

## **Draft Holiday, Morning and Evening Family Court Rules**

Whereas the Department of Justice has identified a number of initiatives for improvement of justice delivery system; the first being increasing the number of court working hours, using the existing infrastructure by holding Morning or Evening or Shift Court;

And whereas Section 21 of the Family Courts Act, 1984, empowers the High Court to make rules providing for holding of sitting of Family Courts on holidays and outside normal working hours and the High Court has decided to hold the sitting of Family Courts on holidays, and beyond the normal working hours;

Now, therefore in exercise of the powers conferred by the proviso under Articles 309, 227 and 235 of the Constitution of India and Section 23 of The Family Courts Act, 1984, and of all the other powers enabling him in this behalf, the Governor of Maharashtra, in consultation with the High Court of Bombay, hereby makes the following Rules for holding sitting of the Family Courts on Holidays and in the Morning and Evening, and the matters connected therewith and incidental thereto, namely:

### **1) Short Title, Commencement and Application :**

- (1) These Rules may be called, "Maharashtra Holiday, Morning and Evening Family Court, Rules, 2011".
- (2) These Rules shall come into force on the date of publication in the Official Gazette.
- (3) These Rules shall apply to the Family Courts, established in the State of Maharashtra u/s 3 of the Family Courts Act, 1984.

### **2) Definitions :** In these Rules, unless the context otherwise requires,

- a) "Act" means the Family Courts Act, 1984;
- b) "Court" means the Family Court established under Section 3 of the Act;

- c) “District Court” means the Principal Court of original civil jurisdiction, established under Section 5 of The Bombay Civil Courts Act, 1869, in the district, where a Family Court has been established, under section 3 of the Act and in relation to Family Court, Mumbai, it means City Civil Court, Bombay;
- d) “Evening Family Court” means the Court notified under rule 3 of these rules;
- e) “Evening Family Court Judge” means any person appointed under rule 4 of these rules to preside over the Evening Family Court;
- f) “Holiday Family Court” means the Court notified under rule 3 of these rule;
- g) “Holiday Family Court Judge” means any person appointed under rule 4 of these rules to preside over the Holiday Family Court;
- h) “High Court” means the High Court of Bombay;
- i) “Judge” means the Judge or, as the case may be, the Principal Judge of a Family Court;
- j) “Government” means the Government of Maharashtra;
- k) “Governor” means the Governor of Maharashtra;
- l) “Morning Family Court” means the Court notified under rule 3 of these rule;
- m) “Morning Family Court Judge” means any person appointed under rule 4 of these rules to preside over the Morning Family Court;
- n) “Principal District Judge” means the Principal District Judge of the District Court in the district, where a Family Court has been established under section 3 of the Act and includes the Principal Judge, City Civil Court, Bombay, in the case of Family Court, Mumbai;
- o) “Staff” means any person or employee working on the establishment of the Court or District Court and includes Marriage Counsellor appointed under Section 6 of the Act and The Maharashtra Family Courts Rules, 1987;
- p) “Subordinate Judicial Service” means the service on any cadre or post on the establishment of District Court, Family Court, City Civil and Sessions Court, Greater Bombay, Court of Small Causes, Bombay and Chief Metropolitan Magistrate, Mumbai.

3) **Establishment of Holiday, Morning and Evening Family Courts:**

The High Court may, by notification, establish as many Holiday, Morning or Evening Family Courts as it may deem necessary.

Provided that the High Court may, having regard to the state of file, number of Courts, infrastructure at, and situation of, the Court, at the particular station, establish either a Holiday or Morning or Evening Court or any two of, or all these Courts.

Provided further that the number of Holiday, Morning or Evening Family Courts, as the case may be, shall not exceed the number of such respective Courts sanctioned by the Government, from time to time.

4) **Appointment of Judges :**

- (1) The High Court may appoint any Principal Judge/Judge of a Family Court to preside over a Holiday, Morning or Evening Family Court, as the case may be, established thereat.
- (2) The High Court may, by a general order, authorize the Principal Judge of the Family Court to depute the Judge/s of the Family Court to preside over the Holiday, Morning or Evening Family Court, as the case may be, established thereat, turn by turn.
- (3) The High Court may appoint, transfer or depute any Judicial Officer in the cadre of District Judge, posted at the District Court, to preside over a Holiday, Morning or Evening Family Court, as the case may be, established in that district.
- (4) The High Court may, by a general order, authorize the Principal District Judge of the district to depute the Judicial Officer/s in the cadre of District Judge to preside over the Holiday, Morning or Evening Family Court, as the case may be, established in that district, turn by turn.
- (5) The Government may, in consultation with the High Court, appoint any retired Judicial Officer, in the cadre of District Judge, as a Holiday, Morning or Evening Family Court Judge.

Provided that no person shall be appointed as, or hold the post of, a Holiday, Morning or Evening Family Court Judge after he has attained the age of sixty five years.

- (6) Ordinarily, a Judge or an in-service Judicial Officer, shall not be directed to preside over a Holiday Family Court for a period of more than a month, at a stretch.
- (7) No in-service Judicial Officer shall work in the Morning Family Court as well as Evening Family Court on any single working day.
- (8) The Principal Judge, and where there is no Principal Judge, the Judge of the Court, may, from time to time, make such arrangements as he may deem fit for the distribution of the business of the Court among the Judges of the Court and Holiday, Morning or Evening Family Court, as case may be, established thereat.

**5) Appointment of Members of Staff:**

- (1) The Principal Judge/Judge of the Court may appoint any member of the staff on the establishment of such Court to be a member of the staff of the Holiday, Morning or Evening Family Court.
- (2) The Principal District Judge may depute any member of the staff on the establishment of the District Court to a Holiday, Morning or Evening Family Court.
- (3) The Principal Judge/Judge of the Court, may appoint any person who has since retired as a member of the Subordinate Judicial Service, to be the member of the staff of the Holiday, Morning or Evening Family Court.

Provided that no person shall be appointed, or continue to work, as a member of the staff of the Holiday, Morning or Evening Family Court after he has attained the age of sixty five years.

**6) Services of Marriage Counsellor :**

- (1) The High Court may, by a general order, direct that one or more Marriage Counsellor attached to the Court shall also be attached to the

Holiday, Morning or Evening Family Court, as the case may be, established thereat.

- (2) Subject to the order of the High Court under sub-rule(1), the Principal Judge/Judge, may from time to time, depute one or more Marriage Counsellor to work with a Holiday, Morning or Evening Family Court, as the case may be, turn by turn.

Provided that a Marriage Counsellor shall not be deputed to work with a Holiday, Morning or Evening Family Court for a period of more than a month at a stretch.

Provided further that no Marriage Counsellor shall work in the Morning Family Court as well as Evening Family Court on any single working day.

**7) Jurisdiction of Holiday Family Court:**

- (1) A Holiday Family Court shall have and exercise all the jurisdiction exercisable by a Court in accordance with section 7 of the Act.
- (2) No suit or proceeding shall be assigned to, or entertained by, a Holiday Family Court, without the consent of the parties thereto.

Provided that none of the parties shall be permitted to revoke such consent, after the suit or proceeding is assigned to, or entertained by, the Holiday Family Court.

- (3) Ordinarily a suit or proceeding at the post-counselling stage may be assigned to a Holiday Family Court.

- (4)(A) Without prejudice to the generality of the foregoing provisions, the proceedings of the following nature, preferably, may be assigned to, and entertained by, a Holiday Family Court:

- (a) Applications for divorce by mutual consent,
- (b) Applications under Chapter IX of the Code of Criminal Procedure, 1973,
- (c) A suit or proceeding for maintenance,

(d) Applications or proceedings in relation to the guardianship of the person or the custody of, or access to, any minor,

(B) Notwithstanding anything contained in clause (A), with the consent of the parties, the suits and proceedings of other categories may also be assigned to, and entertained by, a Holiday Family Court.

**8) Jurisdiction of Morning Family Court:**

The Morning Family Court shall have jurisdiction to entertain, try and dispose of all suits or proceedings as may be assigned to it by the Principal Judge/Judge of the Court.

**9) Jurisdiction of Evening Family Court:**

(1) The Evening Family Court shall have jurisdiction to entertain, try and dispose of the proceedings of the following nature, namely:

- (a) Applications for divorce by mutual consent,
- (b) Applications under Chapter IX of the Code of Criminal Procedure, 1973,
- (c) Applications or proceedings in relation to the guardianship of the person or the custody of, or access to, any minor,

(2) Notwithstanding anything contained in sub-rule (1), the Evening Family Court shall have and exercise the jurisdiction exercisable by a Court in any other suit or proceeding assigned or transferred to it with the consent of the parties.

**10) Sitting of Holiday Family Court:**

(1) The Holiday Family Court shall hold sitting on every Sunday, 2<sup>nd</sup> and 4<sup>th</sup> Saturday of all months and holidays, except the holidays, enumerated in the list of non-working days, in the Appendix appended to these rules.

(2) The High Court may, by notification, add to, or delete from, the entries in the list of non-working days, in the Appendix.

- (3) The working hours of the Holiday Family Court shall be identical with that of the Family Court at the station.

**11) Working hours for Morning Family Court:**

The Morning Family Court shall hold its sitting from 8.30 a.m. to 10.30 a.m. on all working days notified for the Court at the station.

**12) Working hours for Evening Family Court:**

The Evening Family Court shall hold its sitting from 6.00 p.m. to 8.00 p.m. on all working days notified for the Court at the station.

**13) Remuneration for services in Morning or Evening Family Court :**

- (1) Where an in-service Judicial Officer is appointed or deputed to preside over the Morning or Evening Family Court, he shall be paid twenty percent of his basic pay, as revised from time to time, as additional pay.
- (2) Where a retired Judicial Officer is appointed as a Judge of the Morning or Evening Family Court, he shall be paid twenty percent of his last drawn basic pay.
- (3) Where an in-service staff member is appointed, or deputed to work, in a Morning or Evening Family Court, he shall be paid twenty percent of his basic pay, as revised from time to time, as additional pay.
- (4) Where a retired member of subordinate judicial service is appointed to work in a Morning or Evening Family Court, he shall be paid twenty percent of his last drawn basic pay.

**14) Remuneration for services in Holiday Family Court :**

- (1) Where an in-service Judicial Officer is appointed or deputed to preside over the Holiday Family Court, he shall be paid basic pay, drawn by him, from time to time, for the day/s for which he presided over the Holiday Family Court, as additional pay.

- (2) Where a retired Judicial Officer is appointed as a Judge of the Holiday Family Court, he shall be paid basic pay, last drawn by him, for the day/s for which he presided over the Holiday Family Court.
- (3) Where an in-service staff member is appointed, or deputed to work, in a Holiday Family Court, he shall be paid basic pay, drawn by him, from time to time, for the day/s for which he worked in the Holiday Family Court, as additional pay.
- (4) Where a retired member of subordinate judicial service is appointed to work in a Holiday Family Court, he shall be paid basic pay, last drawn by him, for the day/s for which he worked in the Holiday Family Court.

**15) Discontinuation of Service :**

The services of the Holiday, Morning and Evening Family Court Judge, appointed under sub-rule(5)of rule 4, and a member of staff, appointed under sub-rule(3) of rule 5 to work in a Holiday, Morning and Evening Family Court, as the case may be, may be discontinued by the appointing authority at any time without notice and without assigning any reason and upon such discontinuation, he shall immediately cease to hold such office.

Provided that such discontinuation of service shall neither be treated as stigma nor carry any disqualification.

**16) Supervision and Control :**

Subject to the over all control of the High Court, the Principal Judge/Judge of the Court, as the case may be, shall have control over, and supervise and monitor the functioning of, the Holiday, Morning and Evening Family Court.

**17) Savings :**

- (1) The law in force, as applicable to the Court, shall also be applicable to the Holiday, Morning and Evening Family Courts established under these rules.
- (2) The jurisdiction of the Holiday, Morning and Evening Family Court to deal with the suits or proceedings specified in rule 9,10 and 11 of these rules, respectively, shall be concurrent with the Court .



**Appendix**

## List of non-working days for Holiday Family Court

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|-----|------------------------|--------------------------|
| (1) | Republic Day           | 26 <sup>th</sup> January |
| (2) | Independence Day       | 15 <sup>th</sup> August  |
| (3) | Mahatma Gandhi Jayanti | 2 <sup>nd</sup> October  |