



PO Box 3393,
Port Elizabeth, 6056
South Africa

Email: muftis@themajlis.co.za
[The Majlis](http://TheMajlis.co.za)

23 Muharram 1445 – 11 August 2023

THE MARRIAGES BILL A LAWYER'S COMMENTS



BASHEER PARUK
MEDIATORS &
ATTORNEYS

OUR REF	N/A
YOUR REF	GAZETTE NO: 48914
DATE	9 TH AUGUST 2023

TO:

DEPARTMENT OF HOME AFFAIRS

Moses.malakate@dha.gov.za

Agnes.molefe@dha.gov.za

Good day;

RE: THE DRAFT MARRIAGE BILL, 2022

1. The above matter refers.
2. We have perused the Draft Marriage Bill, 2022, which is open for public comment until the 31st August 2023.
3. It is our view, which is academically substantiated, that the Draft Bill will diametrically be in conflict with the Islamic Faith for the following reasons:
 - 3.1. The concept of a women's privacy which is sacred in the Islamic Faith, will be violated by forcing her presence in front of the "Marriage officer" in order to provide consent to her marriage. **[Clause 6.1 and Clause 15.2]**. It has always been the Islamic practice for the bride's representative to convey her consent, on her behalf, to the marriage officer, without her presence to the marriage officer being required in the process.
 - 3.2. The necessary age to be married, being 18 years old **[Clause 7]** is further in conflict with the Islamic Faith, which does not necessitate a

BASHEER PARUK - BA (WITS) LLB (WITS) MEDIATION (LEAD SA)

📍 20 Clare Road, Fordsburg, 2092 ☎ 061-625-6070/068-446-6601 📧 basheer@basheerparukinc.co.za

marriage to be valid on the basis of both parties being 18 years or older.

4. It is important to note that the lack of recognition historically afforded to Muslim marriages, was suitable to the Muslim community as it was correctly foreseen that with legal recognition, would come constitutional subjection. And that such subjection, would never be in harmony with the fundamental tenets of the Islamic Faith.
5. For this reason, it was preferred that Islamically concluded marriages were excluded from the ambit of the definition of "marriage" as per the proposed marriage bill, as it would entitle the Muslim community to have their marriages solemnized in a manner congruous with their faith.
6. However, clause 22 of the marriage bill poses a serious threat to Islamic marriages going forth, as failure to abide by legislation has criminal implications, as opposed to the preferred lack of recognition consequence.
7. The following clauses under clause 22 gravely affects the rights of all Muslim's living in this country:
 - 7.1. A person who marries a person who is under 18 years old shall be guilty of an offence, a fine and/or imprisonment.
 - 7.2. A person (most likely a parent/guardian) who gives consent for a person below 18 years old to get married shall be guilty of an offence, a fine and/or imprisonment.
 - 7.3. A person who solemnizes a marriage, who is not a marriage officer (which is presently the case in the Muslim community, i.e., Imams) shall be guilty of an offence, a fine and/or imprisonment.
 - 7.4. A person who solemnizes a marriage which is in conflict to the provisions of the marriage bill (e.g., solemnizing a marriage where one of the parties are below 18, or where the bride is not in his presence), shall be guilty of an offence, a fine and/or imprisonment.
8. Almost every individual with a rudimentary understanding of the law understands the constitution's unequivocal protection of the right to religion. Which protection is further enshrined in the rights of Equality and Dignity.
9. Included within the ambit of association to any religion, is to practice upon it as well. Hence, one cannot be a Muslim, but be unable to practice his/her religion absolutely. The fallacy is self-evident.

10. For this reason, it is our appeal to reconsider the draft bill currently being proposed.

11. It is our view, that the bill can be remedied in 2 simple ways. Either:

11.1. Exclude Muslim marriages from the ambit of the act.

OR

11.2. In the offences stated in clause 22 (failure to comply with the act), amend same to have it read that failure to commit one of the stated acts, will lead to the marriage in question being prevented from legal recognition. Thus, those who wish to conclude their marriages in compliance with the marriage bill, will be afforded legal recognition, and those who wish not to, will simply not be afforded any legal recognition.

12. We believe that our solution will have the effect of upholding the sanctity of the different religions as opposed to the arbitrary and oppressive consequences of the bill currently proposed (e.g., imprisonment as a consequence).

13. We trust the above is in order, and trust you will make the correct decision, upholding the ethos and values of a post-apartheid state.

14. Thanking you in advance.

Yours Faithfully



PER: Mr B. Paruk
(Director)