



The Recognition of Muslim Marriages Matters.

WHO is the Women's Legal Centre?

The Women's Legal Centre (WLC) is a non-profit organisation that seeks to protect the human rights of women and girls in South Africa.

WHAT is the Women's Legal Centre applying to court for?

The WLC is applying to the Court to ask it to instruct government to recognise Muslim marriages because Muslim women, in particular, are treated unfairly due their religious marriage is not legally recognised.

WHY are we focused on Muslim women?

The Marriage Act (the act that sets out the rules and regulations for marriages in South Africa) defines marriage as a union between a man and a woman.

Islam allows for a husband to marry more than one wife, compared to other religions.

It is therefore a problem for Muslims to marry legally.

Religious leaders are able to become Marriage Officers in terms of the Marriage Act.

At present, there are around 200 Muslim clergy registered as marriage officers in South Africa, but it does not necessarily mean that the religious marriages are registered legally because the Islamic marriage differs from the legal definition as contained in the Marriage Act.

WHY is the Women's Legal Centre bringing the case to court?

The WLC is holding the South African Government accountable for failing to pass laws (legislation) that legally recognise Muslim marriages.

For 20 years, the government and the courts have acknowledged that Muslim women are being treated unfairly compared to other South African women by not recognising their marriage sanctified according to Muslim rites

A process was started since 1996 to recognise Muslim marriages but came to a halt in 2012 after a Bill was published for comment.

Many Muslim women are unprotected when their Muslim marriage dissolves by death or divorce. Thus, they are unable to claim a share of the marital assets that they contributed to during their marriage.

Additionally, Muslim women are unaware of the fact that by entering into a Muslim marriage they are not entitled to enjoy the same rights as those entering into civil marriages, customary marriages or civil unions.

By not being able to enjoy the same rights, Muslim women find themselves vulnerable to being marginalised and prejudiced against. They are subjected to patriarchy and stripped of their constitutional rights.

WHAT is the effect of not recognizing Muslim marriages?

By not recognising Muslim marriages under the common law, Muslim women are not afforded legal protection and do not have access to the courts to assert their rights.

The inaccessibility to the courts means that those married as per Muslim law (Shari'ah law) are not required to obtain divorces through the courts, but rather through Shari'ah law which places skewed power relations in favor of the male spouse, leaving Muslim women vulnerable to being left with no property, money or resources in the event of divorce.

Women find it exceptionally hard to obtain divorces, and are left without options in marriages that are often abusive- emotionally, physically and economically.

Milestones reached

Courts have recognised the rights of Muslim women in certain circumstances such as:

- * The right of a Muslim spouse/s to inherit from her deceased husband,
- * The right to claim maintenance as a surviving spouse, the right to a duty of support,
- * The right to claim interim maintenance pending divorce.
- * Legislation has also been passed that recognize partners to a Muslim marriage as spouses in certain provisions.

WHY is this case so important?

The Constitution of the Republic of South Africa is the most supreme law of the country, ensuring that all people are granted their basic human rights, and that these rights are protected by the law.



Various legislation builds upon the Constitution, seeking to provide specific rules that aim to regulate the protection of specific rights.



The Marriage Act 25 of 1961 aims to set out the rules and regulations relevant to parties that enter into marriages, affording them the protection of their basic human rights.



At present, the Marriage Act fails to provide for, recognize or regulate Muslim marriages, leaving parties that enter into Muslim marriages unprotected by the law.



Without legislation to protect them, Muslim women have the following constitutional rights violated:

The Right to Equality: “everyone is equal before the law and has the right to equal protection and benefit of the law”

The Right to Dignity: “everyone has inherent dignity and the right to have their dignity respected and protected”, by treating differently women in Muslim marriages to those married in civil or customary marriages, the law perpetuates an idea that Muslim women are unworthy of the same protection

The Right to Freedom and Security: “everyone has the right to freedom and security of the person, which includes the right not to be deprived of freedom arbitrarily or without just cause” – Muslim women are often trapped within unhappy marriages, being denied their freedom and autonomy under the law

The Right to Protection against Arbitrary Deprivation of Property: “no law may permit arbitrary deprivation of property” Muslim husbands have the unilateral right to divorce, often exercised suddenly, wives are deprived of their maintenance as well any money and property they contributed to the marriage

For more information visit www.wlce.co.za or Facebook @WLCCTown

