

AL JAMA-AH's four amendments to the Divorce Act 1997 have been approved by Cabinet last week. In 2022 the Party submitted two private members bills to Parliament calling for the recognition of Muslim Marriages and for amendments to the Divorce Act which will afford Muslims legal discourse in matters of dispute. The new Draft Marriages Bill will now be open for public comment.

“In June 2022, the Constitutional Court had found that the Divorce Act in its current form to be inconsistent with the Constitution as it excludes Muslim Marriages. The court found that a section of the Divorce Act is unconstitutional in that it unfairly

discriminates against children of married parents and those of unmarried parents,” said Minister in The Presidency Khumbudzo Ntshavheni.

Of the five clauses proposed to amend unconstitutional sections of the Divorce Act, the four clauses proposed by Al Jama-ah are:

- Clauses 1 - insertion of a new definition of Muslim marriage recognised by the Constitutional Court Judgement to be part of South Africa's common law.
- Clause 2 – amends section 6 of the Divorce Act by providing safeguarding mechanisms for minors or dependants of a Muslim Marriage.
- Clause 3 - amends section 7 of the Divorce Act by empowering a court to grant a divorce decree on the dissolution of a Muslim marriage to make an order with regard to the redistribution of assets.

- Clause 4 – amends section 9 of the Divorce Act to empower a court when granting a divorce a decree on the dissolution of a Muslim marriage to give an order that patrimonial benefits of a Muslim marriage before cited in stipulated terms.

The amendments include Al Jama-ah's proposed definition of a Muslim marriage under Section 1 of the Divorce Amendment bill:

*“A marriage concluded in accordance with Islamic Law, that is, Shariah, which regulates all public and private behaviour as derived from traditional customs (Al-Urf), the two primary sources, namely, the Quran and Sunnah (Prophetic model) and that uses juristic tools such as ijma (the consensus) of Muslim Jurists and the individual jurist's qiyas (analogical deductions) to issue legal edicts.”*

The proposed amendments will allow Muslim women to access the divorce court which will

give them the same benefits and protection as minor and dependent children in civil marriages. Due to the non-recognition of Muslim marriages, many Muslim families have suffered because of the harm South African legal system has caused as regards Muslim marriages; in these, Muslim wives and their children were often left destitute, homeless, and penniless when the spouse (that is, the husband) dies or agrees to a divorce.

“This was Al Jama-ah's 2019 Election Manifesto mandate from the Muslim community to pursue for the recognition of Nikah marriages so Muslim women can access the Divorce Court for their rights in terms of Shariah for their share of the estates at time of Talaq or death of a spouse,” says Hendricks.

This new bill will assist the office of the family advocate to assist with the investigation, welfare, and best interest of minor children; the help will be extended to the children born from a Muslim marriage as well as parents will no longer suffer under the inconsistencies and prejudice of the previous Act.

## AL JAMA-AH'S AMENDMENTS ON DIVORCE BILL APPROVED BY CABINET



MIDDLE: Minister of Home Affairs Aaron Motsoaledi went the extra mile to state that the marriage contract after nikah and deed office costs will be free of charge by front desks at Home Affairs offices at the request of Al Jama-ah



RIGHT: Minister in the presidency Ms Khumbudzo Ntshavheni announced on the 21st June 2023 that the cabinet has approved Hon. Ganief Hendricks five amendments in his Private Members Bill.



From Left to Right: MPL Galil Brinkhuis, Advocate and PR Councillor Shameemah Salie, Advocate Fairuz Nagia and Prof. Haron played an integral role towards the amendment of this Bill.



# AL JAMA-AH'S SHURA:

## PUBLIC PARTICIPATION ON PRIVATE MEMBERS BILLS

Islam encourages Muslims to decide on matters relating to their affairs through consultation with one another. The concept of *Shura* is viewed as a praiseworthy activity which plays a big role in the management of the affairs of mosques, organisations, and institutions.

The Al Jama-ah Party made history when it won a seat in Parliament in the 2019 national elections with the support of many Muslim votes. The party's 2019 Election Manifesto mandate from its Muslim constituency was to fight for the recognition of Muslim marriages. Al Jama-ah's leader and Member of Parliament Hon Mogamad Ganief Ebrahim submitted a Private Members Bill (PMB) on the Registration of Muslim Marriages (RMMB) as well as amendments to the respective Maintenance Act and the Divorce Act 1997.

The party met various organisations and groups throughout the country. In fact, prior to writing the PMB, it held a seminar with several women who were residents at IHATA, a shelter for abused women. These women gave testimonies to the abuse they suffered: domestic violence; Gender-Based Violence; economic-suffering, psychological-torture, and financial abuse from their husbands.

The party embarked on vigorous campaigns to lobby for support from theological bodies, social institutions, Muslim communities, and professionals to give comments and input on the bill.

The calls for public participation took place in various forms:

- Delivering a pre-khutbah (sermons) on the bills;
  - Questions and Answer questions;
  - Information Sessions;
  - Through media interviews;
  - Presentations to theological bodies and others;
  - Small group discussions; and
  - *Al Jama-ah Times* reports
- In Tshwane Atteridgeville about 200 Muslim women gathered to attend a Master Class on Muslim Personal Law that was organized by Al Jama-ah Party.

Besides having benefited from the presentations, the women showed their interest to join the party with the purpose of taking up issues that affect them and others. In addition, they demonstrated their willingness to publicize the party's sterling work. The party asked the women about their views and experiences on domestic violence and solemnly swore to deliver their issues to Parliament. There is no doubt that the process of *Shura* brought about some



Above: Information session in Atteridgeville, Tshwane headed by CEO Prof. Haron



unity between Al Jama-ah and theological bodies and community organizations; it, of course, created more public awareness about the party and its willingness to work with the community across the country.

We encourage public participation: Please send your comments on [info@aljama.co.za](mailto:info@aljama.co.za) or visit our Website [www.aljama.co.za](http://www.aljama.co.za) to view the Registration of Muslim Marriages Bill.



Al Jama-ah-Drakenstein hosted a Heritage Day 2022 programme on the Registration of Muslim Marriages attended by women from Mitchells Plain, Eagle Park and Paarl. Standing with the Mitchells Plain delegation are from left: Al Jama-ah's CEO Prof Muhammed Haron and Adv Yusuf Khan Dalwai. Advocate and PR councillor Shameemah Salie was also present



LEFT: Some of the women who attended Al Jama-ah's seminar on the information session in Zandvlei, Western Cape.

RIGHT: Al Jama-ah consulted widely on the Registration of Muslim Marriages. The Party's leader and Member of Parliament Hon Ganief Hendricks addresses members of the Imaamat Council of Mitchells Plain



BELOW & BELOW RIGHT: Meeting with UUCSA 22 August Consulting with members of the Ulama on the Registration of Muslim Marriages. Al Jama-ah's leader and Member of Parliament Hon Ganief Hendricks (middle) with members of the United Ulama Council of SA (UUCSA) from l-r: Shaykh Sayed Ridhwaan (Executive Member of Cape Town Ulama Board); Moulana Abdul Khaliq Allie (President of UUCSA); Moulana Sayed Imraan Ziyae (Deputy President of Sunni Ulama Council CPT) and Moulana Abdur Rahman Makobi (Member of Cape Town Ulama Board).



# VICTORY FOR MUSLIM WOMEN IN SA

Al Jama-ah's legal team consulted with Hon Ganief Hendricks on the Registration of Muslim Marriages

The legal developments in the Muslim community in South Africa serve as a testament to the power of advocacy and perseverance. For decades, Muslim marriages in South Africa were not recognized by the country's legal system, causing significant discrimination against the Muslim community. The Divorce Act of 1979 explicitly excluded Muslim marriages, which led to Muslim couples facing various obstacles to annul their marriages. With arduous attempts to seek court protection orders, financial support, settle custody of children; and for women to secure property rights and maintenance

However, with the recent proposed amendments, the country is taking significant steps towards undoing this injustice and protecting the rights of Muslim couples and their families. The amendments pushed by AL JAMA-AH to the Divorce Act remove discrimination and hardship for children born in a nikah marriage and wives facing talaq. The Al Jama-Ah political party introduced two private member bills in late 2022, pushing for further changes to divorce and marriage laws. Mogamad Ganief Hendricks, the leader of the party, noted that



LEFT: Al Jama-ah's legal team consulted with Hon Ganief Hendricks on the Registration of Muslim Marriages. From left-right: Ahmed Azhar Allie (intern), Hon Ganief Hendricks (Al Jama-ah MP and leader), Adv Anton van Loggerenberg, Adv Yusuf Khan Dalwai and Markus Nieman (intern)

without such changes, countless Muslim marriages and families would continue to suffer. Al Jama-ah received a mandate from its voters in the 2019 national elections to submit private members' Bills to get the Legislature to recognize Shariah personal law and a correct definition of a Shariah marriage. The efforts of the party's single member of Parliament and party leader have borne fruits, and Al Jama-ah has emerged as one of the foremost voices in protecting the legal rights of Muslim marriages as a minority group in South Africa. Al Jama-ah champions freedom, justice,

and equal rights to Muslim women. Women in a nikah can now approach the Divorce Court for their rights in terms of Shariah, and children born out of nikah now have the support of the Family Advocate. Some key consequences of these amendments include the ability of the office of the family advocate to assist with the investigation and welfare and the best interest of minor children, ensuring that children born of Muslim marriage and their parents no longer suffer from inconsistencies and prejudice as they did under the previous Act. These developments have provided the Muslim

community in South Africa with a significant legal victory that will undoubtedly go down in history.

The progress made by Honourable Hendricks and Al Jamaah is especially significant when considering the parlous state of human rights in the world, including South Africa. The Muslim electorate has placed their trust in him and his party to represent their needs, and he has fulfilled his mandate as their mouthpiece in Parliament.

Factoring in these developments and looking ahead to 2024, AL JAMA-AH's CEO Prof Muhammed Haron has released the Party's election promise; one that specifically appeals to Muslims (along with others) to come out in their numbers on the day of the national elections in July 2024 to cast their vote for the Party; a Party that is here as a committed political stakeholder that wished to help the government to take the socio-political turn.

This year our Party celebrated its 16<sup>th</sup> birthday; a celebration that followed challenging issues and arduous years to gain a seat in the National Parliament, the highest tier of government. The Party made history when it became the first Muslim political party to secure its seat in Parliament during 2019. This achievement by its leader Hon Hendricks is tangible testimony of his sacrifices; for he had complete trust in the Almighty for having granted him the stamina and courage to persevere despite many odds that

were stacked against him.

So, when he got the parliamentary seat on Muslim votes, it was indeed a highpoint; it was an achievement not only for Al Jama-ah, but it was also the case for the Muslim community. Even though many Muslim theological bodies and organizations do not wish to openly demonstrate their support and interest in the Party's manifesto and activities, it too was a victory for them.

Thus far Hon Hendricks' first term in Parliament demonstrated that he did not only set himself several major goals, but he made certain that he accomplished many of them as he adjusted to his position as MP; and, indeed, he did! At this point in time, the Party may rightfully boast that he delivered much more than that of other political parties that served more than one term.

On the question of achievement, allow one to return to the PMB that he generated as an example of his dedication to bringing about changes on the legal front. In 2019, he steered the Party along a challenging course. He helped to realize the 2019 Election Manifesto mandate from its Muslim constituency to fight for the Muslim marriage (that is, the *Nikah*) recognition; a social institution that was performed in accordance with the rules of Shari'ah. Historically, the *nikah* was not given any form of recognition by the successive colonial, apartheid, and democratic governments. Each of them denied the Muslims their rights even though the Muslims – as a religious minority – formed an integral part of these societies over the centuries.

Their discriminatory policies caused much suffering for the Muslim women and their children; the battery of legislation that each of these

governmental systems enacted literally and figuratively deprived them of their fundamental rights; this was either in respect of the estate of the late spouse or in the case where the annulment of the marriage (divorce: *talaq*) could not be proved. The negative outcome of these resulted in the women including their children to be destitute, homeless, and penniless. Setting these aside and as the Party faces the future, its leadership is of the belief that should more Muslims vote for it in the 2024 national elections, then it has the potential to increase its representation in Parliament by more than one seat. But despite only having one seat in Parliament at present, Hon Hendricks has been a champion on various fronts in Parliament.

## AL JAMA-AH EARLY MANIFESTO FOR 2024 NATIONAL ELECTIONS



Soon after the collapse of the *Khilafah* (caliphate), Muslims misunderstood *Shari'ah*; this may be attributed to rule of brutal regimes (with a few exceptions) in different parts of the Muslim world. The rationale of *Al-Khilafah Al Rashida* (righteous caliphate) started from the Prophet's (s) time, and it ended with the death of 'Ali ibn Abi Talib (r). When the Umawi dynasty ushered in their reign soon after, the era of political despotism in Islamic history was initiated. Through the course of history, many tyrannical governments reigned in the Muslim world; they imposed certain aspects of Islamic law. In the process, these regimes ignored many other important aspects of Islam, such as justice, freedom, and rights. This selective approach continued over the centuries.

In contemporary Arab states, the dictatorial governments (with a very few exceptions) forced religious authorities to portray Islam in a particular manner; they did so as they interpreted it and not as Islam should be comprehended as a 'way of life'. These religious authorities, in fact, played a key role in legitimising the tyrannical regimes' rule. Being on the autocratic rulers' payroll, these *shuyukh* turned a blind eye to the looting of resources in the Muslim world. The world witnessed the emergence of political elites, family monopolies, and military cartels that took advantage of their countries' resources, while the majority of their societies are left living in abject poverty and ignorance.

Considering these happenings in the Islamic world and when reflecting on the status of Islamic law (*Shari'ah*), none of the Muslim societies can refer to the three major imperatives (namely, freedom, rights, and justice); concepts that give true meaning and sense to the word *Shari'ah*. The first of the three is: freedom; it word means that an individual exercises his/her free will to determine his/her own choices in life, including to be Muslim or not. For this reason, Islam lifts the burden

# SHAYKH DEBUNKS NEGATIVE NARRATIVE OF SHARI'AH

of responsibility from the minor, the insane, and the one sleeping, let alone the one who is in captivity or whose freedom is usurped. No person is accepted into the fold of Islam 'as the right way of life' without being 'free to choose.' This concept is thus one of the key imperatives of *Shari'ah*. The difference, however, between freedom in Islam and freedom in the Western secular systems is that there are boundaries; for if everyone is to exercise absolute freedoms, then we will end up trespassing other people's rights. In this regard, Islam puts a limit to individual freedoms lest he/she infringes on the societal 'common good.'

The second imperative is justice. Islam considers 'justice' as an absolute value and is critical to societal prosperity, peace and safety. The Quranic verse that talks about justice is amazing!

*"O you who have believed, be persistently standing firm in justice, witnesses for Allah, even if it be against yourselves or parents and relatives. Whether one is rich or poor, Allah is more worthy of both. So follow not [personal] inclination, lest you not be just. And if you distort [your testimony] or refuse [to give it], then indeed Allah is ever, with what you do, Acquainted."* [Quran 4:135].

The third imperative is the fulfillment of 'rights;' not only the rights of people, but also the rights of animals and all other creatures. Caliph Omar (r) said: "If a mule in Baghdad stumbled on the road, I know Allah will ask me for it because I did pave the road for it." Justice means that all citizens in the state must be equal before the law, and nobody is above the law, no matter what position they occupy in society.

The third imperative is the issue of 'rights.' Whatever is right by nature must be fulfilled, meaning that the state should fulfill its obligations towards all the citizens; and the citizens should fulfill their obligations towards the state. *Shari'ah* organises society, in terms of relationships, rights, obligations,

and social interactions. In a nutshell, the reference is to *mu'amalat* (that is, **transactions**). In other words, *Shari'ah* considers society as its central focus and any Muslim government is a servant of society—subject to checks and balances without any sacredness associated with it.

The responsibility of the state in Islam is not to 'propagate' Islam, for this is the role of society. The state's responsibility is to maintain safety, apply justice, and fulfill its obligations to all its citizens; especially in the way the citizens want. In other words, the state acts according to the will of society, not the will of an elite, be it military, familial, or political.

There is a lot of talk these days about Islam in the context of the state among the Muslim jurists.

The version of Islam, however, portrayed by repressive regimes remains a dominant force; this is in the mindset of many Muslims and non-Muslims. So, when we talk about *Shari'ah*, we do not converse about '*hudud*' (penal laws), we talk about the organisation of society at large in everything pertaining to their life.

*(Written by Shaykh Ramadan Ahmed Birima, Executive Director of Verulam Islamic Institute.)*



**RIGHT:**  
Shaykh Ramadan Ahmed Birima,

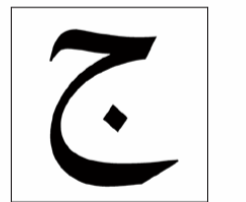
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