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***THE ORISSA MUHAMMEDAN MARRIAGES AND DIVORCES REGISTRATION ACT, 1949**

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AN ACT TO PROVIDE FOR THE VOLUNTARY REGISTRATION OF MUHAMMEDAN MARRIAGES AND DIVORCES IN THE STATE OF ORISSA.

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

It is hereby enacted as follows :

1. Short title, extent and commencement. - (1) This Act may be called the Orissa Muhammedan Marriages and Divorces Registration Act, 1949.

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

(3) It shall come into force at once.

2. Definitions. - 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 (XVI of 1908);

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

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

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

3. State Government may grant licences to Registrar. - It shall be lawful for the State Government to grant a licence to any person, being a Muhammedan, authorising him to register Muhammedan marriage 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 State 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.

4. Muhammedan Registrar to use seal. - Every Muhammedan Registrar shall use a seal bearing the inscription, "The seal of the Muhammedan Registrar of" in Persian character.

5. State Government to provide seal and books. - (1) The State Government shall provide for the office of every Muhammedan 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.

6. Muhammedan Registrar to keep registers. - Every Muhammedan Registrar shall keep up the following books of register namely :

Book I-Register of Marriages ¹[including marriages of women who have effected a divorce of the kind known as Talaq-i-tafweez,] in the Form 'A' contained in the Schedule.

Book II-Register of Divorces other than those of the kind known as Khula ¹[or Talaq-i-tafweez] 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.

¹**Book IV-**Register of Divorces of the kind known as Talaq-i-tafweez in Form 'D' contained in the Schedule.]

7. Entries to be numbered. - 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.

8. Applications by whom to be made. - Every application for registration of a marriage or divorce under this Act shall be made to the Muhammedan Registrar orally as follows :

(i) if the application be for the registration of a marriage ¹[including the registration of a marriage of a woman who has effected a divorce of a kind known as Talaq-i-tafweez] 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:

1. *Inserted vide Orissa Act XII of 1954*

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 ¹[or Talaq-i-tafweez] 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;

¹[(c) if the application be for the registration of a divorce of the kind known as Talaq-i-tafweez-by the woman who has effected the divorce:

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

9. Duties of Muhammedan Registrar on application. - (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 Muhammedan 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 Muhammedan 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 Muhammedan 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 (XVI of 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);

1. *Inserted vide Orissa Act XII of 1954*

- (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 (XVI of 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.

10. Muhammedan Registrar may receive gratuity. - Nothing in the preceding section shall be held to prohibit a Muhammedan 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. Entries by whom to be signed. - Every entry in a register kept under this Act shall be signed as follows :

(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 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 Muhammedan Registrar;

(b) (i) if the entry be of a divorce other than the kind known as Khula ¹[or Talaq-i-tafweez] 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 Muhammedan 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;

1. *Inserted vide Orissa Act XII of 1954*

- (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 or 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 Muhammedan Registrar;

¹[(iii) if the entry be of a divorce of the kind known as Talaq-i-tafweez in a register in the Form 'D' contained in the Schedule to this Act-

- (1) by the woman who has effected the divorce;
- (2) by the person who identifies the woman who has effected the divorce;
- (3) if the woman be of the Shia sect-by two witnesses to the divorce being effected;
- (4) by the Muhammedan Registrar.]

12. Copies of entry to be given to parties. - On completion of the Registration of any marriage or divorce, the Muhammedan Registrar shall deliver to each of the applicants for registration an attested copy of the entry for which 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 Muhammedan Registrar has made an entry in any such register.

14. Particulars to be shown in index. - 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 State Government may from time to time direct.

15. Index may be inspected and copies of entries in registers taken.-
 (1) Subject to the previous payment of the fees provided in Section 16 the index, whether it be in the office of the Muhammedan 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 Muhammedan Registrar, as the case may be.

1. *Inserted vide Orissa Act XII of 1954*

16. Fees for inspection and copies. - Every Registrar of a district and every Muhammedan 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 register other than the first copy referred to in Section 12-One rupee.

17. Muhammedan Registrar to be subject to control of District Registrar. - (1) Every Muhammedan Registrar shall perform the duties of his office under the superintendence and control of the Registrar under whose jurisdiction the office of such Muhammedan 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 Muhammedan Registrar subordinate to him.

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

19. Rules to be approved by State Government and published in Gazette. - All regulations made under Section 18 shall be submitted to the State 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.

20. Refusal to register to be recorded. - Every Muhammedan 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.

21. Appeal against refusal to register. - An appeal shall lie against an order of a Muhammedan Registrar refusing to register a marriage or divorce, to the Registrar to whom such Muhammedan 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.

22. Copies of entries to be sent monthly to Registrar of District. - Every Muhammedan 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 Muhammedan Registrar has been authorised to act, and the Registrar, on receiving such copies, shall file them in his office.

23. Registers to be made over. - Every Muhammedan Registrar shall keep safely each register until the same shall be filed, and shall thereupon of

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. - (1) The State 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 licences under Section 3 may be granted;
- (b) regulating the attendance of Muhammedan Registrars at the celebration of marriages, and their remuneration for such attendance;
- (c) regulating the grant of copies by Registrars and Muhammedan Registrars;
- (d) regulating the payment by the Muhammedan Registrars of the cost of the seals, forms of registers, stationary and any other articles which may be supplied to them by the Government;
- (e) regulating the application of the fees levied by Registrar of Districts and Muhammedan 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 State Government, necessary.

25. Muhammedan Registrar a Public Officer. - Every Muhammedan Registrar shall be, and be deemed to be, a public servant and his duties under this Act shall be deemed to be public duties.

26. Savings. - Nothing in this Act contained shall be construed to-

- (a) render invalid, merely by reason of non-registration, any Muhammedan marriage or divorce which would otherwise be valid;
- (b) render valid, by reason of registration any Muhammedan marriage or divorce which would otherwise be invalid;
- (c) authorise the attendance of any Muhammedan 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 citizen of India.

27. Repeal and savings. - (i) The Bengal Muhammedan Marriages and Divorces Registration Act, 1876 (Bengal Act I of 1876) is hereby repealed.

(ii) All orders issued, appointments made, licences 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 1

Register of Marriages ¹[including marriage of women who have effected divorces of the kind known as Talaq-i-tafweez] (as provided in Section 6 of the Act for the voluntary registration of Muhammedan marriages and divorces)

1. Consecutive No.....

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 ¹[or has effected a divorce of the kind known as Talaq-i-tafweez] and whether she is adult or otherwise.....

¹[4-A. If the bride has effected a divorce of the kind known as Talaq-i-tafweez particulars of the document produced to prove the same.....

4-B. if the bride has effected a divorce of the kind known as Talaq-i-tafweez, the date on which and place where the same was registered with name and residence of the previous husband.....]

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 authorisation 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'wajjal (prompt) and how much mu'wajjal (deferred).....

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

1. *Inserted vide Orissa Act XII of 1954*

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 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 ¹[or Talaq-i-tafweez] (provided in Section 6 of the Act for the voluntary registration of Muhammedan marriages and divorces)

1. Consecutive No.....

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

3. Name 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. Name 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 Muhammedan 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 Muhammedan marriages and divorces)

1. Consecutive No.....

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.....

1. *Inserted vide Orissa Act XII of 1954*

5. Amount of dower.....
6. Whether Khula was acknowledged by the wife in person before the Muhammedan Registrar.....
7. If so, name of the party identifying her before the Muhammedan Registrar, and that of father, and their residences, with specification of the relationship which he bears to her, if any.....
8. If the Khula be acknowledged before Muhammedan 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 authorisation 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.....

Form 'D'-Book IV

Register of divorces of the kind known as Talaq-i-tafweez (as prescribed by Section 6 of the Act for the voluntary registration of Muhammedan marriages and divorces)

1. Consecutive No.....
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. Name of the party identifying the wife before the Muhammedan Registrar, and that of his father, and their residences, with specification of the relationship which he bears to her, if any.....
5. Particulars of documents produced to prove delegation of power to the wife to divorce the husband.....
6. Date of Talaq-i-tafweez according to the English style and according to the era current in the district.....
7. Amount of dower.....
8. Name of the village or town, police-jurisdiction and district where the Talaq-i-tafweez took place.....

1. *Inserted vide Orissa Act XII of 1954*

9. Name of the person in whose house the Talaq-i-tafweez took place, and that of his father.....

10. Description of Talaq-i-tafweez.....

11. Names of the witnesses and their signatures, to the divorce being effected, the names of their father and their residences.....

12. Date of registration to be given in the English style.....