

# The Rajasthan Legal Assistance (Indian Soldiers) Rules, 1971

RAJASTHAN

India

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### Rule

### THE-RAJASTHAN-LEGAL-ASSISTANCE-INDIAN-SOLDIERS-RULES-1971 of 1971

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The Rajasthan Legal Assistance (Indian Soldiers) Rules, 1971 Published vide Notification No. GSR 48. dated January 7, 1972, published in Rajasthan Gazette, Extraordinary, part 4-C (I), dated 11-1-1972, page 251 GSR 48. - The Government of Rajasthan is pleased to make following Rules for providing legal assistance to the Indian Soldiers.

#### 1. Short title, extent and commencement and duration.

(1) These rules may be called the Rajasthan Legal Assistance (Indian Soldiers) Rules, 1971. (2) They shall come into force from such date as the Government may, by notification in the official Gazette, appoint and different dates may be appointed for different areas. (3) They shall remain in force while the proclamation of Emergency is in operation.

#### 2. Definitions.

- In these rules, unless the context otherwise requires, (a) "Act" means the Indian Soldiers (Limitation) Act, 1925 (Central Act 3 of 1925); (b) "Court" means a civil, criminal or revenue Court; (c) "Indian Soldier" means any person domiciled in Rajasthan and subject to the Army Act, 1950 or the Air Force Act, 1950. (d) "Proceedings" includes any suit, appeal or application or any complaint or police report; (e) "Proclamation of Emergency" means the proclamation of Emergency made by the President of India under clause (1) of Article 352 of the Constitution of India; (f) "Section" means the section of the Indian Soldiers (Litigation) Act, 1925 (Central Act 3 of 1925); (g) "Serving under war conditions" means serving under conditions declared by the Government of India under clause (b) of section 3 of the Indian Soldiers (Litigation) Act, 1925 (Central Act 3 of 1925) as constituting a State of War for the purposes of the said Act.

### **3. Conditions for grant of legal assistance.**

- Legal assistance at the expense of the State may be provided to an Indian Soldier serving under war conditions.-(a)If, in any proceeding by or against an Indian Soldier pending before any court on the date of commencement of these rules in any area or in any proceeding instituted in any court against such soldier after such commencement, he is-(i)an unrepresented party not conjointly with others and is unable to appear therein, or(ii)an unrepresented party conjointly with others but the interests of the soldier are not identical with and are not adequately represented by such other party or are not of a formal nature and such soldier is unable to appear in such proceeding, or(iii)not a party, but is materially concerned in the outcome of the proceeding and his interests are likely to be prejudiced by his inability to attend.(b)If any proceeding is intended to be instituted by or on behalf of an Indian soldier alone to prevent any one to invade or threaten to invade the soldiers right to or enjoyment of his property or to prevent it from being wasted, damaged or alienated, or to restrain anyone from causing any injury of any kind to such soldier or to recover possession of any property of which he is dispossessed after the date of the proclamation of Emergency; provided that in civil and revenue proceedings falling under parts (i) and (ii) of clause (a), the Collector shall first be moved to issue a certificate under section 5 and legal assistance shall not be provided under these rules unless such proceedings have been continued by the Court under section 8.

### **4. Application for legal assistance.**

(1)An Indian Soldier or on his behalf his next kin, other relative or friend may, in the prescribed form, apply to the Sub-Divisional officer within whose jurisdiction the Indian soldier ordinarily resides or his property or the court, wherein the proceeding instituted by or against such soldier is pending or is intended to be instituted by or on his behalf, is situated.(2)The Sub-Divisional officer, on being satisfied that legal assistance is admissible to such soldier under rule 3 and that no legal practitioner has volunteered, or is likely to volunteer, to represent such soldier without payment of fee to him, may, subject to rule 5, engage any legal practitioner to represent such soldier in such proceeding.

### **5. Panel of lawyers.**

- The Sub-Divisional officer shall:-(a)maintain a list of legal practitioner of not more than seven years standing at the Bar practicing at the Tehsil, Sub-Division or district headquarter:(b)engage under rule 4 a legal practitioner from the said panel by rotation in the order in which the name appears in such list unless there are special reasons to the contrary to be recorded in writing by such officer:Provided that if any particular case, the Sub-Divisional officer considers it necessary to engage a senior legal practitioner on behalf of the Indian Soldier, he may engage such a practitioner after obtaining prior approval in writing of the Collector.

### **6. Fees of counsel.**

- When a legal practitioner is engaged by the Sub-Divisional officer to represent an Indian soldier,

he shall receive:-(a)if the proceedings are pending or instituted in a criminal court such fee as may be agreed upon between the Sub-Divisional officer and such practitioner;(b)if the proceedings are pending or instituted in a civil or a revenue court, such fee as is legally taxable according to the Rules in force for the time being;(c)The Sub-Divisional officer shall certify on each bill of fees received by him from legal practitioner that the amount of fees has been fixed having regard to all the circumstances of the case and that it is reasonable:Provided that in cases falling under clause (b) if the pecuniary value of the suit, appeal or application cannot be defined or when defined is so low that the fees calculated thereon are trifling, the Sub-Divisional officer may fix such fee as he deems proper taking into consideration the circumstances of the case:Provided further that the fee payable under this rule shall not exceed in each case fifty rupees where a penal legal practitioner is engaged under the proviso to rule 5.

## **7. Incidental expenses.**

- Expenses incurred in defending a soldier under these rules, shall be payable by the Government if they are exclusively incurred in connection with the litigation in question on account of Court fee, Vakalat Nama, Application etc. filed in court.Note: - Stamp duty on affidavits should be regarded as expenses ailing within these rules but not penalty paid on unstamped documents.

## **8. Travelling expenses.**

- The legal practitioner who is to be proceed to a place other than his permanent residence for the conduct of a case under these rules, shall be entitled to travelling allowance and daily allowance at the rates as are admissible to an officer of the State Government of the Second Class.

## **9. Conduct of appeals.**

- The Legal practitioner engaged to conduct case shall be expected to appear if necessary in the court o first appeal without additional remuneration. Nothing in this rule, however, shall be regarded him to appear before the High Court.No assistance for appeal shall be given unless the Law Department agrees to the appeal being preferred or considers pending appeal worth contesting. If any costs are awarded by courts to such soldier, they will be credited to the State account.

## **10. Payment of Bills.**

- The Legal practitioner engaged for defending the soldier shall send his bill to the Sub-Divisional officer showing separately the following:-(i)Date of decision and the result of the case.(ii)Fees settled under rule 6 (in case of legally taxable fees memo of costs obtainable from the court should be attached).(iii)Travelling expenses claimed under rule 8. - The Legal practitioner shall submit his claim for travelling expenses in the form prescribed by the Government for Government servants.(iv)Incidental expenses claimed under rule 7 (a memo signed by the Legal practitioner specifying the kind of memo filed and fee paid thereon will be sufficient).(v)Separate bill will be prepared by the Legal practitioner for separate cases. The Sub-Divisional officer will be the

sanctioning, drawing and disbursing officer for these expenses and will maintain proper record.

## **11. Grant of assistance to be discretionary.**

- A grant of assistance under these rules shall be absolutely at the discretion of the Sub-Divisional officer. The Sub-Divisional officer may refuse to sanction an application for grant but he will assign reasons therefor. The Collector may be approached to revise the orders. Notifications [Notification No.F. 6( 126) Revenue B/62, dated 15-2-1963, Published in Rajasthan Gazette Extraordinary Part IV-C, Supplementary No. 1 dated 4-4-1963.] In exercise of the powers conferred by section 14 of the Indian Soldiers (Litigation) Act, 1925 (Central Act No.4 of 1925), the State Government hereby directs that all the provisions of the said Act shall apply to the Rajasthan Armed Constabulary Personnel stationed outside Rajasthan in connection with the present National Emergency in the same manner as the said provisions apply to soldiers covered by the Government of India, Ministry of Defence's notification No. S.R.O 3 E. dated the 15th November, 1962.