

Ganguly's
CIVIL COURT
Practice & Procedure

TENTH EDITION

By
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PREFACE

GANGULY'S *Civil Court Practice and Procedure* which has already completed nine editions is a very popular treatise on the Civil laws. As this edition is being published after a lapse of about a decade it has been thoroughly revised and re-written so that it may continue to be as popular as before to lawyers as well as to Courts.

Part I under the heading "Advocates and Advocacy" highlights the provisions of Order 3, C.P. Code containing the appointment of a pleader by a party in Civil Court, the duration of such appointment, execution of the Vakalatnama and its interpretation. Salient features of the Advocates Act of 1961 have also been incorporated. In Chapter 2, the Rules framed by the Bar Council of India, namely, Standard of Professional Conduct and Etiquette, as amended from time to time have been reproduced. The judicial interpretations as regards various aspects of the misconduct committed by an advocate resulting in disciplinary proceedings against him by the Disciplinary Committee of the Bar Council have been indicated in Chapter 2. In Chapter 3 valuable hints have been given to an advocate regarding the conduct of a case before a court, the examination-in-chief and cross-examination of witnesses and regarding the art of public speaking. Some model cross-examinations have been given so that a lawyer starting practice in civil court may get valuable help from this book.

Part II is an independent treatise on the Code of Civil Procedure in which all the important provisions of the Civil Procedure Code highlighting the recent amendments of the Code have been given in proper places. Chapter 6 (Pleadings), Chapter 7 (Plaints), Chapter 9 (Written Statement, Set-off and Counter-claim) and Chapter 10 (Pleadings—how to be drawn up) not only highlight the provisions of the Civil Procedure Code regarding the rules of pleadings, but also contain important hints to an advocate for drafting a plaint or written statement conforming to the said provisions of the Code. Chapter 11 contains model forms of plaints and written statements of important civil suits. These chapters may be treated independently as a complete book on the law of pleadings. At the end of this Part model forms of all important petitions required to be filed by any lawyer in a Civil Court have been incorporated along with some valuable hints.

Part III contains the salient features of the following Central Acts, namely, (1) Indian Arbitration Act, (2) Transfer of Property Act, (3) Indian Registration Act, (4) Limitation Act, (5) Indian Succession Act, (6) Guardians and Wards Act, (7) Hindu Minority and Guardianship Act, (8) Indian Lunacy Act, (9) Provincial Insolvency Act, (10) Land Acqui-

sition Act, (11) Provincial Small Cause Courts Act, (12) Legal Practitioners Act, (13) Constitution of India, (14) General Clauses Act, (15) Court Fees Act and (16) Indian Stamp Act. Over and above this Part contains the personal laws of the Hindu and the Mahomedans, Hindu Succession Act and Hindu Marriage Act, Special Marriage Act. Indian Christian Marriage Act, Indian Divorce Act and Parsee Marriage and Divorce Act. Another special feature of this Part is a chapter on the law of Civil and Criminal contempt. Models of the petitions to be filed under the above Acts are also other important aspects of this Part.

In Part IV provisions of four important labour laws, namely, Workmen's Compensation Act, the Employees' State Insurance Act, the Industrial Disputes Act and the Payment of Wages Act with the model petitions have been introduced for the first time as nowadays the litigations in Labour Courts have assumed immense importance.

Part V contains forms of all important deeds with valuable hints, forms of notices and affidavits.

Part VI contains a Law Lexicon explaining all the important legal terms.

As the Rules of Standard of Professional Conduct and Etiquette framed by the Bar Council of India have recently been amended the said amendments have been indicated in the Addenda. The Marriage Laws (Amendment) Bill, 1981 has also been included in the book.

In a word this new edition of Ganguly's *Civil Court Practice and Procedure* has been prepared to make it a complete handbook for lawyers practising in Civil Courts as well as in Labour Courts. This book will also be of immense help to Munsifs and Judges presiding over Civil Courts, because in no other book have so many Acts required for day-to-day trial in the Court been so well covered.

I acknowledge to have received considerable help and suggestions from Sarbashri Prasanta Sinha, Binay Krishna Das Chowdhury and Deb Ranjan Basu Mallik, Advocates. Sri Biswanath Bajpayee, President, Bar Association, Calcutta High Court has bound me by a debt of gratitude to him by placing at my disposal the latest Rules of the Bar Council of India. I am also grateful to Sarbashri Arup De and Ajoy De of Eastern Law House, Calcutta for making available to me foreign and Indian books on the topics dealt with by me at the time of the revision. Sarbashri Jayanta Datta and Shib Narayan Adhikary and Srimati Manika Chandra have typed all the manuscripts of this work very ably.

If this present edition succeeds in rendering any help to those for whom it has been prepared, I shall consider my labour to be amply rewarded.

Lastly, the editor will be very happy if he be favoured with any suggestion by anybody as to how this renowned treatise on Civil laws can be further improved.

Calcutta
14 April 1981

M. R. MALICK

MARRIAGE LAWS (AMENDMENT) BILL, 1981

Bill No. 23 of 1981

A

BILL

further to amend the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954.

BE it enacted by Parliament in the Thirty-second Year of the Republic of India as follows:—

1. **Short title.**—This Act may be called the Marriage Laws (Amendment) Act, 1981.

2. **Insertion of new sections 13C, 13D and 13E.**—In the Hindu Marriage Act, 1955 (hereinafter referred to as the Hindu Marriage Act), after section 13B, the following sections shall be inserted, namely:—

‘13C. **Divorce on the ground of irretrievable breakdown of marriage.**—(1) A petition for the dissolution of marriage by a decree of divorce may be presented to the district court by either party to a marriage, [whether solemnised before or after the commencement of the Marriage Laws (Amendment) Act, 1981] on the ground that the marriage has broken down irretrievably.

(2) The court hearing such a petition shall not hold the marriage to have broken down irretrievably unless it is satisfied that the parties to the marriage have lived apart for a continuous period of not less than three years immediately preceding the presentation of the petition.

(3) If the court is satisfied, on the evidence, as to the fact mentioned in sub-section (2), then, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, it shall, subject to the provisions of this Act, grant a decree of divorce.

(4) In considering, for the purpose of sub-section (2), whether the period for which the parties to a marriage have lived apart has been continuous, no account shall be taken of any one period (not exceeding three months in all) during which the parties resumed living with each other, but no other period during which the parties

lived with each other shall count as part of the period for which the parties to the marriage lived apart.

(5) For the purposes of sub-sections (2) and (4), a husband and wife shall be treated as living apart unless they are living with each other in the same household, and reference in this section to the parties to marriage living with each other shall be construed as reference to their living with each other in the same household.

13D. Wife's right to oppose the petition on the ground of hardship.—(1) Where the wife is the respondent to a petition for the dissolution of a marriage by a decree of divorce section 13C, she may oppose the grant of a decree on the ground that the dissolution of the marriage will result in grave financial hardship to her and that it would in all the circumstances be wrong to dissolve the marriage.

(2) Where the grant of a decree is opposed by virtue of this section, then—

(a) if the court finds that the petitioner is entitled to rely on the ground set out in section 13C; and

(b) if apart from this section the court would grant a decree on the petition;

the court shall consider all the circumstances, including the conduct of the parties to the marriage and the interests of those parties and of any children or other persons concerned, and if, the court is of opinion that the dissolution of the marriage shall result in grave financial hardship to the respondent and that it would in all the circumstances be wrong to dissolve the marriage it shall dismiss the petition, or in an appropriate case stay the proceedings until arrangements have been made to its satisfaction to eliminate the hardship.

13E. Restriction on decree for divorce affecting children.—The court shall not pass a decree of divorce under section 13C unless the court is satisfied that adequate provision for the maintenance of children born out of the marriage has been made consistently with the financial capacity of the parties to the marriage.

Explanation.—In this section, the expression “children” means—

(a) minor children;

(b) unmarried or widowed daughters who have not the financial resources to support themselves; and

(c) children who, because of special condition of their physical or mental health, need looking after and have not the financial resources to support themselves.’

3. Amendment of section 21A.—In section 21A of the Hindu Marriage Act, in sub-section (1), after the word and figures “section 13”, at both the places where they occur, the words, figures and letter “of section 13C” shall be inserted.

4. Amendment of section 23.—In section 23 of the Hindu Marriage Act, in sub-section (1), in clause (a), after the word and figure “section 5”, the words, figures and letter and except in cases where the petition is presented “under section 13C” shall be inserted.

5. Insertion of new sections 28A, 28B and 28C.—In the Special Marriage Act, 1954 (hereinafter referred to as the Special Marriage Act), after section 28, the following sections shall be inserted, namely:—

‘28A. Divorce on the ground of irretrievable breakdown of marriage.—(1) A petition for the dissolution of marriage by a decree of divorce may be presented to the district court by either party to a marriage [whether solemnised before or after the commencement of the Marriage Laws (Amendment) Act, 1981] on the ground that the marriage has broken down irretrievably.

(2) The court hearing such a petition shall not hold the marriage to have broken down irretrievably unless it is satisfied that the parties to the marriage have lived apart for a continuous period of not less than three years immediately preceding the presentation of the petition.

(3) If the court is satisfied, on the evidence, as to the fact mentioned in sub-section (2), then, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, it shall, subject to the provisions of this Act, grant a decree of divorce.

(4) In considering, for the purpose of sub-section (2), whether the period for which the parties to a marriage have lived apart has been continuous, no account shall be taken of any one period (not exceeding three months in all) during which the parties resumed living with each other, but no other period during which the parties lived with each other shall count as part of the period for which the parties to the marriage lived apart.

(5) For the purposes of sub-sections (2) and (4), a husband and wife shall be treated as living apart unless they are living with each other in the same household, and reference in this section to the parties to a marriage living with each other shall be construed as reference to their living with each other in the same household.

28B. Wife’s right to oppose the petition on the ground of hardship.—(1) Where the wife is the respondent to a petition for the dissolution of a marriage by a decree of divorce under section 28A, she may oppose the grant of a decree on the ground that the dissolution of the marriage will result in grave financial hardship to her and that it would in all the circumstances be wrong to dissolve the marriage.

(2) Where the grant of a decree is opposed by virtue of this section, then—

(a) if the court finds that the petitioner is entitled to reply on the ground set out in section 28A; and

(b) if apart from this section the court would grant a decree on the petition;

the court shall consider all the circumstances, including the conduct of the parties to the marriage and the interests of those parties and of any children or other persons concerned, and if, the court is of opinion that the dissolution of the marriage shall result in grave financial hardship to the respondent and that it would in all the circumstances be wrong to dissolve the marriage it shall dismiss the petition, or in an appropriate case stay the proceedings until arrangements have been made to its satisfaction to eliminate the hardship.

28C. Restriction on decree for divorce affecting children.—The court shall not pass a decree of divorce under section 28A unless the court is satisfied that adequate provision for the maintenance of children born out of the marriage has been made consistently with the financial capacity of the parties to the marriage.

Explanation.—In this section, the expression “children” means,—

(a) minor children;

(b) unmarried or widowed daughters who have not the financial resources to support themselves; and

(c) children who, because of special condition of their physical or mental health, need looking after and have not the financial resources to support themselves’.

6. Amendment of section 40A.—In section 40A of the Special Marriage Act, in sub-section (1), after the word and figures “section 27”, at both the places where they occur, the words, figures and letter “or section 28A” shall be inserted.

ADDENDA

Page 15. For Rule 6 substitute the following:

6. An Advocate shall not enter appearance, act, plead or practise in any way before a Court, Tribunal or Authority mentioned in sec. 30 of the Act, if the sole or any member thereof is related to the Advocate as father, grandfather, son, grandson, uncle, brother, nephew, first cousin, husband, wife, mother, daughter, sister, aunt, niece, father-in-law, mother-in-law, son-in-law, brother-in-law, daughter-in-law or sister-in-law.

Page 18. For Rule 39 substitute the following:

39. An Advocate shall not enter appearance in any case in which there is already a vakalat or memo or appearance filed by an advocate engaged for a party except with his consent; in case such consent is not produced he shall apply to the Court stating reasons why the said contest could not be produced and he shall appear only after obtaining the permission of the Court.

Page 18. After Section IV insert the following section:

Section IV A

40. Every advocate borne on the Rolls of a State Bar Council shall pay to the State Bar Council a sum of Rs. 30 every 3rd year, commencing 1st April, 1980, either at one time or in three equated instalments.
41. The aforesaid sum collected by the State Bar Council shall be credited to a separate fund to be known as "Advocates Welfare Fund".
42. All sums so collected by the State Bar Council in accordance with Rule 40 shall be remitted to the Bar Council of India forthwith, which shall be credited by the Bar Council of India to a separate fund to be known as "Advocates Welfare Fund".
43. Every Advocate borne on the Rolls of a State Bar Council shall deliver on or before 1st April, every year, commencing from 1st April, 1980 a declaration in the form set out below:

Form of Declaration

*(Under Rule 43 in Part VI, Chapter 11, Section IV-A of
the Rules of the Bar Council of India)*

The Bar Council of.....
Dear Sirs,

I am regularly practising as an Advocate within the jurisdiction of your Bar Council.

I declare as follows:

(a) I am an Advocate ordinarily practising in the territory/State of

(b) I am not an undischarged insolvent;

(c) I have not been convicted by any Court for an offence involving moral turpitude; or

A period of two years has elapsed since my release after being convicted of an offence involving moral turpitude; (in case of conviction particulars of such conviction should be given).

(d) I am not in full-time service or business or any such part time business or other vocation as is not permitted in the case of practising Advocates by the Rules of the Bar Council;

(e) I have not been suspended from the practice; and

(f) I am a member of the.....Bar Association at.....
and I have paid all the dues of the said Association. The certificate of the Secretary of the aforesaid Bar Association is enclosed herewith.

I verify that the contents of the declaration are true to my knowledge.

Dated.....

Place.....

SIGNATURE

Name in Block Letters.....

Enrolment No.

Present & permanent Address.....

44. Every Advocate borne on the Rolls of a State Bar Council shall enrol himself as a member of a Bar Association within the territory over which the said Bar Council exercises jurisdiction. Every declaration under Rule 43 above, shall be accompanied by a Certificate of the Secretary of that Bar Association; certifying that he is a member and that he has paid all the dues of the Bar Association.

45. The name of every Advocate, who fails to pay the aforesaid sums within the prescribed time set out in Rule 40 or fails to file the declaration under Rule 43 or makes any false statement in the declaration under Rule 43 shall be removed from the Rolls of the State Bar Council.

46. Before the name of any Advocate is removed from the rolls under Rule 45 the Secretary of the State Bar Council shall serve on the Advocate concerned a notice to show cause against the removal of his name and the cause shown, if any, shall be dealt with by the Chairman of the State Bar Council forthwith who, in his discretion, shall such orders as he thinks fit.

Pages 18-19. Rules 40 to 47 be renumbered as Rules 47 to 54.

Page 18. In Rule 44 renumbered as Rule 51 *add* the following to the end:
Law Officer for the purpose of this rule means a person who is so designated by the terms of his appointment and who, by the said terms, is required to act and/or plead in courts on behalf of his employer.

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