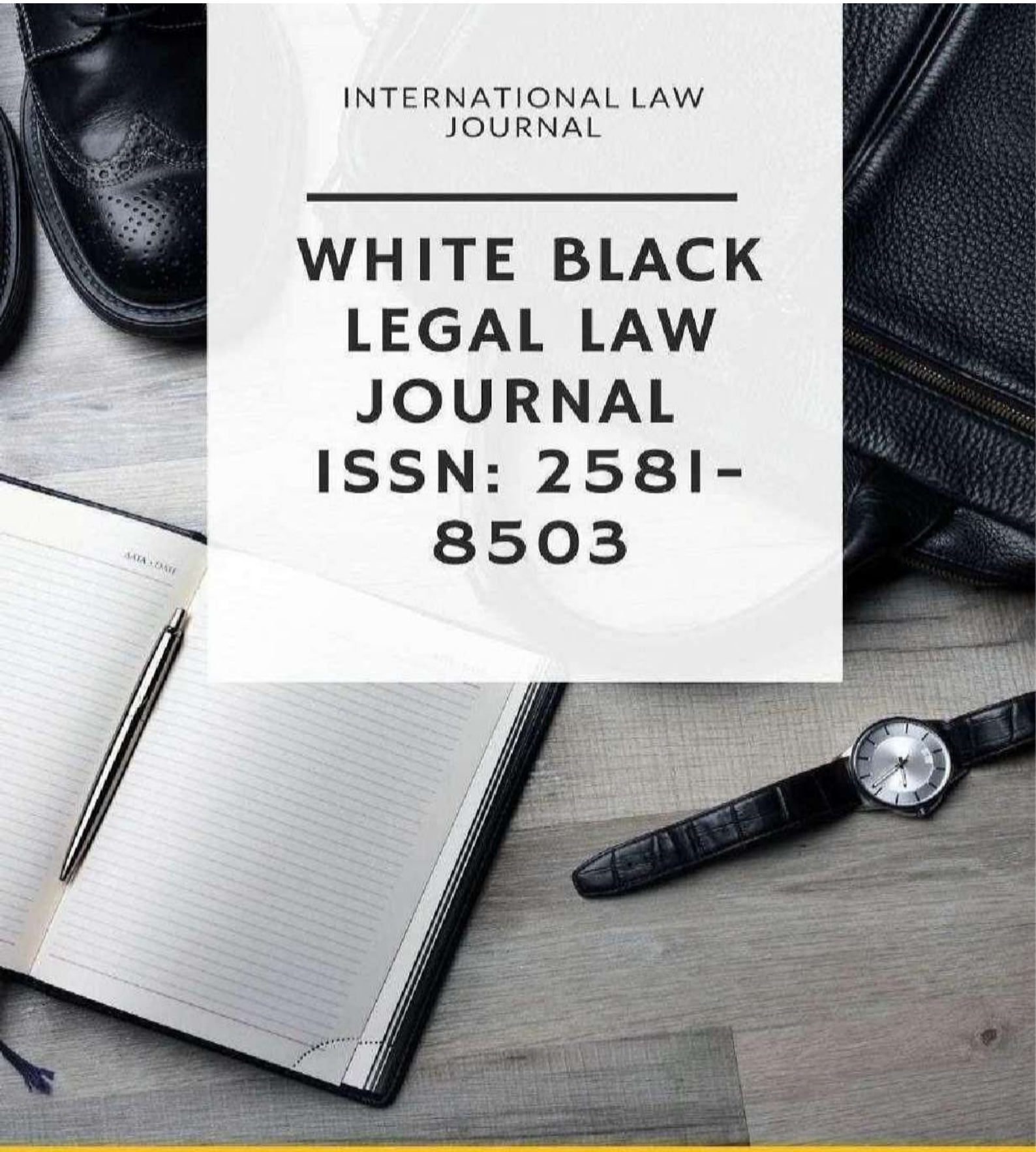

INTERNATIONAL LAW JOURNAL

WHITE BLACK LEGAL LAW JOURNAL

ISSN: 2581-8503

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

DISCLAIMER

EDITORIAL TEAM

Raju Narayana Swamy (IAS) Indian Administrative Service officer

Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and a professional diploma in Public Procurement from the World Bank.

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.

Senior Editor

Dr. Neha Mishra

Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi, Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.

Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.

Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur,
M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM
Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.
More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.

Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

MILITARY COURTS AND THEIR ROLE IN STRENGHTHENING COUNTRY'S DEFENCE

AUTHORED BY - KASHISH KHANDELWAL
ENROLLMENT NO: A3221517290
SEMESTER X
AMITY UNIVERSITY, NOIDA- UTTAR PRADESH BATCH: 2019-2024

DECLARATION

I, Kashish Khandelwal, who am pursuing a BBA.LLB (H) at Amity University in Noida, Uttar Pradesh, hereby declare that this is my original work, prepared under the guidance of Assistant Professor (GRADE I) Dr. Apoorva Roy, at times in partial fulfillment of requirements or for any other purpose.

The aforementioned work, in whole or in part, has never before been presented to a university or other institution for the purpose of conferring a degree or diploma.

Furthermore, all sources- books, articles, research projects, or other works that were used to conduct this study have been properly cited and recognized.

CERTIFICATE

This certifies that Ms. Kashish Khandelwal has finished her internship under my supervision and is pursuing a BBA.LLB(H) at Amity Law School, Amity University Uttar Pradesh. Throughout the work, she acquired knowledge in the field of law. It is determined that the thorough report is unique and appropriate for submission.

Name of the faculty - Dr Apoorva Roy

Date:

Signature:

Designation - Asst Professor (Grade-1)

ACKNOWLEDGEMENT

I take this opportunity to express our profound gratitude and deep regard to our guide Dr Apoorva Roy for her exemplary guidance, monitoring and constant encouragement throughout the course of this term paper. The invaluable suggestions and inputs given by her from time to time have enabled me to complete this term paper with ease.

I am obliged to staff members of Amity University, for the valuable information provided by them in their perspective fields. I am grateful to this cooperation during the period of my assignment.

Last but not the least, I thank almighty, my parents and my friends for their constant support and encouragement without which this research work would not be possible.

Signature: Date:

Kashish Khandelwal A3221517290

INDEX

LIST OF ABBREVIATIONS

A. - Indian Law Reports Allahabad series

ACTION - Acton‘s Reports, iPrize iCauses, iPrivy iCouncil i(Eng.) AC - Appeal Cases (Eng.)

North-Western Provinces High iCourt iReports, iAgra

North-Western Provinces iHigh iCourt iReports, iAgra Agra iFull iBench iRulings Agra iFull Bench Rulings Agra iHigh iCourt iReports

All iIndia iReporter Allahabad Indian iLaw iReports iBombay iSeries Barnwell i& iAlderson‘s iReports i(Eng.)

Bal ideva iRam iDave‘s iPrivy iCouncil iCases

* Agra
* Agra iF.B. • Agra iFB
* Agra iFBR • Agra iHCR • AIR iAll
* B.
* B. & Ald. • Bald.
* Beng.LR
* B.L.J • B.L.R

Bengal iLaw iReports i iReports Bombay iLaw iJournal

Bengal iLaw iReports i iReporter iBHC i-- iBombay iHigh iCourt

iB.L.R i-- iBombay iLaw

* BLT
* CARA
* CJM

•CMM --

Burma Law Times

Central Adoption Research Authority

Chief Judicial Magistrate Chief Metropolitan Magistrate

LIST OF CASES

Bandhua Mukti Morcha AIR 1984 SC 812 371

- Bayer iCorporation i& iOthers iv. iCipla, UOI & others. i2009(41) PTC 643 (Delhi). 228
- CESC Ltd. iv. iSubash iChandra iBose, i(AIR i1992 iSC i573,585) i370 i

➢Consumer iEducation i& iResearch iCentre iv. iUnion iof iIndia. i361 i ➢Consumer iEducation iand iResearch iCenter iv. iUOI iAIR i1995 iSC i636. i i

- Dimminaco iAG iv. iController iof iPatents, i2002, iCalcutta iHigh. i202
- F. iHoffman-La iRoche iv. iCipla, iHigh iCourt of Delhi 369
- Farbwerke iHoechst i& Bruning Corp., 1969 A.I.R. 56, 45
- Gillette iIndus. iLtd. iv. Yeshwant iBros., 1937 A.I.R. 40 (Bom.) i347 i(India) i"(infringement icase during British period)
- GlaxoSmithKline iLC iand iothers iv. iController iof iPatents iand iDesigns iand iothers. i iCalcutta iHigh iCourt
- Monsanto iTechnology iLlc iThru iThe i... ivs. iNuziveedu iSeeds ➢Novartis iAG ivs. iUnion iOf iIndia
- Astrazeneca Ab i& Anr vs. Lintas Pharmaceuticals Ltd. ➢Raymond Ltd ivs. iRaymond iPharmaceutical Pvt Ltd
- Cadila iHealthcare Ltd. Vs. Cadila Pharmaceuticals

ABSTRACT

The judicial system is one of the oldest in the world. It has a clearly organised hierarchy and structure under which all Indians are covered. A notable exception to this of course are the military personnel. They have a separate system to address harmony. This separate system is an age-old legacy remaining almost completely untouched by time. given the nature of the armed forces and the crucial role they play, there is a need for swift and decisive action or punishment. That is, the military cannot afford to be bogged down by the various delays and adjournments that make up the civilian justice system. Speedy trials and predictable decisions are crucial for maintaining order and uniformity and also instilling the necessary discipline that is synonymous with the military. This in turn allows the military to focus on its primary goal, which is ensuring national security and strengthening the country's defense. The purpose of military law is to promote justice, to assist in maintaining good order and discipline in the armed forces, to promote efficiency and effectiveness in the military establishment, and thereby to strengthen the national security of the country.

KEY WORDS: Speedy trials, Predictable decisions, Order and Uniformity, Instilling the necessary discipline, Ensuring National security, Strengthening the Country's defense, Promotes justice

KEY POINTS

* Historical case studies of Speedy trials where decision in civilian court would have taken longer duration
* Uniqueness and Impact of Investigation Process
* Special Articles and Provisions that necessarily differentiate a military trial from civilian trial, for eg: Denial of Right to Appeal
* Key Shortcomings in present day Military Judicial system.

CHAPTER-I INTRODUCTION

The purpose of the present research work is to understand the Administration of Justice in Armed Forces of the Union of India and the role of the Armed Forces Tribunal in the justice delivery system in the Armed Forces in the changing scenario after enactment of the Armed Forces Tribunal Act, 2007. The military Courts are under stress due to the Armed Forces Tribunal. Earlier monopolies of the officers at the higher level in the Armed Forces were prevailing, inherent and dominating. But nowadays, it has become relatively weaker in comparison to olden days because of the establishment of the Armed Forces Tribunal and judicial activism as well. With the advent and the establishment of the Armed Forces Tribunal by the enactment of Armed Forces Tribunal Act, 2007, there has been enormous difference in the military justice system in India. The Tribunal shall have original as well as appellate jurisdiction, but there is one lacuna which is apparent in that the Tribunal shall not have jurisdiction to entertain the matters pertaining to transfers, postings, leave and summary trials and disposals excepts where the sentence of dismissal or imprisonment for more than three months have been awarded. This has lead again to the anarchism and leaving unfettered discretion in the hands of the Commanding Officers to abuse their power which has been conferred to them by the respective laws for the enforcement of the discipline in the Armed Forces of the Union of India. The very purpose of the establishment of the Armed Forces Tribunal has been defeated by excluding the said subjects from the jurisdiction of the Armed Forces Tribunal. Again, aggrieved by the decision of the Commanding Officers, the aggrieved person either after exhausting the remedy of appeal to the departmental appellate authority or has to invoke the jurisdiction of the High Court or the Supreme Court.

India's national defense greatly benefits from the presence of military courts, which preserve order, preparedness for action, and security within the armed forces. How, is as follows:

1. Enforcement of Discipline: Military courts adjudicate disciplinary offenses committed by members of the armed services, guaranteeing that staff members follow the rules and guidelines necessary to preserve efficiency and order.

2. Swift Justice: Military courts offer a shortened legal procedure that enables prompt

resolution of disputes involving security issues or violations of military law. The military personnel's discipline and morale are preserved by this prompt justice.

3. Deterrence: The military tribunals' presence acts as a disincentive to misbehavior and illegal activity among the armed forces. A culture of responsibility and professionalism is reinforced when people are assured that infractions will be dealt with promptly and professionally.

4. Protection of National Security: Espionage, treason, and other offenses that endanger national security are tried in military courts. It is possible to properly handle and safeguard sensitive information by handling these instances through the military justice system.

5. Operational Efficiency: Military courts help the armed services operate more efficiently by resolving legal disputes internally. This relieves military leaders of the burden of drawn-out legal proceedings and frees them to concentrate on strategic goals.

6. Specialized Expertise: Armed forces judges and legal staff have particular knowledge and comprehension of military law and processes, which guarantees that cases are decided properly and efficiently in the distinctive setting of the armed services.

7. Support for Civilian Authorities: By promptly resolving security risks and upholding order, military courts can assist civilian authorities during times of national emergency or crisis.

In general, military courts are an essential part of India's defense system since they help keep the armed forces secure, disciplined, and morale high, all of which strengthen the nation's defense capabilities as a whole.

This research addresses the justifications for running a special military justice system for members of a state's armed services in addition to the shortcomings of existing systems. As for the former, the special laws, rules, and procedures that are suited to the particular requirements of the military are made possible by the distinctive character of military justice, which functions independently from civilian criminal justice systems. It is true that a system that can consider the demands of the battlefield and the hierarchical organizational dynamics of the military that depend on following commands is required, as this publication indicates. The benefits of keeping a distinct military justice system for the purpose of resolving service members' claims of criminal misbehavior are discussed in this paper.

This research comes to the conclusion that military justice can significantly enhance a state's national security provided it is administered properly and holds service personnel accountable for their misbehavior. It can accomplish this while continuing to be in line with the State's duties to guarantee an equitable and just legal system for individuals who are prosecuted there. Only a system of restricted jurisdiction with significant internal and external structural checks and balances, including strict oversight by the State's federal legislative body, can accomplish this delicate balancing act.

1.1 ADMINISTRATION OF JUSTICE

The term Law can well be defined as the principles statutory enactments, rules, regulations, judicial guidelines, customs, conventions, policies, bye laws etc. for the purpose of maintaining discipline in the civilized society and accepted by all the civilized nations. There is a cardinal principle of the law and the administration of justice that justice delayed is justice denied and justice not only to be done but it also seems to be done. Justice is the legal theory whereby fairness is ensured in just and proper manner. Justice varies from place to place, culture to culture and organization to organization. Justice is the need to ensure the fairness in a civilized society. In the modern times justice is being administered by various Courts/ Tribunals/ Quai-tribunals. The purpose of administration of justice is to establish rule of law and also to establish that no one is par and above the law. There are various ways of administration of justice by inflicting punishments of various kinds according to established customs of the nation. The various theories of punishment are

deterrent theory, preventive theory, retributive theory and reformative theory. The reformative theory is commonly accepted theory in most of the civilized nations.

Salmond[1] defines administration of justice as the maintenance of right within a political community by means of the physical force of the state. Thereby, it can be concluded that the administration of justice has three elements, i.e., laws are being framed through legislature, securing the obedience of the law through executive and the judiciary ensures the laws are being applied in its true spirit by the executive and also ensure laws are correctly framed according to true spirit. The concept of administration of justice has undergone tremendous transformations and the it emerged that the greatest and most beneficial interpretations should be applied by law Courts. The law Courts should also ensure the establishment of the rule of law by all means. The punishment can be viewed either as a method to protect the society by minimizing the incidents of crime or we can consider it as departure of crime itself from the society. In the theory of punishment, the society can be protected by deterring the offenders, prevention of crime by the actual offender and by reformation of the individuals and conversion of the society wherein rule of law is prevalent not the autocracy and turning the citizens as a law abiding citizen. Offences are committed due to conflicts of interests between the wrongdoer and the society or the different persons. Punishment prohibits the offences by vanishing this conflict of interests to which they are indebted their cause by making all performances which are harmful to others and also to the doers of them by making crime/offence. Where punishment is disabling or preventive, its aim is to prevent recurrence of offence by rendering the offender unable to commit it.

The purpose of the punishment is to put off the perpetration of acts classified as criminal because they are regarded as being socially damaging. The contravention of such detrimental acts in modern times is prohibited by a intimidation or approval of punishment administered by the state. Thus, the punishment is the sanction obligatory on the accused for the infringement of the established rules and norms of the society. The object of the punishment is to save the society from harm, mischievous and undesirable elements by deterring potential offenders, by preventing the actual offenders from committing further offences and by reforming and turning into law- abiding citizens. It is also asserted that respect of law grows fundamentally out of antagonism to those who contravene the law. The public dislikes a criminal and this aversion is articulated in the form of punishment. The aim of shielding civilization is sought to be achieved by preclusion, bar, justice and

---

[1] Salmond on Jurisprudence by P.J. Fitzgerald Pg. 90 12th Ed.

restoration and thus deterrence is practically regarded as the most important function of the punishment. The various theories of the punishment are as under:

1.1.1 Deterrent Theory

The very purpose of punishment theory is to prevent the wrongdoer from doing so again and also to make him example in the society so as to prevent others who also have such tendencies wherein they should not think of committing crime.

1.1.2 Preventive Theory

The second object of punishment theory is to prevent or put the offender out of action from wrongdoing. Offenders are rendered inoperative from repeating the offence by awarding punishments, e.g. death, exile or forfeiture of an office.

1.1.3 Retributive Theory

In primitive society punishment was primarily retributive. The Supreme Court has rightly held in the case of *Shiv Ram v. State of Uttar Pradesh*,[2] that the person wronged was allowed to have revenge against the wrongdoer. The principle of 'an eye for an eye', 'a tooth for a tooth', 'a nail for a nail', 'a limb for a limb' was the basis of criminal justice system.

1.1.4 Reformative Theory

The purpose of the reformative theory is that punishment should be inflicted only for the reformation of the criminals. The crime should be vanished, not the criminals.

1.2 PRINCIPLE OF MENS REA

In the very early days of European civilization the concept of expiation or punishment was prominent and suffering was often imposed upon persons, who would be regarded by modern standards as innocent of any offence, in order to pacify the hypothetical annoyance of some divinity. Some of the peculiarities of ancient criminal law are thought to have been persuaded by the instinct of self-preservation that caused many creatures to fight back savagely when harmed or frightened. It was believed that the actual creature which did the harm was to be held primarily liable to pay the penalty for it. The combination of three forces operated which are a fear of an angry divinity, a primitive reaction to pain, and a somewhat more advanced, but childishly ignorant, attribution, even to an inanimate object, not only of life but also of a conscious intention to hurt.

Thus, destruction must be paid by the man, who had actually taken part in the succession of actions that could be traced back from such destruction. The view of the scholars of those days was that any person, whose active conduct seemed to have led to cause harm to a

---

[2] AIR 1998 SC 49

man, should bear the consequences and therefore pay compensation to whom he had injured. Also, in certain cases a fine had to be paid to the king, for breach of the king's peace and the exceptions were few. To kill a man was justifiable and carried neither guilt nor liability to punishment, when it was done in the effecting of a judgment of death, in the deterrence of the commission of a capital crime, or in attempt to arrest either forbid criminal or fugitive provided that the man so slain has resisted the arrest. In general, the person who had caused harm can be held morally to blame for it and the growth of the concept of liability depended upon moral blame.

It is well settled principle of common law that mens rea is an essential ingredient of the commission of crime, in other words a crime is not committed if the mind of the person doing the act in question be innocent. Mens rea is a technical term and generally, it means that some blameworthy mental condition, whether constituted by intention or knowledge or otherwise, the absence of which on any particular occasion negatives the intention of a crime. No act per se is criminal, the act becomes criminal when the actor does it with a guilty mind. The maxim *actus non facit reum , nisi mens sit rea* means Mens rea is a principle of natural justice and the intent and act must both concur to constitute the crime.

1.3 ROLE OF PRINCIPLES OF NATURAL JUSTICE IN ADMINISTRATION OF JUSTICE

The natural justice word itself derives the justice in conformity with nature. It has been described as fair-play in action. The doctrine of natural justice seeks not only to secure justice but also prevents miscarriage of justice. There are two fundamental principles of natural justice, audi alteram partem, i.e., a person affected by a decision has a right to be heard and Nemo judex in re sua, i.e. the authority deciding the matter should be free from bias. The principle of natural justice is a dynamic concept not the static one and it varies from time and again with the emerging trends of the present era. These principles cannot be put in one frame. The principle of natural justice varies according to the emerging need of the present case. The Hon'ble Supreme Court has rightly pointed out in *Maneka Gandhi v. Union of India and others,*[3] that the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of the case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose.

[3] AIR 1978 SC 248

Whether the requirements of natural justice have been complied with or not is a specific matter for the Court or the adjudicatory tribunal to decide in the context of the facts and circumstances of that particular case. The reason for the flexibility of natural justice is that the concept is applied to a wide spectrum of decision-making bodies and inquiries, diverse in nature and having different ingredients and consequences, i.e., discretionary proceedings against Government Servants or any others person involving discretion and public policies what a Minister is required to do while considering objections against a planning scheme is different from what a tribunal is require to do while adjudicating upon a dispute between two parties. Thereby, fixed procedural rules cannot be applied in all cases uniformly. The rules of natural justice operates only in those areas not covered by any law validly made. Thus, it can be concluded that the rules of natural justice do not supplant or replace the law covered by the laws of the land but supplement it. Thus, the very purpose of the criminal justice is to punish the wrong-doer. Herein, the military justice refers to criminal justice wherein wrong-doers are punished according to their respective laws as applicable whether the wrong doer is of Army or the Air Force or the Navy and degree of punishment varies according to the nature of offence, the conduct of the individual and according to the discretion of the respective administration. Thus, my research confines to the Armed Forces and their respective laws only. Fundamental principles of natural justice was elaborately explained by the Hon'ble Supreme Court in the case of *Union of India and others v. Colonel Sanjay Jethi,*[4] and held that the fundamental principles of natural justice are ingrained in the decision making process to prevent miscarriage of justice. It is applicable to administrative enquiries and administrative proceedings as has been held by the Hon'ble Supreme Court in the case of *A.K. Kraipak v. Union of India and others.*[5] It is also a fundamental facet of principle of natural justice that in the case of quasi- judicial proceeding the authority empowered to decide a dispute between the contesting parties has to be free from bias. When free from bias is mentioned, it means there should be absence of conscious or unconscious prejudice to either of the parties and the said principle has been laid down by the Hon'ble Supreme Court in the case of *Dr. G. Sarana v. University of Lucknow*.[6]

1.3.1 Audi Alteram Partem

The meaning of Audi Alteram Partem is that no one should be condemned unheard. A person against whom action is sought to be initiated, or whose vested rights are likely to be

---

[4] (2013) 16 SCC 116

[5] (1969) 2 SCC 262.

[6] (1976) 3 SCC 585

affected should be given a reasonable opportunity to prove his innocence. The basic principle is that both the sides should have a full and fair hearing. Every judicial or quasi-judicial body must give the reasonable opportunities to the parties affected to put forth their case; this is commonly described as the right of fair hearing or the right to be heard. Thus, the party whose civil rights are affected in a judicial or quasi-judicial proceeding must have reasonable notice of the case he has to face and opportunity of defending his case. It is a rule of procedure which commands the deciding authority to give both parties in the issue a fair and equal opportunity to state their case and to correct and contradict any relevant statement prejudicial to their view. The hearing varies from tribunal to tribunal, authority to authority and also depends upon the varying circumstances. In some cases hearing procedure may be more formal than others. Fair hearing does not stipulate that proceedings be as formal as in a Court. Natural justice is not a replica of the Court procedures at the level of adjudicatory bodies. The objective is to ensure that the fair hearing is given to the person, whose rights are going to be affected. The attempt is to keep the hearing procedure less formal consistent, however, with the minimal fundamental concepts of procedural due process so as to promote justice and fair play. The procedures of tribunals are normally more formal because of their tendency to follow simplified procedures than the departmental adjudicatory bodies.

The Court has to be satisfied that the person against whom the decision has been made had a fair chance of presenting his contentions before the concerned authority and of persuading it that the grounds on which the action was proposed to be taken against him were either non-existent, or even if they existed they did not justify the action. The decision of the Courts on the question whether the individual concerned has a reasonable opportunity of being heard or not in a particular situation depends ultimately upon the specific facts and circumstances of each case including the nature of the decision-making body, the nature of the action proposed, the materials on which the allegations are based, the attitude of the party against whom the action is proposed showing cause against such proposed action, the nature of the plea raised by him in reply, the requests for further opportunity that may be made, his admission by conduct or otherwise of some of all allegations and such other substances as may be necessary to come to a correct and fair conclusion on the question. The Court discharges the idea of subjecting hearing to legal framework.

1.3.2 Rule Against Bias

The other part of the natural justice is that the judge must not have an interest or bias in the subject matter of the decision. No one can be judge in his own cause and Justice should not only be done but manifestly and undoubtedly seem to be done. If a member of the judicial body is subject to a bias, whether financial or any other bias in favour or any party to a dispute, or is in such a position that bias must be assumed to exist, he ought not to take part in the decision or sit on the tribunal. Any direct or pecuniary interest, however small, in the subject matter of enquiry will disqualify a judge, and any other interest, though not pecuniary, will have the same effect, if it is sufficiently substantial to create a reasonable suspicion of bias because adjudicator must give adjudication with open and independent mind without any indication of bias towards one side or the other side in the dispute.

1.4 GENESIS OF MILITARY LAW IN INDIA

The Government of India Act, 1833 came as a land-mark in the history of the British Indian Military Law. It gave power to the Governor General in Council to legislate for the whole native army officers and soldiers wherever serving under this Authority Act No. XX of 1845 enacted by the Governor General in Council made first (Indian) articles of War which, however, were replaced two years later by Act No. XIX of 1847. Subsequently frequent amendments took place and the act was finally replaced by Act No. - XXIX of 1861, which was also repealed and replaced by " The Indian Articles of War" of Act No. V of 1569 covering the "native officers, soldiers and other persons in Her Majesty's Indian Army", the last expression recognizing what later come to be known as followers. The three native armies of the Presidency Towns being amalgamated into one in 1895, the Indian Articles of War were altered through various amending Acts from 1894 to 1905 but the code generally designed to serve the requirements of three separate local forces could not adequately meet the needs of the new development, despite the patchwork of those amendments, which, on the contrary contributed to confusion and gave rise to difficulty of understanding. A fresh legislation was enacted as the Indian Army Act, 1911. Amendments were subsequently made to this Act by Acts of Governor General in Council in 1914, 1917, 1918, 1919, 1920, 1923, 1930, 1934 and 1935 which also included the provision made for the suspension of sentence, as a temporary measure of war necessity in 1917 and it was made permanent in 1920.

The need for a general revision of Indian Army Act, 1911 and the Indian Army Rules, 1911 was experienced for some time, and some of the provisions became defunct and outdated

for the modern requirements. This need, however, became imperative after independence for apparent reasons. A bill to consolidate and amend the law relating to the Government of the regular Army was therefore, introduced in the Constituent Assembly of India and it was passed by the Parliament as the Army Act, 1950 and came into force after receiving the assent of the President. Subsequent Amendments were made by amending Acts of 1955, 1956, 1957 and 1992 and made as integral part of the Army Act, 1950. Under the provisions of the Army Act, 1950, the Central Government framed the rules there under as Army Rules, 1950 which was later replaced by Army Rules, 1954. The Air Force Act, 1950 similarly replaced the Indian Air Force Act, 1932 and it consists of the provisions akin to the Army Act, 1950 with certain service-specific modifications. The Navy Act, 1957 also replaced the Indian Navy (Discipline) Act, 1934, which was modeled on the corresponding British Legislation. The Army Act, 1950, Army Rules 1954

,Regulations for the Army, 1987, Air Force Act, 1950, Air Force Rules, 1969, Regulations for the Air Force, 1964, Navy Act, 1957 and Regulations for the Navy, 1965 deals with elaborate procedure of Court-Martial and other summary trials. Military provisions govern the role of Armed Forces during peace and war formulated in the form of Statutes, Rules and Regulations. It is a written code which has seen periodic changes and review, apart from conventions of service. Armed Forces Tribunal Act, 2007 and the Armed Forces (Special Powers) Act, 1958 are also relevant legislations.

1.5 MILITARY AND PARA-MILITARY FORCES IN INDIA

The Indian Military Forces are the force in uniform also called the Armed Forces, are forces authorized to use deadly force, and weapons, to support the interests of the state and some or all of its citizens. The task of the military is usually defined as defence of the state and its citizens, and the prosecution of war against another state. The military may also have additional sanctioned and non-sanctioned functions within a society, including, the promotion of a political agenda, protecting corporate economic interests, internal population control, construction, emergency services, social ceremonies, and guarding important areas. The military can also function as a discrete subculture within a larger civil society, through the development of separate infrastructures, which may include housing, schools, utilities, food production and banking. The Indian Armed Forces are the military forces of the Republic of India. It consists of three professional uniformed services Army, Navy Air Force. The President of India is the Supreme Commander of the Indian Armed

Forces. The Indian Armed Forces are under the management of the Ministry of Defence headed by the respective chiefs, which is led by the Union Cabinet Minister. The 'Paramilitary Forces', are headed by officers from the Indian Police Service and are under the control of the Ministry of Home Affairs, not the Ministry of Defence. There are number of uniform forces in India apart from the Armed Forces. All such forces are established under the various enavtments. They are Central Reserve Police Force, Border Security Force, Indo-Tibetan Border Police, Central Industrial Security Force, Sashastra Seema Bal, Assam Rifles, National Security Guard under Ministry of Home Affairs, Special Protection Group under Cabinet Secretariat of India, Railway Protection Force under Ministry of Railways, Indian Coast Guard under Ministry of Defence. All these forces are referred as "Armed Force of the Union" in their respective laws which mean a force with armed capability and not necessarily the Armed Forces. The military service is only confined to three principal wings of the Armed Forces i.e. Army, Navy and Air Force and unless, it is a service in the three principal wings of Armed Forces, a force included in the expression “Armed Forces of the Union” does not constitute part of military service/military. To differentiate from Armed Forces, Some of other forces were commonly referred as Central Paramilitary Forces which caused confusion and giving an impression of being part of Military forces. To remove such confusion, in the year 2011, Ministry of Home Affairs adopted a uniform nomenclature of Central Armed Police Forces for only five of its Primary Police organizations. These were formerly called as Paramilitary Forces. Central Armed Police Forces are still incorrectly referred as 'Paramilitary Forces' in media and in some correspondences. These forces are headed by officers from the Indian Police Service and are under the Ministry of Home Affairs. Other uniform services are referred to by its name only such as Railway Protection Force, National Security Guards, Special Protection Guards, Indian Coast Guard, Assam Rifles etc. but not under any collective nomenclature. However, conventionally some forces are referred as Paramilitary i.e. Assam Rifles, Special Frontier Force, Indian Coast Guards. Indian Coast Guard is often confused incorrectly as a part of Military forces due to the organization being under the management of the Ministry of Defence, mentioned as Armed Force of the Union in Indian Coast Guard Act and its white uniform. It is a service in the three principal wings of Armed Forces, a force included in the expression “Armed Forces of the Union” does not constitute part of military service/military. Indian Coast Guard works closely with civilian agencies such as Customs, Dept of Fisheries, and Coastal Police etc. with its primary role being non military nature of maritime law enforcement and it is independent of Command and Control of

Indian Navy. Indian Coast Guard was initially planned to be kept under Ministry of Home Affairs but has been kept under Ministry of Defence since it

is patterned like Navy and for better synergy. Indian Coast Guard do not take part in any protocol of Military forces such as President's Body Guard, Aide-De-Camps, Tri- Services Guard of Honour etc. Their recruitment is also not under Combined Defence Services Exam/National Defence Academy Exam which is one of the prime modes of commissioning officers to Armed Forces. Indian Coast Guard Officers continue to get their training with Indian Navy Officers due to not having their own training academy. Already a new Indian Coast Guard Academy for training of their officers is under construction. Often Indian Coast Guard loses its credit for being incorrectly recognized as part of Indian military Forces but not as a unique independent force. Thus it can be concluded that a force can be classified as para-military if it has the same degree of military culpability as if any other military forces although strictly not being the branch of military forces.

FUNDAMENTAL RIGHTS OF INDIAN MILITARY PERSONNEL

Military personnel occupy the most dignified position in the life of our nation as they preserve and protect its sovereignty, integrity and unity not only during war times but also during the days of peace. Their devotion and services to the country are fundamental in character. They are expected to command and posses virtues of the highest order known to human beings in the services of the state. It is sad to say that these great servants of the nation are not allowed to enjoy the fundamental rights which are the sweetest fruits of our sovereign, socialist, secular, democratic, republic in the manner in which these rights visit and inform all the citizens of India. It appears that the fundamental rights are not that fundamental to the military personnel. In the present research an attempt is being made to judge the rationality of the existing position of the fundamental rights. The army life is highly challenging with no dull movement in any sphere of their activities. Army institutions demand high degree of discipline. A soldier may, like a clergyman incur special obligations in his official character but the task which a soldier may be called upon to perform and the circumstances under which such task may have to be performed by a soldier call for a high degree of discipline and the maintenance of such discipline in turn requires a special code of law to define the duty

and to prescribe punishment for its breach. The position of the members of the Armed Forces in a democracy is of significant constitutional importance. The constitutional position of the Armed Forces personnel is one of dual liability. A person subject to military law whether an officer or a soldier has a twofold relation, one his relation towards his fellow citizen outside the army and the other his relation towards the member of the army and especially towards his military superiors. In his military character a soldier occupies a position totally different from a civilian, he does not possess the same freedom in addition to his duties as a citizen. He is under the exclusive jurisdiction of the military law regarding the question relating to his military duty and discipline. Though the civil Courts have jurisdiction to determine the persons subject to military law, the questions of military duty and discipline are within the sole cognizance of the military authorities prescribed by the military law and the aggrieved officer or soldier has no remedy under the ordinary law. Further, in the interest of military discipline and efficiency, military law inflicts more severe punishment for the offences like desecration or disobedience to orders which are mere breach of contract under the ordinary law. Owing to the need for different treatment, the Constitution of India, confers power on the Parliament to modify the rights conferred by Part-III in their application to men in the Armed Forces. The Constitution of India, provides that the Parliament may determine to what extent any of the rights conferred by this part shall, in their application to:

(a) The members of the Armed Forces, or

(b) The members of the Forces charged with the maintenance of public order, or

(c) Persons employed in any bureau or other organization established by the state for the purpose of intelligence or counter intelligence, or

(d) Persons employed in, or in connection with, the telecommunication system set up for the purpose of any force, bureau or organization referred to in clauses (a) to (c) be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

Therefore, the aforesaid provisions may be treated as an exception to the fundamental rights. A law enacted by the Parliament in the exercise of this power cannot be

challenged on the ground that it infringes any of the fundamental rights. This power is conferred exclusively on the Parliament and not on the state legislatures. The maintenance of law and order being a state subject the state law cannot abrogate a fundamental right of the members of such forces charged with the maintenance of public order and this can only be done by the Parliament. The Parliament is empowered to lay down to what extent the fundamental rights can be modified by the state legislation applicable to the force charged with the maintenance of the public order. These provisions apply to the Armed Forces, i.e., Army, Navy and Air Force and also the forces charged with the maintenance of the public order such as the police. The Army Act, 1950 further provides that no female shall be eligible for enrolment or employment in the regular army. Similar restrictions were imposed by the Navy Act, 1957 and the Air Force Act, 1950.

Also, the Parliament has enacted the Public Force (Restrictions of Rights) Act, 1966 for restricting certain fundamental rights of the members of the police forces functioning under several institutions listed in the schedule to the Act. A member of the police force is thus prohibited without the consent of the central government, or of the prescribed authorities, from being a member of any trade union, labour union or political association or any organization which is not recognized as part of the force of which he is a member, or is not purely social, recreational or religious in nature. He cannot communicate with the press or publish any book, letter or any other document except where it is being published in the bona-fide discharge of his duties or the communication is of purely literary, artistic or scientific character or of any other prescribed nature. No member of the police force is to participate in any meeting or demonstration, organized for any political purpose or any other purpose prohibited by the rules made under the Act. The breach of these rules is punishable with imprisonment and with fine. The Parliament has also enacted the Intelligence Organization (Restrictions on Rights) Act, 1985 restricting certain fundamental rights in their application to the members of the central bureau and certain central intelligence agencies. This has been done with a view to curb the tendency of indiscipline in such intelligence agencies (such as Intelligence Bureau and the Research and Analysis Wing. The Act prohibited the staff of these agencies from

participating in trade union activities or associating with political organizations or communicating with the press. It is a cognizable criminal offence to do so.

CHAPTER-II

INTERNAL MECHANISM FOR ADMINISTRATION OF JUSTICE IN ARMED FORCES

2.1. INTRODUCTION

Since there were no specific judicial precedents available for the application of Military Law, an official publication called Manual of Military Law was brought out by the British War Office to assist all concerned in the Conduct of the Court- Martial and day-to-day functioning of the Army. Manual of Indian Military Law, 1912 was reproduction of Manual of Military Law. Manual of Indian Military Law was divided into four parts. Part-I contained a history of the law relating His Majesty's Indian Forces, with a general account of that law and its application under the Indian Army Act, 1911 along with the law of evidence applicable to the Court-Martial, such offences against the ordinary criminal law of India as were likely to engage the attention of the Court-Martial and other legal matters a knowledge of which might be useful to officers and soldiers of the Indian Army. Part-II contained the Indian Army Act and Indian Army Rules with plenteous notes which would substantially assist in the administration of Indian Military Law. Part-

III contained the texts of certain analogous Acts and Part-IV contained various notifications issued by the Governor General in Council under the Indian Army Act and also forms for use in the preparation of Court-Martial warrant under that Act. The Manual of Indian Military Law was finally revised 1983 and published in diglot form in three volumes. Volume-I consists of eight chapters dealing with a brief history of Military Law in India, outline of the Army Act, arrest and investigation of charges, Court-Martial, evidence, civil offences, duties in aid of civil power and service privileges. Volume-II contains the Army Act, 1950 and Army Rules, 1954 with explanatory notes, forms and appendices and Volume III contains the texts or relevant extracts from certain Acts of Parliament which includes the Armed Forces (Special Powers) Act, 1958, the Assam Rifles Act, 1944, the Official Secrets Act, 1923, the Indian Evidence Act, 1872 and the Indian Penal Code, 1860 and also Ordinances in addition to the extracts from the Constitution of India.

2.2. VARIOUS FUNCTIONARIES RELATED TO COURT-MARTIAL IN ARMED FORCES

There are various functionaries who have different roles to play in the Administration of Justice and they have certain duties and responsibilities while discharging their duties in the different capacities.

2.2.1. Judge Advocate

The Judge Advocate General in the Army is the superintendent of the administration of military justice and also the Chief legal Advisor to the Chief of the Army Staff in legal matters.[1] The judicial department under the Judge Advocate General has a selected cadre of officers called Judge Advocate. Every General Court-Martial shall and every District or Summary General Court-Martial may be attended by a judge advocate, who shall be either an officer belonging to the department of the judge advocate general or if no such officer is available, an officer approved of by the Judge Advocate General or if no such officer is available, an officer approved by the Judge Advocate general or his deputies.[2] Although at District Court-Martial and Summary General Court-Martial appointment of Judge Advocate is not a legal necessity, but in practice a Judge Advocate is nominated by the deputy Judge Advocate General of the command concerned. Invalidity in appointment of a Judge Advocate does not vitiate the trial.[3] The presence of a Judge Advocate is the legal necessity at a General Court- Martial and his non-attendance will invalidate the proceedings. A Court-Martial, in the absence of a Judge Advocate if such has been appointed, shall not proceed and shall adjourn.[4] The accused has no right to object to the Judge Advocate. A Judge Advocate plays an important role during the course of trial at a General Court- Martial and he is enjoined to maintain an impartial position. The position is more or less the same in the Army and Air Force. If on account of the death or illness of the Judge Advocate, it is impossible to continue the trial, a Court-Martial shall be dissolved. There is no provision in Air Force law for substitution of a trial Judge Advocate during a trial. Any officer of the Judge Advocate General department or, if such officer is not available, an officer approved by the Judge Advocate General or any of his deputies can attend as Judge Advocate. When an officer of the Judge Advocate General department is not available and the case presents no legal difficulties the convening officer may appoint any suitable officer, who has been approved by the Judge Advocate General or his deputy/assistant, to act as Judge

Advocate at a Court-Martial. Ordinarily Command Judge Advocate of a Command is not to act as trial Judge Advocate in trials within the same Command.

Under the provisions of the law, the accused has no right to object to the Judge Advocate or the officers under instruction. The procedure adopted at a Court-Martial ought not to be such as might lead to injustice or an appearance of injustice. The impartiality of the Judge Advocate at a trial is a necessary part of our conception of judicial requirement. If it comes to the notice of a Court-Martial that there is a likelihood of the Judge Advocate being a disqualified person, they must go into the question and decide whether the Judge Advocate can continue to sit on the Court. As there is no provision of law for Judge Advocate to be absent at any sitting of the Court, it would seem that even when the Court was deciding upon the objection to the Judge Advocate the latter should continue to occupy his place.

In the Court-Martial, he represents the Chief Legal Adviser. He is responsible for informing the Court of any informality or irregularity in the proceedings. Whether consulted or not, he shall inform the convening officer and the Court of any informality or defect in the charge, or in the constitution of the Court, and shall give his advice on any matter before the Court. Any information or advice given to the Court on any matter before the Court shall, if he or the Court desires it, will be taken up in the proceedings. At the conclusion of the case he shall, unless both he and the Court consider it unnecessary, sum up the evidence and give his opinion upon the legal bearing of the case before the Court proceeds to deliberate upon its findings. The Court, in following the opinion of the Judge Advocate on a legal point, may record that it has decided in consequence of that opinion.

The trial Judge Advocate has, equally with the presiding officer, the duty of taking care that the accused does not suffer any disadvantage in consequence of his position as such, or of his ignorance or incapacity to examine or cross-examine witnesses or otherwise, and may, for that purpose, with the permission of the Court, call witnesses and put questions to witnesses, which appear to him necessary or desirable to elicit the truth. In fulfilling his duties, the Judge Advocate must be careful to maintain an entirely impartial position. A copy of the charge-sheet and of the summary of evidence, where one has been recorded, should desirably be forwarded before the trial assembles, to the Judge

Advocate, where one is appointed by the convening officer. Upon any point of law or procedure which arises at the trial, the Court should be guided by the opinion of the Judge Advocate, and not disregard it, except for very weighty reasons. The Court is responsible for the legality of its decision, but it must consider the grave consequences which may result from its disregard to the advice of the Judge Advocate on any legal point. If a Court-Martial, acting without jurisdiction or in excess of jurisdiction, convicts a person subject to Air Force Law, the members of the Court may be held liable in damages by a civil Court and such liability or at least the amount of the damages may depend upon the question whether they exercised a bona fide judgment; and the fact that they accepted the advice of the Judge Advocate even if such advice was held to be wrong, might practically exonerate the members from liability. The permission to call and question witnesses should never be refused unless the Court considers that the Judge Advocate is acting improperly or in such a manner as to obstruct the proceedings. The Court should record its reasons for refusing permission. The Judge Advocate attending a Court-Martial should, sum up the evidence and give his opinion upon the legal bearing of the case before the Court proceeds to deliberate upon their finding.

The position of the Judge Advocate in the Navy is little bit different. All proceedings of trials by Court-Martial or by Disciplinary Courts shall be reviewed by the Judge Advocate General of the Navy either on his own motion or on application made to him within the prescribed time by the person aggrieved by any sentence or finding, and the Judge Advocate General of the Navy shall transmit the report of such review together with such recommendations as may appear just and proper to the Chief of the Naval Staff for his consideration and for such action as the Chief of the Naval Staff may think fit. Where any person aggrieved has made an application under this provision, the Judge Advocate General of the Navy may, if the circumstances of the case so require, give him an opportunity of being heard either in person or through a legal practitioner or an officer of the Indian Navy. It shall be the duty[11] of the Judge Advocate General of the Navy to perform such duties of a legal and judicial character pertaining to the Indian Navy as may from time to time be referred or assigned to him by the Central Government or the Chief of the Naval Staff, and to discharge the functions conferred on him. The functions of the Judge Advocate General of the Navy shall in his absence on leave or otherwise, be

performed by such one of the Judge Advocates in his department as may be designated in this behalf by the Chief of the Naval Staff.

There shall be appointed by the Central Government a Judge Advocate General of the Navy and as many Judge Advocates in the department of the Judge Advocate General of the Navy as the Central Government may deem necessary. Out of the Judge Advocates so appointed, the Central Government may designate any one to be the Deputy Judge Advocate General of the Navy. A person shall not be qualified for appointment as Judge Advocate General of the Navy unless he is a citizen of India, and has for at least ten years held a judicial office in the territory of India, or has for at least ten years been an advocate of a High Court or two or more such Courts in succession. However, the Central Government may, if it is of opinion that it is necessary or expedient so to do in the exigencies of service, relax, for reasons to be recorded in writing. A person shall not be qualified for appointment as Deputy Judge Advocate General of the Navy unless he is a citizen of India, and has for at least seven years held a judicial office in the territory of India, or has for at least seven years been an advocate of a High Court or two or more such Courts in succession. However, the Central Government may, if it is of opinion that it is necessary or expedient so to do in the exigencies of service, relax, for reasons to be recorded in writing in respect of any person.

Every Court-Martial shall be attended by a person referred to as the trial Judge Advocate, who shall be either a Judge Advocate in the department of the Judge Advocate General of the Navy or any person appointed by the convening officer, however, in the case of a Court-Martial for the trial of a capital offence the trial shall be a person nominated by the Judge Advocate General of the Navy unless such trial is held outside Indian waters. The trial Judge Advocate shall administer oath to every witness at the trial and shall perform such other duties as are provided in this Act and as may be prescribed. The trial Judge Advocate shall give timely notice to the accused of the time and date of the trial, cause the accused to be furnished with copies of the charge-sheet, the circumstantial letter, the summary of evidence and the list of exhibits proposed to be exhibited at the trial by the prosecution, inform thee accused that any witness whom he may desire to call and whose attendance can reasonably be procured shall be summoned on his behalf, inform the accused that he may, if he so desires and if he makes an application in writing, give

evidence on his own behalf. The notice to the accused shall be in the prescribed form. In the case of *Union of India and others v. B.N. Jha*,[7] it was held by the Supreme Court that non-supply of the copies of the charge-sheet and statement of witnesses supporting the charge-sheet was violative of the Regulations for the Navy, 1965 and thus, vitiates the trial. The trial Judge Advocate shall inform the prosecutor of the time and date of the Court-Martial issuing him with a notice in the prescribed form and request the prosecutor to forward to him certified copies of the documents. The trial Judge Advocate shall take necessary steps to procure the attendance of witnesses, whom the prosecutor or the accused may desire to call and whose attendance can reasonably be procured, serving them with summons.

2.2.2. Defending Officer and Friend of the Accused

In any General or District Court-Martial, an accused person may be represented by any officer subject to the Army Act, 1950 who shall be called 'the defending officer' or assisted by any person whose services he may be able to procure and who shall be called 'the friend of the accused'. It shall be the duty of the convening officer to ascertain whether an accused person desires to have a defending officer assigned to represent him at his trial and, if he does so desire, the convening officer shall use his best endeavours to ensure that the accused shall be so represented by a suitable officer. If owing to military exigencies, or for any other reason, there shall in the opinion of the convening officer, be no such officer available for the purpose, the convening officer shall give a written notice to the presiding officer of the Court-Martial, and such notice shall be attached to the proceedings. Every effort should be made to secure the services of a competent officer as a defending officer, and he should be allowed time and opportunity for properly preparing the defence of the accused. However, the Army Rule empowers dispensing with this in the event of military exigencies. The defending officer shall have the same rights and duties as appertain to counsel under these rules and shall be under the like obligations. The friend of the accused may advise the accused on all points and suggest the questions to be put to the witnesses, but he shall not examine or cross-examine the witnesses or address the Court. In any Summary Court-Martial, an accused person may have a person to assist him during the trial, the friend of the accused, whether a legal advisor or any

---

[7] (2003) 2 SCR 721

other person. Friend of the accused imposed on the accused against his wish, amounts to denial of right. The friend of the accused may advise him on all points and suggest the questions to be put to witnesses, but shall not examine or cross-examine witnesses or address the Court. In a Summary General Court-Martial, the accused shall be asked what he has to say in defence and shall be allowed to make his defence. He may be allowed to make his defence. He may be allowed to have any person assist to him during the trial.

2.2.3. Counsel in the Court-Martial

In every General and District Court-Martial, counsel shall be allowed to appear on behalf of the prosecutor as well as of the accused.[22] However, the convening officer, may declare that it is not expedient to allow the appearance of counsel there at and such declaration may be made as regards all General and District Court-Martial held in any particular place, or as regards any particular General or District Court-Martial, and may be made subject to such reservation as to cases on active service or otherwise, as deemed expedient. However, there is no restriction as to the number of Counsels engaged in a case.

An accused person intending to be represented by a Counsel shall give to his Commanding Officer or to the convening officer at the earliest practicable notice of such intention, and if no sufficient notice has been given, the Court may, if it thinks fit, on the application of the prosecutor, adjourn to enable him to obtain, a Counsel on behalf of the prosecutor at the trial. When the convening officer intends to apply for the services of an officer of the Judge Advocate General's department or an officer holding legal qualifications to act as prosecutor, similar notice should be given to the accused to enable him, if so desires, to obtain Counsel to represent him at the trial. If the convening officer so directs, Counsel may appear on behalf of the prosecutor, but in that case, unless the notice referred as above has been given by the accused, notice of the direction for counsel to appear shall be given to the accused at such time, not in any case less than seven days before the trial in the opinion of the Court have enabled the accused to obtain counsel to assist him at the trial. The Counsel who appears before a Court-Martial on behalf of the prosecutor or accused, shall have the same right as the prosecutor or accused for whom he appears, to call, and orally examine, cross-examine, and re-examine witnesses, to make an objection or statement, to address the Court, to put in any plea, and to inspect the

proceedings, and shall have the right otherwise to act in the course of the trial in the place of the person on whose behalf he appears, and he shall comply with these rules as if he were that person and in such case that person shall not have the right himself to do any of the aforesaid matters except as regards the statement allowed by the provisions, or except so far as the Court permits him to do so. When counsel appears on behalf of the prosecutor, the prosecutor, if called as a witness, may be examined and re-examined as any other witness and provisions laid down shall not apply. The Counsel appearing on behalf of the prosecutor shall have the same duty as the prosecutor, and is subject to be stopped or restrained by the Court as provided in the Army Rules, 1954. The counsel appearing on behalf of the prosecutor should always make an opening address, and should state therein the substance of the charge against the accused and the nature and the general effect of the evidence which he proposes to adduce in support of it without entering into unnecessary details. The counsel appearing on behalf of the accused has the rights and obligations as specified in the Army Rules[32] in the case of the accused.[33] If the Court asks the counsel for the accused a question as to any witness or matter, he may decline to answer, but he must not give the Court any answer or information, which is misleading.

When a person subject to the Army Law is to be tried by the Court-Martial for an offence punishable with death for the offences contained in offences in relation with enemy punishable with death, mutiny, desertion on active service, or civil offences and such a person is unable to engage a Counsel for his defence at the trial owing to lack of pecuniary resources and the convening officer is satisfied about his inability, a counsel for the defence of the accused at the trial may be employed by the Convening officer at Government expense in consultation with the deputy Judge Advocate general of the concerned command. To enable the convening officer to employ a Counsel for the defence of an accused the Deputy Judge Advocate General of every command headquarter shall prepare and maintain, in consultation with local government law officers, list of qualified counsels at various stations who are willing to be employed. The amount payable to a Counsel for hearing will be fixed on daily basis in which he appears before a Court-Martial. In addition, he will be given travelling and daily allowances not exceeding those admissible to an officer of the first grade if the trial is held at a place

different from the normal place of the practice of the Counsel. Bills submitted by Counsels will be countersigned by the Deputy Judge Advocate General concerned before payment. In a joint trial, when the convening officer is satisfied with the accused persons required different lines of defence, he may authorize a separate
counsel for each accused. The Counsel, whether appearing on behalf of the prosecutor or of the accused, shall abide by the provisions contemplated and to the rules of Criminal Courts in India relating to the examination, cross-examination, and
re-examination of witnesses, and relating to the duties of the counsel. Counsel should not state as a fact any matter which is not proved, or which he does not intend to
prove in evidence, nor should he state what is his own opinion as to any matter of fact before the Court. In a question to a witness he should not assume that facts have been given in evidence which has not been so given, or that particular answers have been given contrary to the fact. Counsel should treat the Court and Judge Advocate with
due respect, and should, while regarding the exigencies of his case, bear in mind the requirements of military discipline in the respectful treatment of any superior officer of the accused who may attend as a witness. Neither the prosecutor nor the accused
has any right to object to any counsel if properly qualified.[40] Counsel shall be deemed properly qualified if he is a legal practitioner authorized to practice with right of
audience in a Court of Sessions in India, or if, he is recognized by the convening officer in any other country where the trial is held as having in that part, rights and duties similar to those of such legal practitioner in India and as being subject to punishment or disability for a breach of professional rules.

2.2.4. Prosecutor

The prosecutor in a Court-Martial is generally an officer detailed by the Commanding Officer. He should be an officer having a working knowledge of the Army Act, 1950, the Army Rules, 1954 and the laws of evidence. As a rule, he will be the officer who recorded the summary of evidence. In trials by the General Court-Martial and in complicated cases a prosecutor should be specially selected for his experience and knowledge of military law, and should be, as far as possible, relieved from ordinary military duty, so that he may be enabled fully to master the case. If such an officer is not

available, the convening officer should apply as soon as possible, relieved from ordinary military duty, so that he may be enabled fully to master the case. If such an officer is not available, the convening officer should apply as soon as possible to superior military authority for the services of one.[42] When the Court is satisfied that the provisions of the Army Rules have been complied with, it shall cause the accused to be brought before the Court, and the prosecutor, who must be a person subject to the Army Law shall take his due place in the Court. It is the duty of the prosecutor to assist the Court in the administration of justice, to behave impartially, to bring the whole of the transaction before the Court, and not to take any unfair advantage of, or suppress any evidence in favour of the accused. In complicated cases, the prosecutor should always make an opening address, so that the members of the Court may be enabled to understand the general nature of the allegations. The prosecutor shall state the substance of the charge against the accused and the nature and general effect of the evidence he proposes to adduce in support of it without entering into any unnecessary detail. In case it is necessary for the prosecutor to give evidence for the prosecution on the facts of the case, he shall give it after the delivery of his address, and he must be sworn or affirmed, as the case may be, and give his evidence in detail. The prosecutor may be cross-examined by or on behalf of the accused and afterwards may make any statement which might be made by a witness on re-examination. After the examination of the witness, the prosecutor may make a closing address. In case any point of law is raised by the accused, the prosecutor may, with the permission of the Court, make his submission with regard to that point. A civilian counsel can also be allowed on behalf of the prosecution at General and District Court- Martial.

The Prosecutor is an officer whose duty, it is to see, that justice is done and not a partisan intent on securing a conviction independently of the justice of the case. He should, therefore, put before the Court facts which show the true character of the offence, and must be careful to prove affirmatively any facts tending to show the innocence of the accused or extenuate his offence, e.g., he should himself produce any available defence of provocation which might mitigate punishment. The prosecutor must not introduce matters of aggravation into the evidence against the accused unless they are relevant to the charge against him. Generally, anything which tends to show that the accused committed the

offence charged, or to show the true character of the offence is relevant. The prosecutor is not to refer matters which are not relevant to the charge or the charges. It is the duty of the Court to stop him from so doing and also restrains any undue violence of language or want of fairness or moderation on the part of the prosecutor. The Court shall allow the great latitude to the accused in making his defence. He must abstain from any remarks contemptuous or disrespectful towards the Court, and from coarse and insulting language towards others, but he may for the purpose of his defence impeach the evidence and the motives of the witnesses and the prosecutor, and charge other persons with blame and even criminality, if he does so, to any liability which he may thereby incur. The Court may caution the accused as to the irrelevance of his defence, but shall not stop his defence solely on ground of such irrelevance.[53] The case must be very special to justify the Court in stopping the accused in his defence, or in excluding on the ground of irrelevancy, evidence offered by him, or to justify any further proceedings against him on the account of his defence.

The details of the procedure to be followed by the prosecutor are contemplated in the Army Rules[54] and in the Army Act, 1950.[55] However, the accused shall state the names of all the officers constituting the Court in respect of whom be has objection, before any objection is disposed of, the accused may call any person to give evidence in support of his objection and such person may be questioned by the accused and by the Court and if more than one officer is objected of, the objection to each officer shall be disposed off separately, and the objection in respect of the officers of the lowest in rank shall, be disposed off first, and on an objection to an officer, the remaining officers of the Court shall, in the absence of the challenged officer, vote on the disposal of such objection, notwithstanding that objections have also been made to any of those officers.

2.2.5. Presiding Officer

At every General, District or Summary General Court-Martial the senior member shall be the Presiding Officer.[56] The responsibility of Presiding Officer has been specified in the Air Force Rules.[57] The presiding officer is responsible that the trial is conducted in proper order, and in accordance with the law, and will take care that everything is conducted in a

manner befitting a Court of justice. It is the duty of the presiding officer to see that justice is administered, that the accused has a fair trial, and that he does not suffer any disadvantage in consequence of his position as a person under trial or of his ignorance, or of his incapacity to examine or cross- examine witnesses or otherwise. The presiding officer should be careful to safeguard the dignity of the Court and the solemnity of its proceedings. The Court should have at its disposal all the relevant Acts and any other official books etc. which are necessary for the purpose of its proceedings. The trial Judge Advocate should satisfy himself before the start of the trial that the Court-Martial box contains all the publications and other documents, as laid down from time to time by administrative authorities.

If the accused is not represented by counsel or defending officer, the presiding officer should assist him in putting forward his defence, and take care that he is not prejudiced by his inability to put proper questions to the witnesses or bring out clearly the points upon which he relies. If there is a Judge Advocate, he has a similar duty, but the presence of a Judge Advocate does not relieve the presiding officer of his responsibility under this rule. If a witness gives evidence different from that given by him at the recording of the summary of evidence, he should be questioned as to the difference. If any person, other than the accused, interrupts the proceedings, he should ordinarily be excluded from the Court. The Court has, however, further powers under the Air Force Rules for dealing with persons who interrupt its proceedings. The trial of an accused person cannot proceed in his absence, even though he interrupts the proceedings. The presiding officer should put to a witness, questions which appear to him necessary or desirable for the purpose of eliciting the truth.

2.3. COURT-MARTIAL IN ARMY AND AIR FORCE

According to Army Law, the Indian army has four kinds of Court-Martial namely General Court-Martial, District Court-Martial, Summary General Court- Martial and Summary Court-Martial and procedures are laid according to Army Act, 1950, Army Rules, 1954 and Regulations for the Army, 1987. The corresponding provisions are being followed in Air Force as stipulated in the Air Force Act, 1950, Air Force Rules, 1969 and

Regulations for the Air Force, 1964 with the exception of Summary Court-Martial which does not exists in Air Force. The Military Courts can try personnel subject to Army Act for all kinds of offences except for murder and rape, which shall primarily be tried by civilian Courts of law. The Army Act, 1950 categorically specifies three types of offences triable by the Court-Martial, i.e. offences which are specifically military in nature, such as offences of misconduct in the face of enemy, mutiny desertion, absence without leave, disobedience of orders, sleeping on the post, violations of good order and military discipline, civil offences committed at any place in or beyond India, but deemed to be the offences committed under the Act, if charged, are triable by a Court-Martial. The offences which are specifically civil in nature, i.e., murder, culpable homicide not amounting to murder or rape committed by a person subject to the Military Laws are triable only by the Criminal Courts. If these offences are committed while on active service, or at any place outside India or at a frontier post specified by the Central Government, against person subject to the military laws, then the accused shall be deemed to be guilty of an offence against the law and shall be triable by Court-Martial.

2.4. SUMMARY COURT-MARTIAL IN ARMY

Summary Court-Martial is very peculiar to the Indian Army which does not exist in other wings of the military. The discipline of the Army depends in great measure on the Summary Court-Martial. When a soldier or other native amenable to the Indian Articles of War has committed an offence which is ordinarily triable by Summary Court-Martial, Commanding Officer, when determining by what Court the prisoner is to be tried, are to bear in mind that legislature, in conferring upon them the powers of a Summary Court-Martial, intends that they shall exercise these powers. When a person subject to Army Law has committed an offence which can be tried by Summary Court-Martial, officer commanding units when determining by what Court the accused will be tried will bear in mind that the legislature, in conferring upon them the powers of Summary Court-Martial, intends that they will exercise these powers.

Summary Court-Martial may be held by the Commanding Officer of any corps or detachment of the regular army, he alone constitutes the Court and has the sole right to

decide the findings and sentence. The Summary Court-Martial proceedings are, however, attended by two officers or junior commissioned officers, or one of either, but they do not take any effective part in the proceedings. A Summary Court-Martial may try any person subject to Army Law and under the command of the officer holding the Court, except an officer, junior commissioned officer or a warrant officer. A Summary Court-Martial may pass any sentence under the Law except the sentence of death or imprisonment for a term exceeding one year in case the officer holding the trial is of or higher than the rank of Lieutenant Colonel, and three months, if the officer is of a lower rank.[192] The procedure is to be followed at a Summary Court-Martial is different in many ways from the procedure adopted by a General Court-Martial, District Court-Martial or Summary General Court-Martial. The jurisdiction of a Summary Court-Martial is co-extensive as to all officers and offenders with that of the other types of Court- Martial. Thus, we can conclude that a Summary Court-Martial is legally authorized to take cognizance of all military offences of the soldiers up to the rank of Havildar, however serious, provided the same are not made punishable with the death or exclusively by the General Court-Martial. It has been provided in the Army Law that the accused has the right to challenge his trial by the presiding officer or any member of a General Court-Martial or District Court-Martial or Summary Court- Martial on the grounds of bias or personal interest, but no such rights are available to the accused in case he is being tried by Summary Court-Martial.

The proceedings of the Summary Court-Martial shall be attended throughout by two other persons who shall not as such be sworn or affirmed. In a Summary Court-Martial, unless two officers or junior commissioned officers, or one of either attend the trial throughout the Court will have no jurisdiction. Such officers or junior commissioned officers, who cannot take part in the proceedings as such, need not, however, belong to the unit of the accused. If the Commanding Officer does not himself take the interpreter's oath, one of the officers or junior commissioned officers attending the trial may be appointed interpreter. He may legally combine this duty with attendance at the trial under the Army Law. The officer holding the trial may clear the Court to consider the evidence or to consult with the officers or junior commissioned officers, attending the trial.

Generally, the trial by Summary Court-Martial for desertion will be held by the Commanding Officer of the unit of the deserter.

A Summary Court-Martial may try any offence which is punishable under the Army Law. When there is no grave reason for immediate action and reference can, without detriment to discipline be made to the officer empowered to convene a District Court-Martial or on active service a Summary General Court-Martial for the trial of the alleged offender, an officer holding a Summary Court-Martial shall try without such reference any offence punishable under the provisions of the Army Law, or any officer holding the Court. A Summary Court-Martial may try any person subject to the Army Law except an officer, junior commissioned officer or warrant officer. A Summary Court-Martial may pass any sentence which may be passed under the provisions of the Army Law, except a sentence of death or imprisonment for life or of imprisonment for a term exceeding the limit of one year. The limit of punishment shall be one year if the officer holding the Summary Court-Martial is of the rank of Lieutenant Colonel and above and three months if such officer is of the rank of Major or of below rank.

The Commanding Officer is the best and sole judge to decide which case should ordinarily be tried only after reference and sanction. If it subsequently appears to superior authority that his action was not justified, this should merely be viewed as a grave irregularity for which the Commanding Officer may be held responsible but it does not affect the legality of the finding or sentence, nor, in ordinary circumstances, furnishes reason for setting aside the trial. Where, however, the officer holding the trial loses the sight of the law, and tries without considering whether an emergency exists or not, the trial is illegal. The rules laid down procedures for certificate to be attached to the proceeding by the officer holding the trial when, he tries, without reference, a case which would ordinarily be referred to the officer empowered to convene a District Court-Martial or, on active service, a Summary General Court-Martial. It is difficult to lay down a definite rule for offences against the officer holding the trial, but generally a consideration of personal interest which would suffice to disqualify an officer to sit as a member of a General Court-Martial or District Court-Martial debars him from holding a Summary Court-Martial in case of emergency without previous reference, e.g., the offences under the Army Law, when committed towards a Commanding Officer fall

under this category, and should not, except in case of emergency be tried by Summary Court-Martial without previous reference. The officer holding the trial, shall record, or cause to be recorded the transactions of every Summary Court- Martial. The evidence shall be taken down in narrative from in as nearly as possible the words used, but in any case where the Court considers it material, the question and answer shall be taken down verbatim. The Army Rules, shall be applicable mutatis mutandis while recording proceedings of a Summary Court-Martial.

Military courts play a crucial role in strengthening a country's defense by ensuring swift and efficient justice within the military framework. Here's how:

1. Enforcement of Military Discipline: Military courts uphold discipline within the armed forces by adjudicating cases of misconduct, breaches of military law, and violations of regulations. This maintains order and cohesion, essential for effective defense operations.

2. Protection of National Security: Military courts handle cases related to espionage, treason, terrorism, and other threats to national security. Their specialized expertise and procedures enable them to address sensitive matters promptly and effectively, safeguarding the country from internal and external threats.

3. Expedited Justice: Military courts often operate with streamlined procedures to expedite the resolution of cases, ensuring swift justice for military personnel. This rapid response is critical in maintaining morale and operational readiness, as delays can undermine trust in the justice system and hinder military effectiveness.

4. Maintaining Discipline in Combat Zones: In times of conflict or deployment, military courts provide a mechanism for addressing legal issues arising in combat zones. This includes adjudicating allegations of war crimes, ensuring adherence to rules of engagement, and maintaining discipline under challenging circumstances.

5. Specialized Knowledge: Military courts are staffed by judges, prosecutors, and defense attorneys with expertise in military law and procedures. This specialization allows for a nuanced understanding of the unique challenges faced by military personnel and ensures fair and impartial adjudication of cases.

6. Deterrence: By holding military personnel accountable for their actions through transparent and fair legal processes, military courts deter misconduct and uphold the integrity of the armed forces. This contributes to a culture of accountability and professionalism, strengthening the overall effectiveness of the defense establishment.

Overall, military courts play a vital role in maintaining discipline, upholding the rule of law, and safeguarding national security, all of which are essential for strengthening a country's defense capabilities.

Military courts play a crucial role in bolstering a country's defense by ensuring swift and efficient justice within the armed forces. They handle cases related to discipline, security breaches, and other matters that directly impact military readiness and effectiveness. By maintaining order and enforcing discipline, military courts contribute to the overall strength and cohesion of the armed forces, which is essential for national defense.

MILITARY JUSTICE VALUES

1. Respect for Human Rights and International Humanitarian Law (IHL): as stated in the Yale Draft of the Decaux Principles,32 military justice ought to be in line with upholding both the requirements of IHL and the protection of universally acknowledged human rights, especially the guarantees of due process and fair trials. This implies that everyone facing military justice must receive fair and compassionate treatment, and their rights must be upheld. If there is a derogation, it can only be made in compliance with internationally recognized standards and IHL requirements. Military tribunals should always abide by internationally recognized standards and procedures that guarantee due process and a fair trial, including the rules of IHL in their particular setting.

International standards, including the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the Standard Minimum Rules for the Treatment of Prisoners, and the Basic Principles for the Treatment of Prisoners, must be followed by military prisons.33 It should be possible for both domestic and foreign authorities to inspect these prisons. Laws must be obeyed by military police and military prosecution teams, applying the law impartially and in accordance with international human rights standards.

2. Independence: In order for military justice decision-making to be open, grounded in facts, and guided by unambiguous principles, it must be free from undue influence from higher military or political authority. The appointment of judges free from military or political influence is part of this standard. It also entails preventive steps to guarantee that no higher military leadership or political influence would interfere with the course of events, including the start of proceedings. All judgments pertaining to military justice must be decided in compliance with the laws and regulations in place, free from any influence from the outside or the inside, especially from lawmakers.

3. Accountability: There are various ways to be accountable in the security industry. Legal responsibility is one aspect of this, requiring that everyone working in the security industry adhere to the same legal standards and that infractions be dealt with appropriately. Financial accountability, or making sure all money utilized in the security industry is correctly tracked and accounted for, is one example of this. Moreover, moral and ethical accountability can also be a part of accountability; people in the security industry are supposed to uphold the highest moral standards. Government accountability is necessary for both legitimacy and sound governance. Accountability makes ensuring that people cannot act in a way that is unaccountable, that any legal or moral transgressions are appropriately handled. We hold those accountable who are at fault. Accountability shows that government employees—military or civilian defense ministry officials—take their responsibilities seriously and are dedicated to keeping the public safe. This builds public confidence in the appropriate governmental institution.

As a result, the military justice system of a State needs to operate in a fashion that is answerable to the law and the general public. This generally implies that all choices have to be transparent and subject to criticism. Strong civilian scrutiny should be applied to all military justice judgments in order to prevent any potential bias or conflicts of interest. Military personnel should be held accountable for misbehavior in a fair and consistent manner within a sound military justice system.

Actors in the field of military justice should also be held responsible for how well they execute their duties. Last but not least, military decision-making ought to be open, with modifications to procedures or policies being promptly and clearly announced to the public and military personnel.

4. Professionalism: professionalism in the sense of education, experience, skill, and moral standards

of ethics, strict behavioral guidelines, and responsibility for infractions are necessary for professionalism is essential in the operation of a sound, efficient military justice system, much as

military establishments overall. Professionals in the military should respect both parties' human rights.

Despite being institutionally subject to civilian authorities, other military personnel and those they contact with

command. Crucially, the idea of professionalism in the field of military justice should resemble the

professional ethics of the criminal judicial system in the civilian sphere, considering that military courts, in terms of

Military judges ought to be held to the Yale Draft, as they are "an integral part of the general judicial system."

open and unambiguous judicial ethical guidelines; attorneys practicing within the military justice system.

Similarly, there is a need to be extremely cautious about the impact of non-legal professionals, especially commanders, on military justice. Legislators should also be

interested in the system as a whole rather than specific cases.

5. Efficiency, Assessment, and Openness: Military justice must be administered effectively and efficiently while adhering to the core principles of a fair trial. In order to guarantee the most just and equal administration of justice for all service members, military justice actors should make an effort to employ financial and public resources as effectively and as efficiently as possible. Military judicial institutions should be in charge of creating and maintaining procedures to monitor and assess the effectiveness of the administration of justice in addition to being accountable for adhering to all applicable laws and regulations. This entails compiling statistics on case results, monitoring patterns, assessing the efficacy of their efforts, and ensuring that the public and oversight organizations have access to information on military judicial institutions.

6. Reasonable Military Secrecy: To safeguard information that might jeopardize national security, military justice should be carried out in accordance with reasonable protocols. However, the laws that enable the protection of sensitive military material shouldn't be changed from their intended intent in order to subvert human rights or obstruct the administration of justice.34 When it is absolutely required to preserve information pertaining to national defense, military secrecy may be used, under the supervision of independent monitoring bodies, in accordance with established protocols.

7. Delineation of authority and jurisdiction: The scope of military justice is restricted. It should strictly control how personnel of the armed forces and, in certain cases, civilians behave.35 Criminal offenses should only be pursued in regular civil courts against civilians. In addition, regular civil courts ought to "retain principal jurisdiction over all criminal offenses committed by persons subject to military jurisdiction," meaning that this includes military personnel. Considering that "[t]he goal of military courts is to support the upkeep of military discipline within the framework of the rule of law by the just administration of justice.

In order to prevent unnecessary overlap with other domestic investigative bodies and

institutions, such as the police, courts, or government departments, military justice institutions should make sure that their investigative and disciplinary competencies are clearly defined. If there is overlap, clear guidelines should be established to assign logical primacy.

- All proceedings should strictly adhere to the guarantees provided in the Convention on the Rights of the Child and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) military courts should not have jurisdiction over individuals under the age of 18 (unless they are a voluntary member of the services aged 15 to 18 as allowed by article 38 of the Convention on the Rights of the Child).

- To make sure that the authority of military tribunals only extends to necessary circumstances and does not conflict with the jurisdiction of ordinary civil courts, fair and transparent reviews of the jurisdiction of military justice should be carried out on a regular basis.
- Major human rights breaches should not be investigated or tried in military courts, unless specifically authorized by international humanitarian law.

Extrajudicial killings, forced disappearances, and torture are a few examples of these. Rather, jurisdiction to look into and try people who are suspected of such offenses should be given to civil courts.

Benefits and hazards of military justice.

Good order and discipline within a State's armed forces can be reinforced by a robust military justice system that promises fair trial rights and due process. A parallel administrative disciplinary system that includes summary proceedings for minor misbehavior complements the most successful military justice systems.37 The two systems work together to create a cohesive military structure that upholds the rule of law in general and international humanitarian law in particular.

But military justice fits into a square hole like a "round peg." Based on principled decision-making grounded in facts and evidence, the criminal justice system is intended

to be independent and unbiased. It is difficult to attain this crucial independence and impartiality modus operandi. In the end, a military justice system operates inside a rigidly command-driven, hierarchical structure that prioritizes obedience over critical thought. In fact, military culture places a premium on allegiance to one's unit and mission.38 Any military justice system must balance the underlying conflict between a command-centric military organizational culture and the independent, unbiased, and moral assessment of evidence through codified procedure. It needs to be acknowledged explicitly and supported by internal and external procedural protections.

CONTRIBUTION TO GOOD ORDER AND DISCIPLINE IN THE ARMED FORCES

When implemented properly, military justice offers just punishment systems for serious crimes exclusive to the armed forces as well as other crimes committed by service members that are closely related to their time in the military or for which it would be impractical to hold a regular civilian trial because of deployment or conflict. Because it strengthens the crucial dynamic of following orders, an efficient military justice system thereby supports internal discipline and, consequently, the operational effectiveness of the armed forces. It offers criminal misbehavior accountability, which is crucial for the proper operation of the military. This is especially true when such accountability cannot be provided by regular civilian courts.

Moreover, military justice enables the determination of specifically military offenses (e.g., insubordination, dereliction of duty, malingering, failure to repair, etc.) by military triers of fact.

Unlike civilian members of the public in regular tribunals, those determining the factual guilt or innocence of a service member are usually other service personnel. Members of the armed forces are probably more aware of the circumstances and gravity of crimes specific to the military as well as common crimes committed in a military setting (like stealing in a barrack). There is a benefit to having members of one's own legal team represent them in court, even though regular courts can also fairly handle cases involving offenses exclusive to the military, such as accusations of criminal dereliction against civilian law enforcement

authorities.

Lastly, sanctions rendered by military courts under a military justice system may differ and be more targeted than those provided by civilian tribunals. Demotion, termination from service, and loss of military benefits are a few examples.
For instance, the "Law of the Criminal Procedure Code" in Romania has clauses that guarantee that those using military justice systems must be of a specific rank or level of expertise. This ensures that judges in military courts are people who are familiar with and have worked in the Romanian military.

EFFICIENCY

Swift processes for minor offenses and disciplinary misconducts are part of nonjudicial summary proceedings, which are the disciplinary systems that support military justice systems. These small transgressions are dealt with swiftly, maintaining discipline and order within the unit.
However, military justice procedures are slower than these nonjudicial, summary disciplinary actions since they have to adhere to due process and fair trial guarantees. Nonetheless, they may still be more practical than handling criminal cases in crowded civil courts.

REDUCING WORKLOAD FOR INVESTIGATING BODIES

The heavy burden that investigating agencies in many nations bear only gets heavier during times of armed conflict. Thus, a new military investigation agency would reduce that burden to some extent.
In addition, a military justice system gives service members an alternative to the civilian legal system for resolving conflicts and grievances: a mechanism to handle conflicts with other military members and institutions.
For instance, the UK Service Prosecuting Authority had 601 requests from Service Police for "precharge" advice in 2021. By segregating military judicial action and consulting with the SPA, the public court system can operate more efficiently by evaluating fewer cases.

POTENTIAL CHALLENGES

Maintaining Self-Sufficiency

While the idea of independence can be established in theory, it may prove to be highly challenging in practice to guarantee complete autonomy of all military justice decision-making from military command. On the other hand, regular prosecutors and judges in civil courts are not bound by military rank. Maintaining budgetary independence is also crucial.

There are currently instances involving serious abuses of human rights by security personnel or members of the armed forces being heard in national courts. This raised concerns about the military courts' objectivity as well as whether serious human rights abuses committed by service members ought to be tried in civilian tribunals rather than the military. Nonetheless, criminal prosecution has the strongest deterrent effect when it comes to war crimes.

For instance, it is reported that in 2003 and later, UK forces violated human rights in Iraq. The army and military police have been accused by the administration of politically driven cover-ups in incidents where it was decided that no prosecution would take place. Another illustration can be found in Romanian law, which grants military-like status to police officers who report to the Military Prosecutor, allowing them to elude civilian oversight. The prosecution authorities' lack of impartiality has been criticised on multiple times when it comes to the accountability of Romanian police officers.

Financial Restraints

Any new organization or entity that is created and established is expected to incur large expenses for things like setting up hiring practices, conducting trainings, buying supplies, leasing new space, etc.

In Azerbaijan, for instance, the pay for chairmen of the Military Grave Crimes Court is higher than that of most other court chairs; they receive 80% of the salary of the Supreme Court Chairmen, as opposed to 60% for chairmen of other courts.

ENSURING DUE PROCESS

Shorter processes can always be misused and used as a justification for following all applicable procedural requirements without being followed. Article 14 of the International Covenant on Civil and Political Rights, which guarantees the right to equality before courts and tribunals as well as a fair trial, should be cited in this regard. The UN Human Rights Committee has emphasized in its General Comments to this article that all courts and tribunals falling under the purview of that article, whether regular or specialized, civilian or military, are subject to the provisions of article 14.

OVERLAPPING COMPETENCES

It is essential to clearly define roles and responsibilities when there are several authorities conducting investigations. It takes time, and maybe changes to the law are needed.

JURISDICTIONAL CHALLENGES

Determining the precise boundaries and extent of military justice jurisdiction—that is, identifying the kind of offenses for which a person may be held accountable—is crucial. The most contentious issue when discussing the reach of military justice is whether or not civilians can be subject to its authority.

There isn't a single, widely recognized method for this. No international law expressly forbids the inclusion of civilians under military jurisdiction. Even in emergency situations, their international human rights law is increasingly in favor of keeping civilians outside of military control.46 The UN Principles Governing the Administration of Justice through Military Tribunals provide that the civil court should decide if a person is a conscientious objector (Principle 6) and that military tribunals should never have authority over children (Principle 7).

Trials of civilians by military or special courts should be exceptional, according to the UN Human Rights Committee. This means that they should only be used in situations where the State party can demonstrate that doing so is required and justified by objective, serious reasons, and where regular civil courts are unable to handle the cases due to the

particular class of people and offenses at hand.

The European Court of Human Rights (ECHR) determined that Article 6 of the European Convention on Human Rights—which guarantees the right to a fair trial—had been violated in the case of Ergin v. Turkey (No. 6).49 Ahmet Erdogan, a Turkish national who worked as a newspaper editor, was convicted by a military court despite being a civilian because he was accused of inciting publication of an article that urged readers to avoid serving in the military. The European Court of Human Rights determined that the petitioner's skepticism regarding the military court's impartiality and independence was objectively warranted. Turkey is the only member state of the Council of Europe whose Constitution expressly allows military courts to trial civilians during peacetime.

PUBLIC OPINION

The creation of separate institutions that have special status and internal procedures may have a negative impact on public opinion and create doubts regarding the transparency and independence of such institutions.

MILITARY POLICING AND MILITARY DISCIPLINARY INVESTIGATIONS

The difficulties and solutions for building a stronger military police force, which would entail the need to carry out pre-trial investigations, are discussed in this section. It takes a wide stance on the problems, considering measures that go beyond what might be interpreted as military police in a limited sense, such as investigating duties for the preservation of efficiency, discipline, and military morale in Ukraine. Therefore, it is important to understand that the phrase "military policing" refers to a wider range of duties related to policing Ukraine's armed forces, not just the uniformed military police who serve as a member of the Ukrainian Defence Forces.

Here, "disciplinary code" refers to the legally mandated disciplinary regime of the armed forces, or its military justice system, and "criminal code" refers to the civil penal system, or civilian criminal justice system. Typically, military justice disciplinary regimes comprise penal codes that cater to crimes that are exclusive to the military, such

insubordination; however, some countries also include non-military-unique crimes like murder, burglary, and so on in their military penal codes. These kinds of regimes usually include summary, extrajudicial (and extracriminal) disciplinary procedures for infractions that are minor.

THE EVOLUTION OF MILITARY POLICING

The concept of military police as it exists in contemporary armed forces is relatively new. With more limited powers than contemporary military police, the historical Provost Marshals or Provost Corps are the forerunners of military police in many Western democracies.
These beginnings are demonstrated by the rise of Military Provosts under leaders like Arthur Wellesley, Duke of Wellington. Wellington's Provost Marshals were there to support commanders in keeping order in field forces that were stationed outside their country or fighting military battles. They played a little, if any, role inside the boundaries of the country in the 18th and 19th centuries, when the military forces were mobilized.

Before the 20th century, military policing primarily aimed to achieve two broad, related goals, which were also mirrored in military disciplinary codes: (a) upholding the laws of war and maintaining a disciplined force (often referred to as the maintenance of good order and discipline and (b) making sure that the rules of war were followed.

Historically, the jurisdiction of codes of conduct has been quite restricted. Discipline regulations usually did not include crimes committed by military personnel that occurred on state property, unless they were specifically military-related offenses. Both more significant transgressions that constituted distinct military crimes, such disobedience and mutiny, as well as smaller infractions of non-criminal misconduct that were harmful to peace and discipline would be subject to domestic application of the military disciplinary code. Originally, disciplinary rules were mostly created out of necessity for use in times of armed conflict or when the armed forces were stationed outside of state borders. There was thus a distinction between deployed situations during a war and peacetime. If state borders are not crossed by military forces: the latter showed that civil jurisdiction takes

precedence over criminal justice. For military disciplinary proceedings, residual exercise of jurisdiction under disciplinary rules persisted during peacetime, notwithstanding the primacy of civilian legal systems.

These divisions were not always used uniformly within particular nations or throughout Western democratic states. In some nations, a concept known as "military nexus" or "military connection" started to take shape by the 20th century. In general, this theory provided that military personnel might (or would) be tried under the disciplinary code if the misconduct, including civil offenses, was related to the accused's military service. This also applied to soldiers who were accused of breaking a state's criminal code.

This theory was not uniformly implemented in Anglo Common Law states, and in recent years, appellate and supreme courts have done away with the need for a military link or nexus to support the use of a disciplinary code inside state borders and in times of peace. Discipline codes are subject to parallel jurisdictions in these states, where state actors have rather considerable discretion in deciding whether to go before a military tribunal or a civil court with criminal jurisdiction. However, where an issue comes under concurrent jurisdiction, there may be subnational, regional, or local agreements or arrangements between civil and military authorities governing the priority of investigation or prosecution.

ADVANTAGES AND DISADVANTAGES

There are benefits and drawbacks to each strategy. The clear precedence of the civil criminal justice system is ensured by the constrictive policies of the European Continental states. The disciplinary code is restricted to small, non-criminal infractions of discipline committed within the state and during peacetime by military personnel, who are also subject to the same criminal justice system as other citizens or residents. The disciplinary code's wider application is restricted to times of armed conflict and similar situations where upholding discipline has a more significant influence.

These kinds of restrictions, however, may limit the skill sets that disciplinary actors—including the military police—can acquire and may lessen the disciplinary code's efficacy.

The widespread use of military justice in domestic operations and peacetime in Common Law states helps military justice players advance their careers.

Through the constant application of the disciplinary code, it can result in a more thorough grasp of the code and support "good order and discipline" among military people.

However, the broad approach results in "shared" jurisdiction with the civil criminal justice system, which may cause misunderstandings or the arbitrary choice of the justice regime to be used in a particular situation. In the event that discretion is used inconsistently or that there are no explicit agreements or arrangements on jurisdictional supremacy, this could lead to inefficiencies and unfairness. This has a similar effect on military policing.

ROLES AND FUNCTIONS OF MILITARY POLICE

The roles and responsibilities of military police have changed over the previous three centuries, but they have remained largely the same: (a) force protection; (b) protecting and transporting PW; (c) circulation control; and (d) looking into misbehavior by military personnel. The final of these functions will be the main topic of this short. Both the expansive and restrictive methods adhere to the same initial three functions. Between

both methods, there are differences in the final function.

The investigative duties of other organizations that are not directly involved in the examination of disciplinary or criminal misconduct by military personnel are specifically excluded from this section.

The role and responsibilities of, for instance, (a) inspectors general or ombudspersons;

(b) grievance procedures; (c) safety and accident investigations; or (d) administrative boards of inquiry are not covered in this briefing. These investigative duties and those of military police may intersect. This overlap frequently calls for the following: laws; policies that establish priorities; or the hierarchy of different investigating agencies and the assignment of responsibilities. These are required to prevent functions from conflicting with one another and to make it clear whether additional investigations are admissible in the military adjudicative processes.

This section will address professional military criminal investigation groups that are separate from military police in certain contemporary armed forces and tasked with looking into major offenses. The topic of additional discussion involves investigations carried out by non-investigation professionals. These are categorized as command authority and are explained in the Additional Protocols to the Geneva Conventions, specifically for the investigation of criminal activity on the battlefield. Given their frequent application in certain contemporary militaries for incidents involving, but not limited to, battlefield incidents.

OVERSIGHT

Robust supervision procedures for military policing responsibilities are one contemporary development in this field. Democratic regimes often adhere to the idea of civil control over the armed forces.

The executive, as a representative of sovereign state power, is normally in charge of overseeing the armed forces, including military policing tasks. This authority is carried out by a Minister or Secretary of Defense. Different legislatures have different degrees of power over the military forces. This power is frequently used to pass important laws that regulate the management and control of the military forces as well as the funding of those

forces through fiscal measures. More stringent control procedures are being applied to military policing. This is especially true in Anglo Common Law states where disciplinary codes and criminal codes have concurrent jurisdiction, utilizing a comprehensive approach to military justice discipline (Military justice discipline). Military police are more frequently subject to comparable oversight procedures when they carry out duties and responsibilities similar to those of civil police, frequently with concurrent authority. These systems provide constrained accountability structures like to those used in civil law enforcement.

Military disciplinary investigations can benefit greatly from the involvement of military legal advisors, who are usually uniformed attorneys affiliated with an armed forces legal service agency. They offer direction and counsel regarding controlling legal paradigms, problems with evidence, search and seizure, components of crime, etc. Military legal advisors vary in their extent of involvement. Inexperienced investigators' limitations can be lessened by the assistance of military legal consultants.

This is especially true for command-directed investigations carried out by staff members whose main duty is not conducting investigations.

Military legal advisors function as a structural check on investigators in this capacity.They support the maintenance of thorough, efficient investigations that adhere to pertinent legal and procedural standards.

According to what appears to be best practice, the best investigative outcomes come from regular engagement by qualified legal advisors, beginning as early as feasible in the investigation process; "best" here refers to thoroughness and conformity with pertinent domestic and human rights laws.

INVESTIGATIVE MODALITIES

In numerous states, civilian contractors, civilian family members, other civilians on military sites, and civilians escorting armed personnel in extraterritorial operations are all under the investigative purview of military police. International human rights law and domestic law are the only rules that apply to investigations conducted by civilian law enforcement. In times of armed conflict and occupation, military investigations are

subject to international humanitarian law in addition to the same legal frameworks. As a result, military investigations can be used to handle a wider range of situations. Military investigations also encompass noncriminal disciplinary transgressions (as well as training accidents, safety mishaps, etc., that are outside the purview of this study), whereas external civilian law enforcement investigations only focus on cases of criminality.

For addressing minor, non-criminal military wrongdoing, almost all modern militaries have administrative disciplinary procedures and non-judicial processes in place (take the Danish military justice system, for instance). The most severe of these actions are included in the disciplinary codes of certain military, especially those that carry a potential for sanctions that include restricted use of one's property and freedom, such as rank reduction, demotion, and base restrictions. Some have different disciplinary codes from their administrative regimes. Certain states, like Canada, have similar policies that are separate from and in addition to their disciplinary codes.

These types of disciplinary (and administrative) processes support the same goal as military criminal proceedings: the reinforcement of good order and discipline within the ranks and justice for victims and perpetrators, even though they are distinct from criminal investigations and prosecutions.

Allegations of more serious criminal misconduct (usually investigated by military police or military criminal investigative organizations, and adjudicated before courts martial or similar tribunals) may overlap with those of minor disciplinary infractions, which are usually investigated and decided by military commanders and supervisors. Legislation must, therefore, expressly state which investigative bodies are in charge of each kind of incident and allegation and what their priorities are. Additionally, it should be evident who has the last say over decisions like criminal prosecution or summary disciplinary action. It is necessary to distinguish between criminal and disciplinary/administrative procedures. The current trend has been for the final decision-maker to be located within the ministry of defense but outside the chain of command when there is disagreement about who has investigative and dispositional priority (see, for example, the Danish model). This tendency is not widespread, though.

Investigations conducted in accordance with international humanitarian law and international human rights law typically follow similar general guidelines.54 Both sets of laws stipulate that "effective" investigations must be conducted in response to serious claims of criminal misbehavior. States may use different terms to describe the applicable level, such as "reasonable basis," "credible" allegations, "actual and reasonable suspicion," etc. Generally speaking, though, an effective inquiry satisfies the following requirements: independence, impartiality, thoroughness, promptness, and transparency.

Although military investigations can and should follow these guidelines, extra caution needs to be used in their general planning, execution, and management to guarantee sufficient investigative neutrality and independence. Military investigations are typically concerned with these characteristics.

Investigations into suspected wrongdoing carried out by armies frequently diverge from those carried out by civilian law enforcement authorities, even though they are both guided by the same fundamental principles.

CASE LAWS

1. Maj. Gen. Nilendra Kumar's Case Studies on Military Law[20] was first released in 2003. It featured real-time cases pertaining to inquiries and investigations, decisions about disciplinary and administrative actions, beginning with the charge hearing and concluding with case disposal. The identities of the perpetrators, witnesses, and those involved in the case, along with the units and formations, had all been kept secret. The book's collection of case studies was meant to assist commanders by providing them with an opportunity to critically analyze real-world scenarios and extract pertinent lessons. The book was praised as a "valuable contribution for proper understanding of the subject through live case studies" in a USI Journal review. Under Scrutiny: Courts Martial by Maj. Gen. Nilendra Kumar was presented as a talk on a variety of topics including operations, low-intensity conflicts, international terrorism, procurement litigation, human resource management, and peace enforcement activities. The task involved examining key areas that demonstrated significant shortcomings in the current legal systems, as

observed via both practical and scholarly application.

2. Major J.L. Obheroi served as both author and publisher for Military Law and Writs[22], which was published in 2003. The extensive work, which is divided into thirty parts, was created to help military law practitioners by giving them a quick reference for handling writ petitions. It included pertinent case law as well. It encompassed all of a person's rights, liabilities, duties, and terms of service.

The Judge Advocate General's Department released Military Law: Then, Now & Beyond during their second reunion in 2005. Maj. Gen. Nilendra Kumar was the one who conceptualized, developed, and constructed the piece. This periodical, which included poems, articles, interviews, and images, was distinctive. The book was broken up into sections on memories, izzat, honor, and ethics. courts martial; litigation; the law of war; human rights and gender justice; legal education; media and other issues; historical reflections; the Armed Forces Tribunal; changes to military law; empowerment; and the future. Interviews with Chief of Staff General J. J. Singh and Justice Brigadier DM Sen, the first Judge Advocate General of independent India, were included in the book. SV Thapliyal, AB Gorthi, Lt. Gen. V. R. Raghavan, Justice DP Wadhwa, a former Supreme Court justice, Drs. Manoj Kumar Sinha, Manish Arora, and Shyamlha Pappu, Maj. Gen.

V. K. Singh, Krister Thelin, KPD Samanta, Diane Guillemette, Dr. N.M. Ghatate, and Pravin H. were among the prominent experts on military and legal matters who contributed to the book.

3. Together with Kush Chaturvedi, Maj. Gen. Nilendra Kumar worked on the Military Law Lexicon. It was an encyclopedia of military law terminology, an essential first step in learning military jargon. Different terms were defined in different ways: sometimes according to their dictionary definition, sometimes according to a legal definition, and occasionally using a combination of the two. There were various terms for use abroad.

Wg. Cdr. U.C. Jha's The Military Justice System in India: An Analysis was a critical examination of the country's current military justice system and a comparison with that of the United Kingdom and the United States of America. It listed the shortcomings of the

military justice[8] system in India. It stated that restrictions on human rights must be outlined in legislation and maintained over time. Has responsibilities under international treaties. The author made a compelling case for creating a single code that applies to all three services. Additionally, he supported placing a Chief Judge Advocate General, a Lieutenant General, in charge of the armed services' legal division under the Ministry of Defence.

4. Col. G.K. Sharma and Col. M.S. Jaswal's Courts on Military Law [26] was first released in 2006 and later expanded and rewritten in 2010. The provisions of the Army Act and Army Rules are narrated. Every rule or section was preceded by a commentary that was essentially a case law pertaining to the wording of the rule. The text of the book was compiled from 954 resolved cases, some of which dealt with pension issues.
In 2010, Wg. Cdr. U.C. Jha published a treatise named Armed Forces Tribunal.The Armed Forces Tribunal's authority and powers were scrutinized critically in the book. It provided some insight into the issues that the Tribunal would probably face when it first began operations.

Wg. Cdr. U.C. Jha's other work, published in 2010, was titled The South Asian Military Law Systems. The study compared the military law frameworks of Bangladesh, India, Nepal, Pakistan, and Sri Lanka, the five South Asian nations. A few sections on international human rights law and the law of armed conflict that were pertinent to the operations of the armed forces were also included. The author's opinions and suggestions were covered in a different chapter. He supported placing the Judge Advocate branches of the relevant services under the Ministry of Law and Justice and separating them from the other branches.

The author of A Handbook of Military Law[29], Wg. Cdr. Dr. U.C. Jha, stated that the book was intended to be a quick reference for Indian Army commanders who wanted to learn more about their legal rights and obligations. The manual also included the syllabus for the DSSC entrance exam as well as the Part B and D promotion exams. The "Right to

---

[8] Carnduff, HWC (1904)

Information" section contained information on a subject that the military would not otherwise be very familiar with. Peacekeeping military contingents were the subject of the previous chapter.

India possesses its own Air Force Act, Navy Act, and Army Act.[Reference required] These statutes specify that both men and women in uniform are covered by the legislative provisions. You may search for all three of these Acts on the official website. Laws governing some paramilitary groups in India are similar to those governing defense services. This covers the Assam Rifles Act, the Indo-Tibetan Border Police Force Act, the Coast Guard Act, and the Border Security Force Act. The Army Act serves as the model for all other similar Acts.
With the creation of the Armed Forces Tribunal in 2007, the military courts in India are under tremendous strain. The country is witnessing a growing chorus of voices calling for reform along the lines other liberal democracies have seen in their military justice system.

CONCLUSION

Enforcing good order and discipline within a State's armed forces requires a fair and just system for penalizing those who commit crimes while serving in those services. Although this observation does not automatically necessitate a military justice system, it does need a state to make sure that its service members have access to a sound criminal justice system.
A unique legal system is required because to the nature of criminal law transmission and criminal activity within the military, such as desertions, not to mention the necessity for speed and efficiency during times of conflict. But such a system can only function properly if it is well-designed and has strong civilian control.

When implementing or modifying a military justice system in a nation, it is crucial to take best practices into account. The following are the most important ones.

- Clearly define and uphold policies for the implementation and adherence to the tenets of military justice. Ascertain that each and every service member understands their legal obligations as well as their rights.
- Provide and uphold strong civilian oversight of the military judicial system, preferably with an impartial appeals procedure.
- Ascertain that military prosecutors, judges, and defense attorneys with the requisite knowledge and resources to guarantee impartial trials; additionally, guarantee that prosecutors wield power and prosecutorial judgment outside from the military hierarchy.

To oversee the implementation of military justice and guarantee that all prosecutions follow fair trial procedures, a civilian-led military justice review board should be established.
- Make certain that every service member receives instruction on the correct methods for bringing complaints against their commanders or fellow service members.
- All those under its jurisdiction should get instruction and training on substantive military justice offenses and processes. Create policies for continual development to evaluate the procedure for examining, deciding, and upholding the military justice tenets.

Indian military courts, officially known as General Court Martial (GCM) or Summary General Court Martial (SGCM), are judicial bodies within the Indian Armed Forces responsible for adjudicating cases involving military personnel accused of violating military law or regulations. Here are some key points about Indian military courts:

Jurisdiction: Military courts in India have jurisdiction over members of the Army, Navy, and Air Force who are subject to the Army Act, Navy Act, and Air Force Act, respectively. They handle cases ranging from disciplinary infractions to serious offenses such as espionage or mutiny.

Composition: A panel of military officers, usually higher in rank than the accused, sits in a General Court Martial (GCM), which is presided over by a military judge advocate. A

single officer, typically a commanding officer or a senior officer chosen by the convening authority, makes up a Summary General Court Martial (SGCM).

Proceedings: The procedures that military courts adhere to are specified in the corresponding service acts and regulations. They guarantee the rights to a fair trial, which include the ability to appeal, call witnesses, and have legal representation.

Powers: Military courts have the power to impose a range of sanctions, such as fines, incarceration, or removal from service. The confirmation of sentences rendered by military courts is contingent upon higher military authority.

Independence: Although they are a component of the military justice system, military courts are supposed to function impartially and independently. The court makes sure that the concepts of natural justice and the rule of law are upheld in military justice.

Review Procedure: Within the framework of the military justice system, decisions rendered by military tribunals may be appealed. Furthermore, through writs and appeals, civilian courts have the authority to examine certain aspects of rulings made by military courts.

Roll in National Defense: Indian military courts are essential to preserving order, enforcing moral principles, and encouraging responsibility in the armed services. They support the general efficacy and preparedness of the Indian Armed Forces by guaranteeing compliance with military law and procedures.

In general, Indian military tribunals play a crucial role in the military justice system by guaranteeing military personnel's responsibility, fairness, and discipline, which helps to protect and secure the country.

In conclusion it should be noted that Indian military courts are essential to the country's defense system since they help keep the armed forces accountable, secure security, and preserve discipline. These tribunals support the readiness and efficacy of the Indian Armed Forces by ensuring that violations of military law are promptly and effectively addressed through their jurisdiction over military personnel and adherence to procedural fairness.

In addition to fostering a culture of professionalism and accountability among service personnel, the prudent administration of military justice acts as a disincentive to misconduct and illegal activity. The strength and integrity of India's defense establishment are enhanced by military tribunals, which decide cases ranging from minor violations to major crimes like espionage or mutiny.

Moreover, military tribunals' adherence to the concepts of natural justice and the rule of law is demonstrated by its independence, impartiality, and systems for review and oversight. This guarantees the administration of justice while preserving the military's morale and operational effectiveness.

Indian military courts serve as the country's security guardians in essence, upholding the Indian Republic's interests and fostering confidence between the armed forces and civilian authorities. They are nevertheless vital to the nation's defense in times of peace and in the face of new dangers and difficulties because of their role in maintaining discipline, encouraging accountability, and guaranteeing readiness.

The Indian military tribunals have a great deal of power within the country's defense structure, which is important for preserving order, enforcing security, and protecting the military's integrity. These tribunals, which have jurisdiction over military personnel and uphold procedural justice, are essential in making sure that violations of military law are dealt with promptly and forcefully.

Indian military tribunals have the authority to rule on a broad variety of matters, from minor disciplinary violations to grave crimes that endanger national security. By encouraging a culture of accountability and professionalism among service members,military courts' rulings enhance the overall performance and preparedness of the Indian Armed Forces.

To prevent abuses and guarantee respect to the values of justice and the rule of law, it is crucial to balance this authority with procedures for oversight and evaluation. Maintaining public confidence in the military justice system depends heavily on the independence and impartiality of military courts.

The ability of Indian military tribunals to deliver justice quickly, fairly, and effectively is

ultimately what gives them ultimate power. This helps to maintain democracy, integrity, and security while also bolstering the country's defensive capabilities.

BIBLIOGRAPHY BOOKS

BIBILIOGRAPHY BOOKS

1. Anith iRao iand iBhanoji iRao, iIntellectual iProperty iRights iA iPrimer, iFirst iEdition, iEastern iBook iCompany, iLucknow, i2008. i

2. Carlos iM. iCorrea, iIntellectual iProperty iand iTrade: iThe iTRIPS iAgreement, i(London, iKluwer iLaw iInternational, i1998. i

3. Carlos iM. iCorrea, iTrade iRelated iAspects iof iIntellectual iProperty iRights: iA iCommentary ion ithe iTRIPS iAgreement, iOxford iUniv. iPress, i2007. i

4. Carsten iFink, iIntellectual iProperty iand iDevelopment: iLessons ifrom iRecent iEconomic iResearch, iBank/Oxford iUniv. iPress, i2005. i

5. Catherine iColston iand iKirsty iMiddleton, iModern iIntellectual iProperty iLaw, iSecond iEdition, iCavendish iPublishing iLimited, iLondon. i2005 i

6. Correa iCarlos iM. iIntegrating iPublic iHealth iConcerns iinto iPatent iLegislation iin iDeveloping iCountries. iGeneva: iSouth iCentre, i2000b. i

7. Daniel iGervais, ithe iTRIPs iAgreement: iDrafting iHistory iand iAnalysis, i(London: iSweet i& iMaxwell, i2003. i

8. David iI iBainbridge, iIntellectual iProperty iFirst iEdition, iPearson iEducation iPublication, iDelhi, i2003. i

9. Deborah iE. iBouchoux, iIntellectual iProperty: iThe iLaw iof iTrademarks, iCopyrights, iPatents, iand iTrade iSecrets, iFirst iEdition, iWestern iLegal iPublication, iUnited iStates iof iAmerica, i2000. i

10. Agarwal, iH.O. iHuman iRights, iTwelfth iEdition, iCentral iLaw iPublications, iAllahabad, i2010. i

i i i i i i iReports, iArticles iand iPapers i

1. 2001 iSpecial i301 iReport. iPress iRelease, iApril i30, i2001. iAvailable iat ihttp://www.ustr.gov iHealth iEconomics iand iDrugs, iDAP iSeries iNo. i7 i(Revised), iWHO/DAP.98.9. iAvailable ionline iat ihttp://whqlibdoc.who.int/hq/1998/ iWHO_DAP_98.9_revised.pdf i

2. 2001b. iTRIPS iand iPharmaceutical iPatents. iWTO iFact iSheet i(April). iAvailable iat ihttp://www.wto.org/english/tratop_e/trips_e/trips_e.htm. i

3. 2002. iIMS iWorld iReview, iWebsite. i[www.ims-global.com/products/sales/ ireview.htm].Oxfam. i2002. iGeneric icompetition, iprice iand iaccess ito imedicines: iThe icase iof iantiretrovirals iin iUganda. i

4. Arellano, iO.L. iand iA.C. iLaurell. iMarket iCommodities iand iPoor iRelief: iThe iWorld iBank iProposal ifor iHealth. iInternational iJournal iof iHealth iServices, i25, i1-i18, i1996. i

5. Attaran iA., iGillespie-White iL.: iDo iPatents ifor iAntiretroviral iDrugs iConstrain iAccess ito iAIDS iTreatment iin iAfrica? i286 iJAMA i1886, i2001. iDistributed iat iDoha iby ithe iInternational iFederation iof iPharmaceutical iManufacturers i(IFPMA). i

6. Baker, iBrook iK. i2004. iProcesses iand iIssues ifor iImproving iAccess ito iMedicines: iWillingness iand iAbility ito iUtilize iTRIPs iFlexibilities iin iNon- Producing iCountries. iDepartment iof iInternational iDevelopment iHealth iSystems iResource iCentre. ihttp://www.dfi idhealthrc.org/shared/publications/ iIssues_papers/ATM/ iBaker. iPdf i

7. Balasubramaniam, iK. iAccess ito imedicines: iPatents, iprices iand ipublic ipolicy i– iconsumer iperspectives iin iglobal iintellectual iproperty irights. iIn iDrahos, iP. iand iMayne, iR. i(Eds.), iGlobal iIntellectual iProperty iRights: iKnowledge, iAccess iand iDevelopment, iPalgrave iMacmillan, iLondon. ipp. i90-107. i2002 i

8. Balasubramaniam, iK. iMulti-Stakeholder iDialogue ion iTrade, iIntellectual iProperty iand iBiological iResources iin iAsia. iRound i2: iAccess ito iMedicines iand iPublic iPolicy iSafeguards iunder iTRIPs, i2002. iHealth iAction iInternational iAsia iPacific. ihttp://www.ictsd.org/dlogue/2002-04- 19/Balasubramaniam.pdf i

9. Ball, iDouglas, iThe iRegulation iof iMark-ups iin ithe iPharmaceutical iSupply iChain, iWorking ipaper i3, iWHO/ iHAI iProject ion iMedicine iPrices iand iAvailability, iMay i2011. iAs iof iAugust i25, i2011:

ihttp://www.haiweb.org/medicineprices i/05062011/Markups%20final%20May2011.pdf i 135

10. Byrne iI., iMaking ithe iRight ito iHealth ia iReality: iLegal iStrategies ifor iEffective iImplementation. iCommonwealth iLaw iConference, iLondon iSeptember i2005.

REFERENCES

1. http//www.oxfam.org/en/ i- iOxfam iInternational i

2. http://cgkd.anu.edu.au/ i- iCentre ifor iGovernance iof iKnowledge iand Development, Aust National University, ipublishers isuch ias iPeter iDrahos. i

3. http://www.3dthree.org/en/ i- itrade, ihuman irights, iequitable ieconomy i

4. http://www.ciel.org/ i– iCentre ifor iInternational iEnvironmental iLaw i

5. http://www.lexorbis.com.LEX iORBIS, i"Newsletter", iApril i26, i2006. i

6. http://www.msf.org/ i- iMedicines iSans iFrontiers i

7. http://www.southcentre.org/ ian iintergovernmental iorganization iof idеveloping icountries i

8. http://www.twnside.org.sg/heal.htm i– iThird iWorld iNetwork i

9. http://www.vanuatu.usp.ac.fj, i- iuseful idocuments ion icivil isociety iin ithe iPacific iare iavailable iin ithe iSouth iPacific iCivil iSociety iLibrary i2001a. i 10. http://www.who.int/medicines/areas/quality_safety/regulation_legislation/certificat iion/en/ ihttp://apps.who.int/ghod