

Preface

In 1964, Tanganyika parliament passed the "Islamic Law (Restatement) Act", which empowered the minister responsible for legal affairs to prepare and publish a statement of Islamic Law after consultation with learned persons in the Islamic schools of law. According to the Standard Tanzania (13.7.67), "It is understood that Tanganyika is the first country to have undertaken the exercise of codifying the Islamic Law in a statutory form. These statements will greatly assist the courts who have to rely on text books"

The Khoja Shi'a Ithna-'Ashari Territorial Council of Tanzania took keen interest in this matter. Mr. Mohamed G. Dhirani then President of the said Council took me to the Attorney Generals Chambers, where I met the lawyer in charge of that project. He was a Zanzibarian Muslim. He advised me to write in English the detailed Shi'a law on related matters, for use by his office. Thus I wrote "Islamic Laws, concerning marriage, dissolution of marriage, acknowledgement, will, inheritance and waqf", Mr. Fidahussein Abdallah Hameer, then Secretary of the said Council, arranged for secretarial help.

The papers finally reached Mr. Bashir Rahim, then Senior Parliamentary Draftsman, who finalized four chapters of marriage as accepted by three principal schools of Islamic Law — Shafi'i, Hanafi and Shi'a). It was published, under authority of Mr. Rashidi Kawawa, then Second Vice-President of Tanzania, who was also responsible for Legal Depts. It appeared as the Subsidiary Legislation under the Restatement of Islamic Law Act (No. 56 of 1964), the Gazette Supplement No. 34 of 27 June, 1967. It was understood that remaining chapters relating to custody of children and divorce etc. would be published by end of the year, and then the laws would come into force.

[Turning to Kenya](#)

Now the scene shifts to Kenya. The Kenyan Govt. had meanwhile set up a Commission on the laws of marriage, divorce and succession, under the Chairmanship of Mr. Justice Spry of Kenya High Court. The Commission was to make recommendations for a new law providing a comprehensive and, so far as might be practicable uniform law of marriage, and divorce applicable to all persons in Kenya, *which would replace the existing law on the subject comprising customary law, Islamic law*, (emphasis ours) Hindu law, and the relevant acts of Parliament and to prepare a draft of the new law; paying particular

attention to the status of women in relation to marriage and divorce in a free democratic society.

I had gone to Mombasa in July 1967 in some other connection; and the office-bearers of the Supreme Council took me to meet an advocate who was an expert in the Muslim Personal Law. On being informed of the Tanzania developments, he asked me to send a copy of the Islamic Laws which I had written for Tanzania. I promised.

Prior to this, I had written answers to the Commission's questionnaires which were sent to the Commission beforehand.

Returning to Dar as Salaam, I got the said Islamic Laws (about a hundred foolscap size, closely typed pages) cyclostyled, and dispatched it to the Supreme Council.

In the 3rd week of August, 1967, I was hurriedly called to Mombasa where the Commission was to sit for hearing from 21st August. I wrote a memorandum for submission before the Commission, which was finalized after discussions with the office bearers.

That Memorandum was submitted to the Commission and then published in the Light of July–August, 1967. (Late) Haji Mohamedali Meghji, the President of the K.S.I. Supreme Council, wrote a covering note an extract of which is reprinted before the first memorandum.

Mr. Justice Spry was heard saying to his colleagues afterwards that “these people knew what they were talking about.”

Another Memorandum on the law of Succession, written by me, was sent to the Commission and published in the Light of January–April, 1968. It is the second Memorandum in this collection.

Back to Tanzania

When the above developments were taking place in Kenya, the Tanzania Govt. had abruptly stopped the codification exercise.

The Kenya Commission submitted its reports and recommendations sometimes in 1969. On 10.9.69 the Tanzania Govt. published a White Paper. (No 1 of 1969) to the effect that it wanted to enact a Uniform Law of Marriage, and gave the details of the provisions it wanted to be included in the proposed Act.

With the publication of the White Paper, the govt. invited comments and suggestions from communities and individuals. The Christians, the Hindus and the Ismailis published their views in the newspapers. I approached Bakwata for this purpose; they flatly refused to interfere in the Govt.'s plan. I had no alternative but to write on behalf of the Shi'a Ithna-'Asharis only.

The comments were frank and probably the last paragraph was a bit harsh. I sent the draft to Mr. Anverali M. Rajpar, then President of the Khoja Shi'a Ithna-'Ashari Territorial Council of Tanzania. He

told me to go ahead and get it published in the Standard on behalf of the Tanzania Council. It appeared in the Standard (Dar-es-Salaam) on 8th December, 1969 (Monday) and later its extracts were printed in the Light of December, 1969. This appears as the third Memorandum in this booklet.

When months later, the Supreme Council sent to me the two reports of the Kenya Commission, I was amused to see that most of the proposals of the Tanzanian White Paper were lifted from the Kenya Commission's recommendations.

While drafting the Law of Marriage Act, 1971, in the light of the White Paper and the comments received, Mr. Bashir Rahim, then the Chief Parliamentary Draftsman, tried his best to accommodate the provisions of the Islamic Laws. Before finalizing the draft, it was shown to the scholars of every religion and sect, and some changes were made based on their suggestions.

Present Situation

The Tanzania government now wishes to enact Law of Succession, which would give to women shares equal to that of men. When the Muslim scholars (not Bakwata) raised their voices against it, the then President His Excellency Al-Haj Ali Hassan Mwinyi, assured them that the idea was not to change the Muslims' law, but to bestow right of inheritance on those women who have no such rights at all—rather they themselves are treated as items of inheritance.

Meanwhile in 1990, various Muslim associations (other than Bakwata) began a campaign for the Muslim girls to be allowed to use *hij'ab* in schools. Their representatives met several times, and based on their discussions, I wrote a Memorandum on *Hij'ab* and succession, which was ultimately presented to the President Al-Haj Ali Hassan Mwinyi. It is included in this booklet as the 4th Memorandum. It is gratifying to note that the President announced in a public speech on 10/8/1995 that Muslim girls were now allowed to wear *hij'ab* in schools; and the Acting Commissioner of Education issued a directive to this effect to educational institutions, the original of which may be seen on the next page, and its English translation is given at the end of the book.

The Bilal Muslim Mission of Tanzania feels that these Memoranda contain clear arguments to prove that the Islamic Laws, emanating from the Divine Wisdom, cannot be changed; and that the Islamic jurisprudence is the only system which can promulgate justice and fair play in a society.

It is for this reason that the Mission has decided to publish the four Memoranda together in this booklet. I am thankful to them for this initiative, and pray to Allah Subhanahu wa Ta'ala to give them more *tawfiq* and make this booklet a means of guidance for the Muslims and non-Muslims alike. Amen

Sayyid Sa'eed Akhtar Rizvi,

Dar-es-Salaam

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