

THE MOHAMMEDAN CODE OF 1806

Extracts from the Minutes of a Council held at Colombo This 5th day of August, 1806

The Chief justice submits to the Governor in Council the Code of Mohammedan Laws observed by the Moors in the Province of Colombo and acknowledged by the head Moormen of the district to be adapted to the present usages of the caste.

Resolved on the motion of the Chief Justice that the same be published and that they be observed throughout the whole of the Province of Colombo.

First Title

Relating to Matters of Succession, Right of Inheritances, and other Incidents occasioned by Death

1. When either husband or wife dies, either leaving or not having children, the survivor shall in the first place separate and take away from the estate the dowry brought in marriage by him or her, the same not being in common.
2. A husband dying leaving a wife but no children or relations, the estate shall, after deducting the burial charges and other legacies, be divided in four shares, viz:-

One-fourth to the wife the other three-fourths to the poor.

3. The husband dying and leaving a wife and one or more sons, then the estate is divided as follows, viz:-

One-eighth part to the wife, and to the son or sons seven eighth parts.

4. The husband dying leaving a wife and a daughter:

The wife is entitled to one-eighth part.

The daughter to the just half, and the poor to the remaining three-eighths parts.

5. The husband dying leaving his wife and two daughters, then is due:

To the wife, one-eighth part.

Two-thirds to both the daughters, and the five twenty-fourth parts to the poor.

6. When the husband dies leaving his wife and three daughters:

One-eighth part goes to the wife, three-fourths to the three daughters, and one-eighth part to the poor; and should there even be more daughters they shall not inherit more than three-fourth parts.

7. The husband dying leaving his wife and a son and one daughter:

The wife is entitled to one-eighth part.

The son to seven-twelfth part and the daughter to seven twenty-fourth parts.

8. Should there be more than one son and one daughter, then the division is fixed as follows:

One-eighth part to the wife, and

The son or sons twice as much as the daughters get.

9. The wife dying leaving alone her husband:
The husband is entitled to the half and the poor to the other half.
10. The wife dying leaving the husband and one son, the estate is divided as follows:
One-fourth part to the husband and three-fourth parts to the son; should there be even more sons they will get no more than three-fourth parts.
11. The wife dying leaving a husband and one daughter:
the husband is entitled to one-fourth part of the estate. The daughters to the just half and the poor to one-fourth part.
12. The wife dying leaving a husband and two daughters;
The husband is entitled to one-fourth part. The two daughters to two-thirds and the poor to one-twelfth.
13. The wife dying leaving a husband and three daughters the estate must be divided into thirty-three parts, viz:-
Three-sixteenth parts to the husband. Three-fourth parts to the three daughters, and one-sixteenth part to the poor. And in this manner the estate shall be divided even if there are more daughters.
14. The wife dying leaving a husband, one son, and one daughter, the estate shall be divided as follows, viz:-
To the husband one-fourth part, to the son the just half, and to the daughter one-fourth part.
15. The wife dying leaving her husband, one son and two daughters, the following is allotted:
One-fourth part to the husband, three-eighths parts to the son, and three-eighth parts to the daughters. This manner of dividing

the estate shall take place even if there be more sons and daughters.

16. Should the husband or wife die leaving a father and mother:
The father gets two-thirds and the mother one-third.
17. Any one dying leaving a father and mother and one son:
the father is entitled to one-sixth part, the mother to one-sixth and the son to two-thirds.
18. Anybody dying leaving a father and mother and one son and one daughter:
The father is entitled to one-sixth, the mother to one-sixth, the son to four-ninths, and the daughter to two-ninth parts.
19. A person dying leaving a father and mother and one daughter:
A father is entitled to one-third, the mother to one-sixth, and the daughter to the just half.
20. A person dying leaving a father and mother and two daughters:
The father gets one-sixth, the mother one-sixth, and the two daughters two-thirds; and although there be more daughters they shall have no more than two-thirds.
21. A person dying leaving a daughter and a son's daughter, or granddaughter, they are entitled to the following:
The daughter to one-half of the estate, the granddaughter to one-sixth, and the poor to one-third.
22. Should even the husband leave besides his aforesaid daughter two or more granddaughters, their share shall, not surpass what is stated here above.
23. A grandfather or grandmother and father or mother dying, and a granddaughter surviving them:

The one half of the estate shall go to the granddaughter and the other half to the poor.

24. But in case two granddaughters have been left, then:
Two-thirds go to the two granddaughters and one-third to the poor.
25. If a person has only a grandson he succeeds to the whole property.
26. A person dying leaving a grandson and a granddaughter, the State is divided as follows:
To the grandson two-thirds and to the granddaughter one-third; and although there be more grandsons and granddaughters the division shall take place in the same manner.
27. Should any person die leaving a daughter and a son's son, a grandson, one-third of the estate devolves to the daughter and two-thirds to the grandson.
28. But in case two daughters and one grandson are left, each of them is entitled to an equal share of the state.
29. But should there be a daughter, a grandson, and a granddaughter the estate is then divided as follows:-
The half to the daughter, one-third to the grandson, and one-sixth to the granddaughter.
30. Should, however, there be two daughters, one grandson, and one granddaughter, the estate shall be divided as follows:
To the two daughters two-thirds. To the grandson two-ninths and to the granddaughter one-ninth.
31. Should there be one daughter, two granddaughters, and one daughter's son, the estate is to be divided as follows:

To the daughter the half, to the granddaughters one-fourth, and to the grandson one-fourth.

32. Should there be two daughters, two granddaughters and one daughter's son or grandson:

The daughters are to have two-thirds, the two granddaughters three-eighteenths, and the grandson one-eighteenth.

33. Should anybody die leaving one daughter and a sister, although he and the sister be of two mothers and the same father:

The half of the estate shall go to the daughter and the other half to the sister.

34. Should the deceased leave one daughter and two sisters:

The daughter must have the half and the two sisters the other half.

35. Should he have left two daughters and two sisters:

The two daughters shall have two-thirds and the two sisters one-third; the same division shall take place even if there be more daughters and sisters.

36. The husband dying leaving his wife with one daughter and a son's daughter, and living also a mother and one sister, the estate shall be divided as follows:

The wife shall have one-eighth; the daughter the half; the grand daughter one-sixth; the mother one-sixth; the sister one-twenty-fourth part.

37. But should, as in the above case, the husband survive his wife, and remain with the above persons, then the estate is divided as follows:

To the husband three-thirteenths; to the daughter six-thirteenths; to the granddaughters two-thirteenths, and to the mother two-

thirteenths, and the brothers and sisters are, in this case, not to share in the inheritance.

38. The deceased leaving one brother and one step-brother from the side of another father or mother:

The full brother is entitled to five-sixths and the step-brother to one-sixth.

39. A person dying leaving two brothers or sisters of one mother and two fathers:

The two brothers or sisters are to have one-third and the poor two-thirds.

40. The deceased leaving two half brothers or sisters of one mother and another father, and one full brother and one full sister, the estate is divided in the following manner:

One-third goes to the two half brothers or sisters, four-ninths to the full sister.

41. The wife dying leaving her husband and her grandfather, each of them is entitled to one-half of the estate.

42. The husband dying leaving his wife and his grandfather, one-fourth of the estate devolves to the wife and three-fourths to the grandfather.

43. Should the deceased leave a daughter and grandfather, each of them shall be entitled to an equal share of the estate.

44. Should the deceased leave two daughters and a grandfather, each of them shall be entitled to one-third of the estate.

45. Should there be a grandfather of the father or mother's side, and a son and a daughter:

The grandfather shall be entitled to one-sixth, the son to five-ninths, and the daughter to five-eighteenth parts.

46. Should the wife die leaving her husband, grandfather, or grandmother, and a son:

The husband shall be entitled to one-fourth, the grandfather or grandmother to one-sixth, the son to seven-twelfth parts.

47. Should there be two sons, then the husband is entitled to one-fourth.

The grandfather or grandmother to one-sixth and the two sons to seven-twelfth parts.

48. Should there be also a son and a daughter:

The husband is entitled to one-fourth, the son seven-eighteenths, the grandfather or grandmother to one-sixth, and the daughter to seven thirty-sixth parts.

49. Should the deceased leave a grandfather and grandmother of the father's side:

The grandfather is entitled to five-sixths and the grandmother to one-sixth part.

50. Should the deceased have left a grandfather and grandmother of the father's side, and a grandmother of the mother's side, then:

The grandfather of the father's side is entitled to two-thirds, the grandmother of the father's side to one-sixth, and the grandmother of the mother's side to one-sixth.

51. The wife dying leaving her husband, father and a son, then:

The husband is to have one-fourth. The father one-sixth, the son seven-twelfths.

52. The husband dying leaving his wife, mother and a daughter:
The wife is to have one-eighth. The mother one-sixth. The daughter the half of the estate, and the poor five-twenty-fourths.
53. The husband dying leaving two wives and a son, then:
The two wives are to have one-eighth, and the son seven-eighths, and should there be more wives the division shall take place in the same manner.
54. A grandfather or grandmother dying leaving a son's daughter or granddaughter:
The grand-daughter is to have one-half of the estate, and the poor the other half.
55. A person dying leaving two granddaughters of his son's side and a brother, each of them is entitled to one-third.
56. If the deceased has left a sister she is entitled to the half, and the poor to the other half.
57. The wife dying leaving her husband and two sisters:
The husband is entitled to three-sevenths, and the two sisters to four-sevenths.
58. If the wife has left two full sisters and an uncle of her father's side, then each of these persons shall be entitled to one-third part.
59. Lastly, agreeable to the same rule, all descendants are entitled to their respective shares of inheritances according to the persons they represent in the same manner as -
A wife or her descendants, a full brother or his descendants, paternal uncle and full uncles and aunts and their children, and their descendants if there be no nearest kin, fathers' brothers' and mothers' sisters' children are entitled to the same shares as sons and daughters.

60. An emancipated male slave dying leaving his wife, daughter, and his master or mistress, then:
The wife is entitled to one-eighth. The daughter to one-half, and the master or mistress to three-eighths.
61. An emancipated female slave dying leaving her husband and two daughters, together with her late master or mistress, then the property is divided as follows:
One-fourth to the husband, two-thirds to the two daughters and one-twelfth to the late master or mistress.
62. If such an emancipated male slave dies:
the wife will be entitled to one-eighth. The two daughters to two-thirds, and the master or mistress to five twenty-fourth parts.
63. Lastly, agreeable to the same rule, all descendants are entitled to their respective shares of inheritances according to the persons they represent in the same manner as -
A wife or her descendants, a full brother or his descendants, paternal uncle and full uncles and aunts and their children, and their descendants if there be no nearest kin, fathers' brothers' and mothers' sisters' children are entitled to the same shares as sons and daughters.

Second Title

Concerning Matrimonial Affairs

64. A person wishing to marry, application must be made to the bride's father and mother for their consent.
65. Should the parents of such bride be dead, the man must make his intentions known to the relations of the bride, and endeavour to obtain their consent.

66. And after consent having been obtained it is the custom that the bride and bridegroom interchange some presents, which, however, are reciprocally restored if the marriage does not take place.
67. The parents or nearest relations of the bride shall then with the knowledge of the bride enter upon an agreement with the bridegroom concerning the marriage gift, called maskawien.
68. The matter being settled, the bridegroom is obliged to pay to the bride immediately what has been agreed upon.
69. But should the bridegroom not be able to pay such marriage gift immediately, it is, with special consent of the bride, however, carried to a separate account.
70. The bridegroom is obliged to inform the commandant, or the headman under whose orders he stands, of his intended marriage.
71. The commandant will then by means of the native commissioners apply to His Excellency the Governor for his consent.
72. The maskawien or magger being paid or remained owing, the priest lebbe shall be informed thereof.
73. The priest and commandant are then obliged to record all such transactions, and to permit the marriage ceremonies to be performed.
74. Should, before the consummation of the marriage, it be discovered that the bridegroom laboured under any bad complaints, such as leprosy, insanity, or any other disorder, so that he is unable to perform the matrimonial duties, in which case a divorce is permitted.

75. The bride wishing to be divorced is obliged to inform the priest thereof, who after having deliberated with the commandants on both sides in the presence of the native commissioners accedes to the divorce, which they are obliged to record; should the parties, however, not wish to abide by the decision they shall be at liberty according to custom to lay their case before the competent judge.
76. The bride is in such case obliged to restore to the bridegroom the maskawien or magger.
77. But should the disorder be discovered after the cohabitation a divorce may take place, and the wife may in that case keep the maskawien or magger.
78. And although such complaints should be discovered by the bride either before or after the consummation of the marriage, the husband is entitled to the maskawien or magger if divorced before the cohabitation, but the wife is entitled to the same if discovered after.
79. Married persons, whether they can allege any reasons or not, being with mutual consent divorce the husband is obliged to allow his wife the moettelaak or ready money proportioned to the marriage gift for the support of the house.
80. Should the husband and wife disagree, and live in continued dissensions with one another and wishing to be divorced.
81. In that case the priest and the commandants on both sides are obliged to inquire into the matter and endeavour if possible to reconcile parties.
82. But should the wife oppose a reconciliation, and the husband being inclined to a divorce, in that case they shall be separately kept by their own relations.

83. After which a meeting of the priests and the officers of the company shall be appointed.
84. And the matter in dispute shall be investigated for a second time, and endeavours made to bring the parties if possible to reconciliation.
85. And if the parties cannot come to a reconciliation before the said assembly the matter in question must be brought before the sitting magistrate.
86. And if the wife should oppose the reconciliation she shall be held to restore to the husband twice the value of the maskawien.
87. The husband being desirous to divorce his wife, he shall be obliged to give her the tollok or letters of divorce, which is repeated a second time at the expiration of fourteen days, and at the end of the month she receives the third tollok, during which time the husband is obliged to maintain the wife and to furnish her with all necessaries.
88. Before the third tollok is issued a reconciliation between the parties may take place, and it is not necessary that they should disclose to anybody the causes of their differences.
89. But should the third tollok have been issued they must divorce and it is in use, that should the husband be determined to divorce his wife without any further consideration, to issue three tolloks or letters of divorce at once, but in that case he is obliged to furnish the wife with a dwelling place for the space of three months, and she shall not be allowed to marry before she has had three times her menses.

90. The husband is held to give notice to the commandant on both sides of such divorce, which shall be recorded by them, and nobody else shall meddle themselves therewith.
91. No wife is obliged to receive from the husband any interest money for her maintenance, but such maintenance must according to the Mohammedan law be the produce of some trade or manual work of the husband.
92. A married man decaying into poverty, so as to be unable to maintain his wife, such wife, if she should be possessed of any wealth which she is unwilling to share with her husband may obtain a divorce should she wish it under the same provision as stated in the 76 Act.
93. The husband leaving his wife in order to repair to some place or other on business, he must without giving occasion to divorce provide for the maintenance of his wife in the presence of his relations.
94. Married woman disobeying her husband shall suffer herself to be reprimanded by him for the first time with kindness in order to bring her back to her duty.
95. Should the wife however, fail in her due obedience for the second time the husband is then permitted to inflict on her some gentle correction but by no means to treat her in a rough manner so as to occasion any marks either in her face or other parts of her body much less is he permitted to beat her on any dangerous place of the body so that blood appears.
96. A divorced wife being pregnant is entitled to be maintained till she be delivered by her husband who is also obliged to pay the expense of her lying-in.

97. The wife in the above case is obliged to nourish her child during three days without being at liberty to ask or receive anything.
98. But the husband is after the expiration of the time obliged to fix a certain amount for the maintenance of the child if the wife requires it.
99. Should the wife be unwilling to keep the child longer than three days the husband is obliged to receive it.
100. The man is according to the law of Mohamet permitted to marry four wives that is to say only such men as are uncommonly addicted to the fair sex who have abilities enough to acquit themselves of their duty and who are possessed of wealth enough to maintain the same properly.

Signatories to the 1806 Code

1. Mamoenyua Poele Slyma Lebbe Marikar
2. Segoe Ismail Bebbe Nyna Marikar
3. Oedoema Lebbe Meestriar Sekadie Marikar4. Magellem Moegydien Lebbe
5. Segoe Mira Lebbe Oedoema Lebbe Marrikar
6. Ibrahim Poelle Sinne Lebbe
7. Lebbe Marikar Savaay Lebbe Marikair
8. Agamadoe Lebbe Segoe Abdul Kader Interpreter
9. Omevoenayna Poelle
10. Sege Lebbe
11. Kasie Lebbe Mamoenya Poelle
12. Asen Miera Lebbe Moegammadoe Lebbe

13. Andekana Poella Ossena Lebbe
14. Kasi Lebbe Segoe Mira Lebbe
15. Aydroes Lebbe Sultan Kaydoe
16. Lebbe Marikar Oemevoe Lebbe Marikar
17. Lebbe Marikar Sanasoe Lebbe Marikar
18. Segoe Mira Poelle Awoewekar Lebbe Alvera
19. Mira Lebbe Meestiviar Sekadie Marikar
20. Siyma Lebbe Jeoboe Nayna.

Alexander Johnston papers C/0 54/124 (Originally signed in Tamil)