

# **MADHYA PRADESH FAMILY COURT RULES, 2002**

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*Notfn. No. A. 5-1-2002-ST-V-(47), dated 23-4-2002, Pub. in M.P. Rajpatra (Asadharan), dated 20-6-2002, p. 512(3) as amended subsequently by Notfn. dated 5-10-2010, Pub. in M.P. Rajpatra (Asadharan), dated 7-10-2010, p. 1091; Notfn. dated 4-10-2014, Pub. in M.P. Gaz. (Ext. Ord.), dated 4-10-2014, p. 943; Notfn. dated 17-4-2018, Pub. in M.P. Rajpatra, Pt. IV(Ga), dated 27-4-2018, p. 121..-In exercise of the powers conferred by Section 23 of the Family Courts Act, 1984 (No. 66 of 1984), the State Government, in consultation with the High*

Court of Madhya Pradesh, hereby makes the following rules, namely:-

**1. Short title and commencement.**-(1) These rules may be called the Madhya Pradesh Family Court Rules, 2002.

(2) They shall come into force with effect from the date of their publication in the "Madhya Pradesh Gazette".

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

(a) "Act" means the Family Courts Act, 1984 (No. 66 of 1984);

(b) "Family Court" means the Court established under Section 3 of the Act;

(c) "Government" means the Government of Madhya Pradesh;

(d) "High Court" means the High Court of Madhya Pradesh;

(e) "Judge" means the Judge appointed under sub-section (1) of Section 4 of the Act and includes a Principal Judge or Additional Principal Judge of the Family Court;

(f) All other words and expressions not defined in these rules shall have the same meanings as assigned to them in the Act.

**3. Service conditions of the Judge of Family Court.**-(1) The term of the office of the Judge of Family Court shall be five years from the date he assumes office; or till he attains the age of sixty two years, subject to the prior approval of the High Court.

(2) The Judge of the Family Court shall be under the administrative and disciplinary control of High Court.

(3) A Judge of a Family Court shall be entitled to pay and allowances including travelling allowance, dearness allowance as admissible to a District Judge, who is drawing supertime pay scale:

Provided that the pay and allowances of a Judge who is a member of the Madhya Pradesh Higher Judicial Service shall not be less than the presumptive pay and allowances as would have been admissible to him.

(4) A serving member of the Madhya Pradesh Judicial Service appointed as a Judge or Principal Judge or Administration Principal Judge of a Court being superannuated on attaining the age of superannuation during his tenure as such Judge shall receive pay and allowances which he had last drawn minus pension, if any.

(5) A retired member of the Madhya Pradesh Higher Judicial Service appointed as a Judge or Principal Judge or Additional Principal Judge of a Court shall receive the pay and allowances which he had last drawn as a member of the said service minus pension, if any.

(6) Any other person appointed as Judge or Principal Judge or Additional Principal Judge of a Court shall be entitled to such pay, allowances and other benefits as may be admissible to a member of the Madhya Pradesh Higher Judicial Service in the supertime scale of pay from time to time.



**4. Association of Social Welfare agencies.**-(1) Every Principal Judge of the Family Court shall for the association with it, in consultation with the High Court and State Government maintain in respect of its area a register or registers and record therein the name of:-

- (i) institutions and organisations engaged in Social Welfare in family matrimonial and allied matters and the representatives thereof;
- (ii) persons professionally engaged in promoting the welfare of families; and
- (iii) persons working in the field of social welfare.

(2) Subject to sub-rule (1), the Principal Judge of the Family Court may record such names after obtaining the written consent of the institution, organisation or person, as the case may be, on its own motion or its/his application.

**5. Counselling Centre.**-(1) There shall be attached to the Family Court in each city a counselling centre to be known as the Family Court Counselling Centre.

(2) The Counselling Centre shall be located in the Family Court premises or at such other place as the High Court may direct.

**6. Appointment of Counsellors.**-The Counsellors shall be appointed by the State Government from the panel of Counsellors prepared by the Principal Judge of the Family Court and approved by the High Court:

Provided that no Counsellor shall continue after he attains the age of 65 years.

**7. Number of Counsellors.**-(1) The number and categories of Counsellors in each Counselling Centre shall be such as may be determined by the Government in consultation with the High Court, from time to time.

(2) Where more than one Counsellors are appointed in Counselling Centre, one of them may be designated as Principal Counsellor by the High Court.

**8. Qualification for Counsellor.**-(1) Any person having a degree of a recognised University preferably with Social Science or psychology as one of the subjects, and minimum experience of two years in social work, child psychiatry or family counselling, shall be eligible for appointment as a counsellor:

Provided that the minimum academic qualifications may be relaxed in exceptional circumstances:

Provided further that preference may be given to women having the requisite qualification:

Provided also that person shall be eligible for appointment on the post of Counsellor unless he has attained the age of 35 years and is below 60 years of age.

(2) A Candidate who-

- (a) has been a judge, or
- (b) has experience of Counselling in family matters shall, other things being equal, be given preference in the matter of appointment.

**9. Payment of Honorarium/fee to Counsellors.**-(1) The Honorarium or fee admissible to persons employed as counsellors shall be such as may be determined by the State Government from time to time.

(2) The Counsellors shall be entitled to the payment of Honorarium or fee at the minimum rate of <sup>1</sup>[Rs. 180/- (Rupees One hundred eighty)] per case per sitting for reconciliation. The number of sittings restricted for each case should not be more than four. In any case, the total Honorarium or fee of a counsellor shall not exceed <sup>2</sup>[Rs. 720/- (Rupees seven hundred twenty)] per day.

**10. Function of Counsellor.**-(1) The Counsellor, entrusted with any petition, shall-

- (i) attend the Court as and when required by the Judge of the Family Court;
- (ii) aid and advise the parties regarding settlement of the subject matter of dispute or any other part thereof;
- (iii) help the parties in reconciliation;
- (iv) submit report or interim report, as the case may be, fixed by the Court;
- (v) perform such other functions as may be assigned to him by the Family Court from time to time.

(2) In performing his functions under sub-rule (1) the Counsellor shall be guided by such general or special directions as may be given by the Family Court from time to time.

**11. Conditions of service of employees of a Family Court.**-The qualifications, procedure for recruitment, pay and other conditions of service of the employees of a Family Court shall be the same as of the employees of similar category in the Courts under the control of District Judge and the rules relating thereto shall, *mutatis mutandis*, apply.

**12. Assistance of medical experts, welfare experts.**-(1) Where the Family Court decides to secure the services of any expert or other person referred to in Section 12 of the Act, the Courts shall indicate the exact point or points on which and manner in which the service required is to be rendered.

(2) The expert or other person referred to in sub-rule (1), shall render the service and submit its report within such time as may be indicated in the order of the Family Court or within such extended time as may be given by the Court.

<sup>1</sup> Subs. by Notfn. dated 4-10-2014 for "Rs. 150/- (Rupees One hundred fifty)".

<sup>2</sup> Subs. by Notfn. dated 4-10-2014 for "Rs. 600/- (Rupees six Hundred)".



(3) The Family Court shall permit the parties to file objections against such report.

(4) The Court shall consider the report in deciding the dispute but shall not be bound to accept anything contained therein.

**13. Travelling and other expenses payable to medical and other experts.**-Where in the opinion of the Family Court, the assistance of an expert or other person referred to in Section 12 of the Act is necessary, but the party needing such assistance does not have means to pay his fees and travelling and other expenses, it may, *suo motu* or on the application of the party, direct the payment of such fees and expenses, out of the revenue of the State as specified below:-

(1)	(2)
(a) If the expert is a Government servant	Travelling expenses at the rates as admissible to him in the service of the State Government.
(b) If the expert is not a Government servant	Travelling expenses at the rates as admissible to class-I officer of the State Government plus Rs. 500/- as fees per day.

**14. Permission for representation by a lawyer.**-The Court may permit the parties to be represented by a lawyer in Court. Such permission may be granted if the case involves complicated question of law or fact and if the Court is of the view that the party in person is not in a position to conduct his or her case adequately or for any other reasons. The reason for granting permission shall be recorded in the order. Permission so granted may be revoked by the Court at any stage of the proceedings if the Court considers it just and necessary.

**15. Time for making application.**-An application by a party for being represented by a lawyer in court shall be made by such party to the court after notice to the other side. Such an application shall be made not less than two weeks prior to the date fixed for hearing of the petition.

**16. Application not to be entertained during the hearing.**-An application under rule 15 shall not be entertained after the petition is placed for hearing on the daily board of the court unless there are exceptional circumstances justifying such late application.

**17. Independent legal representation of a minor.**-The Court may appoint a lawyer to represent independently any minor affected by litigation before the court. The court may give suitable directions regarding fees to be paid to such a lawyer.

**18. Amicus Curiae.**-(1) The Family Court shall maintain a panel of legal experts, including legal practitioners, willing to be appointed as amicus curiae.

(2) Where it appears to the Family Court that the assistance of a legal expert as amicus curiae is necessary in the interest of justice, the court may engage a legal expert from the said panel.

(3) The amicus curiae, engaged under sub-rule (2), may be paid by the Family Court out of the revenues of the State, fees and expenses at the rates of Rupees Five Hundred per case or proceeding.

<sup>1</sup>[ 18-A. Eligibility for empanelment of Amicus Curiae.—

(1) The following persons shall be eligible for empanelment of Amicus Curiae in. the Family Court:-

- (a) Any retired Judge of the Supreme Court of India;
- (b) Any retired Judge of the High Court;
- (c) Any retired member of the Higher Judicial Service;
- (d) any Legal practitioner with minimum 10 years standing at the bar at the level of the Supreme Court, High Court or the District Court or equivalent status.

(2) **Disqualifications.**-A person shall be disqualified for being empanelled as amicus curiae if he,

- (a) has been adjudged as insolvent; or
- (b) is facing criminal charges involving moral turpitude, framed by a criminal court and which are pending; or
- (c) has been convicted and sentenced to imprisonment for an offence involving moral turpitude; or
- (d) is facing disciplinary proceedings initiated by the appropriate disciplinary authority which are pending or have resulted in a penalty; or
- (e) is interested or connected with the subject-matter of dispute(s) or is related to any one of the parties or to those who represent them, unless such objection is waived by all the parties in writing; or
- (f) is a legal practitioner who is appearing for any of the parties in the suit or in other proceeding(s).

(3) Addition to or deletion from panel.—

- (a) The process of empanelment of amicus-curiae will be that the person fulfilling the criteria of eligibility may apply to the High Court or the District and Sessions Judge of concerning District on or before 31st January of each calendar year alongwith declaration/proof of his eligibility.
- (b) The High Court/the District and Sessions Judge may call from the concerning Bar Association, the name of the person interested and fulfilling the eligibility criteria for empanelment.
- (c) The Principal Judge of the Family Court with prior approval of the High Court may in his discretion, from time to time, add or delete the name of any person in the panel of amicus curiae.

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<sup>1</sup> Rule 18-A added by Notification dated 17-4-2018 (27-4-2018).



**(4) The duties of the amicus curiae.-**

The duties of the amicus curiae shall be as under:

- (a) The amicus-curiae shall assist the court with regard to the case but not to the any particular petitioner/party. He shall be required to help the court by expanding the law impartially.
- (b) When a person is approached in connection with his proposed appointment as amicus curiae, he shall disclose circumstances likely to give rise to a reasonable doubt as to his independence or impartiality;
- (c) Every Amicus Curia shall from the time of his appointment and during continuance of the proceedings, without delay, disclose to the parties, about the existence of any circumstance referred to in clause (b).

**(5) Withdrawal of appointment.-**

Upon information furnished by the Amicus Curiae or upon any other information received from the parties or other persons, if the court, in which the suit or proceedings is pending, is satisfied that the said information has raised a reasonable doubt as to the amicus curiae independence or impartiality, he may withdraw the appointment and replace him by another amicus curiae.

**(6) Confidentiality, disclosure and inadmissibility of information.-**

- (a) Receipt or perusal of any document by the amicus curiae or receipt of information orally by the amicus curiae while serving in that capacity, shall be confidential and the amicus curiae shall not be compelled to divulge information regarding the document or record or oral information not as to what transpired during the proceedings.
- (b) Parties shall maintain confidentiality in respect of events that transpired during the amicus curiae and shall not rely on or introduce the said information in any proceedings.

**(7) Communication between amicus curiae and the Court.-**

- (a) In order to preserve the confidence of parties in the Court and the neutrality of the amicus curiae, there should be no communication between the amicus curiae and the Court, except as stated in sub-rule (2) and (3) of this rule.
- (b) If any communication between amicus curiae and the Court is necessary, it shall be in writing and copies of the same shall be given to the parties or their constituted attorneys or the counsel.
- (c) All communication between the amicus curiae and the Court shall be made only by the amicus curiae and in respect of the following matters-

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- (i) The failure of a party or parties to attend;
- (ii) The amicus curiae's assessment that the case is not suited for settlement;
- (iii) Settlement of dispute or disputes arrived at between parties; or
- (iv) Any opinion regarding any point of law, if referred to the amicus curiae for assistance by the Family Court.]

**19. Termination of appointment of Counsellor.**-The appointment of a counsellor may be terminated at any time before the expiry of his term on the recommendation of the Judge of the Family Court.

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