persons working on daily wages on the date of commencement of these rules in the vacancies of class III/IV posts and any appointment so made in pursuance of the scheme shall be against the posts of direct recruitment.

30. Residuary powers.—Nothing in these rules shall be deemed to affect the power of the Chief Justice to make such orders, from time to time, as he may deem fit in regard to all matters incidental or ancillary to these rules not specifically provided for herein or in regard to matters as have not been sufficiently provided for:

Provided that if any such order relates to salaries, allowances, leave or pension, the same shall be made with the approval of the Governor of Bihar.

31. Interpretation.—All question relating to the interpretation of these rules shall be referred to the Chief Justice, whose decision thereon shall be final.

32. Repeal and savings:—The Patna High Court Establishment (Appointment) Rules, 1997 are hereby repealed:

Provided further that any action taken or proceedings under the repealed rules and pending at the commencement of these rules shall be continued and disposed of, as far as may be,in accordance with the provisions of these rules.

33. General rules.—(1) All notifications issued, orders passed, appointments made or powers exercised by the Chief Justice or the Registrar General prior to the commencement of these rules shall be deemed to have been issued, passed, made and exercised respectively under the provisions of these rules.

(2) Notwithstanding anything contained in these rules, the Chief Justice shall have the power to make such orders, as he may consider fit, in respect of recruitment, promotion, confirmation or any other matter.

(N.B.—In case of any difficulty or doubt in construing any of the provisions of the Hindi version of the Rules, the English version shall be treated to be the correct version.)

FAMILY COURTS (PATNA HIGH COURT) RULES, 2000][1]

NOTIFICATION

The 7th May, 2002

In exercise of powers conferred by Section 21 of the Family Courts Act, 1984 (Act 66 of 1984) the High Court of Judicature at Patna hereby makes the following rules for the Family Courts in the State of Bihar.

The Family Courts. (Patna High Court) Rules, 2000.

1. Short title, commencement and application.—(i) These rules may be called the "Family Courts (Patna High Court) Rules, 2000."

1. Published in the Bihar Gazette dated 8.5.2002.

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(ii) These rules shall come into force on the date of their publication in the Official Gazette.

(iii) These Rules shall apply to the Family Courts established in the State of Bihar under the Family Courts Act, 1984.

2. Definition.—In these rules unless the context otherwise requires.

(a) 'Act' means the Family Courts Act, 1984.

(b) 'Centre' means a counselling centre and includes office of any association of counsellors.

(c) 'Court' means the Family Court established under Section 3 of the act.

(d) 'Petition' includes application under Chapter IX of the Code of Criminal Procedure, 1973 unless the context otherwise requires.

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

(f) 'Rules' means the rules framed by the Government of Bihar in consultation with the High Court under Section 23 read with Section 5 and 6 of the Family Courts Act, 1984.

(g) Words and expression used but not defined in these rules shall have the meanings assigned to them in the Family Courts Act, 1984 or the Code of Civil Procedure, 1908, as the case may be.

3. Working Hours of Courts and their offices.—The working hours of the Courts and their offices shall be the same as the Civil Courts in the State of Bihar :

Provided that the High Court may fix different working hours for office and sittings of the Courts located in different districts :

Provided further that the Courts may with the consent of the parties and by order in writing hold sitting on holidays or beyond the normal working hours.

4. Place of sitting of Family Courts.—(1) The court shall ordinarily hold its sitting at such place or places, as the High Court may be notification in the Official Gazette specify in this behalf.

(2) If the Judge is of the opinion in any particular case for reasons to be recorded in writing that it will tend to General convenience of the parties or the witnesses or for any other purpose to hold sitting at place other than its ordinary place of sitting, he may hold the sitting at such place after notice to the parties and such other person as he may consider necessary.

5. Institution of proceeding.—(i) The case will be instituted in the Court of Principal Judge or such other Judge, as may be designated by the Principal Judge, on the basis of plaint or application presented personally or by an advocate or sent by registered post with acknowledgement due to such Judge.

(ii) Where a case is instituted on the basis of plaint or application received by registered post but transfered to another Court, intimation of transfer to the particular court shall be sent to the party by registered post on the address furnished in the plaint or application.

6. Transfer of suit or proceeding.—The Principal Judge may at any time transfer any suit or proceeding pending before him to the file of any other Judge and may likewise withdraw any suit or proceeding any try the same himself.

7. Contents of the plaint/application.—In addition to the particulars required to be furnished under Order VII Rule 1 of the Code of Civil Procedure, 1908 and Section 20(1) of the Hindu Marriage Act, 1955 every plaint/application for Judicial separation, nullity of marriage, divorce and restitution of conjugal rights, shall contain the following particulars.—

(a) Place and date of marriage

(b) The names of the parties and their Occupation, places and address where the parties resided and cohabited including the place where they last resided together.

(c) The names of the children of the marriage and dates of their birth, if any.

(d) The particulars of the previous suit or proceeding between the parties, if any,

(e) If the plaint/application is for registered restitution of conjugal rights, the date on or from which and the circumstances under which, the respondent withdrew from the society of the petitioner.

(f) If the petition is for judicial separation, the matrimonial offence alleged or other grounds upon which the relief sought with full particulars so far as known to the petitioner, e.g.—

(i) In the case of desertion, the date and the circumstances under which it began.

(ii) In the case of cruelty or sexual intercourse with another person other than his or her spouse, particulars of the act of cruelty or sexual intercourse together with the name and address of the person or persons with whom the respondent had sexual intercourse so as far as known to the petitioner.

(iii) In the case of virulent leprosy or venereal disease in a communicable from the time when the disease began to manifest itself, the nature of curative steps taken the name and address of the person or persons who treated of such disease, and in the case of venereal disease, that it was not contacted from the petitioner, and

(iv) In the case of unsoundness of mind, the time when such unsoundness began to manifest itself, the nature of curative steps taken, the name and address of the person or persons who treated for such unsoundness of mind.

(g) If the petition is for divorce, the matrimonial offence alleged or other grounds upon which the relief is sought with full particulars so far as known to the petitioner, e.g.

(i) In the case of voluntary sexual intercourse with a person other than his or her spouse after marriage, the particulars of the act or

acts, occasion and the place when such act or acts was or were committed together with the name and address of the person or persons with whom sexual intercourse was committed.

(ii) In the case of incurable unsoundness of mind, the time when such unsoundness began to manifest itself the nature and period of curative steps taken, the name and address of the person or persons who treated for such unsoundness of mind.

(iii) In the case of virulent and incurable form of leprosy or venereal disease in a communicable form, the time when the disease began to manifest itself, the nature of curative steps taken with the name and address of the person or persons who treated for such disease.

and in the case of venereal disease, that it was not contacted from the petitioner, and

(iv) in the case of presumption of death, the place where the parties last lived together and the date and the place when the respondent was last seen or heard of as alive, and the steps, if any, taken to ascertain his or her whereabout.

(h) If the petition is for a decree of nullity of marriage on the grounds specified in clause (c) or clause (d) of Sub-section (1) of Section 12 of the Hindu Marriage Act, 1955, the time when the facts constituting the grounds were discovered, and whether or not sexual intercourse with the consent of the petitioner took place after the discovery of those facts.

(i) Property mentioned in the Section 27 of the Hindu Marriage Act, 1955, if any

(j) Whether marriage has been registered under Section 8 of the Hindu Marriage Act, 1955.

(k) The petition shall at the end set out the relief of reliefs sought including any claim for.

(i) Custody, maintenance and education of children.

(ii) Permanent alimony and maintenance and

(iii) Costs.

Where a claim is made under clause (ii) above, the petition shall specify the value of the respondent's property and his or her income, the particulars of his or her own property and source of income.

8. Preliminary Examination.—(i) Before issuing process to the respondent, the Judge may discuss the case with the petitioner and if he thinks fit, for reasons to be recorded, associate any Counsellor or association referred to in Section 5 of the Act for this purpose.

(ii) In other case, notice shall be issued to the respondent intimating the date and time for appearance in person.

9. Service of Processes.—All processes shall be served in the manner laid down in the Code of Civil Procedure, 1908, personally on the respondent except in exceptional cases where Judge orders otherwise.

10. Settlement.—For the purpose of amicable settlements, the Courts shall maintain separate lists of—

(a) Institutions and organisations engaged in social welfare together with the names and addresses of representatives of such Institution and Organisation.

(b) Persons professionally engaged in promoting family welfare with their addresses.

(c) Persons working in the field of social welfare with their addresses.

11. Procedure for arriving at settlement.—(i) In every suit or proceeding the Judge may at any stage direct the parties to approach a Counsellor on the date and time fixed or on adjourned dates and time, as may be fixed by him, for counselling and amicable settlement of the dispute.

(ii) In case of default, the counsellor may refer the matter to the Judge and thereupon, the Judge may pass such orders including award of cost as the circumstances of the case may require.

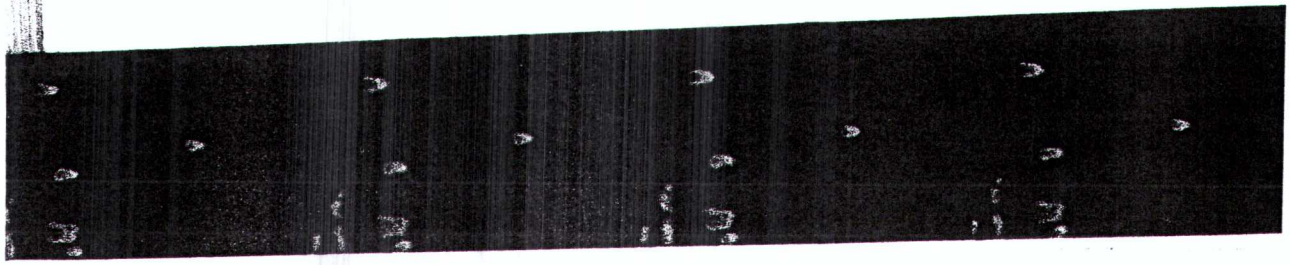
(iii) The Counsellor in discharge of his duties may visit the homes of the parties, interview their relatives, friends and employer, if any, and seek such information as may be deemed necessary from them and with the prior permission of the Judge may also refer the parties or either of them to any expert in the field of medicine or psychiatry or seek such assistance of any Institution, organisation or persons referred to in Section 5 of the Act.

(iv) The Counsellor shall maintain a diary of cases assigned to him, which shall contain the gist of the steps taken in the particular case.

(v) Information gathered by the Counsellor or any statement made before him or any note or report prepared by him shall be treated as confidential and he shall not be called upon to disclose such information, statement, note or report, nor he shall be asked to give evidence in respect of such information, statement, note or report in any Court except with the consent of both the parties.

(vi) The counsellor shall submit to the Judge a report containing the details of the homes of the parties, their personal income and status and their relationship with the child/children in order to assist the Judge in deciding the question of custody or guardianship of any child/children of the marriage or amount of maintenance/ alimony.

(vii) The Judge may ask the Counsellor to submit report on any other matter which the Judge considers necessary.



(viii) Copy of the report may be supplied to the parties on request.

(ix) The parties will be entitled to make their submissions on the report.

(x) Where the parties arrive at a settlement relating to the dispute or any part thereof before the Counsellor, such settlement shall be reduced to writing and signed by them and counter-signed by the Counsellor who shall immediately forward the same to the Court concerned.

(xi) Cohabitation between the parties in course of counselling or conciliation proceeding will not be deemed to be condonation of the matrimonial offence.

12. Proceedings in Court.—(i) On the date fixed for appearance, whether the defendant appears or not, the plaint, petition or application, as the case may be, shall be placed for direction before the Judge in *seisin* of the case.

(ii) Where in course of the conciliation proceeding a settlement is arrived at with respect to whole or part of the dispute on receipt of the settlement papers the Judge shall pronounce the decree/order in terms thereof with respect to whole or part of the dispute, as the case may be, unless he considers the terms as unconscionable or unlawful.

(iii) Where the parties fail to arrive at any settlement, the Judge shall fix the case for evidence and the date so fixed prepare memorandum of substance of evidence as provided under Section 15 of the Act.

(iv) (a) on the request of either party, and if the Judge thinks it fit and proper, the evidence may be permitted to be recorded on a Tape-recorder.

(b) Such evidence recorded on tape shall be part of the record and kept in safe-custody of the Court.

(c) Where an appeal or revision is filed against the Judgment of the court, a party may apply for transcript copy of such evidence, which shall be supplied to him on payment of the prescribed fee.

13. Supplementary Provisions.—(i) The Judge may require the counsellor to superivise guide or assist the reconciled counsels even after disposal of the case for such further period as he considers fit and proper.

(ii) The Judge may require the counsellor to supervise the condition of the child in custody of a party and to pay supervised visits to the home where the child resides even, in a case where the decree or order has been passed.

(iii) The Counsellor may after such visit, submit report to the Judge and suggest modifications whereupon the Judge may pass such order as he deems fit and proper after notice to the parties.

14. Representation by Legal practitioners.—(i) The Judge may permit the parties to be represented by legal practitioner keeping in view the nature of the controversy, the points involved, the education, understanding and other relevant considerations forming the background of the parties, after recording brief reasons for granting such permission.

(ii) Permission may be revoked at any stage of the proceeding if the Judge considers it fit and proper for expeditious disposal of the proceeding.

(iii) Where such application is made for representation by legal practitioner, before passing any order the Court shall give notice to the either side.