

Ulama – The Custodians of the Shari’ah (including MPL)

The lofty status that the true Ulama hold in Islam is not an invention of their own imagination. It is established directly from the Qur’aan and Ahadith. By way of example, Allah Ta’ala says in the Holy Qur’aan: **“From amongst His servants, only the Ulama fear Allah”**. When the very purpose of life is the servitude of Allah Azza wa Jall and fearing His displeasure, the true Ulama have excelled in this goal of life. Their superiority is thus self evident, and attested to by Allah Ta’ala himself.

The highest of Allah’s creation are no doubt the Ambiyaa (Prophets—alayhimus salaam). In their absence, their office, as much as is possible, is filled by the Ulama. Therefore, the Hadith mentions “The Ulama are the inheritors of the Ambiyaa”. Numerous Aayaat of the Qur’aan, and Ahadith could be cited to confirm the elevated rank granted to them by Allah Ta’ala.

Amongst the duties of the true Ulama, and by them we mean those who practically adhere to the Sunnah, is the safeguarding of the Shari’ah from tampering and interference. The Divine code of life should be preserved in its pristine purity, and should not be subjected to changes similar to those found in Christianity and Judaism. The priests and rabbis, in the name of reform, totally disfigured the Divine injunctions revealed to the respective Ambiyaa (alayhimus salaam). Both the word and the spirit of Divine revelation suffered repeated revision, until the final product had very little semblance to its original form.

It comes as no surprise that similar efforts have been underway in Islam, for the Messenger of Allah (Sallallahu alayhi wa sallam) had prophesied this. However, by the Fadhl of Allah Ta’ala, there was and will always be a group of Ulama who defend the original teachings of Islam. Reference to them is made in the Hadith: “There will always remain in my Ummah a group firm on the Truth.” It is the Ulama who take up the front line in defending the teachings of Islam. Due to this position taken up by them, they bear the criticism of those who have an aversion to Islamic values. Thus the modernists of today, who seek to ‘reform’ Islam to conform to western values; have always been at loggerheads with the Ulama. What is in reality an aversion to the Islamic ethos vents itself in shape of spitting venom against the Ulama.

The Ulama have always made it their duty to be aware of various attempts to change the teachings of Islam in the name of reform. It was due to their experience with various reformists groups, that when the issue of MPL came up in South Africa, the Ulama were sceptical that this would just be another vehicle used by modernists to attempt amendment of the Divine Law. When they gave voice to their apprehensions, they were told that they were over reacting, and being irrational. This did not allay their fears, and they kept on probing the purpose of this process of MPL. On each occasion they were told that it was solely to have Muslim marriages legally recognised. The Ulama, because of their insight and foresight, were never really satisfied.

It was just a matter of time before the cat was let out of the bag. What was dismissed as an unfounded conspiracy theory soon unfolded to be a reality.

One of the members of the project committee that drew up the present Bill, namely one Farida Mahomed, had written an article on the background to the work of the committee. It may be viewed at: www.uct.ac.za/depts/lrgu/newslets/2001-may/islamic.htm. Explaining the need for the Bill, and demonstrating her respect for the Ulama, she says:

“Presently, Muslim marriages are supervised by informal patriarchal judiciaries such as the Transvaal and Natal Jamiat al-Ulama, Sunni Jamiat al-Ulama, Muslim Judicial

Council (Cape Town), and the Islamic Council of South Africa. The clergy applies Islamic Law that dates back to the 9th century schools of thought namely, Hanafi and Shafi'. Modern scholars argue that the moral and ethical intent of Islam supports egalitarianism and social justice. Yet, as laws are dynamic, the origins of these laws bear traces of misogyny and patriarchy."

[*patriarchy*: A form of social organization in which a male is the family head and title is traced through the male line.

misogyny: Hatred of women]

There is a subtle admission that the Muslim public have confidence in the Ulama, and that they take the Ulama as a source of guidance in Deeni affairs. This must surely be tearing the hearts out of the modernists, who would certainly wish to see the public abandon the Ulama for their reformed and revised understanding of Islam.

The fact that the Ulama ardently adhere to schools of jurisprudence that date back to the 9th Century is a source of pride for them. Regarding this glorious age, the age of the Aimmah Mujtahideen (the imaams of the schools of jurisprudence), the Messenger of Allah (Sallallahu alayhi wa sallam) said: "The best of ages is my age, then that which follows, and then that which follows." The Aimmah Mujtahideen were most fortunate to have been in the era of the Sahaabah and Taabi-een (alayhimur ridhwaan). True love of Rasulallah (Sallallahu alayhi wa sallam) would demand that all Muslims love those who were favoured with his company, and even those who were honoured with the company of his companions. This is a sign of genuine devotion and allegiance. Therefore, the fact that the Ulama identify themselves with the illustrious Aimmah of this age is in fact a feather in the cap for the Ulama.

As far as the enemies of the Sunnah are concerned, their aversion to the Sahaabah, Taabi-een and Aimmah is evident. These august personalities are deemed backward; hence the Ulama that follow them are also backward. Let it be known to them that in Islam, the scale of merit of time is the reverse of that of the west. In the western mind, the closer one is to latter day material progress, coupled with immorality, decadence and impiety, the more advanced one is regarded to be. In Islam, the closer one is to the age of the Master of all creation (Sallallahu alayhi wa sallam), the more fortunate is one considered. From the two diametrically opposed positions, the view adopted by the writer is clear.

Let it be known to her that, to her dismay, our allegiance goes back even further. It goes back to the 7th century, the time of Rasulallah (Sallallahu alayhi wa sallam) himself. The Aimmah we follow base their entire jurisprudence on the Qur'aan and Sunnah, which dates back to the 7th century. Hence, in her attempt to deem us backward, she has in fact understated the reality.

The plot unfolds when she makes mention of "modern scholars". Who are these modern scholars who could even dream of matching the likes of Imaam Shafi'ee, Imaam Abu Hanifah and the likes (alayhimur rahmah)? We beg: Give us some names so that we may engage in a comparison. Perhaps they may be our saviours, guiding us from the ignorance of antiquated laws to the light of an 'enlightened Islam'. Perhaps they could expound the law of Allah Ta'ala, and apprise us of that which the Aimmah failed to see. And, perhaps they are the first to be endowed with an understanding of what Allah Ta'ala really wants from us.

She makes reference to "the origins of these laws", i.e. the laws codified in the Shafi'ee and Hanafi mathaa-hib. What are "the origins of these laws"? It is none other than:

- a) The Holy Qur'aan
- b) The Sunnah

- c) Ijmaa'
- d) Qiyaas.

Ijmaa' (consensus) has its basis in the Qur'aan and Sunnah. Qiyaas, in a nutshell, is the analogy to the closest example in the Qur'aan and Sunnah, where no explicit text exists. Hence, in reality, "the origins of these laws" are essentially two.

- a) The Holy Qur'aan
- b) The Sunnah

She then says: "...**the origins of these laws bear traces of misogyny**" The inference is thus that the Holy Qur'aan and the Sunnah teach hatred of woman. May Allah Ta'ala save our Imaan. This then justifies the need for reform. It brings to mind the incident where, a few years ago, one of these "modern scholars" called for revision of the actual text of the Holy Qur'aan. Referring to verses that grant different status to men and women he wrote that these "nasty" verses of the Qur'aan should be removed. The inference towards the need for reform is brought out more clearly in her following words:

"Yet, many debates conclude that considering socio-economic circumstances of society, traditional laws must be reformed, because unreformed laws would further enslave women to the whims and fancies of patriarchal interpretations of antiquated laws."

She concludes:

"In conclusion, Committee members are constantly alerted to the fact that the Constitution is the supreme law of the Republic, and will continue to debate the issues bearing in mind that the challenge for the recognition of aspects of MPL is to ensure that there is compatibility of such legislation with the Bill of Rights, particularly the equality clause."

Compatibility with the Constitution is the ultimate aim, as if the Constitution was a divinely revealed scripture. Such sentiments should send shivers down the spine of even the weakest of Muslims. One is simply left shocked and dumbfounded, too stunned to comment. Surely a Muslim's allegiance lies first and foremost with Allah, and not the Constitution.

Therefore, it comes as no surprise at all that the project committee is attempting to reform and modernise the Divine Shari'ah. This aim is abundantly clear from the above quotes.

Let us examine a few examples of such attempted modernisation of the Shari'ah.

Firstly, the proposed Bill seeks to restrict polygyny. While the ultimate aim of the modernist reformers is to outlaw polygyny, in the present climate it would be suicide to do so. Their stark kufr would be exposed, and the ensuing furore would be unbearable. As an interim strategy they have contended themselves with the restriction of polygyny. This is no new development. Modernist writers in other regions have succeeded in introducing restriction on polygyny in a number of States that have a Muslim majority. However, only one State, namely Tunisia, has managed to totally conform to the whims of these reformists by prohibiting polygyny.

Rasulullah (Sallallahu alayhi wa sallam) had predicted that his Ummah would follow the ways of the Jews and Christians to the letter. It is precisely because of this that the Ummah would be divided into seventy three sects, just as the Jews were split into seventy one and the Christians into seventy two sects. The degeneration of the Muslims has already been prophesied. Details of this are to be found in the Ahadith. As much as the sorrowful state of the Ummah in the last ages of the world is painful for us, we have full conviction that such conditions are surely to

come about. This is because the most honest of all creation (Sallallahu alayhi wa sallam) has informed us thereof.

The bible is replete with references to polygyny. Yet, we find that mainstream Christianity outlaws polygyny. What we should question and ponder upon is how this prohibition came about. It was not that a Pope suddenly got up one morning and wrote out a papal decree banning polygyny. The diametrical shift was definitely gradual. The transformation certainly included a period of restriction, before finally arriving at prohibition. As sad as it may be to admit, the Ummah will be soon following suit down the same road. We have no doubt about it. In fact, the process is already underway, as may be gauged from the example of Tunisia.

While the retrogression of the Ummah is inevitable, what is avoidable is that each individual should ensure that he is not party to such schemes. From the Hadith mentioned above it is clear that the true Ulama will stay clear of such contrivances, and continue to propagate the truth under all conditions. A few learned men of this Ummah would surely become embroiled in such conspiracies, as was the case of the rabbis and priests of past. At times such collusion may be undertaken unwittingly, for Shaytaan will beautify their actions for them, as the Qur'aan mentions: **“And Shaytaan had beautified their actions for them, and he had prevented them from the path (of truth).”** May Allah Ta'ala save one and all from such deceptions. Aameen.

In the case under question, Shaytaan has provided an appealing justification for the restriction of polygyny. Cases are presented of men abusing the institution of polygyny. While these are not denied, they do not justify legal restriction. If these cases truly merited legal restriction, then for every case presented, ten could be produced to demonstrate abuse of monogamous marriages. The logical conclusion would be the regulation of monogamous marriages as well. These arguments of the modernist should be dismissed for what they really are: deceptions of Shaytaan.

Another example of reformation of the Divine Shari'ah is the subtle attempt to introduce aspects of the Community of Property regime. This regime envisages a joint estate of the assets of the spouses. More significantly, all assets and liabilities arising after the marriage become part of the joint estate. In practical terms, the wife entering the marriage empty handed leaves the marriage with half of the husband's property. Modernists have argued that since, in Islam, the divorcee is not entitled to maintenance after iddah; such a regime would empower her. She would not be left “on the street” so to say. The inference is that the Law of Allah has not provided for women, and that such deficiencies in the Shari'ah have to be remedied by borrowing from man-made laws. To be more precise, the roots of 'Community of Property' lie in Christendom. Hence Christian concepts, na-uthu-billah, are to be considered the saviours of the supposed inadequacies of the Shari'ah.

In the Shari'ah, the estate of each spouse is independent. In fact, Islam gave the wife contractual and ownership capacities well before the western world could even dream of it. Together with this, Islam has catered for the needs of women in all facets of their lives. Her financial needs are accommodated for in every possible situation, be she a child, adult, spinster, wife, sister, mother, widow, divorcee or aged. An elaborate set of Laws have made it compulsory of various males to provide for her. The modernists, because of their ignorance of Shari'ah, have been led to believe that the Shari'ah is lacking in this regard. This has led them to suffer the inferiority complex they are afflicted with.

Alhamdulillah, with the Ulama vigilantly on their back, the modernists were cautious not to bring in such reforms through the front door. In the hope that they may slip in something from

the side door, they resorted to the books of fiqh to carry out some legal engineering. Like a drowning man latching onto a straw, they would grab at anything that could remotely serve their purpose. In a pernicious attempt to outdo the Law of Allah, they have introduced a provision where the divorcee may claim a share of the profits of the family business if she had contributed to the business. This is despite there being no contract of partnership.

They had managed to locate a weak view recorded in one of the books of fiqh. The very author of this work has himself rejected this view. Such rejected views cannot form the basis of general rules for the masses.

Secondly, in an attempt to bring Islamic Law in line with the Christian concept of 'Community of Property', some modernists are vigorously promoting partnership agreements between the spouses. Reference to this has also been made in the Bill. The validity of such contracts is not questioned, but the motivation is certainly dubious. Of all the various contracts available in the corpus of Islamic Law, why the sudden desire to promote partnerships, and particularly between spouses. This drive stems from the inferiority complex with which the modernists are plagued.

The Ulama have written extensively on the aims, objectives and consequences of Nikah. In the vast compendium of Islamic legal literature on the subject, there is no reference whatsoever to Nikah being a money making machinery. In the western world, in practical terms, it has become just that. These reforms go against the very ethos of Islam.

Thirdly is the promotion of Tafweedut talaq. In Islam, the inherent right to issue Talaq is vested solely in the husband. This is clearly in violation of the secular concept of gender equality. In fact, the Shar'ee position is obviously open to Constitutional challenge. To work around this stumbling block, the modernists are at pains to promote tafweedut talaq (the husband delegating his right to the wife). The façade being created is that once tafweedut talaq has been achieved, equality is accomplished. Such a frontage will, over time, be exposed. There is a clear distinction between inherent and delegated rights. The Constitutional Court would surely, sooner or later, read into the fact that the husband solely has the inherent right, and they would extend such a right to the wife. Thus the promotion of tafweedut talaq will not achieve its intended objective.

More significantly, such promotion goes against the very grain of Islamic values. While our comments may offend the gender equality fraternity, and their Muslim stooges, we will not shy away from the Haq (truth). Allah Ta'ala, in His Divine Wisdom, has created women different. This is not restricted to the physiological sense, but extends beyond the corporeal body. In His wisdom He has not delegated this authority to women, and there is definitely a deep wisdom for this. Women have been created emotionally weaker than men. They are more prone to irrational outbursts, and have less control over their utterances than men. They are often subject to sharply changing moods.

We already have a problem with men abusing their authority of talaq by issuing talaq irrationally. One could well imagine the consequences of women having such powers across the board. Men themselves issue talaq, and thereafter regret their actions. However, it is too late, for talaq cannot be retracted. The heartache that has ensued is too well known to the Ulama. They are the ones who are then expected to pick up the pieces. If tafweedut talaq is to be promoted mass scale, the regretful situations currently being experienced can be expected to multiply ten fold.

In brief, various attempts are underway to reform the Divine Shari'ah to make it compatible with western values. This objective comes out abundantly clear from the above quotations.

The writer goes on to say:

“...the male dominated clergy interpret the text according to their own understanding.”

This is indeed a vile accusation against the Ulama. To appreciate the gravity of this accusation, one has to understand the position of self-interpretation in Islam. The Hadith mentions: “Whoever comments on the Qur’aan from his personal opinion, he should prepare his abode in the Hellfire.” Another Hadith states: “Whoever expresses his opinion on the Qur’aan, and (perchance) his opinion was correct, (then too) he has erred.”

So she is telling us that the Ulama, in general, are in open error and are heading for the fire of Jahannam. If this be the state of the Ulama in general, I wonder where the masses are expected to get their Islamic guidance from. Perhaps from modernists like the writer?

Elsewhere in the article reference is made to “modern scholars”. It is evident that their views are at variance with that of the Ulama. If the Ulama are guilty of self interpretation, it follows that these “modern scholars” use some other source of interpretation. They definitely cannot be guilty of the same crime as the Ulama. Is there perhaps a suggestion that these “modern scholars” rely on the interpretations of the Authorities of Islam, and that the Ulama are guilty of the heinous crime of self interpretation? The absurdity of such a suggestion is manifest.

The Ulama are the custodians of the Shari’ah, and no secular court should be made the final arbiter on Shar’ee matters. The notion that is being promoted by the project committee road show is that we are going to end up with “Muslim family courts”. This is pure hogwash. The judges currently serving are schooled in secular law. Even if they are Muslim, they are sworn in to uphold the Constitution. Their outlook in life is often a secular one. Take the trouble to read the above quotations once more, and one is bound to get a good idea of what the philosophy of the average Muslim Judge is. What precludes any one of them having an anti-Ulama stance like the writer of the article? What guarantee is there that they will not attempt to reform the Shari’ah as the modernists are attempting to do? The modernists have prepared a vast collection of literature to argue their reforms in the light of western precepts. These are readily available in English. What prevents Muslim from using these works as the basis of their judgements?

No judge would like to make himself or herself a fool in the Appeals Court. The judge in the Appeal Court will be a Kaafir. A judgement given by the Muslim judge of the High Court, but not in line with the constitutional ethos, will cause the Appeals Court to come down on his judgement like a ton of bricks. The judge will always be aware of such invisible pressure, and be constrained to give preference to Constitutional values over Islamic values. In such circumstance, it would be a miracle if the judgements of the Muslim judge of the High Court would conform to Shari’ah.

The aspect of Muslim assessors is truly a joke. At the end of the day the judge does what he/she wants. Full stop! He/she will not be answerable in any court or tribunal as to why he/she did not comply with “antiquated laws” from the “9th Century”. Yes, they are certainly answerable for not upholding the Constitution as interpreted by the Constitutional Court. It is truly farfetched to imagine a secular Muslim judge putting his/her career on the line for these “clergy” from the dark ages.

One can well imagine the scene, where the writer, or one of her like, is appointed a judge to preside on a Shar’ee issue. The Maulana (who by some miracle is appointed as an assessor) says

that according to the Qur'aan, the exclusive testimony of two women is inadmissible. She turns to him, gives him one of her cynical smiles, and with an air of independence retorts: "Molvijee, go back to Afghanistan. Modern scholars have allowed it!"

This brings us to our last point. Sadly, Ulama have had a history of being used and dumped. The Ulama were at the forefront of the struggle for the independence of India. When the time came to reap the fruits of their valiant sacrifices, they were given the boot by the Hindu politicians. In the same light, illustrious Ulama like Mufti Muhammad Shafee and Maulana Shabbir Ahmad Uthmaani (alayhimur rahmah) were the stalwarts in the endeavour to establish an Islamic state in Pakistan. In the end they had to admit that the idea was simply a pie in the sky, and that they were duped into wasting a considerable portion of their lives in pursuit of this red herring. When one of the senior Ulama of Pakistan approached Mr. Jeena, who was referred to as the founder of Pakistan, and complained of him being used exploited in the name of Islam, Mr. Jeena responded to the effect: "Molvi saab, didn't you know, this is how politics works."

"Do they not take lesson" (Qur'aan).

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