THE KUFR MMB

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THE SKULDUGGERY OF THE SHEIKH

In his deceptive article titled *The Middle Way in Islamic Law,* Sheikh Abdul Karriem Toffar states: *"Various disputes have arisen in our Muslim community which caused communal strife and discord. One of the reasons for unnecessary discord is the inaccurate usage of the term shari'ah and not informing which madhab fiqhi the information is founded on as well as not indicating that there is/are a legitimate reason(s) for the difference of juristic opinion on a given matter. This shortcoming once again surfaced with discussions on the Muslim Marriages Bill (MMB)."*

This averment is brazenly devious and inaccurate. It is calculated to mislead and to extravasate support for the Kufr MMB which is haraam in terms of all Four Math-habs of Islam. It appears that Toffar, himself, is ignorant of the meaning of the term, *shariah*. He has failed to show the alleged inaccurate usage. Let him cite some examples of this so-called 'inaccurate usage of the term shariah. *SHARIAH* is the Law of Allah Azza Wa Jal. It is structured on the Qur'aan, Sunnah, Ijma' and Qiyaas, the latter again stemming from the two primary sources, viz., Qur'aan and Sunnah. The entire Kufr MMB is in violent opposition to this divine Shariah.

The attack on the Kufr MMB is not sectarian. It is not Math-hab-based. On the contrary, the attack is the unanimous thrust of all Four Math-habs. The attack is on a measure of Kufr which stupid, self-conceited, slaves of the nafs seek to impose on the Muslim community in pursuit of their monetary and nafsaani objectives. There is nothing but harm and damage for Muslims in the Kufr MMB. While all worldly issues have advantages and disadvantages, even liquor and gambling, the KUFR MMB is pure disadvantage on account of its Kufr.

There is no goodness whatsoever in Kufr since it is the antithesis of Imaan.

In the introduction to his article, the sheikh has highlighted acceptable differences of opinion among the Math-habs. While this is an accepted principle, the opposition to the kufr MMB is unanimous in terms of the Shariah as subscribed to by all Four Math-habs. The sheikh has cunningly endeavoured to accommodate the Kufr MMB within the confines of legitimate and principled differences of opinion as accepted by all Four Math-habs whereas all Four Math-habs unanimously reject the Kufr bill.

The example of differences of the Math-habs regarding Asr Salaat time cited to justify MMB is downright stupid. While the followers of the various Math-habs accept such principled differences and have absolutely no fight with the followers of the various Math-habs regarding their specific ways of following the Shariah, this is not the case with MMB. The kufr MMB violates the Shariah in terms of all Four Math-habs.

It is imperative to dispel the falsehood which Sheikh Toffar is peddling with the distorted concept of Math-hab differences to bolster support for the Kufr MMB. The 'communal strife' to which Toffar refers is not based on Math-hab differences nor did the opponents of MMB seek to suppress or override any valid view of the other Math-hab in their fight against the Kufr bill. On the contrary, Hanafi opponents of the Kufr Bill, in support of the Shaafi Math-hab, had pointed out the grave flaws of the Kufr MMB in terms of even the Shaafi' Math-hab. Furthermore, the Hanafi opponents of MMB had drawn attention to the high treason which so-called Shaafi' sheikhs of the MJC were perpetrating in their support for the Kufr MMB. They had degenerated to the level of condoning and promoting *zina (fornication/adultery)* with their blind support for the bill – support for the sake of worldly objectives regardless of the

haraam and Shariah violations in terms of their own professed Math-hab.

One such example is the haraam 'validity' of a nikah without the *Wali.* Such a nikah is absolutely *baatil (haraam, null and void)* according to the Shaafi', Maaliki and Hambali Math-habs. While such a nikah will be valid in terms of the Hanafi Math-hab, its commission is a major sin and haraam according to the Ahnaaf notwithstanding its legal validity. All the spineless supporters of the Kufr Bill have to this day 'judiciously' refrained from responding to this major item of kufr in the Kufr MMB. They have sought refuge in the impregnable fortress of silence, for they lack even a semblance of a valid response.

Another item of major importance which the opponents of the Kufr Bill attacked was the *Iddah* clause which is in violation of the Shaafi' Math-hab, and which has serious consequences for followers of the Shaafi' Math-hab.

A dispassionate and an honest study of the criticism of the Kufr MMB's opponents will reveal that there was absolutely no inter-Math-hab strife in the fight against the bill. On the contrary, the Ahnaaf Ulama not only upheld, but championed the Shaafi' cause wherever the Kufr bill's clauses were in conflict with the Shaafi' Math-hab. The strife is between the Ulama-e-Haqq on the one side, and the gangs of zindeeqs and munaafiqeen on the other side. The 'communal strife' is NOT between Hanafis and Shaafis. This is a massive falsehood and lie which Toffar is peddling. Sheikh Toffar has acquitted himself most dishonestly and despicably by creating the false notion that the strident opposition to the Kufr MMB was Math-hab-based. But this is furthest from the truth. Anyone who has respect for the *Haqq* may ascertain this fact by even casting a cursory glance at the numerous articles we and other opponents of the Kufr MMB had written. Nowhere in any of the innumerable articles emanating from the opponents of the

Kufr bill is any of the arguments structured on differences of the Mathaa-hib. On the contrary, the differences were and are respected and accepted as valid facts of the Shariah. There is absolutely no contention on this score.

Another example of the unanimous opposition of all Four Math-habs is the issue of *Wilaayat* (jurisdiction) of non-Muslim judges over Muslims and the invalidity of the decrees of the kaafir court. This opposition is not in opposition or in conflict with any of the Math-habs. It is an issue on which there exists Consensus (Ijma'), and *Ijma'* is an edifice structured on the *'primary sources or original textual sources which are the revealed Qur'an and authentic Sunnah'* which Toffar has presented as a basis for his lopsided reasoning designed to justify the Kufr MMB.

Consider the issue of equality of the sexes which is enshrined in the Kufr MMB as a constitutional imperative superseding the Wahi of the Qur'aan Majeed. The opposition against this kufr clause is unanimous. It is not based on only the Hanafi Mathab, a baatil idea which the pro-Kufr MMB clique of MJC sheikhs and other Zindeeqs are at pains to diffuse into the minds of the unwary and ignorant. The view of the opponents of the Kufr Bill on the equality issue is a direct derivation from the First Primary Source of Shariah Law, namely the Qur'aan Majeed and overwhelmingly substantiated by the Second Primary Source, viz,. the Sunnah. We challenge the gangs of Zindeeqs to disprove this. Thus to attribute this opposition to intolerance and portray it as an issue of one Math-hab against another Math-hab is lamentable, despicable and skulduggery

In his employment of humbug reasoning, Toffar accuses the opponents of the Kufr MMB of *"not informing which madhab fiqhi the information is founded"*. He is guilty of a blatant lie in making this false claim. We advise him to read carefully our criticism of the Kufr MMB, and he will not fail to find mention of the Math-hab (Hanafi or Shaafi') on which our criticism is

structured. When a man has no respect for the truth, then he lies without compunction.

In our criticism it was made abundantly clear that the Kufr MMB ignores in entirety the Shaafi' Math-hab on the issues of the *Wali* as a fundamental requisite for the validity of Nikah, and the *Iddah* period. The equality clause was rejected on the basis of the Ijma' of all Four Math-habs. These are just two examples of the mention of the Math-habs. Furthermore, the criticism is upheld by the two Primary Sources of the Shariah, viz. Qur'aan and Ahaadith. But Toffar dishonestly seeks to create the impression that the issues which the critics of the Kufr MMB attacked do not stem from the Primary Sources.

Cunningly seeking to minimize the importance of the criticism, Toffar alleges: *"Difference of opinion in matters of interpretation of shariah text as well as new rulings in "new" matters not covered by the shariah text, have existed from the death of our Prophet (s.a.w) and exist until today."*

This is another example of deception designed to mislead the unwary and the ignorant. The rulings of the Ulama opposed to the Kufr MMB are not "new rulings" nor are the condemned matters "new". The issues criticized are as old as Islam. *Wilaayat, Iddah, Nikah, Talaaq, etc.* are issues on which the Shariah has its clear rulings – rulings which may not be tampered with. There exists a fourteen century *Ijma' (Consensus)* on these issues. But with kufr mentality and nafsaani objectives, men such as Toffar are hell-bent on interpolation and mutilating the inviolable Shariah to achieve their ignoble objectives which are primarily monetary and nafsaani.

The Kufr MMB deals with 'old' matters, not with 'new' matters. Furthermore, nothing in Islam is 'old'. For every new development there is a Shar'i basis rooted in the two Primary Sources of the Shariah which cloak the ruling with divine

immutability. While stupid sheikhs lacking in Fiqhi expertise extravasate rulings from their personal opinions unbacked by the Primary Sources of the Shariah, nor supported by any of the Fuqaha of the Four Math-habs, Ulama whose knowledge is grounded in *Haqq* issue rulings which come with the full sanction and weight of the Qur'aan and Sunnah – something which these liberal morons totally lack.

Only such differences which are based on the *Usool* of the Shariah are valid, tolerable and acceptable. But the type of differences which the stupid and unprincipled reasoning of morons produce are fit for the sewerage drains. Such 'rulings' of stupidity totally devoid of Shar'i substance have absolutely no validity in the Shariah. No Math-hab condones such moronic rulings as these liberal, wayward sheikhs of the MJC disgorge.

In a vile, satanic attempt to render the inviolable Shariah subservient to the immoral constitution of the land, Toffar states: *"That the South Africa Constitution Act, Act 108 of 1996, as amended, is the supreme law of the land and any law or conduct inconsistent with it is invalid."*

This is Toffar's primary basis for justifying the promotion of the Kufr MMB. The statement he has made here is stupid relative to the MMB issue. Germane to the Kufr MMB, Toffar's averment has no validity nor any relevance whatsoever. MMB is not a measure which the government or its constitution seeks to impose on Muslims. The Muslim community is under no compulsion from the perspective of the law to submit to and accept the kufr provisions of the Kufr bill or of the whole bill.

Rejection of the Kufr bill does not bring Muslims into confrontation with the state. On the contrary, the constitution upholds our right to reject the Kufr MMB. This insidious bill is the vile machination of evil, kufr forces – of munaafiqs and zindeeqs – lurking in the Muslim community. Whilst we accept

that the kufr constitution is the 'supreme law of the land', we reject with contempt the suggestion that MMB must be accepted despite its blatant conflict with the Shariah. The 'supreme law of the land' does not oblige Muslims to submit to the Kufr MMB. MMB is not a proposal which the government or the 'supreme law of the land' seeks to impose on us. On what Shar'i grounds does Toffar proffer his averment?

The current law of the Shariah and conduct of the Muslim community relevant to their matrimonial affairs are not inconsistent with the 'supreme law of the land'. Characters such as Toffar and entities such as the MJC and the No Name Brand Jamiat (NNB Jamiat) of Fordsburg for their private despicable motives are labouring to mutilate the Shariah and render it subservient to the kufr constitution despite the fact that the 'supreme law of the land' requires no such subservience.

'Invalidity' of aspects of the Shariah in terms of the 'supreme law of the land' is not a criminal offence in this country. Thus, despite the Islamic Nikah being 'invalid' in terms of the country's laws, it is not a criminal offence. The 'supreme law of the land' allows full freedom to enact such 'invalid' marriages. But the Kufr MMB seeks to criminalize aspects of Allah's Shariah, and such villainy is the proposal, not of the government, but of miscreants and morons who gave birth to the illegitimate Kufr MMB.

Vindicating the Kufr MMB, Toffar states: *"In the case of age requirement for marriage, the MMB lays down 18 as the minimum age which is the age of majority according to the present SA constitution but at the same time makes provision for a younger age subject to certain requirements which are, overall, not repugnant to shariah. Shariah has not prescribed any marriage age. The general practice was marriage after pubescence. Child marriages were found in ancient*

civilizations and ancient tribal societies, but it was never the norm."

The prescription of 18 years as the minimum age is repugnant to Islam. It is haraam for Muslims themselves to present such a haraam proposal. Self-immolation is never permissible. If the government imposes such a requirement, Muslims will not be guilty of violating the Shariah of Allah Ta'ala. But for Muslims themselves to ask the government to impose this haraam proposal on us is tantamount to kufr.

"The provision for a younger age" is an interpolation into the Shariah. It interferes with the Law of Allah Ta'ala. It restricts what Allah Ta'ala has ordained to remain unrestricted. Since it effects a change to the inviolable Law of Allah Ta'ala, it is unacceptable that Muslims place this haraam yoke on their necks of their own accord.

The *"certain requirements"* which according to Toffar *"are, overall, not repugnant to shariah"*, are rejected because in reality they are repugnant to Shariah. Any requirement which seeks to fetter with stipulations a law left unrestricted by Allah Azza Wa Jal is necessarily repugnant to the Shariah regardless of what goodness western-colonized brains discern in such stupidities.

Toffar's brazen contention that child marriages *"were found in ancient civilizations and ancient tribal societies"* is an exceptionally flabby and false argument to soothe the western palates and ideas of his western masters. In this contention he has directed insult to Rasulullah (sallallahu alayhi wasallam) and the Sahaabah. He has proffered this stupidity in an abortive attempt to alienate child marriage from Islam when in reality it is an institution valid, accepted and practised by the community of Islam regardless of it being a norm or not. The 'norm' element has no bearing on the validity and acceptability of the institution.

Rasulullah (sallallahu alayhi wasallam) and senior Sahaabah had child brides. We state so with pride. Whatever was practised by our Nabi (sallallahu alayhi wasallam), we are proud thereof. We do not offer any apology to the kuffaar for any practice which Allah Ta'ala has condoned and which His beloved Nabi (sallallahu alayhi wasallam) had practised.

Submission to the norms and ideas of the kuffaar has no room in the Muslim mind. It is most despicable of Toffar to seek to negate child marriages with his 'ancient tribal' drivel. Was Rasulullah (sallallahu alayhi wasallam) and Ameerul Mu'mineen Hadhrat Umar Ibn Khattaab (radhiyallahu anhu) members of some paganistic 'ancient tribal civilization' who painted their faces and danced around corpses and idols? This is the impression which Toffar is seeking to convey with his stupid kufr argument in vindication of the haraam prescription of 18 years.

Toffar conveniently overlooks the *Ijma'* of the Four Math-habs on the validity and perfect permissibility of child marriages in Islam. The criticism of this MMB provision is not based on the view of one Math-hab. It is a *mas'alah* on which *Ijma'* of the Ummah exists, but of course, Toffar and his ilk of liberal sheikhs and molvis are beyond the confines of the Shariah, hence their primary concern is to satisfy the western mind. Whilst he would love to present this criticism as a sample of intolerance of difference of opinion, there actually exists no difference of opinion in Islam on the validity and permissibility of child marriage.

Whether child marriages were the norm or not is irrelevant. The relevant issue is that it is an institution permitted, i.e. ordained by Allah Ta'ala, and practised by Rasulullah (sallallahu alayhi wasallam) and the Sahaabah. As such it is kufr to seek to proscribe it for the sake of appeasing the mind of the western 'master' who has colonized the brains of Toffar and his ilk.

Regardless of the arguments presented by Toffar, he has not been able to show that child marriages are not valid in Islam. On the contrary, he has been forced by the clarity of this issue to concede the validity and permissibility of such marriages. However, he abortively struggles to justify the 18 year prescription with the laws prevalent in Muslim countries. But the governments currently at the helm in Muslim countries are not Muslim. They are kuffaar of the murtadd, munaafiq and zindeeq categories. The law in the Muslim countries is not the Shariah. The 'supreme law' in all Muslim countries today is kuffaar law, not Islamic law. Regarding these vile tyrants ruling the lands of Islam with kufr systems of law, and meeting their ultimate fate most humiliatingly in sewerage pipes, the Qur'aan Majeed issues the following announcement: *"Those who do not decree according to that (Shariah) revealed by Allah, verily they are the kaafiroon."* Thus, the attempt to justify the 18 year prescription with the kufr laws prevailing in Muslim countries is downright stupidity, futile and kufr.

It should be remembered that in terms of the 'supreme law of the land', marriage of 17 year old adults, is prohibited child marriage. Thus, adults in Islam are compelled by the Kufr MMB to seek the permission of kuffaar authorities to enter into Nikah. But zina is valid and permissible according to the 'supreme law of the land'. This is the 'supreme law' which Toffar and his likes desire to impose on the Muslim community.

While according to the Shariah, it is the right of all adult (baaligh) persons, male and female, to enter into Nikah, the Kufr MMB promoted by the NNB Jamiat-MJC nexus, prohibits under 18 year old adults from marrying. While this Kufr bill spawned by kufr brains prohibits under 18 year olds from Nikah, it does not prohibit them from fornication. While they are free to indulge in every type of immorality and sexual

aberration, they are prohibited from the holy institution of Nikah. This provision is an adequate commentary for the kufr of the miscreants who have spawned this haraam suggestion and who are actively promoting it.

In blatant conflict with the Shariah, Toffar seeks to justify the haraam proscription of polygamy. His only ground for justification is to cite the kufr law systems prevailing in Muslim countries. But such systems of kufr are in flagrant conflict with the Shariah. Toffar is Islamically bankrupt. He lacks understanding of even the rudimentary requisites and methodology of the Shariah, hence he can afford the audacity to present a kufr system to justify another kufr system which is proffered to alter the divine system of the Shariah. What takes place in today's Muslim countries is not the Shariah.

Toffar degenerating into kufr in his attempt to justify the criminalizing of polygamy, says: *"However, the text do (does) require justice to be done to spouses in polygyny and one of these is the ability to maintain more than one spouse justly, fairly and equitably. All madhahib require this. The text also makes it clear that if one cannot do so, then marriage to only one wife is permitted."*

The last statement in this averment is a blatant lie. The advice to marry one wife does not proscribe polygyny. Just as a man unable to afford one wife will be advised to abstain from marriage until he is able to maintain a wife and fulfil her rights does not proscribe marriage nor renders the Nikah invalid, so too is it with polygyny. While Toffar has been quick to claim that all Mathaahib require justice and fairness, he conveniently ignores the fact that all Mathaahib allow polygyny without state intervention. According to all Math-habs, marriage to four wives is valid and permissible. The man's ability to maintain his four wives and to acquit himself correctly as Islam demands belong to the private domain. None of the Math-habs

has given the state the right to prevent polygyny as Toffar and his ilk advocate.

Islam does not criminalize polygyny if the man is unable to maintain his wives with justice. The institution of Nikah is never criminalized on the basis of the man's sinful deeds of wilful discrimination. But Kufr MMB disgorged by the Zindeeqs criminalizes the very institution of polygyny even if the man seeking to marry a second wife is fully capable of meting out equality and justice. For the past more than fourteen centuries even poor men married more than one wife without the need for obtaining state permission. The institution of Nikah was never criminal. But Kufr MMB outlaws polygyny and makes it a criminal offence. Only a kaafir court/minister has the right to legalize aspects of polygyny according to its/his sole discretion. Thus, the kaafir court is given the right to criminalize an institution which the Qur'aan and Sunnah permit and promote, and which was given practical expression by the Ambiya, by Rasulullah (sallallahu alayhi wasallam), the Sahaabah and the entire Ummah down the long corridor of Islam's history.

Regardless of the angle from which Toffar seeks to argue this issue and regardless of the stupid drivel he presents in justification of criminalizing polygyny and proscribing what Allah Ta'ala has allowed, he fails miserably in his kufr exercise to substantiate his effort of making haraam what Allah has made halaal.

In another smokescreen justification, Toffar defends the Kufr MMB provision pertaining to maintenance during the *Iddah* period. Attempting to detract from the real issue of criticism in this regard, Toffar introduces a peripheral dispute on which the critics did not even touch. He does so while ignoring the fundamental issue of the meaning of *Iddah* itself. The Hanafi critics were actually taking up the cause of the Shaafi' Math-

hab, and criticizing the Kufr MMB in defense of the Shaafi' Muslim community whose Math-hab MMB has ignored in totality. Thus Hanafis and Shaafi's (those who understand the Shariah) are unitedly criticizing the Kufr MMB for failing to take into account the Shaafi' concept of *Iddah*. The aspect which Toffar has raised was not the subject of our criticism. But, his chicanery dictated this deflection from the real issue of contention. What was attacked is conveniently ignored, and what was not criticized is presented dishonestly in the attempt to label the critics with intolerance of even valid differences of the Fuqaha.

At no stage did the critics even suggest that there should not be maintenance during the valid Shar'i *Iddah* period irrespective of any differences on this score. Our criticism was entirely in a different area related to *Iddah*. If Toffar has any conception of honesty in him, he should study our criticism on this issue.

Toffar, bereft of any Shariah arguments, seeks to justify the R20,000 fine which Kufr MMB imposes on those who fail to register their Talaaq, by citing the kufr law system prevailing in Muslim countries. We have already pointed out earlier that the system of law governing Muslim countries is a kufr system. It is not the Shariah. Prostitution, liquor, and all types of sin and vice are lawful in the Muslim countries of this era. A brain which cites these vile governmental systems of kufr to justify an act which proscribes what the Shariah has ordained, is indoctrinated with kufr. His points of justification for the heavy fine are figments of his hallucination. None of the Math-habs advocates this provision of the Kufr MMB. The Math-habs do not criminalize, fine and imprison Muslims who fail to register their Talaaq. After more than fourteen centuries, the MMB clique seeks to subject the Shariah to change and distortion.

In his attempt to bamboozle the unwary and the ignorant, Toffar in justification of the R20,000 fine for not registering Talaaq, says: *"It is administrative carelessness that is being penalized due to the serious consequences it will have on the lives of people."* His lack of expertise in Shariah law is conspicuously exhibited by his ignorance of the fact that monetary fines are not allowed by the Shariah in any field of criminality. 'Administrative careless' may not be penalized with the imposition of a monetary fine. It is haraam to do so in the Shariah. The monetary fine itself is a gross transgression of Allah's Law. Regardless of whatever consequences may ensue in the wake of 'administrative carelessness', monetary fines remain haraam and cannot be imposed. This is the bottom line on which our criticism is structured.

Secondly, what is 'administrative carelessness' in terms of Kufr MMB is not 'administrative carelessness' according to the Shariah. Since the Shariah has not imposed registration of Talaaq neither on the state not on individuals, abstention from such registration is never termed 'administrative carelessness' in terms of the Shariah. Abstention from the type of registration required by kufr law, is the Muslim's right. If there was even a semblance of a need to register Talaaqs, the Shariah would have stipulated witnesses for the validity of Talaaq in the same way as witnesses are requisites for the validity of Nikah. But Talaaq does not require even witnesses. Thus, to a greater extent is the provision of registration an act of *zulm* and an infringement on the rights of Muslims. But for adhering to his Shar'i right, Toffar and his gang of miscreants advocate the haraam R20,000 fine for doing something which is perfectly halaal. Their brains are truly colonized by kufr cults of life.

Justifying the Kufr MMB's provision allowing kuffaar courts to handle and dissolve Nikahs, Toffar avers: *"A far-reaching new process is envisaged for dissolution and post-dissolution*

of marriages where current South African legislation will become applicable. As is universally known, all over South Africa, there is no system of Muslim post-divorce care and supervision of parties' responsibilities in the aftermath of a divorce……..The Family Advocate of the High Court will play an important role in settlement matters as far as it affects children."

Toffar is arguing in favour of a kufr system. Only those ignorant of the Shariah will be bamboozled by his devious reasoning and justification for the kufr provision of the MMB. This court system of dissolving marriages and the 'post-divorce care and supervision', and the 'Family Advocate' with his system, are all in conflict with the Shariah in terms of all Math-habs. In our criticism on these provisions we have explained in detail the Shariah's law which is in violent conflict with the kufr provisions of MMB.

Toffar has miserably failed to produce any Shar'i justification for submission to the kufr system. All law systems argue in favour of their provisions for the welfare of society. But Islam has its own system. All other systems are rejected by Islam. It therefore does not behove Muslims to voluntarily elect for submission to a kufr system. Every step effected by the family advocate who will be a non-Muslim, perhaps a lesbian or a gay, a faasiq and a faajir and an atheist, is in conflict with the Shariah. But Toffar and the NNB gang beg Muslims to submit to the yoke of kufr.

The lack of *"Muslim post-divorce care and supervision of parties"* is never a valid ground for interference and tampering with the Shariah. Such experiences whether real or hallucinated do not justify the kufr exercise of effecting changes to Allah's inviolable Law – His Shariah. Specifically denouncing and rejecting kufr systems, and commanding obedience to the divine Shariah, the Qur'aan Majeed states: *"Thus, We have established you on a Shariah regarding (all*

your) affairs. Therefore follow it, and do not follow the base desires (such as Kufr MMB) of those who lack knowledge" (such as Toffar and his ilk of kufr breeders).

Employing his usual dishonesty and skulduggery, Toffar alleges: *"Needless to say, a purely sectarian view on custodial guardianship will cause serious problems for those who insist on this kind of solution in this matter."*

What is that 'sectarian view' to which Toffar has alluded? And, what are the 'serious problems' which will stem from this ambiguous 'sectarian view'? What is that 'sectarian view' which allegedly the critics of Kufr MMB had been brandishing in their attack of the bill? This ambiguity is another red herring of Toffar to justify his case with lies.

Letting loose out another lie intentionally calculated to misinform and mislead, Toffar states: *"The relevant section in section 9(2) mentions, as elsewhere, Islamic law, and does not specify any madhab. This is a pertinent feature in MMB and could be the cause why certain criticisms of it had been vehement."*

It is satanic mischief to peddle the idea that criticism of the Kufr MMB is based on one Math-hab or on account of the bill's conspicuous diversion from Math-habs. The attack on Kufr MMB is in terms of all Four Math-habs. The vehemence of the criticism is on account of the clear-cut kufr of the MMB. Furthermore, assuming that the MMB recklessly discards the Math-habs and seeks to enforce the rulings of a Math-hab on the followers of another Math-hab, then this too is unacceptable and intolerable. For example, in terms of Kufr MMB, the Hanafi view for the validity of Nikah is imposed on Shaafis as well despite the fact that the marriages will not be valid in terms of the Shaafi' Math-hab. This serious difference resulting in the contract being either nikah (for Hanafis) and

zina (for Shaafis) cannot be brushed aside. The view of Hanafis may not be imposed on Shaafis on this score. The difference is unbridgeable. It is a matter of Nikah or zina.

Nevertheless, despite this wide chasm between the Math-habs on this issue, Hanafi Ulama were standing up in defense of the Shaafi' community in criticizing the Kufr MMB on the validity of marriages provision. Thus, our criticism is not based on sectariasm as Toffar deceptively and cunningly endeavours to propagate.

Peddling another *baatil* idea to justify the kufr system of alimony and post-divorce awards which the kaafir court makes, Toffar says: *"Any enrichment she causes her husband to procure in his work or business and related matters are (is) outside the scope of the Muslim marriage. These extraneous activities must thus be rewarded at market value. Clauses in the MMB to this effect are thus not repugnant to shariah."*

In fact, such clauses are most repugnant to the Shariah. Toffar has spoken absolute rubbish. This rubbish highlights his ignorance of the Shariah. If he had even a superficial grasp of Fiqh, he would not have blurted out this *ghutha* (rubbish). Financial matters are clearly defined by the Shariah. There is no support whatsoever for Toffar's baatil in the Shariah. He has stated pure stupid opinion unsubstantiated by even a shred of Shar'i evidence. The Shariah is not the product of a man's opinion, leave alone stupid opinion such as the rubbish Toffar rambles. The Fuqaha have clearly ruled that there is no post-divorce award/reward for a woman who has assisted her husband during the era of marriage. Even the children cannot be granted legal awards for having enriched their father.

The wife will be entitled to a claim only if she had expressly given her husband a loan. Such loan is a liability on the husband. But, her assistance in the family business and the

gifts of wealth she makes to her husband are never rewardable by legal decrees of courts at any time, neither during the subsistence of the marriage nor after its dissolution.

Bereft of any Shar'i evidence for his rubbish view, Toffar, the freelancer, wandering aimlessly in the limbo of *zanaadaqah* without adherence to any Math-hab, attempts to extravasate support from a Hanafi view. Thus he says: *"Some fuqaha require servants to be hired to do this work and be paid by the husband. They see this as part of the requirement of maintenance of the wife."*

This is the view of the Hanafi Math-hab. But there is absolutely no basis in this Hanafi view for the *ghutha* of Toffar. This Hanafi view can never be presented in support for an award claimed by a wife after dissolution of the marriage. Toffar is either ignorant of the Hanafi stance regarding a claim for even past maintenance, or he has chosen to ignore it since it flies in the face of his stupid opinion of the validity of 'post-divorce' awards decreed by the kaafir court in terms of the Kufr MMB. According to the Hanafi Math-hab, a wife has no right of claiming maintenance which the husband has not paid in the past. She will have a claim only if there was an agreement to the effect or the Qaadhi had fixed the maintenance. But, in general the Hanafi Math-hab negates such claims.

Furthermore, the provision of a servant for the wife is within the subsistence of the Nikah and is part of the Waajib maintenance. It is a right which the Shariah gives a wife, in terms of *only* the Hanafi Math-hab. It is not a right which extends to the post-divorce period in the same way as *nafqah* (maintenance) terminates with the expiry of the *Iddah* and does not extend beyond this era.

In another baseless attempt to justify the Kufr MMB's 'post-divorce' awards, Toffar says: *"Even the hadanah of the infant, especially the breastfeeding of such a child is against a fee under various circumstances according to the different views of*

the fuqaha herein." Even a moron should be able to understand that the fee mentioned here is remuneration for current services, and in no way whatsoever constitutes a basis for justifying the haraam awards made by a kaafir court during the 'post-divorce' era. Such awards are not allowed by any Math-hab.

Regarding custody of minors, Toffar justifying the Kufr MMB's provisions, disgorges the following deception: *"As far as custody and access to minor children are concerned, section 10 of the MMB states that the Islamic laws of custodial guardianship and the recommendations of the Family Advocate of the High Court will decide such issues. The section does mention, on more than one occasion, that there must be regard to the Islamic law herein."* Toffar has simply regurgitated what the MJC and the NNB Jamiat had disgorged in defence of the Kufr MMB.

The mention of 'Islamic law' in the Kufr MMB is humbug and meaningless, and Toffar's citation thereof is skulduggery to dupe the unwary and the ignorant. In fact, his ignorance of the Shariah exhibits his stark *jahaalat* of the laws of the Shariah. Regarding custody and access, the Kufr MMB states:

"Custody of and Access to Minor Children

"In making an order for the custody of, or access to a minor child, or making a decision of guardianship, the court must, with due regard to Islamic law and the report and recommendation of the Family Advocate, which must take into account Islamic norms and values, consider the welfare and best interests of the child."

With forked tongues, the NNB Jamiat-MJC clique has attempted to bamboozle unwary and ignorant Muslims with the terms *'Islamic law'*. With this extremely transparent veneer, the clique has endeavoured to pull wool over the eyes of the Muslim public. It is an abortive ploy to beguile people into

believing that the Kufr bill is 'shariah-compliant'. If it was shariah-compliant what is the need for the recommendations of a lesbian/gay/non-Muslim/jaahil 'family advocate'? Why did the miscreant clique not spell out with clarity the Shariah's laws of custody? They refrained from the Shar'i presentation because on this issue the Shariah comes into violent clash with the Constitution and the law.

The recommendation of the non-Muslim family advocate who is appointed in terms of the secular Act, and who may be a lesbian female or a gay, kaafir male, must incumbently be in line with the letter and spirit of the Constitution. It is unthinkable and downright stupid to believe that the non-Muslim family advocate will ignore the law/Constitution and submit to the Shariah. In a conflict of the two systems, the family advocate is constitutionally bound to set aside any law/tradition, and to act in accordance with the letter and spirit of the Constitution.

The inclusion of the phrases, *Islamic law, Islamic norms and values',* is pure hogwash designed to bamboozle. Every intelligent person who has even a slight understanding of the Constitution and the laws of the land knows that it is inconceivable for the courts to render the Constitution or the law Acts subservient to the Shariah. On the contrary, they are under constitutional obligation to mutilate ('develop') and interpret the Shariah to force it into subservience of the Constitution.

In brief, the so-called 'amendments' of the miscreant clique have totally ignored the Shariah's laws pertaining to custody of minors. They did so because of the sharp conflict between the two systems.

"In the absence of both parents, for any reason, but subject to subsection (1), the court must, in accordance with Islamic law,

in awarding or granting custody or guardianship of minor children, award or grant custody or guardianship to any person ***as the court deems appropriate, in all the circumstances."(Our emphasis)***

The determining factor in this provision is *"as the court deems appropriate, in all circumstances."* It is not as the Shariah deems appropriate. The final decree is that of the court which will decree according to the Constitution. Islamic law will or may be taken into consideration only if it does not conflict with the Constitution nor is in violation of the law. Even the miscreant clique is not so stupid as to believe that the Shariah will trump the Constitution. They do understand that the final say will be the decree of the court which will and must necessarily conform with the Constitution. The courts will incumbently interpret and mutilate the Shariah to bring it in line with the letter and spirit of the Constitution. It is precisely for this reason that the MMB clique has refrained from stating clearly the Shariah's law in this case. They content themselves with highly ambiguous statements since such ambiguity and forked tongued presentations serve the objective of befooling and misleading the unwary and the ignorant.

The court will not and cannot award custody and grant guardianship in terms of Islamic law if such law conflicts with the Act or with the Constitution. In any such conflict, the courts will incumbently interpret the Shariah to render it subservient to the Constitution. Such mutilation of the Shariah is kufr – kufr invited by the miscreant clique in the name of Islam.

Defending the Kufr MMB's maintenance provisions, Toffar, displaying his *jahaalat* blurts out: *"In the issue of maintenance, there is no fundamental or serious difference between shariah requirements herein and the MMB."* The disgorgement of this

blatant lie is the effect of *jahaalat* (gross ignorance) of the Shariah's law of maintenance. Maintenance in terms of the Kufr MMB is securely fettered by the secular Maintenance Act and other Acts. The Kufr MMB states in this regard:

"Maintenance

"Subject to subsection (2), the provisions of the Maintenance Act, 1988 (Act No.99 of 1998), apply with the changes required by the context, in respect of the duty of any person to maintain any other person."

Regardless of the Islamic terminology injected into the bill, the secular Maintenance Act and the Constitution will be the deciding factors. It is precisely for this reason that a variety of secular Acts fetter the Kufr MMB. There is an unbridgeable chasm between *Nafqah* (maintenance) fixed by the Shariah, and maintenance in terms of the secular law. The greater portion of maintenance ordered by a secular court will be haraam. What may be essential in secular law could be haraam in terms of the Shariah.

Toffar abortively labours to forge a resemblance between the Kufr MMb's 'compulsory mediation' model and the Shar'i process of *Tahkeem (Arbitration).* However, the two systems are poles apart. Regarding arbitration, the Kufr MMB states:

"Arbitration (Tahkeem)

"*Subject to subsection (4), the provisions of the Arbitration Act, 1965, shall apply to an arbitration conducted in terms of this section."*

Islam has its own form of *Tahkeem* (Arbitration). Yet, the miscreant clique places it under the shadow of the secular Arbitration Act. It is haraam to fetter the Shariah's Law, making it subservient to the secular Act. The mere adoption of the term, *tahkeem,* does not confer Shar'i legitimacy to the

hybrid, haraam arbitration process proposed by the NNB Jamiat-MJC clique.

"No arbitration award affecting the welfare of minor children or the status of any person shall come into effect unless it is confirmed by the court upon application to such court and upon notice to all parties who have an interest in the outcome of the arbitration."

This is a perfect specimen of transmogrification of the Shariah. The arbitrator in terms of the Kufr MMB is a toothless dog whereas in terms of the Shariah, the *hukm (decree)* of the *Hakam* (Arbitrator) is final and binding. The award made by the *Hakam* may not be made subservient to the secular court. While the Kufr amendment of the miscreant clique states in the above provision that the *Hakam's* decree for minor children will have no effect, the Shariah declares it to be binding. While the MMB's kufr provision requires the *Hakam's* award to be confirmed by the kuffaar court, the Shariah decrees that his award is Waajib and binding. The amendment implies the invalidity of the award of the *Hakam* unless ratified and confirmed by the secular court, and that too on application.

Besides the threat of transmogrification (mutilation and destruction) of the Shariah by the interpretation of the courts, the Kufr MMB itself transmogrifies the Shariah with its kufr provisions even without the intrusion of the courts.

"In considering an application for the confirmation of an arbitration award, the court must be satisfied that the award is in the best interests of all minor children…"

This is utterly *baatil* in terms of the Shariah which does not require any confirmation of any court for the validity of the

Hakam's decree. Secondly, the concept of 'best interests of minor children' is widely at variance with the Shar'i concept. What is 'best interests' in terms of secular law may be evil and haraam according to the Shariah, and what is 'best interests' in terms of the Shariah may be unlawful according to secular law. Yet, the miscreant clique who proposed the MMB kufr amendments feels comfortable with its kufr provisions as well as with the transmogrification of the Shariah, which will be the logical consequence of the intrusion into the domain of the Shariah by the secular courts.

"….and to this end the court may: (a) confirm the award; (b) declare the whole or any part of the award to be void; (c) substitute the award for another award which the court deems fit; (d) vary the award on appropriate terms: or (e) remit the matter to the arbitrator with appropriate directions."

In terms of the Shariah, all five provisions (a, b, c, d, and e) are *baatil.* According to the Shariah the secular court has no power to effect any of these provisions. This haraam action is a further distortion and mutilation of the Shariah.

"Nothing in subsection (5) shall be construed as limiting the court's jurisdiction under any law to review an arbitration award insofar as it relates to a property dispute which does not affect the rights or interests of minor children."

It is quite obvious from this provision that nothing and nothing whatsoever can limit the jurisdiction of the secular court which operates in the full glare of the Constitution. The Shariah has absolutely NO pedestal in this secular judiciary system. Despite this brazen assertion of the Kufr MMB amendment, the miscreants stupidly pipe the theme of 100% shariah-compliant, when in fact the bill is 100% KUFR.

CONCLUSION

Whatever Toffar has disgorged in his article is old hat which has been adequately rebutted and negated in numerous articles in the past. Toffar's dishonesty or ignorance of the Shariah is conspicuously manifested by his silence on the major issues of *Validity of Nikah, Meaning of Iddah and the Equality* provisions of the Kufr MMB. These are such fundamental issues which cannot be ignored under any circumstances. However, since Toffar has absolutely not a shred of justification to offer in support of these provisions of the Kufr MMB, discretion dictated silence.

In terms of the Kufr MMB, a marriage which is not valid according to the Shaafi' Math-hab, is valid according to Kufr MMB. What may not be *Iddah* for Shaafis is imposed as *Iddah* on them by the Kufr MMB. According to all Four Math-habs supported by the two Primary Sources of Islamic Law, the Qur'aan and Ahaadith, the equality provision of the Kufr MMB is rejected as *baatil.*

The MMB is a conspicuous document of kufr peddled by *zindeeqs* and *juhala* as being compliant with the Shariah.

A number of booklets and numerous articles explaining the Kufr MMB are available. Anyone who wishes to study these copious writings on this issue, may write for copies to
Mujlisul Ulama of S.A., P.O. Box 3393, Port Elizabeth 6056.

"Thus, have We established you on a Shariah regarding (all) your affairs. Therefore follow it, and do not follow the base desires of those who lack knowledge." (Qur'aan)

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EXECUTIVE SUMMARY OF THE MUSLIM LAWYERS ASSOCIATION SUBMISSIONS AGAINST THE MUSLIM MARRIAGES BILL (MMB)

We, as the Muslim Lawyers Association are fundamentally opposed to the Bill for various reasons, some of which are inter alia:

1. Failure to abide by the provisions of the proposed Bill could result in a Muslim being found guilty of a criminal offence and/or being fined.
2. There are many provisions in the Bill which are simply un-Islamic and against the Quran and Sunnah. For example the regulation relating to maintenance, Talaq, polygamy and intestate succession to name a few.
3. The Bill makes impermissible what Allah has made permissible.
4. The outlook of the Bill is distinctly secular and materialistic and against the ethos of Islamic concepts such as RIZQ.
5. The Bill allows Non-Muslim judges who have no in-depth knowledge of Arabic and are not schooled in the Shariah to interpret Quraan and Sunnah and to make Ijtihad. The secular courts may amongst other things, pronounce on the validity of a Talaq, issue a Faskh, determine who is Muslim and interpret Islamic law. The secular courts are able to make rulings which South African law will recognise as Shariah.
6. Muslims' Shariah rights may not be considered valid until reviewed and ratified by South African courts. This in itself is contrary to Shariah. e.g. Talaq and polygamy must be confirmed by a South African Court.
7. The MMB will subject Quraan and Sunnah to Constitutional review, which means that Allah's Law will be subject to Constitutional analysis. With the development of the law based on the proposed Bill along with Constitutional intervention, the

result will contaminate Shariah and will consist of few elements of Deen combined with secular ideas of justice, all under the banner of Islam.

8. The constitution at present allows for all citizens to freely practice their religions. The MMB would curtail such religious freedom of expression for Muslims which in itself would be arguable to be unconstitutional.
9. The Bill promotes a school of thought of a minority and does not cater for difference of opinion amongst scholars of the different schools of thought.
10. Existing Muslim marriages will automatically be bound by the Act, unless both husband and wife jointly opt out of it. Opting out does not stop the Courts from going ahead anyway with interpretation of Quraan and Sunnah on behalf of those who are bound by the Act, and modifying the Shariah as we know it to be more consistent with modern secular values.
11. There is selective Justice. The taking of a second wife without court permission is criminalised but adultery and fornication are not.
12. The Bill is in fact unconstitutional because it changes Muslim Personal Law instead of just recognising it. In light of the provisions not being consistent with Shariah, and being applicable only to Muslims, this will allow secular courts to systematically discriminate against Muslims, to the exclusion of all others, with sanctions which are foreign to the Shariah.
13. The MMB curtails religious freedoms.
14. The Bill will cause division amongst Muslims and between Muslims and the State.
15. The Bill will promote a brand of Islam which is more palatable to Western secular values.
16. The Bill does not allow arbitration which the MLA believes is the only possible solution.

THE MLA'S DETAILED SUBMISSIONS ARE AVAILABLE ON ITS WEBSITE www.mlajhb.com