

## **EXECUTIVE SUMMARY OF THE MUSLIM LAWYERS ASSOCIATIONS SUBMISSIONS AGAINST THE MUSLIM MARRIAGES BILL (MMB)**

We, as the Muslim Lawyers Association are fundamentally opposed to the Bill for various reasons, some of which are *inter alia*:-

1. There are many provisions in the Bill which are simply un-Islamic and against the Quran and Sunnah .For example the regulation relating to maintenance, Talaq, polygamy and intestate succession to name a few.
2. The Bill makes impermissible what Allah has made permissible.
3. The outlook of the Bill is distinctly secular and materialistic and against the ethos of Islamic concepts such as RIZQ.
4. The Bill allows Non-Muslim judges who have no in-depth knowledge of Arabic and are not schooled in the Shariah to interpret Quraan and Sunnah and to make Ijtihad. The secular courts may amongst other things, pronounce on the validity of a Talaq, issue a Faskh, determine who is Muslim and interpret Islamic law. The secular courts are able to make rulings which South African law will recognise as Shariah.
5. Muslims' Shariah rights may not be considered valid until reviewed and ratified by South African courts. This in itself is contrary to Shariah. e.g. Talaq and polygamy must be confirmed by a South African Court.
6. The MMB will subject Quraan and Sunnah to Constitutional review, which means that Allah's Law will be subject to Constitutional analysis.

With the development of the law based on the proposed Bill along with Constitutional intervention, the result will contaminate Shariah and will consist of few elements of Deen combined with secular ideas of justice, all under the banner of Islam.

7. The constitution at present allows for all citizens to freely practice their religions. The MMB would curtail such religious freedom of expression for Muslims which in itself would be arguable to be unconstitutional.
8. Failure to abide by the provisions of the proposed Bill could result in a Muslim being found guilty of a criminal offence and/or being fined.
9. The Bill promotes a school of thought of a minority and does not cater for difference of opinion amongst scholars of the different schools of thought.
10. Existing Muslim marriages will automatically be bound by the Act, unless both husband and wife jointly opt out of it. Opting out does not stop the Courts from going ahead anyway with interpretation of Quraan and Sunnah on behalf of those who are bound by the Act, and modifying the Shariah as we know it to be more consistent with modern secular values.
11. There is selective Justice. The taking of a second wife without court permission is criminalised but adultery and fornication are not.
12. The Bill is in fact unconstitutional because it changes Muslim Personal Law instead of just recognising it. In light of the provisions not being consistent with Shariah, and being applicable only to Muslims, this will allow secular courts to systematically discriminate against Muslims, to

the exclusion of all others, with sanctions which are foreign to the Shariah.

13. The MMB curtails religious freedoms.

14. The Bill will cause division amongst Muslims and between Muslims and the State.

15. The Bill will promote a brand of Islam which is more palatable to Western secular values.

16. The Bill does not allow arbitration which the MLA believes is the only possible solution.

THE MLA'S DETAILED SUBMISSIONS ARE AVAILABLE ON ITS WEBSITE  
[www.mlajhb.com](http://www.mlajhb.com)