

CHAPTER 134

MARRIAGE AND DIVORCE (MUSLIM)

Acts
Nos. 13 of 1951,
31 of 1954,
22 of 1955,
1 of 1965,
5 of 1965,
32 of 1969,
Law
No. 41 of 1975.

AN ACT TO MAKE PROVISION WITH RESPECT TO THE MARRIAGES AND DIVORCES OF MUSLIMS IN SRI LANKA AND, IN PARTICULAR, WITH RESPECT TO THE REGISTRATION OF SUCH MARRIAGES AND DIVORCES.

[1st August. 1954.]

Short title. **1.** This Act may be cited as the Muslim Marriage and Divorce Act.

Application of Act. **2.** This Act shall apply only to the marriages and divorces, and other matters connected therewith, of those inhabitants of Sri Lanka who are Muslims.

office by the Minister, hold office for such period not exceeding three years as may be specified by the Minister at the time of the nomination of that member.

(2) A nominated member who vacates his office by effluxion of time shall be eligible for renomination to the board.

PART I

PRELIMINARY

Supervisory powers of Registrar-General and District Registrars. **3.** The Registrar-General shall, subject to the directions of the Minister, have the general control and superintendence of the registration of marriages and divorces under this Act, and every District Registrar shall, subject to the directions of the Registrar-General, have the control and supervision of the registration of such marriages and divorces within his district.

(3) The Minister may remove any nominated member from office if he is satisfied that such member, without leave of the board first obtained, has failed to attend three consecutive meetings of the board :

Provided that the preceding provisions of this subsection shall not be deemed in any way to limit the power of the Minister to remove a nominated member from office for any other cause.

The Muslim Marriage and Advisory Board. **4.** (1) For the purposes of this Act, there shall be established a board, to be called " The Muslim Marriage and Divorce Advisory Board ".

6. It shall be the function of the Muslim Marriage and Divorce Advisory Board to advise the Registrar-General on all such matters relating to or connected with the administration of this Act as may be referred by the Registrar-General to the board for such advice or in respect of which the board may think fit to tender advice. Function of the board.

(2) The board shall consist of the person for the time being holding the office of Registrar-General, who shall be the Chairman of the board, and of not less than four nor more than nine Muslims (hereinafter referred to as "nominated members ") nominated by the Minister.

Nominated members of the Board. **5.** (1) Every nominated member of the Muslim Marriage and Divorce Advisory Board shall, unless he earlier resigns his office as a member or is removed from

7. (1) The Chairman of the Muslim Marriage and Divorce Advisory Board shall preside at all meetings of the board at which he is present. In the absence of the Chairman from any meeting of the board the members present shall elect one of themselves to preside at that meeting. Meetings of the board.

(2) Four members of the board shall form the quorum for any meeting of the board.

(3) The Registrar-General may appoint an officer of his department to be or to act as the secretary of the board and it shall be the duty of the secretary to keep minutes of each meeting of the board.

(4) Subject to the provisions of this Act and any regulations made thereunder, the board may regulate its own procedure.

8. (1) The Registrar-General may, on application made in that behalf, appoint as a Registrar of Muslim Marriages any male Muslim who, in the opinion of the Registrar-General, is a fit and proper person to register marriages under this Act, and may, on payment of the prescribed fee, issue to him a certificate of appointment.

(2) The number of registrars that may be appointed under this section for any district shall be in the discretion of the Registrar-General.

(3) Every certificate of appointment under this section shall be made out in foil and counterfoil, substantially in form I set out in the First Schedule, and shall specify the particular area in which the person named in the certificate is authorized to register marriages under this Act.

(4) The prescribed fee for a certificate of appointment under this section shall be paid in stamps, which shall be supplied by the applicant and shall be affixed to the counterfoil and duly cancelled by the Registrar-General.

(5) A list of the registrars appointed under this section shall be made and preserved in the office of , the Registrar-General,

(6) Every registrar appointed under this section shall reside within the area specified in his certificate of appointment as the area in which he is authorized to register marriages.

(7) The Registrar-General may, in his discretion, by order cancel any appointment

made under this section and recall the certificate relating to such appointment,

9. (1) Where a registrar appointed under section 8 is temporarily absent from the area in which he is authorized to register marriages or is temporarily incapacitated for the performance of his duties under this Act by reason of illness or by any other sufficient cause, or is dead or has resigned or retired from office, the District Registrar may issue a certificate of appointment to any other fit and proper male Muslim to act as a temporary registrar in place of the aforesaid registrar for such period as may be specified in the certificate.

(2) Every certificate of appointment issued under this section shall be free of stamp duty and shall be valid only for the period specified therein.

10. (1) Whenever there is a special necessity for the appointment of a registrar otherwise than under section 8 or section 9, the Registrar-General may, on application made in that behalf, appoint as a special registrar any male Muslim who, in the opinion of the Registrar-General, is a fit and proper person to register marriages under this Act, and may, on payment of the prescribed fee, issue to him a certificate of appointment in the prescribed form.

(2) A special registrar may be appointed under this section either for the whole of Sri Lanka or for a special area thereof; but the exercise of the authority conferred by each appointment shall be limited to such cases or circumstances or be subject to such restrictions and conditions as may be specified by the Registrar-General in respect of that appointment.

(3) Every certificate of appointment issued under this section shall be made out in foil and counterfoil and shall specify the area for which the appointment is made and the cases or the circumstances in which or the conditions and restrictions subject to which the authority conferred by the appointment is to be exercised.

(4) The prescribed fee for a certificate of appointment under this section shall be paid in stamps, which shall be supplied by the

Registrars of Muslim Marriages.

Temporary Registrars.

[§2,32 of 1969.]

Special registrars.

applicant and shall be affixed to the counterfoil and duly cancelled by the Registrar-General.

(5) A list of the special registrars appointed under this section shall be made and preserved in the office of the Registrar-General,

(6) A special registrar appointed under this section shall not register any marriage in any case or in any circumstance other than the cases or circumstances, or otherwise in accordance with the conditions and restrictions, specified in his certificate of appointment.

(7) Any appointment made under this section may be cancelled, and the certificate relating thereto may be recalled, by the Registrar-General in his discretion.

Registration of marriages outside area of appointment.

11. Subject as hereinafter provided, no registrar appointed under section 8 or section 9 shall register any marriage contracted outside the limits of the area specified in the certificate of appointment issued to him:

Provided that the Registrar-General may in his discretion, on application made for that purpose in respect of any particular marriage in any area by the bridegroom and, where a *wali* is necessary according to the Muslim law governing the sect to which the bride belongs, by the *wali* of the bride, and on payment of the prescribed fee, authorize by letter a registrar appointed for any other area to register that marriage.

Quazis. [§2, 1 of 1965.]

12. (1) The Judicial Service Commission may appoint any male Muslim of good character and position and of suitable attainments to be a Quazi.

(2) Save as otherwise provided in section 13 or section 14, more than one person shall not be appointed to be a Quazi for the same area; and the area for which each Quazi is appointed shall be so fixed or delimited as to avoid any intersection with or overlapping of any other such area.

(3) Every appointment of a Quazi shall be notified in the Gazette.

(4) In the notification relating to the appointment of each Quazi the area for which he is appointed shall be specified.

(5) Every Quazi shall reside within the area for which he is appointed.

(6) The Judicial Service Commission [§2,1 of 1965.] may, in its discretion, cancel the appointment of any Quazi by notification in the Gazette.

(7) Every Quazi shall, unless he earlier resigns his office or his appointment is cancelled by the Judicial Service Commission, hold office for such period as may be specified in the notification relating to his appointment. [§2,1 of 1965.]

13. (1) Where a Quazi appointed for any area temporarily leaves the area or is temporarily incapacitated for the performance of his duties under this Act by reason of illness or by any other sufficient cause, the Judicial Service Commission may appoint a suitable person to act as a temporary Quazi for that area. Temporary Quazis. [§3, 1 of 1965.]

(2) The Judicial Service Commission may by Order published in the Gazette delegate to the Secretary to the Commission the power to make appointments under subsection (1), subject to such limitations as may be specified in the Order. [§3,1 of 1965.]

14. (1) Whenever there is a special necessity for the appointment of a Quazi otherwise than under section 12 or section 13, it shall be lawful for the Judicial Service Commission to appoint any male Muslim of good character and position and of suitable attainments to be a special Quazi. Special Quazis. [§4,1 of 1965.]

(2) A special Quazi may be appointed under this section either for the whole of Sri Lanka or for any area thereof.

(3) In appointing a special Quazi, the Judicial Service Commission may specify the conditions or restrictions subject to which such Quazi shall perform his duties and functions under this Act; and such Quazi shall not act otherwise than in accordance with such conditions or restrictions. [§4,1 of 1965.]

(4) Every appointment of a special Quazi shall be notified in the Gazette.

[§4,1 of 1965.]

(5) The Judicial Service Commission may in its discretion cancel the appointment of a special Quazi by notification in the Gazette.

Board or Quazis.
[§5. 1 of 1965.]

15. (1) The Judicial Service Commission may appoint a Board of Quazis, consisting of five male Muslims resident in Sri Lanka, who are of good character and position and of suitable attainments, to hear appeals from the decisions of the Quazis under this Act.

(2) The appointment of the members of the Board of Quazis shall be notified in the Gazette.

(3) (a) Three members of the Board of Quazis shall form a quorum of that board.

(b) No appeal shall be heard by the Board of Quazis unless a quorum is present,

(c) The decision of a majority of the members of the Board of Quazis who are present at the hearing of an appeal shall for all purposes be deemed to be the decision of the board.

[§5,1 of 1965.]

(4) The Judicial Service Commission may, in any special circumstances, terminate the appointment of any member of the Board of Quazis by notification in the Gazette.

[§5,1 of 1965.]

(5) Where the appointment of a member of the Board of Quazis is terminated by the Judicial Service Commission or any such member dies or resigns his office or, without the consent of the Judicial Service Commission leaves Sri Lanka for a period exceeding three months, the Judicial Service Commission may appoint a suitable person to fill the vacancy.

[§3,32 of 1969.]

(6) The Registrar-General may appoint a person to be or to act as the secretary to the Board of Quazis, and the person so appointed shall perform all such duties and functions as may be assigned to the secretary by the provisions of this Act or the

regulations thereunder or by a decision of the Board of Quazis not inconsistent with any such provision.

PART II

REGISTRATION OF MARRIAGES

16. Nothing contained in this Act shall be construed to render valid or invalid, by reason only of registration or non-registration, any Muslim marriage or divorce which is otherwise invalid or valid, as the case may be, according to the Muslim law governing the sect to which the parties to such marriage or divorce belong.

Validity or invalidity of Muslim marriages.

17. (1) Save as otherwise hereinafter expressly provided, every marriage contracted between Muslims after the commencement of this Act shall be registered, as hereinafter provided, immediately upon the conclusion of the *Nikah* ceremony connected therewith.

Duty of causing marriage to be registered.

(2) In the case of each such marriage, the duty of causing it to be registered is hereby imposed upon the following persons concerned in the marriage :—

(a) the bridegroom; and

(b) in every case where the consent of the *wali* has not been dispensed with under section 47 and is required by the Muslim law governing the sect to which the bride belongs, the *wali* of the bride ; and

(c) the person who conducted the *Nikah* ceremony connected with the marriage.

(3) For the purpose of causing the marriage to be registered, it shall be the duty of the person specified in subsection (2)—

(a) to give to the registrar information of the date on which and the time and place at which the *Nikah* ceremony is to take place, and to request him to attend the ceremony for the purpose of registering the marriage ; and

(b) immediately upon the conclusion of the *Nikah* ceremony, to call upon the registrar to register the marriage, and for that purpose to render him all such assistance and take all such other measures as may be necessary.

(4) Where the registrar, notwithstanding that the acts or measures required by subsection (3) have been done or taken, neglects or refuses to register the marriage, it shall be the duty of the persons specified in subsection (2) to send to the District Registrar, within the seven days next succeeding the date of the *Nikah* ceremony, a written report setting out the following particulars relating to the marriage :—

- (a) the names of the parties to the marriage,
- (b) the date on which and the time and place at which the *Nikah* ceremony was conducted,
- (c) the name of the *wali*, if any,
- (d) the name of the person who conducted the *Nikah* ceremony.

(5) Where any marriage which is required by this Act to be registered is not registered owing to default in doing or taking any act or measure required by any of the preceding provisions of this section, every person on whom the duty of doing or taking that act or measure is imposed by that provision shall be deemed to have failed to cause the marriage to be registered.

(6) The court convicting any person of the offence of failing to cause a marriage to be registered or of failing to send the District Registrar a report as to any marriage which the registrar has neglected or refused to register, shall send to the District Registrar, as early as may be after the close of the proceedings in respect of the offence, a report setting out such particulars relating to the marriage as are required by subsection (4).

(7) It shall be the duty of the District Registrar, on receipt of any report under subsection (4) or subsection (6), to satisfy

himself by such inquiry or investigation as may appear to him to be adequate, that the marriage has taken place and that it has not been registered, to verify the particulars furnished in the report and amend them if they are not correct, and to make order directing that the marriage be registered with the particulars verified or amended; and it shall be the duty of the registrar specified in the order to register the marriage accordingly.

18. (1) Before the registration of a marriage, there shall be made and signed in the presence of the registrar—

Declaration and form of registration.

- (a) a declaration by the bridegroom substantially in form II set out in the First Schedule ; and
- (b) a declaration by the *wali* of the bride substantially in form III set out in that Schedule:

Provided that the declaration by a *wali* shall not be required in any case where the consent of a *wali* has been dispensed with under section 47 or where no *wali* is necessary according to the Muslim law governing the sect to which the bride belongs;

Provided further that where the *wali* making a declaration is a person other than her father or paternal grandfather, the bride shall also sign the declaration made by such *wali*.

It shall be the duty of the registrar to require the bridegroom, and, where necessary under the preceding provisions, the *wali* and the bride, to sign such declarations-

(2) After the signing of the declarations referred to in subsection (1), the registrar shall enter, in Sinhala or in Tamil, a statement of the particulars of the marriage, in triplicate, that is to say, the original, the second copy (hereinafter referred to as the "duplicate"), and a third copy, in a marriage register, which he is hereby required to keep for that purpose substantially in form IV set out in the First Schedule. The third copy shall bear an

[§7, Law 41 of 1975.]

endorsement under the hand of the registrar to the effect that it is issued under section 19A.

commencing with the first page for the first marriage to be registered; and

[§7, Law 41 of 1975.]

(3) The prescribed fee shall be paid in stamps which shall be supplied by the bridegroom. Such stamps shall be affixed to the duplicate of the entry relating to the marriage and shall be duly cancelled by the registrar.

(b) be numbered consecutively in that register, in the order of time in which the registrar is called upon to register those marriages.

Entries of marriage to be signed and attested. [§7, Law 41 of 1975.]

19. (1) The statement of particulars entered in the register in respect of each marriage shall be signed in the original, the duplicate and the third copy, by—

21. It shall be the duty of a registrar appointed for any area under section 8 or section 9 to attend the solemnization of a marriage between Muslims within that area for the purpose of registering the marriage, on being required so to do by the bridegroom or the *wali* of the bride or the person by whom the *Nikah* ceremony is to be conducted: Attendance of registrar at marriage.

- (a) the bridegroom; and
- (b) in every case where the consent of the *wall* has not been dispensed with under section 47 and is required by the Muslim law governing the sect to which the bride belongs, the *wall* of the bride; and
- (c) the person who conducted the *Nikah* ceremony connected with the marriage; and
- (d) two witnesses, being persons present at the *Nikah* ceremony; and
- (e) the registrar.

Provided that nothing in the preceding provisions of this section shall affect or be construed to affect the right of a registrar to refuse to register any marriage sought to be registered in contravention of the provisions of this Act or of any regulation made thereunder;

Provided further that where a registrar is required to attend as aforesaid at two or more places at the same time or on the same date, he shall be entitled to stipulate for a readjustment of the time or the date of any of the marriages concerned, or, if such readjustment is not possible, to decline to be present at any one or more of such marriages.

(2) Where the registrar has himself conducted the *Nikah* ceremony at any marriage, it shall be sufficient if he inserts in the register the words "Registrar of Muslim Marriages" in the space intended for the signature of the person conducting the *Nikah* ceremony and signs the register in his capacity as registrar.

22. Notwithstanding anything in section 17, a marriage contracted by a Muslim woman during her period of *iddat* shall not be registered under this Act. Marriage during *iddat* not to be registered.

Issue of copy of registration entry free. [§7, Law 41 of 1975.]

19A, The third copy referred to in the preceding section shall forthwith, free of charge, be delivered or transmitted by post to the female party to the marriage by the registrar.

23. Notwithstanding anything in section 17, a marriage contracted by a Muslim girl who has not attained the age of twelve years shall not be registered under this Act unless the Quazi for the area in which the girl resides has, after such inquiry as he may deem necessary, authorized the registration of the marriage. Marriage of girl who has not attained the age of twelve not to be registered without Quazi's permission.

Marriages to be registered and numbered consecutively.

20. The marriages to be registered under this Act in the marriage register kept by each registrar shall—

24. (1) Where a married male Muslim living with or maintaining one or more wives intends to contract another marriage, he shall, at least thirty days before contracting such other marriage, give notice Second or subsequent marriages.

- (a) be entered, each on a page, on consecutive pages of that register,

of his intention to the Quazi for the area in which he resides, and to the Quazi or Quazis for the area in which his wife or each of his wives resides, and to the Quazi for the area in which the person whom he intends to marry resides.

(2) Every notice required by subsection (1) shall be in the prescribed form and shall contain the full names and addresses of the person giving the notice and of his wife or each of his wives and of the person with whom he intends to contract a marriage.

(3) It shall be the duty of every Quazi to whom notice is given under subsection (1) to cause a copy of such notice to be exhibited at each of the Jumma mosques within his area, and in some conspicuous place at each address (being an address within his area) which is specified in such notice.

(4) Notwithstanding anything in section 17, no marriage contracted by any male Muslim of the description set out in subsection (1) without giving the notices required by that subsection shall be registered under this Act.

25. (1) For the avoidance of doubt it is hereby declared that no contract of marriage of a woman belonging to the Shaffie sect is valid under the law applicable to that sect, unless—

- (a) a person entitled to act as her *wall*—
 - (i) is present at the time and place at which the contract is entered into; and
 - (ii) communicates her consent to the contract and his own approval thereof; or
- (b) the Quazi has under section 47, authorized the marriage and dispensed with the necessity for the presence and the approval of a *wall*.

(2) A marriage which is invalid under the law referred to in subsection (1) shall not be registered under this Act.

26. (1) No person shall knowingly act as *Wali* of bride. *wali* at the marriage of a Muslim woman, unless he is entitled according to the Muslim law governing the sect to which the bride belongs, to act as *wali* to that bride.

(2) No marriage at which any person has acted as *wali* in contravention of the provisions of subsection (1) shall be registered under this Act.

PART III

REGISTRATION OF DIVORCES

27. Where a husband desires to divorce his wife the procedure laid down in the Second Schedule shall be followed. Divorce by husband.

28. (1) Where a wife desires to effect a divorce from her husband, without his consent, on the ground of ill-treatment or on account of any act or omission on his part which amounts to a " fault " under the Muslim law governing the sect to which the parties belong, the procedure laid down in the Third Schedule shall be followed, Divorce by wife.

(2) Where a wife desires to effect a divorce from her husband on any ground not referred to in subsection (1), being a divorce of any description permitted to a wife by the Muslim law governing the sect to which the parties belong, the procedure laid down in the Third Schedule shall be followed so far as the nature of the divorce claimed in each case renders it possible or necessary to follow that procedure.

29. (1) The Quazi who is required in accordance with the Second Schedule or Third Schedule to register a divorce shall enter, in Sinhala or in Tamil, a statement of the particulars of the divorce in triplicate, that is to say, the original, the second copy (hereinafter referred to as the " duplicate ") and a third copy, in a divorce register, which he is hereby required to keep for that purpose substantially in form V set out in the First Schedule. The third copy shall bear an endorsement under the hand of the Quazi to the effect that it is issued under section 29 (5). Registration of divorce. [§7, Law 41 of 1975.]

(2) The entries relating to any divorce in the divorce register shall be signed in the

Declaration of Shaffle law as to marriage of women of that sect.

original, and in the duplicate and in the third copy by the Quazi and by the husband and wife if present at the time the entries are made.

(3) The divorces to be registered under subsection (1) in the divorce register shall—

(a) be entered, each on a page, on consecutive pages of that register, commencing with the first page for the first divorce to be registered, and

(b) be numbered consecutively in that register, in the order of time in which the Quazi registers those divorces.

(4) The party applying for a divorce shall pay the prescribed fee to the Quazi as soon as the proceedings for the divorce are commenced. The prescribed fee shall be paid in stamps and such stamps shall be affixed to the duplicate of the entries relating to the divorce and shall be duly cancelled by the Quazi.

(5) Upon the registration of a divorce the third copy referred to in this section shall forthwith, free of charge, be delivered or transmitted by post to the party applying for the divorce by the Quazi.

PART IV

SPECIAL PROVISION FOR EARLIER DIVORCES AND REMARRIAGES

30. Where, in any proceedings before a Quazi under this Act, a Muslim husband states that he has at any time earlier (whether before or after the commencement of this Act) divorced his wife, but is unable to prove that a divorce was in fact effected, the statement of the husband at such proceedings shall be deemed to be the pronouncement of a talak under the Muslim law and shall be recorded accordingly under the rules in the Second Schedule, and the provisions of those rules relating to the procedure to be followed after the pronouncement of a talak is recorded shall mutatis mutandis apply in that case:

Provided that the divorce shall not be registered in any such case until the expiry

of a period of three months from the date on which the pronouncement of the talak is recorded as aforesaid, or, if the wife is pregnant at the expiry of that period, until she is delivered of the child.

31. Every divorce or remarriage duly registered in the manner required by section 23 of the Muslim Marriage and Divorce Registration Ordinance, 1929,* shall be deemed to be valid and to have been duly effected or contracted, as the case may be, on the original date of such divorce or remarriage, and all children born of such remarriage shall be deemed to be legitimate children of such remarriage.

32. (1) Where a marriage or divorce contracted or effected on or after the 1st day of January, 1937, has not been registered or has been registered with erroneous particulars, it shall be lawful for either of the parties to the marriage or the divorce, or, where either of them is dead, for the issue or other lawful representative of any such party, to apply to the District Registrar of the district in which such marriage or divorce was contracted or effected to have such marriage or divorce registered or the erroneous particulars rectified, as the case may be. On receipt of such application the District Registrar shall cause the officiating or other priest or registrar or Quazi before whom the marriage or divorce, as the case may be, was contracted or effected and any other persons whom he may consider it expedient to hear, to be served with a notice to show cause why such application should not be granted- If no sufficient cause is shown to the contrary and the District Registrar is satisfied, after hearing such evidence as may be adduced, that such marriage or divorce was in fact contracted or effected and that it has not been registered or has been registered with erroneous particulars, he shall by order under his hand direct the marriage or divorce to be registered or the erroneous particulars to be rectified, as the case may require.

(2) To every application made under subsection (1), stamps of the prescribed value shall be affixed by the applicant.

Effect of registration of divorce or remarriage.

Power to register marriages and divorces omitted to be registered and to rectify errors in registration.

Registration of divorces in cases where proof of divorce is inadequate,

* Repealed by Act No. 13 of 1951.

Certain powers of District Registrar under section 32 exercisable by Registrar-General. [§4, 32 of 1969.]

33. The powers conferred on a District Registrar under section 32 in relation to the rectification of erroneous particulars relating to a marriage or divorce, may be exercised by the Registrar-General.

38. (1) Where, in any proceedings under this Act for *mahr* or *kaikuli*, a woman claimant is represented by some other person under section 37, all moneys received by a Quazi to which that woman is entitled as the claimant shall, notwithstanding anything in section 53, be deposited by the Quazi in the kachcheri in the name of such claimant.

Disposal of moneys received by Quazi in claims where party is represented under section 37.

PART V

PROVISIONS RELATING To MAINTENANCE, " MAHR " AND " KAIKULI "

Claims for wife's maintenance.

34. A wife or any person on behalf of a wife shall not be entitled to claim or to receive maintenance in respect of any period during which the wife lives or has lived with her husband whether on the orders of a Quazi or otherwise.

(2) No money deposited by a Quazi in a kachcheri under subsection (1) shall be withdrawn by any person unless the Quazi has in writing authorized such withdrawal; and the Quazi shall not authorize the withdrawal of the whole or any part of any money deposited as aforesaid unless he is satisfied that such money will be used for the maintenance or benefit of the woman on whose behalf the claim was made.

Claims for child's maintenance.

35. (1) A child or any person on behalf of a child shall not be entitled to claim or to receive maintenance in respect of any period during which the child is or was living with or supported by the father.

39. The time for the prescription or limitation of a suit or action for the whole or part of a woman's *mahr* shall not begin to run until the dissolution of the marriage by death or divorce, and such suit or action shall be maintainable if commenced within three years from the date of such dissolution of marriage.

Prescription of action for *mahr*.

(2) In allowing any claim for maintenance by or on behalf of a child a deduction shall be made of the sums which may have been paid by the father for the use or support of the child between the date of the claim and the date of the order allowing the claim.

PART VI

POWERS AND DUTIES OF REGISTRAR-GENERAL, DISTRICT REGISTRARS, BOARD OF QUAZIS, QUAZIS AND REGISTRARS

Orders for payment of maintenance from date of claim.

36. Subject to the provisions of sections 34 and 35, where an order is made allowing a claim for maintenance by or on behalf of a wife or child, the authority making the order may specify therein that the order shall have effect from the date of the claim, and, in every such case, maintenance, in accordance with the order, shall be payable from the date on which such claim was made.

40. The Registrar-General or any District Registrar may inspect or cause to be inspected from time to time the books and registers required to be kept under this Act by the Quazis and registrars, and may hear any complaints respecting any such books or registers, or the conduct of any of the registrars.

Power of Registrar-General and District Registrars to inspect registers, Ac. [§5,32 of 1969.]

Representation of woman in claiming for *mahr* or *kaikuli*.

37. Where it is proved to the satisfaction of a Quazi that a woman claiming or intending to claim *mahr* or *kaikuli* is, through sickness, infirmity or other reasonable cause, unable to appear in person, the Quazi may permit any fit and proper person authorized in that behalf by the claimant and approved by the Quazi, to institute proceedings or to appear on behalf of the claimant.

41. All moneys paid to a District Registrar by a Quazi in pursuance of the provisions of the second proviso to section 52 (1) shall be disposed of by the District Registrar in such manner as may be prescribed.

Power of District Registrar to dispose of money paid under section 52.

42. Every District Registrar shall cause to be bound together in a general register all copies of entries sent to him by Quazis in pursuance of the provisions of section 54,

Duty of District Registrar to cause copies of Quazis' entries to be bound.

Power of Board of Quazis to call for records.

43. The Board of Quazis may call for and examine the record of any proceedings before a Quazi under this Act in respect of any matter (whether such matter has been tried or inquired into or is pending trial or inquiry) for the purpose of satisfying itself as to the legality or propriety of any order passed therein or as to the regularity of the proceedings.

subsection (1) and communicate its opinion thereon to the Quazi who referred the question; and such Quazi shall, in the proceedings in which the question arose, be bound by such opinion.

Revisory powers of Board of Quazis.

44. (1) The Board of Quazis may, in respect of any proceedings before a Quazi the record of which has been called for, in its discretion exercise any of the powers conferred upon it for the purposes of its appellate jurisdiction.

47. (1) The powers of the Quazi under this Act shall include the power to inquire into and adjudicate upon—

(2) No order under this section shall be made by the Board of Quazis to the prejudice of any person unless he has had an opportunity of being heard either in person or by his representative.

(a) any claim by a wife for the recovery of *mahr*;

(b) any claim for maintenance by or on behalf of a wife ;

(c) any claim for maintenance by or on behalf of a legitimate child ;

(3) Every order made by the Board of Quazis under this section shall have the same effect as an order made on appeal from an order made by a Quazi.

(cc) notwithstanding anything to the contrary in section 2, any claim for maintenance by or on behalf of an illegitimate child, where the mother of such child and the person from whom maintenance is claimed are Muslims;

Duty of Board of Quazis to furnish Registrar-General with opinions on questions of Muslim law.

45. The Board of Quazis shall, at the written request of the Registrar-General, furnish him with a written opinion on any question of Muslim law which may arise in connection with the administration of this Act or of any regulation made thereunder.

(d) any claim by a divorced wife for maintenance until the registration of the divorce or during her period of *iddat*, or, if such woman is pregnant at the time of the registration of the divorce, until she is delivered of the child ;

Duty of Board of Quazis to advise on questions of law submitted by a Quazi.

46. (1) Any Quazi may if he thinks fit reserve for the consideration of the Board of Quazis any question of Muslim law which arises in any proceedings before him, and, where any question of law is so reserved, no further steps shall be taken in such proceedings until the opinion of the board is communicated to him.

(e) any claim for the increase or reduction of the amount of any maintenance ordered under this section or under section 21 of the Muslim Marriage and Divorce Registration Ordinance, 1929 ;*

(2) Every Quazi reserving a question of Muslim law under subsection (1) shall submit the question in writing in the form of a special case, and shall state shortly the facts, if any, which are relevant to the consideration of the question.

(f) any claim for *kaikuti*;

(g) any claim by a wife or a divorced wife for her lying-in expenses;

(3) The Board of Quazis shall, as soon as may be, determine every question of law reserved for its consideration under

(h) any application for mediation by the Quazi between a husband and wife;

(i) any application for a declaration of nullity of marriage either by a husband or by a wife;

*Repealed by Act No. 13 of 1951.

(j) any application for authority to register the marriage of a girl who has not passed the age of twelve years:

Provided that no variation or alteration of any maintenance ordered under this section or under section 21 of the Muslim Marriage and Divorce Registration Ordinance, 1929,* shall be made except upon good and sufficient cause shown to the Quazi and after notice to all the parties concerned.

(2) A Quazi may inquire into and deal with any complaint by or on behalf of a woman against a *wali* who unreasonably withholds his consent to the marriage of such woman, and may if necessary make order authorizing the marriage and dispensing with the necessity for the presence or the consent of a *wali*.

(3) Where a woman has no *wali*, a Quazi may, after such inquiry as he may consider necessary, make order authorizing the marriage and dispensing with the necessity for the presence or the consent of a *wali*^

(4) Where an order is made under subsection (2) or subsection (3) authorizing any marriage, a permit authorizing the registration thereof shall be issued by the Quazi, but no such permit shall be issued until the expiry of a period of ten days from the date of the order, or, where an appeal is preferred against such order, unless such order is confirmed by the Board of Quazis, or, in the event of a further appeal, by the Court of Appeal.

(5) In this section "divorced wife" includes a wife against whom the *talak* has been pronounced, and who has not been taken back by the husband.

(6) Every inquiry under this section shall be held as nearly as possible in accordance with the rules in the Fourth Schedule, but no Muslim assessors shall be empanelled for the purpose of assisting the Quazi at such inquiry.

48. Subject to any special provision in that behalf contained in this Act, the jurisdiction exercisable by a Quazi under section 47 shall be exclusive and any matter falling within that jurisdiction shall not be tried or inquired into by any other court or tribunal whatsoever.

Quazi to have exclusive jurisdiction to inquire into matters specified in section 47.

49. Every Quazi shall take an oath of office in the prescribed form as soon as may be after his appointment and before he commences to exercise any powers or perform any duties or functions under this Act.

Quazis' oath of office.

50. Every Quazi is hereby empowered to administer oaths to witnesses or to Muslim assessors in the course of any inquiry or other proceedings held or taken by him under this Act.

Power of Quazi to administer oaths.

51. (1) Every Quazi shall, before he commences to perform any of the functions of his office, enter into a bond in the sum of one thousand rupees conditioned for the due and faithful discharge of his duties.

Quazis to enter into security bonds.

(2) In the case of a Quazi appointed under section 12 or section 13 the bond shall be executed before the District Registrar, and in the case of a Quazi appointed under section 14 the bond shall be executed before the Registrar-General or any District Registrar authorized for the purpose by the Registrar-General.

(3) The aforesaid sum shall be secured to the State, either by the hypothecation of immovable property or by deposit of movable property, or by the guarantee of two or more sufficient sureties in that behalf to the satisfaction of the District Registrar or Registrar-General, as the case may be.

(4) Each such bond shall be filed in the office of the District Registrar or of the Registrar-General as the case may be.

52. (1) A record of each sum of money received by a Quazi under any of the provisions of this Act or the regulations thereunder shall forthwith be made by him in the prescribed book and such money shall forthwith be paid by him to the person entitled thereto:

Quazis to keep record of moneys received and paid by them.

* Repealed by Act No. 13 of 1951.

Provided that where the person entitled to any money is a child under fourteen years of age such payment may be made by the Quazi in his discretion to the person who from time to time has the custody of that child;

Provided further that where the person entitled to any money cannot be found or does not claim the money within the period of one month after the date on which the Quazi received such money, the Quazi shall pay such money to the District Registrar.

(2) A record of each sum of money paid by a Quazi in pursuance of the provisions of subsection (1) shall forthwith be made by him in the prescribed book and every such payment must be supported by a receipt in the prescribed form signed by the payee.

Quazis to report to District Registrar sums deposited or withdrawn under section 38.

53. Every Quazi who deposits any money in or authorizes the withdrawal of any money from a kachcheri in pursuance of the provisions of section 38 shall forthwith report to the District Registrar the amount so deposited or to be withdrawn, the date on which the deposit was made or the withdrawal was authorized, the name of the claimant and any other particulars which may be prescribed.

Quazis to send copies of entries and indexes to District Registrar each month.

54. Unless otherwise provided by regulation, every Quazi shall, at the close of each month, send to the District Registrar copies, verified on oath in the prescribed form, of all entries made by him in his books or registers or in the indexes thereto during that month.

The preceding provisions of this section shall not apply to the records of proceedings before a Quazi or to entries in the divorce register.

Quazis and registrars to keep indexes of books and registers.

55. Every Quazi and every registrar shall keep, in the prescribed form, a current index of the contents of every book and register kept by him, except where it is otherwise provided by regulation; and every entry in such index shall be made, so far as practicable, immediately after he has made an entry in the book or register,

56. (1) Except in such cases or on such occasions as may be prescribed or except on the orders of a competent court, no Quazi or registrar shall permit any other person to take possession or to have the custody of any register, book, or other document required to be kept by such Quazi or registrar under this Act. Custody of registers, &c., by Quazis and registrars.

(2) Every Quazi and every registrar shall keep all registers, books, and indexes until they are filled up and shall then forward them for record to the District Registrar,

(3) Where a Quazi or registrar leaves the area for which he is appointed, or resigns his office, or where his appointment is cancelled, he, or in the event of his death, his legal representative, shall forthwith deliver his books, registers, and indexes to the District Registrar; and on failure of such delivery, the District Registrar shall take possession of them.

(4) No person other than a Quazi or a registrar shall keep any book or register which is or purports to be a register of Muslim marriages or divorces, or any record of proceedings relating to divorces effected or purporting to have been effected by any other person, under the provisions of this Act or the Muslim Marriage and Divorce Registration Ordinance, 1929.*

57. Every Muslim assessor who is empanelled for the purposes of this Act shall take an oath in the prescribed form before he functions as an assessor. Muslim assessor's oath.

58. (1) The registrar who registers a marriage or the Quazi who registers a divorce shall detach the duplicate from the marriage register or the divorce register, as the case may be, and send such duplicate and in the case of a marriage, the declarations under section 18 (1), on or before the fifth day of the month following that in which the marriage or divorce was registered, to the District Registrar. Duty to send to District duplicates from marriage and divorce registers.

(2) Where a marriage is registered by a registrar authorized under the proviso to section 11, he shall, in addition to complying with the requirements of subsection (1), send certified copies of the statement of particulars entered in the marriage register, of the declarations, and of

* Repealed by Act No. 13 of 1951.

the letter authorizing him to register the marriage, to the District Registrar having jurisdiction over the area in which the marriage is registered.

(3) All duplicates and declarations sent to the District Registrar in accordance with the provisions of subsection (1) shall be forwarded by him to the Registrar-General who shall cause such duplicates and declarations to be filed and preserved in his office.

59. (1) Every registrar shall be entitled to demand and to receive as his own remuneration a fee at the prescribed rate from the prescribed persons for the performance of each of his duties under this Act.

(2) Every registrar shall keep posted in a conspicuous part of his house, a table setting out, in Sinhala, Tamil and English, the fees prescribed for the performance of each of the duties of a registrar under this Act.

PART VII

APPEALS

60. (1) Any party aggrieved by any final order made by a Quazi under the rules in the Third Schedule or in any inquiry under section 47 shall have a right of appeal to the Board of Quazis:

Provided that there shall be no appeal from an order absolute made in accordance with the rules in the Fourth Schedule in any inquiry under section 47.

(2) All appeals under this section shall be heard and disposed of in accordance with the rules in the Fifth Schedule.

61. Every order made by the Registrar-General refusing or cancelling or recalling a certificate of appointment under section 8 shall be subject to appeal to the Minister, and every order made by a District Registrar under section 32 shall be subject to appeal to the Registrar-General, and every such appeal shall be preferred within fourteen days after the order appealed from is notified to the party or parties concerned.

62. (1) Any party aggrieved by any order of the Board of Quazis on any appeal under section 60 may, with the leave of the Court of Appeal first had and obtained, appeal to that court from such order.

(2) The Supreme Court may, from time to time, make such general rules as to it shall seem meet for regulating the mode of applying for leave to appeal and of prosecuting appeals from orders of the Board of Quazis and for regulating any matters relating to the costs of such applications for leave to appeal and of appeals.

63. Notwithstanding anything in any rule in the Fifth Schedule or in any regulation under this Act relating to appeals against orders made by Quazis, it shall be competent for the Board of Quazis—

(a) where any appeal is filed out of time, to entertain the appeal if the board is satisfied that the appeal could not be filed in time owing to illness, accident, misfortune or other unavoidable cause; or

(b) where a petition of appeal is not stamped or is insufficiently stamped, to entertain the appeal if the petitioner pays in stamps an amount equal to twice the value of the stamps that should have been affixed or twice the deficiency, as the case may be.

PART VIII

ENFORCEMENT OF ORDERS

64. (1) Any sum claimed in any proceedings under section 47 (other than proceedings for the recovery of *mahr* or *kaikuli*) and allowed by the Quazi, or on appeal, by the Board of Quazis, or, in the case of a further appeal, by the Court of Appeal, may in case of default of payment be recovered as though it were a fine imposed under this Act, on application made to the Magistrate having jurisdiction in the area within which the person liable to pay such sum is for the time being resident.

(2) Every application under subsection (1) shall be made by the Quazi and shall be

Appeals to court of Appeal.

Appeal notwithstanding lapse of time, &c.

Recovery of sums due on claims, &c., under section 47 other than claims for *mahr* or *kaikuli*.

Fees chargeable by registrars.

Appeals from Quazis' orders.

Appeals from the Registrar-General's or District Registrars' orders. [§6.32 of 1969.]

supported by a certificate under his hand stating the amount of the sum due, the name of the person liable to pay such sum, the name or names of the person or persons entitled thereto, and whether the proceedings in which the order requiring the payment was made were *inter panes* or *ex pane*.

(3) Every sum referred to in subsection (1) may be recovered as a fine notwithstanding that such sum exceeds the amount of the maximum fine which the Magistrate may in his ordinary jurisdiction impose, and when recovered shall be remitted to the Quazi for payment in due course to the person thereto entitled.

Recovery of sums due on claims for *mahr* or *kaikuli*.

65. (1) In allowing any claim under section 47 for the recovery of *mahr* or *kaikuli* the Quazi, or on appeal, the Board of Quazis, or in the case of a further appeal, the Court of Appeal, may make order that the sum so allowed shall be paid to the Quazi in such instalments and on such dates as may be specified in the order.

(2) Where default is made in the payment of any instalment specified in an order made under subsection (1), the Quazi may, in his discretion, by notice under his hand served on the person liable to make such payment, require such person to pay to the Quazi, within such period as may be specified in the notice, the aggregate of all such instalments then outstanding; and where such person fails to comply with such notice within the specified period, the Quazi may send to the Primary Court having jurisdiction within the area for which he is appointed, a certificate under his hand specifying the aggregate amount outstanding, the name of the person liable to pay such amount, the name of the person entitled to such amount and such other particulars as may be prescribed.

No such certificate shall be made out except upon payment to the Quazi, by the person entitled to such amount of the prescribed stamp duty,

(3) Every certificate sent under subsection (2) shall be registered by the Judge of the Primary Court and shall be deemed to be a decree to pay money entered

by such court on the date of such registration, notwithstanding that the aggregate amount specified in such certificate may exceed the maximum amount which that court may award in the exercise of its ordinary jurisdiction, and shall be binding on all parties concerned and may be enforced in the same manner as a decree of such court. All further proceedings in the Primary Court in connexion with such certificate shall be liable to stamp duty as if they were proceedings in an action for the amount specified in such certificate:

Provided that where such amount exceeds one thousand five hundred rupees, stamp duty shall be leviable as though such amount were one thousand five hundred rupees.

(4) There shall be no appeal to the Court of Appeal from any order made by the Judge of a Primary Court in any proceeding taken under the preceding provisions of this section.

66. Where any person against whom an order for maintenance is made by a Quazi under this Act fails or neglects to comply with the order, the Magistrate to whom application is made by the Quazi under section 64 may for every breach of the order issue a warrant directing the amount due to be levied in the manner provided by law for levying fines imposed by Magistrates, and may sentence such person, in respect of the whole or any part of any monthly allowance remaining unpaid by such person after the execution of the warrant, to imprisonment of either description for any term not exceeding one month:

Procedure on failure to orders for maintenance.

Provided that if the Quazi has certified that the proceedings in which the order was made were *ex pane* and the person against whom the order was made informs the Magistrate that he desires to have such proceedings reopened, the Magistrate shall release such person on his executing a bond in a reasonable sum conditioned for his appearance in the Magistrate's Court on a date to be fixed by the Magistrate, or if the application to reopen such proceedings is dismissed by the Quazi, within three days of the dismissal of such application whichever date is the earlier.

PART IX

GENERAL

Transfer of proceedings from one Quazi to another. [§7,32 of 1969.]

67. Where it appears to the Judicial Service Commission, on the application of any party to, or any person interested in, any proceedings instituted or to be instituted under this Act before a Quazi, that a fair and impartial inquiry cannot be had before such Quazi, or where a Quazi himself makes an application in that behalf to the said Commission, the Commission may order that such proceedings be instituted before and heard by a special Quazi appointed in that behalf by the Commission under section 14 and, in the event of any such order being made, any proceedings taken before the first-mentioned Quazi in respect of the matter to which such application relates shall be of no effect.

Registers and indexes to be open to inspection.

68. The records of any proceedings pending before the Board of Quazis or before any Quazi, and the general register and the books, registers and indexes of Quazis and registrars (whether kept under this Act or the Muslim Marriage and Divorce Registration Ordinance, 1929 *), shall be open to inspection at all reasonable hours upon the payment of the prescribed fee by any person applying for permission to inspect them; and the Registrar-General or a District Registrar or the secretary to the Board of Quazis or a Quazi or a registrar shall, at the request of any person and upon payment of the prescribed fee, issue to that person a copy of any entry therein, certified under his hand to be a true copy.

Records kept under earlier law to be open to inspection.

69. All documents which were required to be kept under the Mohammedan Marriage Registration Ordinance, 1886, f and which are in the custody of any District Registrar shall be open to inspection at all reasonable hours, upon the payment of the prescribed fee by any person applying for permission to inspect the same; and the District Registrar shall, at the request of any person and upon payment of the prescribed fee, issue to that person a copy of any such document or of any entry therein, certified under his hand to be a true copy.

70. Every book or register of a Quazi or of a registrar, and every general register, and every copy of every entry in any such book or register and every extract therefrom, certified under the hand of the Registrar-General or a District Registrar or the Secretary to the Board of Quazis or a Quazi or a registrar to be a true copy or extract, and every document referred to in section 69 and every copy of any such document or any entry in any such document certified under the hand of the District Registrar to be a true copy issued under section 19A and section 29 (5) shall be prima facie evidence in all courts of the dates and facts contained or set out in such book, register, general register, copy or extract.

Registers and copies to be evidence. [§7, Law 41 of 1975.]

71. A certified copy of the entry in the register of marriages kept under section 18 or in the register of divorces kept under section 29 of this Act or in any register heretofore kept under the Mohammedan Marriage Registration Ordinance, 1886, f or under the Muslim Marriage and Divorce Registration Ordinance, 1929,* shall be accepted and received in all courts as the best evidence of the marriage or divorce, as the case may be, to which the entry relates.

Entry in the register of marriages or in the register of divorces to be best evidence.

72. Blank books for registers and blank books for all other records required to be kept by Quazis and registrars shall be furnished free of charge by the District Registrar on the application of any Quazi or registrar.

Books, &c., to be supplied free. [§7, Law 41 of 1975.]

73. Every member of the Board of Quazis, the secretary to that board, and every Quazi, shall be deemed to be a public servant within the meaning of the Penal Code, and all proceedings before the Board of Quazis or before a Quazi under the provisions of this Act shall be deemed to be judicial proceedings within the meaning of Chapter XI of the Penal Code.

Members of the Board of Quazis, secretary to the Board of Quazis and Quazis deemed to be public servants.

74. No attorney-at-law shall be entitled or permitted to appear on behalf of any party or witness in any proceedings before a Quazi under this Act.

Representation of parties and witnesses before Quazis.

* Repealed by Act No. 13 of 1951.
+ Repealed by Ordinance No. 27 of 1929.

The preceding provisions of this section shall not apply in the case of any proceedings before the Board of Quazis.

other document kept for the purposes of this Act or in any register or other document which was required to be kept under the Muslim Marriage and Divorce Registration Ordinance, 1929, * or under the Mohammedan Marriage Registration Ordinance, 1886, f may, after due inquiry, be corrected by the Registrar-General or by any person authorized in that behalf by the Registrar-General, in such circumstances and in accordance with such conditions and procedure as may be prescribed.

Duty of police officers and grama seva niladharis to assist Quazis.

75. It shall be the duty of every police officer or grama seva niladhari to aid and assist the Board of Quazis and the Quazis in the exercise of the powers and jurisdiction or the performance of the duties conferred or imposed on them by this Act.

Damage of duplicate and original entries, and reconstruction of duplicate and original entries. [§7, Law 41 of 1975.]

76. (1) Where the original of any marriage or divorce entry made by a registrar or a Quazi is lost, damaged, has become illegible or is in danger of becoming illegible, the Registrar-General may, if the duplicate is available, cause the missing document to be replaced by a copy of such duplicate, such copy being certified by the Registrar-General to be a true copy. Every such copy so certified shall replace the original and shall, for all purposes, be deemed to be the original of such entry.

78. For the purposes of this Act the Forms. forms set out in the First Schedule shall be used with such variations as may be necessary for any particular case.

PART X

OFFENCES AND PENALTIES

(2) Where the duplicate of any marriage or divorce entry made by a registrar or a Quazi is lost, damaged, has become illegible or is in danger of becoming illegible, the Registrar-General may, if the original of such entry is available, cause the missing document to be replaced by a copy of such original, such copy being certified by the registrar or the Quazi to be a true copy and countersigned by the District Registrar. Every such copy so certified and countersigned shall, for all purposes, be deemed to be the duplicate of such entry.

79. Every person who—

Penalty for destruction of registers, &c.

(3) Where both the duplicate and the original of a marriage or divorce entry made by a registrar or a Quazi are lost, damaged, have become illegible, or are in danger of becoming illegible, the provisions of section 13 of the Births and Deaths Registration Act shall, *mutatis mutandis*, apply to and in relation to the substitution of copies of such duplicate and original. Such copies shall replace the original and duplicate entries and shall, for all purposes, be deemed to be the original and duplicate entries, respectively.

- (a) wilfully destroys or injures, or causes to be destroyed or injured, any record of proceedings, register, book, permit or other document kept or issued under this Act or under the Mohammedan Marriage Registration Ordinance, 1886,f or under the Muslim Marriage and Divorce Registration Ordinance, 1929,* or
- (b) falsely makes, fabricates or counterfeits in whole or in part any such register, book, permit or document or any document, purporting to be a certified copy of any such register, book, permit or document, or part thereof or extract therefrom, or
- (c) wilfully inserts any false entry in any such register, book, permit, document, or any certified copy thereof or extract therefrom,

shall be guilty of an offence, and shall be liable on conviction to imprisonment of either description for a term not exceeding three years.

Correction of clerical errors in registers.

77. Any clerical error which may from time to time be discovered in any register or

* Repealed by Act No. 13 of 1951.
+ Repealed by Ordinance No. 27 of 1929.

Penalty for incestuous marriage, &c.

80. (1) Every male Muslim who enters into any contract purporting or intended to be a contract of marriage, or has or attempts to have carnal intercourse, with a woman who to his knowledge is—

- (a) his daughter or other lineal descendant; or
- (b) his mother or other lineal ascendant; or
- (c) his sister by the full or the half-blood ; or
- (d) the daughter of his brother or sister by the full or the half-blood, or a descendant from either of them; or
- (e) the sister by the full or the half-blood of his mother, father, or other lineal ascendant; or
- (f) his wife's mother or grandmother; or
- (g) the daughter or granddaughter of his wife by another father; or
- (h) his son's, grandson's, father's, or grandfather's wife or widow or divorced wife; or
- (i) his wife's sister, his wife being then alive,

shall be guilty of an offence, and shall be liable on conviction to imprisonment of either description for any period not exceeding three years.

For the purposes of this subsection it is immaterial that the carnal intercourse was had, or that the attempt was made, with the consent of the woman.

(2) Every Muslim woman of or above the age of twelve years who enters into any contract purporting or intended to be a contract of marriage with any man, or permits any man to have carnal intercourse with her, knowing such man to be—

- (a) her son or other lineal descendant; or
- (b) her father or other lineal ascendant; or

- (c) her brother by the full or the half-blood ; or
- (d) the son of her brother or sister by the full or the half-blood, or a descendant from either of them; or
- (e) the brother by the full or the half-blood of her father, mother, or other lineal ascendant; or
- (f) her husband's father or grandfather; or
- (g) the son or grandson of her husband by another mother; or
- (h) her daughter's, granddaughter's, mother's or grandmother's husband or widower or divorced husband,

shall be guilty of an offence, and shall be liable on conviction to imprisonment of either description for any period not exceeding three years.

It shall be a defence for a woman charged with an offence under this subsection to prove that she was at the time of the offence under the coercion of the person having carnal intercourse with her.

(3) Nothing contained in this section or in any judgment or order given or made in any proceedings relating to an offence under this section shall be construed to make valid a marriage which would otherwise be invalid according to the Muslim law applicable to the parties thereto.

81. Every person—

- (a) upon whom a duty is imposed by this Act to register a marriage or to cause a marriage to be registered and who fails to register such marriage or to cause such marriage to be registered ; or
- (b) who aids or assists any Muslim to obtain or effect or register a divorce otherwise than in accordance with the provisions of this Act, or abets that offence in any other manner; or
- (c) who contravenes any of the provisions of section 56 (1) or section 56 (4),

Penalty for offences relating to marriage, divorce, &c.

shall be guilty of an offence and shall be liable on a first conviction to a fine not exceeding one hundred rupees, and on a second or subsequent conviction to a fine not exceeding one hundred rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and such imprisonment.:

Penalty for registering marriage in contravention of section 22, section 23 or section 24 (4).

82. Every registrar who knowingly registers, and every other person who aids or abets the registration of, any marriage in contravention of the provisions of section 22, section 23 or section 24 (4) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and such imprisonment.

Penalty for unauthorized registration of marriage, divorce, &c.

83. Every person who, not being a Quazi, issues or professes to issue any permit or to register a divorce under this Act, or who not being a registrar, registers or professes to register any marriage under this Act, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and such imprisonment.

Penalty for Quazi's failure to pay money to person entitled.

84. Subject to the provisions of section 38, every Quazi, who fails without reasonable cause forthwith to pay to the person entitled thereto any sum of money received by him under section 64 or section 65, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and such imprisonment.

Penalty for making false statement in declaration.

85. Every person who wilfully or knowingly makes a false statement in any declaration signed by him under section 18 (1) shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding one hundred rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and such imprisonment.

86. Every registrar who—

Penalty for breach of duty by registrars.

- (a) upon being required under this Act to register a marriage fails or refuses without reasonable cause to register that marriage ; or
- (b) except in the cases referred to in section 11, registers any marriage contracted or effected outside the limits of the area for which he is appointed; or
- (c) having been appointed under section 10, registers any marriage in breach of the restrictions or conditions contained in his certificate of appointment; or
- (d) registers any marriage at which he was not present; or
- (e) wilfully neglects to carry out at or, in connection with the registration of any marriage any duty imposed upon him by section 18, section 19, or section 58; or
- (f) wilfully contravenes any regulation made under this Act,

shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding one hundred rupees.

87. Every Muslim woman who during her period of *iddat* contracts a marriage or participates as the bride in any ceremony purporting to be a marriage ceremony, and every person who aids or abets the contracting of any such marriage or the performance of any such ceremony, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred rupees.

Penalty for registration of marriage contracted during *iddat*.

88. Every person who refuses or omits to deliver any book, register, or index, to the District Registrar as required by section 56 (3) and every person who is found without lawful excuse in possession of any book, register, or index, which is required by that section to be delivered to the District Registrar or to be taken possession of by him, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred rupees.

Penalty for failure to deliver registers, &c. to District Registrar.

Penalty for intermeddling with suitors.

89. (1) Every person who, without proper excuse, accosts or attempts by words, signs or otherwise to meddle with any suitor or other person having business, actual or prospective, before the Board of Quazis or a Quazi, with respect to his suit or business, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred rupees.

- (b) makes use of any violent, indecent or unbecoming gestures; or
- (c) wilfully interrupts or obstructs any proceedings thereof,

may be ordered by the board or such Quazi, as the case may be, to pay a penalty not exceeding twenty rupees.

(2) No prosecution shall be instituted in respect of an offence under subsection (1), except by, or at the instance or with the written consent of, the Attorney-General.

Where any such order is made by a Quazi, an appeal shall lie against that order to the Board of Quazis and the rules in the Fifth Schedule shall apply to -any such appeal:

[§9, 32 of 1969.]

Penalty for failure to discharge duty imposed by section 75.

90. Every police officer or grama seva niladhari who fails to discharge the duty imposed on him by section 75 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty rupees.

Provided that no further appeal shall lie to the Court of Appeal against the order made by the board on an appeal under this subsection.

(2) Where default is made in the payment of any penalty imposed under subsection (!), the penalty may be recovered from the defaulter, on application made to the Magistrate having jurisdiction in the area within which the defaulter is resident, as though it were a fine imposed on him by the Magistrate, and when so recovered shall be credited to the Consolidated Fund.

Penalty for refusing to sign register or to provide necessary stamps.

91. Every person who—

- (a) being required by or under this Act to sign the statement of particulars entered in a register in respect of any marriage or divorce, without good cause refuses or . wilfully neglects to do so; or
- (b) being liable under this Act to supply the stamp or stamps necessary for the payment of any prescribed fee, refuses or neglects to do so,

(3) Every application under subsection (2) shall be signed by the secretary of the Board of Quazis if the penalty was imposed by the board and, in all other cases by the Quazi who imposed the penalty, and shall specify the amount of the penalty, the name and address of the person on whom it was imposed and such other particulars as may be prescribed.

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty rupees.

PART XI

General penalty.

92. Every person who fails to comply with or acts in contravention of any provision of this Act or of any regulation, not referred to in the preceding sections in this Part, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding one hundred rupees.

SUPPLEMENTARY PROVISIONS

94. (1) The Minister may make Regulations. regulations for or in respect of all or any of the following matters :—

(a) the procedure to be observed in cases before Quazis in regard to matters for which no express provision is made in this Act;

(b) the processes to be issued by Quazis and the mode of enforcing the processes;

Misconduct while the Board of Quazis or a Quazi is sitting.

93. (1) Any person who, while the Board of Quazis or a Quazi is sitting, and in the presence on the board or such Quazi—

- (a) uses any violent, insulting, abusive or threatening language; or

- (c) the form and method of appeals to the Board of Quazis and all matters incidental or appertaining to the hearing of such appeals and the recording of the verdict or decision of the board;
 - (d) the summoning, challenging, and empanelling of Muslim assessors, and other matters relating to such assessors;
 - (e) the manner in which and the conditions subject to which processes may be served by the Fiscal, or other officers or persons;
 - (f) the stamp fees to be levied in respect of cases instituted before the Quazi, processes issued by the Quazi, appeals heard by the Board of Quazis, and applications for leave to appeal and appeals made to the Court of Appeal and, in general, all fees required by this Act to be prescribed, whether payable in stamps or otherwise;
 - (g) the stamp fees to be levied in respect of proceedings under this Act before Primary Courts where such fees are not provided for under any law for the time being regulating proceedings before Primary Courts;
 - (h) the stamp fee to be paid on a certified copy of or extract from any entry in a register relating to a marriage or divorce and on declarations under section 18(1);
 - (i) the inspection by the Registrar-General or a District Registrar of the offices of Quazis, and the registers and books kept by Quazis and registrars, and the inquiry into complaints against registrars;
 - (j) the correction of clerical errors in registers of marriages or divorces and the imposition of penalties on registrars in respect of such errors where they are due to negligence or wilful disregard of the provisions of this Act or any regulations made thereunder;
 - (k) the nature and form of the books, registers, certificates, permits, forms, and indexes to be kept, issued, or used by District Registrars, Quazis and registrars;
 - (l) the sums payable to the members and the secretary of the Board of Quazis, to Quazis, Muslim assessors and registrars, by way of fees and allowances (including allowances in reimbursement of the cost of travelling), and on any other account;
 - (m) the manner in which unclaimed moneys paid by Quazis to District Registrars under the second proviso to section 52 (1) or deposited by Quazis in kachcheries under section 38 shall be disposed of;
 - (n) the conditions subject to which the marriage of a male Muslim not domiciled in Sri Lanka with a Muslim woman domiciled in Sri Lanka may be registered, being conditions relating to the prepayment of *mahr* and deposit of money for maintenance of any child that may be born of the marriage;
 - (o) all other matters which are required or authorized by this Act to be prescribed or which may appear to the Minister to be necessary or expedient for the purpose of carrying out the provisions of this Act.
- (2) Any form in the First Schedule and any rule in the Second, Third, Fourth or Fifth Schedule may be rescinded, amended, modified or replaced, and any Schedule may be added to or replaced, by regulation made under this section.
- (3) Every regulation made by the Minister under this section shall be published in the Gazette. A regulation shall not come into operation unless it has been approved by Parliament nor until notification of such approval has been published in the Gazette.
- 95.** Nothing contained in this Act shall be construed to prevent a husband or wife from bringing an action in a civil court

[§7.1 of 1965.]

Saving of actions in civil courts.

against a third party for damages incurred by him or her in respect of any injury to his or her matrimonial rights.

Construction of references to District Registrar.

96. Every reference to a District Registrar in this Act or in any regulation made thereunder shall, for the purposes of the application of the Act or of any such regulation to a special registrar appointed under section 10 or to a special Quazi appointed under section 14, be read and construed as though the words "Registrar-General" were substituted for the words "District Registrar" in the context in which such reference is made.

Interpretation.

97. In this Act, unless the context otherwise requires—

"appointed date" means the 1st day of August, 1954 ;

"district" means administrative district;

"District Registrar", in relation to any district, means the person appointed to be or to act as the District Registrar of Marriages of that district for the purposes of the Marriage Registration Ordinance, and includes a person appointed to be or to act as an Additional District Registrar of that district ;

[§7,41 of 1975.]

[§8, 1of 1965.]

"Judicial Service Commission" means the Judicial Service Commission referred to in Article 112 of the Constitution ;

"kaikuli" means any sum of money paid, or other movable property given, or any sum of money or any movable property promised to be paid or given, to a bridegroom for the use of the bride, before or at the time of the marriage by a relative of the bride or by any other person ;

"prescribed" means prescribed by regulations made under this Act;

"Quazi" means a Quazi appointed under section 12 or section 13 or section 14;

"registrar" means a male Muslim appointed under section 8 or section 9 or section 10 to register marriages under this Act ;

"Registrar-General" means the person appointed to be or to act as Registrar-General of Marriages under section 2 of the Marriage Registration Ordinance, and includes a Deputy Registrar-General and an Assistant Registrar-General;

[§§2&3 Law 23 of 1978.]

"regulation" means a regulation made under this Act;

"secretary" or "secretary to the Board of Quazis" means the secretary appointed under section 15 (6).

PART XII

SAVINGS AND TRANSITIONAL PROVISIONS

98. (1) For the avoidance of doubt, it is hereby declared that the repeal of sections 64 to 101 and of the first paragraph of section 102 of the Mohammedan Code of 1806, by the Muslim Marriage and Divorce Registration Ordinance, 1929,* or the repeal of that Ordinance by Act No. 13 of 1951, does not affect the Muslim law of marriage and divorce, and the rights of Muslims thereunder.

Saving of Muslim-law of marriage and divorce.

(2) It is hereby further declared that in all matters relating to any Muslim marriage or divorce, the status and the mutual rights and obligations of the parties shall be determined according to the Muslim law governing the sect to which the parties belong.

99. On and after the appointed date—

Savings.

(a) every rule made under section 18 and every regulation made under section 22 of the Muslim Marriage and Divorce Registration Ordinance, 1929,* and in force on the day immediately preceding that date shall, in so far as such rule or regulation is not inconsistent with the provisions of this Act, continue in force and be deemed to be a rule or regulation made under section 62 or section 94, as the case may be, of this Act;

(b) every officiating priest, temporary officiating priest or special officiating priest licensed under the Muslim Marriage and Divorce Registration Ordinance, 1929,*

* Repealed by Act No. 13 of 1951.

shall be deemed to be a registrar, temporary registrar or special registrar appointed under this Act; and every licence issued under that Ordinance shall be deemed to be a certificate of appointment issued under this Act;

- (c) every Kathi, temporary Kathi or special Kathi, appointed under the

Muslim Marriage and Divorce Registration Ordinance, 1929,* shall be deemed to be a Quazi, temporary Quazi or special Quazi appointed under this Act; and the Board of Kathis appointed under that Ordinance shall be deemed to be the Board of Quazis appointed under this Act.†

FIRST SCHEDULE

Form No. I

CERTIFICATE OF APPOINTMENT OF A REGISTRAR OF MUSLIM MARRIAGES AUTHORIZED TO REGISTER MARRIAGES

Counterfoil

No.

In pursuance of the powers vested in me by section 8 of the Muslim Marriage and Divorce Act, I,, do hereby appoint of to be a Registrar of Marriages for the following area:

(Sgd.), Registrar-General.

Date:

(Stamp.)

Original

No.

In pursuance of the powers vested in me by section 8 of the Muslim Marriage and Divorce Act, I,, do hereby appoint of to be a Registrar of Marriages for the following area:

(Sgd.), Registrar-General.

Date:

(Stamp.)

[Section 8.]

[Section 18 (1).]

Form No. II

THE MUSLIM MARRIAGE AND DIVORCE ACT

FORM OF DECLARATION BY BRIDEGROOM UNDER SECTION 18 (1)

I, the undersigned, do hereby give notice that a marriage is about to be/has been solemnized between me and, and I further hereby solemnly declare that to the best of my knowledge and belief the several particulars entered below are true and correct and that there is no lawful hindrance to the said marriage:

- 1. Bridegroom's name in full:
2. Bridegroom's age:
3. Bridegroom's residence:
4. Full name of bridegroom's guardian (if any):
5. Bride's name in full:
6. Bride's age:
7. Bride's residence:

* Repealed by Act No. 13 of 1951.
† Paragraphs (d), (e), (f) and (g) are omitted.

- *8. Full name of bride's *wali*:.....
- 9. Relationship of *wali* to bride (whether father, paternal grandfather, brother, &c.):.....
- 10. Whether bridegroom was previously married or not, and, if so, to whom : ,.....
- 11. Whether previous wife or wives divorced or dead :
- 12. If divorced, date and number of divorce registration and name, area and district of the officiating priest or Quazi:

(Sgd.).....
Signature of bridegroom.

Signed before me, this day of..... 19.....

(Sgd.).....
Registrar of Muslim Marriages for the
area of the District.

* This may be omitted where the Quazi has expressly authorized the marriage under section 47 (2), or where no *wali* is necessary according to the Muslim law governing the sect to which the bride belongs.

Form No. III

(Section 18
(1).]

THE MUSLIM MARRIAGE AND DIVORCE ACT

FORM OF DECLARATION BY "WALI " OF BRIDE UNDER SECTION 18(1)

I, the undersigned do hereby give notice that a marriage is about to be/has been solemnized between and whose *wali* I am for the purposes of such marriage, and I further hereby solemnly declare that to the best of my knowledge and belief the several particulars entered below are true and correct and that there is no lawful hindrance to the said marriage ;—

- 1. Bridegroom's name in full :.....
- 2. Bridegroom's age :.....
- 3. Bridegroom's residence:.....
- 4. Full name of bridegroom's guardian (if any) :.....
- 5. Bride's name in full :.....
- 6. Bride's age :.....
- 7. Bride's residence;.....
- 8. Whether the bride was previously married or not:.....
- 9. If previously married, to whom :.....
- 10. Whether bride's previous husband is dead or divorced :.....
- 11. If divorced, date and number of divorce registration and name, area and district of the officiating priest or Quazi:.....

(Sgd.).....
Signature of *wali*.

Residence of *wali*..

I,.....;....., the undersigned, do hereby confirm the foregoing declaration made by my *wali*, who is neither my father nor my paternal grandfather.

(Sgd.).....
Signature of bride.

Signed before me, this..... day of..... 19.....

(Sgd.).....
Registrar of Muslim Marriages for the
area of the District.

No. :

THE MUSLIM MARRIAGE AND DIVORCE ACT
MUSLIM MARRIAGE REGISTER

District :

Registrar's area :

Full name of registrar registering the marriage :

	Bridegroom	Bride
1. Name in full		
2. Age		
3. Civil condition		
4. If divorced, evidence of divorce, if any		
5. Residence		
6. Name of father or other guardian in full		
7. Nature of guardianship		

8. Amount of *mahr* and whether paid or not :
- *9. Amount of *kaikuli* :
10. Place of marriage :
11. Date and hour of marriage :
12. Date of registration :
13. Full name and residence of first witness :
14. Full name and residence of second witness :
15. Full name of person conducting *Nikah* ceremony :
16. Signature of—

(1) Bridegroom :

†(2) Bride's *wali* :

(3) First witness :

(4) Second witness :

(5) Person conducting *Nikah* ceremony :

(6) Registrar :

* It is optional and not obligatory to enter details of item.

† Signature of the bride's *wali* may be omitted where the Quazi has expressly authorized the marriage under section 47 (2), or where no *wali* is necessary according to the Muslim law governing the sect to which the bride belongs.

No. :

THE MUSLIM MARRIAGE AND DIVORCE ACT
MUSLIM MARRIAGE REGISTER

District :

Registrar's area :

Full name of registrar registering the marriage :

	Bridegroom	Bride
1. Name in full		
2. Age		
3. Civil condition		
4. If divorced, evidence of divorce, if any		
5. Residence		
6. Name of father or other guardian in full		
7. Nature of guardianship		

8. Amount of *mahr* and whether paid or not :
- *9. Amount of *kaikuli* :
10. Place of marriage :
11. Date and hour of marriage :
12. Date of registration :
13. Full name and residence of first witness :
14. Full name and residence of second witness :
15. Full name of person conducting *Nikah* ceremony :
16. Signature of—

(1) Bridegroom :

†(2) Bride's *wali* :

(3) First witness :

(4) Second witness :

(5) Person conducting *Nikah* ceremony :

(6) Registrar :

* It is optional and not obligatory to enter details of item.

† Signature of the bride's *wali* may be omitted where the Quazi has expressly authorized the marriage under section 47 (2), or where no *wali* is necessary according to the Muslim law governing the sect to which the bride belongs.

Stamp.

No. :

THE MUSLIM MARRIAGE AND DIVORCE ACT
MUSLIM DIVORCE REGISTER

District :

Quazi's area :

Full name of Quazi registering the divorce :

1. Husband's name in full :
2. Husband's residence at time of divorce :
3. Wife's name in full :
4. Wife's residence at time of divorce :
5. Full name, area and district of officiating priest or registrar who registered the marriage :
6. Number and date of the entry of marriage :
7. Place of divorce :
8. Nature of divorce (whether by husband or by wife) :
9. If divorce by wife, whether granted by Quazi or on order of the Board of Quazis or of the Court of Appeal :
10. Date and hour of divorce :
11. Date of registration of divorce :
12. Signature of—
 - (1) Husband (if present) :
 - (2) Wife (if present) :
 - (3) Quazi registering the divorce :

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No. :

THE MUSLIM MARRIAGE AND DIVORCE ACT
MUSLIM DIVORCE REGISTER

District :

Quazi's area :

Full name of Quazi registering the divorce :

1. Husband's name in full :
2. Husband's residence at time of divorce :
3. Wife's name in full :
4. Wife's residence at time of divorce :
5. Full name, area and district of officiating priest or registrar who registered the marriage :
6. Number and date of the entry of marriage :
7. Place of divorce :
8. Nature of divorce (whether by husband or by wife) :
9. If divorce by wife, whether granted by Quazi or on order of the Board of Quazis or of the Court of Appeal :
10. Date and hour of divorce :
11. Date of registration of divorce :
12. Signature of—
 - (1) Husband (if present) :
 - (2) Wife (if present) :
 - (3) Quazi registering the divorce :

Stamp.

RULES TO BE FOLLOWED IN THE CASE OF A DIVORCE BY A HUSBAND

1. Where a husband intends to pronounce the *talak* on his wife, he shall give notice of his intention to the Quazi of the area in which she is resident, and it shall then be the duty of the Quazi to attempt to effect a reconciliation between such husband and wife with the help of the relatives of the parties and of the elders and other influential Muslims of the area.

2. If within thirty days from the date on which the husband gives notice of his intention under rule 1, no reconciliation between him and his wife is effected, the husband, if he desires to proceed with the divorce, shall pronounce the *talak* in the presence of the Quazi and two witnesses, and the Quazi shall forthwith record such pronouncement and shall cause notice thereof to be served upon the wife, if she is not present. The prescribed fee shall be recovered by the Quazi from the husband in stamps which shall be affixed to the record of the proceedings and duly cancelled by the Quazi.

3. The Quazi shall not record the alleged reasons for which, or the alleged grounds upon which, the husband seeks to pronounce the *talak*.

4. (1) In every case where no reconciliation between husband and wife is effected within the period of thirty days referred to in rule 2, it shall be the duty of the Quazi—

(a) at such stage in the proceedings as he may deem convenient, to recover in the prescribed manner from the husband any *mahr* payable to the wife, whether or not a claim for *mahr* by the wife has theretofore been made;

(b) forthwith upon such recovery to deposit the money so recovered in the kachcheri in the name of the wife and to give notice to the wife that such money has been deposited in her name in the kachcheri.

(2) No money deposited in a kachcheri in pursuance of the preceding provisions of this rule shall be withdrawn unless the Quazi has authorized such withdrawal; and the Quazi shall not authorize any withdrawal except in accordance with the regulations prescribing the circumstances in which the Quazi may authorize moneys deposited under paragraph (1) to be withdrawn.

5. If the Quazi is satisfied by statement on oath or affirmation that the wife is not in Sri Lanka and that in the circumstances of the case it is not possible to serve upon her the notice referred to in rule 2, he may order the notice to be served on the wife's nearest relative, or, if no relative of the wife is known to be in Sri Lanka, he may dispense with the necessity for serving such notice on the wife.

6. If the presence of the wife cannot be secured or if a reconciliation cannot be effected, the husband shall, after the expiry of a period of thirty days reckoned from the date on which the *talak* was pronounced under rule 2, appear before the Quazi on a date fixed by the Quazi who shall again endeavour to effect a reconciliation between the parties. If no reconciliation between the parties is effected, notice of that fact shall be served by the Quazi on the wife if she is not present.

The provisions of rule 5 shall apply in the case of a notice given under this rule in like manner as they apply in the case of a notice referred to in rule 2.

7. Where no reconciliation between husband and wife is effected before the expiry of a period of thirty days from the date fixed by the Quazi under rule 6, the husband shall appear before the Quazi on such date after the expiry of the said period as may be fixed by the Quazi; and the Quazi shall forthwith record such appearance and the fact of his failure to reconcile the parties and shall thereupon register the divorce.

8. Where a husband fails to appear before the Quazi on the date fixed under rule 6 or rule 7, the Quazi may, at any time after the expiry of a period of three months from the date on which the *talak* was pronounced under rule 2, first examine the wife on oath or affirmation with regard to the failure of the husband, to appear and the causes of the failure to effect a reconciliation between the parties, and shall thereupon register the divorce.

9. Save as otherwise provided in rule 3, all proceedings under the rules in this Schedule shall be recorded by the Quazi.

THIRD SCHEDULE

RULES TO BE FOLLOWED IN THE CASE OF A DIVORCE BY A WIFE

[Section 28.]

1. Subject to the provisions of section 67 of the Act, the wife shall make an application for divorce to the Quazi of the area in which she is resident or, where a special Quazi has, under section 14 of the Act, been appointed for (hat area or any area of which that area forms part, to that special Quazi.

2. Upon receiving the application, the Quazi shall forthwith cause a notice, setting out particulars of the application and the date fixed by him for the hearing thereof, to be served upon the husband.

3. Where it is made to appear to the Quazi by statement on oath or affirmation that the husband is not in Sri Lanka and that in the circumstances of the case it is not possible to serve on the husband the notice referred to in rule 2, the Quazi may order the notice to be served on the husband's nearest relative or, if no relative of the husband is known to be in Sri Lanka, the Quazi may dispense with the necessity for serving such notice on the husband.

4. Where it is made to appear to the Quazi by statement on oath or affirmation that the husband is in Sri Lanka and that he has no fixed abode and that in the circumstances of the case it is not possible to serve on the husband the notice referred to in rule 2, the Quazi may dispense with personal service on the husband and may order that a copy of the notice be posted up in a conspicuous place at each of the Jumma mosques of the area for which the Quazi has been appointed and at the houses of the nearest relatives of the husband whose addresses are known.

5. The Quazi shall record all the steps taken to serve the notice on the husband in accordance with these rules.

6. If on the date appointed for the hearing of the application the husband does not appear the service or posting up of the notice shall, unless the Quazi has dispensed with the notice under rule 3, be proved by statement on oath or affirmation-

7. The Quazi shall then proceed, in manner prescribed by regulation made under the Act, to empanel three Muslim assessors (hereinafter in this Schedule referred to as " Muslim assessors ") to assist him in the hearing of the application:

Provided that in the following cases, and in those cases only, it shall not be necessary for the Quazi to empanel Muslim assessors, namely—

(a) where the Quazi dealing with an application is a special Quazi appointed under section 14 of the Act; or

(b) where the area in which an application is to be heard* is an area in respect of which, owing to the sparseness of the Muslim population or for any other reason, the Minister has by notification in the Gazette given directions that applications for divorce may be heard without the assistance of Muslim assessors.

8. In an area brought under the operation of the Village Councils Ordinance, the Muslim assessors shall be male Muslims who are resident in that area and who possess the qualifications required under that Ordinance for membership of a Village Council. Registrars of Births and Deaths are hereby exempted from service as Muslim assessors.

9. In an area not brought under the operation of the Village Councils Ordinance the Muslim assessors shall be male Muslims who are resident in that area and whose names appear in the lists of jurors for that area.

10. It shall be the duty of the Quazi and of the Muslim assessors (if any) before hearing the application to endeavour by all lawful means to bring the parties to an amicable settlement and, with the consent of the parties, to abate or remove the real cause of trouble between them and to prevent it from recurring thereafter. But if the parties will not agree to such settlement, the Quazi and the Muslim assessors (if any) shall proceed to hear evidence and to determine the application.

11. The Quazi shall maintain a record of the proceedings in the case and shall enter therein the statements made on oath or affirmation by the wife and her witnesses and by the husband (if he is present) and his witnesses- Of the wife's witnesses the number examined shall not be less than two in, any case. The record of every such statement shall be read over by the Quazi to the person who has made it and, after any necessary corrections have been made therein, shall be signed by such person. Where such person refuses to sign such statement, the fact of such refusal shall be recorded by the Quazi.

12. The Muslim assessors shall first express their opinions on the points arising for adjudication, and when they have done so the Quazi shall express his opinion. In the event of any difference of opinion between the Quazi and the Muslim assessors or any of them, or in the event of a refusal by more than one of the Muslim assessors to

express their opinion, the opinion of the Quazi shall prevail; and in accordance therewith he shall make such order on the application as may properly be made under the Muslim law governing the seel to which the parties belong. Every such difference of opinion with any assessors or refusal of any assessor to express an opinion shall be recorded by the Quazi in the record of the proceedings in the case.

13. The Quazi shall, immediately after making order on the application, reduce such order to writing in the record of the proceedings in the case and the record shall be signed by the Quazi, by the Muslim assessors, by the wife, and by the husband, if he is present.

14. The Quazi shall, on payment of the prescribed fee, furnish either party to the application with a certified copy of the record of the proceedings in the case.

15. After the appealable time has elapsed, if there has been no appeal from the order of the Quazi allowing a divorce, or if there has been an appeal to the Board of Quazis, after the Board of Quazis has allowed a divorce, or in case of a further appeal to the Court of Appeal, if the order of the Court of Appeal allows such a divorce, it shall be the duty of the Quazi to register the divorce.

FOURTH SCHEDULE

RULES FOR INQUIRIES UNDER SECTION 47

[Section 47.]

1. Every claim, complaint or application referred to in section 47 shall be made to the Quazi of the area in which the claimant, complainant or applicant resides, or, where a special Quazi has been appointed, to such special Quazi, and shall specify the party or each of the parties (hereinafter referred to as the "respondent") from or against whom relief is sought.

2. Upon receipt of any claim, application or complaint, the *Quazi* shall immediately fix a date for the inquiry thereinto and shall cause a notice of the claim, application or complaint and of the date so fixed to be served upon the respondent;

Provided that if it is made to appear to the Quazi by statement on oath or affirmation that any such respondent is not in Sri Lanka or has no fixed place of abode, the provisions of rule 3 or of rule 4 (as the case may require) in the Third Schedule shall, so far as applicable, apply.

3. Where the respondent appears on the date fixed for the inquiry, the Quazi shall proceed with the inquiry, and, after hearing both parties, shall make such order on the claim, complaint or application as to him may seem just.

4. Where the respondent does not appear on the day fixed for the inquiry, the Quazi, if he has dispensed with service of notice on the respondent or if the service of notice on the respondent or the posting up of the notice is proved by statement on oath or affirmation, shall proceed with the inquiry *ex parte* and shall, if he is satisfied that the claimant or complainant or applicant is entitled to the relief prayed for, make in his favour an order *nisi* conditioned to take effect in the event of the respondent not showing cause against it on a day specified for that purpose in the order and shall direct a copy of such order certified under his hand to be served on the respondent:

Provided that if it is made to appear to the Quazi by statement on oath or affirmation that the respondent is not in Sri Lanka or has no fixed place of abode, the provisions of rule 3 or of rule 4 (as the case may require) in the Third Schedule shall, so far as applicable, apply.

5. Where the respondent fails to appear in any case in which the Quazi has dispensed with service of the copy of the order *nisi* on the respondent or in which the service of such copy on the respondent or the posting up of such copy is proved by statement on oath or affirmation, or where the respondent appears but fails to show cause against the order, the Quazi shall make the order absolute.

6. Where the respondent appears and shows cause to the satisfaction of the Quazi why the order *nisi* should not be made absolute, the Quazi shall set aside the order *nisi* and shall proceed with the inquiry as though no default had been made by the respondent in appearing in compliance with the notice issued under rule 2.

7. The provisions of rule 11 in the Third Schedule as to the record of proceedings shall apply so far as may be in the case of inquiries held under the rules in this Schedule.

8. Every order made by a Quazi in any inquiry held under the rules in this Schedule shall be entered in the record of the proceedings in the case and shall be signed by the Quazi and by the claimant, applicant or complainant and by the respondent, if he is present.

9. The Quazi shall on payment of the prescribed fee furnish either party to the proceedings with a certified copy of the record of the proceedings in the case.

10. No appeal shall lie against any order absolute made by a Quazi in pursuance of the rules in this Schedule, but if any person against whom an order absolute has been made appears within a reasonable time after such order and satisfies the Quazi that he was prevented from appearing to show cause against the making of the order absolute by reason of illness, accident, misfortune or other unavoidable cause or by not having received notice of the proceedings, the Quazi may upon such terms and conditions as he may think it just and right to impose set aside the order absolute and proceed with the inquiry as though there had been no default in appearance.

FIFTH SCHEDULE

RULES FOR APPEALS

[Sections 60
and 93.]

1. Where by any provision of this Act a right of appeal against any order made by a Quazi is conferred on any party, such appeal shall be preferred in writing to the Board of Quazis—

(a) in the case of an order made under subsection (2) or subsection (3) of section 47, within ten days from the date on which the order was made;

(b) in the case of any other order, within thirty days from the date on which the order was made :

Provided that the preceding provisions of this rule shall not affect the power vested in the board by the Act to entertain an appeal which is out of time.

2. The Board of Quazis may hear any appeal either in public or *in camera* and may, if it considers it necessary so to do for the proper disposal of the case, hear such further evidence as may be tendered by either party to the appeal.

3. (1) Every order made by the Board of Quazis shall be reduced into writing and shall be signed by the members of the board present at the hearing of the appeal.

(2) Notice of every order made by the Board of Quazis shall be given to the appellant and the respondent.

4. Any party aggrieved by any order made by the Board of Quazis may within thirty days from the date on which notice of the order was given as aforesaid apply by petition to the Court of Appeal for leave to appeal against such order and shall give to the other party to the appeal notice of such application.

5. The Court of Appeal may in refusing to grant leave to appeal against any order of the Board of Quazis make such order as to costs as it may deem just.

6. The Court of Appeal may in granting leave to appeal against any order of the Board of Quazis prescribe such conditions as it may consider expedient relating to the payment of costs that may become payable in the event of the appeal to that court being unsuccessful.

7. Where any appeal is heard by the Court of Appeal, it shall be lawful for the court to order that a new inquiry should be held by the Quazi or that further evidence should be taken by him or to make order confirming, altering, amending, modifying or reversing the order made by the Quazi or by the Board of Quazis.

8. Where any order has been made by any Quazi in any case and an appeal is preferred in that case to the Board of Quazis or to the Court of Appeal—

(a) notice of such appeal shall be given by the appellant to the Quazi; and

(b) it shall be the duty of the Quazi to carry into effect the order made in appeal in that case by the Board of Quazis or by the Court of Appeal.