

THE MUSLIM PERSONAL LAW (SHARIAT) APPLICATION ACT, 1937.

ACT No. 26 OF 1937.

[7th October, 1937.]

An Act to make provision for the application of the Muslim Personal Law (Shariat) to Muslims 1* * *.

WHEREAS it is expedient to make provision for the application of the Muslim Personal Law (Shariat) to Muslims 1* * *; It is hereby enacted as follows:-

1.Short title and extent.

1. Short title and extent.-(1) This Act may be called the Muslim Personal Law (Shariat) Application Act, 1937.(2) It extends to the whole of India 2 [except the State of Jammu and Kashmir] 3* * *.4.2.Application of Personal Law to Muslims.

2.Application of Personal Law to Muslims.-Notwithstanding any customs or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and religion endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat).

3.Power to make a declaration.

3.(1) Power to make a declaration.-Any person who satisfies the prescribed authority--
(a) that he is a Muslim, and
(b) that, he is competent to contract within the meaning of section 11 the Indian Contract Act, 1872 (9 of 1872), and

1 The words "in the Provinces of India" omitted by the A. O. 1950

2 Subs. by Act 48 of 1959, s. 3 and Sch. I, for certain words (w.e.f. 1-2-1960).

3 The words " excluding the North-West Frontier Province" omitted by the A. O. 1948.4 In its application to Pondicherry, in section 1, after, sub-section (2), the following shall be inserted-

"Provided that nothing contained in this Act shall apply to the Renoncants of the Union territory of Pondicherry."--(Vide Act 26 of 1968).

The Act has been extended to Dadra and Nagar Haveli by Reg. 6 of 1963, s. 2 and Sch. I and to Laccadive, Minicoy and Amindivi Islands by Reg. 8 of 1965, s. 3 and Sch.

206.(c) that he is a resident of 1*[the territories to which this Act extends], may by declaration in the prescribed form and filed before the prescribed authority declare that he desires to obtain the benefit of 2*[the provisions of this section], and thereafter the provisions of section 2 shall apply to the declarant and all his minor children and their descendants as if in addition to the matters enumerated therein adoption, wills and legacies were also specified.

(2) Where the prescribed authority refuses to accept a declaration under sub-section (1), the person desiring to make the same may appeal to such officer as the State Government may, by general or special order, appoint in this behalf, and such officer may, if he is satisfied that the appellant is entitled to make the declaration, order the prescribed authority to accept the same.

4.Rule-making power.

4.(1)Rule-making power.-The State Government may make rules to carry into effect the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:-

(a) for prescribing the authority before whom and the form in which declarations under this Act shall be made ;

(b) for prescribing the fees to be paid for the filing of declarations and for the attendance at private residences of any person in the discharge of his duties under this Act; and for prescribing the times at which such fees shall be payable and the manner in which they shall be levied.

(3) Rules made under the provisions of this section shall be published in the Official Gazette and shall thereupon have effect as if enacted in this Act.

3*[(4) Every rule made by the State Government under this Act shall be laid, as soon as it is made, before the State legislature.]

5. [Dissolution of marriage by Court in certain circumsta.]

Rep. by the Dissolution of Muslim Marriages Act, 1939 (8 of 1939),s.6.

6.Repeals.

6.Repeals.-4*[The undermentioned provisions] of the Acts and

Regulations mentioned below shall be repealed in so far as they are inconsistent with the provisions of this Act, namely:-

(1) Section 26 of the Bombay Regulation IV of 1827;

Act : THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT, 1986

[Act No. 25 of 1986 dated 19th May, 1986]

An Act to protect the rights of Muslim women who have been divorced by, or have obtained divorce from, their husbands and to provide for matters connected therewith or incidental thereto. BE it enacted by Parliament in the Thirty-seventh year of the Republic of India as follows: -

1. Short title and extent

(1) This Act may be called the Muslim Women (Protection of Rights on Divorce) Act, 1986.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

2. Definitions

In this Act, unless the context otherwise requires,-

(a) ~divorced woman~ means a Muslim woman who was married according to Muslim law, and has been divorced by, or has obtained divorce from, her husband in accordance with Muslim law;

(b) ~iddat period~ means, in the case of a divorced woman,-

(i) three menstrual courses after the date of divorce, if she is subject to menstruation;

(ii) three lunar months after her divorce, if she is not subject to menstruation; and

(iii) if she is enceinte at the time of her divorce, the period between the divorce and the delivery of her child or the termination of her pregnancy, whichever is earlier;

(c) ~Magistrate~ means a Magistrate of the First class exercising jurisdiction under the Code of Criminal Procedure, 1973 in the area where the divorced woman resides;

(d) ~prescribed~ means prescribed by rules made under this Act.

3. Mahr or other properties of Muslim woman to be given to her at the time of divorce

(1) Notwithstanding anything contained in any other law for the time being in force, a divorced woman shall be entitled to-

(a) a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband;

(b) where she herself maintains the children born to her before or after her divorce, a reasonable and fair provision and maintenance to be made and paid by her former husband for a period of two years from the respective dates of birth of such children;

(c) an amount equal to the sum of mahr or dower agreed to be paid to her at the time of her marriage or at any time thereafter according of Muslim law; and

(d) all the properties given to her before or at the time of marriage or after her marriage by her relatives or friends or the husband or any relatives of the husband or his friends.

(2) Where a reasonable and fair provision and maintenance or the amount of mahr or dower due has not been made or paid or the properties referred to in clause (d) of sub-section (1) have not been delivered to a divorced woman on her divorce, she or any one duly authorised by her may, on her behalf, make an application to a Magistrate for an order for payment of such provision and maintenance, mahr or dower or the delivery of properties, as the case may be.

(3) Where an application has been made under sub-section (2) by a divorced woman, the Magistrate may, if he is satisfied that-

(a) her husband having sufficient means, has failed or neglected to make or pay her within the iddat period a reasonable and fair provision and maintenance for her and the children; or

(b) the amount equal to the sum of mahr or dower has not been paid or that the properties referred to in clause (d) of sub-section (1) have not been delivered to her, make an order, within one month of the date of the filing of the application, directing her former husband to pay such reasonable and fair provision and maintenance to the divorced woman as he may determine as fit and proper having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of her former husband or, as the case may be, for the payment of such mahr or dower or the delivery of such properties referred to in clause (d) of sub-section (1) to the divorced woman:

Provided that if the Magistrate finds it impracticable to dispose of the application within the said period, he may, for reasons to be recorded by him, dispose of the application after the said period.

(4) If any person against whom an order has been made under sub-section (3) fails without sufficient cause to comply with the order, the Magistrate may issue a warrant for levying the amount of maintenance or mahr or dower due in the manner provided for levying fines under the Code of Criminal Procedure, 1973, and may sentence such person, for the whole or part of any amount remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one year or until payment if sooner made, subject to such person being heard in defence and the said sentence

being imposed according to the provisions of the said Code.

4. Order for payment of maintenance

(1) Notwithstanding anything contained in the foregoing provisions of this Act or in any other law for the time being in force, where a Magistrate is satisfied that a divorced woman has not re-married and is not able to maintain herself after the iddat period, he may make an order directing such of her relatives as would be entitled to inherit her property on her death according to Muslim law to pay such reasonable and fair maintenance to her as he may determine fit and proper, having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of such relatives and such maintenance shall be payable by such relatives in the proportions in which they would inherit her property and at such periods as he may specify in his order:

Provided that where such divorced woman has children, the Magistrate shall order only such children to pay maintenance to her, and in the event of any such children being unable to pay such maintenance, the Magistrate shall order the parents of such divorced woman to pay maintenance to her:

Provided further that if any of the parents is unable to pay his or her share of the maintenance ordered by the Magistrate on the ground of his or her not having the means to pay the same, the Magistrate may, on proof of such inability being furnished to him, order that the share of such relatives in the maintenance ordered by him be paid by such of the other relatives as may appear to the Magistrate to have the means of paying the same in such proportions as the Magistrate may think fit to order.

(2) Where a divorced woman is unable to maintain herself and she has no relatives as mentioned in sub-section (1) or such relatives or any one of them have not enough means to pay the maintenance ordered by the Magistrate or the other relatives have not the means to pay the shares of those relatives whose shares have been ordered by the Magistrate to be paid by such other relatives under the second proviso to sub-section (1), the Magistrate may, by order, direct the State Wakf Board established under section 9 of the Wakf Act, 1954, or under any other law for the time being in force in a State, functioning in the area in which the woman resides, to pay such maintenance as determined by him under sub-section (1) or, as the case may be, to pay the shares of such of the relatives who are unable to pay, at such periods as he may specify in his order.

5. Option to be governed by the provisions of sections 125 to 128 of Act 2 of 1974

If on the date of the first hearing of the application under sub-section (2) of section 3, a divorced woman and her former husband declare, by affidavit or any other declaration in writing in such form as may be prescribed, either jointly or separately, that they would prefer to be governed by the provisions of sections 125 to 128 of the Code of Criminal Procedure, 1973, and file such affidavit or declaration in the court hearing the application, the Magistrate shall dispose of such application accordingly.

Explanation,- For the purposes of this section, ~date of the first hearing of the application~ means the date fixed in the summons for the attendance of the respondent to the application.

6. Power to make rules

(1) The Central Government may, by notification in the Official Gazette, make rules or carrying out the purposes of this Act.

(2) In particular and without prejudice to the foregoing power, such rules may provide for-

(a) the form of the affidavit or other declaration in writing to be filed under section 5;

(b) the procedure to be followed by the Magistrate in disposing of applications under this Act, including the serving of notices to the parties to such applications, dates of hearing of such applications and other matters;

(c) any other matter which is required to be or may be prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

7. Transitional provisions

Every application by a divorced woman under section 125 or under section 127 of the Code of Criminal Procedure, 1973 pending before a Magistrate on the commencement of this Act, shall, notwithstanding anything contained in that Code and subject to the provisions of section 5 of this Act, be dispose of by such Magistrate in accordance with the provisions of this Act\\

An Act to consolidate and clarify the provisions of Muslim Law relating to suits for dissolution of marriage by women married under Muslim Law and to remove doubts as to the effect of the renunciation of Islam by a married woman on her marriage tie.

Whereas it is expedient to consolidate and clarify the provisions of Muslim Law relating to suits for dissolution of marriage by women married under Muslim Law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage; it is hereby enacted as follows:

1. Short title and extent.

(1) This Act may be called the Dissolution of Muslim Marriages Act, 1939.

(2) It extends to all the provinces and the Capital of the Federation.

2. Grounds for decree for dissolution of marriage.

A woman married under Muslim Law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely:

(i) that the whereabouts of the husband have not been known for a period of four years;

(ii) that the husband has neglected or has failed to provide for her maintenance for a period of two years;

(ii-A) that the husband has taken an additional wife in contravention of the provisions of the Muslim Family Laws Ordinance, 1961;

(iii) that the husband has been sentenced to imprisonment for a period of seven years or upwards;

(iv) that the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years;

(v) that the husband was impotent at the time of the marriage and continues to be so;

(vi) that the husband has been insane for a period of two years or is suffering from leprosy or a virulent venereal disease;

(vii) that she, having been given in marriage by her father or other guardian before she attained the age of sixteen years, repudiated the marriage before attaining the age of eighteen years:

Provided that the marriage has not been consummated;

(viii) that the husband treats her with cruelty, that is to say,

(a) habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, or

(b) associates with women of evil repute or leads an infamous life, or

- (c) attempts to force her to lead an immoral life, or
- (d) disposes of her property or prevents her exercising her legal rights over it, or
- (e) obstructs her in the observance of her religious profession or practice, or
- (f) if he has more wives than one, does not treat her equitably in accordance with the injunctions of the Quran,
- (ix) on any other ground which is recognized as valid for the dissolution of marriages under Muslim Law,

Provided that:

- (a) no decree passed on ground (i) shall take effect for a period of six months from the date of such decree, and if the husband appears either in person or through an authorised agent within that period and satisfies the Court he is prepared to perform his conjugal duties the Court shall set aside the said decree; and
- (b) before passing a decree on ground (v) the Court shall, on application by the husband, make an order requiring the husband to satisfy the Court within a period of one year from the date of such order that he has ceased to be impotent, and if the husband so satisfied the Court within such period, no decree shall be passed on the said ground.

3. Notice to be served on heirs of the husband when the husband's whereabouts are not known.

In a suit to which clause (i) of section 2 applies:

- (a) the names and addresses of the persons who would have been heirs of the husband under Muslim Law if he had died on the date of the filing of the plaint shall be stated in the plaint.
- (b) notice of the suit shall be served on such persons, and
- (c) such persons shall have the right to be heard in the suit:

Provided that paternal-uncle and brother of the husband, if any, shall be cited as party even if he or they are not heirs.

4. Effect of conversion to another faith.

The renunciation of Islam by a married Muslim woman or her conversion to a faith other than Islam shall not by itself operate to dissolve her marriage:

Provided that after such renunciation, or conversion, the woman shall be entitled to obtain a decree for the dissolution of her marriage on any of the grounds mentioned in section 2;

Provided further that the provisions of this section shall not apply to a woman converted

to Islam from some other faith who re-embraces her former faith.

5. Right to dower not be affected.

Nothing contained in this Act shall affect any right which a married woman may have under Muslim law to her dower or any part thereof on the dissolution of her marriage

6. (Repeal of section 5 of Act, XXVI of 1937)

Rep. by the Repealing and Amending Act, 1942 (XXV of 1942), section 2 and First Sch. An Ordinance to give effect to certain recommendations of the commission on marriage and Family Laws.

Whereas it is expedient to give effect to certain recommendation of the commission on Marriage and Family Laws.

Now, therefore in pursuance of the proclamation of the seventh day of October 1958, and in exercise of all powers enabling

him in this behalf, the President is pleased to make and promulgate the following Ordinance:

1. Short title, extent, application and commencement

(1) This Ordinance may be called the Muslim Family Laws Ordinance, 1961.

(2) It extends to whole of Pakistan, and applies to all Muslim citizens of Pakistan, wherever they may be.

(3) It shall come into force on such date as the Federal Government may, by notification in the official Gazette, appoint in this behalf.

2. Definition

(a) "Arbitration Council" means a body consisting of the Chairman and a representative of each of the parties to a matter dealt with this Ordinance:

Provided that where any party fails to nominate a representative within the prescribed time, the body formed without such representative shall be the Arbitration Council.

(b) "Chairman" means the Chairman of the Union Council or a person appointed by the Federal Government in the Cantonment areas or by the Provincial Government in other areas or by an Officer authorised in that behalf by any such Government to discharge the functions of chairman under Ordinance:

Provided that where the Chairman of the Union Council is a non-Muslim, or he himself wishes to make an application to the Arbitration Council, or is, owing to illness or any other reason, unable to discharge the functions of Chairman, the Council shall elect one of its Muslim members as Chairman for the purposes of this Ordinance.

(c) "Prescribed" means prescribed by rules made under Sch. II.

(d) "Union Council" means the Union Council or the Town or Union Committee constituted under the Basic Democracies Order, 1959 and having jurisdiction in the matter as prescribed.

(e) "Ward" means a ward within a Union or Town as defined in the aforesaid Order.

3. Ordinance to override other laws, etc.

(1) The provisions of this Ordinance shall have effect notwithstanding any law, custom or usage, and the registration of Muslim marriages shall take place only in accordance with these provisions.

(2) For the removal of doubt, it is hereby declared that the provisions of the Arbitration Act, 1940 (X of 1940), the Code of Civil Procedure 1908 (Act V of 1908), and any other law regulating the procedure of Courts shall not apply to any Arbitration Council.

4. Succession.

In the event of death of any son or daughter of the propositus before the opening of succession, the children of such son or daughter, if any, living at the time the succession opens, shall per stripes, receive a share equivalent to the share which such son or daughter, as the case may be, would have received if alive.

5. Registration of marriage.

(1) Every marriage solemnized under Muslim Law shall be registered in accordance with the provisions of this Ordinance.

(2) For the purpose of registration of marriage under this Ordinance, the Union Council shall grant licenses to one or more persons, to be called Nikah Registrars, but in no case shall more than one Nikah Registrar be licensed for any one Ward.

(3) Every marriage not solemnized by the Nikah Registrar shall, for the purpose of registration under this Ordinance be reported to him by the person who has solemnized such marriage.

(4) Whoever contravenes the provisions of such-section (3) shall be punishable with simple imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

(5) The form of nikahnama, the registers to be maintained by Nikah Registrars, the records to be preserved by Union Councils, the manner in which marriage shall be registered and copies of nikahnama shall be supplied to parties, and the fees to be charged thereof, shall be such as may be prescribed.

(6) Any person may, on payment of the prescribed fee, if any, inspect at the office of the

Union Council the record preserved under sub-section (5), or obtain a copy of any entry therein.

6. Polygamy.

(1) No man, during the subsistence of an existing marriage, shall except with the previous permission in writing of the Arbitration Council, contract another marriage, nor shall any such marriage contracted without such permission be registered under this Ordinance.

(2) An application for permission under Sub-section (1) shall be submitted to the Chairman in the prescribed manner together with the prescribed fee, and shall state reasons for the proposed marriage, and whether the consent of existing wife or wives has been obtained thereto.

(3) On receipt of the application under Sub-section (3), Chairman shall ask the applicant and his existing wife or wives each to nominate a representative, and the Arbitration Council so constituted may, if satisfied that the proposed marriage is necessary and just, grant, subject to such condition if any, as may be deemed fit, the permission applied for.

(4) In deciding the application the Arbitration Council shall record its reasons for the decision and any party may, in the prescribed manner, within the prescribed period, and on payment of the prescribed fee, prefer an application for revision, to the Collector concerned and his decision shall be final and shall not be called in question in any Court.

(5) Any man who contracts another marriage without the permission of the Arbitration Council shall,

(a) pay immediately the entire amount of the dower whether prompt or deferred, due to the existing wife or wives, which amount, if not so paid, shall be recoverable as arrears of land revenue; and

(b) on conviction upon complaint be punishable with the simple imprisonment which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

7. Talaq.

(1) Any man who wishes to divorce his wife shall, as soon as may be after the pronouncement of talaq in any form whatsoever, give the chairman a notice in writing of his having done so, and shall supply a copy thereof to the wife.

(2) Whoever, contravenes the provisions of sub-section (1) shall be punishable with simple imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

(3) Save as provided in sub-section (5) talaq, unless revoked earlier, expressly or otherwise, shall not be effective until the expiration of ninety days from day on which notice under sub-section (1) is delivered to the Chairman.

(4) Within thirty days of the receipt of notice under Sub-section (1), the Chairman shall constitute an Arbitration Council for the purpose of bringing about a reconciliation between the parties, and the Arbitration Council shall take all steps necessary to bring about such reconciliation.

(5) If the wife be pregnant at the time talaq is pronounced, talaq shall not be effective until the period mentioned in Sub-section (3) or the pregnancy, whichever later, ends.

(6) Nothing shall debar a wife whose marriage has been terminated by talaq effective under his section from remarrying the same husband, without an intervening marriage with a third person, unless such termination is for the third time so effective.

8. Dissolution of marriage otherwise than by talaq.

Where the right to divorce has been duly delegated to the wife and she wishes to exercise that right, or where any of the parties to a marriage wishes to dissolve the marriage otherwise than by talaq the provisions of section 7 shall, mutatis mutandis and so far as applicable, apply.

9. Maintenance.

(1) If any husband fails to maintain his wife adequately, or where there are more wives than one, fails to maintain them equitably, the wife, or all or any of the wives, may in addition to seeking any other legal remedy available apply to the Chairman who shall constitute an Arbitration Council to determine the matter, and the Arbitration Council may issue a certificate specifying the amount which shall be paid as maintenance by the husband.

(2) A husband or wife may, in the prescribed manner, within the prescribed period, and on payment of the prescribed fee, prefer an application for revision of the certificate, to the Collector concerned and his decision shall be final and shall not be called in question in any Court.

(3) Any amount payable under Sub-section (1) or, (2) if, not paid in the due time, shall be recoverable as arrears of land revenue.

PUNJAB AMENDMENT

In sub-section (2), the full-stop occurring at the end shall be replaced by a colon and thereafter the following proviso shall be added, namely:

Provided that the Commissioner of a Division may, on an application made in this behalf and for reasons to be recorded, transfer an application for revision of the certificate from a Collector to any other Collector, or to a Director, Local Government, or to an Additional Commissioner in his Division. [Ord. II of 1975, Section 2].

10. Dower.

Where no details about the mode of payment of dower are specified in the nikahnama or the marriage contract, the entire amount of the dower shall be presumed to be payable on demand.

11. Power to make rules.

(1) The Government may make rules to carry into effect the purposes of this Ordinance.

(2) In making rules under this section, such Government, may provide that a breach of any of the rules shall be punishable with simple imprisonment which may extend to one month, or with fine which may extent to two hundred rupees, or with both.

(3) Rules made under this section shall be published in the official Gazette and shall thereupon have effect as if enacted in this Ordinance.

12. Amendment of child marriage restraint act, 1929 (xix of 1929). Omitted by Ord. 27 of 1981.

13. Amendment of the dissolution of Muslim marriages act, 1939 (viii of 1939). Omitted by Ord. 27 of 1981.
