

REGISTRATION OF BIRTHS AND DEATHS REGISTRATION ACT 1969

PROCEEDING UNDER SECTION 13 (3) BEFORE THE J.M.F.C.

- Whose responsibility is it to give or cause to be given the information of births and deaths to the Registrar?
- **Section 8** : Persons required to register births and deaths :
- (a) head of the house, in his absence his nearest relative and in his absence, the oldest adult male person present in the house during the period in which the birth or death has to be reported.
- (b) the medical officer in charge or his authorized persons -in respect of births and deaths in a hospital, health center, maternity or nursing home or other like institution.
- (c) the jailor in charge -in respect of births and deaths in a jail.
- (d) the person in charge of a choultry, chattram, hostel, dharmasala, boarding house, lodging house, tavern, barrack, toddy shop or place of public resort.
- (e) the headman of the village in the case of a village and officer in charge of the local police station elsewhere -in respect of any new-born child or dead body found deserted in a public place.
- Section 9: Special provision regarding births and deaths in a plantation:
- Section 10: Duty of certain persons to notify births and deaths and to certify cause of death:

DELAYED REGISTRATION OF BIRTHS AND DEATHS:

- ➔ As per section 13 sub-section (1), the information of any birth or death given to the registrar after the expiry of the period specified therefor, but within 30 days after its occurrence, shall be registered on payment of such late fees as may be prescribed.
- ➔ As per sub-section (2), the information of any birth or death given to the registrar after 30 days but within one year after its occurrence, shall be registered only with the written permission of the prescribed authority and on payment of the prescribed fee and the production of an affidavit made before a notary public or any other officer authorised in this behalf by the state government.

→ Sub-section (3) is relevant for the Judicial Magistrates. It provides that any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order made by a Magistrate of the First Class or a Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee.

→ Rule 9 of the Maharashtra Births and Deaths Reg. Rules:

→ (1) Any birth or death of which information is given to the Registrar after the expiry of the period specified in rule 5, but within thirty days of its occurrence, shall be registered on payment of a late fee of rupees two.

→ (2) Any birth or death of which information is given to the Registrar after thirty days but within one year of its occurrence, shall be registered only with the written permission of the Block Development Officer for rural area, and Executive Health Officer/ Health Officer/ Chief Officer/ Executive Officer for concerned urban area and on payment of a late fee of rupees five.

→ (3) Any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order of Executive Magistrate of respective area, and on payment of a late fee of rupees ten.

→ The above sub-rule (3) is not in consonance with sub-section (3). Because, the sub-rule says that on the order of Executive Magistrate the registration can be done, while the sub-section states about the necessity of an order by a Judicial Magistrate. A circular issued by the Secretary, Law and Judiciary, Government of Maharashtra, clarified that it is the Judicial Magistrate and not the executive Magistrate who is empowered to order the registration of any death or birth the registration of which was not done within one year after its occurrence.

→ Neither the Act nor the Rules prescribe the nature or scope of the inquiry to be held by the Judicial Magistrate.

- Some of the participant judges pointed out that invariably the competent authority of the municipal Corporation, is impleaded as the opponent.
- Some participants stated that they call the report from the said authority as to whether the death or birth has been already registered or not.
- Some participants stated that the applicant themselves produce a certificate from such authority to the effect that such birth or death was not registered.
- Some participants stated that before passing the order for such registration, its notice i.e. citation should be published in the local newspaper.
- The inquiry contemplated in this regard is not an inquiry contemplated under the Code of Criminal Procedure. Because it is not related to any offence.
- As per sub-section (3) the Judicial Magistrate shall **verify the correctness of the birth or death.**

Case-laws:

- In *Karimabibi W/o Gulam Mohammad Mustufa Karodiawad and Others v. Ankleshwar Municipality and Others*, AIR 1998 Guj. 42 has issued the following directions.

“Admittedly, the application filed by the respondent Nos. 2 and 3 was under sub-section (3) of Section 13 of the said Act. If the above provision of sub-section (3) of Section 13 are considered, then it would be quite clear that it is the duty of the learned Judicial Magistrate to verify the correctness of the date of birth before allowing the application filed before him. When the law expects that he has to verify correctness of the birth, it is expected from him that he must hear the persons who would be interested in disputing or supporting the said application. No doubt the said Act of 1969 does not lay down any procedure as to how and in what manner the application is to be presented by the petitioner to the learned Judicial Magistrate. Not only that, the said Act of 1969 is not making any provision for the proceeding for filing such an application, but no procedure is also laid down by any rules framed under the said Act or by any other specific provisions of any Act. Therefore, in these circumstances when any application is presented under Section 13 of the said Act after a period of 1 year from the date of birth or date of death,

 - (1) It would be incumbent on the applicant to state the reasons/grounds in his application as to why the earlier entry in the death or birth register could not be made and why he could not give the information regarding the same to the competent authority.
 - (2) He must justify his late action in filing such an application by making necessary averments in his petition.

(3) It is also further necessary for him to state the purpose of which he wants the entry in the birth register or the death register.

(4) He must also state in the said application as who are likely to be affected by the said entry in the birth register or death register.

(5) **When all the above stated details are given in the application, it is also incumbent on the Magistrate to issue notice to those persons who are likely to be affected by his order.**

(6) **He should also insist on issuing a proclamation as is required while issuing a succession certificate.**

(7) **Without following the above stated procedure, the Magistrate should not proceed to dispose of such an application because the granting of such relief is going to create a right in favour of the applicant and obligation against certain persons.**

(8) **When the obligations are created against such persons, they must have a reasonable opportunity to challenge the said act of the petitioner."**

→ In *Sk. Rahimuddin Vs. Ojifa Bibi and Others*, AIR 1989 Ori. 56 has held as under :

"Section 13(3) casts an onerous duty on the Magistrate to verify the correctness of the birth or death and thereafter, pass an order. There cannot be any manner of doubt that an entry with regard to the date of birth of a person confers a valuable right and when such an entry was not contemporaneously made for some reason or the other and can be made only after a Magistrate passes an order after verifying the correctness of the same, the Magistrate must make an inquiry in that respect. Without any inquiry worth the name, and passing an order mechanically on the basis of affidavit filed, would tantamount to passing an order on total non-application of mind and in the eye of law, it would not be a verification as contemplated under Section 13(3). Such an order cannot be sustained in law."

→ In *Smt. Muniyamma, C. Sandeep Babu Vs. Devegowda, The Tahsildar*, 2014 (1) Kar.L.J. 714 it has been held : "The applicant has to state at least the following particulars in the application filed under Section 13(3) of the Act for entering the date of death:

(i) The reasons/grounds as to why entry in the death register could not be made earlier and why he could not give information regarding the same to the competent authority.

(ii) The purpose for which he wants entry in the death register.

(iii) Wife and children of the deceased have to be made parties in the application as also the Jurisdictional Registrar of Births and Deaths.

(iv) The particulars of the person/persons, who are likely to be affected by the entry in the death register.

(v) The Magistrate can also direct the applicant to furnish such other particulars as he may deem fit and proper in the circumstances of the case.

(vi) If the application contains the above particulars, the Magistrate should not only issue notice to the respondents but also to those persons who are likely to be affected by the order. He should also direct the issue of notice in two local daily newspapers, one of them should be in vernacular language, having wide circulation. The Magistrate may also issue such other directions as he may deem fit and proper depending upon the facts of the case. He should hold an enquiry and pass appropriate orders thereon in accordance with law. If there is a serious dispute with regard to the date of death, the Magistrate has to dismiss the petition with liberty to the parties to approach the Civil Court for appropriate reliefs.”

- ➔ For other FAQ on the Births and Deaths Registration Act visit the webpage <http://arogya.maharashtra.gov.in/Site/Uploads/GR/FAQs-on-Registration-of-Births-and-Deaths.pdf>
- ➔ The application under section 13(3) shall be accompanied by a duly filled up form of Birth information in Form 1 or as the case may be Death information in Form 2.
- ➔ The application lies before the Judicial Magistrate having local jurisdiction over the place where the birth or death occurred. Because, the Registrar under section 8 can register the births and deaths which occurred in his jurisdiction only and the Judicial Magistrate can give the direction to such Registrar only.

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