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NOTIFICATION

No. H. 12018/162/06-LJD/21, the 4th October, 2008. The Mizoram Divorce Ordinance, 2008 (Ordinance No. 1 of 2008) is hereby published for general information.

P. CHAKRABORTY
Secretary to the Govt. of Mizoram,
Law & Judicial Department.

The Mizo Divorce Ordinance, 2008 **An** **Ordinance**

to make laws relating to the divorce and matrimonial causes of Mizo Christians.

Whereas the Indian Divorce Act, 1869 has been barred in its application to the erst -while Lushai hills District (now Mizoram) by the Governor of Assam under the Assam Frontier Regulation, 1888 and was not extended or applied thereto under the Scheduled Districts Act, 1874 or under The Government of India Act, 1935:

Whereas Article 371G of the Constitution further provides that any Act of Parliament relating to these matters for the Mizos shall remain inapplicable, if not already applied before the 20th February, 1987; and

Whereas it is expedient to make the laws relating to the divorces and matrimonial causes arising out of the same, relating to the Mizos, whose marriage is solemnized in the church or who are married according to the Mizo customs or according to any other law in force,

And whereas the Legislative Assembly of Mizoram is not in session, the Governor of Mizoram in exercise of the powers conferred under article 213 of the Constitution, hereby promulgate the following Ordinance, namely: -

CHAPTER – I
PRELIMINARY

1. Short title, extent and commencement-

- (1) This Ordinance may be called the Mizo Divorce Ordinance, 2008.
- (2) It extends to the whole of the State of Mizoram except the Autonomous districts of Lai, Mara and Chakma.
- (3) It shall come into force from the date of its publication in the Mizoram Gazette.

2. Definitions-

In this Act, unless there is something repugnant in the subject or context,-

- (a) 'Couple' means and applies to husband and wife whose marriage has been solemnized in the church or who are married according to the Mizo customs.
- (b) 'Court' means the Subordinate District Council Court or a Family Court, as the case may be;
- (c) 'Decree' means and applies the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regards to all or any of the matters in controversy in the suit and may be final in so far as this Act is concerned.
- (d) 'Desertion' means abandonment against the will of the person charging it;
- (e) 'Divorce' means for the purpose of this Act the various means of nullity of marriage or separation amongst the Mizo by means of the mizo custom namely: 'Mak', 'Sumchhuah', 'Kawngka Sula Mak', 'Uire', 'Atna Avanga Inthen', 'Nupui Fanau Chhuahsan', 'Nupui Fanau Tlanbosan', 'Atna Avanga Inthen', 'Zangzaw', 'Chhuping', 'Nupa Inpawl duhlo', 'Sazumeidawh'
- (f) 'Marriage' for the purpose of this Act means the marriage between Mizo Christians solemnized by the church or marriage according to the Mizo custom.
- (g) 'Mizo' means and applies to individuals who are the Mizos by birth;
- (h) 'Re-marriage' means and applies to the second marriage of a couple who were previously married but have been divorced;

CHAPTER II
DISSOLUTION OF MARRIAGE

3. Grounds for dissolution of marriage

- (1) Any marriage before or after the commencement of this Act, may, on petition presented to the court either by the husband or the wife, be dissolved and a divorce decree be granted on the ground that the respondent-
 - (i) has committed adultery; or
 - (ii) has converted to another religion; or sectarian groups
 - (iii) due to irreconcilable incompatibility; or

- (iv) has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious for the petitioner to live with the respondent; or
 - (v) has been incurably of unsound mind for a continuous period of not less than three years immediately preceding the presentation of the petition; or
 - (vi) has, for a period of not less than three years immediately preceding the representation of the petition, been suffering from a virulent and incurable form of leprosy or any disease in a communicable form which endangers the life of the spouse,
 - (i) has not been heard of as being alive for a period of seven years or more by those persons who would have naturally have heard of the respondent if the respondent had been alive ; or
 - (ii) has willfully refused to consummate the marriage and the marriage has thereof not been consummated; or
 - (iii) has deserted the petitioner for at least two years immediately preceding the presentation of the petition.
 - (iv) by mutual consent.
- (2) A wife or husband may also present a petition for the dissolution of her marriage on the ground that her husband has, since the solemnization of the marriage been found guilty of rape, sodomy or bestiality

CHAPTER III RESTITUTION OF CONJUGAL RIGHTS

4. When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply by petition to the court for restitution of conjugal rights, and the court on being satisfied of the truth of the statement made in such petition, and that there is no ground why the application should not be granted, may decree restitution of conjugal rights accordingly.
5. A petition for judicial separation or nullity of marriage may be presented to the court either by the husband or the wife on the ground of failure to comply with a decree for restitution of conjugal rights and the court, on being satisfied of the truth of the statement made in such a petition and that there is no legal ground why the application should not be granted, may decree a judicial separation or nullity of marriage accordingly.
6. **Power of the court to pronounce decree for dissolving marriage.**
In case the court is satisfied on the evidence that the case of the petitioner has been proved, and does not find that the petitioner has been in any manner accessory to, or conniving at, the going through of the said form of marriage, or has condoned the adultery complained of, the court shall pronounce a decree, and grant a certificate of divorce as in Form I declaring such marriage to be dissolved.
7. **Time-frame for pronouncement of a decree-**
The court shall pronounce the decree for the dissolution of marriage within ninety days.

CHAPTER IV ALIMONY

8. **Permanent Alimony and maintenance-**

- (1) The Court exercising jurisdiction under this Act, may at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant, the conduct of the parties and other circumstances of the case, as it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immoveable property of the respondent.
- (2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub section (1), or The party in whose favour an order has been made has re- married, it may, at the instance of either party, vary, modify, or rescind any such order in such manner as the court may deem just.
- (3) Disposal of property- In any proceeding under this Act, the court may make such provisions in the decree as it deems fit and proper with respect to any property presented at the time of marriage, which may belong jointly to both husband and the wife.

CHAPTER V CUSTODY OF CHILDREN

9. **Duty of the court to consider the welfare of the children-**

In any proceeding under this Act, the court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem fit and proper with respect to the custody, maintenance and education of minor children, consistent with their wishes where ever possible, and upon application by the petition, may also from time to time revoke, suspend or vary any such orders and provisions previously made, and may, if it thinks fit, direct proceedings to be taken for placing such children under the protection of the Court.

CHAPTER VI RE- MARRIAGE

10. **Liberty to parties to marry again-**

Where a decree for dissolution or nullity of marriage has been passed and either the time for appeal has expired without an appeal having been presented to any court including the Supreme Court or, an appeal has been presented but has been dismissed and the decree or dismissal has become final, it shall be lawful for either party to the marriage to marry again.

CHAPTER VII
JURISDICTION

11. **Court to which petition should be made.**

Every petition under this act shall be presented to the court within the local limits of whose original jurisdiction -

- (i) the marriage was solemnized; or
- (ii) the respondent, at the time of the presentation of the petition resides; or
- (iii) the parties to the marriage last resided together.

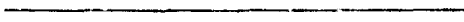
12. Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavor to bring about reconciliation between the parties;

13. For the purpose of aiding the court in bringing about such reconciliation, the court may, if the parties so desire or the court thinks fit it just and proper so to do, adjourn the proceedings for a reasonable period not exceeding fifteen days and refer the matter to any person named by the parties in this behalf or to any person nominated by the court if the parties fail to name any person, with directions to report to the court whether reconciliation can be and has been effected and the court shall in disposing of the proceeding have due regard to this report.

14. In every case where a marriage is dissolved by a decree of divorce, the court passing the decrees shall give a copy thereof free of costs to each of the parties.

15. Subject to others provisions contained in this Act all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908.

16. **Power to remove difficulties:** The State Govt. may by notification publish in the Official Gazette remove difficulties in implementation of the provisions of this Act.



FORM 1
NAME OF COURT

DIVORCE CERTIFICATE NO. _____ OF _____

This is to certify that Smt. _____ d/o
_____ (Name of father) or (name of
mother) of _____ (Name of village) and
Shri _____ (Name of ex-husband)
s/o _____ of _____ who were
married on _____ were divorce from each other by
way of _____ under _____ with effect
from _____ due to _____
Hence their marriage stands dissolved.

Name and Signature of
Issuing Authority with Seal