



BASHEER PARUK
MEDIATORS &
ATTORNEYS

OUR REF	MB006
YOUR REF	TBC
DATE	13 th JAN 2025

TO:

THE SOUTH AFRICAN - MUSLIM UMMAH

Asalamualykum;

RE:	THE MARRIAGE BILL [B43-2023]
READING TIME:	5 MINUTES

1. The above matter refers.

INTRODUCTION

2. Over the past 2 years, our offices have written numerous articles on the issues surrounding the recognition of Muslim marriages in South Africa.
3. At the end of each article, an earnest plea was made to the public to object to certain proposals being made, as its effects would be grave, not on only one individual, or perhaps a group of individuals, but rather, on **every** single South African Muslim.
4. It is our hope (although we are doubtful) that each and **every** person objected to the relevant specified personnel.

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THE MARRIAGE BILL [B43-2023]

5. On the 17th November 2024, a group of attorneys met with a Parliamentarian to discuss the proposed Marriage Bill [B43-2023] which is currently open for public comment.
 6. The Marriage Bill, essentially, seeks to unify all types of marriages, irrespective of race and religion, and bring it all under one banner in which it will operate.
 7. Upon inspection of the Bill, the following contentious clauses were noted:
 - 7.1. Illegal foreigners will not be permitted to make *Nikkah* **(Clause 4)**.
 - 7.2. Individuals below 18 years of age, will not be permitted to make *Nikkah*, unless written consent is obtained from the Minister **(Clause 5)**. This is in conflict with the *Shariah*.
 - 7.3. For a male to make *Nikkah* to a second spouse, written consent will need to be sought from the first wife, and a further application to court will need to be made, seeking permission of same **(Clause 6)**.
 - 7.4. A person who solemnises a marriage, who is not a marriage officer (which is presently the case in the Muslim community throughout the history of time, i.e., *Mawlanas and Imams*) shall be guilty of an offence, a fine and/or imprisonment **(Clause 17)**.
- NOTE: In order to become a marriage officer, a formal training program will need to be undergone.**
- 7.5. A person who solemnises a marriage which is in conflict to the provisions of the marriage bill (e.g., solemnising a marriage where one of the parties are below 18), shall be guilty of an offence, a fine and/or imprisonment **(Clause 17)**.
 - 7.6. A person (e.g. an *Imam*), who is appointed as a marriage officer, can be limited to specific areas, or periods of time in which he may perform a *Nikkah* **(Clause 8(4))**. Hence, an Imam given permission to perform *Nikkah*'s only in Johannesburg, will not be permitted to solemnise a *Nikkah* in Durban.
 - 7.7. A person who marries a person who is under 18 years old shall be guilty of an offence, a fine and/or imprisonment **(Clause 17)**.

- 7.8. The default position of a Nikkah, should the prospective spouses not enter into an Ante-nuptial contract, will be: **in-community-of-property (Clause 15(3))**. This is in conflict with the *Shariah*.

NOTABLE CLAUSES

8. We have simplified the above so that any reader can easily understand the consequence of the bill.
9. While, it is our view, that all of the above are important violations of the *Shariah*, two consequences we wish to particularly draw to every reader:
- 9.1. If your local Imam or Mawlana performs yours or your family members Nikkah, and he is not a marriage officer, he can be imprisoned, and fined.
- 9.2. If you wish to ensure your marriage is out-of-community of property (His is his. Hers is hers), one would need to register an Ante-nuptial contract prior to getting married, which averages a cost of R4000-00.

What is “In-community-of-property” ?

- At the time of death or divorce, both spouses’ wealth are combined, then split 50%, and equally given to each person.
- Hence, even if one spouse has 50 million Rand, and the other has R1000-00, they will end the marriage with the same amount of money.
- This is the current default regime in South Africa when legally getting married, which was **not** historically applicable to Muslim marriages.
- However, if the bill is enacted, the default position will **change**.
- Hence, for all people looking to get married, whether rich or poor, whether black, white or Indian, they will **NEED** to register an Antenuptial contract (“ANC”) EXCLUDING the Accrual system to keep it in line with the Islamic position (Out-of-community of property).

MISCONCEPTIONS

10. If you are married, there is no need to register an ANC. The above will **not** have a retrospective effect.
11. One cannot think “***We’ll just make Nikkah. How will anyone know?***” As long as a *Nikkah* certificate is issued to you, the implications will apply, and the Imam is at risk at facing the aforesaid penalties.

CONCLUSION

12. The above clearly highlights the gravity of the Marriage Bill, which, if passed, will affect the lives of **every** Muslim in South Africa for an indefinite period of time.
13. For this reason, we have prepared a link which will be forwarded together with this notice.
14. **Click the link, and enter in your name and ID number at the bottom, should you agree with the contents thereof.**

<https://tinyurl.com/yc27zuxb>

15. It is our hope that every person will take heed, and not adopt the mentality that “*the next person will do it. What difference will I make?*”.

16. **إِنَّ تَنْصُرُوا اللَّهَ يَنْصُرْكُمْ**

If you help [the cause of] Allah, ALLAH will help you.

Yours Faithfully



PER: Mr B. Paruk

(Director)