

The Practicability of the Marriage Bill

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INTRODUCTION

The Marriage Bill B43-2023 (hereafter the Bill) was introduced into legislation with the aim of consolidating the various marriage laws in South Africa. The Bill intends to provide a comprehensive legislative framework, “To provide for the recognition of marriages; to provide for the requirements for monogamous and polygamous marriages; to provide for designation of marriage officers; to provide for solemnisation and registration of marriages; to provide for proprietary consequences and the dissolution of marriages; to provide for offences and penalties and to provide for matters incidental thereto.”

This article will examine the key provisions of the Marriage Bill, highlighting both its advantages and potential challenges.

THE NEED FOR REFORM

Section 9 of the Constitution of the Republic of South Africa provides for the right to equality for all citizens. More specifically section 9(2) states that “Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed Chapter 2: Bill of Rights 6 to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken”. In this context, the introduction of the Marriage Bill appears to be a necessary step toward ensuring that all forms of marriage are treated equally under the law. While the Bill has been largely welcomed, several concerns have been raised about its implementation and scope.

ISSUES OF CONCERN

1. Recognition of Long-Term Partnerships:

The Marriage Bill does not recognise long-term partnerships as a form of marriage. Many South Africans live together in committed relationships without formally marrying, often due to personal issues. The lack of recognition for such relationships can lead to legal complications, particularly regarding

inheritance, property rights, and child custody. A more inclusive approach might consider providing legal recognition for long-term partnerships, ensuring that these relationships are also afforded protection under the law.

2. Dissolution of Marriages:

The Bill outlines the procedures for divorce and the management of matrimonial property. However, these procedures may not align with the more relaxed practices traditionally associated with customary marriages. The introduction of stricter divorce regulations could disrupt these customs, potentially leading to conflict. Additionally, Section 21(1) of the Bill allows for the dissolution of a marriage if one spouse is in a state of continuous unconsciousness. However, the lack of a clear definition of what constitutes a “reasonable amount of time” for such unconsciousness raises concerns about the potential for abuse or misinterpretation.

3. The definition of Lobolo:

The Bill defines lobolo as “property in cash or in kind ... which a prospective husband or the head of his family undertakes to give to the head of the prospective wife’s family in consideration of a customary marriage.” This definition has sparked debate, as it reinforces gender inequality by excluding women from participating in lobola negotiations or paying lobola. Moreover, it limits the recognition of same-sex relationships under customary law as it makes specific reference to ‘husband’ and ‘wife’, a limitation similar to that found in the Recognition of Customary Marriages Act 120 of 1998.

4. Marriage Officers and Religious Beliefs:

The Bill’s provisions regarding marriage officers have also raised concerns, particularly among religious leaders. Under the Bill, marriage officers are required to solemnise marriages, including same-sex and polygamous unions, even if such marriages conflict with their religious beliefs.

This requirement has been perceived as an infringement on religious freedom as set out in Section 15 of the Constitution. Striking a balance between the rights of individuals to marry and the religious freedoms of marriage officers is a complex issue that requires careful consideration.

CONCLUSION

The Marriage Bill represents a significant effort to unify South Africa's marriage laws and promote equality. However, its implementation presents several challenges, particularly in addressing the diverse needs and beliefs of the population. While the Bill's intention to create a single legal framework for all marriages is commendable, it may not fully achieve the desired equality and inclusivity in its current form. As the legislative process continues, it is essential to address these concerns to ensure that the final law is both practical and fair for all South Africans.

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