

APPENDIX-13

THE HINDU MARRIAGE (GAUHATI HIGH COURT) RULES, 1988¹
 (HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA,
 MIZORAM AND ARUNACHAL PRADESH.)

**GAUHATI HIGH COURT RULES TO REGULATE THE PROCEDURE UNDER THE
 HINDU MARRIAGE ACT, 1955.**

Notification No. HC XI-2/83/10376/RC, dated 27.4.1989

In exercise of the powers conferred by Sections 14 and 21 of the Hindu Marriage Act, 1955 (Act No. XXV of 1955) with all its amendments up-to date, the Gauhati High Court (High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh) is pleased to make the following Rules for regulating the proceedings under the said Act. These Rules would supersede the previous Rules made by the then High Court of Assam vide Notification No. HC.XI-3/53/1429-RC, dated 9th March, 1956.

1. Short title.— These Rules may be called the Hindu Marriage (Gauhati High Court) Rules, 1988¹.

2. Commencement.— These Rules shall take effect from the date of their publication in the Assam Gazette.

3. Definitions.— Notwithstanding contained anything contrary in the subject or context, in these Rules:

(i) "Act" means the Hindu Marriage Act, 1955 (Central Act No. XXV of 1955) with all its up-to date amendments.

(ii) "Court" means the District Court as mentioned in Section 3(6) of the Act.

(iii) "Code" means the Civil Procedure Code, 1908 as amended from time to time.

(iv) "Section" and "sub-section" means section and sub-section of the Act respectively.

(v) All terms and expressions used in these Rules shall carry the same meaning as assigned to them in the Act.

4. Petition.— (i) Every petition under the Act shall be accompanied by either certified extract from Hindu Marriage Register maintained as per Section 8 of the Act where the marriage is registered under the Act, or, in the absence of the same, an affidavit to the effect that the marriage was solemnised between the spouses under the Hindu rites and rituals.

[(ii) Every petition for divorce on either of the grounds mentioned in clauses

Note 1: The Nomenclature of the existing the "Hindu Marriage Act Rules, 1988" is modified as The Hindu Marriage (Gauhati High Court) Rules, 1988 vide Notification under Memo No. HC.XI-06/2007/493 dated. 20.06.2008 and wherever the former expression occurs the same would be read as the latter.

(i) and (ii) of sub-section (1-A) of Section 13 of the Act shall be accompanied by certificate copy of the decree of judicial separation or for restitution of conjugal rights as the case may be]².

5. Initiation of proceedings.—All proceedings under the Act shall be initiated by petition viz:.....

- (i) Under Section 9 for restitution of conjugal rights.
- (ii) Under Section 10(1) and 10(2) for Judicial separation and for rescinding a decree for Judicial separation.
- (iii) Under Sections 11 and 12 of the Act for nullifying a marriage.
- (vi) Under Section 13 and Section 13(b) for a decree a divorce and for decree of divorce by mutual consent respectively.
- (v) Under Section 14 for leave to present a petition for divorce before the expiration of one year from the date of marriage.
- (vi) Under Section 26 for making, revoking, suspending or varying orders and provisions previously made with respect to the custody, maintenance and education of minor children belonging to the spouses to the proceeding.

Note—In case of (v) and (vi) the petitions should be supported by affidavit as per provision of Civil Procedure Code.

6. Petition by or against a person suffering from mental disorder.—A person suffering from mental disorder in any proceeding under the Act shall be treated in all respect and for purposes as a person of unsound mind as contemplated under Order XXXII of the Code.

7. Contents of petitions.—In addition to the particulars required under Order VII Rule 1 of the Code and Section 20(1) of the Act, every petition for Judicial separation, nullity of marriage and divorce under Sections 9 and 13 of the Act shall contain the following particulars:-

- (i) The place and date of marriage.
- (ii) Whether the spouses were Hindus by religion at the time of the marriage and whether they continue to be so till the date of filing of the petition.
- (iii) The name, status, domicile of the spouses before the marriage/after the marriage and at the time of presenting the petition.
- (iv) The principal permanent address where the parties reside at the time of presenting the petition together with the addresses where they last resided together.

Note 2: The existing sub-Rule (ii) of Rule 4 substituted vide Notification No. HC.X1-06/2007/493 dated. 20.06.2008. The earlier sub-rule reads as under :-

"(ii) Every petition for divorce on either of the grounds mentioned in clauses (i) and (ii) of sub-section (1) of Section 13 of the Act shall be supported by certificate copy of the decree of judicial separation or for restitution of conjugal rights as the case may be."

(v) The name of the children, of the marriage, if any, their sex and their dates of birth or ages.

(vi) If there was any prior proceeding under the Act between the parties, full particulars thereof.

(vii) If the relief is sought on the ground of matrimonial offence, or offences or other grounds—the time and place of the acts or facts alleged with sufficient material particularity but not the evidence by which they are intended to be proved such as:-

(a) for restitution of conjugal rights the date or time from which and the circumstances under which the other spouse i.e., the respondent had withdrawn from the society of the Petitioner.

(b) for decree of nullity of marriage under Sections 12(1) (c) and 12(1)

(d) the material particulars and circumstances of force or fraud and the facts with time of discovery of such force or fraud and the facts and whether marital intercourse took place or not with the consent of the Petitioner after the discovery of such facts.

(c) for a decree of Judicial separation under Section 10(1) and divorce under Section 13 (1) (i) on the ground that the other party had voluntary sexual intercourse with any person other than his or her spouse—the name, occupation and place of residence of such person or persons so far they can be ascertained and the specified particulars of such acts of sexual intercourse as far as practicable.

(d) (i) for alleged desertion the date and time and the circumstances in which it started. (ii) for cruelty—either mental or physical the specific acts or bundle of facts constituting cruelty specifying the place and occasion where and when such acts were committed.

(e) for unsoundness of mind or mental disorder—the nature of such mental condition and the time when it began to manifest itself and the curative steps taken with the period of treatment.

(f) for virulent and incurable form the leprosy or venereal diseases in communicable form—when such ailment began to manifest and the nature and the period of curative steps taken.

(g) for the relief on the grounds specified in Section 13(1) (vi), the date of renunciation and the particulars of the religious order which the other spouse has entered into.

(h) for the relief on the grounds specified in Section 13(1) (vii), the time and the place where the other spouse was last seen or heard of being alive and the steps taken, if any, to ascertain his or her whereabouts;

(i) for the relief on the grounds of rape or sodomy or bestiality the occasion, place and the names and address of the persons or the particulars of beast involved in the commission of such acts. In case of conviction or criminal proceedings for committing rape or sodomy, the particulars thereof;

(j) for relief under Section 13 (2) (iii) of the Act, particulars of decree under Section 18 of the Hindu Adoption and Maintenance Act, 1956 or order under Section 125 of the Criminal Procedure Code, 1973 (corresponding to Section 488 of the Cr. P. C. 1898) together with a further statement supported by affidavit that since after the passing of such decree or order, cohabitation between the spouses has not been resumed for one year or upwards;

(k) for relief under Section 13 (2) (iv) — the date of birth of the wife or the particulars showing the age of the wife at the time of the marriage together with the date or time and the place of repudiation with its mode:

(viii) the particulars of the property as per mentioned in Section 27 of the Act.

(ix) the relief or reliefs prayed for.

8. Necessary parties.— (a) In every petition for divorce or Judicial separation on the ground that the other spouse/respondent is living in adultery or has committed adultery with any person, after the solemnisation of the marriage the petitioner shall make such adulteror or adulteress a co-respondent. The petitioner may however, apply to the court by an application supported by affidavit for leave to dispense with the joinder of such person as a co-respondent on any of the following grounds:-

(i) that the name of such person is unknown to the Petitioner although he has made all efforts for discovery;

(ii) that such person is dead;

(iii) that the Respondent being the wife is leading a life of a prostitute and that the petitioner knows of no person with whom adultery has been committed;

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

(b) In every petition under Section 13 (2) (i) of the Act the petitioner shall make "the other wife" mentioned in that section a co-respondent.

(c) In every petition under Section 11 of the Act, the Petitioner shall make the spouse alleged to be living at the time of the marriage as Co-respondent if the relief is sought on contravention of Section 5 (1) of the Act.

9. Affidavit for non-collusion.—Every petition (Excepting petitions under Section 11) shall be accompanied by an affidavit to the effect that it is not presented or prosecuted in collusion with the respondent.

10. Affidavit for non-condonation.—Where the relief is sought on the ground specified in Section 10 (1) or under Section 13 (1) (i) of the Act or where the

ground is for cruelty, the petition shall be accompanied by an affidavit to the effect that the petitioner has not, in any manner, been accessory to or connived at the act or acts complained of and that the Petitioner has not condoned the act or acts complained of and has not condoned the cruelty.

11. Affidavit of non-cohabitation.—Every petition under Section 13 (1-A) (i) of the Act shall be accompanied by an affidavit made by the Petitioner that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or more after the passing of a decree for Judicial separation between the parties.

12. Affidavit of non-restitution of conjugal right.—Every petition under Section 13 (1) (ii) of the Act shall be accompanied by an affidavit made by the Petitioner to the effect that there has been no restitution of conjugal rights between the parties to the marriage for a period of one year or more after the passing of a decree for conjugal rights between the parties.

13. Affidavit for mutual consent for divorce.— Every petition filed jointly by the spouses under Section 13 B (1) of the Act shall be accompanied by an affidavit sworn jointly by the spouses to the effect that they have been living separately for a period of one year or and they have not been able to live together and that they have mutually agreed for dissolution of the marriage.

14. Verification of the petition.—Every petition under the Act shall be verified in respect of the statements contained in the petition by the petitioner or some other competent person on behalf of the petitioner in the manner required by the Code.

15. Application for leave under Section 14 of the Act.— (1) The application for leave shall be filed accompanied by the original petition intended to be filed for divorce under the Act. In support of the application for leave under Section 14 of the Act there shall be filed an affidavit made by the petitioner setting out the particulars of exceptional hardship or exceptional depravity alleged, whether there was any previous application under the said section, whether there are living children of the marriage with particulars of their age, sex and custody, whether any, attempts were made for reconciliation with it result and any other circumstances which may assist the Court in deciding the question, whether there is reasonable probability of a reconciliation between the parties.

(2) Notice of the application together with the Original petition for divorce shall be served on the respondent who may contest the same by filing affidavit in opposition.

(3) The leave matter may be decided on the basis Affidavit and counter affidavit . But in exceptional cases the Court may, if necessary, order a deponent to be

cross-examined on his or her affidavit.

(4) When the court grants leave, the petition for divorce shall be deemed to be filed duly on the date of the said order provided proper court fee thereon is paid and other requirements fulfilled within the time allowed by the Court.

16. Notice.— The Court shall issue notice to the respondent or co-respondent if any, being accompanied by a copy of petition, requiring, unless the Court otherwise directs, the respondent or co-respondent to file his or her written statement in court on or before the date fixed in the notice. Every petition and notice under the Act shall be served upon the party intended thereby in the manner provided for summons under Order V of the Code:

Provided that the court may dispense with such service altogether if it deems necessary or expedient to do so.

17. Written statement in answers to petitions by respondents.—The provisions of Order VIII of the Code shall apply mutatis mutandis to the written statement, if any, presented by the respondent in answer to the petition. Where a counter-claim is made in terms of Section 23-A of the Act it shall comply with the Rules applicable to petitions on the like grounds.

18. Mode of taking evidence.—The witnesses in all proceedings before the court where their attendance can be had, shall be examined orally and if any party may after himself or herself as a witness and shall be examined, cross-examined and re-examined like any other witness:

Provided that the parties shall be at liberty to verify the respective cases in whole or in part by affidavit, but the deponent in every such affidavit shall on the application of the opposite party or by direction of the Court be subject to be cross-examined by or on behalf of the opposite party, orally and after such cross-examination may be re-examined by or on behalf of the party by whom such affidavit was filed.

19. Costs.— Unless otherwise directed by the court, the cost of the petition under the Act shall be costs as taxed in a suit.

20. Order as to costs.—The award of costs shall be within the discretion of the court.

Whenever in any petition any alleged adulterer or adulteress has been made a correspondent or any such party have been impleaded as per Section 23-A of the Act and the adultery has been established the court may order correspondent or the party impleaded to pay the whole or any part of the cost of such proceedings:

Provided that the correspondent shall not be ordered to pay the costs:-

(i) if the respondent was at the time of adultery living apart from her husband and leading the life of a prostitute;

(ii) if the correspondent had not, at the time of adultery, reason to believe the respondent to be a married person;

(iii) if the allegation of charge of adultery against the person impleaded under Section 23-A of the Act is found to be baseless or not proved, rather, in that case the person making such allegation shall be asked to pay costs to the party impleaded.

21. Application for alimony and maintenance.—Every application for maintenance pendente lite permanent alimony and maintenance or for custody, maintenance and education expenses of minor children shall be supported by an affidavit and shall state the average monthly income of the petitioner and the Respondent, the source of their income, particulars of other movable and immovable property owned by the spouses jointly and severally, the details of their liability and dependents, if any, with the names and ages of such dependence.

22. Supply of certified copy of the decree to the parties.—(1) In every case where a marriage is dissolved by decree of divorce; the court passing the decree shall give a copy thereof free of cost to each of the parties as per Section 23 (4) of the Act. The copy so supplied shall be authenticated as “true copy” by the court passing the decree.

(2) A register shall be maintained in the court where the particulars of decree shall be incorporated and signatures of the parties or their Advocates or agents shall be obtained in taken of their having received a copy of the decree.
