

ORISSA ACT VII OF 1949.

**THE ORISSA MUHAMMADAN MARRIAGES AND DIVORCES
REGISTRATION ACT, 1949.**

[Received the assent of the Governor on the 8th June 1949, first published in
[Orissa Gazette, dated the 24th June 1949]

AN ACT TO PROVIDE FOR THE VOLUNTARY REGISTRATION OF MUHAMMADAN
MARRIAGES AND DIVORCES IN THE PROVINCE OF ORISSA.

WHEREAS it is expedient to provide for the voluntary registration of marriages and divorces among Muhammadans in the Province of Orissa ;

It is hereby enacted as follows :—

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Orissa Muhammadan Marriages and Divorces Registration Act, 1949.

(2) It extends to the whole of the Province of Orissa.

(3) It shall come into force at once. *

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) " district " means a district formed under the provisions of the Indian Registration Act, 1908 ;

(b) " Inspector-General of Registration " and " Registrar " respectively mean the officers so designated and appointed under the Indian Registration Act, 1908, or any other law for the time being in force for the registration of documents ;

(c) " Muhammadan Registrar " means any person who is duly authorised under this Act to register marriages and divorces ;

(d) " Pardanashin " means a woman who, according to the custom of the country, might reasonably object to appear in a public office.

Provincial
Government
may grant
licenses to
register.

3. It shall be lawful for the Provincial Government to grant a licence to any person, being a Muhammadan, authorising him to register Muhammadan 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 Provincial Government to revoke or suspend such licence :

Provided that not more than two persons shall be licensed to exercise the said functions within the same limits :

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.

Muham-
madan
Registrar
to use seals

4. Every Muhammadan Registrar shall use a seal bearing the inscription, ' The seal of the Muhammadan Registrar of ' in Persian character.

* NOTE—Extended to all the partially-excluded areas of the Province of Orissa by notification No. 8182-R. dated the 14th July 1949 (vide *Orissa Gazette* dated the 22nd July 1949, Part III, page 1303).

Provincial Government to provide seal and books.

5. (1) The Provincial Government shall provide for the office of every Muhammadan Registrar the seal and the books necessary for the purposes of this Act.

(2) 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.

Muhammadan Registrar to keep registers.

6. Every Muhammadan Registrar shall keep up the following books of register, namely :—

Book I—Register of marriages in the Form A contained in the Schedule.

Book II—Register of divorces other than those of the kind known as Khula, in the Form B contained in the Schedule.

Book III—Register of divorces of the kind known as Khula, in the Form C contained in the Schedule.

Entries to be numbered.

7. The necessary entries in each register specified in section 6 shall be numbered in a consecutive series, which shall commence and terminate with the year, a fresh series being commenced at the beginning of each year.

Applications by whom to be made.

8. Every application for registration of a marriage or divorce under this Act shall be made to the Muhammadan Registrar orally as follows :—

(i) 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, such application shall be made on their behalf by their respective lawful guardians :

Provided further that, if the woman be a pardanashin such application may be made on her behalf by her duly authorised agent ;

(ii) (a) if the application be for the registration of a divorce other than of the kind known as Khula by the man who has effected the divorce ;

(b) if the application be for the registration of a divorce of the kind known as Khula—

by the parties to the divorce jointly :

Provided that if the woman be a pardanashin, such application may be made on her behalf by her duly authorised agent,

Duties of Muhammadan Registrar on application.

9. (1) Every application for registration under section 8 shall be made within one month from the date of marriage or divorce and on payment to him of a fee of one rupee, the Muhammadan 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 agent), satisfy himself of the right of such person to appear.

(2) If the Muhammadan Registrar is satisfied on the aforesaid points 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 every person who, under the provisions of section 11 is required to sign such entry.

(3) The Muhammadan Registrar shall not register—

(a) a marriage of a woman who has effected a divorce of the kind known as Talaq-i-tafweez—

(i) except on the production of a document registered under the Indian Registration Act, 1908, or under any other law for the time being in force for the registration of documents, or of a certified copy of such document, or of a certified copy of the order of the District Judge or any Court of competent jurisdiction, showing that such divorce has been effected or of an attested copy of an entry of the divorce in the register of divorces of the kind known as Talaq-i-tafweez (Book IV) ;

(ii) notwithstanding anything contained in section 9, within six months of the date of divorce of the previous husband of the woman ;

(iii) without giving to the previous husband of the woman by registered post one month's notice in such form containing such particulars as may be prescribed by rules made under section 24 ;

(b) a divorce of the kind known as Talaq-i-tafweez except on the production of a document registered under the Indian Registration Act, 1908, or under any law for the time being in force for the registration of documents, by which the husband delegated the powers of divorce to the wife or of an attested copy of an entry in the register of marriages (Book I) showing that such delegation has been made.

Muham-
madan
Registrar
may receive
gratuity.

10. Nothing in the preceding section shall be held to prohibit a Muhammadan Registrar from receiving a gratuity in excess of the fee provided in sub-section (1) of section 9 when such gratuity is voluntarily tendered.

11. Every entry in a register kept under this Act shall be signed as follows :—

Entries by
whom to be
signed.

(a) if the entry be of a marriage, in a register in the Form A contained in the Schedule—

(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 authorised agent ;

(2) by two witnesses who were present at the marriage-ceremony ;

(3) in cases in which the woman is represented by an agent by two witnesses to the fact of the agent having been duly authorised to represent her, and

(4) by the Muhammadan Registrar.

(b) (i) if the entry be of a divorce other than the kind known as Khula in a register in the Form B contained in the Schedule—

(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 ; and

(4) by the Muhammadan Registrar.

(ii) if the entry be of a divorce of the kind known as Khula in a register in the Form C contained in the Schedule—

(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 authorised agent ;

(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 an agent on behalf of the woman by two witnesses to the fact of the agent having been duly authorised to represent her ;

(5) if the man be of the Shia sect—by two witnesses to the divorce being effected ; and

(6) by the Muhammadan Registrar.

Copies of entry to be given to parties. 12. On completion of the registration of any marriage or divorce, the Muhammadan Registrar shall deliver to each of the applicants for registration an attested copy of the entry for which no charge shall be made.

Index to be kept. 13. 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 Muhammadan Registrar has made an entry in any such register.

Particulars to be shown in index. 14. The index provided in section 13 shall contain the name, place of residence and father's name of each party to every marriage or divorce, and the date of registration and it shall contain such other particulars and shall be prepared in such form, as the Provincial Government may from time to time direct.

Index may be inspected and copies of entries in registers taken. 15. (1) Subject to the previous payment of the fees provided in section 16 the index, whether it be in the office of the Muhammadan 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 22 shall at all times be open to inspection by any person applying to inspect the same.

(2) 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 shall be given to all persons applying for such copies.

(3) Such copies shall be signed and sealed by the Registrar of the district or by the Muhammadan Registrar, as the case may be.

Fees for inspection and copies.

16. Every Registrar of a district and every Muhammadan Registrar shall, for the purposes of this Act, be entitled to levy the following fees :—

(a) for every inspection or permission to inspect any index or register under his charge—Four annas ;

(b) for every certified copy of any entry in a register other than the first copy referred to in section 12—One rupee.

Muhammadan Registrar to be subject to control of District Registrar.

17. (1) Every Muhammadan Registrar shall perform the duties of his office under the superintendence and control of the Registrar under whose jurisdiction the office of such Muhammadan Registrar is situate.

(2) Every Registrar 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 Muhammadan Registrar subordinate to him.

Inspector-General of Registration to exercise general superintendence.

18. The Inspector-General of Registration shall exercise general superintendence over the offices of all Muhammadan Registrars and shall have power from time to time to make regulations for the guidance of the said Muhammadan Registrars and the regulation of their offices generally.

Rules to be approved by Provincial Government and published in Gazette.

19. All regulations made under section 18 shall be submitted to the Provincial Government for approval, and after they have been approved shall be published in the Gazette, and shall have effect from the date of such publication.

Refusal to register to be recorded.

20. Every Muhammadan 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 that purpose.

Appeal against refusal to register.

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

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

22. Every Muhammadan 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 6, and also of the entries which have been made in the index referred to in section 13 to the Registrar of the district within which such Muhammadan Registrar has been authorised to act, and the Registrar, on receiving such copies, shall file them in his office.

Registers to be made over.

23. Every Muhammadan Registrar shall keep safely each register until the same shall be filled, and shall thereupon 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.

Provincial
Government
may
prescribe
rules.

24. (1) The Provincial Government may from time to time make rules for carrying into effect the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power such rules may provide for—

(a) determining the qualifications to be required from persons to whom licenses under section 3 may be granted ;

(b) regulating the attendance of Muhammadan Registrars at the celebration of marriages, and their remuneration for such attendance ;

(c) regulating the grant of copies by Registrars and Muhammadan Registrars ;

(d) regulating the payment by the Muhammadan 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) regulating the application of the fees levied by Registrars of districts and Muhammadan Registrars under this Act : and

(f) regulating such other matters for which no provision or inadequate provision is made in this Act and for which provision is in the opinion of the Provincial Government necessary

Muhamma-
dan Regis-
trar a Public
Officer.

25. Every Muhammadan Registrar shall be, and be deemed to be, a public servant and his duties under this Act shall be deemed to be public duties.

Savings.

26. Nothing in this Act contained shall be construed to—

(a) render invalid, merely by reason of non-registration, any Muhammadan marriage or divorce which would otherwise be valid ;

(b) render valid, by reason of registration any Muhammadan marriage or divorce which would otherwise be invalid ;

(c) authorize the attendance of any Muhammadan 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 His Majesty's subjects in the Dominion of India.

Repeal and
savings.

27. (i) The Bengal Muhammadan Marriages and Divorce Registration Act, 1876 is hereby repealed. Bengal Act of 1876.

(ii) All orders issued, appointments made, licenses granted or anything done under the said Act and in force immediately before the commencement of this Act shall continue in force and be deemed to have been issued, made, granted or done under the corresponding provisions of this Act.

SCHEDULE

(See sections 6 and 11)

FORM A. BOOK I

Register of marriages (as provided in section 6 of the Act for the voluntary registration of Muhammadan marriages and divorces)

1. Consecutive number.
2. Name of the bridegroom 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 bridegroom (if the bridegroom 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 bridegroom.
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.
7. Name of the bride's agent and of his father, and their residences, with specification of the relationship in which the agent stands to the bride.
8. Names of the witnesses to the due authorization of the bride's agent, with names of their fathers and residences, and specification of the relationship in which they stand to the bride.
9. Date on which the marriage was contracted, to be given according to the British calendar and according to the era current in the district.
10. Amount of dower.
11. How much of the dower is mu'ajjal (prompt) and how much mu'wajja (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 to the British calendar.

FORM B. BOOK II

Register of Divorces, other than those of the kind known as Khula (provided in section 6 of the Act for the voluntary registration of Muhammadan 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 British calendar 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. Names 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 Muhammadan Registrar and that of his father, and their residences.
11. Date of registration—to be given according to the British calendar.

FORM C. BOOK III

Register of Divorces of the kind known as Khula (provided in section 6 of the Act for the voluntary registration of Muhammadan 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 British calendar and according to the era current in the district.
5. Amount of dower.
6. Whether Khula was acknowledged by the wife in person before the Muhammadan Registrar.
7. If so, name of the party identifying her before the Muhammadan 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 Muhammadan Registrar by the wife's agent, his name and that of his father and their residences, with specification of the relationship which the agent bears to the wife, if any.

9. Names of the two witnesses to the due authorization of the wife's agent, 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 British calendar.