

High Court of Jammu and Kashmir and Ladakh

(Office of the Registrar General at Srinagar)

Subject:- Amendment to the Jammu and Kashmir General Rules (Civil) of 1978 Svt., for the guidance of District and Subordinate Courts of UTs of Jammu and Kashmir and Ladakh.

NOTIFICATION

No: 2449 of 2025/RA/GS

Dated: 25/07/2025

In exercise of the powers conferred by Article 227 of the Constitution of India read with Section 122 of the Code of Civil Procedure, 1908 and all other powers enabling in this behalf, the High Court of Jammu and Kashmir and Ladakh with the previous approval of the Lieutenant Governor, hereby makes the following amendment to the "Jammu and Kashmir General Rules (Civil) of Svt. 1978, (for the Guidance of District & Subordinate Courts of UTs of Jammu & Kashmir and Ladakh).

This amendment shall come into force from the date it is published in the Official Gazette.

"After Chapter VII, the following Chapter VII-A shall be inserted; namely:-

Cross Town News

" CHAPTER VII-A

SUITS BY OR AGAINST THE SOLDIERS

PART—A. AMENABILITY TO THE CIVIL COURTS OF PERSONS SUBJECT TO MILITARY LAW

1. All persons belonging to the Armed Forces are amenable to the jurisdiction of ordinary Civil Courts subject and are liable to certain procedural requirements as regards their personal appearance in Court and execution of decree against their persons, pay and allowances and military equipment.
2. A Memorandum has been drawn by the Government of India, in the above regard, showing the legal position concerning the persons belonging to Army Officers. The Armed Forces in the matter of arrest for debt, attachment of their pay and allowances and priority in disposal of litigation involving them, is attached as an appendix at the end of this Chapter. This Memorandum is only for the guidance of the civil courts. This memorandum is not applicable to the personnel of Indian Navy who continue to be governed by the Memorandum issued with the Government of India, vide Home Department letter No.F.311/37-Judicial, dated the 29th July, 1937, as amended by letter No. 113/37—Judicial, dated the 29th May, 1939.

3. Attention is also invited to clause (j) of the proviso to sub-section (1) of section 60, of the Code. The pay and allowances of persons to whom the Air Force Act, 1950 or the Army Act, 1950, applies or of persons other than commissioned officers to whom the Indian Navy (Discipline) Act, 1934, applies, are exempt from attachment in execution of decrees of civil Courts.
4. When any officer or soldier actually serving Government in military capacity is a party to a suit and cannot obtain leave of absence for prosecuting or defending a suit, he can appoint some other person to act on his behalf by an authority in writing given in the manner prescribed in Order XXVIII of the Code of Civil Procedure.

In the case of Indian Officers or soldiers the following form has been prescribed for the authority in writing.

"Whereas I (name) Inhabitant of village in the district of.....son of.....the caste of at present rank in.....Company Regimentstationed at..... having occasion to institute (or defend) an action for (nature and object of suit and name of adverse party), do hereby nominate and appoint (name, residence and caste and relationship, if any) to be my attorney and

I bind myself to abide by whatever he, the said attorney may do in my behalf, in the prosecution (or defence) of the said suit. The said attorney will either prosecute (or defend) the suit in person or will appoint one or more of the authorized advocates of the Court to prosecute (or defend) the same under the instructions of the said attorney as he may think proper. In the event of an appeal being preferred from the Judgment passed in the suit the said attorney is hereby empowered to act for me on the appeal in a like manner as in the original suit.

Signed in my presence.

Signature
O.C."

(Vide Paragraph 285, Regulations for the Army in India, 1927)

A power of attorney to institute or defend a suit executed as above is not chargeable with Court fee (vide section 19, clause (1) of the Court fees Act, 1870).

5. As regards service of processes on officers and soldiers, see Order V, Rules 28 and 29 of the Civil Procedure Code, 1908 and Rules and Orders Volume IV, Chapter 7, Processes (Civil).
6. Civil Courts should dispose of all suits, for the prosecution or defence of

which officers, soldiers or reservists have obtained leave of absence as speedily as is consistent with the administration of justice, irrespective of the order in which they stand on the register.

7. When a person subject to the Army Act, 1950, or the Air Force Act 1950, obtains or applies for leave of absence for the purpose of prosecuting or defending a civil suit, he is provided by his Unit Commander with a certificate to enable him to obtain priority of hearing (I. A.F. D. 902). This certificate must be presented by him in person to the Court. If the case cannot be disposed of within the period of leave granted, the civil officer concerned may grant leave for such period as will admit of the receipt of a reply to an application to the Unit Commander for the necessary extension of leave. The civil officer will at once report to the Unit Commander any grant of leave sanctioned by him. (See paragraph 288, Regulations for the Army in India, 1927).

APPENDIX

(Referred to in Para 2)

Memorandum showing the Legal position of persons belonging to the armed forces in the matter of arrest for debt, attachment of their pay allowances and priority in disposal of litigation involving them.

1. Cases have occurred where Civil Courts have issued orders attaching the pay and allowances of persons belonging to the Armed Forces. There have also been cases of delay by courts in the hearing and final disposal of cases involving such persons. The intention of this memorandum is to state in simple terms the existing provisions in regard to exemption from arrest for debt and attachment of pay and allowances and other property of persons belonging to the Armed Forces and the priority to be given by Civil Courts for the hearing and final disposal of any suits or other proceedings in which they may be involved.
2. The privileges granted to such persons by the Army and Air Force Act, 1950 (Acts XLVI and XLV of 1950 respectively) are detailed below. These rights and privileges are in addition to any other rights and privileges conferred by any other law for the time being in force.

- MSH*
25/07/2005
3. (a) **Immunity from attachment.**—Under Sec. 28 of the Army/Air Force Act, no arms clothes, equipment, accoutrements or necessities of any person subject to either of these Act nor any animal used by him for the discharge of his duties can be seized, nor can his pay and allowances or any part thereof be attached by direction of any civil or revenue court or any revenue officer in satisfaction of any decree or order enforceable against him.

(b) **Immunity from Arrest for debt.**—Sec. 29 of the Army/Air Force Act provides that no person subject to either of these Acts, so long as he belongs to the Armed Force, can be arrested for debt under any process issued by, or by the authority of a civil or revenue court or a revenue officer. Where, in spite of the above any such arrest is made, the court of

the revenue officer concerned on receipt of a complaint by such person or by his superior officer to that effect, may discharge him and award reasonable costs to the complainants. The costs may be recovered in like manner as if they were awarded to him by a decree against the person obtaining the processes. No court fees are payable for the recovery of such costs.

(c) Immunity of persons attending courts martial from arrest. —

Under Section 30 of the Army/Air Force Act, no presiding officer or member of a court martial, no Judge advocate, no party to any proceedings before a court martial, or his legal practitioner or agent, and no witness acting in obedience to a summons to attend a court martial while proceeding to, attending or returning from, a court martial is liable to be arrested under civil or revenue process. If any such person is arrested under any such process, he may be discharged by order of the court martial.

(d) Priority in respect of Army Air Force personnel's litigation. —

Under Section 32 of the Army/Air Force Act on the presentation to any court by or on behalf of any person subject to either of these Acts of a certificate, from the proper military/air force authority, of leave of absence having been granted to or applied for by him for the purpose of prosecuting or defending any suit or other proceeding in such court, court shall on the application of such person, arrange, so far as may be possible, for the hearing and final disposal of such suit or other proceedings within the period of the leave so granted or applied for.

Cross Town News

The certificate from the proper military air force authority shall state the first and last day of the leave or intended leave and set forth a description of the case with respect to which the leave was granted or applied for. No fee is payable to the court in respect of the presentation of any such certificate, or of any application by or on behalf of any such person, for priority for the hearing of his case. Where the court is unable to arrange for the hearing and final disposal of the suit or other proceeding within the period of such leave or intended leave as aforesaid, it shall record its reason for its inability to do so, and shall cause a copy thereof to be furnished to such person on his application without any payment whatever by him in respect either of the application for such copy or the copy itself. If in any case a question arises as to the proper Military/air force authority qualified to grant such certificate as aforesaid, the court shall refer the question at once through the authority granting the certificate to—

- (i) An officer having power not less than a Brigadier or equivalent commander in the case of military personnel;
- (ii) An officer having power not less than a group commander or equivalent commander in respect of air force personnel.

The decision of the officer so referred to shall be final.

4. Persons subject to the Army and Air Force Act who are entitled to the privileges mentioned above are detailed in Sections 2 and 31 of those Acts. They are-

- (a) Officers, Junior Commissioned officers and warrant officers of the Regular Army and Officers and warrant officers of the Air Force;
- (b) Persons enrolled under the Army or the Air Force Acts;
- (c) Persons belonging to the Indian Reserve Forces or Air Force Reserve when called out for, or engaged in, or returning from, training or service;
- (d) Persons belonging to the Indian Supplementary Reserve Forces when called out for service or when carrying out the annual test;
- (e) Officers of the Territorial Army when doing duty as such officers;
- (f) Enrolled persons of the Territorial Army when called out or embodied or attached to any regular forces;
- (g) Persons holding commissions in the Army in India Reserve of Officers and officers appointed to the Regular Reserve of Officers when ordered on any duty or service for which they are liable as such members;
- (h) Persons belonging to the Indian Air Force Volunteer Reserve in the circumstances specified in section 3 of the Indian Air Force Volunteer Reserve (Discipline) Act, 1939 (XXXVI of 1939).
- (i) Persons not otherwise subject to military/air force law, who on active service, in camp on the march, or at any frontier post specified by the Central Government are employed by, or are in the service of or are followers of, or accompany any portion of the Regular Army Air Force.

Handwritten signature
25/07/2005

CHAPTER VII-A

(Part B)

PART B:—THE INDIAN SOLDIERS' LITIGATION ACT, 1925.

1. An 'Indian soldier' is defined in the Indian Soldiers' Litigation Act, 1925, as a person subject to the Army Act 1950 or the Air Force Act 1950. Section 3 defines the circumstances in which an Indian Soldier shall be deemed to be serving "under special conditions". According to Section 6, when a court (Civil or Revenue), has reasons to believe that a party to a suit before it is an Indian soldier who is not duly represented and is unable to appear, it must give notice thereof to the 'prescribed authority' in the 'prescribed manner' and suspend proceedings in the meantime. If the 'prescribed authority' certifies that the soldier is serving under "special conditions" the case must be postponed. Section 10 confers power on the Court to set aside decrees and orders passed against an Indian soldier serving under 'War' or 'special conditions' in certain circumstances. Section 11 permits the period spent in such service to be deducted from the normal period of limitation, except in the case of preemption suits. For the purposes of section 10 and Section 11, the Court may refer the question as to whether a soldier has been serving under 'special or 'War conditions' to the prescribed authority, and certificate granted by that authority is conclusive on the point.
2. The rules framed by the Central Government under section 13 of the Indian Soldiers (Litigation) Act, 1925, are given in the following notification:—

INDIAN SOLDIERS (LITIGATION) RULES, 1938

Published vide Notification Gazette of India, 1938, Part 1, page 968.

Handwritten signature and date: 25/07/2005
No. 455—In exercise of the powers conferred by Section 13 of the Indian Soldiers (Litigation) Act, 1925 (IV of 1925), the Central Government after consulting the High Courts concerned, is pleased to make the following rules, namely:—

1. (1) These rules may be called the Indian Soldiers (Litigation) Rules, 1938.
2. Definitions - (1) In these rules, 'the Act' means the Indian Soldiers (Litigation) Act, 1925 (IV of 1925).

(2) All words used herein and defined in the Act shall be deemed to have the meanings respectively attributed to them by the Act.

3. The prescribed authority for the purposes of sub clause (iv) of clause (b) of section 3 and section 6, 7 and 8 of the Act shall be the Officer Commanding the unit or the Depot of the unit to which the soldier belongs.

4. The certificate given by a Collector under section 5 of the Act shall be in Form A of the Schedule.

5. (1) The notice given by the Court under section 6 of the Act shall be in Form B of the Schedule and shall be sent to the prescribed authority care of the General Officer Commanding in Chief of the Command in which the Court is situated, and the certificate of the prescribed authority under section 7 of the Act, shall be in Form C of the Schedule.

6. If at any time it appears to the prescribed authority that the circumstances in which he certified to the Court under Section 7 of the Act that a postponement of the proceedings was necessary in the interests of justice, no longer exist, he shall forthwith certify to the Court to that effect in Form D of the Schedule.

7. On receipt of a certificate from the prescribed authority under section 7 of the Act that a postponement of the proceedings is necessary in the interests of Justice the court shall postpone the proceedings until the receipt of a certificate in Form D from the prescribed authority or until the soldier is represented in the proceedings by some person duly authorized to appear, plead or act in his behalf.

8. The prescribed authority for the purposes of section 12 of the Act shall be the General Officer Commanding-in-chief of the Command in which the Court is situated.

Handwritten signature
25/07/2025

**SCHEDULE
FORM A.**
(See rule 4)

*Collector's certificate under section 5 of the Indian Soldiers (Litigation)
Act, 1925.*

From
The Collector,
District.....
.....

To
.....
.....
.....

In re.....No of 20.

.....
Versus
.....

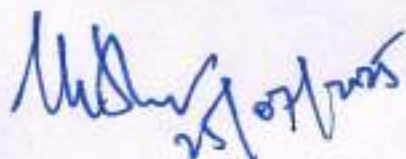
No.....,dated.....

Sir,

Cross Town News

I have the honour to certify under section 5 of the Indian Soldiers (Litigation) Act, 1925 (IV of 1925), that I have the reason to believe that son of....., who is an Indian soldier ordinarily residing in my district and who is a party in the above mentioned (enter suit, appeal application of other proceedings) now pending in (enter name of court) is unable to appear therein.

Yours faithfully,



Collector

Notes.—(1) This Certificate should be sent by post in a registered cover or by hand and an acknowledgement should be obtained for it.

(2) It should be addressed in the case of High Court, to the Registrar of the Court, or in the case of a Board of Revenue to the Secretary of such Board, or in the case of a Financial Commissioner, to the Clerk of the Court, or in other cases to the Presiding Officer of the Court.

FORM B.
(See Rule 5)

Notice under section 6 of the Indian Soldiers (Litigation) Act, 1925.

In the.....
.....No.....of.....

.....
Versus
.....

To

The Officer Commanding (enter name of unit / depot of unit).
Care of the General Officer Commanding in Chief..... Command.

Please take notice that upon the certificate of the Collector of under Section 5 of the Indian Soldiers (Litigation) Act, 1925 (IV of 1925) having had reason to believe that....., son ofan Indian Soldier who is a party in the above-mentioned proceeding now pending in this Court and is not represented by any person duly authorized to appear, plead or act on his behalf, is unable to appear therein, this Court has, under section 6 of the said Act, suspended the proceedings, if within the period prescribed in section 8 of the said Act, no certificate is received from you under section 7 thereof, the Court will, if it thinks fit, continue the proceeding.

Given under my hand and the seal of the Court, this..... day
of 20.

Presiding Officer of the Court/ Registrar

NOTE — This notice should be sent by post in a registered cover, or by hand, and an acknowledgement should be obtained for it.

Handwritten signature and date: 25/07/2025

FORM C.

(See Rule 5).

Certificate under section 7 of the Indian Soldiers (Litigation) Act, 1925.

From

.....
.....
.....

.....No.....of 20.....

.....
Versus
.....

No....., dated.....

Sir,

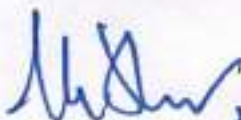
I have the honour to acknowledge receipt of your notice dated.....
under section 6 of the Indian Soldiers (Litigation) Act, 1925 (IV of 1925), in
the above mentioned proceeding, and to certify under section 7 of the said Act
thatson of, in respect of whom the
above mentioned notice has been given, is serving under special conditions
and that a postponement of the proceeding in respect of that soldier is
necessary in the interest of justice.

Yours faithfully,

Officer Commanding

NOTE—(1) This certificate should be sent by post in a registered cover or by
hand, and an acknowledgement should be obtained for it.

(2) It should be addressed in the case of a High Court, to the Registrar of the
Court, or in the case of a Board of Revenue to the Secretary of such Board, or
in the case of a Financial Commissioner, to the Clerk of the Court, or in other
cases to the Presiding Officer of the Court.


25/07/2025

FORM D.

(See Rule 6).

Certificate under rule 6 of the Indian Soldiers (Litigation) Rules, 1938.

From

.....
.....
.....

To

.....
.....
.....

In re.....*No.*.....*of 20*.....

.....
Versus

.....
No....., dated.....

Sir,

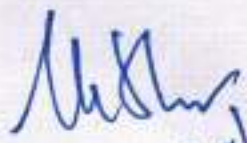
I have the honour to invite a reference to my letter No.....
....., dated....., and to certify under rule 6 of the
Indian Soldiers (Litigation) Rules, 1938, that circumstances no longer exist for
the postponement of the above mentioned (enter suit appeal, application or other
proceeding), now pending in (enter name of court),
wherein....., son ofan Indian Soldier, is a party.

Yours faithfully,

Officer Commanding

Notes. — (1) This certificate should be sent by post in a registered cover, or by
hand, and an acknowledgement should be obtained for it.

(2) It should be addressed, in the case of a High Court, to the Registrar of the
Court, or in the case of a Board of Revenue to the Secretary of such Board, or
in the case of a Financial Commissioner, to the Clerk of the Court, or in other
cases to the Presiding Officer of the Court.


25/07/2025

CHAPTER VII-A

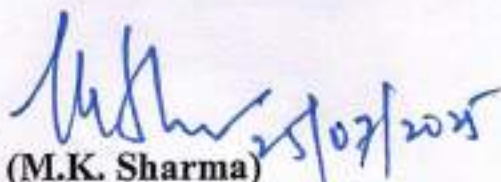
(Part C)

PART C.—PROCEEDINGS WITH RESPECT TO SUCCESSION CERTIFICATES.

As some doubt and difference of opinion existed in connection with the application of Sections 5 and 6 of the Indian Soldiers' Litigation Act, 1925, to cases for the grant of succession certificates under the Indian Succession Act, 1925 (No. XXXIX of 1925), the following instructions have been issued for the guidance of subordinate Courts.

- (1) A "party to any proceeding" is a person actually impleaded e.g., a plaintiff or defendant or an appellant or respondent—and the phrase does not include persons named under section 372, sub section (1), clause (c) of the Indian succession Act, 1925, in an application for the grant of a certificate until the Court has, by order under Section 373 (1) (a) of that Act, expressed the opinion that special notice of the application should be given to them.
- (2) When the Court finds that a person falling under clause (c) of Section 372 (1) aforesaid, is an Indian soldier serving under special or War conditions, and there is no special and obvious reason for suspecting the good faith of the members of the family actually applying for the certificate, the Court should declare that, in the circumstances, it is unnecessary to make the soldier a party to the proceeding or to issue notice to him; but in such cases the Court should always demand security under section 375 of the Act. If, on the other hand, there is any good reason to suspect the good faith of the applicant, then he should be required to get a power of attorney from the absent soldier or some written assurance from him that he does not object to the application.

By Order.


(M.K. Sharma)

Registrar General (Officiating)


No: 40487-540/24/43

Dated: 25.07.2025

Copy of the above forwarded to the:

1. Principal Secretary to Hon'ble the Chief Justice, High Court of J&K and Ladakh.
2. Secretary to Hon'ble Mr./Mrs. Justice _____,
.... for kind information of their Lordships.
3. Secretary to Govt. Department of Law, Justice and Parliamentary Affairs,
Civil Secretariat, Srinagar for information
4. Registrar Vigilance, High Court of J&K and Ladakh, Srinagar.
5. Director, J&K State Judicial Academy, Srinagar.

6. Registrar Rules, High Court of J&K and Ladakh, Srinagar.
7. Registrar Inspection, High Court of J&K and Ladakh, Jammu/Srinagar.
8. Registrar Judicial, High Court Wing, Jammu/Srinagar.
9. Registrar Computers (I.T), High Court of J&K and Ladakh, Srinagar.
10. Member Secretary(s) J&K and Ladakh Legal Services Authorities
11. All Principal District & Sessions Judges of the UTs of J&K and Ladakh
.....for information and necessary action.
- 12. CPC e-Courts, High Court of J&K and Ladakh, Srinagar for information and with the request to get the same uploaded on the official website of the High Court.
- 13. General Manager, Govt Press Jammu/Srinagar for publication in the next issue of the Govt. Gazette.
14. Chief Librarian, High Court of J&K and Ladakh, Jammu/Srinagar for information and keeping the record of the same.
15. Order File.


Registrar General (Officiating)

Cross Town News