

The Orissa



Gazette

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LAW DEPARTMENT

NOTIFICATION

The 12th October 1990

S. R. O. No. 963/90—In exercise of the powers conferred by section 23 of the Family Courts Act, 1984, (66 of 1984), the State Government after consultation with the High Court of Orissa, do hereby make the following rules namely :—

1. *Short title and Commencement* :—(1) These rules may be called the Family Courts (Orissa) Rules, 1990.

(2) They shall come into force on the date of their publication in the official Gazette.

2. *Definitions* :—In these rules, unless the context otherwise requires.

(a) "Act" means the Family Courts Act, 1984,

(b) "Centre" means a counselling centre ;

(c) "Court" means the family court established under section 3 of the Act ;

(d) "Principal Counsellor" means the Principal Counsellors, appointed by the High Court and includes Counsellor or Counsellors, as the case may be, where Principal Counsellor is not appointed.

(e) "Prescribed" means prescribed by rules made under the Family Court Act, 1984 (Act 66/84) ;

(f) "State Government" means the Government of Orissa ;

(g) "High Court" means the High Court of Orissa ;

(h) "Service" means the Orissa Superior Judicial Service of selection grade ;

(i) all other words and expression used herein but not defined and defined in the Act shall have the meanings respectively assigned to them in the Act.

3. *Terms and conditions of service of the Judge of Family Courts* : (a) A Judge of a Family Court shall hold office for a term of five years from the date he assumes office or until he attains the age of Superannuation, whichever is earlier.

(b) A Judge of a Family Court shall be entitled to the selection grade of pay and allowances and leave as admissible to an officer of the selection grade in the Orissa Superior Judicial Service.

(c) Other conditions of service of a Judge of the Family Court shall be those applicable to officers in the cadre of District Judges (Senior branch).

4. *The number and categories of other employees of Family Court*—(a) The number and categories of other employees of a Family Court shall be as specified in the schedule appended to these rules.

(b) The conditions of service of the employees shall be that as applicable to their counter parts under the Orissa District and Subordinate Courts' Ministerial Service (Method of Recruitment and conditions of service) Rules, 1969.

Appointment of Counsellors:—Principal Counsellor and other Counsellors attached to the Court shall be appointed by the High Court in consultation with one or more professionally qualified persons in family and child welfare, preferably working with a recognised institution of social science or work.

6. *Qualifications of counsellors:*—Persons having a Master's degree in social work with a minimum experience of 3 years in family counselling shall be eligible for appointment as counsellors.

Provided that where such persons are not available, persons above the age of thirty-five working in the field of social service and welfare activities and engaged in promoting the welfare of Family and Child Care with a degree in Social Work shall be eligible for such appointment.

7. *Counsellor to fix time and date for counselling:*—The counsellor appointed to advise the parties shall fix the time, place and date of appointment and the parties so noticed shall be bound to attend.

8. *Functions of a Counsellor:*—Counsellor entrusted with any petition shall assist and advise the parties regarding the settlement of subject matter of dispute between the parties or any part thereof. The Counsellor shall also help the parties in arriving at a reconciliation.

9. *Home Visits:*—The Counsellor in the discharge of his duties shall be entitled to pay visits to the houses of any of the parties.

10. *Interviews:*—The Counsellor in the discharge of his duties shall be entitled to interview relatives friends acquaintances of parties or any of them.

11. *Information from Employer:*—The Counsellor in the discharge of his duties may seek information as he may deem fit from the employer of any of the parties.

12. *Reference to experts:*—The Counsellor may refer the parties to an experts in such areas as medicine or psychiatry, if he considers it desirable.

13. *Panel of experts:*—The Judge of the Family Court in consultation with the Principal Counsellor shall prepare a panel of medical and other experts who shall be paid fees and expenses (including T. A.) as per the scale of fees and expenses fixed by the Government from time to time, by an order made in this behalf.

14. *Confidentiality of information:*—(a) Information gathered by the Counsellor, any statement made before the Counsellor or any notes or reports prepared by the Counsellor shall be treated as confidential and shall not be disclosed to any Court or any other person except with the consent of both the parties.

(b) Such notes, statements, information, report or any material lying with the Counsellor shall be kept in sealed packets by the Counsellor and shall not form a part of evidence before the Court.

15. *Counsellor not to give evidence:*—The Counsellor shall not be asked to give evidence in any court in respect of the information, statements, notes for report.

Provided that the Counsellor may submit to the Court a report relating to the home environment of the parties concerned, their personalities and their relationship with their child or children in order to assist the court in deciding the question of custody or guardianship of any child or children of the marriage.

Provided further that, the Counsellor may also submit to the Court a report relating to home environment income or standard of living of the party or parties concerned in order to assist the court in determining the amount of maintenance and or alimony to be granted to one of the parties.

16. *Report from the Counselor*—The court may also request the counsellor to submit to it a report on any other subject in order to assist the court in adjudicating upon the matter before it or any part thereof.

17. *Supply of copies*—A copy of the report submitted under rules 15 and 16 may be supplied to the parties on such request being made by the parties.

18. *Right of the parties to make submissions*—The parties shall be entitled to make their submission on the report.

19. *Counsellor not to be cross-examined*—The counsellor shall not be called upon to give evidence and shall not be cross-examined in any court in respect of the report so made.

20. *Submission of memorandum*—Save as provided in these rules, the counsellor shall submit a brief memorandum to the court informing the court of the outcome of the proceedings before him.

21. *Settlement before counsellor*—When the parties arrive at a settlement, before the counsellor, relating to the dispute or any part thereof, such settlement shall be reduced to writing and shall be signed by the parties and countersigned by the counsellor. The Court shall pronounce a decree in order in terms thereof unless the court considers the terms of the settlement unconscionable or unlawful or contrary to public policy.

22. *Counsellors right to supervise custody of children*—The Counsellor shall be entitled to supervise the placement of children in the custody of a party and shall be entitled to make surprise visits to the home where the child resides. In the event of the counsellor coming to a conclusion that any alteration is required on the arrangement relating to custody of a child or children, the counsellor shall make a report to the court in that connection. Thereupon the court may, after giving notice to the parties to appear before it, pass such orders after hearing the parties, in that connection as the court may deem fit.

23. *Counsellors right to supervise reconciliation*—The counsellor shall also be entitled to supervise, guide and assist the reconciled couples (on the request of either party) even if the matter is no longer pending in court.

24. *Co-habitation with course of reconciliation proceedings*—Co-habitation between the parties in the course of conciliation proceedings before the counsellor or court shall not be deemed to be a condonation of the matrimonial offence.

25. *Failure to attend counselling*—If one of the parties fails to attend the counsellor on the date and at the time so fixed, the counsellor may fix another date and time and confirm the absent party accordingly by registered post. If the said party does not attend the counselling centre on such adjourned date the counsellor may make a report to the court stating that one or both the parties have failed to attend the counselling centre. On such report being made, the court may proceed with the matter without prejudice to other powers of the court to take action against a defaulting party.

26. *Counselling centre*—(a) There shall be attached to each family court a centre to be known as "The counselling centre of the family court".

(b) Each such centre may have a principal counsellor and shall have as many counsellors as may be determined by the High Court.

(c) The counselling centres may be divided into different units and may be located in the court premises or in such other place or places as the High Court may direct but not far away from the Family Court.

27. *Party entitled to legal advice*—A party will be entitled to take legal advice at any stage of the proceedings either before the counsellor or before the court. A party in indigent circumstances will be entitled to free legal aid and advice.

28. *Panel of Lawyers for free legal advice*—The court shall maintain a panel of Lawyers willing to render free legal aid and advice. A party entitled to free legal aid and advice will be entitled to select any of the Lawyers from the said panel provided the lawyer is available and willing to accept the case.

29. *Conditions of Engagement*—The terms and conditions of engagement of such a Lawyer and the remuneration, if any, to be paid to him, will be as laid down in the Orissa State Legal Aid and Advice Scheme, 1981 or any modification thereafter.

30. *Circumstances entitling a party to legal aid*—The circumstances under which such legal aid will be made available to a party shall be as laid down by the High Court.

31. *List of institutions agencies, etc.*—The principal judge in consultation with the principal counsellor shall also prepare a list of institutions, organisation or agencies working in area of family welfare, child guidance, employment or in any other area that he may deem fit, in order to enable a counsellor or parties to obtain the assistance of such an institution, organisation or agency and may also lay down the manner and the conditions for association of such institutions, organisations or agencies with a family court.

32. *Assistance of other organisation*—The counsellor may take the assistance of such an organisation, institution or agency in the discharge of his duties.

33. *Fee for counsellor*—Such counsellor shall be entitled to assisting fee of Rupees ~~one~~ ^{two} hundred per day. *as actual work.*

34. *Fees and expences of medical experts*—The medical experts or other experts referred to in the Rules, whose services are secured for assisting the family court shall be paid prevailing and daily allowances at the rate admissible to the official and non-official witnesses appearing before the criminal courts for giving evidence.

The principal counsellors and counsellors shall be entitled to assisting fee of Rupees three hundred and fifty respectively per day.

Submitted vide Orissa Gazette No 7 dt 12.2.1999

35. *Institution of proceedings*—All proceedings instituted before the family court shall be by way of petition, but however, in respect of applications under chapter IX of the Code of Criminal Procedure Code, 1973 (Central Act 2 of 1974), the provisions of that code will apply.

36. *Filing of a petitions*—Every petition or application shall be accompanied by as many clear authenticated copies thereof as there are respondents to be served and by 3 additional copies for the use of the court and by such papers as are referred to with petition or application. One copy of such petition or application shall be forwarded by the Chief Ministerial Officer of the family court to the principal counsellor.

37. *Provisions of C. P. C. and Cr. P. C. to apply*—Save as aforesaid, the provisions of the Civil Procedure Code, 1908 and of the Code of Criminal Procedure, 1973, as the case may be, shall apply to the proceedings before the Family Court.

38. *Application for guardianship*—All applications for guardianship other than applications over which the High Court has jurisdiction, shall be filed before the Family Courts.

39. *Assistances of Social Welfare Agencies*—In deciding a guardianship petition, the Court may take the assistance of a social welfare agency or agencies for the scrutiny of the petition. The Court may also ask such an agency for its report thereon and pay fees at the prescribed rate by the High Court to the said agency for its work.

SCHEDULE

1. Sheristadar
2. Senior Stenographer
3. Senior Clerk
4. Junior Clerk
5. Jamadar
6. Court Peon
7. Orderly Peon

[No. 15258—II-67/83-L.]

By order of the Governor

B. N. DAS

Additional Secretary to Government