

The Bengal Mohammadan Marriages and Divorces Registration Act, 1876

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Act 1 of 1876

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The Bengal Mohammadan Marriages and Divorces Registration Act, 1876 Bengal Act 1 of 1876 [Dated 19th January, 1876] An Act to provide for the voluntary registration of Mohammadan Marriages and Divorces. Preamble. - Whereas it is expedient to provide for the voluntary registration of marriages and divorces among Mohammadans; It is enacted as follows:

1. Local extent.

- This Act shall commence and take effect in those districts in [West Bengal, Bihar or Orissa] [Substituted by para. 3 (1) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948 for provinces subject to the provincial Government of Bengal to which the said Provincial Government'.] to which the [State] [Substituted by A.L.O.] Government concerned] shall extend it by an order published in the [Official Gazette] [Substituted by A.O. for 'Calcutta Gazette'.]; and thereupon this Act shall commence and take effect in the districts named in such order, on the day which shall be in such order provided for the commencement thereof.

2. Interpretation.

- In his Act, unless there be something repugnant in the subject or context, - "Mohammadan Registrar" means any person who is duly authorized under this Act to register marriages and divorces; "Inspector-General of Registration" and "Registrar" respectively mean the officers so designated and appointed under the Indian Registration Act, 1871 or other law for the time being in force for the registration of documents; "district" means a district formed under the provisions of the [Indian Registration Act, 1871] [Act, 8 of 1871 was repealed and re-enacted by Act 3 of 1877, which again has been repealed and re-enacted by the Indian Registration Act, 1908 (16 of 1908), and this reference should now be construed as a reference to the latter Act--See the General Clauses Act,

1897 (10 of 1897).]: "pardanashin" means a woman who, according to the custom of the country might reasonably object to appear in a public office.

3. State Government may grant licences to register.

- It shall be lawful for the [State] [Substituted by A.L.O.] Government to grant a licence to any person, being a Mohammadan, authorising him to register Mohammadan marriages and divorces which have been effected within certain specified limits, on application being made to him for such registration; and in like manner it shall be lawful for the said [State] [Substituted by A.L.O.] Government to revoke to suspend such license: Provided that no more than two persons shall be licensed to exercise the said functions within the same limits: and: Provided further that when two persons are so licensed to act within the same limits, the one shall be a member of the Sunni and the other of the Shia, sect.

4. Mohammadan Registrars to use seal.

- Every Mohammadan Registrar shall use a seal bearing the following inscription in the Persian character and language: "The seal of the Mohammadan Registrar of "

5. Government to provide seal and books.

- The [State] [Substituted by A.L.O.] Government shall supply for the office of every Mohammadan Registrar the books necessary for the purpose of this Act. The pages of such books shall be consecutively numbered in print and the number of pages in each book shall be certified on the title-page by the officer by whom such books are issued.

6. Mohammadan Registrar to keep registers.

- Every Mohammadan Registrar shall keep up the following register-books:- Book I. - Register of marriage, in the Form A contained in the Schedule to this Act. Book II. - Register of divorces other than those of the kind known as Khula, in the Form B contained in the Schedule to this Act. Book III. - Register of divorces of the kind known as Khula, in the Form C contained in the Schedule to this Act.

7. Entries to be numbered.

- All entries in each register prescribed by the last preceding section shall be numbered in consecutive series, which shall commence and terminate with the year, a fresh series being commenced at the beginning of each year.

8. Applications by whom to be made.

- Every application for registration under this Act, shall be made to the Mohammedan Registrar orally as follows: If the application be for the registration of a marriage- by the parties to the marriage jointly: Provided that if the man or the woman, or both, be minors, application shall be made on their behalf by their respective lawful guardians: and Provided further that, if the woman be a pardanashin, such application be made on her behalf by her duly authorised vakil; if the application be for registration of a divorce other than of the kind known as Khula- by the man who has effected the divorce; by the parties to the divorce jointly: Provided that, if the woman be a pardanashin, such application may be made on her behalf her duly authorized vakil-

9. Duties of Mohammadan Registrar on application.

- On application being made to a Mohammadan Registrar for registration under this Act of a marriage or divorce within one month of the marriage or divorce being effected, and not otherwise and on payment to him of a fee of one rupee, the Mohammadan Registrar shall-(a)satisfy himself whether or not such marriage or divorce was effected by the 'person or persons by whom it is represented to have been effected;(b)satisfy himself as to the identity of the persons appearing before him and alleging that the marriage or divorce has been effected;(c)in the case of any person appearing as representative of the man or woman (whether he appears as guardian or vakil), satisfy himself of the right of such person to appear. If the Mohammadan Registrar be satisfied on the above points, and not otherwise, he shall make an entry of the marriage or divorce in the proper register: Provided that no such entry shall be made otherwise than in the presence of very person who, by section eleven of this Act, is required to sign such entry.

10. Mohammadan Registrar may receive gratuity.

- Nothing in the preceding Section shall be held to prohibit a Mohammadan Registrar from receiving a gratuity in excess of the prescribed fee of one rupee, when such gratuity is voluntarily tendered.

11. Entries by whom to be signed.

- Every entry in a register kept under this Act shall be signed as follows:- If the entry be of a marriage in a register in the Form A contained in the schedule to this Act, -(1)by the parties to the marriage, or, if either or both of them be minors, by their lawful guardians respectively: Provided that, if the woman be a pardanashin, the entry may be signed on her behalf by her duly authorized vakil; (2)by two witnesses who were present at the marriage ceremony; (3)in cases which the woman is represented by a vakil- By two witnesses to the fact of the vakil having been duly authorised to represent her; (4)by the Mohammadan Registrar; if the entry be a divorce other than the kind known as a khula in a register in the Form B contained in the Schedule to this Act, -(1)by the man who has effected the divorce; (2)by the witness who identifies the man who has effected the divorce; (3)if the man be of the Shia sect- By two witnesses to the divorce being effected; (4)by the Mohammadan

Registrar. If the entry be of a divorce of the kind known as khula in a register in the Form C contained in the Schedule to this Act, - (1) by the parties to the khula: Provided, that if the woman be a pardanashin the entry may be signed on her behalf by her duly authorized wakil; (2) by the person who identifies the man; (3) by the person who identifies the woman; (4) if the application for registration has been made by a wakil on behalf of the woman - by two witnesses to the fact of the wakil having been duly authorised to represent her; (5) if the man be of the Shia sect - By two witnesses in the divorce being effected; (6) by the Mohammadan Registrar:

12. Copies of entry to be given to parties.

- On completion of the registration of any marriage or divorce, the Mohammadan Registrar shall deliver to each of the applicants for registration an attested copy of the entry; and for such copy no charge shall be made.

13. Index to be kept.

- In every office in which any register hereinbefore mentioned is kept, there shall be prepared a current index of the contents of such register; and every entry in such index shall be made, so far as practicable, immediately after the Mohammadan Registrar has made an entry in any such register.

14. Particulars to be shown in index.

- The index mentioned in the last preceding section shall contain the name, place of residence and father's name of each party to every marriage or divorce, and the date of registration. It shall also contain such other particulars and shall be prepared in such form, as the [State] [Substituted by A.L.O.] Government may direct.

15. Index may be inspected and copies of entries in registers taken.

- Subject to the previous payment of the fees prescribed, the index whether it be in the office of the Mohammadan Registrar or of the Registrar of the district, and the copies of entries in such index, which are filed in the office of the Registrar of the district, under the provisions of section twenty-two of this Act, shall be at all times open to inspection by any person applying to inspect the same; and copies of entries in any of the registers, and of the certified copies of such entries, which are filed in the office of the Registrar of the district under Section 22 of this Act, shall be given to all persons applying for such copies. Such copies shall be signed and sealed by the Registrar of the district or by the Mohammadan Registrar as the case may.

16. Fees for searches and copies.

- Every Registrar of a district and every Mohammadan Registrar shall, for the purposes of this Act, be entitled to levy the following fees: - For every search or permission to search in any index or register under his charge - four annas; for every certified copy of any entry in a register other than the

first copy referred to in section twelve of this Act-one rupee.

17. Mohammadan Registrar to be subject to control of District Registrar.

- Every Mohammadan Registrar shall perform the duties of his office under the superintendence and control of the Registrar in whose district the office of such Mohammadan Registrar is situate. In the town of Calcutta every Mohammadan Registrar shall perform the duties of his office under the Superintendence and control of the Inspector General of Registration. Every Registrar, and in the town of Calcutta the Inspector-General of Registration, shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act which he considers necessary in respect of any act or omission of any Mohammadan Registrar subordinate to him.

18. Inspector-General of Registration to exercise general superintendence.

- The Inspector-General of Registration shall exercise a general superintendence over offices of all Mohammadan Registrars, and shall have power from time to time to frame Rules consistent with this Act, for the guidance of the said Mohammadan Registrar and the regulation of their offices generally.

19. Rules to be approved by State Government and published in Gazette.

- All Rules framed in accordance with the last preceding section shall be submitted to the [State] [Substituted by A.L.O.] Government for approval, and after they have been approved they shall be published in the Official Gazette, and shall then have the same force as if they were inserted in this Act.

20. Refusal to register to be recorded.

- Every Mohammadan Registrar refusing to register a marriage or divorce shall make an order of refusal, and record his reasons for such order in a book to be kept for the purpose.

21. Appeal against refusal to register.

- An appeal shall lie against an order of a Registrar refusing to register a marriage or divorce, to the Registrar to whom such Mohammadan Registrar is subordinate, if presented to such Registrar within twenty days from the date of the order, and the Registrar may reverse or after such order, and the order passed by the Registrar on appeal shall be final.

22. Copies of entries to be sent monthly to Registrar of district.

- Every Mohammadan Registrar shall, at the expiration of every month, send certified copies of all entries made by him during the month in the registers mentioned in Section six of this Act, and also of the entries which have been made in the index referred to in Sections thirteen and fourteen of this

Act, to the Registrar of the district within which such Mohammadan Registrar has been authorised to act, and the Registrar, on receiving such copies, shall file them in his office.

23. Registers to be given up.

- Every Mohammadan Registrar shall keep safely each register untill the same shall be filled and shall then or earlier if he shall leave the district or cease to hold a licence, make over the same to the Registrar of the district for safe custody, or to such other person as the Registrar may direct.

24. State Government may prescribe Rules.

- The [State] [Substituted by A.L.O.] Government may from time to time prescribe such rules as [it] [Substituted by the AO for 'he'.] thinks fit, provided that such Rules be not inconsistent with any provisions of this Act, - (a) for determining the qualifications to be required from persons to whom licences under section three of this Act may be granted; (b) for regulating the attendance of Mohammadan Registrars at the celebration of marriages, and their remuneration for such attendance; (c) for regulating the grant of copies by Registrars and Mohammadan Registrars; (d) for regulating the payment by the Mohammadan Registrars of the cost of the seals, forms of registers, stationery and any other articles which may be supplied to them by the Government; (e) for regulating the application of the fees levied by Registrars of district and Mohammadan Registrars under this Act; and (f) for regulating such other matters as appear to the [State] [Substituted by A.L.O.] Government necessary to effect the purpose of this Act. The [State] [Substituted by A.L.O.] Government may from time to time cancel or alter any such Rules.

25. Mohammadan Registrar a public officer.

- Every Mohammadan Registrar shall be, and be deemed to be, a public officer, and his duties under this shall be deemed to be public duties.

26. Saving clause.

- Nothing in this Act contained shall be construed to - (a) render invalid, merely by reason of its not having been registered, any Mohammadan marriage or divorce which would otherwise be valid; (b) render valid, by reason of its having been registered, any Mohammadan marriage or divorce which would otherwise be invalid; (c) authorise the attendance of any Mohammadan Registrar at the celebration of a marriage, except at the request of all the parties concerned; (d) affect the religion or religious rites and usages of any of the [citizens of India] [Substituted by para 3 and Schedule XI of the ALO for 'His Majesty's subjects in India'.]; (e) prevent any person, who is unable to write, from putting his mark instead of the signature required by this Act.

Schedule

(See Sections 6 and 11) Form A Book I Register of Marriages (as prescribed by Section 6 of the Act for the voluntary registration of Mohammedan Marriages and Divorces).

- 1. Consecutive number.**
- 2. Name of the bride-groom and that of his father, with their respective residences.**
- 3. Name of the bride and that of her father, with their respective residences.**
- 4. Whether the bride is a spinster, a widow or divorced by a former husband and whether she is adult or otherwise.**
- 5. [Name of the guardian of the bride-groom (if the bride-groom be a minor) and that of the guardian's father, with specification of the guardian's residence, and of the relationship in which he stands to the bride-groom.] [This column will be blank if the bride and bride-groom, respectively, are not represented by guardians.]**
- 6. [Name of the guardian of the bride (if she be a minor) and that of his father, with specification of his residence, and the relationship in which he stands to the bride.] [This column will be blank if the bride and bride-groom, respectively, are not represented by guardians.]**
- 7. [Name of the bride's wakil and of his father, and their residences, with specification of the relationship in which the wakil stands to the bride.] [This column will be blank if the bride and bride-groom, respectively, are not represented by guardians.]**
- 8. [Names of the witnesses to the due authorization of the bride's wakil, with names of their fathers and residences, and specification of the relationship in which they stand to the bride.] [These columns will be blank when the bride is not represented by a wakil.]**

9. Date on which the marriage was contracted,-To be given according to the English style and according to the era current in the district.

10. Amount of dower.

11. How much of the dower is muajjal (prompt) and how much muwajjal (deferred).

12. Whether any portion of the dower was paid at the moment. If so, how much.

13. Whether any property was given in lieu of the whole or any portion of the dower, with specification of the same.

14. Special conditions, if any.

15. Names of village or town, police-jurisdiction and district in which the marriage took place.

16. Name of the person in whose house the marriage-ceremony took place, and that of his father.

17. Date of registration. - To be given according the English style.

Form BBook IIRegister of Divorces, other than those of the kind known as Khula prescribed by Section 6 of the Act for the voluntary registration of Mohammedan Marriages and Divorces

1. Consecutive number.

2. Names of the husband and of his father, and their residences.

3. Names of the wife and of her father, and their residences.

4. Date of divorce-According to the English style and according to the era current in the district.

5. Description of divorce.

- 6. Manner in which the divorce was effected.**
- 7. Names of the village or town, police-jurisdiction and district in which the divorce took place.**
- 8. Name of the party in whose house the divorce took place, and of his father.**
- 9. Name of witnesses to the divorce, if any, the names of their fathers, and their respective residences.**
- 10. Name of party identifying the husband before the Mohammadan Registrar and that of his father, and their residences.**
- 11. Date of registration-To be given according to the English style.**

Form CBook IIIRegister of Divorce of the kind known as Khula (prescribed by Section 6 of the Act for the voluntary registration of Mohammadan Marriages and Divorces).

- 1. Consecutive number.**
- 2. Name of the husband and that of his father, and their residences.**
- 3. Name of the wife and that of her father, and their residences.**
- 4. Date of Khula-According to the English style and according the era current in the district.**
- 5. Amount of dower.**
- 6. Whether Khula was acknowledged by the wife in person before the Mohammadan Registrar.**
- 7. If so, name of the party identifying her before the Mohammadan Registrar, and that of his father, and their residences, with specification of the relationship which he bears to her, if any.**
- 8. [If the Khula be acknowledged before the Mohammadan Registrar by the wife's wakil, his name and that of his father and their residences, with specification of the relationship which the wakil bears to the wife, if any.]**

[This column will be blank if the woman is not represented by a wakil.]

9. Names of the two witnesses to the authorization of the wife's wakil, and those of their fathers, with their residences.

10. Name of village or town, police-jurisdiction and district where the Khula took place.

11. Name of the person in whose house the Khula took place, and that of his father.

12. Names of the witnesses, if any, to the divorce being effected, the names of their fathers, and their residences.

13. Name of the person identifying the husband, and that of his father, and their residences.

14. Date of registration-To be given in the English style.