

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 4

2021

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Overview of Indian Military Justice System

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ABSTRACT

Military justice refers to a set of laws and rules that regulate members of the Armed services. Every country has its own distinct legal organizations that regulate the actions of its Armed Forces personnel. Military justice in the present period necessitates quick decisions, which cannot be attained only by debate and discussion. In most circumstances, a commander's viewpoint is enforced on his or her subordinate officers. The present legal system in armed forces necessitates lot of changes and reforms be it appointment of judges or the trial procedures. Emphasis should be laid on conduct of court martials and shortcomings like procedure of bail, conduct of Summary Court Martial and nomination of members need to be reviewed and changed accordingly. The working and powers of Armed Forces Tribunal also requires a relook and reformed to improve the legal system. All remedial measures to be implemented expeditiously.

Keywords: *Military justice, summary court martial.*

I. INTRODUCTION

Military justice refers to a set of laws and rules that regulate members of the armed services. Every country has its own distinct legal organizations that regulate the actions of its Armed Forces personnel. Military justice in any nation refers to a collection of laws aimed at regulating the personnel of the country's armed forces.

India's military justice system has its roots in English military law. The British made it after the Mutiny of 1857 to govern the people of the country.² After the 1857 Mutiny, the principal goal of British military justice developers was to instill discipline amongst Indians. Before Independent India accepted British laws, just a few small amendments were made. Army Act, Navy Act, and Air Force Act are the three military laws in India. All three acts are nearly identical, with a few small differences. The legislative provisions that apply to men and women in uniform are outlined in these statutes. Military forces have their own set of laws, but they are identical to the Army, Navy, and Air Force Acts. Border Security Forces Act, Coastal Guards

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² Divi Jain, Summary Court Martial and the Indian Judiciary, Legal Service India.com (oct 5,2007), available at <http://www.legalserviceindia.com/article/130-Summary-Court-Martial-And-The-IndianJudiciary.html> (last visited may 15, 2021)

Act, Indo Tibet Border Police Act, and Assam Rifles Act are all military-inspired laws of India.

II. IS THERE IS A NEED FOR AMENDMENT IN THE MILITARY JUSTICE SYSTEM?

Military justice in the present period necessitates quick decisions, which cannot be attained only by debate and discussion. In most circumstances, a commander's viewpoint is enforced on his or her subordinate officers. Military justice in India moves at a glacial pace. For a court to be able to hold a fair trial, it must have at least three elements: the judges must be competent, that is, they must have the necessary legal training and qualifications; the judges' appointment in any department, promotion, and tenure should not be influenced by the executive; and the trial must be fair and reasonable. Every aspect of our military justice system is deficient. The legal system,

as well as the summary court martial, has been criticized by the high courts in a number of cases. The summary court martial trial has been observed as not being fair and reasonable.

In the case of **Lance Naik Mirza Ahmed v. Union of India**³ The summary court martial procedures were challenged on the grounds that the commanding officer was biased towards the petitioner, that the commanding officer created the summary of evidence and so was not qualified to lead the court, and that there was no evidence against the petitioner. After reviewing the case, the Jammu and Kashmir High Court rejected the first two arguments, but found the third to be plausible because the petitioner was charged under section 52(b) of the Army Act, and the proceedings revealed no evidence of entrustment or disposal of property by the petitioner and court set aside the proceedings.

According to section 108 ,Chapter X of military manual⁴ , it states that there are four kinds of court martial which are as follows:

- a) General court martial
- b) District court martial
- c) Summary general court martial and
- d) Summary court martial

(A) General court martial

A general court martial may be called by the central government, the army chief, or any officer entitled in his behalf to issue the warrant, according to section 109 of the Army Act. According to section 113 of the army act, a general court martial must consist of at least five officers, each of whom must have served for at least three years and four of them must not be officers of

³ WP No.317 of 1981

⁴ Manual of military law ,available at <http://indianarmy.nic.in> (last visited on May 15 ,2021)

lower rank than captain.

(B) District court martial

A district court martial may be called by an officer who has the authority to hold a general court martial or by any such officer on his behalf who has the authority to issue the warrant, according to section 110 of the Army Act. The district court martial must consist of at least three officers and have served in the armed services for at least two years. The district court martial is established under section 114 of the Army Act.

(C) Summary General court martial

According to section 112 of the Army Act summary, a general court martial may be constituted on behalf of the Central Government or by order of the Army Chief, or by an officer in service, the officer in commanding the forces in the field, or any officer authorised by him in this purpose⁵. According to section 115 of the Army Act, a summary general court martial shall consist of at least three officers.

(D) Summary court martial

A summary court martial may be conducted by the commanding officer of any corps, department, or detachment of the regular army, and he shall alone form the court, according to section 116 of the Army Act. Two other officers or junior commissioned officers who will not be sworn or affirmed should attend the proceedings; however, the presence of one officer may be sufficient. The officers are not authorized to participate in the proceedings and have no opportunity to vote on any of the summary court martial's findings and sentences. Summary court martials are usually held for offences committed by soldiers, havildars, or lower-ranking officers, with the goal of avoiding the imposition of capital penalty, which is possible in a full court martial.

A summary court martial can give any punishment which is given under the army act for the said offence. Section 120 states that a summary court martial may pass one year of sentence to the officer holding the court martial is of the rank of Lieutenant Colonel and If the summary court martial is conducted for the officer holding the rank of major or below , summary court martial cannot give punishment of imprisonment exceeding three months. The commanding officer acts as a prosecutor in examining the witnesses in relation to the charged as there is no prosecutor in the summary court martial.

According to section 69 of the Army Act 1950, any person who falls under this act and commits any civil offence either in India or outside India, and who is found guilty of an offence against this act and is prosecuted under this act, shall be subject to a court of martial trial.

⁵ Ibid

Section 70 states that a person subject to this act who commits a crime of murder or culpable homicide not amounting to murder or rape in relation to a person not subject to military, naval, or Airforce law or culpable homicide not amounting to murder or rape in relation to such person is guilty of a crime of murder or culpable homicide not amounting to murder or rape and If the accused is not guilty of an infraction against this act, he will not face a court martial unless he commits one of the aforementioned offences while on active duty, outside of India, or at a border station designated by the central government.

III. DRAWBACKS OF THE MILITARY JUSTICE SYSTEM

The military judicial system continues to follow British legal traditions and is refusing to make the required changes and improvements to its justice system. The following are some of India's military judicial system's setbacks:

(A) Right To Bail

In any of the three service Acts, there is currently no provision for bail for detained military members. The accused officer is at the mercy of his superior officer and the authorities overseeing his case. The Honorable Supreme Court has established the criteria for granting bail, and these rules and principles should be applied to military members in custody. No right to bail is a clear violation of Indian constitution articles 21 and 22, which state that no person shall be deprived of his life or personal liberty, and that no person shall be detained in custody without being informed of the grounds of arrest, and that no person shall be denied the right to consult and be defended by a qualified legal practitioner of his choice.

(B) Trial In Summary Court Martial

In today's world, the military legal framework is behind the times and does not fulfil the essential standards. The accused military man does not even have the right to defend himself without the help of a lawyer or other authorities. This component of the military trial is a clear violation of Indian constitution articles 21 and 22. When it comes to imposing punishment, the mechanism for conducting a trial under the Military Justice System is regarded unjust and unreasonable. Several High courts and the Supreme Court have criticised the summary court martial's rulings and conclusions, observing that in several cases, the summary court martial's trial is based on assigning disproportionate punishment to the accused Armed personnel. Article 14 of the Indian Constitution is clearly violated in this part of the military judicial system.

In the case **Chaudhary M.R Ex Sepoy V. Union of India**⁶, Himachal Pradesh high court overturned the accused's sentence of removal from the military and 6 months of imprisonment, which had been imposed by a summary court martial. When the accused was serving in the IPKF in Sri Lanka, he pushed a JCO, and the high court found that the sentence he received was not justified.

(C) Members Of The Court –Martial

In order for a court to conduct a reasonable and fair trial, it must possess at least three characteristics: competence, independence, and impartiality. India's military judicial system falls short in all of these areas. Experts have noted that the judges or members lack appropriate legal expertise, knowledge, and qualifications in the field of law.

Experts also noted that while a court martial is being held, there is a command influence. When the word "command influence" is used in relation to the law, it implies that decision-making is not autonomous and fair. The presiding officer is responsible for conducting a fair and reasonable court martial.

In the case **Uma Shankar Pathak v. Union of India**⁷ Allahabad High Court questioned the procedure of the summary court-martial. The petitioner's major issue in front of the Court was non-compliance with Army Rules 34 and 115(2). In the case of non-compliance with Army Rule 115(2), the Court stated that a plain certificate from the commanding officer stating that the terms of the Army Rule are now complied with is inadequate. The court must specifically note in the proceedings record that the accused was fully informed on the nature and substance of the accusation, as well as the differences in process between pleading guilty and not guilty. The questions posed to the accused and his responses must be reported verbatim by the Court. The Court had not acted in this capacity. The Court said that the necessity of at least 96 hours notice to the accused is mandatory when it comes to non-compliance with Army Rule 34. The petitioner had just been told of the charge 8 hours before the trial was to begin, according to the Court. The Court determined that there had been a violation of Rules 34 and 115(2) based on the facts and circumstances of the case. As a result, the Court overturned the summary Court-martial proceedings and ordered that the petitioner be reinstated with all benefits.

(D) Double Jeopardy

According to Section 127 of the Army Act 1950, a person who has been convicted or acquitted

⁶ CWP No563 OF1990

⁷ 3 Serv LR 405 (1989)

by a court martial may be prosecuted again in a criminal court with civil jurisdiction for the same offence or on the same circumstances as in the first trial.

The concept of double jeopardy is stated in Article 20(2) of the Indian constitution, which provides that no one may be prosecuted and punished for the same offence more than once. The army act's section 127 is a clear breach of the idea of double jeopardy. In the case of **Surinder Singh v. Union of India**⁸, the petitioner moved to the Madhya Pradesh High Court in Jabalpur to have the proceedings of the general Court martial that was summoned to try him set aside after his summary court-martial conviction was overturned. His main argument was that he had already been tried and punished for the same offence by a summary Court-martial, and that a retrial was barred under the provisions of Section 121 of the Army Act and Article 20(2) of the Constitution. He contended that the summary Court-martial proceeding in which he had been tried previously was quashed for non-compliance with the mandatory provisions of Army Rule 22. The summary Court-martial proceedings could not have been set aside because of a technical fault in the procedure at the pre-trial stage because the trial by summary Court-martial occurred after evaluating the contentions of the summary Court-martial proceedings. Even pursuant to the Army Act's Section 162. Only the merits of the case, not technicalities, can be used to dismiss summary court-martial proceedings. As a result, the general Court-martial proceedings were annulled by the Court as being in violation of Army Act Section 121 and Article 20(2) of the Constitution.

(E) Absence Of Right To Appeal

Presently, there is no formal method for appealing a court martial findings or verdict. The present method for what is referred as to the confirmation and revision of court martial procedure is enumerated in chapter XII of the AA, notably sections 153-165. It is stated in section 153 that no decision or sentence of parties such as a General, district, or summary General, or a court martial, may be deemed legal until it is confirmed as mentioned in the AA.⁹ The modification of the court martial finding or punishment by an order confirming a judgement is then passed in Section 160. Section 164 on the other end, is concerned with the confirmation and remedies accessible to persons who have been found guilty or sentenced. In the case of final finding or the sentence imposed by GCM, DCM, SGCM, the remedy available to the accused is set out in section 164(2), which essentially states that it can only be evoked once the sentence is assured or confirmed.

⁸ 1992 CriLJ 1312

⁹ Manual of military law, available at <http://indianarmy.nic.in> (last visited on May 16, 2021)

The option of seeking remedy is thus for all intents and purposes inaccessible to the individual on trial prior to the sentence being confirmed furthermore, the solution is merely a formality and is not carried out to the highest possible standard. Essentially, the afore mentioned clause weakened , and the majority of proceedings takes place behind closed doors, with the accused being denied the right to counsel. As a result, an appeal against court martial order is effectively possible.

IV. THE ARMED FORCES TRIBUNAL

Parliament established the armed forces tribunal act of 2007 to empower the tribunal to solve disputes and complaints arising from the army act of 1950, the navy act 1957 and the air force act of 1950. It also gave this tribunal the authority to hear an appeals in the events of the miscarriage of justice.¹⁰ The regional benches of Chandigarh and Lucknow each have three benches , whereas the regional benches each have a single bench with the judicial and administrative member. An judicial member is a former high court judge , whereas administrative member is a retired armed forces member who has served for 3 years or more with the rank of Maj Gen or higher. Currently, it has mostly failed to live up to anticipation and enthusiasm.a key issue for the AFT is a lack of the necessary number of tribunals. As a result, thjere is a significant amount of delay in the judicial procedure. In addition , there is a major case of final orders not being implemented , with may have brought relief to litigents. The majority of the case filed the tribunal were against the union government , with the ministry of defence serving as the respondent. Due to lack of execution and cooperation by the authorities , they relief and justice imposed by the tribunal to the aggrieved service men and veterans were just on paper. The tribunals were unable to carry out there decisions due to a serious lack of sufficient contempt power.

V. CONCLUSION

While the benefits of establishing a separate system for resolving military issues are obvious, it is also critical that change be implemented. Transparency is critical, as is better support and legal aid for the accused, and the apparent modifications that need to be made to the bail conditions. The Indian military justice system traces its roots back to a time when the conflict was far away and the Armed Forces had to be self-contained. No legal system can or should work in a vacuum, ignoring societal norms as they change. The military justice system is archaic, and simply establishing an appeals tribunal will not make it more active. Instead of making adjustments by establishing a "tribunal," it may be more prudent to examine the entire

¹⁰ Court martial procedure available at <http://blog.ipleaders.in/court-martial/amp/> last visited on (may 15 ,2021)

military justice system in order to develop a healthy justice delivery system.

The system should be shared by all three Services and serve as a guide for citizens participating in the nation building process. The armed forces tribunal is another significant area where changes are needed. The tribunal need proper contempt powers and support in order to successfully carry out the decisions it issues. If the government succeeds in making military law more humanitarian and dynamic, it will reassure military members that they are protected by the Indian Constitution's fair, just and impartial justice system.
