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Bengal Act I of 1876

[THE BENGAL MUHAMMADAN MARRIAGES AND DIVORCES REGISTRATION ACT, 1876.]

CONTENTS.

Section.

1. Local extent.
2. Interpretation.
3. State Government may grant licenses to register.
4. Muhammadan Registrars to use seals.
5. Government to provide seal and books.
6. Muhammadan Registrar to keep registers.
7. Entries to be numbered.
8. Applications, by whom to be made.
9. Duties of Muhammadan Registrar on application.
- 9A. Duties of Muhammadan Registrar in certain cases.
10. (*Repealed.*)
11. Entries by whom to be signed.
12. Copies of entry to be given to parties.
13. Index to be kept.
14. Particulars to be shown in index.
15. Index may be inspected and copies of entries in registers taken.
16. Fees for searches and copies.
17. Muhammadan Registrar to be subject to control of District Registrar.
18. Inspector-General of Registration to exercise general superintendence.
19. Rules to be approved by State Government and published in Gazette.
20. Refusal to register to be recorded.
21. Appeal against refusal to register.
22. Copies of entries to be sent monthly to Registrar of district.
23. Registers to be given up.
24. State Government may prescribe rules.
25. Muhammadan Registrar a public officer.
26. Saving clause.

Schedule—Form A, Book I.

Schedule—Form B, Book II.

Schedule—Form C, Book III.

Schedule—Form D, Book IV.

Bengal Act I of 1876

[THE BENGAL MUHAMMADAN MARRIAGES AND DIVORCES REGISTRATION ACT, 1876.]¹

SHORT TITLE GIVEN	. . .	Act I of 1903.
AMENDED	. . .	Ben. Act VI of 1932. Ben. Act I of 1935. Ben. Act XVI of 1946.
ADAPTED	. . .	(a) The Government of India (Adaptation of Indian Laws) Order, 1937. (b) The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948. (c) The Adaptation of Laws Order, 1950.

[19th January, 1876.]

An Act to provide for the voluntary registration of Muhammadan Marriages and Divorces.

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

It is enacted as follows:—

1. This Act shall commence and take effect in those districts in ²[West Bengal, Bihar or Orissa to which the State³ Government concerned] shall extend it by an order published in the ⁴[*Official 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.

Local extent.

2. In this Act, unless there be something repugnant in the subject or context,—

Interpretation.

"Muhammadan Registrar" means any person who is duly authorized under this Act to register marriages and divorces;

"Muhammadan Registrar".

¹SHORT TITLE.—This short title was given by the Amending Act, 1903 (I of 1903).

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see the *Calcutta Gazette* of 1873, Pt. IV, page 1526; and for Proceedings in Council, see *ibid.* 1873, Supplement, page 1586; *ibid.* 1875, Supplement, pages 1, 55, 119, 175, 407, 437 and 1358.

LOCAL EXTENT.—This Act extends only to districts notified under section 1.

²Substituted for the words "the provinces subject to the Provincial Government of Bengal to which the said Provincial Government" by paragraph 3(1) of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

³The word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

⁴These words were substituted for the words "*Calcutta Gazette*", by para. 4(1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

(Sections 3-6.)

"Inspector-General of Registration" and "Registrar."

"Inspector-General of Registration" and "Registrar" respectively mean the officers so designated and appointed under the Indian Registration Act, ¹[1908] or other law for the time being in force for the registration of documents;

XVI of
1908.

"District."

"district" means a district formed under the provisions of the Indian Registration Act, ¹[1908];

"*Parda-nashin*."

"*parda-nashin*" means a woman who, according to the custom of the country, might reasonably object to appear in a public office.

State Government may grant licenses to register.

3. It shall be lawful for the ²[State] Government to grant a license to any person, being a Muhammadan, authorizing 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 said ²[State] Government to revoke or suspend such license:

Provided that no more than two persons shall be licensed to exercise the said function 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.

Muhammadan Registrars to use seals.

4. Every Muhammadan Registrar shall use a seal bearing the following inscription in the Persian character and language: "The seal of the Muhammadan Registrar of. . ."

Government to provide seal and books.

5. The ²[State] Government shall supply for the office of every Muhammadan Registrar the seal and the books necessary for the purposes 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.

Muhammadan Registrar to keep registers.

6. Every Muhammadan Registrar shall keep up the following register-books:—

BOOK I.—Register of marriages ³[including marriages of women who have effected divorces of the kind known as *Talaq-i-tafveez*], in the Form A contained in the schedule to this Act.

¹This figure was substituted for the figure "1871" by s. 2 of the Bengal Muhammadan Marriages and Divorces Registration (Amendment) Act, 1934 (Ben. Act I of 1935).

²See foot-note 3 on page 225, *ante*.

³These words were inserted by s. 3(a) of the Bengal Muhammadan Marriages and Divorces Registration (Amendment) Act, 1934 (Ben. Act I of 1935).

of 1876.]

(Sections 7, 8.)

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 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.

²Book IV.—Register of divorces of the kind known as *Talaq-i-tafweez* in the Form D contained in the schedule to this Act.

7. All entries in each register prescribed by the last preceding section 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.

Entries
to be
numbered.

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

Applications,
by whom
to be made.

if the application be for the registration of a marriage ³[including the registration of a marriage of a woman who has effected a divorce of the 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, application shall be made on their behalf by their respective lawful guardians: and provided further that, if the woman be a *parda-nashin*, such application may be made on her behalf by her duly authorized *vakil*;

if the application be for registration of a divorce other than of the kind known as Khula ⁴[or *Talaq-i-tafweez*]:—

by the man who has effected the divorce;

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 *parda-mashin*, such application may be made on her behalf by her duly authorized *vakil*;

¹These words were inserted by s. 3(b) of the Bengal Muhammadan Marriages and Divorces Registration (Amendment) Act, 1934 (Ben. Act 1 of 1935).

²This paragraph was added by s. 3(c), *ibid.*

³These words were inserted by s. 4(a), *ibid.*

⁴These words were inserted by s. 4(b), *ibid.*

*The Bengal Muhammadan Marriages and Divorces
Registration Act, 1876.*

[Ben. Act I

(Sections 9, 9A.)

¹[if the application be for the registration of a divorce of the kind known as Talak-i-tafweez—

by the woman who has effected the divorce:

provided that, if the woman be a *parda-nashin*, such application may be made on her behalf by her duly authorized *vakil*.]

Duties of
Muham-
madan
Registrar on
application.

9. On application being made to a Muhammadan 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 ²[on payment of the fee specified in this behalf by rules made under section 24,] 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 marriage or divorce has been effected;
- (c) in the case of any person appearing as representative of the man or woman (whether he ³[appears] as guardian or *vakil*) satisfy himself of the right of such person to appear.

If the Muhammadan 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 every person who, by section 11 of this Act, is required to sign such entry.

Duties of
Muham-
madan
Registrar in
certain cases.

⁴9A. The Muhammadan Registrar shall not register—

- (a) a marriage of a woman who has effected a divorce of the kind known as *Talaqi-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

XVI of
1908.

¹These words were inserted by s. 4(c) of the Bengal Muhammadan Marriages and Divorces Registration (Amendment) Act, 1934 (Ben. Act I of 1935).

²These words were substituted for the words "on payment to him of a fee of one rupee" by s. 2 of the Bengal Muhammadan Marriages and Divorces Registration (Amendment) Act, 1932 (Ben. Act VI of 1932).

³Substituted by s. 2 and the First Schedule of the Bengal Repealing and Amending Act, 1946 (Ben. Act XVI of 1946), for the word "appear".

⁴Section 9A was inserted by s. 5 of the Bengal Muhammadan Marriages and Divorces Registration (Amendment) Act, 1934 (Ben. Act I of 1935).

of 1876.]

(Sections 10, 11.)

- 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 power 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.

XVI of
1908.

10. [Muhammadan Registrar may receive gratuity.]—Rep. by the Bengal Muhammadan Marriages and Divorces Registration (Amendment) Act, 1932 (Ben. Act VI of 1932).

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

Entries by
whom to
be signed.

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 *parda-nashin*, the entry may be signed on her behalf by her duly authorised *vakil*;
- (2) by two witnesses who were present at the marriage-ceremony;
- (3) in cases in which the woman is represented by a *vakil*—by two witnesses of the fact of the *vakil* having been duly authorized to represent her;
- (4) by the Muhammadan Registrar;

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 to this Act,—

- (1) by the man who has effected the divorce;

¹These words were inserted by s. 6(a) of the Bengal Muhammadan Marriages and Divorces Registration (Amendment) Act, 1934 (Ben. Act I of 1935).

*The Bengal Muhammadan Marriages and Divorces
Registration Act, 1876.*

[Ben. Act I

(Sections 12, 13.)

- (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 Muhammadan 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 *parda-nashin*, the entry may be signed on her behalf by her duly authorized *vakil*;
- (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 *vakil* on behalf of the woman—by two witnesses to the fact of the *vakil* having been duly authorized to represent her;
- (5) if the man be of the *Shia* sect —by two witnesses to the divorce being effected;
- (6) by the Muhammadan Registrar;

¹*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 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; and for such copy 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.

¹These words and figures within square brackets were inserted by s. 6(b) of the Bengal Muhammadan Marriages and Divorces Registration (Amendment) Act, 1934 (Ben. Act I of 1935).

(Sections 14-18.)

14. 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.

Particulars to be shown in index.

It shall also contain such other particulars, and shall be prepared in such form, as the ¹[State] Government may direct.

15. Subject to the previous payment of the fees prescribed, 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 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.

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

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

16. Every Registrar of a district and every Muhammadan 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*:

Fees for searches and copies.

for every certified copy of any entry in a register other than the first copy referred to in section 12 of this Act—one rupee.

17. Every Muhammadan Registrar shall perform the duties of his office under the superintendence and control of the Registrar in whose district the office of such Muhammadan Registrar is situate.

Muhammadan Registrar to be subject to control of District Registrar.

In the town of Calcutta every Muhammadan 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 Muhammadan Registrar subordinate to him.

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

Inspector-General of Registration to exercise general superintendence.

¹See foot-note 3 on page 225, ante.

*The Bengal Muhammadan Marriages and Divorces
Registration Act, 1876.*

[Ben. Act I

(Sections 19-24.)

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

19. All rules framed in accordance with the last preceding section shall be submitted to the ¹[State] 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.

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 20 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 of this Act, and also of the entries which have been made in the index referred to in sections 13 and 14 of this Act, to the Registrar of the district within which such Muhammadan Registrar has been authorized to act, and the Registrar, on receiving such copies, shall file them in his office.

Registers to be given up.

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

State Government may prescribe rules.

24. The ¹[State] Government may from time to time prescribe such rules as ²[it] thinks fit, provided that such rules be not inconsistent with any provision of this Act,—

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

³(aa) for regulating the fee payable to a Muhammadan Registrar under section 9;

¹See foot-note 3 on page 225, *ante*.

²This word was substituted for the word "he" by paragraph 5(2) of the Government of India (Adaptation of Indian Laws) Order, 1937.

³Clause (aa) was inserted by s. 4 of the Bengal Muhammadan Marriages and Divorces Registration (Amendment) Act, 1932 (Ben. Act VI of 1932).

of 1876.]

(Sections 25, 26.)

- 1(aaa) for regulating the forms, contents and other particulars of notices under section 9A;
- (b) for regulating the attendance of Muhammadan Registrars at the celebration of marriages, and their remuneration for such attendance;
- (c) for regulating the grant of copies by Registrars and Muhammadan Registrars;
- (d) for 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) for regulating the application of the fees levied by Registrars of districts and Muhammadan Registrars under this Act; and
- (f) for regulating such other matters as appear to the ²[State] Government necessary to effect the purposes of this Act.

The ²[State] Government may from time to time cancel or alter any such rules.

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

Muham-
madan
Registrar
a public
officer.

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

- (a) render invalid, merely by reason of its not having been registered, any Muhammadan marriage or divorce which would otherwise be valid;
- (b) render valid, by reason of its having been registered any Muhammadan marriage or divorce which would otherwise be invalid;
- (c) authorise 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 ³[Citizens of India];
- (e) prevent any person, who is unable to write, from putting his mark instead of the signature required by this Act.

Saving
clause.

¹Clause (aaa) was inserted by s. 7 of the Bengal Muhammadan Marriages and Divorces Registration (Amendment) Act, 1934 (Ben. Act I of 1935).

²See foot-note 3 on page 225, *ante*.

³Substituted for the words "His Majesty's subjects in India" by para. 3 and the Eleventh Schedule of the Adaptation of Laws Order, 1950.

*The Bengal Muhammadan Marriages and Divorces
Registration Act, 1876.*

[Ben. Act I

(Schedule.)

SCHEDULE.

(See sections 6 and 11.)

FORM A. BOOK I.

*Register of Marriages*¹ [including marriages of women who have effected divorces of the kind known as *Talaq-i-tafweez*] (as prescribed by 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 husband² [or has effected a divorce of the kind known as *talaq-i-tafveez*], and whether she is adult or otherwise.
- ‡³5. If the bride has effected a divorce of the kind known as *Talaq-i-tafveez*, particulars of the document produced to prove the same.
- ‡³6. If the bride has effected a divorce of the kind known as *Talaq-i-tafveez*, the date on which and place where the same was registered, with name and residence of the previous husband.
- ‡⁴7. †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.
- ‡⁴8. †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.
- ‡⁴9. *Name of the bride's *vakil* and of his father, and their residences, with specification of the relationship in which the *vakil* stands to the bride.
- ‡⁴10. *Names of the witnesses to the due authorization of the bride's *vakil*, with names of their fathers and residences, and specification of the relationship in which they stand to the bride.

¹These words were inserted by s. 8(a)(i) of the Bengal Muhammadan Marriages and Divorces Registration (Amendment) Act, 1934 (Ben. Act I of 1935).

²These words were inserted by s. 8(a)(ii), *ibid.*

³Entries 5 and 6 were inserted by s. 8(a)(iii), *ibid.*

‡Entries 5 to 20 were renumbered consecutively by s. 8(a)(v), *ibid.*

†These columns will be blank if the bride and bridegroom, respectively, are not represented by guardians.

*These columns will be blank when the bride is not represented by a *vakil*.

of 1876.]

(Schedule.)

- ‡11. Date on which the marriage was contracted,—to be given according to the English style and according to the era current in the district.
- ‡12. Amount of dower.
- ‡13. How much of the dower is *mu'ajjal* (prompt) and how much *mu'wajjal* (deferred).
- ‡14. Whether any portion of the dower was paid at the moment. If so, how much.
- ‡15. Whether any property was given in lieu of the whole or any portion of the dower, with specification of the same.
- ‡16. Special conditions, if any.
- ‡17. Names of village or town, police jurisdiction and district in which the marriage took place.
- ‡18. Name of the person in whose house the marriage ceremony took place, and that of his father.
- ‡¹19. Whether the husband has delegated the power of divorce to the wife.
- ‡20. Date of registration,—to be given according to the English style.

FORM B. BOOK II.

Register of Divorces, other than those of the kind known as Khula² {or Talaq-i-tafweez} (prescribed by 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 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.

¹This entry was inserted by s. 8(a)(iv) of the Bengal Muhammadan Marriages and Divorces Registration (Amendment) Act, 1934 (Ben. Act I of 1935).

²These words were inserted by s. 8(h) of the Bengal Muhammadan Marriages and Divorces Registration (Amendment) Act, 1934 (Ben. Act I of 1935).

‡Entries 5 to 20 were re-numbered consecutively by s. 8(a)(v) of the Bengal Muhammadan Marriages and Divorces Registration (Amendment) Act, 1934 (Ben. Act I of 1935).

*The Bengal Muhammadan Marriages and Divorces
Registration Act, 1876.*

[Ben. Act I

(Schedule.)

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 English style.

FORM C. BOOK III.

Register of Divorces of the kind known as Khula (prescribed by 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 English style 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 the Muhammadan Registrar by the wife's *vakil*, his name and that of his father and their residences, with specification of the relationship which the *vakil* bears to the wife, if any.
9. Names of the two witnesses to the due authorization of the wife's *vakil*, 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.

*This column will be blank if the woman is not represented by a *vakil*.

of 1876.]

(Schedule.)

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.

FORM D. BOOK IV.

Register of Divorces of the kind known as Talaq-i-tafveez (as prescribed by 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. Name of the party indentifying the wife before the Muhammadan 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-tafveez*—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-tafveez* took place.
9. Name of the person in whose house the *Talaq-i-tafveez* took place, and that of his father.
10. Names of the witnesses, if any, to the divorce being effected, the names of their fathers and their residences.
11. Date of registration—to be given in the English style.

¹Form D., Book IV, was added by s. 8(c) of the Bengal Muhammadan Marriages and Divorces Registration (Amendment) Act, 1934 (Ben. Act I of 1935).

