



HIGH COURT OF HIMACHAL PRADESH

No. HHC/Admn. 22(20)/82-

Dated Simla-1 the 1st February, 83

NOTIFICATION

In exercise of the powers conferred by Section 41 of the Special Marriage Act, 1954 (Act No. 43 of 1954) read with section 29 of H.P. Courts Act, 1976 and Article 227 of the Constitution of India, the High Court of Himachal Pradesh hereby makes the following rules to regulate the proceedings under the said Act:-

1. Short title and commencement:

- (1) These rules may be called the Special Marriage and Divorce (Himachal Pradesh) Rules, 1982.
- (2) These rules shall come into force with effect from the date of their publication in the Himachal Pradesh Gazette.

2. Definitions:

In these rules

- (a) "Act" means the Special Marriage Act, 1954 (Act No. 43 of 1954) as amended from time to time;
- (b) "Code" means the Code of Civil Procedure, 1908 as amended or modified from time to time;
- (c) "Court" means the court mentioned in section 2(8) of the Act;
- (d) "Form" means a form appended to these rules;
- (e) "Section" and "Sub-section" means, respectively, Section and Sub-section of the Act; and
- (f) All other terms and expressions used herein, but not defined shall have the meaning respectively assigned to them in the Act.

3. Form of Proceedings.

- (1) The following proceedings under the Act shall be instituted by petitions. Each petition shall be numbered as Special Marriage Petition No. _____ of 19 _____ :-

- (a) under section 22 for the restitution of conjugal rights;
 - (b) under section 23 sub section (1) for judicial separation;
 - (c) under section 23 sub section (2) for rescinding a decree for judicial separation;
 - (d) under section 24 sub section (1) for declaring a marriage null and void;
 - (e) under section 24 sub section (2) for declaring the registration of a marriage to be of no effect;
 - (f) under section 25 for annulment of marriage;
 - (g) under section 27 for divorce;
 - (h) under section 28 for divorce by mutual consent;
 - (i) under section 37 for permanent alimony;
 - (j) under section 38 for making, revoking, suspending or varying orders and provisions with respect to the custody, maintenance and education of minor children.
- (2) Every other proceeding subsequent to the petition shall be treated as an inter-locutory application and shall not be registered separately.

4. Petition.

- (1) Every petition, application, affidavit, decree or order under the Act shall be headed by a cause title in "Form-I" and shall set forth the provision of the Act and/or the rules under which it is made.
- (2) Every petition under the Act shall be accompanied by a certified copy of the 'Certificate of Marriage' entered in the 'Marriage Certificate Book' about the solemnization of the marriage under the Act, unless the production of certificate, for sufficient cause, is dispensed with by the Court.

- (3) Every application, made for dispensing with the production of the certificate under sub rule 2 above, shall be supported by an affidavit to the effect that the petitioner was married to the respondent under the provisions of the Act and the grounds on which dispensation is being claimed.
- (4) Every petition under the Act shall, so far as practicable, conform to the forms appended to these rules..

5. Contents of the petition.

In addition to the particulars required to be given under Order VII rule 1 of the Code and section 32 of the Act, all petitions under chapter V or chapter VI of the Act shall state—

- (a) the date and place of marriage;
- (b) the status and domicile of the parties before the marriage and at the time of filing the petition;
- (c) the address where the parties resided including the address where they last resided together and the address at the time of filing the petition;
- (d) whether there have been any previous proceeding between the parties with regard to the marriage, if so, the result thereof;
- (e) Whether any children were born of the marriage and, if so, the date and place of birth, name and sex of each child separately and whether dead or alive;
- (f) the matrimonial offence charged or other grounds, upon which relief is sought, setting out with sufficient particularity, the time and place of the acts alleged, and other facts relied upon, but not the evidence by which they are to be proved, — 9. :
 - i) if the petition is for restitution of conjugal rights, the date on or from which and the circumstances under which respondent withdrew from the society of the petitioner.
 - ii) If the petition is for judicial separation or divorce by either of the spouse on the ground that the other party has after the solemnization of marriage had sexual inter-

course voluntarily with any other person, other than his or her spouse, the petitioner shall state the name, occupation and place of such person or persons, so far as ^{he/}they can be ascertained, the specific act of sexual intercourse and the occasion when and the place where such acts were committed.

- iii) In the case of desertion, the date and circumstances in which it began.
- iv) In the case of cruelty, the specific acts of cruelty and the occasion when and the place where such acts were committed and that the petitioner has not in any manner condoned such acts of the respondent.
- v) In case of a petition under section 25(ii) of the Act, whether the petitioner was, at the time of marriage, ignorant of the facts alleged and whether marital intercourse with the consent of the petitioner has taken place since the discovery by the petitioner of the existence of the grounds for a decree.
- vi) In the case of a petition under section 25(iii) of the Act, the particulars of coercion or fraud and the circumstances in which force ~~caused~~ or fraud had been practised alongwith the time when the facts relied upon were discovered and whether or not the petitioner has with his or her free consent lived with the respondent as husband and wife after the force had ceased or, as the case may be, the fraud discovered.
- vii) In the case of unsoundness of mind or mental disorder, the time when such mental disorder or unsoundness of mind began to manifest itself and the nature and period of curative steps taken.
- viii) In the case of virulent and incurable form of leprosy or venereal disease in a communi-

-cable form, when such ailment began to manifest itself and the nature and period of curative steps taken.

ix) In the petition on the ground specified in clause (b) of section 27(1) of the Act, the date and place where the respondent was last seen or heard alive and the steps, if any, taken to ascertain his or her whereabouts.

x) In the petition founded on any of the grounds specified in section 27 (1A)(i) of the Act, the occasion, place where and the name and address of the person(s) with whom the acts of rape or sodomy were committed or the particulars of the beast with whom the husband had been guilty of bestiality. In the case of conviction for committing rape or sodomy, the particulars thereof.

xi) In a petition for divorce on the ground specified in section 27(1A)(ii) of the Act, the particulars of the decree under section 18 of the Hindu Adoptions and Maintenance Act, 1956 or of an order under section 125 of the Code of Criminal Procedure, 1973 together with an affidavit that since the passing of such decree or order, there has been no co-habitation between the parties for a period of one year or upwards.

xii) In a petition for divorce under clause (c) of section 27 (1) of the Act, the particulars of the offence committed, the court awarding sentence and the period of sentence.

xiii) In a petition under section 28 of the Act, the date since when the parties have been living separately and whether

/ or not they have been able to live together and whether

/ the mutual agreement dissolving the marriage is verbal or evidenced by a document in writing.

- (g) Every petition shall state that there is no collusion between the parties.
- (h) The claim for damages, if any, with particulars,
- (i) The relief or reliefs claimed.
- (j) Where the provisions of section 31(2) of the Act are invoked by the wife petitioner, the address at which she has ordinarily resided during the three years immediately preceding the presentation of the petition, and the length of her residence at each address and the place of residence of the husband.

6. Affidavits.

- (1) Every petition under chapter V or chapter VI of the Act shall be accompanied by an affidavit to the effect that it is not presented in collusion with the respondent.
- (2) If the petition is founded on the ground specified in clause (a) of sub section (1) of section 27 of the Act, it shall also be stated that the petitioner has not in any manner been an accessory to or connived at the act or acts of sexual inter-course complained of, and the petitioner has not condoned such act or acts complained of.
- (3) Every petition under section 28 of the Act, the grounds of consent for divorce narrated in the petition shall be supported by separate affidavits of the parties stating that the consent has not been obtained by force, fraud or undue influence.
- (4) The petition on the ground of cruelty, shall be accompanied by an affidavit to the effect that the petitioner has not condoned the act or acts complained of or has not in any manner condoned the cruelty.
- (5) Every petition under section 27(1)(i) of the Act, shall be accompanied by an affidavit that there has been no resumption of co-habitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties.

- (6) Every petition under section 27(1)(j) of the Act, shall be accompanied by an affidavit to the effect that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upward after the passing of a decree for restitution of conjugal rights in the proceedings to which they were parties.
- (7) Every petition under section 27 (1A)(ii) of the Act, shall be accompanied by an affidavit to the effect that the parties are living apart and there has been no resumption of cohabitation for a period of one year or upwards since the passing of a decree under section 18 of the Hindu Adoptions and Maintenance Act, 1956 or order under section 125 of the Code of Criminal Procedure, 1973.

7. Necessary parties.

- (1) In every petition for judicial separation or divorce on the ground that the respondent has, after the solemnization of marriage, had voluntary sexual intercourse with any person other than his/her spouse, the petitioner shall make the alleged adulterer or adulteress a co-respondent.

Provided that the joinder of such adulterer or adulteress as a co-respondent may be dispensed with by the court, on the application, duly supported by an affidavit, on the following grounds:

- (a) that the name of such person is unknown to the petitioner although due efforts for discovery were made by him/her;
- (b) that such person is dead;
- (c) that the respondent wife is leading a life of a prostitute and the petitioner knows of no person with whom voluntary sexual intercourse has been committed; or
- (d) any other reason that the court considers sufficient.

- (2) In every petition under section 24 of the Act on the ground that condition specified in clause (a) of section 4 has not been fulfilled, the other spouse, alleged to be living at the time of marriage, shall be made a co-respondent.

8. Petitions by or against person suffering from mental disorder.

A person suffering from mental disorder will be treated in all respect as a person of unsound mind for the purpose of order XXXII of the Code.

9. Presentation of Petition.

Every petition or application under the Act shall be presented to the court in person or through Advocate or pleader or a Recognised Agent.

10. Notice to respondent.

- (1) A notice of every petition or application under the Act shall be issued to the respondent(s) in 'Form II' to appear and answer the claim on a day to be specified therein;

Provided that no such notice would be necessary when the respondent appears, either in person or through counsel, at the time of the presentation of the petition or application.

- (2) Every notice issued under sub-rule (1) above shall be accompanied by a copy of the petition or application and the affidavit, if any. The petitioner or applicant shall along with the petition or application, file the required number of copies of the petition or application and the affidavit, if any, together with the process fee prescribed under the law.

11. Application for leave.

- (1) Every application under section 29 of the Act for leave shall be supported by an affidavit of the applicant stating:-

- (a) The grounds on which the application is made;
 - (b) The particulars of the exceptional hardship and/or depravity alleged;
 - (c) whether there has been any previous application under the said section, if so, with what result;
 - (d) whether there are living children of the marriage, if so, the names and dates of birth or ages of such children, sex and where and with whom such children are living;
 - (e) whether there has been any attempt at reconciliation;
 - (f) the circumstances which may assist the court to determine the question whether there is a reasonable probability of a reconciliation between the parties.
- (2) Notice of the application shall be given to the respondent who may contest the same by filing counter-affidavit.
 - (3) Evidence, if any, in support of or against the application shall, unless the court otherwise directs, be given by affidavits.
 - (4) The court may, if necessary in exceptional circumstances either of its own motion or on the application of the party order a deponent to be cross examined on his/her affidavit.
 - (5) Every application under section 29 of the Act, shall be accompanied by the petition intended to be filed.
 - (6) On the leave having been granted by the court, the petition shall be deemed to have been duly filed on the date of the said order, provided the court fee thereon is paid within the time allowed by the court.

12. Contents of written statement.

- (1) Every written statement in answer to a petition shall set out the particulars, as far as may be, set out in rule 5 above.

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- (2) Where a counter-claim is made in terms of section 35 of the Act, it shall comply with the rules applicable to the petition on the like grounds.

13. Interveners' petitions.

- (1) Unless the court for good cause shown otherwise directs where the written statement of the respondent alleges adultery by the petitioner with a named man or woman, a certified copy of such statement or such material portion thereof containing such allegations shall be served on such man or woman accompanied by a notice that such person is entitled, within the time therein specified, to apply for leave to intervene in the case.
- (2) Every application for leave to intervene in the case shall be accompanied by an affidavit of the interven-er.
- (3) Notices of the application together with a copy of the application and affidavit shall be served on all parties who shall be at liberty to file counter affidavit.
- (4) If, after hearing all the parties, the court grant leave, the intervener may take part in the trial subject to such terms and conditions as the court may deem fit to impose.
- (5) 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 against him/her.
- (6) Thenceforth the intervener shall be treated as a party to the proceedings and shall be liable or entitled to costs, as the case may be, according to law.

14. Mode of taking Evidence.

The witnesses in all proceedings under the act before the court shall be examined orally and any party may offer himself or herself as a witness and shall be examined and may be cross examined and re-examined like any other witness.

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15. Applications 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:-

- (a) the average monthly income of the petitioner and respondent;
- (b) the sources of their income;
- (c) the particulars of other moveable and/or immoveable property owned by them jointly or severally;
- (d) the details of liabilities, if any, along with the number of their dependents, if any, and the names and ages of such dependents.

16. Custody of children.

The petitioner or respondent spouse or the guardian of any child of marriage may, at any time, either before or after the decree, apply to the court for the custody or education of the children of the marriage and the court may pass such orders as may be deemed fit subject to the provisions of section 38 of the Act.

17. Damages and costs against co-respondents.

- (1) Whenever in any petition presented by a husband, the person alleged to have committed adultery has been made a co-respondent and the charge of adultery has been established, the court may order the co-respondent to pay the whole or any part of the costs of the proceedings:

Provided that the court shall not order the co-respondent to pay the costs:-

- (a) if the co-respondent had at the time of commission of such acts, no reasons to believe the respondent to be a married woman; or
- (b) if the respondent wife, at the time of voluntary intercourse was living apart from her husband and was leading the life of a prostitute.

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- (2) Where damages are claimed, the court shall assess the same and direct in what manner the damages, if any, awarded shall be paid or applied.
- (3) The court may assess damages and make an order for payment thereof notwithstanding that the respondent or co-respondent or both of them have remained ex-parte.

18. Pleader's fee.

Pleader's fee may be fixed by the court as it may consider appropriate taking into consideration the nature of the proceedings and the status of parties.

19. Taxation of costs.

Unless otherwise directed by the court, the costs of the petition under this Act shall be costs as taxed in Civil Suit.

20. Register to be maintained.

Every court shall maintain a register in which the details regarding petitions shall be entered and shall conform to Civil Register No. III maintained for Divorce and Matrimonial cases.

21. Supply of certified copies.

- (1) In every case where marriage is dissolved by a decree of divorce, the court passing the decree shall give a copy thereof free of cost to each of the parties. The copy so supplied shall be authenticated as "true copy" by the Reader of the Court passing the decree.
- (2) The court shall maintain a register where the particulars of the decree shall be incorporated and signatures of the parties or their Advocates or agents shall be obtained in token of their having received copy of the decree.
- (3) The court shall send a certified copy of every decree for divorce or nullity of marriage or dissolution of marriage, to the Marriage Officer, before whom the marriage between the parties was solemnised under the Act.

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22. Forms.

The forms given in the Appendix to these rules shall, with such modifications and variations as the circumstances of each case may require, be used in the proceedings under this Act.

23. Trial.

The trial of a petition under the Act, so far as is practicable, be continued from day to day until its conclusion.

24. Appeal.

Appeals to the High Court from the decrees and orders of the Court shall be governed by the Appellate Side Rules of the High Court as far as may be applicable.

BY ORDER OF THE COURT

R. L. Khurana
(R. L. Khurana)
REGISTRAR
R. L. Khurana

*Published in H.P. Rajpatra (ordinary)
dated 14.5.83 at page No. 594.*

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FORM NO.1

In the Court of _____ at _____

S.M.Petition No. _____ of 19 _____

In the matter of Special Marriage Act, 1954

A.B.Petitioner

Versus

C.D.Respondent

....Co-respondent.

Petition under Section _____ of the Special
Marriage Act, 1954 and Rule _____ of the Rules
under the Special Marriage Act.

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FORM NO. 2.

In the Court of _____ at _____
S.M. Petition No. _____ of 19 _____

In the matter of Special Marriage Act, 1954.

.....Petitioner

versus

..... Respondent(s)

To _____

Take notice that the petitioner _____
above named, has presented a petition/application against you
for _____ under Section _____
of the Special Marriage Act, 1954 (Act No.43 of 1954), copy
of the said petition/application is sent herewith.

You are hereby directed to appear in this
Court on _____ day of _____ 19 _____ at 10AM to
answer the said petition/application, either in person or by a
recognised agent or an advocate duly instructed and able to
answer all material questions relating to the case and you
are further directed to produce on that day all the documents
upon which ^{you} intend to rely in support of your defence.

Written statement/reply, if any, be filed on the said date.

You are further informed that in default of your
appearance on the day and in the manner above mentioned, the
petition/application shall be heard and determined ex-parte.

Given under my hand and seal of the Court this _____
day of _____ 19 _____.

Judge
at _____.

FORM NO.3

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In the Court of _____ at _____

S.M.Petition No. _____ 19 _____

In the matter of Special Marriage Act.

_____.Petitioner

Versus

_____.Respondent(s)

Petition for restitution of conjugal rights under Section 22 of the Special Marriage Act, 1954.

The petitioner prays as follows:-

1. A marriage between the parties was solemnised under registered under Chapter II of the Act by the Marriage Officer of _____ Chapter III at _____ on _____. A certified copy of the certificate of marriage is filed herewith.

2. The status and place of residence of the parties to the marriage before the marriage and at the time of filing the petition were as follows:-

	Husband		wife	
	Status	Place of residence	Status	Place of residence
(i) Before marriage				
(ii) At the time of filing the petition.				

(Whether a party was a bachelor/spinster, widow(er) or divorcee at the time of marriage is a part of his/her Status).

3. (In this paragraph particulars and place(s) of cohabitation as husband and wife and the children from the marriage, if any, may be given. The dates and place of birth and name and sex of each child and the fact whether alive or dead should also be stated)

4. The respondent has, without reasonable excuse, withdrawn from the society of the petitioner with effect from _____ (cause(s) of estrangement, as known to the petitioner may be stated).

5. The petition has not been presented in collusion with the respondent.

6. There has not been any unnecessary or improper delay in filing the petition.

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7. There has not been any previous proceeding with regard to the marriage by or on behalf of any party.

or

There have been the following previous proceedings with regard to the marriage by or on behalf of the parties :-

S.No.	Name of parties	Nature of proceedings with Section of the Act.	Number and date and year of the case.	Name and location of the Court.	Result.
1.					
2.					
3.					
4.					
5.					

8. There is no other legal ground why the relief should not be granted.

9. The marriage was solemnised at _____/the parties last resided together at _____. The parties are now residing at _____, within the local limits of the ordinary original jurisdiction of this Court.

10. The petitioner, therefore, prays for a decree for restitution of conjugal rights against the respondent.

(Petitioner)

VERIFICATION

The above named petitioner states on solemn affirmation that paras 1 to _____ of the petition are true to the best of the petitioner's information and belief.

Verified at _____ (Place)

Dated _____

(Petitioner)

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FORM NO. 4.

In the court of _____ at _____
S.M. Petition No. _____ 19 _____.

In the matter of Special Marriage Act

_____ Petitioner.

Versus

_____ Respondent (S)

Petition for judicial separation under
Section 23 of the Special Marriage Act, 1954.

The petitioner prays as follows :-

1. A marriage between the parties was solemnised under
registered under
Chapter-II of the Act by the Marriage Officer of _____
Chapter III
at _____ on _____. A certified copy
of the certificate of marriage is filed herewith.

2. The status and place of residence of the parties
to the marriage before the marriage and at the time of filing
the petition were as follows:-

	Husband	wife
	Status	Place of residence
(i) Before marriage		
(ii) At the time of filing the petition.		

(Whether a party was a bachelor/spinster, widow(er) or divorcee at the time of marriage is a part of his/her status).

3. (In this paragraph particulars and place(s) of cohabitation as husband and wife and the children from the marriage, if any, may be given. The dates and place of birth and name and sex of each child and the fact whether alive or dead should also be stated.)

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4. The respondent has _____ (any one or more of the grounds specified in Section 23 may be pleaded here). The matrimonial offences charged should be set in separate paragraphs, with times and places of their alleged commission. The facts on which the claim to relief is founded should be stated as distinctly as the nature of the case permits. If adultery is pleaded, the petitioner should give particulars, as nearly as he can of the acts of adultery alleged to have been committed.)

5. (Where the ground of petition is adultery, the petitioner should state that he has not in any manner been an accessory to or connived at as condoned the act(s) complained of).

6. (Where the ground of petition is cruelty, the petitioner should state that he has not in any manner condoned cruelty).

7. The petition has not been presented in collusion with the respondent.

8. There has not been any unnecessary or improper delay in filing the petition.

9. There has not been any previous proceeding with regard to the marriage by or on behalf of any party.

or

There have been the following previous proceedings with regard to the marriage by or on behalf of the parties :-

S.No.	Name of parties.	Nature of proceeding, with section of the Act.	Number and date and year of the case.	Name & location of the Court.	Result.
1.	'	'	'	'	'
2.	'	'	'	'	'
3.	'	'	'	'	'
4.	'	'	'	'	'
5.	'	'	'	'	'

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10. There is no other legal ground why the relief should not be granted.

11. The marriage was solemnised at _____/. The parties last resided together at _____. The parties are now residing at _____, within the local limits of the ordinary original jurisdiction of this Court.

12. The petitioner, therefore, prays that a decree for judicial separation be passed in his/her favour and against the respondent.

(Petitioner)

VERIFICATION

The above named petitioner states on solemn affirmation that paras 1 to _____ of the petition are true to the best of the petitioner's information and belief.

Verified at _____ (Place)

Dated _____.

(Petitioner)