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**HIGH COURT OF JAMMU & KASHMIR**  
**(Office of the Registrar General at Jammu)**

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**NOTIFICATION.**

No: 1610

Dated: 08-02-2019

In exercise of the powers conferred by Section 21 of the Jammu & Kashmir Family Courts Act, 2018 (Governor Act No. XXIV of 2018), and all enabling provisions in that behalf, the Honourable Chief Justice and Judges hereby make and prescribe the following Rules for the Family Courts in the State of Jammu & Kashmir.

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**THE JAMMU & KASHMIR FAMILY COURTS (COURT) RULES, 2019**

In exercise of the powers conferred by Section 21 of the Jammu & Kashmir Family Courts Act, 2018 (Governor Act No. XXIV of 2018), the High Court of Jammu & Kashmir is pleased to prescribe the following Rules for the Family Courts in the State of Jammu & Kashmir:-

**CHAPTER I:**

**SHORT TITLE, COMMENCEMENT, APPLICATION AND DEFINITIONS**

1. **Short title** - These Rules may be called the Jammu & Kashmir Family Courts (Court) Rules, 2019.
2. **Commencement** - These Rules shall come into force on the date of publication in the Government Gazette.
3. **Application** - These Rules shall apply to the Family Courts established in the State of Jammu & Kashmir under section 3 of the Jammu & Kashmir Family Courts Act, 2018.
4. **Definitions.** - In these Rules, unless the context otherwise requires,-
  - (a) "Act" means the Jammu & Kashmir Family Courts Act, 2018;
  - (b) "Centre" means a Counselling Centre;
  - (c) "Court" means the Family Court established under section 3 of the Act;
  - (d) "Petition" shall include an application under Chapter XXXVI of the Jammu & Kashmir Criminal Procedure Code unless the subject matter or context requires otherwise;

(e) "Principal Counsellor" means the principal counsellor appointed by the High Court. Where principal counsellor is not appointed, it shall include counsellor or counsellors as the case may be;

(f) "Family Court Rules" means Rules framed by the Government of Jammu & Kashmir in consultation with the High Court under section 22 read with sections 5 and 6 of the Jammu & Kashmir Family Courts Act, 2019.

**CHAPTER II :**  
**INSTITUTION OF PROCEEDINGS AND SERVICE**

**5. Institution of Proceedings.** - All proceedings instituted before a Family Court shall be by way of a Petition. In respect of applications under Chapter XXXVI of the Jammu & Kashmir Criminal Procedure Code, however the provisions of that Code will apply.

**6. Filing of Petitions in duplicate.** - A petition or any other application shall be filed in duplicate. One copy of such petition or application shall be forwarded by the Incharge of the Registry of the Family Court to the Principal Counsellor forthwith.

**7. Summons of Respondent.** - In all matters other than those under Chapter XXXVI of the Jammu & Kashmir Criminal Procedure Code the Summons to appear and answer shall be in Form No. 1 as set out in the appendix with such variations as the circumstances of the case may require.

**8. Name and address of the party or of the Advocate to be stated in every process.'** - The name and address of a party or of the advocate appearing for a party shall be stated in every Summons, Witness Summons, interim application, Notice, Warrant and every process of the Court issued at the instance of such party or Advocate.

**9. Summonses, etc. how attested and signed.** - All Summons, Rules, Orders, Warrants and other mandatory processes shall be sealed with the seal of the Court and shall be signed by the Incharge adding thereto the date of signing.

**10. Sealing of Summons, rules, decree.** - The seal of the Court shall not be affixed to any Summons, Rule, Order, Warrant, or other mandatory process, unless the same is signed by an Officer of the Court to be called the sealer and unless the name of the party or his Advocate on record is subscribed thereto. The date of the sealing shall be inserted below the signature of the sealer.

**11. Returnable date of Summons.** - Unless otherwise ordered, the Summons shall be made returnable 15 days after the date of the filing of the petition, if the respondent resides within the local limits of the Court, and four weeks after the date of the filing of the petition, if the respondent resides outside the said limits. The returnable date shall be fixed on the day of the week fixed for giving directions as provided in Rules 23 and 24.

**12. Mode of Service of Summons.-** A Summons shall be amended in the manner prescribed in the Code of Civil Procedure save and except in proceedings under Chapter XXXVI of the Jammu & Kashmir Criminal Procedure Code where the provisions of that Code will apply.

A Summons in proceedings under Chapter XXXVI of the Jammu & Kashmir Civil Procedure Code may also be served by registered post with acknowledgement due and by any other mode provided under the said Code.

**13. Summons and other process not to be served on Saturdays, Sundays and Holidays.** - No Summons or other process shall be served on Saturdays, Sundays or on Holidays notified by the Court, except by leave of the Court.

**14. Service at advocate's office not to be effected after 6 p.m. on week days and 1.30 p.m. Saturdays.** - No Summons or other process shall be served at the Office of an Advocate after 6 p.m. on week days and 1-30 p.m. on Saturdays.

**15. Undertaking by advocate to accept service.** - A Summons need not be served on a respondent personally, if his advocate undertakes in writing to accept service and to file a Vakalatnama. An Advocate filing his Vakalatnama, however, shall not be entitled to appear in Court to plead his client's case in Court without obtaining the leave of the Court as prescribed under Rule 37.

**16. Only one summons may be served, when advocate appears for several respondents.** - Where an Advocate undertakes in writing to accept service and to file a Vakalatnama on behalf of more respondents than one, it shall be sufficient to serve only one Summons on the said advocate on behalf of his clients.

**17. Copy of petition to be furnished to the respondent.** - Any respondent or his Advocate applying to the petitioner or his Advocate on record for a copy of the petition and exhibits annexed thereto, shall be furnished with the same but where several of the respondents are represented by the same Advocate, it shall be sufficient to supply one copy of the petition and exhibits to such Advocate:

Provided that if the application is made after the passing of a decree in a petition, such copies need only be furnished to the respondent or his advocate on payment of the copying charges.

**18. Power to direct issue of fresh summons.** -Whenever, upon the further amendment of any Summons, the court, is of opinion that a fresh Summons should be substituted, it shall direct it to be done and such fresh Summons shall be declared by the Petitioner or his Advocate on record and be examined, signed and sealed by the proper Officer.

**19. Proof of service of summons.-** Unless the Court shall otherwise order the service of Summons to appear and answer shall be proved by the Vakalatnama having been filed or when no Vakalatnama has been filed, by evidence showing

that the Summons was served in the manner provided by the Jammu & Kashmir Code of Civil Procedure. Such proof shall ordinarily be by the affidavit of the bailiff and (as to such matters as the bailiff cannot speak to of his knowledge) of the person who attended the bailiff for the purpose of identification at the time of service, or of such other person or persons as can speak to the identity of the person served or to other matters necessary to be proved in respect of the service.

**20. When service through Court.** - When the Summons has been served through another Court, the service may be proved by an affidavit of Process Server sworn before an Officer of the Court through which the service was effected.

**21. Substituted service.** - Application for substituted service of the Summons shall be made to the court. The application shall be supported by an affidavit, and in the case of service through another Court, by the affidavit of the Officer who attempted to make the Service, and of such other person or persons as may have accompanied him for the purpose of pointing out the party to be served stating when, where and how such service was attempted to be made,

**22. Dismissal of petition if summons not served within six months.** - If the Summons is not served within six months from the date of the filing of the petition, the court shall unless good cause is shown, place the petition on board for dismissal. The court shall notify such petitions on its notice board one week before they are placed with the board for dismissal.

**CHAPTER III:**  
**PROCEEDINGS IN COURT**

**23. Directions on the returnable date.** - On the returnable date of the Summons, the petition shall be placed for directions before a judge of the Family Court to whom the work may be assigned by the Principal Judge of the Family Court.

**24. Date of giving directions.** - One day in a week shall be designated by the Principal Judge for the giving of such directions.

**25. Presence of Counsellor in Court.** - On the date fixed for giving directions, the Principal Counsellor or such other counsellor designated by him shall attend the Court of the judge giving directions.

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**26. Direction to attend counsellor.** - When giving directions, the Judge shall, in consultation with the Principal Counsellor or such other counsellor who may be present in court, direct the parties to attend a specified counsellor for the purpose of counselling.

**27. Selection of counsellor.** - Such counsellor shall be chosen bearing in mind the convenience of the parties, their special requirements and the area in which the unit to which that counsellor is attached is located.

**28. Procedure, Powers, Functions & Duties of Counselors.** - The procedure before the Counsellor, the powers, functions and duties of counselors and the protection granted to them in the discharge of their duties shall be as prescribed in the Jammu & Kashmir Family Court Rules, 2019. The reports to be submitted, by the counsellor to the Family Court shall also be as prescribed in the said Rules.

#### **CHAPTER IV :** **HEARING OF PETITIONS IN COURT**

**29. Filing memorandum in court.** - On the proceedings before the counsellor coming to an end and on the counsellor filing a memorandum in the petition setting out the outcome of the proceedings before him, the court shall call a meeting of the parties to fix a date of hearing, of the petition. Intimation of such meeting shall be given to the parties by registered post or personally.

**30. Meeting before Court.** - At the meeting so fixed the court shall fix a date of hearing after consulting both the parties.

**31. Ascertaining time to be taken in hearing.** - Court shall also ascertain from the parties the approximate time to be taken by each party before the Court for the hearing of the matter. On the date of hearing, the time so ascertained shall be kept free for the disposal of the matter. Such time shall be kept available on file following consecutive working days also if the matter is likely to take more than a day.

**32. Consequence of absence before the Court.** - In the event of any party remaining absent at the meeting called by the Court, the Court shall fix such date of hearing as it may deem fit. Court shall fix a date at least four weeks after the date of the meeting.

**33. Placing the petition on the board of the Court.** - On the date so fixed by the Court the petition shall be placed on the board of the court for hearing and final disposal. The time allocated to the parties shall also be indicated on the board.

**34. Adjournment of hearing.** - Any party finding the date fixed by the Court unsuitable for any reason may get it altered by the Court after notice to the other side not less than two weeks before the scheduled date of hearing.

**35. Court cannot alter date.** - The Court shall not ordinarily alter the date when the date has been fixed in the presence of both the sides.

**36. Adjournment by the Court.** - The petition so fixed, shall not be adjourned by the Court unless there are exceptional circumstances, justifying such adjournment and unless they are such as could not have been foreseen when the date of hearing was fixed before the Court. The Court shall record its reasons for adjourning a manner.

**37. 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 it involves complicated questions of law or fact, if the court is of the view that the party in person will not be in a position to conduct his or her case adequately or for any other reason. 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.

**38. 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.

**39. Application not to be entertained at the hearing.** - Such an application 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.

**40. 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.

**41. Appointment of Amicus Curiae.**- The Court may appoint lawyer amicus curiae to assist the court in the discharge of its duties.

**42. Tape-recording of evidence.** - Evidence given before the court may, at the discretion of the Court, be tape- recorded.

**43. Memorandum of evidence.** - The Court shall also prepare a memorandum of substance of what the witness deposes as prescribed under section 15 of the Jammu & Kashmir Family Courts Act, 2018.

**44. Transcript of tape-recorded evidence.** - In the event of any appeal or revision being filed before the High Court, a party may within thirty days thereafter, apply to the court for transcription of the tape-recorded evidence. Such transcription shall be supplied to the party concerned on payment of prescribed fees.

**44A. Execution of order of maintenance.** - An order passed under section 488 of the Chapter XXXVI of the Jammu & Kashmir Criminal Procedure Code, for maintenance allowance can be executed by the Court by attachment of salary as provided in section 60 and Order 21 of the Jammu & Kashmir Code of Civil Procedure, in addition to the mode of recovery provided in sub-section (3) of section 488 of the said Code:

Provided that Rules 37 to 40 (both inclusive) of Order 21 of the Jammu & Kashmir Code of Civil Procedure shall not be resorted to.

**45. Provisions of J&K C.P.C. and J&K Cri. P.C. to apply.** - Save as aforesaid, the provisions of the Jammu & Kashmir Code of Civil Procedure or the Jammu & Kashmir Code of Criminal Procedure as the case may be shall apply to the proceedings before the Family Court.

**46. Proceeding before Family Court not to become invalid for non-compliance of procedural requirements** -A proceeding before the Family Court shall not become invalid by reason only of non-compliance with any of the procedural requirements prescribed herein.

#### CHAPTER V : INTERIM APPLICATIONS

**47. Interim applications.** - All interim applications to the Court shall be separately numbered as interim Applications

**48. Interim applications while matter is pending before counsellor.** - An interim application may be made even while the matter is pending before a counsellor.

**49. Report from the Counsellor.** - The court may ask the counsellor to submit an interim report for the purposes of such an application before deciding an interim application. The Family Court Rules, 2019 relating to reports to be submitted by counsellors, shall mutatis mutandis apply to interim reports also.

#### CHAPTER VI : GUARDIANSHIP

**50. Applications for Guardianship.** - All petitions for guardianship other than applications over which the High Court has jurisdiction shall be filed before the Family Court.

**51. Contents of application.** - Every petition for guardianship, when it is .by a person other than the natural parent or natural guardian of the child shall be

accompanied by a Home Study Report of the person asking for such guardianship and his/her spouse, if any, prepared by an approved family welfare agency or a suitably trainee social worker. A list of such agencies and/or persons shall be prepared by the Principal Judge and Principal Counsellor in consultation with the High Court.

**52. Home Study in respect of application by a foreigner.** - When a Petition for guardianship is filed by a foreigner the court may accept a Home Study Report prepared by a recognised family welfare agency of the country where the foreigner resides.

**53. Contents of Petition.** - Every Petition for guardianship shall be accompanied by -

- i. Two recommendations from respectable members of the community .
- ii. A Salary Certificate or statement relating to the annual income of the petitioner and his financial position.
- iii. A Health Certificate of the petitioner and his/her spouse signed by a medical practitioner as also a medical report regarding sterility of petitioner and/ or spouse.
- iv. A Health Certificate of the child proposed to be taken in Guardianship signed by a medical practitioner and countersigned by the petitioner.
- v. A Child Study Report of the child proposed to be taken in guardianship together with a photograph of the child. Such report shall be in Form No.3 prescribed in the appendix when the child is institutionalised or court committed. The report shall be countersigned by the Petitioner.
- vi. A declaration from the proposed guardian and his/her spouse, if any, expressing their willingness to take the child in guardianship.

**54. Application by Foreigners.** - When a Petitioner appearing for guardianship is a foreigner, the petition will also be accompanied by -

- (i) Permission from the country where the petitioner resides, for the child to enter the country;
- (ii) An undertaking by a recognised family welfare agency of the country concerned to supervise the child in the home of the petitioner until the child is legally adopted.



**55. Adoption under the law of the country where the foreigner resides.** - In granting a petition of a foreigner for guardianship, the Court shall satisfy itself that the child can be legally adopted by a foreigner under the law of the country where he/she resides.

**56. Bond.** - The Court may direct a foreign petitioner to give a bond for such amount as it may think proper for the return of the child to India in the case of any difficulty.

**57. Financial security of the minor.** - While granting a petition for guardianship, the court may pass such orders as it may deem proper for the financial security of the minor.

**58. Consent of natural mother.** - When the child proposed to be given in guardianship is an abandoned child the Court shall satisfy itself that the consent of the natural mother was taken at the time of abandonment of the child or at any time thereafter, to the child's being given in guardianship to another person. Then name of the natural mother or natural father as also the consent letter from natural parent shall be treated as confidential. Consent letter shall be kept in Court in a sealed cover.

**59. Affidavit of the institution.** - When the child being placed in guardianship is an abandoned child from an institution for abandoned children, the institution shall file an affidavit setting out the circumstances under which the child was abandoned. The affidavit shall also set out whether, the institution is agreeable to the child being given in guardianship to the petitioner.

**60. Attempts for placement in India.** - The Court, in its discretion may not entertain a petition for guardianship by a foreigner unless the court is satisfied that adequate attempts for at least three months of such other period as the court may deem fit have first been made to place the child in an Indian Home. For this purpose the court may ask the petitioner to obtain a no objection letter from a Voluntary coordinating Agency or any other similar organisation working for the placement of children in Indian Homes.

**61. Application by a related person.** - When the proposed guardian is related to the Child, the Court may dispense with any of the above provisions.

**62. Form of Order.** - A guardianship order shall be in the Form No. 2 prescribed in the Appendix with such modifications as may be required in each case. A photograph of the child signed by an authorised officer of the court shall be attached to the order.

**63. Copy to be forwarded to Directorate of Social Welfare.** - A copy of every guardianship order appointing a foreigner as a guardian shall be forwarded to the the Directorate of Social Welfare, Government of Jammu & Kashmir.

64. **Waiver of requirements.** - The Court shall have the power to waive the requirement of any of the above rules relating to petitions for guardianship in a suitable case.

65. **Power of court to direct supervision.** - In case of a child placed in guardianship the court may, at any time direct a counsellor attached to the court to supervise the placement of the child and submit a Report or Reports thereon to the court in such manner as the court may deem fit.

**CHAPTER VII**  
**PROCEDURE OF SETTLEMENT**

66. **Procedure of Settlement:** The procedure for efforts of settlement in accordance with Section 9 of the Act, shall be as follows:

(1) If it appears to the court, that there exist elements of a settlement which may be acceptable to the parties, the court may, with the consent of parties, refer the parties, for resolution of their disputes, to mediation or conciliation.

(2) Reference to mediation or conciliation:

(i) Where a dispute has been referred for resolution by recourse to mediation, the procedure envisaged under the Jammu and Kashmir Civil Procedure Mediation Rules, 2009 shall apply.

(ii) In case of a successful resolution of the dispute, the Mediator shall immediately forward the mediated settlement to the referral court.

(iii) On receipt of the mediated settlement, the referral court shall independently apply its judicial mind and record a satisfaction that the mediated settlement is genuine, lawful, voluntary, entered into without coercion, undue influence, fraud or misrepresentation and that there is no other legal impediment in accepting the same.

(iv) The court shall record a statement on oath of the parties, or their authorized representatives, affirming the mediated settlement as well as a clear undertaking of the parties to abide by the terms of the settlement.

(v) If satisfied, the court shall pass an order in terms of the settlement.

(vi) If the main petition, in which the reference was made is pending, it shall be disposed of by the referral court in terms thereof.

(vii) If the main petition, in which the reference was made stands disposed of, the mediated settlement and the matter shall be listed before the referral court, which shall pass orders in accordance with clause (iii), (iv) and (v) above.

(viii) Such a mediated settlement, shall have the same status and effect as a decree under the Code of Civil Procedure.

**By Order of the High Court.**

(Sanjay Dhar)  
Registrar General

No: 56025-45/98

Dated: 08-02-2019

**Copy forwarded to the:**

1. Principal Secretary to Hon'ble the Chief Justice High Court of J&K, Jammu.
2. Secretary to Hon'ble Mr. Justice \_\_\_\_\_  
..... for information of their Lordships.
3. Secretary to Government, Department of Law, Justice and Parliamentary Affairs, Civil Secretariat, Jammu.
4. Registrar Vigilance, High Court of J&K, Jammu.
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7. Director Judicial Academy, High Court of J&K, Jammu.
8. Principal District & Sessions Judge \_\_\_\_\_.
9. Administrative Officer, Office of the Advocate General, J&K, Jammu
10. President, Bar Association Srinagar/Jammu.  
..... for information.
11. CPC e-Courts, High Court of J&K for uploading the same on the official website of the High Court.
12. Manager, Government Press, Jammu for publication of the same in the next issue of Government Gazette.
13. Order file.

Registrar General