

The High Court of Jharkhand Hindu Marriage Rules, 2017

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Notification No. 03/2017/R&S, dated 16th May, 2017. - In exercise of the powers conferred by Sections 14 and 21 of the Hindu Marriage Act, 1955 (25 of 1955), the High Court of Jharkhand, Ranchi hereby frames "The High Court of Jharkhand Hindu Marriage Rules, 2017" as under;

1. Short title and commencement. - (i) These rules may be called the High Court of Jharkhand Hindu Marriage Rules, 2017.

(ii) These rules shall come into force with effect from the date of publication in the Jharkhand Gazette.

2. Definitions. - (i) The Act' means the Hindu Marriage Act, 1955 (25 of 1955).

(ii) 'Court' means the Court mentioned in Section 3(b) of the Act.

3. Form of the proceeding. - The following proceeding under the Act shall be initiated by original petitions :-

(i) Under Section 9 for restitution of conjugal rights;

(ii) Under sub-section (1) of Section 10 for judicial separation;

(iii) Under sub-section (2) of Section 10 for rescinding a decree for judicial separation; ;

...

(iv) Under Section 11 for declaring a marriage null and void;

(v) Under Section 12 for annulment of a marriage by a decree of nullity;

(vi) Under Section 13 for divorce;

(vii) Under Section 26 to make, revoke suspend or vary an order for provision regarding the custody, maintenance or education of minor children.

4. Every other proceeding, subsequent to the original petition mentioned in Rule 3, shall be initiated by an interlocutory application.

5. Every petition, application, affidavit, decree or order under this Act shall be headed by a cause title in Form No. 1 given in the schedule to these rules with such variation as may be necessary and shall be drawn up, so far as possible, in the forms prescribed in the schedule to the Indian Divorce Act, 1869 (4 of 1869).

6. When a husband or a wife is mentally ill or suffering from mental disorder, any petition under the Act other than a petition for restitution of conjugal rights may be brought on his or her behalf by the person entitled to his or her custody.

7. Petitions of minors. - (i) Where the petitioner is a minor, he or she shall sue by his or her next friend to be approved by the Court; and no petition presented by a minor under the Act shall be filed until the next friend has undertaken in writing to be answerable for costs such undertaking shall be filed in Court, and the next friend shall thereupon be liable in the same manner and to the same extent as if he were a plaintiff in an ordinary suit.

(ii) The next friend shall file an affidavit along with the petition, which shall state the age of the minor, that the next friend has no adverse interest that of the minor and the next friend is otherwise a fit and proper person to act as such.

(iii) The Court may on considering the affidavit and such other material as it may require, record its approval to the representation of the minor by the next friend or pass such order or orders as it may deem fit.

8. Contents of petition. - In addition to the particulars required to be given under Order VII, Rule 1 of the Code of Civil Procedure and Section 20 of the Act, every original petition shall state-

(i) The place and the date of the marriage;

(ii) The names of the parties and their occupation, status and domicile of the wife and husband before and after the marriage;

(iii) The principal permanent address where the parties cohabited including the address where they last resided together;

(iv) The names of the children, if any, of the marriage together with their dates of birth or ages;

(v) If prior to the date of the petition there has been any proceeding between the parties to the petition with the reference to their marriage in any Court in India, the full particulars thereof including the result, if any;

(vi) If the petition is for restitution of conjugal rights the date on or from which and the circumstances under which the respondent withdrew from or terminated conjugal relationship with the petitioner;

(vii) If the petition is for judicial separation or divorce the matrimonial offence alleged or other grounds upon which the relief is sought, together with full particulars thereof so far as such particulars are known to the petitioner, e.g.-

(a) In the case of alleged desertion the date and the circumstances under which it began;

(b) In the case of presumption of death, the last place where the parties lived together and the date when and the place where respondent was last seen or heard of as alive and the steps, if any, taken to ascertain his whereabouts;

(c) In the case of cruelty or adultery the specific acts of cruelty or adultery and the occasions when and the places where such acts were committed;

(d) In the case of incurable unsoundness of mind, the time when such unsoundness began to manifest itself, the nature and the period of the curative steps taken together with the name and address of the person, if any, who treated for such unsoundness of mind;

(e) In the case of leprosy, or venereal disease in a communicable form, when such ailment began to manifest itself, the nature and the period of the curative steps, if any, taken together with the name and address of the person who treated for such ailment and whether or not such ailment was contracted from the petitioner;

(f) In case of an allegation of fraud, a complete specification of the facts which constitute the fraud;

(viii) If the petition is for a decree of nullity of marriage on the ground specified in clause (c) or clause (d) of Section 12 of the Act, the time when the facts relied on were discovered and whether or not marital intercourse with the consent of the petitioner took place after the discovery of the said facts;

(ix) If the petition is by a husband for divorce on the ground that the wife is living in adultery or judicial separation on the ground that his wife committed adultery with any person, the name, occupation and place of residence of such person, so far as they can be ascertained;

(x) If the petition is by a wife for divorce on the ground that the husband is living in adultery or judicial separation on the ground that her husband committed adultery with any woman, the name, occupation and place of residence of such woman, so far as they can be ascertained;

(xi) If the petition is by the wife for divorce on the ground that her husband has been guilty of rape, sodomy and bestiality, besides the same being averred in detail, the petition must also accompany all particulars in proof of the same, including a certified copy of judgment, if any, in case of conviction;

(xii) If the petition is one for a decree of dissolution of marriage or of nullity or annulment of marriage or for judicial separation, that there is no collusion or connivance between the petitioner and the other party to the marriage or alleged marriage;

- (xiii) The details of the property, if any, mentioned in Section 27;
- (xiv) Set out at the end the relief or reliefs sought, including any claim for-
 - (a) Damages against the co-respondent;
 - (b) Custody, care and maintenance of children; and
 - (c) Permanent alimony and maintenance; and
 - (d) Costs.

Where a claim is made under clause (c), the petition shall specify the annual or capital value of the husband's property, the amount of his annual earning and other particulars relating to his financial resources and also the annual or capital value of the wife's property.

9. Verification. - Statements contained in every petition shall be verified by the petitioner or some other competent person in the manner required by the Code of Civil Procedure for the time being in force for the verification of plaints.

10. Application for leave under Section 14 of the Act. - (1) Where any party to a marriage desires to present a petition for divorce within three years of such marriage, he or she shall obtain leave of the Court under Section 14 of the Act on ex parte application made to the Court in which the petition for divorce is intended to be filed.

(2) The application shall be accompanied by the petition intended to be filed bearing the proper Court fee under the law and in accordance with the rules. The application shall be supported by an affidavit made by the petitioner setting out the particulars of exceptional hardships to the petitioner or exceptional depravity on the part of the respondent on which leave is sought.

(3) The evidence in such application may, unless the Court otherwise directs, be given by affidavit.

(4) When the Court grants leave, the petition shall be deemed to have been duly filed on the date of the said order. Within a week of the date of the said order or, within such further time as may be fixed by the Court, the petitioner shall file sufficient number of copies of application for leave and order of the Court thereon and of the petition for divorce for service upon the respondent in the petition.

11. Service of copy of application for and order granting leave on the respondents and procedure after service. - (1) When the Court grants leave under the preceding rule a copy of the application for leave and order granting leave shall be served on each respondents along with the notice of the petition for divorce.

(2)(a) When the respondent desires to contest the petition for divorce on the ground that leave for filing the petition has been erroneously granted or improperly obtained, he or she shall set forth in his or her written statement the grounds with particulars on which the grant of leave is sought to be contested;

(b) The Court may, if it so deems fit, frame, try and decide the issue as to the property to leave granted as a preliminary issue;

(c) The Court may, at the instance of either party, order the attendance for examination or cross-examination of any deponent in the application for leave under the preceding rule.

12. Every petition made under the Act shall be accompanied by a certified copy of the certificate from the Hindu Marriage Registrar, if any, prescribed by the State Government about the solemnisation of the marriage under the Act. A petition for divorce on any of the grounds mentioned in clauses (viii) and (ix) of sub-section (1) of Section 13 of the Act shall be accompanied by a certified copy of a decree for judicial separation or for restitution of conjugal rights, as the case may be.

13. When a petition is presented, the Chief Ministerial Officer of the Court shall assign a distinctive number to the petition and all subsequent proceeding on the petition shall bear that number.

14. Along with the petition, the petitioner shall furnish a copy thereof for service on the respondent and if co-respondent is impleaded, an additional copy for service on him, together with the fee prescribed under the Court-fees Act for service of notices.

15. (i) Notice of the petition shall be in Form No. II given in the schedule to these rules for settlement of issue and shall require the respondent and the co-respondent, if one is named in the petition to enter appearance in person or by pleader, and file a written statement not less than seven days before the day fixed in the notice.

(ii) The notice together with a copy of the petition shall be served on the respondent and the co-respondent, if named, in the manner prescribed in Order V of the Code Of Civil Procedure not less than 21 days before the day appointed therein:

Provided that the Court may dispense with such service altogether in case it seems necessary or expedient so to do.

16. Co-respondent in husband's petition. - In any petition presented by a husband for divorce on the ground that the wife is living in adultery or judicial separation on the ground that the wife has, since the solemnisation of the marriage, been guilty of adultery, the petitioner shall make the alleged adulterer, if alive a co-respondent in the said petition, unless he is excused from so doing by an order of the Court which may be made on any or more of the following grounds which shall be supported by an affidavit in respect of the relevant facts :-

(i) that the respondent is leading the life of a prostitute, and that the petitioner knows of no person with whom the adultery has been committed;

(ii) that the name of the alleged adulterer is unknown to the petitioner, although he has made due efforts for its discovery;

(iii) that the alleged adulterer is dead;

(iv) for any other sufficient reason that the Court may deem fit to consider.

17. Respondent in wife's petition. - Unless otherwise directed, where a wife's petition alleges adultery with a woman named and contains a claim for costs against her, she shall be made a respondent in the case.

18. Intervention. - (i) Any person other than a party to the proceeding including person charged with adultery or sodomy not made a respondent or co-respondent, shall be entitled to appear and intervene in the proceedings with the leave of the Court. The application shall be supported by an affidavit setting forth the facts on the basis on which the intervention is sought for.

(ii) Notice for the application together with a copy of the affidavit shall be served on all parties who shall be at liberty to the counter affidavit.

(iii) If, after hearing all the parties, the Court grants leave, the intervener may take part in the trial subject to such terms and conditions as the Court may deem fit to impose.

(iv) If the Court is satisfied that the intervention was made without sufficient cause it may order the applicant to pay the whole or part of the costs occasioned the intervention. If on the other hand, the Court finds that the intervention is justified it may pass suitable orders for payment to the applicant the whole or any part of the costs of intervention.

(v) A person to whom leave to intervene has been granted may file in the Court an answer to the petition or written statement containing the charges, or allegation against such intervener.

19. Written statements in answer to petition filed by respondent. - The respondents may, and if so required by the Court, shall, present a written statement in answer to the petition and the provisions of Order VIII of the Code of Civil Procedure shall apply mutatis mutandis to such written statements. In particular if in any proceedings for divorce the respondent opposes the relief sought in the petition on the ground of the petitioner's adultery, cruelty, or desertion, the written statement shall state the particulars of such adultery, cruelty or desertion.

20. Damages. - Any husband may, in petition for divorce, claim damages from the co-respondent on the ground of his having committed adultery with the wife of such petitioner-

(i) Such petition shall be served on the said co-respondent and the wife unless the Court dispenses with such service in accordance with the provisions of rule 15.

(ii) The damages to be recovered on any such petition shall be ascertained by the Court although the respondent or either of them may not appear.

After the Court decision has been given, the Court may direct in what manner the damages shall be paid or applied.

21. Costs. - The Court may direct that the whole or any part of the costs of the petition for nullity of marriage or for divorce incurred by any of the parties to such petitions may be paid by any of the other parties thereto:

Provided that the co-respondent shall not be ordered to pay the petitioner's costs-

(i) If the respondent was at the time of adultery living apart from the husband and leading the life of a prostitute, or

(ii) If the co-respondent had not, at the time of adultery, reasons to believe the respondent to be a married woman.

The award of costs shall be in the discretion of the Court and the Court shall make an order of the same while passing the decree.

22. Application for alimony and maintenance. - (a) Every application from maintenance pendente lite permanent alimony and maintenance or for custody, maintenance and educational expenses of minor children, shall state the average monthly income of the petitioner and the respondent, the sources of these income, particulars of other movable and immovable property owned by them, the number of dependents on the petitioner and the respondent, and the names and age of such dependents.

(b) Such application shall be supported by an affidavit of the applicant.

23. Unless otherwise directed by the Court, the costs of the petition under the Act shall be cost as taxed in suit under the Indian Divorce Act (VI of 1869).

24. Appeal under the Act shall be governed by the relevant rules in the High Court of Jharkhand Rules, 2001, General Letters, Circulars, Orders, Civil Court Rules framed by the High Court of Jharkhand, as the case may be, so far as they may be applicable.

Schedule

Form No. 1

(Rule 5)

In the Court of the Principal Judge, Family Court at...../ Principal District Judge

Original Suit No..... of 20

In the matter of the Hindu Marriage Act, 1955

A.B..... Petitioner.

C.D..... Respondent.

E.F..... Co-respondent.

Petition under Section of.... the Hindu Marriage Act, 1955, and rule.....of the rules under Hindu Marriage Act.

Form No. II

(Rule 5)

In the Court of the Principal Judge, Family Court at...../ Principal District Judge

Original Suit No..... of 20

In the matter of the Hindu Marriage Act, 1955

A.B..... Petitioner.

C.D..... Respondent.

E.F.....Co-respondent.

Petition presented on

Petition filed on.....

Whereas on the.....day of..... 20..... the above-named petitioner filed a petition against the respondent for..... (specify the relief). You are hereby required to appear in the Court on the.....day of.....20 at 10.30 a.m. (7.30 a.m. in the case of morning sitting in person or by pleader duly instructed and able to answer all material questions relating to the above proceeding.

Also take notice that in default of your appearance on the aforesaid day the issues will be settled and the petition heard and determined in your absence. You shall also bring with you or sent by your pleader any documents on which you intend to rely in support of your defence.

You are required to file a written statement in Court on or before the day of..... 20...

Given under my hand and the seal of the Court.....this day of..... 20.....

Principal Judge/ Principal District Judge

Note. - A Copy of the petition accompanies this notice.