

# THE ARMY ACT, 1950

(Act XLVI of 1950)

## CHAPTER 1

### PRELIMINARY

#### 1. Short title and Commencement.

1. This Act may be called the Army Act, 1950.
2. It shall come into force on such date as the Central Government may, by notifications in the Official Gazette, appoint in this behalf.

#### NOTE

The AA came into force on 22 Jul 1950. See Government of India Notification S.R.O 120 dated 22 Jul 50 (Reproduced in Part IV).

#### 2. Persons subject to this Act.

1. The following persons shall be subject to this Act wherever they may be namely :-
  - (a) Officers, Junior Commissioned Officer and Warrant Officers of the regular Army.
  - (b) Persons enrolled under this Act.
  - (c) Persons belonging to the Indian reserve Forces.
  - (d) Persons belonging to the Indian Supplementary Reserve Forces when called out for service or when carrying out the annual test.
  - (e) Officers of the Territorial Army, when doing duty as such officers and enrolled persons of the said Army when called out or embodied or attached to any regular forces, subject to such adaptations and modifications as may be made in the application of this Act to such persons under sub-section (1) of section 9 of the Territorial Army Act, 1948(LVI of 1948).
  - (f) Persons holding commissions in the Army in India Reserve of Officers, when ordered on any duty or service for which they are liable as members of such reserve forces.
  - (g) Officers appointed to the Indian regular reserve of Officers, when ordered on any duty or service for which they are liable as members of such reserve forces.
  - (h) (Omitted)1.
  - (j) Persons not otherwise subject to military law who, on active service in camp, on the march or at any frontier post specified by the Central Government by notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of the regular Army.
2. Every person subject to this Act under clauses (A) to (g) 2, sub-section (1) shall remain so subject until duly retired, discharged, released, removed, dismissed or cashiered from the service.

#### NOTES

1. Sub-sec (1). "Wherever they may be". The AA which is a special law has extra-territorial application in as much as a person subject to it continues to be so subject at all times irrespective of the place where he is serving e.g., whether he is in India or otherwise. His liability to punishment under the Act therefore remains, unaffected by the place where he commits the offence.

2. Clause (a) – For the definition of ‘Officer’, ‘JCO’, ‘WO’ and ‘Regular Army’ see AA. s. 3(XVIII). (XII), (XXIV) and (XXI) respectively.
3. Clause (b) - “persons enrolled” see AA. ss. 13, 14 and 15.
4. Clause (c) - (The Indian reserve forces consist of the Regular Reserve and the Supplementary Reserve). Persons belonging to the Indian Reserve Forces are subject to the AA at all times until duly discharged or dismissed. S. 5 of the Indian Reserve Forces Act 1888 and rule 3B of Indian Reserve Forces Rules, 1925 refer.
5. Clause (d) - Indian Supplementary Reserve Forces is no more in existence and there is no class of persons who are subject to the AA under this clause.
6. Clause (e) – The term ‘Officers of the Territorial Army’ includes JCOs of that Army as well – S. 2(b) of TA Act, 1948.

For the ~adaptations and modifications’ made to AA. See rule 24 of the TA Act Rules, 1948 and Schedules II and IIA thereto (reproduced in PART III).

7. Clause (F) – Army in INDIA Reserve of Officers force is no more in existence and there is no class of officers subject to the AA under this clause.
8. Clause (g)- Personnel mentioned in this clause are subject to the AA only when ordered on duty or service for which they are liable as members of such reserve forces. Officers of the regular Army who retire on pension or gratuity have a liability to serve in the Reserve until they reach the specified age limits.
9. Clause (i)\_ Persons commonly known as ‘followers’ are not ordinarily subject to AA unless they have been enrolled under it, but in the interest of discipline and security, it is obviously necessary that they and other civilians who accompany any portion of the regular Army should be subject to military discipline on active service and in certain other circumstances. This clause provides for such subjection.

All persons, including civilian officers and subordinates, who are subject to AA under this clause are deemed to be of a rank inferior to that of a non-commissioned officer, unless the Central Government have under AA. s. 6 (1) issued a notification regarding the manner in which such persons shall be so subject, See AA s. 6 and Government of India Notification S.R.O 325 of 1975 (reproduced in part IV) under which civilian government servants are classified as Officer, JCOs, WOs and NCOs according to their total monthly emoluments, the status so conferred is personal and does not give them power of command over others nor does it make them ‘superior officers’ within the meaning of the AA.

Further, subjection of civilians in government service to AA under this clause does not preclude their being dealt with departmentally under their civil, disciplinary regulations but if they are dealt with under military law, the procedure must be in accordance with the AA AND AR..

10. “Active Service” See AA. s. 3(i).

Regular Army - See AA. s. 3 (XXI)

11. Sub-Sec (2) –A person subject to the AA cannot terminate his subjection unilaterally, cessation of such subjection must take place in one of the ways mentioned in this sub sec.
12. ‘Duly retired’ ‘discharged’ etc – See chapter IV of the AA and ARs 13 to 18. For cashiering and dismissal as a court-martial sentence see AA. 71 and AR 168. If a sentence of dismissal is combined with a suspended sentence of imprisonment, the dismissal does not take effect until so ordered by the authority or officer specified in AA. s. 182. Also see AA. s. 190 (1).

### 3. **Definitions.** In this Act, unless the context otherwise requires.

- (i) “active service” as applied to a person subject to this Act, means the time during which such person -

- (a) Is attached to, or forms part of, a forces which is engaged in operations against an enemy, or
  - (b) is engaged in military operation in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or
  - (c) is attached to or forms part of a force which is in military occupation of a foreign country.
- (ii) “civil offence” means an offence which is triable by a criminal court,
  - (iii) “civil prison” means any jail or place used for the detention of any criminal prisoner under the Prisons Act, 1894 (IX of 1894), or under any other law for the time being in force.
  - (iv) (“Chief of the Army Staff” means the officer commanding the regular Army)<sup>1</sup>
  - (v) “commanding Officer”, when used in any provision of this Act, with reference to any separate portion of the regular Army or to any department thereof, means the officer whose duty is under the regulations of the regular Army, or in the absence of any such regulations, by the custom of the service to discharge with respect to that portion of the regular Army or that department, as the case may be, the functions of a commanding officer in regard to matters of the description referred to in that provisions.
  - (vi) “CORPS” means any separate body of persons subject to this Act, which is prescribed as a corps for the purposes of all or any of the provisions of this Act.
  - (vii) “court- martial” means a court-martial held under this Act.
  - (viii) “criminal court” means a court of ordinary criminal justice in any part of India.
  - (ix) “department” includes any division or branch of a department.
  - (x) “enemy” includes all armed mutineers, armed rebels, armed rioters, pirates and any person in arms against whom it is the duty of any person subject to military law to act.
  - (xi) “the Forces” means the regular Army, Navy and Air Force or any part of any one or more of them.
  - (xii) “junior commissioned officer” means a person commissioned, gazetted or in pay as a junior commissioned officer in the regular Army or the Indian Reserve Forces, and includes a person holding a junior commission in the Indian supplementary Reserve Forces, or the Territorial Army ( )<sup>1</sup> who is for the time being subject to this Act.
  - (xiii) “military custody” means the arrest or confinement of a person according to the usages of the service and includes naval or air force custody.
  - (xiv) “military reward” includes any gratuity or annuity for long service or good conduct, good service pay or pension, and any other military pecuniary reward.
  - (xv) “non-commissioned officer” means a person holding a non-commissioned rank or an acting non-commissioned rank in the regular Army or the Indian Reserve Forces, and include a non-commissioned officer or acting non-commissioned officer of the Indian Supplementary Reserve Forces or the Territorial Army ( )<sup>1</sup> who is for the time being subject to this Act.
  - (xvi) “notification” means a notification published in the Official Gazette.
  - (xvii) “Offence” means any act or omission punishable under this act and includes a Civil offence as hereinbefore defined.
  - (xviii) “Officer” means a person commissioned, gazetted or in pay as an officer in the regular Army, and includes.
    - (a) an officer of the Indian Reserve Forces.

(b) an officer holding a commission in the Territorial Army granted by the President with designation of rank corresponding to that of an officer of the regular Army who is for the time being subject to this Act.

(c) an officer of the Army in India Reserve of Officers who is for the time being subject to this Act.

(d) an officer of the Indian Regular Reserve of Officers who is for the time being subject to this Act.

(e) (Omitted)<sup>1</sup>.

(f) in relation to a person subject to this Act when serving under such conditions as may be prescribed, an officer of the NAVY or Air Force;

but does not include a junior commissioned officer, warrant officer, petty officer or non-commissioned officer.

(xix) “prescribed” means prescribed by rules made under this Act.

(xx) “provost-marshal” means a person appointed as such under section 107 and includes any of his deputies or assistants or any other person legally exercising authority under him or on his behalf.

(xxi) “regular Army” means officers, junior commissioned officers, warrant officers, non-commissioned officers and other enrolled persons who, by their commission, warrant, terms of enrolment or otherwise, are liable to render continuously for a term military service to the Union in any part of the world, including persons belonging to the Reserve Forces and the Territorial Army when called out on permanent service.

(xxii) “regulation” includes a regulation made under this Act.

(xxiii) “superior officer” when used in relation to a person subject to this Act, includes a junior commissioned officer, warrant officer and a non-commissioned officer, and, as regards persons placed under his orders, an officer, warrant officer, petty officer and non-commissioned officer of the Navy or Air Forces.

(xxiv) “warrant officer” means a person appointed, gazetted or in pay as a warrant officer of the regular Army or of the Indian Reserve Forces, and includes a warrant officer of the Indian Supplementary Reserve Forces or of the Territorial Army ( )<sup>1</sup> who is for the time being subject to this Act.

(xxv) all words (except the word India)<sup>2</sup> and expressions used but not defined in this Act and defined in the Indian Penal Code (Act XLV of 1860) shall be deemed to have the meanings assigned to them in that Code.

## NOTES

1. Clause (i) : Enemy – see clause (x).

2. persons subject to the AA may be on active service even before embarkation for the seat of operations if the circumstances are such that they can reasonably be held to be attached to or form part of such a force as is specified in this clause or to be on the line of march to a country or place wholly or partly occupied by enemy.

A person is on the line of march from the time he parades for the original march until he arrives at his ultimate destination.

3. Termination of a state of war between the Union and an occupied enemy country would not ipso facto prevent troops occupying that country from being on active service for the purposes of this clause provided they are in fact occupying that foreign country. In order to ascertain whether such troops are ‘on active service’ or not, regard must be had to all the circumstances involved. Where there is any doubt as to whether or not troops are on active service for the purpose of this clause, declaration should be made under AA. S 9.

4. Clause (ii) – Offence – see clause (xvii).  
Criminal court - see clause (viii).

5. Clause (iii) – see notes to AA. S. 24.
6. Criminal prisoner means any prisoner duly committed to custody under the writ, warrant or order of any court or authority exercising criminal jurisdiction or by order of a court-martial. (The Prison Act 1984, s. 3(2).
7. Clause (iv) – The term ‘Commander in Chief’ was replaced by the term ‘Chief of the Army Staff’ wef 07 May 55, see The Commanders-in-Chief (change of Designation) Act, 1955 (No 19 of 1955) and Govt. of India, Ministry of Defence Notification SRO 2/E dated 07 May 55. Regular Army – see clause (xxi).
8. Clause (v) – An officer as defined in clause (xviii) can be a Commanding Officer within the meaning of this clause.  
  
It has been left to the Regs or in their absence to the custom of the service to specify the officer whose duty it is to discharge the functions of a commanding officer in regard to any particular provisions; see Regs Army and notes to AA.s. 116.
9. Clause (vi) - prescribed – see AR 187.
10. Clause (vii)- see notes to AA. s. 60.
11. Clause (viii) - India. See Art (1) of the Constitution. See also notes to clause (ii) above.
12. Clause (x) The term “enemy” would include a soldier ‘running amok’ see Regs Army Para 348.
13. Clause (xi) – The term ‘the forces’ means ‘the Armed Forces of the union referred to in Art 72 (2) of the Constitution.
14. Clause (xii) – Regular Army – see clause (xxi)  
  
“Commissioned gazetted or in pay” existence of any one of these conditions makes him subject to the AA as a JCO.
15. Clause (xiii) - As to arrest and confinement and release therefrom, see Regs Army paras 391 to 397.
16. “Confinement” would include confinement in the unit quarterguard or detention in barracks while undergoing a sentence of imprisonment under AA. s. 80 or 169 (3) or detention under AA. s. 80.
17. Clause (xiv) – A war gratuity is thus a military reward but a medal in the rules governing it but not as a court-martial sentence.
18. A military reward can be forfeited in the circumstances specified in the rules governing it but not as a court-martial sentence.
19. Clause (xv) – As an acting NCO is legally a NCO within the meaning of this clause, the punishments specified in clause (a), (b), (c) or (j) of AA. s. 80 cannot be awarded to him but he can be awarded a severe reprimand or reprimand under clause (g) of the said section or under clause (i) of AA. s. 71. But see note 14 to AA. s.71.  
  
Only attested persons are eligible for non-commissioned ranks – AA. s. 16.
20. Clause (xvii) – Every civil offence is deemed to be an offence against the AA. See AA. s. 69.
21. Clause (xviii) - An officer holds a commission from the date notified in the official gazette and not from the date on which the commission is issued to him.
22. Clause (xxi) – The distinction between the regular Army and other forces is that persons belonging to the regular Army are liable to serve continuously for a term in any part of the world. Reservists or TA personnel become a part of the regular Army only when called on permanent service under the circumstances provided in sub – sec (d) and (e) of AA. s. 2(1).
23. Clause (xxii) - The term ‘regulation’ would appear to include a non-statutory regulation.

24. Clause (xxiii) – Although an officer of the Navy or Air Force cannot exercise command in general over persons subjects to the AA or be subject to command by such persons unless such officer is serving under prescribed conditions (clause (xviii) (f), an officer, WO etc, of the Navy or Air Forces is a 'superior officer' as regards person placed under this command.

25. Clause (xxiv) - Indian supplementary Reserve Forces – see Note 5 to AA. s. 2.

## CHAPTER II

### SPECIAL PROVISIONS FOR THE APPLICATION OF ACT IN CERTAIN CASES

#### 4. Application of Act to certain forces under Central Government.

(1) The Central Government may, by notification, apply, with or without modifications, all or any of the provisions of this Act to any force raised and maintained in India under the authority of that Government ( )1 and suspend the operation of any other enactment for the time being applicable to the said for the time being applicable to the said force.

(2) The provisions of this Act so applied shall have effect in respect of persons belonging to the said force as they have effect in respect of persons subject to this Act holding in the regular Army the same or equivalent rank as the aforesaid persons hold for the time being in the said force.

(3) The provisions of this Act so applied shall also have effect in respect of persons who are employed by or are in the service of or are followers of or accompany any portion of the said force as they have effect in respect of persons subject to this Act under clause (i) of sub-section (1) of Section 2.

(4) While any of the provisions of the Act apply to the said force, the Central Government may, by notification, direct by what authority any jurisdiction, powers or duties incident to the operation to these provisions shall be exercised or performed in respect of the said force.

#### NOTES

1. AA has been applied to the following forces:-

Force	Gazette Notification No. and date	With or without modification
(i) Assam Rifles	SRO 117 of 28 Mar 60 and 318 of 6 Dec 62 as amended by SRO 325 of 31 Aug 77.	With modifications.
(ii) Civil General	SRO 122 of 22 Jul 50 as amended Transport Companies by SRO 282 of 17 Aug 60.	Without modifications.
(iii) General Reserve Engineer Force	SROs 329 and 330 of 23 Sep 60.	With modifications.

2. The equivalent ranks of these forces viz-a-viz regular Army are given in the SROs shown below:-

Force	Gazette Notification No and date
(i) Assam Rifles	SRO 325 of 29 Sep 75.
(ii) Civil Genera; Transport Companies	SRO 1255 of 07 Nov 53 as amended by SRO 126 of 11 Apr 61..
(iii) General Reserve Engineer	SRO 1001 of 20 May 61 as amended by SRO 993 of 04 May 62 force.

2. The above SROs have been reproduced in Pt IV of the manual.

5. (Omitted).

6. **Special Provision as to rank in certain cases.**

1. The central government may by notification, direct that any persons or class of persons subject to this Act under clause (i) of sub-section(1) of section 2 shall be so subject as officers, junior commissioned officers, warrant officers or non-commissioned officers and may authorities any officer to give a like direction and to cancel such direction.

2. All persons subject to this Act other than officers, junior commissioned officers, warrant officers and non-commissioned officers shall, if they are not persons in respect of whom a notification or direction under sub-section (1) is in force, be deemed to be a rank inferior to that of a non-commissioned officer.

**NOTES**

1. See notes to AA.s. 2 (1) (i).

2. See SRO 325 of 29 Sep 75 reproduced in Part IV.

7. **Commanding Officer of persons subject to Military Law under clause (i) of sub-section (1) of Section 2.**

1. Every person subject to this Act under clause (i) of sub-section (1) of section 2 shall, for the purposes of this Act be deemed to be under the commanding officer of the corps, department or detachment, if any, to which he is attached, and , if he is not so attached, under the command of any officer who may for the time being be named as his commanding Officer by the officer commanding the force with which such person for the time being is serving, or any other prescribed officer or if, no such officer is named or prescribed under the command of the said officer commanding the force.

2. An officer commanding a force shall not place a person subject to this Act under clause (i) of sub-section (1) of section 2 under the command of an officer of rank inferior to that of such person, if there is present at the place where such person is any officer of a higher rank under whose command he can be placed.

**NOTES**

1. Sub sec (1) has reference to the powers of a CO e.g., Investigation by the CO, trial by SCM, summary proceedings under AA s. 80 and 85 etc.

2. For prescribed officer, see AR 189.

8. **Officers exercising powers in certain case.**

1. Whenever persons subject to this Act are serving under an officer commanding any military organization not in this section specifically named and being in the opinion of the Central Government, not less than a brigade, that Government may prescribed the officer by whom the powers, which under this Act may be exercised by officers commanding armies, army corps, divisions and brigades, shall, as regards such persons, be exercised.

2. The Central Government may confer such powers, either absolutely or subject to such restrictions, reservations, exceptions and conditions as it may think, fit.

9. **Power to declare persons to be on active service.** Notwithstanding anything contained in clause (i) of section 3, the central Government may, by notification, declare that any person or class of persons subject to this Act shall, with reference to any area in which they may be serving or with reference to any provision of this Act or if any other law for the time being in force, be deemed to be on active service within the meaning of this Act.

**NOTE**

See SRO 17 E dated 05 Sep 77 reproduced in part IV.

## CHAPTER III

### COMMISSION, APPOINTMENT AND ENROLMENT

**10. Commission and appointment.** - The President may grant, to such person as he thinks fit, a commission as an officer, or as a junior commissioned officer or appoint any person as a warrant officer of the regular Army.

#### NOTES

1. 'Such persons as he thinks fit', even an alien or a female may be granted a commission as an officer or JCO or appointed as a WO.
2. A commission or appointment is strictly speaking not a contract as its grant or termination/withdrawal is not legally dependent on the consent of the grantee.

**11. Ineligibility of aliens for enrolment.** – No person who is not a citizen of India shall except with the consent of the Central Government signified in writing, be enrolled in the regular Army:

Provided that nothing contained in this section shall bar the enrolment of the subjects of Nepal in the regular Army.

#### NOTES

1. Regular Army, see AA. s. 3 (xxi).
2. The following persons can be enrolled.
  - (a) A citizen of India (see Arts 5-11 of the Constitution and Citizenship Act, 1955);
  - (b) A subject of Nepal;
  - (c) An alien, with the written consent of the Central Government;
  - (d) A female, though a citizen of India, s subject of Nepal or an alien who has obtained the written consent of the Central Government is only eligible for enrolment or employment in such corps, department etc., of or any service auxiliary to the regular Army as specified in AA. s. 12.
3. A non-eligible person can however be deemed to be duly enrolled under AA. s. 15 if he satisfies the conditions set out therein.
4. Enrolment Boys : Being enrolled, the boys are subject to all the provisions of the AA and may legally be tried and punished by a court-martial or summarily. They may also be awarded minor punishments specified for boys. (see Regs Army para 443 (c) and item VI of the table annexed thereto).

The boys cannot be punished under AA for offences committed before enrolment.

**12. Ineligibility of females for enrolment or employment.** – No female shall be eligible for enrolment or employment in the regular Army, except in such corps, department, branch or other body forming part of, or attached to any portion of, the regular Army as the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that nothing contained in this section shall affect the provisions of any law for the time being in force providing for the raising and maintenance of any service auxiliary to the regular Army or any branch thereof in which females are eligible for enrolment or employment.

#### NOTES

1. This action has been enacted under the provisions of Art 16 (3) of the Constitution.
2. Department: see AA.s. 3 (ix).
3. Regular Army: See AA.s. 3 (xxi).



4. Law would seem to mean any law, ordinance, order, byelaw, rule or regulation passed or made by parliament, any authority or person having power to make such a law, ordinance, order, byelaw, rule or regulation. See Military Nursing Services (India) Ordinance (No xxx) of 1943, under which Military Nursing Service has been raised and maintained as an auxiliary to the regular Army.

**13. Procedure before enrolling Officer.** Upon the appearance before the prescribed enrolling officer of any person desirous of being enrolled, the enrolling officer shall read and explain to him, or cause to be read and explained to him in his presence, the conditions of the service for which he is to be enrolled and shall put to him the questions set forth in the prescribed form of enrolment and shall, after having cautioned him that if he makes a false answer to any such question he will be liable to punishment under this Act, record or cause to be recorded his answer to each such question.

#### NOTES

1. Prescribed enrolling officer: see AR 7.
2. Prescribed forms of enrolment: see Appx I to ARs.

The conditions of service, in these forms, are embodied in the questions which are put to the person to be enrolled and his acceptance of these conditions is duly recorded therein.

3. A person enrolled into one corps or department can, in the circumstances specified in AR 10, be transferred from that corps/department to another corps/department without his consent.
4. A false answer to any question set forth in the prescribed form of enrolment is punishable under AA.s. 44.

**14. Mode of enrolment.** If, after complying with the provisions of section 13, the enrolling officer is satisfied that the person desirous of being enrolled fully understands the questions put to him and consents to the conditions of service, and if such officer perceives no impediment he shall sign and shall also cause such person to sign the enrolment paper. And such person shall thereupon be deemed to be enrolled.

**15. Validity of enrolment.** Every person who has for the space of three months been in receipt of pay as a person enrolled under this Act and been borne on the rolls of any corps or department shall be deemed to have been duly enrolled, and shall not be entitled to claim his discharge on the ground of any irregularity or illegality in his enrolment or on any other ground whatsoever, and if any person, in receipt of such pay and borne on the rolls as aforesaid, claims his discharge before the expiry of three months from his enrolment, no such irregularity or illegality or other ground shall, until he is discharged in pursuance of his claim affect his position as an enrolled person under this Act or invalidate any proceedings, act or thing taken or done prior to his discharge.

#### NOTES

1. The effect of this section is that if a person including the one ineligible for enrolment receives pay for three months or more as an enrolled person and has been borne on the rolls of any corps or department, without having been enrolled in accordance with the provisions of AA, see ss. 13 and 14, he may be treated for all purposes as duly enrolled and subject to the AA, except that such a person can claim his discharge before the expiry of three months on any ground e.g. illegality or irregularity but that does not affect his being subject to the AA for the period he is so in receipt of pay and borne on the rolls as aforesaid, until his discharge. After the expiry of three months he cannot claim discharge on grounds of illegality or irregularity of enrolment.
2. Corps : see AR 187 (i).  
Department : see AA s. 3(ix).

**16. Persons to be attested.** The following persons shall be attested namely :-

- (a) all persons enrolled as combatants.
- (b) all persons selected to hold a non-commissioned rank ; and
- (c) all other persons subject to this Act as may be prescribed by the Central Government.

## NOTES

Attestation involves no further liabilities beyond those assumed at enrolment but confers upon the attested person certain privileges. The discharge of an attested person can, as a rule, only be authorized by higher military authorities, while that of an enrolled person who has not been attested e.g. recruits and followers can be authorised by his CO. Only attested persons are eligible for non-commissioned rank. See AR 8.

### **17. Mode of attestation.**

1. When a person who is to be attested is reported fit for duty, or has completed the prescribed period of probation, an oath or affirmation shall be administered to him in the prescribed form by his commanding officer in front of his corps or such portion thereof or such members of his department, as may be present, or by any other prescribed person.
2. The form of oath or affirmation prescribed under this section shall contain a promise that the person to be attested will bear true allegiance to the Constitution of India as by law established, and that he will serve in the regular Army and go wherever he is ordered by land, sea or air, and that he will obey all commands of any officer set over him, even to the peril of his life.
3. The fact of an enrolled person having taken the oath or affirmation directed by this section to be taken shall be entered on his enrolment paper, and authenticated by the signature of the officer administering the oath or affirmation.

## NOTES

1. For the prescribed form of oath or affirmation to be administered on attestation see AR 9 (1) and for its translation in vernacular languages see notes to AR 9.
2. The proper authority to attest a person subject to the Act is generally his immediate CO who should do so in the ceremonial manner here indicated. For list of other “attesting officers” see AR 9 (2).

## CHAPTER IV

### CONDITIONS OF SERVICE

**18. Tenure of service under the Act.** Every person subject to this Act shall hold office during the pleasure of the President.

#### NOTE

This section merely reiterates the constitutional position set out in Art 310 (1) of the Constitution. The President’s powers to terminate the service by way of dismissal, removal or otherwise, of any person subject to the AA under the said Art are unqualified and unfettered and no show cause notice is necessary.

**19. Termination of service by Central Government.** Subject to the provisions of this Act and the rules and regulations made thereunder the Central Government may dismiss, or remove from the service, any person subject to this Act.

## NOTES

1. The section empowers the Central Government to dismiss or remove from service any person subject to the AA but only in accordance with the provisions of the AA or of any rules or regulations made thereunder; the only legal restrictions are contained in ARs 13-A, 14 and 15 which require a show cause notice to be served upon an officer before his service is terminated on grounds of his failure to qualify at an examination or course, misconduct or inefficiency. Such show cause notice may be dispensed with by the Central Govt, when it considers it inexpedient or impracticable to do so or when the officer is already convicted by a criminal court for the misconduct. AR 15-A provides for the release of an officer on medical grounds, which is to be carried out on the recommendations of a Medical Board.

2. Dismissal under this section, AA. s. 18 or 20 is not a punishment as under AA. s. 71 but merely amounts to termination of a person's commission/service without his consent. Removal is a less grave form of dismissal.
3. For the date an order of dismissal or removal under this section takes effect, see AR 18 and for the date a sentence of cashiering or dismissal awarded by a court-martial takes effect, see AR 168.
4. The competent authority cannot make the dismissal/removal under this section or discharge under AR 13 retrospective nor can such valid dismissal etc, be cancelled without the person's consent.
5. An officer or JCO holding a substantive rank cannot be reduced to a lower substantive rank though he can be dismissed or removed under this section.
6. As to furnishing a JCO, WO or OR, who is dismissed or removed with a discharge certificate, see AA. s. 23 and AR 12. see also Regs Army para 169.

**20. Dismissal, removal or reduction by (Chief of the Army Staff) and by other officers.**

- (1) The (Chief of the Army Staff)<sup>1</sup> may dismiss or remove from the service any person subject to this Act other than an officer.
- (2) The (Chief of the Army Staff)<sup>1</sup>, may reduce to a lower grade or rank or the ranks, any warrant officer or any non-commissioned officer.
- (3) An officer having power not less than a brigade or equivalent commander or any prescribed officer may dismiss or remove from the service any person serving under his command other than an officer or a junior commissioned officer.
- (4) Any such officer as is mentioned in sub-section (3) may reduce to a lower grade or rank or the ranks, any warrant officer or any non-commissioned officer under his command.
- (5) A warrant officer reduced to the ranks under this section shall not, however, be required to serve in the ranks as a sepoy.
- (6) The commanding officer of an acting non-commissioned officer may order his to revert to his permanent grade as a non-commissioned officer, or if he has no permanent grade above the ranks, to the ranks.
- (7) The exercise of any power under this section shall be subject to the said provisions contained in this Act and the rules and regulations made thereunder.

**NOTES**

1. For the date an order of dismissal or removal under this section takes effect, see AR 18, and for the date a sentence of dismissal awarded by a court-martial takes effect, see AR 168.
2. The difference between dismissal and discharge is that the former does, while the latter does not, imply culpability, (Further dismissal involves the forfeiture of claim to any pension or gratuity which may have been earned. Discharge does not involve such forfeiture. See Regs Pension Part II Regs 14 and 195).
3. All persons sentenced to imprisonment (except persons sentenced by court-martial whose sentences are suspended) and such persons sentenced to imprisonment, as it is not desired to retain in the service will, if not dismissed by the sentence of a court-martial, be dismissed under this section or under AA. s. 19; see Regs Army paras 167 and 423 also. COs will use their discretion in applying for the dismissal and the higher authorities their discretion in ordering it. Such a dismissal should not be applied for, or at any rate should not be put into effect, until the convict or prisoner sentenced by court-martial has been committed to a civil prison (AR 168). In the case of a sentence passed by a civil court, the application should, if the dismissal is desired, be made as soon as possible after the sentence has been passed by the civil court. In special cases, a prisoner when it is not desired to retain in the service may be discharged instead of being dismissed.

4. As to furnishing a JCO, WO or OR who is dismissed with a discharge certificate, see. AA. s. 23 and AR 12 and Regs Army para 169.

5. A WO or NCO can be reduced in rank under sub-sec (4), but if the ground is some misconduct which is an offence against the Act, he should, as a rule, be brought to trial by a court-martial.

6. For ranks see Regs Army para 131. Lance and acting Naik is a matter to be dealt with by the CO.

7. When an acting NCO has been punished by court-martial for an offence, and such punishment does not involve reduction or reversion, his CO can revert him to his permanent grade, not as further punishment, but because the proceedings show him to be unfit to hold his appointment.

8. For CO see AA. s. 3(v).

**21. Power to modify certain fundamental rights in their application to persons subject to this Act.** – Subject to the provisions of any law for the time being in force relating to the regular Army or to any branch thereof, the Central Government may, by notification, make rules restricting to such extent and in such manner as may be necessary the right of any person subject to this Act.

(a) to be a member of, or to be associated in any way with, any trade union or labour union, or any class of trade or labour unions or any society, institution or association, or any class of societies, institutions or associations :

(b) to attend or address any meeting or to take part in any demonstration organized by any body of persons for any political or other purposes.

(c) to communicate with the press or to publish or cause to be published any book, letter or other document.

#### NOTES

This section has been enacted under the authority of Art 33 of the Constitution which empowers Parliament to restrict or abrogate the fundamental rights conferred by the Constitution in their application to 'the Armed Forces'. It gives the central Government power to make rules restricting the three of the fundamental rights conferred by Art 19 of the Constitution. The restrictions imposed by the Government under this rule making power will be found in ARs 19, 20 and 21.

Other instances where fundamental rights have been modified in pursuance of Art 33 are:-

(a) Protection from double jeopardy: Art 20 (2) of the Constitution has been abrogated by AA.s. 127.

(b) The right to be defended by legal practitioner of his choice provided vide Art 22 (1) of the Constitution has been restricted by ARs 96 and 129.

**22. Retirement, release or discharge.** Any person subject to this Act may be retired, released or discharged from the service by such authority and in such manner as may be prescribed.

#### NOTES

1. A person subject to the AA continues to be so subject until he is duly retired, released, removed, discharged, dismissed or cashiered from the service. AA. s. 2 (2).

2. For cashiering, dismissal and removal, see AA. ss. 19, 20 and 71 (d), (e) and notes thereto.

3. As to retirement and resignation of commission of officers, see ARs 14, 15 and 18 (1) and Regs Army Para 103.

4. Though regulations may prescribe age limits for compulsory retirement in respect of different ranks, every person subject to the AA holds office during the pleasure of the President and has thus no right to be kept in service till he reaches such age limit.

5. 'Released': See AR 16.

6. For authorities competent to authorize discharge see AR 13 and table annexed thereto. The discharge of a person who is under the conditions of his enrolment entitled to be discharged must be authorized and completed with all convenient speed (AR 11) by the proper authorities (AR 13) unless the Central Government has by notification suspended the said entitlement (AR 11).

7. A valid discharge cannot be cancelled without the consent of the discharged person {AR 11 (2)} and as such cancellation in effect amounts to re-enrolment.

1. Application for discharge will be made on IAFY-1948.

9. As to furnishing a person who is discharged with a discharge certificate (IAFY-1949). See AA. s. 23. AR 12 and Regs Army para 169.

2. For the date discharge takes effect see AR 18 (2).

**23. Certificate on termination of service.** - Every junior commissioned officer, warrant officer, or enrolled person who is dismissed, removed, discharged, retired or released from the service shall be furnished by his commanding officer with a certificate, in the language which is the mother tongue of such person and also in the English language setting forth :-

- (a) the authority terminating his service.
- (b) the cause for such termination ; and
- (c) the full period of his service in the regular Army.

#### NOTES

1. See AR 12 and Regs Army para 169.

2. An officer is not entitled to be furnished with a discharge certificate on termination of his commission.

**24. Discharge or dismissal when out of India.**

(1) Any person enrolled under this Act who is entitled under the conditions of his enrolment to be discharged, or whose discharge is ordered by competent authority, and who, when he is so entitled or ordered to be discharged, is serving out of India, and requests to be sent to India, shall, before being discharged, be sent to India, with all convenient speed.

(2) Any person enrolled under this Act who is dismissed from the service and who, when he is so dismissed, is serving out of India, shall be sent to India with all convenient speed.

(3) When any such person as is mentioned in sub-section (2) is sentenced to dismissal combined with any other punishment, such other punishment, or, in the case of a sentence of imprisonment for life or imprisonment, a portion of such sentence may be inflicted before he is sent to India.

(4) For the purposes of this section, the word "discharge" shall include release, and the word "dismissal" shall include removal.

#### NOTES

1. When an enrolled person's entitlement to be discharged or released accrues when he is out of India, he must, if he so requests, be sent to India for being discharged or released; in other words, the discharge/release must then be carried out in India. An enrolled person can however, be dismissed or removed from the service when serving out of India.

2. Sub-sec (3) is permissive and must be read with AA. ss. 168-169 and 171 which provide for the infliction of sentences of imprisonment passed by courts-martial. The result is that, unless the sentence is one of imprisonment which is to be undergone in military custody or a military prison under AA. s. 169 or in regard to which an order of its infliction or partial infliction in local civil custody has been made under AA. s. 171, a prisoner cannot legally be

kept abroad to undergo his imprisonment, but must be sent to a civil prison in India where it can be inflicted in accordance with this Act. Persons sentenced to imprisonment, which is to be undergone in a civil prison and where no order has been made under AA.s. 171 may be kept temporarily in military custody, military prison or other fit place under AA. s. 170.

3. On active service, however, a sentence of imprisonment may be carried out in such place as the officer commanding, the forces in the field may from time to time appoint: AA.s. 169 (4).

4. persons sentenced to dismissal and imprisonment can legally be retained in such a place to undergo the whole or any part of their terms of imprisonment before being sent to India under sub-sec (3).

## CHAPTER V

### SERVICE PRIVILEGES

**25. Authorised deductions only to be made from pay.** – the pay of every person subject to this act due to him as such under any regulation for the time being in force shall be paid without any deduction other than the deduction other than the deductions authorized by or under this or any other act.

### NOTES

1. The term 'pay' means the rate of pay with increases, if any, for length of service, to which a person subject to the AA. is entitled by reason of his rank, appointment, trade group or trade classification, and includes additional remuneration such as qualification pay, proficiency pay and the various forms of additional pay. All other emoluments are "allowances", which, as the word itself suggests, are purely discretionary and may be withdrawn at any time.

2. It is illegal to make deductions which are not authorized and the unlawful detention of pay is an offence under AA. s. 61.

3. 'Due to him as such', means earned by but not paid to him.

4. Under any regulation for the time being in force: such a regulation need not be a statutory one; (see AA. s. 3(xxii)).

5. For deductions authorized by or under the Act: see AA. s. 90-91 and AR 205.

6. Instances of deductions authorized by or under any other Act are to be found in the Income Tax Act or the rules made by the Central Government in pursuance of AA. s.4 of the Indian Reserve Forces Act, 1988 under which a reservist who fails to appear for training etc., or takes his discharge between trainings may be deprived of any arrears of pay and allowances due to him.

**26. Remedy of aggrieved persons other than officers.**

(1) Any person subject to this Act other than an officer who deems himself wronged by any superior or other officer may, if not attached to a troop or company, complain to the officer under whose command or orders he is serving; and may, if attached to a troop or company, complain to the officer commanding the same.

(2) When the officer complained against is the officer to whom any complaint should, under, sub-section (1), be preferred, the aggrieved person may complain to such officer's next superior officer.

(3) Every officer receiving any such complaint shall make as complete an investigation into it as may be possible for giving full redress to the complainant; or, when necessary, refer the complaint to superior authority.

(4) Every such complaint shall be preferred in such manner as may from time to time be specified by the proper authority.

(5) The Central Government may revise any decision by the (Chief of the Army Staff) under sub-section (2), but, subject thereto, the decision of the (Chief of the Army Staff) shall be final.

## NOTES

1. For further information regarding complaints and petitions generally, see Regs Army Para 361.
  2. To come within this section or AA. s 27, the complaint must be that the complainant has been denied or deprived of something to which he has a military right. A non-regular officer applicant for a permanent regular commission has a right to have his application fairly considered but has no right to be granted such a commission, consequently he cannot complain under AA. s. 27 if his application is refused unless he can produce some evidence that his application was not properly considered. Similarly a JCO or OR who is refused compassionate leave or a compassionate posting has no right of complaint under this section unless he can produce some evidence of improper motive for the refusal of leave, etc.
  3. Complaints may be made respecting such matter, but can be made by an individual only. The combined complaint of several can never be permissible, but should not, if well founded, be treated as mutinous, where it is plain that the only object of those making the complaint is to procure redress of the matter by which they think themselves wronged.
  4. A person can only complain once under this section in respect of any such matter.
  5. A complaint cannot legitimately be preferred to a superior officer except in the regular course defined by this section. The channels through which complaints must be preferred are specified in Regs Army para 361, and it is only where the immediate superior refuses or unnecessarily delays to redress or forward the complaint that direct application can be made to higher authority. The officer in question ought to be informed of the application being made to his superior. For definition of 'officer' and 'superior officer' see AA. s. 3(xvii) and (xxiii) respectively.
  6. The authority competent to dispose finally of the matter, complained of is the officer who, in pursuance of regulations or the custom of the service, is authorized to dispose of that matter. As a rule, he is the next superior officer to the officer against whom the complaint is made. If however, a person thinks himself wronged by his commanding officer in respect of his complaint not being redressed, it has been held that he may complain to the brigade commander.
  7. A false accusation or false statement made in preferring a complaint under this section or AA. s. 27 is punishable under AA. s. 56(b); but the mere fact that a complaint appears to be baseless, or even frivolous, does not render the maker liable to punishment. As to the repetition of baseless complaints, or the submission of complaints in disrespectful language, see notes to AA. s. 63.
  8. The persons to whom this section applies have no right to petition to the Central Government on matters arising out of their military service.
  9. For petition against order, finding or sentence of court-martial: see AA. s. 164 and notes thereto.
- 27. Remedy of aggrieved officers.** - Any officer who deems himself wronged by his commanding officer or any superior officer and who on due application made to his commanding officer does not receive the redress to which he considers himself entitled, may complain to the Central Government in such manner as may from time to time be specified by the proper authority.

## NOTES

1. It is the custom of the service to forward every complaint through the CO of the unit, and an officer would not be justified in deviating from this course, unless the CO should refuse, or unreasonably delay, to forward it. In such a case, an officer, on addressing himself directly to higher authority, should apprise his CO of his doing so, and should observe in the channel of approach to the Central Government each intermediate gradation of command in so far as he is concerned.
2. CO : see AA. s.3 (v);  
Superior Officer: see AA. s. 3 (xxiii).
3. Deems himself wronged: see note 2 to AA. s. 26.

4. This sec is not available to officers seconded for service with a civil department of a State, in respect of matters arising in the course of seconded employment.

5. Although the complaint is to the Central Government an intermediate authority is not debarred from expressing his own view of the case, and such expression of opinion may even in some cases suffice to render further steps unnecessary.

6. See also note 7 and 9 to AA. s. 26.

**28. Immunity from attachment.** Neither the arms, clothes, equipment, accoutrements or necessaries of any person subject to this Act, nor any animal used by him for the discharge of his duty, shall be seized, nor shall the pay and allowances of any such person or any part thereof be attached, by direction of any civil or revenue court or any revenue officer in satisfaction of any decree or order enforceable against him.

#### NOTES

1. The words "civil or revenue court" in this section do not include a criminal court. The section does not afford protection against a distress warrant issued under s. 421 of Cr PC: but the amount in respect of which the distress warrant is issued should be paid by the competent authority ordering deductions from the individual's pay and allowances under AA. s. 90(f) or 91 (h) as the case may be.

3. As to action to have an order of attachment set aside; see Regs Army para 532.

**29. Immunity from arrest for debt.**

(1) No person subject to this Act shall, so long as he belongs to the Forces, be liable to be arrested for debt under any process issued by, or by authority of, any civil or revenue court or revenue officer.

2. The judge of any such court or the said officer may examine into any complaint made by such person or his superior officer of the arrest of such person contrary to the provisions of this section and may, by warrant under his hand, discharge the person, and award reasonable costs to the complainant, who may recover those costs in like manner as he might have recovered costs awarded to him by a decree against the person obtaining the process.

3. For the recovery of such costs no court-fee shall be payable by the complainant.

#### NOTES

The privilege is from arrest on civil or revenue process. There is no privilege from arrest on any criminal process except as provided in ss. 45 and 475 of the Cr PC. The remedy for an improper arrest is to apply to the court on whose process the arrest took place or to apply for a writ of habeas corpus.

**30. Immunity of persons attending courts-martial from arrest.**

(1) No presiding officer or member of a court-martial, no judge advocate, no party to any proceeding before a court-martial, or his legal practitioner or agent, and no witness acting in obedience to a summons to attend a court-martial shall, while proceeding to, attending, or returning from, a court-martial, be liable to arrest under civil or revenue process.

(2) If any such person is arrested under any such process, he may be discharged by order of the court-martial.

**31. Privileges of reservists.** Every person belonging to the Indian Reserve Forces shall, when called out for or engaged in or returning from, training or service, be entitled to all the privileges accorded by section 28 and 29 to a person subject to this Act.

#### NOTE

It would appear that persons belonging to the Indian Reserve Forces though subject to the AA at all times would not enjoy the privileges conferred by AA. ss. 28 and 29 except in the circumstances mentioned in this section.



### **32. Priority in respect of army personnel's litigation.**

(1) On the presentation to any court by or on behalf of any person subject to this Act of a certificate from the proper military authority of leave of absence having been granted to or applied for by him for the purpose of prosecuting or defending any suit or other proceeding in such court, the court shall, on the application of such person, arrange, so far as may be possible for the hearing and final disposal of such suit or other proceeding within the period of the leave so granted or applied for.

(2) The certificate from the proper military authority shall state the first and last day of the leave or intended leave, and set forth a description of the case with respect to which the leave was granted or applied for.

(3) No fee shall be payable to the court in respect of the presentation of any such certificate, or of any application by or on behalf of any such person, for priority for the hearing of his case.

(4) Where the court is unable to arrange for the hearing and final disposal of the suit or other proceeding within the period of such leave or intended leave as aforesaid, it shall record its reasons for its inability to do so, and shall cause a copy thereof to be furnished to such person on his application without any payment whatever by him in respect either of the application for such copy or of the copy itself.

(5) If in any case a question arises as to the proper military authority qualified to grant such certificate as aforesaid, such question shall at one be referred by the court to an officer having power not less than a brigade or equivalent commandeer whose decision shall be final.

#### **NOTES**

1. For orders as to the speedy disposal of suits by or against officers or soldiers who have obtained leave of absence for the purpose of the suit see Regs Army para 535.

2. The Indian Soldiers Litigation Act 1925 (Act IV of 1925), (reproduced in part IV provides, among other things, for the postponement, when necessary in the interest of justice, of proceedings pending before a Civil or Revenue Court in India to which any person subject to AA serving under "special conditions" (see s. 3 of the Indian Soldiers Litigation Act) is a party when such person is unable to appear in person or is not represented by any person duly authorized to appear, plead or act on his behalf. This concession, however, does not necessarily extend to pre-emption cases or to cases where the soldier's interests are identical with those of any other party to the proceedings and are adequately represented by such other party or are merely of a formal nature.

3. Govt. of India, Ministry of Home Affairs while listing out the service privileges (AA. ss.28-32) have issued instructions to the State Govts to accord priority in respect of Army personnel's litigation. See Regs Army para 532 and appendix 'K-1' to Regs Army.

4. For form of appointment of attorney, see Regs Army para 533.

5. A power of attorney to institute or defend a suit executed by a person subject to the AA is not chargeable with any court fee. See Regs Army para 534.

6. If the case cannot be disposed of within the period of leave granted, the civil officer concerned may extend leave for such period as will admit of the receipt of a reply to an application to the OC unit for the necessary extension of leave. The civil officers will report to the OC unit any grant of leave sanctioned by him. See Regs Army para 536.

**33. Saving of rights and privileges under other laws.** – The rights and privileges specified in the preceding sections of this Chapter shall be in addition to, and not in derogation of, any other rights and privileges conferred on persons subject to this Act or on members of the regular Army, Navy and Air Force generally by any other law for the time being in force.

#### **NOTES**

1. The privileges specified in AA. ss. 25-32 are in addition to certain others which have been conferred on members of 'the Forces' by other Acts. A few examples of such privileges are :-

(a) All Govt. pensions (including military persons) are immune from attachment in the execution of the decrees of civil courts; s. 11 of pensions Act 1871, proviso (g) to s. 60 of Code of Civil Procedure 1908.

(b) Receipts for pay or allowances of NCOs, or Sepoys when serving in such capacity need not be stamped; Indian Stamp Act, schedule 1.

(c) All officers, JCOs, WOs and OR of the regular Army on duty or on the march as well as their authorized followers, families, horses, baggage and transport are exempt from all tolls except certain tolls for the transit of barges etc. along canals; s. 3 of Indian Tolls (Army and Air Force ) Act 1901.

## CHAPTER VI

### OFFENCES

**34. Offences in relation to the enemy and punishable with death.** Any person subject to this Act who commits any of the following offences, that is to say -

(a) Shamefully abandons or delivers up any garrison, fortress, post, place or guard, committed to his charge, or which it is his duty to defence, or uses any means to compel or induce any commanding officer or other person to commit any of the said acts ; or

(b) Intentionally uses any means to compel or induce any person subject to military, naval or air force law to abstain from acting against the enemy, or to discourage such person from acting against the enemy; or

(c) In the presence of the enemy, shamefully casts away his arms, ammunition, tools or equipment or misbehaves in such manner as to show cowardice ; or

(d) Treacherously holds correspondence with, or communicates intelligence to, the enemy or any person in arms against the Union; or

(e) directly or indirectly assists the enemy with money, arms, ammunition, stores or supplies; or

(f) treacherously or through cowardice sends a flag of truce to the enemy; or

(g) in time of war during any military operation, intentionally occasions a false alarm in action, camp, garrison or quarters, or spreads reports calculated to create alarm or despondency; or

(h) in time of action leaves his commanding officer or his post, guard, picquet, patrol or party without being regularly, relieved or without leave ; or

(i) having been made a prisoner of war, voluntarily serves with or aids the enemy; or

(j) knowingly harbours or protects an enemy not being a prisoner; or

(k) being a sentry in time of war of alarm, sleeps upon his post or in intoxicated ; or

(l) knowingly does any act calculated to imperil the success of the military, naval or air forces of India or any forces co-operating therewith or any part of such forces.

shall, on conviction by court-martial, be liable to suffer death or such less punishment as is in this Act mentioned.

### NOTES

1. Offences under this section should not be dealt with summarily under AA. s. 80. 83 or 84; also see Regs Army para 451.

Because the maximum punishment for offences under this section is death.-

(a) a summary of evidence must be taken.

- (b) a plea of guilty cannot be accepted {AR 52 (4)}
  - (c) the trial should not take place before a DCM/SCM.
2. `Subject to this Act'; see. S. 2.
  3. Clause (a); `Shamefully abandons', etc. –
    - (a) This offence can only be committed by the person in charge of the garrison, post, etc, and not by the subordinates under his command. The surrender of a place by an officer charged with its defence can only be justified by superior's orders or the utmost necessity, such as want of provisions or water, the absence of hope of relief, and the certainty or extreme probability that no further efforts could prevent the place with its garrison, their arms and ammunition, falling into the hands of the enemy.
    - (b) It must be proved that the accused had no necessity to surrender or abandon the post before a conviction can be obtained. Particulars of a charge under this clause must detail some circumstances which make abandonment in a military sense shameful. `Shameful' means a positive and disgraceful dereliction of duty and not merely negligence or misapprehension or error of judgment.
    - (c) `Post' includes any point or position (whether fortified or not) which a detachment may be ordered to hold; and the abandonment of a post would also include the abandonment of a siege if there were no circumstances to warrant such a measure. It has not the same meaning as in clauses (h) and (k) or AA. s. 36 (c) or (d), where it has reference to the position of an individual.
  4. Clause (b) ; `Intentionally' – As a state of mind (e.g. intention, knowledge) is not capable of positive proof, the court may infer intention from the circumstances proved in evidence. As a general rule, a person is presumed in law to have intended the natural and probable consequences of his act. A court may also presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of events and human conduct. See IEA s. 114.
  5. Enemy – see AA. s. 3 (x).
  6. Clause (c): `Shamefully' -
    - (a) The particulars of the charge must show the circumstances which make the act in a military sense shameful; see note 3 (b) above.
    - (b) The presence of the enemy must be near at hand and a soldier not in the forward area could not be convicted of an offence if, for example, he casts away his arms during an air raid.
    - (c) Enemy: see AA.s. 3(x). The term includes any person in arms against whom it is the duty of a person subject to military law to act. A person subject to the AA, therefore, who, when a comrade `runs amok' shows cowardice by refraining from acting against him is liable to trial under this clause. See also Regs Army para 348.
  7. `Misbehaves' - (a) This means that the accused from an unsoldier like regard for his personal safety, in the presence of the enemy, failed in respect of some distinct and feasible duty imposed upon him by a specified order or regulation, or by the well-understood custom of the service, or by the requirements of the case, as applicable to the position in which he was placed at the time. Misbehavior of any kind not evidencing cowardice cannot be charged under the last sentence of this clause.
    - (b) Where there is evidence that an accused has committed some other offence which is specifically mentioned in the Act as under clause (a) or (b) or AA. s. 38 (1) such an offence should be charged in preference to a charge under this clause.
  8. Clause (d) - `Treacherosly'
    - (a) see note 9 (a) and (b) below.
    - (b) If there is no evidence of treachery, the charge should be laid under AA.s.35 (b).

- (c) In a charge under this clause, it must be proved that the intelligence did in fact reach the enemy.
9. Clause (f) - 'treacherously' or 'through cowardice'
- (a) Treacherously implies an intention to assist the enemy and must be carefully distinguished from 'through cowardice' which occur in this clause. The intention to help the enemy is an essential ingredient of the offence of treachery and must be proved before a conviction can be sustained.
- (b) The particulars of the charge must show the circumstances which indicate the treachery or cowardice. If there is no treachery or cowardice, the charge should be laid under AA. s. 35(c).
- (b) Enemy; see AA. s. 3(x).
3. Clause (g); Intentionally - see note 4 above.
11. 'Occasions a false alarm' – The particulars of the charge must set out briefly the means whereby the alarm was caused.
12. 'Spreads reports' - The particulars of the charge must detail the reports alleged to have been spread, and should indicate how they were calculated to create alarm or despondency. It is not necessary to aver or prove that the reports were false, indeed the truth may increase the offence; nor is it necessary to show that any effect was actually produced by the reports spread; it would, however, seldom be expedient to try an officer or soldier under this section for reports which could not be shown to have had some effect. The offence may be committed either with reference to the troops with whom the offender is serving or with reference to the inhabitants of the country. When the false alarm is occasioned or such reports are spread otherwise than in time of war or during any military operation, the charge should be framed under AA. s. 36 (e) which makes punishable such spreading of reports etc. even though through neglect.
13. Camp includes a bivouac and any quarters, shelter or other place where troops are temporarily located.
14. Clause (h); Commanding Officer – see AA.s. 3(v).
15. 'Post'
- (a) When used with respect to an individual as in this clause and clause (k) means the position or place in which it may be the duty or a person subject to the AA to be, especially when under arms. In determining what, in any particular case is a post, the court will use their military knowledge (AA. s. 134). The place in which the person was posted is material and should be stated in the charge.
- (b) When a person is charged with leaving his post, it is always necessary to prove that he had been regularly posted.
- (c) This offence can be committed by any member of the guard, picquet etc. even the guard etc. commander but a joint charge cannot be preferred.
16. Without being regularly relieved or without leave. These words are in the nature of an exception, and the principle laid down in section 105 of IEA applies. Therefore, though the charge must aver the absence of regular relief or leave, this need not be proved, and the fact of the accused person having quitted his guard, etc, being established it will be for him to show that he was regularly relieved or had leave to quit his guard; nevertheless, any evidence bearing on this point which is known to the prosecutor should be adduced.
17. Clause (i): 'Voluntary'. The term as defined in s. 39 of the IPC relates to the causation of effects and not to the doing of acts from which those effects result. However, here it has been use more in its ordinary meaning e.g. of his own free will rather than in its technical sense i.e. it means merely that the accused was willing to do the act charged; it is not necessary to show that he volunteered to do it, or even that he wished to do it. In the absence of any evidence that compulsion was applied the court may find that the accused acted voluntarily; but if from the whole of the evidence given the court think that the accused's will may have been overborne by fear they should acquit him. The test is whether the particular accused was in fact so frightened as to have lost control of his will, not whether the methods used by his captors were such as

would cause a reasonably brave man to lose control. Coercion will, therefore, be a defence to such a charge.

18. Clause (j): 'Knowingly'. Evidence should, if possible, be given that the accused knew the person harboured or protected to be an enemy who is not a prisoner but if the fact of the harbouring of protesting is proved, the court may infer knowledge from the circumstances.

19. 'Harbouring'. The word 'harbour' includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means or means of conveyance or the assisting of a person by any means, whether of the above kinds or not to evade apprehension : IPC section 52A.

20. Enemy. See AA. s. 3(x).

21. Clause (k): 'Post'

(a) As used with respect to an individual in this and other clauses the term refers to the position or place in which it may be the duty of a person subject to this Act to be, especially when under arms. With respect, in particular, to a sentry, it applies (i) to the spot where the sentry is left to the observance of his duties by the officer, JCO or NCO posting him, or (ii) to any limits specially pointed out as his best. The fact that a sentry has not been regularly posted is immaterial if he is charged with an offence committed while on his post provided evidence is given to prove that he adopted the duty of sentry.

(b) In determining what in any particular case, is a post the court will use their military knowledge: AA. s. 134.

(c) A sentry found sleeping even a short distance from his 'post' should be charged with leaving his post under clause (h) or AA. s. 36(d); he cannot be charged with sleeping on his post under this clause. However, where a sentry is found intoxicated, he could be charged under this clause though he is so found at a short distance away from his post as the place where he is found intoxicated is immaterial not being ingredient of the offence.

(d) A policeman on gate duty is not a sentry.

(e) Two or more accused cannot be tried jointly with committing an offence under this clause.

(f) The same offence when committed by a sentry in circumstances which do not fall under this clause is triable under clause (c) of AA. s. 36.

22. Clause (l): 'Knowingly'. – See notes 4 and 18 above.

A charge under this clause should particularise the actual acts alleged. The act or acts must be shown to have been deliberately done by the accused with the intention of imperiling the success of the said forces. Such intention may be proved in evidence or may be inferred from the circumstances.

**35. Offences in relation to the enemy and not punishable with death.** Any person subject to this Act who commits any of the following offences, that is to say:-

(a) is taken prisoner, by want of due precaution, or through disobedience of orders, or willful neglect of duty, or having been taken prisoner, fails to rejoin his service when able to do so; or

(b) without due authority holds correspondence with or communicates intelligence to the enemy or having come by the knowledge, or any such correspondence or communication, willfully omits to discover it immediately to his commanding or other superior officer; or

(c) without due authority sends a flag or truce to the enemy; shall, on conviction by court-martial be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

#### NOTES

1. Offences under this section should not be dealt with summarily under AA. ss. 80, 83 or 84.

2. Clause (a): Where the conduct of any person subject to the AA. when being taken prisoner by or while in the hands of the enemy is to be inquired into, the COAS may order a court of inquiry to be held for this purpose and on the basis of the finding of the said court, the pay and allowances of such person may be forfeited by order of the Central Govt.; see AA.ss. 90(b) and 96. Such a court of inquiry held in the absence of the said person is provisional and as such has no effect except on the pay and allowances of that person.

3. Clause (b): This offence is less grave in form than the one under AA. s. 34(d).

4. (a) 'Communicates intelligence to'. A man must be taken to intend the natural consequences of his acts, and this clause appears to be wide enough to cover the case of intelligence reaching the enemy through the capture or the re-publication (e.g., by relatives or newspapers) of letters, sketches, photographs, etc. Everyone connected with the forces should recognize the grave danger of assisting the enemy by gossip, whether verbal or written, as to plans, prospects, operations, numbers, etc. As to unauthorized publication of official documents see Regs Army para 318 and Official Secret Act, 1923 (reproduced in part III).

(c) In a charge under this clause however, it must be proved that the intelligence did in fact reach the enemy.

5. Clause (c): The offence under this clause is less grave in form than the one under AA.s. 34(f).

**36. Offences punishable more severely on active service than at other times.** – Any person subject to this Act who commits any of the following offences, that is to say,-

(a) forces a safeguard, or forces or uses criminal force to a sentry; or

(b) breaks into any house or other place in search of plunder; or

(c) being a sentry sleeps upon his post, or is intoxicated; or

(d) without orders from his superior officer leaves his guard, picquet, patrol or post; or

(e) intentionally or through neglect occasions a false alarm in camp, garrison, or quarters or spreads reports calculated to create unnecessary alarm or despondency; or

(f) makes known the parole, watchword or countersign to any person not entitled to receive it; or knowingly gives a parole, watchword or countersign different from what he received;

shall, on conviction by court-martial,

if he commits any such offence when on active service, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

if he commits any such offence when not on active service, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

### NOTES

1. Offences under this section when on active service should not be dealt with summarily under AA. ss. 80, 83 or 84.

2. Clause (a): 'Safeguard'. – A safeguard is a party of soldiers detached for the protection of some person or persons, or of a particular village, house, or other property. A single sentry posted from such party is still part of the safeguard, and it is as criminal to force him by breaking into the house or other property under his special care as to force the whole party. A man posted solely to control traffic is not a "safeguard" for the purposes of this provision.

3. 'Forces'. – Does not necessarily mean use of physical force. Passing the sentry when warned by him not to do so will amount to this offence.

5. 'Uses criminal force'- For definition of criminal force see IPC. Ss. 349 and 250.

6. 'Sentry' .-

(a) A sentry is posted for protecting some place, property or person and any forcible interference with such protection amounts to an offence under this clause provided the accused was aware that the sentry was in fact acting as such.

(b) An accused charged under this clause for using criminal force to a sentry can be found guilty of attempting to use such criminal force under AA. s. 139 (8) or of assaulting the sentry under AA. s. 139(3). Similarly, if the charge is laid under AA. s. 69 for using criminal force to a sentry, the accused can be convicted of attempting to use such criminal force to or assaulting him under AA. s. 139 (6).

(c) See also note 21 to AA. s. 34, as to duties of sentries.

(d) A policeman on gate duty is not a sentry.

6. Clause (b):

(a) The 'other place' should be specified in the charge.

(b) This clause, having regard to special military significance of the term plunder, is applicable only to offences committed on active service.

(c) For definition of 'house breaking' see IPC. S. 445. A house indicates some structure intended for affording some sort of protection to the person dwelling inside it or for the property placed there for custody. What is a house must always be a question of degree and circumstances.

7. Clause (c): 'Sentry'- For definition see note 21 to AA. s. 34 and note 5 above. A sentry found asleep even a short distance from his post should be charged with leaving his post under clause (d), he cannot properly be charged with being asleep on his post, though he may be charged under AA. s. 63 with being asleep when on sentry duty. However the words 'upon his post' do not qualify the words 'is intoxicated'. It is therefore enough to constitute the offence if a person subject to the AA acting as a sentry is found intoxicated on his post or elsewhere during his tenure of duty as a sentry.

8. Clause (d): 'Superior officer'. - For definition see AA. s. 3(xxiii).

9. 'Post'. -

(a) See notes 15 and 21 to AA. s. 34. When a person is charged with leaving his post it is always necessary to prove that he had been regularly posted or had undertaken the duty on that post although he has not been regularly posted. Where a member of a guard or picquet furnishing a sentry for a post receives orders that he will relieve the sentry on the post at a fixed hour, and in due course does so, he will have been regularly posted although the officer, JCO or NCO in charge was not present himself at that time.

(b) This offence can be committed by any member of the guard, picquet or patrol, even the guard, etc., commander but a joint charge cannot be preferred.

10. Clause (e): See notes AA. s. 34 (g).

11. 'Through neglect: See note 3 (b) to AA. s. 63.

12. (f) : (a) The particulars of the charge must aver that the accused made known the watchward etc., to a person was not entitled to receive the watchward etc.

(b) 'knowingly'. - see note 18 to AA. s. 34 above.

**37. Mutiny. -** Any person subject to this Act who commits any of the following offences, that is to say, -

(a) begins, incites, causes, or conspires with any other person to cause any mutiny in the military, naval or air forces of India or any forces co-operating therewith; or

(b) joins in any such mutiny; or

- (c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or
- (d) knowing or having reasons to believe in the existence of any such mutiny, or of any intention to mutiny or of any such conspiracy, does not, without delay, give information thereof to his commanding or other superior officer; or
- (e) endeavours to seduce any person in the military, naval or air force of India from his duty or allegiance to the Union;

shall, on conviction by court-martial, be liable to suffer death or such less punishment as is in this Act mentioned.

### NOTES

1. offences under this section should not be dealt with summarily under AA. s. 80, 83 or 84.
2. (a) The limitation of time for the commencement of trial (three years) prescribed by AA. s. 122 does not apply to the offence of mutiny.
  - (b) As the maximum punishment for offences under this section is death :-
    - (i) a summary of evidence must be taken.
    - (ii) a plea of guilty cannot be accepted [AR 52 (4)].
    - (iii) the trial should not take place before a summary or district court-martial.
3. (a) Mutiny implies collective insubordination, or a combination of two or more persons to resist, or to induce others to resist, lawful military authority.
  - (b) Words in the plural include the singular (s. 13 General Clauses Act, 1897). There fore a person can be charged under clause (a) with conspiracy with one other person to cause a mutiny.
    - (c) A person cannot be charged generally with mutiny, or with an act of mutiny, but only with some one or more of the specified offences laid down in this section. If he has not brought himself within the terms of the section, his offence, however much it may tend towards mutiny, must be dealt with as insubordination and the provisions of AA. s. 40 or 41 will usually afford ample powers for the purpose. Thus, where there is an actual mutiny or a conspiracy to mutiny, all concerned in the mutiny or conspiracy can be tried under this section for causing or conspiring to cause, or joining in, the mutiny, as the case may be. If no mutiny or conspiracy exists, a person can only be tried under this section if the charge is one of being present at a mutiny not using his utmost endeavour to suppress the same or of failing to inform his commanding or other superior officer of an intent to cause mutiny or such conspiracy or of endeavouring to seduce any person in the forces from his duty or allegiance to the Union.
      - (d) In framing a charge under this section the specific act or acts which are alleged to have constituted the offence must always be averred; and the offence is so grave that a charge for it should only be brought on very clear evidence. Cases of insubordination, even on the part of two or more person, should unless there appears to be a combined design on their part to resist authority, be charged jointly under AA. s. 40(a) with using criminal force, assaulting, or separately under AA. s. 40(b) or (c) with using threatening or insubordinate language, or under AA. s. 41, or if these sections are inapplicable jointly or separately under AA. s. 63. Provocation by a superior or the existence of grievances, is no justification for mutiny or insubordination though such circumstances would be given due weight in considering the question of punishment.
      - (c) Collective petitions/representations or the submission of a petition through the medium of any association in respect of military matters are forbidden on this ground.
4. If there is evidence that a person caused, or conspired with others to cause a mutiny, but a doubt exists as to whether he took such an active part as to have actually joined, in the mutiny, he may be charged under clause (b) with an alternative charge under clause (a). On the other hand, doubts may arise whether the persons who appear to be taking an active part are actually



acting in combination, and in such cases it is desirable to prefer separate charges in the alternative under AA. s. 40 or AA. s. 41 as appropriate.

5. Persons present on parade or present accidentally or induced by false pretences to attend a meeting where a mutiny is being contrived may still be guilty of an offence under clause (c) although they took no active part in the proceedings.

6. (a) Not using his utmost endeavour in clause (c) does not necessarily mean the utmost of which a person is capable, but such endeavours as person might reasonably and fairly be expected to make, and every person in a squad not marching or not coming from their barrack room when duly ordered, is guilty of mutiny.

(b) In clause (d), it will be noticed that the person who comes to know of an existing or intended mutiny will have performed his duty under this clause if he given information without delay either to his CO or any other superior officer. Such information would naturally be given to the immediate superior of the person, who would, in his turn, be bound to transmit it to higher authority.

(c) Commanding officer: see AA. s. 3(v).

Superior officer see AA. s. 3(xxiii).

7. Endeavours to seduce etc. the attempt itself is punishable. It is immaterial whether the attempt succeeds or not.

### **38. Desertion and aiding desertion :-**

(1) Any person subject to this Act who deserts or attempts to desert the service shall, on conviction by court-martial.

If he commits the offence on active service or when under orders for active service, be liable to suffer death or such less punishment as is in this Act mentioned ; and

If he commits the offence under any other circumstances, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

(2) Any person subject to this Act who, knowingly harbours any such deserter shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

(3) Any person subject to this Act who, being cognizant of any desertion or attempt at desertion of a person subject to this Act, does not forthwith give notice to his own or some other superior officer, or take any steps in his power to cause such person to be apprehended, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

### **NOTES**

1. General.

(a) An offence under sub-section (1) of this section when on active service or under orders for active service should not be dealt with summarily under AA. ss. 80, 83 or 84.

(b) When a superior officer directs that case of an offender against whom a charge for desertion has been preferred to be summarily disposed of, he should order the offence to be disposed of as one of absence without leave. See notes to AA. s. 39. See generally AA. ss. 104 and 105 and Regs Army paras 376 to 381.

(c) Under AA. s. 120(3), a CO can try by SCM a NCO or sepoy under his command, for an offence under this section. As a rule a NC or OR cannot be attached to another unit for purposes of his trial by SCM; but see Regs Army para 381 for the circumstances when a CO other than the CO of the unit to which a NCO or OR properly belongs, can try him by SCM for an offence of desertion or absence without leave.

2. Sub sec. (1). - Desertion is distinguished from absence without leave under AA. s. 39; in that desertion or attempt to desert the service implies an intention on the part of the accused either (a) never to return to the service or (b) to avoid some important military duty (commonly known as constructive desertion) e.g., service in a forward area, embarkation for foreign service or service in aid of the civil power and not merely some routine duty or duty only applicable to the accused like a fire picquet duty. A charge under this section cannot lie unless it appears from the evidence that one or other such intention existed; further, it is sufficient if the intention in (a) above was formed at the time during the period of absence and not necessarily at the time when the accused first absented himself from unit/duty station.

3. A person may be a deserter although he re-enrols himself, or although in the first instance his absence was legal (e.g. authorized by leave), the criterion being the same, viz, whether the intention required for desertion can properly be inferred from the evidence available (the surrounding facts and the circumstances of the case).

4. Intention to desert may be inferred from a long absence, wearing of disguise, distance from the duty station and the manner of termination of absence e.g., apprehension but such facts though relevant are only prima facie, and not conclusive, evidence of such intention. Similarly the fact that an accused has been declared an absentee under AA.s. 106 is not by itself a deciding factor if other evidence suggests the contrary.

5. A person subject to the AA charged with desertion may be found guilty of an attempt to desert or of absence without leave, and such a person charged with attempting to desert may be found guilty of being absent without leave provided evidence was available to prove the absence, see AA. s. 139(1) and (2). When the absence began more than 3 years before the date of trial, the provisions of AA.s. 122 must be borne in mind and compiled with. For instance where an accused person is charged with desertion commencing on a date more than three years before the date of trial, he cannot be found guilty under AA.s. 139 (1) of absence without leave from that date but such absence must be restricted to a period not exceeding three years immediately prior to the commencement of trial; where such a finding and sentence has been wrongly confirmed, the competent authority under AA.s. 163 may substitute a valid finding and pass a sentence for the offence specified or involved in such findings.

6. When a person subject to AA has been absent from his duty without authority for a period of thirty days, a court of inquiry is mandatory under AA.s. 106 but even after such a court of inquiry has been held, the case can still be disposed of summarily under AA. s. 80, 83 and 84 but the charge should be laid for absence without leave under AA.s. 39. As to inquiring into absence see AR 183 also.

7. AA. s. 122 which prescribes the limitation of time for the trial of offences expressly excludes desertion; but where a person other than an officer has subsequently to the commission of the offence served continuously in an exemplary manner for not less than three years, he cannot be tried for such offence of desertion which was committed before the commencement of such three years other than desertion on active service. For 'exemplary service' see Regs Army para 465.

8. Two or more persons cannot be tried jointly with committing the offence of desertion under this sub sec.

9. AA. ss. 90(a) and 91(a) read with P and A Regs provide for automatic forfeiture of pay and allowances for every day a person subject to AA is absent on desertion or without leave.

10. As to forfeiture of service for pension or gratuity, which follows upon desertion, and restoration of service so forfeited, see Regs pension (part 1) Reg 123. The period between desertion and apprehension/surrender does not, under the prescribed conditions of enrolment; reckon as service towards discharge. Service rendered previous to desertion, though forfeited for purposes of pension or gratuity, reckon as service towards discharge.

As to a person who absents himself from his corps or department and enrolls again, see AA. s. 43 and notes thereto.

11. (a) While framing charges of desertion or absence without leave care must be taken to ensure that the particulars allege and the prosecution prove, both the date when the absence began, and the date when it ended (by return, surrender, apprehension or re-enrolment). It is not sufficient to allege and prove absence "on or about" a certain date, or "from some date subsequent to .....".

(b) Commencement of absence under this section or AA. s. 39 may be proved in the following ways :-

(i) orally by a witness who found the accused absent, or

(ii) by production by a witness on oath, who can identify the accused as the person named in:

(aa) the declaration of a court of inquiry held under AA .s. } Provided  
106 as entered in the court-martial book; or } AA. s.

} 106 and

(bb) a certified true copy of the above declaration on IAFD ]AR 183

918 ; or

}have

}been

}complied

}with

(cc) an entry in a part II order; provided the entry is one that is made in regimental orders/books in pursuance of military duty and the orders purported to be signed by the CO or by the officer whose duty it is to make such record AA. s. 142 (3). Such an entry should only be used as evidence where no direct evidence and no declaration of a court of inquiry is available and even then it is only prima facie evidence and may be rebutted ; or

(dd) a copy of such an order purporting to be certified to be in true copy by the officer having custody of such order; see AA.s. 142 (4).

(c) Termination of absence may be proved in the following ways :-

(i) by oral evidence of a witness who apprehended the accused or to whom the accused surrendered ; or

(ii) by production by a witness on oath, who can identify the accused as the person named in :

(aa) a certificate on IAFD-910 stating the fact, date and place of surrender or apprehension and the manner in which the accused was dressed and signed by a police officer not below the rank of an officer in charge of a police station to whom the accused surrendered or by whom he was apprehended AA. s. 142 (6); or

(bb) where the surrender was made to an officer or other person subject to AA or any portion of the regular Army or where the accused was apprehended by an officer or other person subject to A, a similar certificate signed by the 'proper' officer: AA. s. 142 (5) (Also see Regs Army para 378); or

(cc) a Part II Order showing the taking on strength properly signed in accordance with AA. s. 142 (3); or

(dd) a certified true copy of such order in accordance with AA. s. 142 (4); or

(ee) where the absence terminated by fraudulent enrolment in the regular Army, the enrolment paper or certified true copy thereof AA. s. 141 (2).

12. The commencement of an absence cannot be proved by production of an absence report as this is not a regimental book under Regs Army para 610.

13. Attempt to desert. To establish an attempt to desert, some act which, if completed, would constitute desertion must be proved, e.g., a soldier is arrested in the act of leaving his unit lines without authority, dressed in plain clothes and carrying his personal kit, when the circumstances indicate that he intends to desert. The test is whether the act, or series of acts, in the course of which the offender is apprehended or surrenders, would, if completed, amount to desertion. A mere preparation to desert, if unaccompanied by any such act which if completed would amount

to desertion, does not constitute an offence of attempting to desert. But if there is evidence that the offender actually absented himself from the place where his duty required him to be and that he intended to desert, the offence is complete and a charge for desertion, not for an attempt to desert should be framed.

Attempt to desert is itself made a substantive offence, and a charge for the same should be preferred under this job sec and not under AA.s. 65.

14. For definition of active service ; see AA. s. 3(i).
  15. Abetment of desertion of a person subject to the AA can be charged under AA. s. 66.
  16. Sub sec (2) : knowingly – see note 18 to AA. s. 34.
  17. Harbours : see note 19 to AA. s. 34.
  18. Any such deserter – A charge under this sub sec can lie when the offence of desertion has already been committed.
  19. Sub sec. (3) - To substantiate a charge the particulars must specify the precise steps which, it is alleged by the prosecution, were within the power of the accused to take to cause the deserter, or intending deserter to be apprehended. The times at which the accused became aware of the desertion or attempt to desert and gave notice to a superior officer, are material and should be disclosed in the charge.
  20. Superior officer means the 'Superior Officer' in relation to the offender, not to the deserter or intending deserter.
39. **Absence without leave** - Any person subject to this Act who commits any of the following offences, that is to say ,-
- (a) absents himself without leave ; or
  - (b) without sufficient cause overstays leave granted to him ; or
  - (c) being on leave of absence and having received information from proper authority that any corps, or portion of a corps, or any department, to which he belongs, has been ordered on active service, fails, without sufficient cause, to rejoin without delay ; or
  - (d) without sufficient cause fails to appear at the time fixed at the parade or place appointed for exercise or duty ; or
  - (e) when on parade, or on the line of march, without sufficient cause or without leave from his superior officer, quits the parade or line of march ; or
  - (f) when in camp or garrison or elsewhere, is found beyond any limits fixed, or in any place, prohibited by any general, local or other order, without a pass or written leave from his superior officer ; or
  - (g) without leave from his superior officer or without due cause, absents himself from any school when duly ordered to attend there;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.

#### NOTES

1. Two or more accused should not be jointly charged with an offence under this section.
2. Clause (a) – The criterion between desertion and absence without leave is intention. Where all the ingredients of the offence of desertion are present except an intention not to return to the service or to avoid some important military duty, the offence will be one of absence without leave or any other offence of this genus e.g., failure to appear at the time fixed at the parade.
3. (a) Absence without leave must not be involuntary absence e.g., due to illness or being taken into civil or military custody, whether on surrender or apprehension.

However, the mere reporting by an absentee to a provost officer or M.C.O or the fact that such provost officer or M.C.O orders the absentee to return to his unit will not terminate the voluntary absence; which will continue to run until the absentee rejoins his unit.

(b) To render an absence involuntary there must be some physical impracticability, outside the control of the offender, that prevents his return to his unit. Inability to return to his unit through intoxication which is an offence under AA. s. 48 will not make such absence involuntary nor would an inability which arises through without leave was originally voluntary and has by change of circumstances, subsequently become involuntary the offender may be convicted of absence for the whole period. Similarly, an absence that was originally involuntary becomes voluntary, if the offender fails to return to his unit at the earliest practicable moment e.g., failure to return on release from a civil prison.

(c) Where the prosecution proves that the accused was absent and that he had not been granted leave, the court may, in the absence of any satisfactory explanation by the accused, infer that the absence was voluntary.

4. (a) A court considering a charge under this section should consider “ was the accused at the place where his duty required him to be?”.

(b) An offence under this section is one of absence without leave and not merely absence. Leave of absence must be notified to the applicant for such leave. A person who has applied for leave, and departs from his unit before it is actually granted, commits the offence of being absent without leave, even though the leave had been granted but not notified to him.

(c) When evidence has been given of the accused’s absence, or failure to appear at the place required, and that evidence is sufficient to raise an inference that he had no leave of absence, then the court may look to the accused to provide evidence, by way of defence, for his “leave” “sufficient cause” or “ due cause” as the case may be.

5. (a) For proof of commencement and termination of absence see note 11 to AA. s. 38.

(b) The particulars of a charge of absence without leave should state the date when the absence began and terminated. Where the exact hour of the absence is material for the purpose of proving a whole day’s absence, as it may be under the provisions of AA. s. 92, the hour of the offender’s departure and return should also be stated in the particulars of the charge.

(c) Where, for some reason, it is not possible to prove the exact dates of commencement and termination of the absence but it is possible to show that an absentee was at some place other than his place of duty a charge under AA. s. 63 alleging that he was improperly at one place; whereas his duty required him to be elsewhere may be preferred.

6. Under AA. s. 90(a), read with P & A Regs (Officers), an officer automatically forfeits all pay and allowances due to him for every day he absents himself without leave or overstays the period of his leave unless a satisfactory explanation has been given to his CO and has been approved by the Central Govt . AA. s. 9(a), read with P & A Regs (OR), makes such deductions also automatic in the case of person subject to AA other than officers; the CO of such absentee can, however, remit such penal deduction if the absence does not exceed for days ; AR 195 (b). The penal deductions under AA ss. 90 (a) and 91(a) may be made without the absentee being convicted by court-martial or dealt with summarily under AA . ss. 80, 83 or 84.

7. Under AA .s. 139 (1) and (2), a person subject to AA and charged with desertion or attempted desertion may be found guilty of absence without leave but not vice versa. Also see note 5 to AA .s. 38.

8. When a person has been absent without leave for 30 clear days or has overstayed his leave without sufficient cause for that period, a court of inquiry will be assembled under AA .s. 106. Also see AR 183.

9. Under AA .s. 120 (3), a CO can try by SCM a NCO or a sepoy under his command for an offence under this clause. For the circumstances when a CO other than a CO of the unit to which a NCO or OR properly belongs, can try an offence under this clause see note 1 (c) to AA .s. 38.

10. If at any trial for desertion or absence without leave overstaying leave or not rejoining when warned for service, the accused states in his defence any sufficient or reasonable cause for his absence and refers in support to any officer in the service of the Govt. it is the duty of the court to address such officer if it appears that such officer may prove or disprove the accused's statement; AA s. 143. Failure to comply with this provision may result in annulment of the proceedings.

11. Clause (b). – This offence is basically the same as in clause (a); except that the absence becomes illegal only after the expiry of his authorised leave; whereas under clause (a) the absence is illegal ab-initio.

12. If it is proved that a person subject to the AA. has overstayed his leave, it will be for him to show that he had sufficient cause (e.g., sickness or the unexpected interruption of the ordinary means of transit) for doing so. If, however, any evidence as to the cause of his failure to return is known to the prosecutor, it should be adduced, leaving it to the court to decide as to the sufficiency of such cause.

13. Clause (c) - Charges under clauses (c), (d), (e) or (g) should not ordinarily be preferred as any offence under those clauses must almost invariably amount to an offence under clause (a) and a charge under the latter clause is simple to prove.

14. Without sufficient cause : see note 13 above.

15. Corps – see AR 187 (3).

Department – see AA. s. 3 (ix).

Active service – see AA. s. 3 (i).

16. Clause 9(d) –

(a) before a conviction can be obtained under this clause, it must be proved that the time was fixed and the place appointed by competent authority, and that the accused was aware of this fact. These facts are sometimes difficult to prove and therefore a charge of absence without leave under clause (a) is usually more practicable. See also note 13 above.

(b) A person who is late for parade commits an offence under this clause, equally with one who is altogether absent.

(c) Absence from parade etc. through intoxication should not be charged under this section but under AA. s. 48 for intoxication. Ignorance of the order for the parade, although exposing the offender to a charge under AA. s. 63, for failing to acquaint himself with the order as required by Regs Army Para 324, will not render him liable to a conviction under this clause. Where a reasonable misapprehension of the order exists, based on lack of clarity in the terms of the order itself, this may, in certain circumstances amount to a good defence to the charge.

17. Clause (f) - 'Camp' includes a bivouac and any quarters, shelters, or other place where troops are temporarily lodged.

18. 'general, local or other order' - The orders specified in this clause are standing orders or orders in writing and applicable continuously over a period of time to persons present in a certain geographical area or in a certain military formation. Ignorance of the order is no excuse if the order is one which the accused ought, in the ordinary course, to know, But a misapprehension reasonably arising from want of clarity in the order is a ground for exculpation. The existence of the order must be proved by producing it or a certified copy order cannot be proved by oral testimony. Evidence must also be led to show that the order was duly posted or brought to the notice of the accused, or that he was otherwise in a position to be acquainted with its contents.

19. (a) A charge alleging "without a pass or written leave from his superior officer" would be a good charge under this clause, since it is a single offence for him to have neither a pass nor written leave. On the other hand, a charge alleging "beyond the limits fixed by general or local orders" would be bad since it might be one offence to be beyond the limits fixed by general orders, and another offence to be beyond the limits fixed by local orders (see AR 30).

(b) Without a pass or written leave from his superior officer – These words are in the nature of an exception, and on being proved that the accused was found beyond fixed limits, it will rest on him to show that he had the proper authority.

20. Superior officer . see AA. s. 3 (xxiii).

**40. Striking or threatening superior officers.**- Any person subject to this Act who commits any of the following offences, that is to say -

- (a) uses criminal force to or assaults his superior officer ; or
- (b) uses threatening language to such officer ; or
- (c) uses insubordinate language to such officer ;

shall on conviction by court-martial

if such officer is at the time in the execution of his office or, if the offence is committed on active service, be liable to suffer imprisonment for a term which may be extend to fourteen years or such less punishment as is in this Act mentioned ; and

In other cases, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

Provided that in the case of an offence specified in clause (e), the imprisonment shall not exceed five years.

#### NOTES

1. Clause (a) – offences under this clause should not be dealt with summarily under AA. s. 80,83 or 84.

2. (a) For definition of `force`, using criminal force and `assault` , sec IPC, ss. 349,350 and 351 (Part III). The difference between the offence mentioned in this clause will be clear from the following examples :-

(i) A throws a stone at B. If the stone hits B, A has used criminal force, if it misses him, A has attempted to use criminal force.

(ii) A, during an altercation with B, picks up a stone in a threatening manner. If A intends, or knows it to be likely, that this will cause B to believed that A is about to throw the stone at him. A commits an assault on B.

An `assault` is something less than the use of criminal force; the force being cut short before the blow actually falls. It seems to consist in an attempt for offer by a person having present ability, with force to do any hurt for violence to the person of another, and it is committed whenever a well founded apprehension of peril from a force partially or fully put in motion is created, e.g., when a person draws a bayonet or otherwise makes a show of violence against a superior but not when he is behind the bars or at such a distance as to rule out at the moment any actual use of criminal force. An assault is thus included in every use of criminal force, and is an intermediate stage thereof;

(b) If the force be used in the exercise of the right of private defence, for instance, if it be shown that it was necessary, or that at the moment the accused had reasons to believe it was necessary for his actual protection from injury, and that he used no more force than was reasonably necessary for this purpose, he is legally justified in using it, and commits no offence. See IPC . ss. 96, 97-102 (Part III).

(c) Provocation is not a ground of acquittal, but tends to mitigate the punishment; evidence of provocation, if tendered, must therefore be admitted. Also see note 6 to AR 52.

(d) As to intoxication as an excuse or defence to a charge under this section, see note 4 to AA. s. 48.

3. A joint charge under this clause can be sustained provided that the use of criminal force or assault was the result of a concerted action in furtherance of a common intent (IPC). S. 34 though in some cases such concerted use of force may amount to an offence under AA. s. 37 (b) also.
4. When use of criminal force to a superior is accompanied by insubordinate language, the use of criminal force only should be charged (assuming that the evidence is satisfactory) and the language would be admissible in evidence to show the manner in which the offence was committed.
5. A person charged with using criminal force may be found guilty of an attempt to use criminal force or assault (AA. s. 139 (8) and (3)).
6.
  - (a) Superior Officer – See AA. s. 3(xxiii).
  - (b) While framing a charge under this section, the name of the superior officer should be set out in the particulars of the charge.
  - (c) The expression 'superior officer' in this section and in AA. s. 41 means not only a superior in rank but also a senior in the same grade where that seniority gives power of command according to the usages of the service, but one sepoy can never be the "superior officer" of another. The court should be satisfied, before conviction, that the accused knew the person, with respect of whom the offence was committed, to be a superior officer. If the superior did not wear the insignia of his rank, and was not personally known to the accused, evidence would be necessary to show that the accused was otherwise aware of his being his superior officer, or had reason to believe him, to be his superior officer. If such evidence is not available, the accused should be charged under AA. s. 63 or 69.
  - (d) Where the accused is charged with an offence against a superior officer who is of the same grade, evidence must be adduced to show that the latter is senior to the accused.
  - (e) The lower the rank of the superior the less is the gravity of the offence. Also see Regs Army Para 450.
7.
  - (a) The offence under this clause or clause (b) and (c) is punishable more severely if such superior officer was at the relevant time in the execution of his office or if the offence is committed on active service. Such aggravating circumstances should not be averred in the particulars unless the case warrants severe punishment and it is intended to try the accused by a GCM.
  - (b) It is difficult accurately to define the words 'in the execution of his office', but the military knowledge and experience of the members of a court-martial will enable them in most instances readily to determine whether the superior officer was or was not in the execution of his office. A superior officer in plain clothes may undoubtedly be in the execution of his office; but where the superior officer is in plain clothes, it becomes necessary to prove some knowledge on the part of the accused at the time of the offence that the person who was assaulted or to whom criminal force was used was a superior officer and that he was known to the accused as such, which is not the case where the superior officer is in uniform. On the other hand, there may be circumstances in which a superior officer in uniform is not in the execution of his office. It may be taken in general that using criminal force to or assaulting any superior officer by a person subject to AA over whom it is, at the relevant time, the duty of that superior officer to maintain discipline, would be using criminal force to or assaulting him in the execution of his office.
  - (c) When the accused is charged, with using criminal force to or assaulting his superior officer who is at the time in the execution of his office or if the accused is charged with committing the offence on active service and the court is satisfied that the offence was committed but not on active service or that the superior officer was not then in the execution of his office, he may be found guilty under AA. s. 139 (7) of the same offence as having been committed in circumstances involving a less severe punishment.
8. Clause (b). A joint charge of using threatening or insubordinate language to a superior officer should not be preferred.



9. Where the charge is for using threatening or insubordinate language the particulars of the charge must state the expression or their substance, and the superior to whom they were addressed. See note 7 above.

10. Expression, however offensive to a superior, that are used (a) in the course of a judicial inquiry, (b) by a party to that inquiry, and (c) upon a matter pertinent to and bonafide for the purposes of that inquiry, as, for instance, the credibility of a witness, are privileged, and cannot be made the subject of a criminal charge.

11. Expression used of a superior officer and not within his hearing, or which cannot be proved to be used to a superior officer, must be charged as an offence under AA. s. 63, and not under this section, but the use of threatening or otherwise insubordinate language regarding one superior to (in the sense that it is intended to be heard by) another superior constitutes an offence of using threatening or insubordinate language under this section.

12. Threatening language means language from which a person addressed may reasonably infer that criminal force may be used. This may be inferred either from the character of the words used or from the surrounding circumstances.

13. Whereas all threatening language is insubordinate the converse is not true; therefore unless there is no doubt as to his intention an accused should be charged with using insubordinate language rather than threatening. A court may, however, if satisfied in other respects that an offence under this section has been committed, make a special finding when an accused is charged with the offence of using threatening language that he was guilty of using insubordinate language (AA. s. 139 (4)).

14. Clause (c). – See notes 7 to 11 and 13 above.

15. The words must be used with an insubordinate intent, that is to say, they must be, either in themselves, or in the manner or circumstances in which they are spoken, insulting or disrespectful, and in all cases it must reasonably appear that they were intended to be heard by a superior. The words themselves need not necessarily be discourteous. If they indicate a deliberate intention to be insubordinate or resist lawful authority they may properly be regarded as disrespectful of authority, although courteously expressed. Where for instance a sepoy, having been given a lawful command which does not require immediate compliance, indicates respectfully that he does not intend to comply with it and is at once placed in arrest before being given a chance to comply, he may be charged with an offence under this section though not with an offence under AA. s. 41 (2).

16. Further a sepoy may in an outburst of temper or excitement use violent language without intending to be insubordinate. Allowance should also be made for the use of coarse expression by a person of inferior education which might often be used as mere expletives. These expressions might be insubordinate if used by an officer, a JCO or a senior NCO but not so when used by a junior NCO or a sepoy. These points must be considered by a court before convicting an accused of an offence under this clause.

17. As to the use of coarse and abusive language by a person who is intoxicated, see note 6 to AA. s. 48.

18. The words need not necessarily be spoken. If an accused writes a letter containing insubordinate expressions and addresses it to a superior officer, intending the letter to be read by the addressee, a charge would lie under this clause.

19. The use of what is commonly known as “bad” language need not necessarily give rise to a charge either under this section or AA. s. 63.

#### **41. Disobedience to superior Officer.**

(1) Any person subject to this act who disobeys in such manner as to show a willful defiance of authority any lawful command given personally by his superior officer in the execution of his office whether the same is given orally, or in writing or by signal or otherwise shall, on conviction by court-martial be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

(2) Any person subject to this Act who disobeys any lawful command given by his superior officer shall, on conviction by court-martial.

If he commits such offence when on active service, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned ; and

If he commits such offence when on active service, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

## NOTES

1. Offences under this section, when on active service, should not be dealt with summarily under AA. s. 80, 83 or 84.
2. An offence under this section cannot be made the subject of a joint charge.
3. Lawful Command. The command must be a specific command to an individual i.e., it must be capable of individual execution by the person to whom it is addressed, and justified by military, as well as by civil, law and usage, e.g., a command addressed by a superior officer to form persons to “dismiss” is for the purposes of this section a lawful military command to each of the four persons so addressed. The command must relate to military duty that is to ay disobedience must have reference to the time at which the command is to be obeyed. If the command be a lawful command, and demands a prompt and immediate compliance, hesitation or unnecessary delay in obeying it may be sufficient to constitute an offence under this section. A son who on being ordered to do a certain thing at some time, uses words expressing an intention not to obey, and is immediately confined, does not commit an offence under this section. He should be charged under AA. s. 40 (c) or 63 according to the circumstances of the case. A neglect to carry out an order due to misapprehension, or forgetfulness, does not constitute an offence under this section though non-compliance with an order through forgetfulness or negligence would be chargeable under AA. s. 63.
5. Sub sec (1) –
  - (a) The essential ingredients of this offence are that the disobedience should show a willful defiance of authority and should be disobedience of a lawful command given personally in the execution of his officer by a superior officer; in fact, it would ordinary be such an offence as would fall under AA.s. 37 if two or more persons joined in it. In order, therefore, to convict an accused of an offence under this sub-sec, it must be shown (i) that lawful command was given by a superior officer, (ii) that it was given personally by such officer; (iii) that it was given by such officer in the execution of his officer; (iv) that the accused disobeyed it, not from any misunderstanding or slowness, but so as to show a willful defiance of his superior officer’s authority.
  - (b) The disobedience must be willful and deliberate, and distinguished from disobedience arising from forgetfulness or misapprehension (which might, however, be punished under AA. s. 63). It is not disobedience in the sense of this section if a sepoy declines to sign his accounts on the grounds that they are incorrect, nor his failure to obey a command where obedience would be physically impossible.
  - (c) Religious scruples, however, bonafide, afford no justification for disobedience of command which are clearly lawful.
  - (d) Disobedience to an order of a general nature, as for instance to a regimental order or a para of regulations, is not chargeable under this section but under AA.s. 42(e) or 63.
5. (a) Superior Officer ; see AA.s. 3 (xxiii). – A ‘superior officer’ whose command has been restricted, either by the terms of his commission or by regulations, cannot give a lawful command to a person who is, by the terms of such restrictions, placed outside his control.
  - (b) Disobedience of a lawful order given by a person who is not a superior officer within the meaning of AA.s. 3(xxiii) may be punishable under AA. s. 63 if the disobedience was prejudicial to good order and military discipline ; for instance, a civilian cannot give a “lawful command” under this section to a soldier employed under him ; but it may well be the soldier’s duty as such to do the act indicated, and, if so, he

may be punished for not doing it under AA. s. 63. The particulars of the charge should clearly show that the disobedience was prejudicial to good order and military discipline because the soldier had been placed under the orders of the civilians by a superior military authority.

(c) The particulars of the charge must set out the name of the superior officer and a charge for disobeying an order given by two different superior officers would be bad for duplicity. AR 30 (1).

6. In the execution of his office; see note 7 to AA. s. 40.

7. A court trying an accused for an offence under this sub sec could, if it was not satisfied that the order was given in the execution of the superior's office, find the accused guilty of an offence under sub sec (2) provided that in all other respects an offence under this section had been committed (AA.s. 139 (7)).

8. Sub sec. (2) – The offence under this sub sec is a less grave offence when not committed on active service and consists of disobedience of any lawful command given by a superior officer but not accompanied by the essential elements of the graver offence under sub sec (1).

9. The particulars of the charge must specify the command, the name of the superior officer giving it, the fact of disobedience and if the charge is laid under sub sec (1) also that it was given personally by superior officer in the execution of his office specifying the nature of the offence and the manner in which the disobedience showed a willful defiance of authority.

**42. Insubordination and Obstruction.** Any person subject to this Act who commits any of the following offences, that is to say :-

(a) being concerned in any quarrel, affray, or disorder, refuses to obey any officer, though of inferior rank, who orders him into arrest, or uses criminal force to or assaults any such officer; or

(b) Uses criminal force to or assaults any person, whether subject to this act or not, in whose custody he is lawfully placed, and whether he is or is not his superior officer; or.

(c) resists an escort whose duty it is to apprehend him or to have him ion charge ; or

(d) breaks out of barracks, camp or quarters ; or

(e) neglects to obey any general, local or other order; or

(f) impedes the provost-marshal or any person lawfully acting on his behalf or when called upon, refuses to assist in the execution of his duty a provost-marshal or any person lawfully acting on his behalf; or

(g) uses criminal force to or assaults, any person bringing provisions or supplies to the forces: shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend, in the case of the offences specified in clauses (d) and (e) to two years, and in the case of the offences specified in the other clauses to two years, or such less punishment as is in this Act mentioned.

## NOTES

1. Clause (a) - For definitions of affray, criminal force and assault, see IPC. ss. 159 and 349-351 (reproduced in part III).

An affray differs from assault in that the former cannot be committed in a private place whereas in latter may take place anywhere; further an affray is an offence against the public peace while an assault is an offence against the person of an individual.

2. A person may be charged under this clause whether the officer who ordered him into arrest was of inferior or superior rank, but where the officer was of superior rank, the offender may be charged under AA.s. 40 or 41. Only officers should be charged under this clause.

3. An accused charged under this clause with using criminal force could be found guilty under AA. s. 139 of an attempt to use criminal force or assault.

4. As to intoxication as a defence to a charge see note 4 to AA. s. 48.
5. Clause (b) – A charge may be laid under this clause for assaulting a civil policeman, if the person committing the assault is subject to military law, and has been lawfully placed in the policeman's custody.
6. Clause (c) – Resistance may be direct violence but threatening words and a threatening attitude might amount to resisting an escort, if the threats were sufficient to deter the escort from arresting the accused. Resistance may also be passive, e.g. a person tying down and refusing to move, if physically able to move, could be said to resist. The particulars of the charge should specify the nature of the resistance. The court will use their military knowledge to determine whether it was the duty of the escort to apprehend the accused or to have him in charge.
7. Clause (d) -
  - (a) This offence consists of a person quitting barracks, etc, at a time when he had no right to do so, either because he was on duty or under punishment, or because of some regulation or order; and it is immaterial whether the offence was managed by violence, stratagem, disguise, or simply by walking past a sentry unnoticed. The mode in which the act was effected will, however, assist a CO in determining whether a charge be preferred under this clause, or under AA.s. 38 (1). The particulars of the charge must show that the absence from barracks etc, was without permission, or otherwise unlawful, and also if the accused was in any way confined to barracks that fact must be alleged in the charge.
  - (b) In a charge for breaking out of barracks, it must be proved that the accused left the confines of the barracks, as charged. A charge of breaking out of quarters would hold good in the case of a person quartered in one part of a barrack and improperly leaving that part for another part where he had no right to be.
8. Clause (e)
  - (a) The orders specified in this clause, mean standing orders or orders having a continuous operation or applicable continuously over a period of time to all officers, JCOs, WOs and OR present in a certain geographical area, such as Command, Area, Sub Area or Station or in a certain military formation such as Army, Corps Division or Brigade. Disobedience of a specific order in the nature of a command should be dealt with under AA. 41 and non-compliance, through forgetfulness or negligence, with an order to do some specific act at a future time under AA.s. 63.
  - (b) Ignorance of the order is no excuse, if the order is one which the accused ought in the ordinary course to know. But a misapprehension reasonably arising from want of clarity in the order is a ground for exculpation. The existence of the orders and the fact of the neglect must be proved. The order contravened, or a certified copy where such copy is admissible under AA. 142 (4) must be produced on oath to the court and the court will make a record in the proceedings of its having been so produced. A written order cannot be proved by oral testimony. Evidence must also be given to show that the order was duly posted or brought to the notice of the accused, or that he was otherwise in a position to be acquainted with its contents. Disobedience of a regulation may be punished under AA.s. 63 but if the regulation is published as a regimental order, it acquires the character of a general, local or other order, and disobedience to it may be punished under this clause.
  - (c) Concealment of venereal disease is to be dealt with under this clause if standing orders to the effect have been published that a person subject to AA. who is suffering from VD must report sick without delay. Also see Regs Army para 351.
9. Clause (f) – As to the definition, appointment and duties of provost-marshals see AA.ss. 3(xx) and 107.

Under AA.s. 107 (4) a provost-marshal includes a provost-marshal appointed under any law for the time being in force relating to the government of the Navy or Air Force and any person legally exercising authority under him or on his behalf.

10. The court may exercise their military knowledge as to whether a person was a provost-marshal, or a person legally exercising authority under or on behalf of the provost-marshal: but it will be open to the accused to show that the person he is charged with impeding was not properly appointed provost marshal or was not lawfully acting on his behalf.

11. It is frequently of the highest importance to conciliate the inhabitants of the country where the troops happen to be, and to induce them to bring provisions and supplies. From this point of view an offence, which in other circumstances would be trivial, may require severe punishment.

**43. Fraudulent Enrolment.** – Any person subject to this Act who commits any of the following offences, that is to say -

(a) without having obtained regular discharge from the corps or department to which he belongs, or otherwise fulfilled the conditions enabling him to enroll or enter, enrolls himself in , or enters the same or any other corps or department or any part of the naval or air force of India or the Territorial Army : or

(b) is concerned in the enrolment in any part of the Forces of any person when he knows or has reason to believe such person to be so circumstanced that by enrolling he commits an offence against this Act;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

#### NOTES

1. An offence under this section should not be dealt with summarily under AA.s. 80, 83 or 84.

2. Fraudulent enrolment like desertion is an offence, trial in respect of which is not barred by AA.s. 122 except in the case of a person, other than an officer, who has subsequently to the commission of the offence served continuously in an exemplary manner for not less than three years with any portion of the regular Army; for exemplary manner, see Regs Army para 465.

3. Clause (a) - For definition of 'corps' see AR 187 (1).

4. Department : see AA.s. 3 (ix).

5. (a) A person who leaves one corps or department and enrolls himself in another does not prima facie commit the offence of deserting the service, though he irregularly and improperly exchanges one branch of that service for another. If, however, at the time of leaving his first corps or department, he had no intention of re-enrolling himself, and only did so as an afterthought, or if he absented himself to avoid a particular military service, e.g., service abroad, his offence is desertion, though a conviction on a charge framed under this section would also be legal. In deciding under which section a charge should be framed, the time which elapsed between the two acts will be an important element for consideration. In doubtful cases the charge should be framed under this clause.

(b) If the offender is charged with desertion, he should be tried in his original corps or department. If he is charged with the offence specified in this clause he may be tried either in his original corps or department, or in that into which he had fraudulently enrolled himself, and if not dismissed by the court which tries him may be held to serve in either corps or department. As a rule he should be tried in that corps or department in which it is intended to retain him..

(c) It will be noticed that the offence under this clause can be committed by a person who belongs to a corps or department and enrolls himself again in the same corps or department.

This clause is meant to meet the case of the larger corps and department (e.g. the Army Service Corps) where a man might otherwise leave and portion of the corps or department and enroll himself in another with impunity.

6. The clause does not deal with the case of a sailor or airman who enrolls into any corps or department of the regular Army but merely gives the converse case of a person subject to AA enrolling in the Air Force or TA or entering the Navy. Sailors or airmen who enroll in any corps or department of the regular Army should be dealt with under AA.s. 44. Similarly a member of the Territorial Army who enrolls himself into any corps or department of the regular Army when such member is not subject to AA under AA.s. 2(1)(e) cannot be charged under this clause although he may be charged under AA.s. 44 for making a false answer if such be the case.

7. As to forfeiture of service towards pension or gratuity on conviction for this offence, see P and A Regs and Pension Regs, where the condition under which service so forfeited may be restored are also laid down.

8. Proof of fraudulent enrolment may be given either -

(a) orally by a witness who was present when the accused was enrolled on the second enrolment, or

(b) by production by a witness, who can identify on oath the accused as the person named therein, of the original enrolment paper or a copy of his enrolment paper purporting to be certified to be a true copy by the officer having the custody of the enrolment paper; AA.s. 141 (2). Evidence must also be given that at the time the accused enrolled himself; he was then serving. This can be proved by a witness orally or by production of the earlier enrolment paper as above.

9. Clause (b) - 'the forces'; see AA .s. 3(xi).

10. 'So circumstanced' - The term implies that where he is subject to AA, so that he is guilty of fraudulent enrolment under AA.s. 43(a) or where, having previously served, he again enrolls without declaring the circumstances of his previous service, so that he commits an offence under AA.s. 44.

**44. False answers on enrolment.**- Any person having become subject to this Act who is discovered to have made at the time of enrolment a willfully false answer to any question set forth in the prescribed form of enrolment which has been put to him by the enrolling officer before whom he appears for the purpose of being enrolled shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

#### NOTES

1. (a) An offence under this section should not be dealt with summarily under AA.s. 80, 83 or 84.

(b) 'Having become subject. - It will be observed that the wording of this section differs from the wording of the other penal sections. This is essential since at the time the offence is committed the person is not actually subject to AA; as he does not become so subject until he has signed the enrolment paper (AA .s. 14).

2. A person charged with "false answer" made on the occasion of such enrolment.

3. (a) The answer must be willfully false; thus where a person might reasonably have been mistaken as to the fact of his having "served", where, for instance, he was discharged as unfit before he had done duty or worn uniform, a conviction would not be upheld.

(b) Where the false answer is as to age, proof must be given by calling some one to prove that the accused is the person referred to in the birth-certificate or register is not sufficient.

4. The falsity of the answer must be proved in accordance with the normal rules of evidence. The original enrolment paper must be produced at the trial, see AA .s. 141 (1).

5. If false answers are given to two or more questions in the enrolment paper, each false answer should be included in a separate charge.

6. 'Enrolling Officer' : see AR 7.

**45. Unbecoming conduct.** - Any officer, junior commissioned officer or warrant officer who behaves in a manner unbecoming his position and the character expected of him shall, on conviction by court-martial, if he is an officer, be liable to be cashiered or to suffer such less punishment as is in this Act mentioned; and, if he is a junior commissioned officer or a warrant officer, be liable to be dismissed or to suffer such less punishment as is in this Act mentioned.

#### NOTES

1. An offence under this section should not be dealt with summarily under AA .s. 83 or 84.
2. For behaviour to be blameworthy under this section, it must be unbecoming both the accused's position and the character expected of him as an officer/JCO/WO i.e., his refusal to be swayed by considerations other than duty to the service does not, as the word is commonly understood, admit of different degrees or standards at any rate in that class and cannot therefore vary with his position i.e., the rank or appointment held by him except when the behaviour complained of is of a social character i.e., it offends the accepted rules of social behaviour and thus is unbecoming the character from a moral view point, in which case the culpability would depend upon the position held by the accused. Where behaviour complained of is not punishable under this section, a charge may lie under AA .s. 63, if such conduct is prejudicial both to good order and military discipline.
3. The offence under this section must be distinguished from the offence of disgraceful conduct of a cruel, indecent or unnatural kind under AA .s. 46 (a). As a rule a charge should not be preferred under this section where such behaviour amounts to a specific offence under any other section of AA. The conduct is not brought within the scope of this section by merely applying to it the statutory language; and a court is not warranted in convicting unless of the opinion that the conduct proved was unbecoming of the accused's position and the character expected of him as an officer etc, having regard to its nature and to the circumstances in which it took place.
4. This section is not applicable to civilians with relative rank and subject to AA under sec 2 (1) (i).
5. This section is frequently invoked in cases where an officer has given stumer cheques. Such a charge should only be preferred where it is clear from the evidence from the bank that the officer acted in such reckless manner as in tantamount to fraud.
6. There can be no attempt to commit this offence as unbecoming conduct would include the act as well as an attempt to do such act.

**46. Certain forms of disgraceful conduct.** – Any person subject to this Act who commits any of the following offences, that is to say, -

- (a) is guilty of any disgraceful conduct of a cruel, indecent or unnatural kind; or
- (b) Malingers, or feigns, or produces disease or infirmity in himself, or intentionally delays his cure or aggravates his disease or infirmity; or
- (c) with intent to render himself or any other person unfit for service voluntarily causes hurt to himself or that person;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

#### NOTES

1. offences under this section should not be dealt with summarily under AA .s. 80, 83 or 84.
2. Clause (a) - The particulars of a charge of disgraceful conduct under this clause must specify the details of the act or acts alleged to constitute the disgraceful conduct of the kind charged. In the case of an officer accused, the same facts may constitute an offence either of disgraceful conduct under this clause or of unbecoming conduct under AA .s. 45; but see note 3 to AA .s. 45.
3. In the absence of any evidence of a definite act of indecency or attempted indecency, mere words that an indecent or unnatural act was committed are not sufficient to constitute an offence under this clause though a charge may probably lie under AA .s. 63.

4. Disgraceful conduct of an unnatural kind ordinarily implies the commission or at least the attempted commission of an offence under IPC.s. 377. Therefore, in framing charges under this clause, the charge should invariably be laid for disgraceful conduct of an indecent kind unless the evidence permits of the averment in the particulars that an unnatural offence as ordinarily understood was committed or at least attempted.

5. To allege in a charge under this clause conduct of an indecent and unnatural kind would be bad for duplicity, since they are two separate offences: AR 30.

6. Cruel.- Cruelty usually involves the doing of some positive act, such as beating or killing or torturing. In most cases therefore the conduct alleged will amount to an offence under some other section of AA. But there are circumstances in which cruelty can be charged against a person who has culpably failed to do what he ought to have done e.g., where a definite duty was imposed upon a person to do something and he failed to perform that duty.

7. There can be no attempt to commit this offence. See note 7 to AA .s. 45.

8. Clause (b). - To 'malingering' is to pretend illness or infirmity which does not exist, in order to escape duty.

To 'feign' disease or infirmity means that the accused person exhibits appearances resembling the genuine symptoms of disease or infirmity which, to his knowledge, are not due to such disease or infirmity, but have been produced artificially for purposes of deceit; e.g., simulating fits or mental disease.

To 'produce' disease is willfully to cause genuine disease to develop, e.g., by the infection of microbes or poisonous drugs. The involuntary production, aggravation, or prolongation of delirium tremens by intemperate habits, or of sexually transmitted diseases by immoral conduct, does not render a person liable under this clause; but see note 8(c) to AA s. 42 as to concealment of sexually transmitted diseases.

Similarly a person who refuses to undergo a surgical operation or to be inoculated or vaccinated does not incur any liability under this clause or AA .s. 41 as any puncturing or cutting of the skin, mucuous membrane or tissues amounts to a surgical operation nor can he be punished for refusing to allow anaesthetic to be administered.

9. 'Intentionally' – In a case under this clause and clause (c), evidence must be given of the intent required therein but it would be sufficient to raise a presumption of that intention if the act in question was shown to have been done willfully and not accidentally.

10. Clause (c) – Intent : see note 9 above.

It is usual to prefer an alternative charge under AA.s. 63 to a charge under this clause alleging that the accused improperly or negligently rendered himself temporarily unfit for duty.

11. For the definition of the term 'voluntarily causing hurt' : see IPC. Ss. 319 and 321 (Part III).

12. 'Any other person' means any other person subject to AA and not a civilian.

13. Offences of this nature, even when committed in the presence of the enemy should be charged under this clause and not under AA. s. 34 (c).

**47. Ill-treating a subordinate.** – Any officer, junior commissioned officer, warrant officer or non-commissioned officer who uses criminal force to or otherwise ill-treats any person subject to this Act, being his subordinate in rank or position, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

## NOTES

1. (a) An offence under this section should not be dealt with summarily under AA. s. 80, 83 or 84.



- (b) A sepoy cannot commit an offence under this section.
2. (a) For definitions of 'force' and 'criminal force' : see IPC. Ss. 349 and 350 (Part III).
    - (b) An accused charged under this section with using criminal force may be convicted of an attempt to use criminal force or assault as a special finding under AA. s. 139 (3) and (8).
  3. Using criminal force or ill-treatment provided for by this section need not necessarily be consequent on or connected with the superior status of the accused. The only essentials necessary to constitute an offence under this section are -
    - (a) that the accused used criminal force to or ill-treated a person subject to AA. subordinate to him in rank or position ; and
    - (b) that the accused was acquainted with the identity of the person against whom he used criminal force or whom he ill-treated.
  4. It is an offence under this section for one NCO to use criminal force or ill-treat another who is not his superior in rank or position. Where two NCOs of equal rank are concerned, evidence must be led to prove that the person against whom criminal force was used was junior to the accused. Where the two are of equal seniority or where one sepoy strikes another, the charge should be laid under AA. s. 63 or 69
  5. Where the person against whom criminal force is alleged to be used in a sentry, the charge should be preferred under AA. s. 36 (a) and not under this section.

#### **48. Intoxication**

- (1) Any person subject to this Act who is found in a state of intoxication , whether on duty or not, shall, on conviction by court-martial, if he is an officer, be liable to be cashiered or to suffer such less punishment as is in this Act mentioned; and, if he is not an officer, be liable, subject to the provisions of sub-section (2), to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.
- (2) Where an offence of being intoxicated is committed by a person other than an officer when not on active service or not on duty, the period of imprisonment awarded shall not exceed six months.

#### **NOTES**

1. Intoxication may be induced by opium or any similar drug as well as by liquor. This section creates only one single offence, viz, intoxication, and in all cases whether the act was committed on duty or not on duty, the charge should be "intoxication". If the offence was committed on duty, or after the accused had been warned for duty, the fact that the offence was so committed and the nature of the duty should be specified in the particulars of the charge as the character of the offence, from a military point of view, and therefore its proper punishment is materially affected by the circumstance.
2. Intoxication will be regarded as having the ordinary meaning attached to it in civil life i.e., what an ordinary reasonable person would consider to be such and the fact that an offender is capable or incapable of performing his duty is not a decisive or exclusive test of drunkenness or sobriety. It is, however, one of the tests which should be applied by the court.
3. A person suspected of being intoxicated cannot be put through any drill or test for the purpose of ascertaining his condition; (Regs Army para 393 (b). As such the best evidence in such a charge is the direct stated evidence of witness(s).
4. For instructions as to the treatment of a person in arrest for being intoxicated see Regs Army Para 393 (a).
5. The offence of intoxication is one which cannot be tried jointly.

6. Nothing can justify a person subject to AA using criminal force to or assaulting a superior, and great care is therefore enjoined to be taken to avoid bringing intoxicated persons in contact with their superiors. Mere abusive and violent language used by an intoxicated person, as the result of being taken into custody, should not be used as the ground for framing a charge of using threatening or insubordinate language to a superior officer under AA.s. 40(b) or (c). If a court-martial is considered necessary, the charge should be framed under this section, the language being treated as in the nature of riotous conduct only, and to that extent aggravating the offence.

**49. Permitting escape of person in custody.** Any person subject to this Act who commits any of the following offences, that is to say :-

(a) When in command of a guard-picquet, patrol or post, releases without proper authority, whether willfully or without reasonable excuse, any person committed to his charge, or refuses to receive any prisoner or person so committed ; or

(b) Willfully or without reasonable excuse allows to escape any person who is committed to his charge, or whom it is his duty to keep or guard.

Shall, on conviction by court-martial, be liable, if he has acted willfully to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and if he had not acted willfully to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

#### NOTES

1. Where the offence is willful, the charge should not be dealt with summarily under AA. s. 80, 83 or 84.

2. (a) Where a doubt exists as to the accused having acted willfully, he should be charged with having acted without reasonable excuse.

(b) An act or omission is wilful if it is done or made by a person with the intention of allowing the escape of a person committed to his charge or whom it is his duty to guard or keep.

(c) If the charge is one of willfully committing the offence, the court may, if it is not satisfied that the act was willful, make a special finding under AA.s. 139 (7) that the accused acted without reasonable excuse.

3. 'Without proper authority' -

(a) These words are in the nature of an exception and it will rest on the accused to show that he had the proper authority.

(b) The court may use their military knowledge (AA.s. 134) with respect to whether any authority alleged by the accused to exist was or was not sufficient.

4. 'Any person' - The person improperly released or allowed to escape need not be a person subject to AA.

5. A deserter or absentee without leave who surrenders himself, and who is being conducted by a NCO to rejoin his unit, is not "committed to the charge" of the NCO conducting him within the meaning of this section, but it may well be the NCO's duty to "keep or guard him". It will be noticed that for the purpose of clause (a), the person released must have been committed to the charge of the accused, while for the purpose of clause (b) the person allowed to escape need only have been a person whom the accused was under a duty to keep or guard. The offender under clause (a) must be in the command of the guard, picquet, patrol or post, and previously have had the released person committed to his charge; while under clause (b) the offender who allows a person to escape need not have any such command.

**50. Irregularity in connection with arrest or confinement.** Any person subject to this Act who commits any of the following offences, that is to say :-

(a) unnecessarily detains a person in arrest or confinement without bringing him to trial, or fails to bring his case before the proper authority for investigation ; or

(b) having committed a person to military custody fails without reasonable cause to deliver at the time of such committal, or as soon as practicable, and in any case within forty-eight hours thereafter, to the officer or other person into whose custody the person arrested is committed, an account in writing signed by himself of the offence with which the person so committed is charged.

Shall on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

#### NOTES

1. Clause (a) - In support of a charge laid under this clause for either of the offences therein created the prosecutor will have to prove the facts which either show or enable the court to infer that the accused could have brought the person under arrest or in confinement to trial or brought his case before the proper authority for investigation. If these are proved the court may infer that it was unnecessary to keep the person, in question, in custody in the absence of an explanation by the accused. As to "the proper authority" see AR 2 (d). See also regs Army Para 408 (b).

2. AR 27 (3) prohibits an accused being detained in military custody which includes open arrest for longer than 2 months without the sanction of the COAS and for longer than 3 months without the approval of the Central Government.

3. Clause (b) - For definition of military custody, see AA. s. 3 (xiii).

4. When a guard etc. commander willfully or without reasonable excuse refuses to receive a person committed to his charge, he commits an offence under AA. s. 49 (a) in respect of his improper refusal. The fact that no account in writing of the type required in this clause was received by the guard etc., commander from the person committing the person at the time of committal or within 48 hours thereafter would not entitle the guard commander to refuse custody or charge or to effect the subsequent release of any such person.

5. As regards powers of arrest and confinement and ancillary matters see AA. s. 101 and 107 and Regs Army paras 391 to 397. Also see regs Army para 401.

**51.** Escape from Custody - Any person subject to this Act who, being in lawful custody, escapes or attempts to escape, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to five, years or such less punishment as is in this Act mentioned.

#### NOTES

1. The term 'lawful custody' in this section means not only military custody as defined in AA.s. 3(xiii) but any lawful custody ; so that a person subject to AA may be convicted under this section when escaping or attempting to escape from a police officer who has under AA. s. 105 (2) arrested him as a suspected deserter. Similarly when a person is held by the Provost Marshal or a person legally exercising authority under him or on his behalf under AA.s. 107, he may be charged with an offence under this section.

2. (a) As military custody includes open arrest, a person escaping or attempting to escape while in open arrest could be charged under this section.

(b) A person undergoing field punishment is in lawful custody within the meaning of this section although he is not in arrest. Care therefore must be taken, when framing a charge under this section to ensure that the particulars alleged correspond with the statement of offence.

(c) Confinement to the lines is not lawful custody for the purposes of this section.

3. A person subject to AA, who escapes from arrest and absents himself without leave, may be charged with, and convicted of, both under this section, and of the subsequent desertion or absence without leave ; under AA. s. 38 (1) or 39 (a).

4. A prisoner is said to 'escape' when he unlawfully goes out of sight beyond the control of the person in whose custody he is placed.

5. Attempt to escape is itself made a substantive offence and a charge for the same should be preferred under this section.

**52. Offences in respect of Property.** Any person subject to this Act who commits any of the following offences, that is to say :-

- (a) Commits theft of any property belonging to the Government, or to any military, naval or air force mess, band or institution, of to any person subject to military, naval or air force law ; or
- (b) dishonestly misappropriates or converts to his own use any such property : or
- (c) commits criminal breach of trust in respect of any such property; or
- (d) dishonestly receives or retains any such property in respect of which any of the offences under clauses (a), (b) and (c) has been committed, knowing or having reason to believe the commission of such officer ; or
- (e) willfully destroys or injures any property of the Government entrusted to him ; or
- (f) does any other thing with intent to defraud, or to cause wrongful gain to one person or wrongful loss to another person;

shall on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

#### NOTES

1. Offences under this section should not be dealt with summarily under AA. s. 80,83 or 84. Before trial is ordered on charges under this section, reference should be made to the DJAG Command concerned : see Regs Army Para 432 and 458.
2. A person charged before a court-martial with an offence under clause (a), (b), (c) or (d) of this section may be found guilty of any other of these offence with which he might have been charged (AA.s. 139 (5)).
3. Clause (a)
  - a. For definition of theft see IPC.s. 378 in part III.
  - (b) `Any property` means any moveable property.
    - b. See IPC.s. 27 for the implication of the term "possession".
4. (a) If the stolen property has been recovered, it should be produced in court and identified by its owner and by any other witnesses who mention it in their evidence. If it has not been recovered its value or approximate value should be entered in the particulars of the charge and proved in evidence so that the court, if it convicts the accused, may add an award of stoppages to its sentence.
  - (b) where an offender is sentenced by court-martial to be placed under stoppages in respect of any property stolen, etc., by him, due allowance must be made, in enforcing such stoppages, for money, or the value of any property found upon him and appropriated by way of restitution under AA. s. 151.
5. captured enemy property becomes the property of the Government.
6. (a) One of the essential ingredients of the offence of theft is that the property must be taken out of the possession of another person. It is not necessary that the property should have been owned by such person. When a person has the `physical` or `constructive` possession of property, dishonest removal of the same from the possession of such person without his consent constitutes theft.
  - (b) Stealing from a person subject to military law is regarded as a particularly disgraceful military offence, considering that in the daily routine of barrack life, persons must constantly leave exposed their arms, uniform and equipment as well as their private property, such as money, watches, etc., trusting to the honour of their comrades.

7. For the presumption which a court may draw in respect of recent possession of stolen property, see IEA.s. 114 illustration (a).
8. if the property belongs to some person or institution not including in the categories contained in this clause, the accused can only be charged under AA.s. 69 or 52 (f) or dealt with by the civil power.
9. Every instance of theft should be laid as a separate charge unless they form part of the same transaction.
10. Clause (b)
  - (a) For civil offence of criminal misappropriation see IPC.s. 403 (Part III).
  - (b) 'Any property' means any moveable property.
  - (c) For definition of 'dishonestly' see IPC.s. 24. Also see IPC.s. 23.
11. (a) 'To misappropriate' means to set apart for or to assign to the wrong person or a wrong use.
  - (b) Converts to' his own use - There must be actual conversion of the thing appropriated to the use of some person other than the person entitled thereto. Mere retention of property would not warrant a conviction under this clause; unless there is evidence that the accused used that property ; for instance when a clerk received certain sums on various dates but entered them in the accounts on each occasion some days after and it was found that the clerk was not in difficulties and did not use the amount, the mere retention by him of the money for some days would not constitute an offence under this clause.
12. Difference between theft and criminal misappropriation. – In theft the object of the offender always is to take property which is in the possession of a person out of that person's possession ; and the offence is complete as soon as the offender has moved the property in order to dishonest taking of it. In criminal misappropriation, the offender is already in possession of the property ; and in either innocently or lawfully in possession of it, because either he has found it or it is entrusted to him, or his possession, if not strictly lawful, is not punishable as an offence because he has acquired it under some mistaken notion of right in himself or of consent given by another. It is the dishonest misappropriation or conversion to his use that constitutes the offence.
13. (a) A mere error or irregularity in accounts or a mistaken mis-application of property does not constitute an offence under this clause. There must be an intent to defraud on the part of the accused either for the benefit of himself or some other person. This must be particularly remembered in the case, for example, of an NCOs accounts getting into confusion through the neglect or carelessness of his superiors. Neglect or failure to supervise that the account is maintained strictly according to service regulations frequently leads to loss of funds and property, and also exposes the subordinates to grave temptation in relation to their accounts.
  - (b) To secure a conviction on a charge under this clause it is not necessary for the prosecution to prove that the accused intended permanently to deprive the public or other owner of the property, provided the court is satisfied that the accused or some other person benefited and that the owner of the property suffered. In other words, a person may still be guilty of the offence, even though he has repaid the money which he had misappropriated , provided that at the time of such ,misappropriation he had a dishonest intent. The term 'dishonest misappropriation' includes temporary as well as permanent misappropriation of that description. See IPC. S. 403 explanation 1.
  - (c) If no evidence is forthcoming as to the particular mode of misappropriation, the court may, in the absence of explanation from the accused, infer that the property was misappropriated from the fact of its not having been properly utilised or accounted for.
14. Each instance of misappropriation should be in a separate charge, unless they all form part of the same transaction.
15. the values of the property alleged to have been misappropriated should be entered in the particulars of the charge and proved in evidence so that the court, if it convicts the accused, may award stoppages.

16. Clause (c); Criminal breach of trust ; for definition see IPC. S. 405.
17. (a) To constitute an offence under this clause, there must be dishonest misappropriation by a person in whom confidence is placed as to the custody or management of the property in respect of which the breach of trust is charged. There must be an entrustment which, in its most general significance, imports a handing over the possession for some purpose which may not imply the conferring of any proprietary right at all.
- (b) A person is said to be entrusted with dominion over property when it remains legally in the owner's possession but he is given a ;limited authority to deal with it.
18. Criminal misappropriation and criminal breach of trust. In criminal misappropriation the property comes into the possession of the offender by some casualty or otherwise, and he afterwards misappropriates it. In the case of criminal breach of trust the offender is lawfully entrusted with the property and he dishonestly misappropriates the same or willfully suffers any other person to do so, instead of dishonestly misappropriates the same or willfully suffers any other person to do so, instead of discharging the trust attached to it.
19. Clause (d) Dishonestly – see IPC.s. 24. Also see IPC.s. 23.
20. The offence of dishonestly receiving property under this clause has practically the same meaning as under IPC.s. 411 except that his clause is only limited to property of the description mentioned in clause (a).
21. Receives or retains - A person cannot be convicted of receiving if he had no guilty knowledge at the time of receipt. But he is guilty of 'retaining' if he subsequently knows or has reason to believe that the property was obtained by theft, criminal misappropriation or criminal breach of trust. The offence of dishonest retention may be completed without any guilty knowledge at the time of receipt. A person who is proved to have stolen etc., property cannot be convicted of retaining it.
22. Clause (e): Wilfully destroys or injures. – A charge for destroying or injuring the property here mentioned must be laid under this clause, and not under AA.s. 69. The prosecutor must adduce evidence which will either prove, or enable the court to infer, that the injury was not accidental or done by some other person. If the injury appears to be the result of neglect, it will be for the court to determine whether the neglect was willful and intended to injure the property, or was mere carelessness. In the latter case no offence under this clause would be committed.
23. Clause (f) : 'Does any other thing'. An act or omission which would fall under any other clause or any other section of AA should not be made the subject matter of a charge under this clause. But in doubtful case, the charge should be laid under this clause.
24. (a) 'With intent to defraud'.- A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise. IPC.s. 25.
- (b) The terms 'fraud' and 'defraud' are not found defined in the IPC. The word 'defraud' is of double meaning in the sense that it either may or may not imply deprivation. Whenever the words 'fraud' or 'intent to defraud' or 'fraudulently' occur in the definition of a crime two elements at least are essential to the commission of the crime; namely first, deceit or an intention to deceive or in some cases mere secrecy ; and secondly, either actual injury or possible injury or an intent to expose some person either to actual injury or to a risk of possible injury by means of that deceit or secrecy. This intent is very seldom the only or the principle intention entertained by the fraudulent person, whose principal object in nearly every case is his own advantage. The "injurious deception" is usually intended only as a means to an end, though this does not prevent it from being intentional. A practically conclusive test as to the fraudulent character of a deception for criminal purposes is this; did the author of the deceit derive any advantage from it, which he could not have had if the truth had been known? If so, it is hardly possible that that advantage should not have had an equivalent in loss, or risk of loss to some one else; and if so, there was fraud.
- (c) A general intention to defraud, without the intention of causing wrongful gain to one person or wrongful loss to another, would be sufficient to support a conviction. In order to prove an intent to defraud it is not at all necessary that there should have been some person defrauded, or who might possibly have been defrauded. A person may have

an intent to defraud and yet there may not be any person who could be defrauded by his act. It should, however, be noted that an intent only to deceive is not enough.

(d) When it is material to prove an intent to defraud, evidence may be given of similar offences by the accused.

25. Wrongful loss or wrongful gain : see IPC.s. 23 (Part III).

26. (a) In order to constitute an offence under this clause, it is not sufficient to couple the description of an act which can bear an innocent construction with an averment of intent to defraud. The act alleged to have been committed with intent to defraud must itself appear from the particulars of the charge to be a wrong act though it need not necessarily amount to an offence under the ordinary criminal law.

(b) Mere irregularity in accounts, due to incompetence or ignorance of book-keeping would not be sufficient under this clause, to constitute an offence as no fraudulent conduct is involved. However, acts such as, with intent to defraud, presenting for signature acquittance roll, containing entries known to be false; or charging money for railway warrant; tickets or vouchers to which a person is entitled free of charge, would all amount to offences of a fraudulent nature for the purposes of this clause.

**53. Extortion and Corruption.** - Any person subject to this Act who commits any of the following offences, that is to say :-

(a) commits extortion ; or

(b) without proper authority exacts from any person money, provisions or service ;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

#### NOTES

1. Clause (a) -

(a) For definition of extortion see IPC.s. 383.

(b) Extortion is distinguished from theft in that in the case of extortion, the consent is obtained by putting the person, in possession of property, in fear of injury to him or to any other, whereas in theft the offender's intention is always to take without that person's consent. Further, the property which is obtained by extortion is not limited, as in theft, to moveable property only.

2. Clause (b) – Without proper authority : see note 3 to AA.s. 49.

3. Any person means a person whether subject to AA or not.

**54. Making away with equipment** - Any person subject to this Act who commits any of the following offences, that is to say :-

(a) makes away with, or is concerned in making away with, any arms, ammunition, equipment, instruments, tools, clothing or any other thing being the property of the Government issued to him for his use or entrusted to him ; or

(b) loses by neglect anything mentioned in clause (a) ; or

(c) sells, pawns, destroys or defaces any medal or decoration granted to him.

Shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend in the case of the offences specified in clause (a) to ten years, and in the case of the offences specified in the other clauses to give years , or such less punishment as is in this Act mentioned.

#### NOTES

1. Clause (a) – In the absence of some positive act of making away with e.g. pawning, selling etc, a charge of making away with should not be preferred under this clause. When,

therefore, articles of the description in the clause are found to be merely deficient through the culpability of a soldier, it would be proper to prefer a charge under clause (b) of losing by neglect the articles in question. The particular mode of making away with should be alleged in the particulars although it does not affect the kind of offence, but only gravity in relation to the amount of the sentence to be imposed on conviction.

2. Before an accused can be convicted under this clause, evidence must be adduced at the trial that he had been issued with the articles either by

- (a) examining a witness who actually issued the articles to the accused, or
- (b) by a witness on oath producing any receipt for the articles and proving the signature of the accused, or
- (c) by oral evidence that on a certain date prior to the offence the accused was in possession of those articles e.g., at a kit inspection.

3. (a) A charge under clause (a) or (b) of making away with or losing etc. property not mentioned in those clauses e.g., mess property or property of comrade would be bad though if the act amounted to theft, dishonest misappropriation or criminal breach of trust, it would be punishable under AA.s. 52 or 69; if the facts show willful act or neglect, the person might in certain circumstances be charge with an offence under AA.s. 63.

(b) Any other thing should be ejusdem generis i.e., part of the accused's kit which he is bound to maintain or is general military equipment supplied by the Government; such 'other ting' should be specified in the statement and particulars of the charge.

4. clothing in this clause may include hospital clothing issued to a person subject to AA, or civilian clothing issued from military sources.

5. Whenever it is desired that the offender should, on conviction of an offence under this clause or clause (b), be awarded stoppages under AA.s. 71(1) in respect of the value of the articles which need be made good to the Govt/public, then the value must be stated ion the particulars of the charge (AR 30 (6)) and proved as follows :-

(a) value of an article having an official value will be proved by calling a witness who can, on oath, estimate the value (inclusive of authorized departmental expenses) of the article at the date of the offence upon the basis of its age and/or condition and by reference to the regulations which should be produced for fixing the value of the articles at that age or in that condition.

(b) When the article has not an official value, competent evidence is required to prove the approximate value.

(c) When an article has been damaged but not rendered unserviceable, competent evidence is required to prove the pecuniary amount of the damage, which will be either the cost of repairing it, if it can be repaired, or the cost of repair plus any ultimate loss of value due to the act of the accused.

6. Clause (b) – This is not intended to punish a person for a deficiency in his kit occasioned by accident or mere carelessness but for loss by culpable neglect. On the other hand, the fact that a person has not got his arms, service necessaries , etc., at a time when it was his duty to have them (i.e., at a kit inspection), is prima facie evidence of his having lost them the loss them by neglect. The onus of proving “neglect” always remains on the prosecution. But once the loss is proved, the court is entitled to except the accused to offer some explanation of it, and if he given none, it is open to the court to conclude that the loss must have been due to his negligence. If he gives an explanation which may reasonably be true and which if true is inconsistent with negligence, even if the court is not convicted of its truth, he must be acquitted, since a reasonable doubt as to his negligence then remains.

7. Where a court of inquiry (as laid down in AA.s. 106) has been held and has found a person to be deficient in certain articles, then upon his trial under this clause a certified copy of the record in the regimental books, on IAFD-918, showing that such articles were deficient is prima facie evidence that they were deficient and of their value, if stated (AA.s. 142 (3) and (4). If no evidence, except IAFD-918 is obtainable, the prosecution would be justified in proceeding on that alone, and if no evidence is given on the part of the inquiry with regard to any of the articles in question, it will become necessary for the prosecution to produce other evidence in



support of its case in so far as such articles are concerned – for which purpose the court might, if necessary, grant an adjournment under AR 82. If for any reasonable cause, such as lapse of time since the deficiency arose, no witnesses are available to rebut the evidence produced by the accused, the court must use its discretion as to its finding in respect of the articles in question. In all cases where IAFD-918 is not produced at the trial evidence must be produced to show that at some previous specified date the accused has been in possession of the articles alleged to be deficient. In cases of desertion or absence without leave the form will usually show as missing some articles which the person in fact brings back with him. The court must not, of course, convict him in respect of articles so returned if, in serviceable condition or those the value of which had not to be made good to the public.

8. Losing by neglect the property of a comrade, or a decoration, is not an offence under this clause as that class of property or decoration is not mentioned therein. Also see notes 3 and 4 above.

9. As to stoppages and evidenced of value of the property, see note 5 above.

**55. Injury to Property.** Any person subject to this Act who commits any of the following offences, that is to say :-

(a) destroys or injures any property mentioned in clause (a) of section 54 or any property belonging to any military, naval and air force mess, band or institution, or to any person subject to military, naval or air force law, or serving with or attached to, the regular Army ; or

(b) commits any act which causes damage to, or destruction of, any property of the Government by fire ; or

(c) kills, injures, makes away with, ill-treats or loses any animal entrusted to him;

shall on conviction by court-martial, be liable, if he has acted willfully, to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned ; and if he has acted without reasonable excuse to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

#### NOTES

1. Clause (a) 0 For special finding see AA.s. 139 (7).

2. “Destroys or injures” – A charge for damaging or injuring the property here mentioned must be laid under this section and not under AA.s. 69. The prosecution must adduce evidence which will either prove, or enable the court to infer, that the destruction or injury was willful and not accidental. If the injury appears to be the result of neglect, it will be for the court to determine whether the neglect was willful and intended to injure the property, or was mere carelessness. In the latter case no offence under this section would be committed.

3. See note 5 to AA.s. 54 regarding proving the value of the property destroyed or injured.

4. Clauses (b) and (c): To constitute an offence under either of these clauses, the act etc., must be either committed willfully or without reasonable excuse.

**56. False Accusations.** Any person subject to this Act who commits any of the following offences, that is to say :-

(a) makes a false accusation against any person subject to this Act knowing or having reason to believe such accusation to be false ; or

(b) in making a complaint under section 26 or section 27 makes any statement affecting the character of any person subject to this Act, knowing or having reason to believe such statement to be false or knowingly and willfully suppresses any material facts;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

#### NOTES

1. Offences under this section should not be dealt with summarily under AA.ss. 80, 83 or 84.

2. Clause (a) – A mere false statement not involving an accusation (e.g., a letter to a friend containing insinuations against a non-commissioned officer) is not within this clause. This clause implies an accusation being made to some superior authority which would lead to the superior exercising his authority by enquiry or otherwise or the accusation must mean some assertion made publicly or to another person, which, if true, would expose the person respecting whom it is made to punishment or to moral censure. An accusation may be either verbal or in writing.

3. Before an accused can be convicted of a charge under this clause, it must be proved that the accusation was made against the person named in the particulars of the charge, that it was false and that the accused knew or had reason to believe that it was false. For definition of 'reason to believe' see IPC.s. 26.

4. Clause (b)

(a) It is not necessary that the false statement affecting the character of an officer or other person should be directly related to the subject of the complaint. It is sufficient if the false statement is calculated to create prejudice against the officer etc., with reference to whom the complaint is addressed.

(b) To suppress knowingly and willfully any material facts in connection with complaints for the redress of wrongs under AA.ss. 26 and 27 is an offence under this clause.

**57. Falsifying official documents and false declarations.** Any person subject to this Act who commits any of the following offences, that is to say :-

(a) in any report, return, list, certificate, book or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy; knowingly makes, or is privy to the making of any false or fraudulent statement ; or

(b) in any document of the description mentioned in clause (a) knowingly makes, or is privy to the making of, any omission, with intent to defraud ; or

(c) knowingly and with intent to injure any person, or knowingly and with intent to defraud, suppresses, defaces, alters or makes away with any document which it is his duty to preserve or produce ; or

(d) where it is his official duty to make a declaration respecting any matter, knowingly makes a false declaration ; or

(e) obtains for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record or by making any document containing a false statement' or by omitting to make a true entry or document containing a true statement;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

#### NOTES

1. (a) An offence under this section should not be dealt with summarily under AA.ss. 80,83 or 84. Before trial is ordered on charges under this section, reference should be made to the DJAG Command concerned.

(b) This section refers to strictly official documents.

2. Clauses (a) and (b) – A report(which must be in writing), return, certificate or other document mentioned herein must be one executed by the accused in his capacity as a person subject to AA and not in some civil capacity. The 'other document' which should be ejusdem generis, should be specified in the statement and particulars of the charge. A trivial error in the report should not, in the absence of fraud or bad faith, be made the ground of a charge under these clauses.

3. 'Made by him' – Making a document means creating or bringing it into existence e.g., writing or typing it as distinguished from sealing, signing or otherwise executing it.
4. In determining whether or not it was the duty of the accused to ascertain the accuracy of the report, etc., referred to in the charge, the court may use their military knowledge (AA. s. 134).
5. (a) If a person makes false entries as to payments made in a book which it was his duty to keep in his official capacity he may be charged with knowingly making false statement under clause (a) or, if it can be shown that he intended to defraud by means of the entries, he may be charged with knowingly making a fraudulent statement. Similarly, if he omits to make in the book entries of payment made by him or to him he may : if the evidence justifies such a course. Be charged with knowingly making such omissions with intent to defraud under clause (b).
 

(b) When the accused has on the same occasion made a number of fraudulent entries on an acquittance roll, etc., an omnibus charge under AA.s. 52 (f) would be preferable to a number of charges under clause (a).
6. Knowingly - see note 18 to AA.s. 34.
7. it is wrong to make a statement made by an accused in defence or in explanation of an offence imputed to him, the subject of a charge against him, such statement or explanation is strictly analogous to a plea of 'not guilty' before a court-martial, thus casting the burden of proof on the other side, and the accused is at liberty to make at any preliminary inquiry the best excuse he can.
8. Clause (c) – The suppression, etc., of a document is not an offence under this clause if it is affected only with intent to deceive and not to defraud. The question as to the duty of the accused to preserve or produce the document will be determined by the court using their military knowledge. The particulars of a charge under this clause should show the capacity or appointment of account of which it was the accused's duty to produce or preserve the document.
9. Clause (e)-
  - (a) Other advantage or privilege must be of a similar kind.
  - (b) obtaining pension or other such advantage may be for himself or any other person whether subject to AA or not.

**58. Signing in blank and failure to report** - Any person subject to this Act who commits any of the following offences, that is to say :-

- (a) when signing any document relating to pay, arms, ammunition, equipment, clothing, supplies or stores, or any property of the Government fraudulent leaves in blank any material part for which his signature is a voucher ; or
- (b) refuses or by culpable neglect omits to make or send a report or return which it is his duty to make or send;

shall, on conviction by court-martial be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

#### NOTES

1. An offence under this section should not be dealt with summarily under AA.ss. 80,83 or 84.
2. Clause (b) – In a charge under clause (b), the particulars must show that it was the duty of the accused to make or send the report or return, but where the position (appointment etc.,) of the accused is proved the court may use their military knowledge to infer his duty. If the report or return was one for which the superior officer had not right to call, it is not an offence to refuse to make or send it.

3. The report must be in writing ; clause (b) does not relate to a verbal report. The neglect must be culpable, i.e., something more than mere forgetfulness or mistake ; see note 3 to AA.s. 63.

**59. Offences relating to court-martial** – Any person subject to this Act who commits any of the following offences , that is to say :-

(a) being duly summoned or ordered to attend as a witness before a court-martial, willfully or without reasonable excuse, makes default in attending ; or

(b) refuses to take up an oath or make an affirmation legally required by a court-martial to be taken or made ; or

(c) refuses to produce or deliver any document in his power or control legally required by a court-martial to be produced or delivered by him ; or

(d) refuses when a witness to answer any question which is by law bound to answer ; or

(e) is guilty of contempt of court-martial by using insulting or threatening language, or by causing any interruption or disturbance in the proceedings of such court ;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.

#### NOTES

1. An offence under this section should not be dealt with summarily under AA.ss. 80, 83 or 84.

2. (a) There is no restriction, debarring a court-martial from trying any of the offences specified in this section when committed in respect of itself. In all cases reported by court-martial under AR 150 and in many other cases the members are, however, individually disqualified under AR 39, from sitting at the second trial so that the result is practically the same. A CO cannot, except with the sanction of superior authority, or in a grave emergency, try by SCM an offence under this section committed against his own authority when sitting at another trial. See AA.s. 120 (2).

(b) If a person subject to AA is tried for any of the offences specified in this section when committed in respect of a court-martial other than a court-martial held under AA, the charge should be framed under AA.s. 63; as such a court is not a court-martial for the purposes of AA; see AA.s. 3(vii).

3. See AR 150 and notes for manner of dealing with similar offences when committed by civilians or persons amenable to naval or air force law.

4. As a rule, courts should accept an apology sufficient to vindicate their dignity without resorting to extreme measures.

5. Clause (a) - 'Duly summoned or ordered' see AA.s. 135. A person subject to AA, who fails to attend the taking of summary of evidence when ordered to do so can be tried under AA.s. 41 or 63 and not under this section, which deals with court-martial.

6. (a) Wilfully or without reasonable excuse; for definition see note 2 of AA.s. 49.

(b) For special finding, see AA.s. 139 (7).

7. Clause (b) - (a) A person who, for reasons of sincerity of which the court is satisfied, refuses to take an oath, must be given the opportunity of making an affirmation; see AA.s. 131 (2) and AR 140. The offence is not complete unless there is proof of a refusal both to take the oath and to make an affirmation provided option so to do is given to the accused. The charges of refusing to take an oath legally required by a court-martial to be taken and fusing to make an affirmation legally required by a court-martial to be made; may, therefore, be properly drawn in the alternative.

8. Clause (c) – See IEA. Ss. 123-124 which deal with privilege of official documents. Also see IEA s. 162.

When a witness is directed by summons to produce a document which is in his possession or power, he must bring it to court, notwithstanding any objection that he may have with regard to its production or admissibility. After this has been done it rests solely with the court to hear the objection or the claim as to privilege and to decide whether it should be allowed.

9. Clause (d) – Because a person is competent to give evidence, he cannot be compelled to answer every question he may be asked when giving evidence and which is relevant to the matter in issue. For instance, on an incriminating question being put to a witness, he is entitled to ask to be excused from answering it, and if after he has asked to be excused, the court compels him to answer (as they are entitled to do) his answer cannot be proved against him at any criminal proceedings except a prosecution for giving false evidence by such answer ; see IEA. S. 132.

10. Clause (e) A court-martial begins to sit from the time the members take their seats for the purposes of trial, even before they are sworn/affirmed, and anything which would be a contempt after the court was sworn/affirmed would be a contempt once the members have so taken their seats.

11. See also note 2 above.

60. **False evidence.** Any person subject to this Act who, having been duly sworn or affirmed before any court-martial or other court competent under this Act to administer an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction by court-martial. By liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

#### NOTES

1. (a) An offence under this section should not be dealt with summarily under AA. ss. 80, 83 or 84.

2. (a) The offence specified in this section is in many respects similar to the offence of giving false evidence under IPC. S. 191.

(b) The courts referred to in this section are :-

(i) Court-martial.

(ii) A court of inquiry on illegal absence under AA.s. 106.

(iii) A court of inquiry on recovered prisoners of war ; AA.s. 191(2) (d) and AR 181.

(iv) Any other court of inquiry when the officer assembling the court has directed that the evidence be recorded on oath or affirmation. AA.s. 191 (2) (d) and AR 181.

(c) Statement at a summary of evidence cannot be given on oath. If, therefore, false evidence is given at a summary of evidence the charges should be framed under AA.s. 63.

3. The proceedings of the court-martial or court of inquiry before which false evidence is alleged to have been given are not admissible as evidence that the accused gave the evidence as charged. The officer who recorded the proceedings, or some other person, who heard the evidence given, must prove by oral evidence this fact and that the accused was duly sworn/affirmed. He may however, use the record to refresh the memory, (IEA, ss. 159 and 160). The proceedings of the court are, however, admissible to prove that the occasion on which the alleged false statement was made was a properly constituted court-martial or court of inquiry.

4. A charge under this section cannot be preferred when the false evidence is given at a naval or airforce court-martial though in such cases a charge under AA. s 63 or 69 could be preferred.

61. **Unlawful detention of pay.** Any officer, junior commissioned officer, warrant officer or non-commissioned officer who, having received the pay of a person subject to this Act unlawfully detains or

refuses to pay the same when due, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

### NOTES

1. This offence cannot be committed by a sepoy.
2. This section is a corollary of AA.s. 25 which provides that the pay of any person subject to AA shall be paid without any deductions other than those authorized by or under AA or any other Act. For deductions authorized by or under AA see AA. ss. 90,91 and AR 205.
3. AA. s. 90(c) also makes provision for penal deduction to be made from the pay and allowances of an officer to make good any sum which has unlawfully been retained or withheld by him but recovery under that clause does not require disciplinary action. However, as there is no similar provision in AA. s. 91, a JCO, WO or NCO must be tried for the offence before he can be placed under stoppages.

**62. Offences in relation to aircraft and flying** - Any person subject to this Act who commits any of the following offences, that is to say :-

- (a) willfully or without reasonable excuse damages, destroys or loses any aircraft or aircraft material belonging to the Government; or
- (b) is guilty of any act or neglect likely to cause such damage, destruction or loss ; or
- (c) without lawful authority disposes of any aircraft material belonging to the Government; or
- (d) is guilty of any act or neglect in flying,, or in the use of any aircraft, or in relation to any aircraft or aircraft material, which causes or is likely to cause loss of life or bodily injury to any person ; or
- (e) during a state of war, willfully and without proper occasion, or negligently, causes the sequestration, by or under the authority of a neutral state, or the destruction in neutral state of any aircraft belonging to the Government;

shall, on conviction by court-martial, be liable, if he has acted willfully, to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned, and, in any other case, to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

### NOTES

1. (a) Offences under this section should not be dealt with summarily under AA. ss. 80,83 or 84.  
(b) before trial is ordered on charges under this section, reference should be made to the DJAG Command concerned, see Regs Army Para 458.
2. As the terms 'aircraft' and 'aircraft material' have not been defined in AA, they should, be construed in the light of the definition given in the Air Force Act which reads as under ;  
"aircraft" includes aeroplanes, balloons, kite balloons, airships, gliders or other machines for flying.  
"aircraft material" includes any engines, fittings, guns, gear, instruments or apparatus for use in connection with aircraft, and any of its components and accessories and petrol oil, and any other substance used for providing motive power for planes.
3. The word 'neglect' in this section means culpable neglect ; see note 3 to AA.s. 63.
4. Wilfully or without reasonable excuse. See note 2 to AA. s. 49.
5. if an accused is charged under this section with willfully damaging an aircraft he may be found guilty of damaging it without reasonable excuse under AA. s. 139 (7) if the evidence justifies this course.

**63. Violation of good order and discipline** - Any person subject to this Act who is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and military discipline shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven year or such less punishment as is in this Act mentioned.

#### NOTES

1. As a rule a charge should not be preferred under this section where special provision for the offence is mad elsewhere in AA. In a proper case, however, an alternative charge may be added under this section.

2. A charge under this section must recite its actual words. i.e., there must be charged an “act or “omission” “ prejudicial to good order and military discipline”. But, of course, an act or omission is not brought within the scope of the section by merely applying to it the statutory language; and a court is not warranted in convicting unless of the opinion that the act, etc, proved was prejudicial both to good order and to military discipline, having regard to its nature and to the circumstances in which it tool place.

3. (a) “An omission” to be punishable under this section must amount to neglect which is willful or culpable. If willful, i.e., deliberate it is clearly blameworthy. If it is not willful, it may or may not be blameworthy, and the court must consider the whole circumstances of the case and, in particular, the responsibility of the accused. A high degree of care can rightly be demanded of a person who is in charge of a motor vehicle or public money or property, or who is handling firearms or explosives, where a slight degree of negligence may involve loss or danger to line; in such circumstances a small degree of negligence may be blameworthy. On the other hand, neglect which results form mere forgetfulness, error of judgment or inadvertence, in relation to a matter which does not rightly demand a very high degree of care, would not be judged blameworthy so as to justify conviction and punishment. The essential thing for the court to consider is whether in the whole circumstances of the case as they existed at the time of the offence the degree of neglect proved is such as, having regard to their military knowledge of the amount of care which ought to have been exercised, renders the neglect substantially blameworthy and deserving of punishment.

(b) Negligently. – Negligence has been defined by judicial pronouncements as “the omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do and as “doing some act which a person of ordinary care and skill would not do under the circumstances”.

4. The following are a few instances of offences not uncommonly charged under this section :-

Negligent performance of duties connected with money or stores resulting in a deficiency and loss.

Being in improper possession of public property or of property belonging to a comrade (where there is no evidence of actual theft).

Improperly using Government transport and petrol for private purposes.

Borrowing money from persons under his command, gambling, and other cases of disobedience of regulations, which are not published as regimental orders (see note to AA .s. 42 (e).

Negligently wounding or injuring self or others.

Improperly using or obtaining railway warrants.

Sending an anonymous letter to his commanding officer.

Neglect of duty when a sentry, on guard, etc.

Causing a disturbance in the lines.

Stating a falsehood to a superior officer.

Using criminal force to a comrade.

5. AA recognises no such offence as “making a frivolous complaint”; but the repetition of baseless complaints may amount to an offence under this section; so too may a complaint so framed as to be offensive or indicative of insubordination, etc.

**64. Miscellaneous offences.** - Any person subject to this Act who commits any of the following offences, that is to say :-

(a) being in command at any post or on the march, and receiving a complaint that any one under his command has beaten or otherwise maltreated or oppressed any person, or has disturbed any fair or market, or committed any riot or trespass, fails to have due reparation made to the injured person or to report the case to the proper authority; or

(b) by defiling any place of worship, or otherwise, intentionally insults the religion or wounds the religious feelings of any person; or

(c) attempts to commit suicide, and in such attempt does any act towards the commission of such offence; or

(d) being below the rank of warrant officer, when off duty, appears, without proper authority, in or about camp or cantonments, or in or about, or when going to or returning from, any town or bazaar, carrying a rifle, sword or other offensive weapon; or

(e) directly or indirectly accepts or obtains, or agrees to accept or attempts to obtain for himself or for any other person, any gratification as a motive or reward for procuring the enrolment of any person, or leave of absence, promotion or any other advantage or indulgence for any person in the service; or

(f) commits any offence against the property or person of any inhabitant of, or resident in, the country in which he is serving;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as it in this Act mentioned.

#### NOTES

1. Clause (a) – The offence under this clause can only be committed by a person who is in command.

2. For definition of riot and trespass, see 146 and 441 respectively.

3. Clause (b) – The offence under this clause, which is similar to offence under chapter XV of the IPC is based on the Fundamental Right to freedom of religion conferred by Art. 27 of the Constitution.

4. Intentionally – A person is presumed to intend the natural and probable consequences, of his act and the court may infer intention from the circumstance. See note 4 to AA. s. 34.

5. Clause (c)-

(a) This offence is the same as the civil offence under IPC. S. 309.

(b) A person should not be charged with attempted suicide unless the circumstances of the case make it clear that he seriously intended to take his life.

(c) Where the action falls short of a deliberate intent to end his life, the accused could be charged under AA. s. 46 © or 63 (if appropriate); the charge alleging that the accused rendered himself temporarily unfit for duty by reason of his conduct.

(d) At the summary of evidence and the trial evidence must be given by a medical officer as to the probable effect of the action which the accused took and he should also express his opinion as to the state of mind of the accused at the time of the commission of the alleged offence.



6. Clause (d)
- (a) This offence can only be committed by NCO or sepoy.
- (b) Camp – see note 13 to AA. s. 34.  
 ‘Cantonment’ is not restricted to those stations which have been declared to be “cantonments” for the purposes of the Cantonments Act, 1924 (II of 1924). Troops are considered to be in a cantonment for the purposes of AA when they are quartered in any station or locality as a permanent, or semi-permanent, arrangement.
- (c) Without proper authority – see note 3 (a) to AA. s. 49.
7. Clause (e) -
- (a) Gratification – The term is not restricted to a pecuniary gratification or a gratification estimable in money. The offence is complete if the gratification is given with the intention indicated, and it is not necessary that the enrolment or other object should be actually procured. An attempt to obtain a gratification (e.g., by asking for it) is punishable equally with the actual receipt of one. An attempt to give a gratification (e.g., an offer of a bribe) is an abetment of the offence by way of instigation and is punishable under AA. s. 66 or 68 as the case may be.
- (b) Any other advantage or indulgence – such advantage etc., must be ejusdem generis.
8. Clause (f)
- (a) Offence - For definition see AA.s. 3 (xvii). The word “offence” here means an offence which would be punishable, if committed in India as a civil offence.
- (b) See note 11 to AA. s. 42. it is frequently of the highest importance to conciliate the inhabitants of the country where the troops happen to be, and to induce them to bring provisions and supplies/. From this point of view as offence, which in other circumstances would be trivial, may require severe punishment, as for instance. If a trifling theft has the effect of disturbing the confidence of the inhabitants and endangering the supplies of the Army. A person should not be charged under this clause when the offence is committed in India. Elsewhere it is better that a charge should be preferred under AA. s. 69 and not under this clause. The charge must set out the specific acts of violence or the specific offence alleged to have been done or committed.

**65. Attempt-** Any person subject to this Act who attempts to commit any of the offences specified in sections 34 to 64 inclusive and in such attempt does any act towards the commission of the offence shall, on conviction by court-martial, where no express provision is made by this Act for the punishment of such attempts, be liable :-

if the offence attempted to be committed is punishable with death, to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned ; and

if the offence attempted to be committed is punishable with imprisonment to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

### NOTES

1. Attempts to commit the offences specified in AA. ss. 34 to 64 are, except where such attempts are specifically provide for (e.g, an attempt to desert), triable under this section. Attempts to commit civil offences are not triable under this section but are triable under AA. s. 69 read with IPC.s. 511.

2. Does any act towards the commission of the offence. There is a difference between the preparation antecedent to an offence and the actual attempt. To constitute an attempt to commit an offence there must be an intent to commit the offence, a commencement of the commission and an act done towards the commission. An act is said to be done towards the commission of the offence when the offence remains incomplete only because something yet remained to be done, which the person intending to commit the offence is unable to do by reason of circumstances independent of his own volition. These words must not be construed to include all

acts, however, remote which tend towards the commission of the offence. The thing done may be too small or it may proceed too small or it may proceed too short a way towards the accomplishment of the offence for the law to notice it as an attempt. It must in every case be a question depending upon the circumstances whether a particular act done (with the requisite intention) towards the commission of the offence is sufficiently proximate to its commission to constitute an attempt or is so remote as to merely constitute preparation for its commission.

3. A person charged before a court-martial with any offence under AA may be found guilty of the attempt to commit that offence if the evidence so warrant; AA. s. 139 (8).

**66. Abetment of offences that have been committed.** Any person subject to this Act who abets the commission of any of the offences specified in sections 34 to 64 inclusive shall, on conviction by court-martial, if he act abetted is committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer the punishment provided for that offence or such less punishment as is in this Act mentioned.

#### NOTES

1. For definition of 'abetment' see IPC. S. 107 (Part III).

2. Abetment of a civil offence is not triable under this section or AA. s. 67 or 68 but under AA. s. 69.

3. A person subject to AA who abets a person not subject to the said act e.g., civilian, airmen etc., in doing a thing which would have been an offence under AA had the person doing it been subject thereto is not punishable under AA. ss. 66 to 68. Such cases will, however, generally fall within the terms of AA. s. 69.

4. A person charged before a court-martial with any offence under AA may be convicted of having abetted the commission of that offence, AA. s. 139 (8).

**67. Abetment of offences punishable with death and not committed.** Any person subject to this Act who abets the commission of any of the offences punishable with death under section 34, 37 and sub-section (1) of section 38 shall, on conviction by court-martial, if that offence be not committed in consequence of the abetment and no express provision is made by the Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

#### NOTES

1. see notes to AA. s. 66.

2. This section deals with punishment for abetment of offences punishable with death where the offence has not been committed in consequence of the abetment and no specific provision for such punishment has been prescribed by AA.

**68. Abetment of offences punishable with imprisonment and not committed.** Any person subject to this Act who abets the commission of any of the offences specified in section 34 to 64 inclusive and punishable with imprisonment shall, on conviction by court-martial, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

#### NOTES

1. See notes to AA. s. 66.

2. This section is similar to AA. s. 67 ; except that it deals with abetment of offences punishable with imprisonment.

**69. Civil Offences.** Subject to the provisions of section 70, any person subject to this Act who at any place in or beyond India commits any civil offence shall be deemed to be guilty of an offence against this Act and, if charged therewith under this section, shall be liable to be tried by a court-martial and on conviction, be punishable as follows, that is to say:-

(a) if the offence is one which would be punishable under any law in force in India with death or with imprisonment for life, he shall be liable to suffer any punishment, other than

whipping, assigned for the offence, by the aforesaid law and such less punishment as is in this Act mentioned;

(b) in any other case, he shall be liable to suffer any punishment, other than whipping, assigned for the offence by the law in force in India, or imprisonment for a term which may extend to seven years, or such less punishment as is in this Act mentioned.

#### NOTES

1. (a) An offence under this section should not be dealt with summarily under AA. ss. 80, 83 or 84.

(b) A SCM cannot be try an offence punishable under this section unless the provisions of AA. s. 120 (2) have been complied with.

(c) before trial is ordered on any charge under this section, as a rule the advice of the DJAG Command concerned should be obtained. Regs Army Para 458.

2. 'Civil offence' means an offence triable by a criminal court(AA . s. 3(ii). For definition of 'criminal court' see AA. s. 3 (viii). It therefore follows that a person subject to AA who while stationed in any country other than India commits an act or omission which is an offence under the civil law of that country but which if committed in India would not amount to a 'civil offence' cannot be charged under this section though a charge may properly be framed under AA.s. 63 if the facts so warrant.

3. 'Subject to the provisions of AA. s. 70' – AA. s. 70 prohibits trial by court-martial of three civil offences viz., murder, culpable homicide not amounting to murder of a person not subject to military, naval or air force law e.g., a civilian or rape in relation to such a person, unless the said offence was committed :-

(a) while on active service (for definition see AA. ss. 3(i) and 9, or

(b) at any place outside India, or

(c) at a frontier post specified by the central Govt by notification in this behalf. The test is where the offence was committed and not where the trial is held. If the offence was committed at a place and in the conditions which permit of the offence being tried by court-martial; the court-martial may be held anywhere (AA. s. 124) where courts-martial may convened.

4. Certain Acts of parliament require that, before proceedings can be instituted in the criminal courts, the consent of the appropriate Govt, must be obtained (e.g., under s. 13 (3) of the Official Secrets Act, 1923). It is not, however, necessary, before a person is charged with an offence under this section alleging that the civil offence is against such an Act, to obtain such a consent.

5. For adjustment of jurisdiction between a criminal court and a court-martial when both have jurisdiction in respect of the same civil offence, see AA, ss. 125 and 126 and notes thereto. Also see AR 197A and Regs Army para 418.

6. See AA. s. 139 (6) and notes thereto, which enables a court-martial, when trying a person for a civil offence to find him not guilty of that offence but guilty of any other offence of which he might have been found guilty under the Cr. PC.

7. (a) For offences falling under clause (a), except only those offences for which an obligatory punishment is provided under the law in force in India (e.g., death or imprisonment for life for murder), a court-martial may award any of the following punishments :-

(i) Any punishment, other than whipping, assigned to the offence under the law in force in India ; and

(ii) In addition to the above, one or more of the punishments specified in AA. s. 71.

(b) For offences falling under clause (b), courts-martial may award:

(i) the punishment, other than whipping, assigned to the offence under the law in force in India, or

(ii) imprisonment which may extend to seven years, or

(iii) if the offender is under the rank of WO and the offence was committed on active service, field punishment upto 3 months, and

(iv) in addition to any of the above, one or more of the punishment specified in AA. s. 71.

(c) Fines are awardable (as penalties authorized under the law in force in India) under both clauses of this section.

8. Chapter VI deals generally with offences punishable by the ordinary civil law which are made offences against AA by this section.

**70. Civil offences not triable by court-martial.** A person subject to this Act who commits an offence of murder against a person not subject to military, naval or air force law, or of culpable homicide not amounting to murder against such a person or of rape in relation to such a person, shall not be deemed to be guilty of an offence against this Act and shall not be tried by a court-martial unless he commits any of the aid offences :-

(a) while on active service, or

(b) at any place outside India, or

(c) at a frontier post specified by the Central Government by notification in this behalf, (Explanation)1.

#### **NOTE**

See note 3 to AA. s. 69.

#### **PUNISHMENTS**

**71. Punishment awardable by courts-martial.**-Punishment may be inflicted in respect of offences committed by person subject to this Act and convicted by court-martial, according to the scale following, that is to say,-

(a) death ;

(b) (imprisonment for life)1 ;

(c) imprisonment, either rigorous or simple, for any period not exceeding fourteen years ;

(d) cashiering, in the case of officers ;

(e) dismissal from the service ;

(f) reduction to the ranks or to a lower rank or grade or place in the list of their rank, in the case of warrant officers ; and reduction to the ranks or to a lower rank or grade, in the case of non-commissioned officers ;

provided that a warrant officer reduced to the ranks shall not be required to serve in the ranks as a sepoy ;

(g) forfeiture of seniority of rank, in the case of officers, junior commissioned officers, warrant and non-commissioned officers; and forfeiture of all or any part of their service for the purpose of promotion, in the case of any of them whose promotion depends upon length of service ;

(h) forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose;

(i) severe reprimand or reprimand, in the case of officers, junior commissioned officers, warrant officers and non-commissioned officers ;

- (j) forfeiture of pay and allowances for a period not exceeding three months for an offence committed on active service ;
- (k) forfeiture in the case of person sentenced to cashiering or dismissal from the service of all arrears of pay and allowances and other public money due to him at the time of such cashiering or dismissal ;
- (l) stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

### NOTES

1. See Regs Army paras 476 and 468 as to the principles to be observed by a court-martial in awarding sentence. These should be treated as a guide only and it may be necessary to pass more severe sentence if, for example, the offence is committed on active service, or where attention has been called in local orders to the prevalence of the offence and such orders have been proved to the satisfaction of the court.
2. The punishments referred to in this section are the only punishments awardable by a court-martial on conviction for an offence specified in any of the AA. ss. 34 to 68. In cases of charges under AA. s 69, a court-martial can also award any punishment, other than whipping, assigned for the offence under any law in force in India. For instance, a fine is not specified as a punishment in this section but a court-martial exercising jurisdiction under AA. s. 69 can award a fine and such is recoverable under AA. ss. 90(f)/91(h) or 174, if the civil offence in question is punishable with a fine under the law in force in India.
3. As to jurisdiction and powers of GCM, SGCM, DCM and SGM, see AA, ss. 118 to 120.
4. As to disposal of property produced before a court-martial or regarding which an offence has been committed, see AA, ss. 150 and 151.
5. AA, s. 73 specifies the particular instances in which more than one punishment may be awarded.
6. Clause (a),-
  - (a) sentence of death can only be passed by a GCM with the concurrence of at least two-thirds of the members or by a SGCM with the concurrence of all the members; see AA, s. 132 (2) and (3). A certificate to the effect that the death sentence was passes with the concurrence of .....members/unanimously, as the case may be, should be endorsed in the proceedings.
  - (b) in awarding a sentence of death the court must add a direction that the accused shall suffer death by being hanged by the neck until he be dead ; or by being shot to death ; see AA. s. 166 (4).
  - (c) A person who is sentenced by a court martial to death continues to be subject to AA till the sentence is executed; see AA. s. 123 (4).
  - (d) Apart from AA. s. 69, the offences where a sentence of death can be awarded are specified in AA. ss. 34, 37 and 38 (1).
  - (e) An officer sentence to death or imprisonment must first be sentence to be cashiered. AA. s. 74.
  - (f) For forms of warrants, see Appx V to AR.
7. Clause (b).
  - (a) Imprisonments for life is a punishment which a GCM or SGCM can award only in cases of charges under AA. s. 69 where such a punishment is assigned for that offence under the law in force in India or where the offence is punishable with death as under AA. s. 34, 37 or 38 (1) and the court considers that sentence to be too severe in the circumstance of the case.

Imprisonment for life cannot be awarded for any of the remaining offence as the maximum punishment laid down for such offence is imprisonment for fourteen years of cashiering/dismissal.

(b) For calculation fractions of terms of punishment imprisonment for life is to be reckoned as equivalent to imprisonment for twenty years (IPC. s. 57), though for other purposes it is treated as imprisonment for the whole of the remaining period of the convicted man's natural life. In practice, the sentence of imprisonment for life is treated as a sentence for a certain number of years only.

(c) In case of officers, a sentence of cashiering must precede sentence of imprisonment for life ; see AA. s. 74.

(d) Though a WO or NCO is deemed to be reduced to the ranks if sentenced to imprisonment for life, imprisonment, field punishment or dismissal from the service under AA. s. 77, it is desirable to specify the reduction in the sentence.

(e) As to the date from which a sentence of imprisonment for life is to be reckoned, see AA. s. 167.

(g) As to execution of sentence of imprisonment for life and forms of warrants see AA. s. 168, 170 and 172 and notes thereto. Form F in Part II of Appx. IV to the AR and Form J in Appx V to the said Rules.

(h) For suspension of a sentence of imprisonment for life or imprisonment see AA. ss. 182 to 190 and notes thereto.

8. Clause (c).

(a) Imprisonment is either (i) rigorous, that is with hard labour; or (ii) simple. The terms "rigorous" and "simple" should invariably be used in sentences passed under AA. If a court inadvertently passes a sentence of "imprisonment" without specifying whether it is rigorous or simple, the sentence is treated as one of "simple imprisonment". Sentence of simple imprisonment are inexpedient and inconvenient of execution.

(b) A sentence of imprisonment, whether revised or not, and whether the accused is already undergoing sentence or not, commences on the day on which the original proceedings were signed by the presiding officer or in the case of a SCM, by the court (AA. s. 167).

(c) An officer sentenced to death, imprisonment for life or imprisonment must first be sentenced to be cashiered. (AA. s. 74).

(d) As to the automatic reduction to the ranks as a result of the sentence, see note 7(d) above.

(e) As to execution of sentences of imprisonment see AA. ss. 169, 170 and 171. For forms of warrant see Forms B, C, F and G in Appx IV to AR.

Advantage should be taken of AA.s. 169 (3) to award short sentences of imprisonment, not exceeding three months, to be undergone in military custody to persons whom it is desired to retain in the service. See Regs Army para 494 (c).

(f) For suspension of sentences see AA. ss. 182 to 190 and notes thereto.

(g) Sentences of Imprisonment, unless for one or more yeas exactly, should, if for one month or upwards, be recorded in months. Sentences consisting partly of months and partly of days should be recorded in months and days. Also see Regs Army para 467 (e).

9. Clause (d) and (e).

(a) Cashiering is the more ignominious form of dismissal ; and normally and officer who has been cashiered cannot hold and appointment under the Government.

(b) In case of an officer. A sentence of cashiering must precede the sentence of death, imprisonment for life or imprisonment: AA. s. 74.

(c) For the date on which sentences of cashiering and dismissal take effect, see AR 168.

(d) The decision whether a cashiered or dismissed officer shall receive a pension or gratuity, is in the discretion of the Government. Regs Pension Reg 16 (a).

(e) Regs Army para 703 (a) makes provision for the forfeiture of gallantry decorations, campaign and commemorative medals clasps in the event of a person subject to AA being cashiered or dismissed.

(f) Dismissal under this section is a punishment awardable by a court-martial where as dismissal under AA. s. 19 is and administrative measure.

10. Clause (f).

(a) Service in the lower rank, grade or class will reckon from the date of signing the original sentence, whether the original sentence in question was a revised sentence or mitigated by the confirming officer from a more severe sentence.

(b) Although the definition of NCO includes an acting NCO, a court-martial does not deal with acting or lance rank ; a sentence reducing a naik (acting Havildar) to naik or lance naik to the ranks, is inoperative. See Regs Army para 131 for definition of ranks and appointments.

(c) Reduction of a WO and NCO under this section to the ranks or to a lower rank or grade is a punishment awardable by a court-martial whereas a similar reduction under AA.s. 20 (4) is an administrative measure resorted to on grounds inefficiency or unsuitability. See Regs Army paras 172 to 173.

(d) The term 'grade' means 'rank'.

11. Clause (g).

(a) For form of sentence see part I of Appendix III to AR.

A sentence of forfeiture of seniority may be combined a sentence of forfeiture of service for the purpose of promotion.

(b) Forfeiture of seniority of rank.- The effect of a sentence of forfeiture of a seniority of rank is that the seniority of the person in his rank alone is affected, not the period of the service in the rank. For example, Capt 'A' who is substantive Capt having been commissioned on 1 Jan 69, is awarded by a GCM on 1 Jun 78 forfeiture of 2 years seniority of rank. The sentence specifically reading as-"to take rank and precedence as 'if his appointment as substantive Capt bore date the first day of Jan 1971'. As a result of this sentence Capt 'A' would be junior to all Captains commissioned before 1 Jan 71 in that rank.

(c) Forfeiture of service for the purpose of promotion.- This sentence can be awarded in respect of all or any part of his service. The forfeiture does not affect the seniority of the officer etc, in the rank he holds at the time the sentence is passed. The effect of this sentence would be that all future promotions depending upon length of service will be retarded by the period forfeited this clause. This would not preclude a court-martial from awarding the punishment of forfeiture of seniority of rank in the form of sentencing an officer to take precedence in the rank held by him in his corps, in cases where dates of appointment of a large number of officers are identical and the forfeiture of even one day's service for the purposes of promotion might in its effect constitute too severe a punishment for the offence which nevertheless would not be adequately met by a severe reprimand.

12. Clause (h).

(a) 'Prescribed' means prescribed by rules made under AA, No other 'purpose' has so far been 'prescribed under this clause.

(b) As to forfeiture of service towards pension or gratuity on conviction for desertion or fraudulent enrolment, see Regs Pension, where the conditions under which service so forfeited is restored are also laid down.

13. Clause (i) : Severe reprimand or reprimand.

(a) Although acting rank is not cognisable in the sentence of a court-martial, a sepoy holding any such rank, being a NCO (AA. s. 3 (XV), may nevertheless be sentenced by a court-martial to be severely reprimanded or reprimanded.

(b) Severe reprimand constitutes a `red ink; entry ; see Regs Army para 387 (b).

14. Clause (j).

(a) This punishment can only be awarded by a court-martial where an offence is committed on active service : for definition of `active service'. See AA. ss. 3 (i) and 9. It is immaterial where the trial takes place.

(b) This sentence may be awarded in addition to other punishments. Care must be taken in awarding a sentence of forfeiture of pay and allowances in days to ensure that the total period in days does not exceed three calendar months e.g., when February intervenes.

(c) The forfeiture commences from the date of award and applies to all pay and allowances but see AA. s. 94. Any other stoppages of pay and allowances which the offender may be under are suspended during the period of the forfeiture.

15. Clause (k).-As cashiering or dismissal takes effect the date specified in AR 168, this punishment will hardly be effective unless action has already been taken under AA. s. 93 for withholding the pay and allowances of the accused in which case the pay and allowances so withheld will automatically be forfeited under AA.s. 91 (b) read with P and A Regs if the accused was in custody ; forfeiture under this clause will then cover only arrears of pay and allowances prior to the date the accused was placed in custody as well as any public money due to him.

16. Clause (l).-An award to compensate for loss of damage is termed `stoppages. Such an award can only be made if the particulars of the charge allege that the act or omission of the accused occasioned a loss or damage and, is proved on record (AR 30 (6)).

17. Irrespective of the currency in which the wording of a charge may assess the loss or damage, any stoppage that is imposed by a court-martial must be awarded in the Indian currency. The only exception to this rule is where accused's rate of pay is expressed in any Regulations/Instructions in any other currency.

18. If a court wishes to award compensation to the injured party as well as to cause the offender to lose all arrears of pay and allowances, etc, it should sentence him to stoppages under this clause and to forfeiture of all arrears of pay and allowances, etc, under clause (k). The stoppages will first be satisfied from any pay and allowances or other public money due to him, and the remainder (if any) will be forfeited to the State under sentence.

19. A court-martial acting this clause will simply sentence the offender to stoppages to a certain extent. The recovery which is automatic will take place under the provisions of AA.s. 90 to 91, whichever is applicable, and the P & A Regulations. The officer enforcing the sentence will be guided by AA.ss. 94 and 95 i.e., he will (unless the offender is sentenced to dismissal or is an officer) stop half his pay and allowances in any one month and the whole of any gratuity or other public money (not pay and allowances) due to him, until the compensation awarded in the sentence is complete. No portion of the pay and allowances of a person sentenced to dismissal is protected and the whole of such a person's pay and allowances can, if necessary be withheld.

**72. Alternative punishments awardable by court-martial.** Subject to the provisions of this Act, a court-martial may, on convicting a person subject to this Act of the offences specified in sections 34 to 68 inclusive, award either the particular punishment with which the offence is stated in the said sections to be punishable, or, in lieu thereof, any one of the punishments lower in the scale set out in section 71, regard being had to the nature and degree of the offence.



## NOTES

1. "Subject to the provisions of this Act", AA. s. 73 specifies the particular instances in which more than one punishment may be awarded.
2. Field Punishments is deemed for the purpose of commutation to stand next below dismissal in the scale of punishments (AA.s. 76) and may be awarded in lieu where permissible.
3. The punishments awardable by a court-martial on conviction for a civil offence under AA.s 69 are set out in that section.

**73. Combination of punishments.** A sentence of a court-martial may award in addition to, or without any one punishment specified in clause (d) or clause (e) of section 71 and any one or more of the punishments specified in clauses (f) to (l) of that section.

## NOTES

1. The following combined sentences are legal :-
  - (i) Cashiering, imprisonment, stoppages and forfeiture of pay and allowances in the case of an officer.
  - (ii) Imprisonment, dismissal, reduction (WO and NCO), stoppages and forfeiture.
  - (iii) field punishment, dismissal, reduction (NCO) stoppage and forfeiture ;
  - (iv) forfeiture of seniority of rank, forfeiture of service for promotion (when applicable), severe reprimand, forfeitures and stoppages, in the case of an officer, JCOs, WO or NCO.
2. It should be noted that field punishment and forfeiture of pay and allowances can only be awarded for an offence committed on active service. Further, a DCM cannot award a sentence of imprisonment to a WO (AA. s 119) nor can field punishment be awarded to an offender unless he is below the rank of WO.
3. The punishments specified in this section may be awarded for civil offences tried under AA. s. 69 either in lieu of, or in addition to, those assigned by the ordinary law to the offence of which the accused has been convicted. See note 7 to AA. s. 69.

**74. Cashiering of Officers.** An officer shall be sentenced to be cashiered before he is awarded any of the punishments specified in clauses (a) to (c) of section 71.

## NOTES

Care must be taken to comply with this section provision. A sentence of death, imprisonment for life or imprisonment and cashiering is incorrect as the sentence of cashiering must precede the sentence of death, imprisonment for life or imprisonment. If such a punishment is awarded the confirming officer should vary it under AR 73. However in the case of an officer, a sentence of dismissal and imprisonment is no sentence at all being unknown to law; such a sentence, if passed by a court-martial, should be sent back for revision.

**75. Field Punishment.-** Where any person subject to this Act and under the rank of warrant officer commits any offence on active service, it shall be lawful for a court-martial to award for that offence any such punishment as is prescribed as a field punishment. Field punishment shall be of the character of personal restraint or of hard labour but shall not be of a nature to cause injury to life or limb and shall not include flogging.

## NOTES

1. (a) Active Service : see AA. ss. 3 (i) and 9.  
(b) This punishment can only be awarded to a NCO or Sepoy.

2. Whenever an accused was at the date of his offence on active service this fact should always be state in the charge-sheet so that the court may be in a positions to give effect to this section. Nevertheless when the troops in the country where the court sits are all on active service, the court may take judicial notice of such fact though not expressly alleged.
3. (a) Field punishment may only be awarded for a offence committed on active service, for a period not exceeding three months. "Month" is a calendar month, and care must be taken when awarding field punishment in days to ensure that the maximum punishment is not exceeded. e.g., allowances must be made for the shortness of the month of February.
  - (b) A NCO awarded field punishment by a court-martial is deemed to be reduced to the ranks ; AA.s. 77.
  - (c) Field punishment should always be awarded in days or months.
4. For the prescribed form of field punishment see ARs 172 to 176.
5. The term of field punishment commences from the date of award.

**76. Position of field punishment in scale of punishments.-** Field punishment shall for the purpose of commutation be deemed to stand next below dismissal in the scale of punishments specified in section 71.

#### NOTES

Field punishment can be commuted to reduction to the ranks or to a lower rank or grade or to any punishment lower than reduction in the scale contained in AA. s. 71. Only sentences of death, imprisonment for life, imprisonment can be commuted to field punishment and then only if the offender is under rank of WO of and the offence is committed on active service.

**77. Result of certain punishments in the case of a warrant officer or non-commissioned officer.-**A warrant officer or a non-commissioned officer sentenced by a court-martial to (imprisonment for life), imprisonment or dismissal from the service, shall be deemed to be reduced to the ranks.

#### NOTES

1. Although under this section a WO or NCO holding substantive rank, when sentenced to imprisonment for life, imprisonment, dismissal or field punishment, is, ipso facto, reduced to the ranks it is desirable to specify the reduction in the sentence. A court-martial cannot sentence a person holding an acting rank to reduction to the ranks; but an acting NCO, being a NCO in terms of AA. s. 3 (XV) loses his acting rank under this section upon being sentenced to any of the punishments therein mentioned. See note 10 (b) to AA. s. 71.
2. The remission of the punishment mentioned in this section would not of itself avoid the reduction to the ranks consequent on the sentence. If it is desired to avoid such reduction to the ranks the reduction must be remitted as well; see AA. s. 181.

**78. Retention in the ranks of a person convicted on active service.-** When on active service, any enrolled person has been sentenced by a court-martial to dismissal, or to (imprisonment for life)1 or imprisonment whether combined with dismissal or not, the prescribed officer may direct that such person may be retained to serve in the ranks, and such service shall be reckoned as part of his term of (imprisonment for life)1 or imprisonment, if any.

#### NOTES

1. Any enrolled person.- Means a person subject to AA under AA. s. 2 (1) (b) JCOs and WOs though originally enrolled are not liable to be retained to serve in the ranks under this section.
2. 'Prescribed officer' : see AR 191.
3. A person can only be retained to serve in the ranks under this section while he is on active service, and the order must be made before the sentence of dismissal has taken effect ; see AR 168. The dismissal is not avoided but is merely suspended so long as the person is retained

to serve in the ranks. If it is subsequently desired to retain the person in the service, the dismissal must be remitted.

**79. Punishments otherwise than by court-martial.**- Punishments may also be inflicted in respect of offences committed by person subject to this. Act without the intervention of a court-martial and in the manner stated in sections 80, 83, 84 and 85.

#### NOTES

The proceedings under AA. ss. 80, 83, 84 and 85 are summary proceedings. The officer disposing of the case summarily under these sections is not a 'court' nor does the Indian Evidence Act, 1872 apply to such proceedings. Further, unlike a trial by court-martial, the accused has no right to be represented by counsel/defending officer or even assisted by the 'friend' of the accused.

**80. Punishments of person other than officers, junior commissioned officers and warrant officers.**- Subject to the provisions of section 81, a commanding officer or such other officer as is, with the consent of the Central Government specified by the (Chief of the Army Staff)<sup>2</sup>, may, in the prescribed manner proceed against a person subject to this Act otherwise than an officer, junior commissioned officer or warrant officer who is charged with an offence under this Act and award such person, to the prescribed, one or more of the following punishments, that is to say,-

- (a) imprisonment in military custody upto twenty-eight days;
- (b) detention up to twenty-eight days;
- (c) confinement to the lines up to twenty-eight days;
- (d) extra guards or duties;
- (e) deprivation of a position of the nature of an appointment or of corps or working pay, and in the case of non-commissioned officers, also deprivation of acting rank or reduction to a lower grade of pay;
- (f) forfeiture of good service and good conduct pay;
- (g) severe reprimand or reprimand;
- (h) fine up to fourteen days' pay in any one month;
- (i) penal deductions under clause (g) of sections 91;
- (j) any prescribed field punishment up to twenty-eight days, in the case of a person on active service.

#### NOTES

1. "Subject to the provisions of Section 81".- AA. s. imposes limitations or restrictions on the powers granted to the Commanding or other officer under this section.

2. For the definition of CO; see AA. s. 3 (v).

A JCO commanding a unit or detachment, not being an officer, within the meaning of AA. s. 3 (xviii), cannot award any of the punishments under this section.

3. In the prescribed manner-see 'offence report' in Part II of Appendix III to AR.

For the duties of a CO as to investigation of a charge for an offence and disposal of the charge ; see AA. s. 102 and, ARs 22 to 24.

Every charge must be heard in the presence of the accused ; except a charge against an officer, as to which see AR (25 (1)). Witnesses are not sworn or affirmed, but the accused must have full liberty to cross-examine, to call witnesses and to make any statement.

A CO may dismiss the charge, and he should do so if, in his opinion, the evidence does not show that some offence under AA has been committed, or if, in his discretion, he thinks that the charge ought not to be proceeded with. See AR 22 (2).

4. (a) Where a person has been convicted or acquitted of an offence by a court-martial or by a criminal court or summarily dealt with of the charge has been dismissed he is not liable to be summarily punished or tried by court-martial for the same offence or for an offence which is substantially the same; AA. s. 212. If, for example, he has been acquitted or convicted of, or summarily for, absence without leave, and the absence amounted to desertion, he cannot afterwards be tried for desertion.

(b) A person convicted by a court-martial of an offence cannot afterwards be sentenced under this section by his CO to stoppages for damage caused by that offence.

(c) A person is also not liable to be tried for an offence which has been pardoned or conducted by competent military authority, or which was committed more than three years before the date of his trial, unless the offence was mutiny, desertion or fraudulent enrolment ; see AA. s. 122 and AR 53.

5. (a) 'To the extent prescribed' - A CO or other officer specified in his section, if below field rank, cannot award, imprisonment or detention for a period exceeding seven days unless empowered to do so by an officer having power not less than an officer commanding a division. AR 192.

(b) For officers specified by the Chief of the Army Staff, with the consent of the Central Government, under this section ; see Regs Army para 443.

6. The following combined punishments under this section are legal ;

(a) In the case of a NCO-

One of more of the punishments specified in clauses (d) to (i).

a. In the case of Sepoy-

(i) Imprisonment, detention and confinement to the lines if the total period does not exceed 42 days, but the confinement to the lines will take effect on the expiry of imprisonment and or detention ; or

(ii) Field punishment upto 28 days on active service.

In addition to the punishments mentioned in clauses (i) and (ii) above, the CO may award one or more of the following punishments e.g., extra guard or duties, deprivation of corps or working pay, reduction to a lower class of pay, forfeiture of good service and good conduct pay, fine and stoppages.

7. A CO cannot increase a punishment after he has once made his award, which is considered complete when the person has quitted his presence. But a CO can at any time before the punishment has been completed, mitigate or remit such punishment. As to entry of his award, see Regs Army para 387 (b).

8. Awards by a CO which appear to be illegal, unjust or excessive can be reviewed by superior military authority as defined in clause (a) of AA. s. 88 : see AA. s. 87 and Regs Army para 442 also.

9. Clause (a).-

(a) Imprisonment may be rigorous or simple. See s. 3 (27) of the General Clauses Act 1897. The term 'rigorous' or 'simple' should always be used in the award, see note 8 (a) to AA. s. 71.

(b) Imprisonment, detention, confinement to the lines or field punishment will not be awarded to a person who is of the rank of NCO or was of such rank at the time of committing the offence for which he is punished : AA. s. 81 (4). The term 'Non commissioned officer' as defined in AA. s. 3 (xv) includes as acting NCO.

(c) Imprisonment, will be reserved for serious and repeated offences.

- (d) Imprisonment or detention commences from the date of award and ends at sunset of the day the sentence expires.
- (e) An award of imprisonment, rigorous or simple, carries with it a minimum of two hours of military instruction daily; Regs Army para 508 (a).
- (f) As to deduction from pay and allowances entailed by an award of imprisonment or field punishment or for absence without leave, see AA. s. 91 (a) and P and A Regs (OR).
- (g) Imprisonment, detention, confinement to the lines and extra guards or duties may be awarded separately or conjointly but the carrying out of imprisonment and detention will precede confinement to the lines and extra guards and duties : AA. s. 81 (2).
- (h) No award or awards including imprisonment, detention and confinement to the lines shall exceed in the aggregate forty two days, AA. s. 81 (3). Also see AA. s. 81 (2) and note (g) above.
10. Clause (b).- For detention in military custody : See Regs Army para 509. Also see notes 9 (b), (d), (g) and (h) above.
4. Clause (c).-
- (a) Defaulter's will be required to answer to their names at uncertain hours throughout the day, and will be employed on working parties to the fullest practicable extent with a view to relieving well-conducted soldiers there from. Defaulters will attend parades, and take all duties in regular turn. When the working parties required are not sufficient to keep the defaulters fully employed, the CO may order them to attend extra drill, which will be limited to one hour a day, and will include some form of useful instruction. (See item I, column 4 of the Table appended to Regs Army para 443.
- (b) Confinement to the lines is not 'custody' for the purpose of AA. s. 51.
- (c) See note (b), (g) and (h) above.
5. clause (d).-
- (a) This punishment is awarded for minor offences on those duties.
- (b) See note 9 (g) above.
13. Clause (e).-
- (a) For ranks and appointments ; see Regs Army para 131.
- (b) Lower grade of pay includes lower class of pay.
- (c) The maximum period for which such forfeiture can be ordered has not been prescribed, but see P & A Regs (OR).
14. Clause (f).- The CO or other specified officer can forfeit at a time one rate of such pay : see P and A Regs (OR).
15. Clause (g).-
- (a) This punishment can be awarded only to a NCO or an acting NCO. AA. s. 81 (5). A lance naik is a NCO for the purpose of this clause.
- (b) An award of severe reprimand constitutes a red ink entry ; Regs Army para 387 (b).
16. Clause (h).-
- (a) This punishment may be awarded alone or in conjunction with any other punishment under this section.

(b) Recovery can be effected under AA. s. 91 (h).

17. Clause (i).- Under this clause the CO or specified officer is authorised to award stoppages to meet any expenses loss, damage or destruction caused by the offender to the Central Government or to any building or property : but the deductions so ordered shall not exceed in any month one half of his pay and allowances for that month, AA. s. 91 (g) and 94.

18. Clause (j).-

(a) For prescribed forms of field punishment see ARs 172 to 176.

(b) This award can only be made an offence committed on active service.

(c) This punishment cannot be awarded conjointly with that of imprisonment, detention or confinement to the lines ; AA. s. 81 (1).

(d) Field punishment cannot be awarded to a person who is or was, at the time of committing the offence, a NCO ; see note 9 (b) above.

(e) As to forfeiture of pay and allowances; and note 9 (f) above.

### **81. Limit of punishments under section 80.-**

1. Omitted.

2. In this case of award of two or more of the punishments specified in clauses (a), (b), (c) and (d) of the said section, the punishment specified in clause (c) or clause (d) shall take effect only at the end of the punishment specified in clause (a) or clause (b).

3. When two or more of the punishments specified in the said clauses (a), (b) and (c) are awarded to a person conjointly, or when already undergoing one or more of the said punishments, the whole extent of the punishments shall not exceed in the aggregate forty-two days.

4. The punishments specified in clauses (a), (b) and (c) of section 80 shall not be awarded to any person who is of the rank of non-commissioned officer or was, at the time of committing the offence for which he is punished, or such rank.

5. The punishment specified in clause (g) of the said section shall not be awarded to any person below the rank of non-commissioned officer.

#### **NOTES**

1. See notes 9 (b), (g) & (h), 15 (a) and 18 (c) to AA. s. 80.

2. For sub secs (4) and (5) of this section, a lance naik shall be deemed to be a NCO.

**82. Punishments in addition to these specified in section 80.** (The Chief of Army Staff) may, with the consent of the Central Government, specify such other punishments as may be awarded under section 80 in addition to or without any of the punishments specified in the said section, and the extent to which such other punishment may be awarded.

#### **NOTES**

1. This section empowers the Chief of Army Staff to add, with the consent of the Central Government, to the punishments awardable under AA. s. 80 and to specify the extent of the punishments so added.

2. For other punishments (i.e., specified under this section) which may be awarded under AA. s. 80 see Regs Army para 443.

**83. Punishment of officers, junior commissioned officers and warrant officers by brigade commanders and others.-** An officer having power not less than a brigade, or an equivalent commander or such other officer as is, with the consent of the Central Government, specified by the Chief of Army Staff may, in the prescribed manner, proceed against an officer below the rank of a field

officer, a junior commissioned officer or a warrant officer, who is charged with an offence under this Act, and award one or more of the following punishments that is to say,-

- (a) severe reprimand or reprimand.
- (b) stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

### NOTES

1. See generally notes to AR 26.
2. This section and AA. s. 84 obviate the necessity for trying by court-martial certain officers. JCOs or WOs who commit some offence which is not of a serious nature but which cannot at the same time be overlooked.
3. An officiating brigade, sub area or equivalent commander, irrespective of his rank, can exercise the powers under this section.
4. As to the 'prescribed manner' see AR 26. Forms 1 and 2 in Part I of the Appendix IV to AR and Regs Army para 144.
5. An abstract of evidence, referred to in AR 26, if adduced must not consist of statements made at an earlier court of inquiry.
6. (a) An officer of the rank of Major or above cannot be dealt with under this section.  
(b) For definition of 'field officer' see AR 2 (c).
7. The sentence of forfeiture of seniority or of service for the purpose of promotion cannot be awarded under this section.
8. Stoppages : see AA. ss. 90 (e) and 91 (e) and note 16 to AA. s. 71.
9. Awards under this section, AA. ss. 84 and 85, which appear to be illegal unjust or excessive can be reviewed by the authorities specified in AA. s. 88 (b) : see AA. s. 87 and Regs Army para 442.
10. For transmission of proceedings see AA. s. 86.
11. For period of limitation for trial see AA. s. 122 and notes thereto.

### DELEGATION OF DISCIPLINARY POWERS

The Chief of the Army Staff, with the consent of the Central Government, has specified the Deputy General Officers Commanding at Divisional Headquarters as officer who can exercise powers under Army Act Section 83 in respect of personnel of Division Headquarters and Division Troops units.

(Auth Army HQ letter No 4176/AG/DV-1 dt 17 Jun 88)

**84. Punishment of officers, junior commissioned officers and warrant officers by area commanders and others.-** An officer having power not less than an area commander or an equivalent commander or an officer empowered to convene a general court-martial or such other officer as is, with the consent of the Central Government, specified by the Chief of the Army Staff may, in the prescribed manner proceed against an officer below the rank of lieutenant colonel a junior commissioned officer or a warrant officer, who is charged with an offence under this Act, and award one or more of the following punishments that is to say.

- (a) forfeiture of seniority, or in the case of any of them whose promotion depends upon length of service, forfeiture of service for the purpose of promotion for a period not exceeding twelve months, but subject to the right of the accused previous to the award to elect to be tried by a court-martial.
- (b) severe reprimand or reprimand.
- (c) stoppages of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

### NOTES

1. See generally notes of AA. s. 83 and AR 26.
2. An officiating area or equivalent commander or other officer specified in this section, irrespective of his rank, can exercise the powers under this section.
3. As to the 'prescribed manner' see AR 26, Form 1 and 2 in Part I of Appendix IC to AR and Regs Army para 444.
4. Charges against an officers, who at the time of the commission of offence or disposal held the rank of Lt Col (actg or substantive) should not be dealt with summarily, even if he has ceased to hold that rank at the time the case has been referred to the superior authority by his CO. He should be brought to trial by a court-martial or dealt with administratively depending on the merits of the case.
5. Forfeiture of seniority of rank or service : see note 11 to AA. s. 71. If the authority dealing summarily with the case propose to award this punishment he shall ask the accused " Do you elect to be tried by court-martial or will you accept my award ?.
7. For period of limitation for trial see AA. s. 122 and notes thereto.

### DELAGATION OF DISCIPLINARY POWERS

The Chief of the Army Staff, with the consent of the Central Government, has specified the Chiefs of Staff at Command and Corps HQ as Officers who can exercise powers under Army Act 84 in respect of the personnel of those HQ and of units which are directly under the command of those HQ.

(Auth : Army HQ letter No 41776/PSI dt 23 May 77).

**85. Punishment of junior commissioned officers.** A commanding officer of such other officer as is, with the consent of the Central Government specified by the Chief of the Army Staff may, in the prescribed manner, proceed against a junior commissioned officer who is charged with an offence under this Act and award one or more of the following punishments, that is to say, -

- (i) severe reprimand or reprimand;
- (ii) stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good:

Provided that the punishment specified in clause (i) shall not be awarded if the Commanding Officer or such other officer is below the rank of Colonel.

### NOTES

1. A CO or any 'specified' officer can award stoppages against a JCO who is charged with an offence.
2. Prescribed manner see AR 26, form 1 and 2 in Part I of Appendix IV to the AR and Regs Army para 444.



3. Awards under this section which appear to be illegal, unjust or excessive can be cancelled, varied or remitted by superior military authority specified in AA.s. 88 (a) i.e., any officer superior in command to the CO.
4. For period of limitation for trial see AA.s. 122 and notes thereto.
5. Transmission of proceedings; see AA.s. 86.

**86. Transmission of proceedings.** - In every case in which punishment has been awarded under any of the sections 83, 84 ad 85, certified true copies of the proceedings shall be forwarded, in the prescribed manner, by the officer awarding the punishment, to a superior military as defined in section 88.

#### NOTES

See notes to AR 26 and Appendix K to Regs Army para 444.

**87. Review of Proceedings.** – If any punishment awarded under any of the sections 83, 84 and 85 appears to a superior military authority as defined in section 88 to be illegal, unjust or excessive, such authority may cancel, vary or remit the punishment and make such other direction as may be appropriate in the circumstances of the case.

#### NOTES

1. (a) A “punishment is wholly” “illegal” if
  - (i) the finding of guilty cannot be upheld: or
  - (ii) the only punishment awarded is of a kind which cannot be awarded for the offence charged (e.g., stoppage of pay and allowances for an offence which is not alleged to have occasioned any loss): or
  - (iii) where the punishment awarded is of a kind which the authority dealing with the case is not authorised to award.

(b) Where the punishment is wholly illegal it must be cancelled and appropriate directions made by the superior military authority.
2. (a) A punishment is “excessive” when it is in excess of the punishment authorised by law for the offence i.e., where it is of a kind which the authority dealing with the case is authorised to award for the offence charged but is greater in amount than he is authorised to award e.g., if an authority under AA.s.83, 84, 85 were to award stoppages greater than the amount of the loss proved to have been occasioned by the offence.
 

(b) In such cases the superior military authority specified in AA.s. 88 can vary the punishment by reducing the amount of punishment to an amount which is authorised by law.
3. Where the punishment though not in excess of the punishment authorised appears to be ‘unjust’ or severe, the superior military authority has the power to remit the whole or part of the punishment. If the whole of the punishment is remitted there will be nothing left except the finding which will stand good and the accused will suffer the forfeitures or penalties which are consequential on conviction.
4. ‘Make such other direction, as may be appropriate in the circumstances of the case’ There words would enable the superior military authority to mitigate or commute the punishment where it is unjust or excessive.
5. Though this section does not specifically provide review of the punishments awarded under AA. s. 80, the same procedure should be followed in respect of those punishments. Also see Regs Army para 442.

**88. Superior Military Authority.** For the purpose of sections 86 and 87, a “superior military authority” means :-

- (a) in the case of punishments awarded by a commanding officer, any officer superior in command to such commanding officer.;

(b) in the case of punishments awarded by any other authority, the Central Government, the (Chief of Army Staff) or other officer specified by the (Chief of the Army Staff).

### **DELAGATION OF DISCIPLINARY POWERS**

In exercise of the powers vested under section 88(b) of the Army Act 1950, the Chief of the Army Staff has specified the officer commanding the Army Corps as a superior Military Authority for the purpose of section 86 and 87 of the Army Act , 1950.

(Auth :L Army HQ letter No 41776/AG/DV-1 dt 05 Jan 93).

#### **NOTE**

Clause (a) – In cases where a detachment etc., commander can exercise the powers of a CO within the meaning of AA, the CO of the main unit can be the superior officer of the detachment etc., commander under this clause.

#### **89. Collective fines.**

(i) Whenever any weapon or part of a weapon forming part of the equipment of a half squadron, battery, company or other similar unit is lost or stolen, the officer commanding the army, army corps, division or independent brigade to which such units belongs may, after obtaining the report of a court of inquiry impose a collective fine upon the junior commissioned officers, warrant officers, non-commissioned officers and men of such unit, or upon so many of them as, in his judgment, should be held responsible for such loss or theft.

(2) Such fine shall be assessed as a percentage on the pay of the individuals on whom it falls.

#### **NOTES**

1. This section authorizes the imposition of collective fine on a company or similar unit for the purpose of enforcing collective responsibility. Such a collective fine must be distinguished from a joint fine based on individual responsibility. The intention of the section is not to permit of the punishment by the fine of persons against whom there is suspicion but insufficient proof to warrant their conviction by court-martial. This section is, in a sense, an exception to the general scheme of AA, under which individual responsibility is the basis for punishment or for penal deduction. The powers granted by this section are, therefore, of an administrative and not judicial character.

2. A collective fine cannot be imposed upon officers.

3. The imposition of a collective fine under this section upon persons of a unit is not a bar to trial by court-martial of any person of that unit, whose individual act or omission may have contributed to the loss.

4. Whenever, a weapon or part of a weapon referred to in this section and AR 186 is lost or stolen, a court of inquiry is mandatory under AR 185.

5. The amount of the fine to be imposed is regulated by AR 186 and the fine must be assessed as a percentage on the pay of the individuals on whom it falls.

Fine cannot be imposed in respect of weapons or parts of weapons not enumerated in AR 186.

### **CHAPER VIII**

#### **PENAL DEDUCTIONS**

**90. Deduction from pay and allowances of officers.** The following penal deduction may be made from the pay and allowances of an officer, that is to say :-

(a) all pay and allowances due to an officer for every day he absents himself without leave, unless a satisfactory explanation has been given to his commanding officer and has been approved by the Central Government.

- (b) all pay and allowances for every day while he is in custody or under suspension from duty on a charge for an offence for which he is afterwards convicted by a criminal court or a court-martial or by an officer exercising authority under section 83 or section 84 ;
- (c) any sum required to make good the pay of any person subject to this Act which he has unlawfully retained or unlawfully refused to pay;
- (d) any sum required to make good such compensation for any expenses, loss, damage or destruction occasioned by the commission of an offence as may be determined by the court-martial by whom he is convicted of such offence, or by an officer exercising authority under section 83 or section 84.
- (e) all pay and allowances ordered by a court-martial to be forfeited or stopped .
- (f) any sum required to pay a fine awarded by a criminal court or a court-martial exercising jurisdiction under section 69.
- (g) any sum required to make good any loss, damage, or destruction of public or regimental property which, after due investigation, appears to the Central Government to have been occasioned by the wrongful act or negligence on the part of the officer;
- (h) any pay and allowances forfeited by order of the Central Government if the officer is found by a court of inquiry constituted by the (Chief of the Army Staff) in this behalf, to have deserted to the enemy, or while in enemy hands, to have served with, or under the orders of the enemy, or in any manner to have aided the enemy, or to have allowed himself to be taken prisoner by the enemy through want of due precaution or through disobedience of orders or willful neglect of duty, or having been taken prisoner by the enemy, to have failed to rejoin his service when it was possible to do so;
- (i) any sum required by order of the Central Government or any prescribed officer to be paid for the maintenance of his wife or his legitimate or illegitimate child or towards the cost of any relief given by the said Government to the said wife or child.

#### **NOTES**

1. (a) AA.s. 25 enjoins, that the pay of any person subject to AA due to him as such under any regulation for the time being in force shall be paid without any deduction other than the deduction authorised by or under this or any other Act.

The term 'pay' means the rate of pay with increases, if any, for length of service, to which a person subject to AA is entitled by reason of his rank, appointment, trade group or trade classification, and includes additional remuneration such as qualification pay, proficiency pay and various forms of additional pay which is admissible only on fulfillment of certain conditions. Regulations may provide for the withdrawal of such additional remuneration if the conditions government them are not fulfilled. All other emoluments are 'allowances'. Also see note 1 to AA.s. 25.

- (b) It is illegal to make deductions which are not authorised and the unlawful withholding of pay is an offence under AA.s. 61.

2. This section and AA.s. 91 enunciate the penal deductions that may be made from the pay and allowances of an officer and a person other than an officer respectively and by implication exclude other penal deductions but they do not prohibit deductions not penal e.g., in respect of rations, or stoppages to meet a public claim or regimental debt or claim etc., under AR 205.

3. Though this section and AA.s. 91 are permissive, some of the penal deductions authorised thereunder have been made mandatory by P & A Regs (Officers) and OR. Penal deductions under clauses (b), (c), (g) (h) and (i) permissive, see para 528 of P & A Regs (Officers)

4. As to remission of penal deductions, see AA.s. 97 and AR 195.

5. Clause (a) - If pay has been discontinued under P & A Regs or has not been drawn during a period of absence without leave, such pay is liable to be forfeited under this clause on the issue of an order by the Central Govt. If pay has been drawn during such a period, the issue constitutes an over-issue and the amount is recoverable as a public claim under AR 205. It is

necessary for an officer to be found guilty of absence by any tribunal before any deductions for the period of absence can be enforced under this clause.

6. Clause (b) – Pay and allowances are issuable to an officer though he is in custody or under suspension from duty on a charge for an offence unless such pay and allowances or any part thereof are directed to be with-held under AA.s. 93, in which case they can be forfeited on his subsequent conviction for that offence. Even though pay and allowances are not so withheld, their issue during such period may constitute an over-issue and the amount may be recovered as a public claim under AR 205.

7. 'Custody' includes custody by the civil authorities.

8. Suspension from duty- see Rega Army para 346. Valid deductions under this clause can only be made if the officer is subsequently convicted of the offence for which he was suspended or kept in custody.

9. clause (c) – It is an offence under AA.s. 61 to detain \pay unlawfully, etc., but it would not appear necessary for an officer is subsequently convicted of the offence for which he was suspended or kept in custody.

10. Clause (d) - 'Occasioned by' In order to put an officer under stoppages by way of penal deductions under wither this clause or clause (g), it is not sufficient to show merely that the loss, etc, was facilitated or made possible by his offence, act, or neglect. It is necessary to show that the loss etc., was "occasioned by" in the sense of being the natural and reasonable consequence of the particular offence of which he is convicted. In the case, however, of the continuing wrongful act of improperly using Govt property, e.g., a motor vehicle, any loss or damage happening of such property during the continuance of such use may be held to be occasioned thereby. Where the loss etc., was merely facilitated or made possible by the offence, it is possible to effect its recovery as a public etc., claim under AR 205 where appropriate.

11. The terms 'expenses' and 'losses' etc., in this clause are not limited to public and regimental funds and property but would also extend to, e.g., loss of wages and doctor's expenses incurred by an individual (servicemen or a civilian), as the direct result of the offence of which the delinquent is convicted. But occasion will rarely arise when it is advisable for a military tribunal to exercise its power of awarding a penal deduction to compensate a civilian who has always his proper legal remedy of bringing a civil action for recovery of damages. Stoppages, however, should be awarded where a charge of theft of or damage to the property of a civilian is dealt with by court-martial or summarily.

A person is not liable for the ordinary expenses of his prosecution, capture or conveyance or indirect expenses of a similar kind. Nor would he be liable under this clause for damage to a policeman's clothes, because the policemen fell down and damaged them while in pursuit of the person endeavouring to escape. Where a person refuses to march, being able to do so, and a taxi has to be hired for his conveyance, he may be held liable for the expense thus incurred by his contumacy; but he would not be liable if intoxicated and incapable of walking.

The principle is that stoppages are intended, not for punishment, but to compensate for the loss etc., sustained.

12. Where an officer has been convicted for an offence by a court-martial which did not award any stoppages, no penal deductions can subsequently be ordered under this clause administratively for compensation for damage caused through that offence.

13. As regards averment in the particulars of the charge of the amount of the loss etc., see AR 30 (6).

14. Clause (e) – Reference to AA.s. 85 is wrong as it deals with a JCO; further stoppages have been covered under clause (d).

A court-martial can award both forfeiture of pay and allowances or arrears thereof and stoppages under clauses (j), (k) and (l) of AA.s. 71 respectively. However, an officer exercising authority under AA.s. 83,84 or 85 can award stoppages and not forfeiture. Therefore, pending statutory amendment this clause be read.

"All pay and allowances ordered by a court-martial to be forfeited.

15. Clause (f) – Fine is not one of the punishments specified in AA.s. 71 and is only awardable by a court-martial when exercising jurisdiction under AA.s. 69.

16. When the fine awarded by court-martial cannot be recovered wholly by deductions from the pay and allowances of an officer, action may also be taken for its recovery under AA.s. 174.

17. Clause (g) - 'Public property' in this clause means not only property of the Govt. but also any property belonging to the community at large as distinct from that which is private property. Captured enemy property becomes public property.

18. The words 'of Public or regimental property' qualify 'loss' and 'damage' as well as destruction. Furniture etc., hired by the military authorities for military use may be treated as "public" or "regimental" property.

19. It must be shown to the satisfaction of the Central Govt, that there has been a loss etc., occasioned by (in the sense referred to in note 10 above) some wrongful act or negligence on the part of the officer; and as a general rule an officer is first afforded an opportunity of advancing any reasons why a deduction should not be made from his pay and allowances.

The Central Govt, can legally impose a penal deduction on an officer under this clause notwithstanding that he has been previously dealt with under AA.s. 83 or 84 or by a court-martial for the wrongful act or neglect but they may not increase a penal deduction awarded by court-martial or other authority, or order such deduction where the loss etc., was averted in the particulars but the court-martial or other authority did not award any stoppages. A mere invitation to an officer to make a payment towards any loss or damage occasioned by his wrongful act or neglect however, does not bar the Central Govt. from making an order under this clause.

20. Negligence has the same meaning as 'omission' or 'neglect' in AA.s. 63, see notes thereto. Also see Regs Army Para 435.

21. Clause (h)

(a) When there is reason to believe that an officer has been taken prisoner by his own voluntary action or willful neglect of duty or that he has served with or under or has aided the enemy, etc., a provisional court of inquiry will be assembled at the earliest moment to investigate the circumstances; see regs Army para 522. The COA or any officer authorised by him may then under AA.s. 96 order the pay and allowances of such person to be withheld pending the result of such inquiry.

A court of inquiry respecting a prisoner of war still absent and not known to have died in captivity will be provisional, to be followed later by another court of inquiry when the individual returns to service or is recovered. If the officer's conduct is found by the court of inquiry (Provisional or otherwise) to be blameworthy, the Central Govt may, on the basis of such finding, order forfeiture of the pay and allowances of the officer. An officer, unlike a JCO, WO or OR, does not automatically forfeit his pay and allowances while a prisoner of war.

(b) When a court of inquiry is assembled on a prisoner of war, evidence shall be recorded on oath or affirmation. AR 81 (a). Also see AR 178.

(c) As to remission of penal deductions; see AA.s. 97 and AR 195(a).

(d) As to provision for dependents of prisoners of war from remitted deductions or from his pay and allowances, see AA.s. 98 and 99 and AR 196.

(e) For the duration for which a person is deemed to be a prisoner of war; see AA.s. 100.

22. Clause (i)

(a) All personnel subject to the Army Act are legally and morally bound to maintain their wives and children whether or not a harmonious relationship exists. This subsection empowers the competent authority to order deduction from pay and allowances of an officer for maintenance of his wife and children. The grant of maintenance allowances under the Army Act is independent of the provisions of section 125 of Code of Criminal Procedure and section 24 of the Hindu marriage Act, 1955.

(b) This sub-section also prevents any financial hardship being caused to the destitute wife and children by the provisions of Section 28 under which pay and allowances of a person subject to the Army Act cannot be attached in satisfaction of any decree of a civil court. In other words, if in a suit for maintenance or payment of alimony, a civil court grants a decree in favour of his wife and/or children, the amount decreed can be deducted from the pay and allowances of the person and paid to the concerned individuals under the executive order of the central Government or the prescribed officer made under this section. Such court proceedings do not ipse fact debar the Army authorities from processing and granting maintenance allowances under the provisions of the Army Act but if a court order to the same effect is passed, it should be given due consideration while dealing with the question of alteration in allowance.

The existing Note 5 to Army Act section 120 be deleted.

**91. Deduction from pay and allowances of persons other than officers.** Subject to the provisions of section 94 the following penal deductions may be made from the pay and allowances of a person subject to this Act other than an officer, that is to say :-

- (a) all pay and allowances for every day of absence either on desertion or without leave, or as a prisoner of war, and for every day of (imprisonment for life) or imprisonment awarded by a criminal court, a court-martial or an officer exercising authority under section 80.
- (b) all pay and allowance for every day while he is in custody on a charge for an offence of which he is afterwards convicted by a criminal court or a court-martial, or on a charge of absence without leave for which he is afterwards imprisoned by an officer exercising authority under section 90.
- (c) all pay and allowance for every day on which he is in hospital on account of sickness certified by the medical officer attending on him to have been caused by an offence under this Act committed by him.
- (d) for every day on which he is in hospital on account of sickness certified by the medical officer attending on him to have been caused by his own misconduct or imprudence, such sum as may be specified by order of the Central Government or such officer as may be specified by that Government.
- (e) all pay and allowances ordered by a court-martial or by an officer exercising authority under any of the sections 80,83 , 84 and 85, to be forfeited or stopped.
- (f) all pay and allowances for every day between his being recovered from the enemy and his dismissal from the service in consequence of his conduct when being taken prisoner by, or while in the hands of the enemy.
- (g) any sum required to make good such compensation for any expenses, loss, damage or destruction caused by him to the Central Government or to any building or property as may be awarded by his commanding officer;
- (h) any sum required to pay a fine awarded by a criminal court, a court-martial exercising jurisdiction under section 69, or an officer exercising authority under any of the sections 80 and 89.
- (i) any sum required by order of the Central Govt, or any prescribed officer to be paid for the maintenance of his wife or his legitimate or illegitimate child or towards the cost of any relief given by the said Government to the said wife or child.

#### NOTES

1. see notes 1 and 2 AA.s. 90.
2. Penal deductions under claused (a), (b), (c) and (f) of this section have been made mandatory; see Rule 51 of P & A Regs (OR). In cases falling under clauses (a), (b) and (c)the pay and allowances are to be forfeited automatically and no discretion is given to the CO to decide whether or not to enforce wholly or partially the forfeiture, but as to remission of such deductions ; see AA.s. 97 and AR 195.

3. Clause (a) – It is unnecessary for a JCO, WO or OR to be found guilty of absence by a court-martial or by his CO before a forfeiture of pay and allowances for the period of absence can be enforced under this clause.

4. A sepoy who has been sentenced by his CO to undergo detention or confinement to the lines under AA.s. 80 does not suffer deductions under this clause.

5. A JCO, WO or OR automatically forfeits his pay and allowances while a prisoner of war and such pay and allowances cannot as a rule be restored to him unless a court of inquiry assembled to inquire into his conduct finds that he was not taken prisoner through neglect or misconduct on his part or that he was otherwise blameless and the authority prescribed in AR 195(c) remits the forfeiture; see AA.ss 98 to 100. ARs 178, 181 and 196 ad regs Army Para 522.

6. A.s. 92 prescribes how days of absence etc., are to be calculated for the purposes of this clause and clause (b).

For instances, if a person absented himself from 9 P.M, on 1st Jun 78 and returned at 2.45 A.M., on 2<sup>nd</sup> Jun 78, he would forfeit no pay as his absence did not amount to six hours or upwards, but he was bound to go on guard or perform some other military duty and in consequence of his absence some other person had to go on guard or perform that duty, then he would forfeit one day's pay;

Again, if a person absents himself at 10 P.M., on the 1<sup>st</sup> Jun 78 and remains absent until 4 A.M., on the 2<sup>nd</sup> Jun 78, he would forfeit one day's pay and if he remained absent until 2 A.M., on the 9<sup>th</sup> Jun 78, he would forfeit nine day's pay, for in the latter case he would be absent for over twelve consecutive hours and the period of absence on the 1<sup>st</sup> and 9<sup>th</sup> would each reckon as absence for one whole day.

7. When the sentence of imprisonment for life or imprisonment is suspended by competent authority under AA.s. 182, no forfeiture under this clause can take place for the period it is so suspended.

8. Clause (b) – See note 6 to AA.s. 90, Effect cannot be given to this provision unless the pay and allowances of a person in custody on a charge for an offence have been ordered to be withheld under AA.s. 93. Once they have been so withheld, the deductions are carried out automatically on conviction for that offence. If pay and allowances are not so withheld, their issue during such period constitutes an over-issue and the amount is recoverable as a public claim under AR 205. JCOs & NCOs under “close arrest” but not in confinement will incur no forfeiture of pay and allowances. For persons below that rank “close arrest” is the same thing as “confinement” and they will forfeit pay and allowances for every day of “close arrest”. See note under Rule 51 (f) of P & A Regs (OR). “Custody” Includes custody by the civil authorities.

9. NCO or sepoy who has been sentenced to any punishment other than imprisonment or field punishment under AA.s. 80 for the offence of absence without leave or a sepoy who is awarded imprisonment or field punishment under AA.s. 80 for an offence other than that of absence without leave does not forfeit his pay and allowances while in custody under this clause.

10. Upon a charge for desertion or absence without leave, a finding that the accused did the act charged but was insane at the time when he did the same, does not amount to a conviction, as it negatives “intention”, and no forfeiture of pay and allowances results. See notes to AA.s. 145.

11. Clause (c).- The deduction under this clause is only authorised where the sickness is caused by an offence of which a person has been found guilty. It, therefore, does not extend to sickness caused by immorality or intemperance, when there is no conviction (either by a court-martial or the officer disposing of the case summarily) for an offence by which the sickness was caused. The medical officer must attend the investigation of the offence, whether before the court-martial or the officer disposing of the case summarily, and give evidence in substantiation of the facts contained in his certificate. Also see Regs Army Para 1228.

12. Clause (d).- See Regs Army Para 1228. The amount to be deducted is specified in P and A Regs (OR).

13. Clause (e).- Forfeiture of pay and allowances or of arrears of pay and any public money due at the time of dismissal can only be awarded by a court-martial under clauses (j) and (k) of AA.s.71 respectively. Such punishments cannot be awarded under AA.s. 80 83, 84 or 85. A CO or specified officer can, however, award deprivation of corps or working pay, forfeiture of good service and good conduct pay or a fine under AAs. 80.

14. (a) Stoppage or compensation cannot be awarded by a court-martial unless the grounds for awarding it are stated in the particulars of the charge and the loss etc, proved in evidence; see AR 30 (6) and notes thereto. Also see note 5 to AA.s. 54, note 16 to AA.s. 71 and 13 of AA.s. 90.

(b) A deduction cannot be effected in anticipation of stoppages.

15. As to the limit of deductions : See AA.s. 94.

16. Clause (f). – A person subject to AA other than an officer forfeits his pay and allowances while prisoner of war under clause (a) read with Rule 51 (c) P and A Regs (OR). See note 5 above. This clause authorize forfeiture of pay and allowances due to such person between the date of his being recovered from the enemy and the date of his dismissal from the service if the court of inquiry assembled under AA.s. 96 and Regs Army Para 522 to inquire into his conduct finds that he was taken prisoner through neglect or misconduct on his part. Also see AA.s. 100.

17. For definition of enemy; see AA.s. 94.

18. Clause (g).- For the meaning of words “expenses” and “losses” etc, see note 11 to AA.s. 90.

19. Caused by – These words have the same meaning as the expression “occasioned by”. See note 10 to AA.s. 90.

These words have also been held to include loss of wages and doctor’s fee when a person’s negligence has occasioned personal injury to a third person.

20. ‘Any Building or property’: The building or property need not be public building or property; the words include the buildings or property of persons subject to AA of civilians, whether there is any claim against the public or not. Thus, a CO may order a person to pay damages for a broken window, or such other minor damage done by him. A case of serious damage is, of course, not one which a CO should dispose of summarily.

21. Where a person has been convicted by a court-martial for an offence, his CO cannot subsequently award compensation for damage caused through that offence. The penal deductions under this clause are purely executory following CO’s award under AA.s. 80 (i).

22. A JCO may be awarded by his CO under this clause. See AA.s. 85.

23. As to the limit of deductions; see AA.s. 94.

24. Clause (h).- See AA.s. 80 (b). The deductions permissible on account of fine under this clause cannot, except where the accused is sentenced to dismissal, exceed in any one month one half of his pay and allowances for that month AA.s. 94.

25. In addition to deduction under this clause, a fine awarded by a court-martial can also be recovered under the provisions of AA.s. 174.

26. Clause (i). – See note 22 to AA.s. 90, which applies mutatis mutandis to this clause.

27. As to extent of deductions, see AA.s. 94.

**92. Computation of time of absence or custody.** – For the purposes of clauses (a) and (b) of section 91.

(a) no person shall be treated as absent or in custody for a day unless the absence or custody has lasted, whether wholly in one day, or partly in one day and partly in another, for six consecutive hours or upwards;

(b) any absence or custody for less than a day may be reckoned as absence or custody for a day if such absence or custody prevented the absentee from fulfilling any military duty which was thereby thrown upon some other person.

(c) absence or custody for twelve consecutive hours or upwards may be reckoned as absence or custody for the whole of each day during any portion of which the person was absent or in custody.



(d) a period of absence or imprisonment, which commences before, and ends after, midnight may be reckoned as a day.

#### NOTES

1. This section explains how a 'day' of absence or custody referred to in clauses (a) and (b) of AA.s. 91 is to be computed.
2. (a) This section prescribes six hours as the minimum period of absence that will count as a day of absence unless two conditions are fulfilled, first, that the absentee was prevented by his absence from fulfilling a military duty, and second, that the duty was thrown upon some other person. Six clear hours must, therefore, elapse, and they must be reckoned consecutively.  
  
(b) If the absence or custody amounts to six hours but not to twenty four hours, one day's pay is forfeited unless the absence exceeds twelve consecutive hours and falls partly on one natural day (reckoned from midnight to midnight) and partly on another, in which case such absence or custody is reckoned for the whole of each natural day during any portion of which the person was absent or in custody.

**93. Pay and allowances during trial.** In the case of any person subject to this Act who is in custody or under suspension from duty on a charge for an offence, the prescribed officer may direct that the whole or any part of the pay and allowance of such person shall be withheld, pending the result of his trial on the charge against him, in order to give effect to the provisions of clause (b) of sections 90 and 91.

#### NOTES

1. Pay and allowances of a person are payable to him even though he is in custody or under suspension from duty on a charge unless the said pay and allowances or any part thereof are withheld by the prescribed authority under this section pending the result of his trial on that charge; unless they are so withheld, the provisions of AA.s. 90(b) and 91(b) will remain ineffectual, but for the recovery of the amount as a public claim under AR 204, see notes 6 and 8 to AA.s. 90 and 91 respectively.
2. The prescribed officer is, in the case of an officer, COAS and in the case of a person other than an officer, the officer empowered to convene a court-martial for his trial. See AR 194.

**94. Limit of certain deductions.** The total deductions from the pay and allowances of a person made under clauses (e), (g) to (i) of section 91 shall not, except where he is sentenced to dismissal, exceed in any one month one-half of his pay and allowances for that month.

#### NOTES

From this section it appears that the intention is to leave a certain minimum proportion of his monthly emoluments to a person, other than an officer, for his subsistence. The restriction imposed, however, does not apply :-

- (a) to deductions under AA.s. 90 from the pay and allowances of an officer; or
- (b) to deductions under clauses (a), (b) (c) and (f) of AA.s. 91; or
- (c) where the offender has been sentenced to dismissal.

**95. Deduction from public money due to a person.** Any sum authorised by this Act to be deducted from the pay and allowances of any person may, without prejudice to any other mode of recovering the same, be deducted from any public money due to him other than a pension.

#### NOTES

1. 'Any public money due to him other than a pension' :-  
  
(a) This will allow the amount to be deducted from a gratuity or other sums earned by but not paid to a person subject to A. It would not include money lodged in a fund of whatever description, nor ration or lodging etc., allowance.

(b) A pension is excluded because being granted as an act or grace it is non-justifiable and the Government can take away or modify its grant (S. 4 of Pension Act 1871 (XXIII of 1871)). Further, a pensioner not being subject to AA is outside the scope thereof.

2. “Without prejudice to any other mode of recovering the same” – for instance, though a fine awarded by a court-martial exercising jurisdiction under AA.s. 69 is recoverable under clause (f) of AA.s. 90 or clause (b) of AA.s. 91, it can also be recovered under the provisions of AA.s. 174.

**96. Pay and allowances of prisoner of war during inquiry into his conduct.** Where the conduct of any person subject to this Act when being taken prisoner by, or while in the hands of. The enemy, is to be inquired into under this Act or any other law, the (Chief of the Army Staff) or any officer authorised by him may order that the whole or any part of the pay and allowances of such person shall be withheld pending the result of such inquiry.

#### NOTE

A JCO, WO or OR automatically forfeits his pay and allowances for the period he is a prisoner of war unless a court of inquiry assembled under Regs Army Para 522 finds that he was not taken prisoner through neglect of misconduct on his part and the forfeiture has been remitted by the competent military authority specified in AR 195(3). In the case of a person other than an officer, therefore, the pay and allowances which may be withheld under this section will relate to the period after he returns or is apprehended. An officer, however, does not automatically forfeit his pay and allowances while a prisoner of war. This section, therefore, provides that the pay and allowances of an officer may be withheld by the CAS or other officer authorised by him, pending the result of an inquiry into the officer’s conduct, if the court of inquiry finds him to be blameworthy, his pay and allowances can then be forfeited by the Central Government. In other words this section was enacted to give effect to the provisions of clause (h) of AA.s. 90 and clause (f) of AA.s. 91 and thus supplements those clauses.

**97. Remission of Deductions.** Any deduction from pay and allowances authorised by this Act may be remitted in such manner and to such extent, and by such authority, as may from time to time be prescribed.

#### NOTES

1. “Prescribed” – See AR 195. The most common case is that of a person absent without leave for a period not exceeding five days. In such a case, unless the person is convicted by a court-martial, his CO may remit the forfeiture of pay and allowances which his absence entails see AA.s. 91 (a).

2. And to such extent – The remission may be partial, but there is nothing to prevent a further remission made subsequently.

**98. Provisions for dependents of prisoner of war from remitted deductions.** In the case of all persons subject to this Act being prisoners of war, whose pay and allowances have been forfeited under clause (h) of section 90 or clause (a) of section 91, but in respect of whom a remission has been made under section 97, it shall be lawful for proper provision to be made by the prescribed authorities out of such pay and allowances for any dependents of such person, and any such remission shall in that case be deemed to apply only to the balance thereafter remaining of such pay and allowances.

#### NOTE

1. Prescribed authorities – See AR 196.

2. If the officer who assembles the court is not one of the prescribed authorities, he should forward the proceedings with his recommendations, to one of those authorities. A court of inquiry on a prisoner of war who is still absent may be assembled in order to assist the authorities prescribed in ARs 195 and 196. In determining respectively whether remission of forfeiture of pay and allowances shall be ordered and if so what provision under this section, shall be made for the dependents of such prisoners of war. A second court of inquiry must be assembled as soon as possible after the return of the prisoner of war. Regs Army para 522 (g).

**99. Provisions for dependents of prisoner of war from his pay and allowances.** It shall be lawful for proper provision to be made by the prescribed authorities for any dependents of any person subject to this Act who is a prisoner of war or is missing, out of his pay and allowances.

## NOTES

1. This section applies where the pay and allowances of a person who is a prisoner of war or is missing have not been forfeited e.g., in the case of a person, other than an officer, who is missing or in the case of an officer who is a prisoner of war or is missing and in whose case a court of inquiry under the Regs Army has not been held or a court of inquiry has been held but the court found the officer blameless.
2. For 1prescribed authorities' see AR 196.
3. Under this section, unlike, AA.s. 98, provision can be made for person's dependents even when such person is found missing.

**100. Period during which a person is deemed to be a prisoner of war.** For the purposes of sections 98 and 99, a person shall be deemed to continue to be a prisoner of war until the conclusion of any inquiry into his conduct such as is referred to in section 96, and if he is cashiered or dismissed from the service in consequence of such conduct, until the date of such cashiering or dismissal.

## CHAPTER IX

### ARREST AND PROCEEDINGS BEFORE TRIAL

#### **101. Custody of offenders**

- (1) Any person subject to this Act who is charged with an offence may be taken into military custody.
- (2) Any such person may be ordered into military custody by any superior officer.
- (3) An officer may order into military custody any officer, though he may be of a higher rank, engaged in a quarrel, affray or disorder.

## NOTES

1. As to arrest and investigation of charges. See ARs 22 to 27 and notes thereto and Regs Army paras 391 to 397, 401 and 402.
2. Sub-sec (1) – Charged with an offence: The charge referred to here is not the formal written charge (AR 28) preferred by the CO when it is decided to send the case for trial but a complaint or accusation that an offence has been committed and which gives rise to the preliminary investigation.
3. Military custody – See AA.s. 3 (xiii).

This expression is here restricted to the military custody of persons when charged with offences and does not apply to persons in military custody when undergoing sentences.

4. Sub-sec (2) - Superior officer; see AA.s. 3(xxiii).
5. Sub-sec (3) – Officer – see AA.s. 3 (xviii).
6. As to offences in relation to this sub-sec see AA.s. 42(a).

#### **102. Duty of commanding officer in regard to detention.**

- (1) It shall be the duty of every commanding officer to take care that a person under his command when charged with an offence is not detained in custody for more than forty eight hours after the committal of such person into custody is reported to him. Without the charge being investigated, unless investigation within that period seems to him to be impracticable having regard to the public service.
- (2) The case of every person, being detained in custody beyond a period of forty eight hours, and the reason thereof shall be reported by the commanding officer to the general or other officer to whom application would be made to convene a general or district court-martial for the trial of the person charged.

(3) In reckoning the period of forty eight hours specified in sub-section (1) Sundays and other public holidays shall be excluded.

(4) Subject to the provisions of this Act, the Central Government may make rules providing for the manner in which and the period for which any person subject to this Act may be taken into and detained in military custody, pending the trial by any competent authority for any offence committed by him.

#### NOTES

1. sub -sec (1) – for definition of CO, see AA.s. 3 (v). A CO who unnecessarily detains a person in arrest or confinement renders himself liable to a charge under AA.s. 50(a).

2. The sub-sec which applies in the case of officers as well a JCOs, WOs and OR, means that the investigation must be commenced within the time specified, though it may be impossible to complete it within that time. As to exclusion of Sundays and public holidays, see sub-sec (3).

3. Sub-sec (2) – The report should be made by letter and should refer specifically to the case, and state the reasons justifying the detention of the accused in custody without investigation. The absence of an important witness would justify a remand; or the accused might be ordered t return to his duty with a specific intimation that his case will be investigated as soon as the absent witness is available.

4. sub-sec (3) – Sundays and other public holidays are excluded when computing the period of forty eight hours referred to in sub-sec (1) though are not so excluded for any other purpose e.g., time reckoned for the purposed f punishment or of any deduction of pay.

**103. Interval between committal and court-martial.** In every case where any such person as is mentioned in section 101 and as is not on active service remains in such custody for a longer period than eight days, without a court-martial for his trial being ordered to assemble, a special report giving reasons for the delay shall be made by his commanding officer in the manner prescribed, and a similar report shall be forwarded at intervals of every eight days until a court-martial is assembled or such person is released from custody.

#### NOTES

1. The intention of this section is to bring the accused to trial as soon as possible and to avoid delays in disposing of cases under AA.

2. AA does not require these reports to be rendered where the accused is on active service.

3. The section applies whether the accused is in open or close arrest.

4. Special report – for form see Appendix III (Party IV) to AR.

The object of this section is that all intervals beyond eight days must be justified by submission of special reports until a court-martial has been ordered to assemble or the person concerned released. AR 27 (3) has been framed under AA.s. 102 (4), in order to render unlawful any detention beyond 2/3 months without a court-martial having been ordered to assemble unless the sanction of the COAS or approval of the Central Govt, as the case may be has been obtained.

**104. Arrest by civil authorities.** Whenever any person subject to this Act, who is accused of any offence under this Act, is within the jurisdiction of any magistrate or police officer, such magistrate or police officer shall aid in the apprehension and delivery to military custody of such person upon receipt of a written application to that effect signed by his commanding officer.

#### NOTE

This section enjoins the civil authorities e.g., a magistrate or a police officer to assist in the arrest and delivery to military custody of a person accused of an offence under AA if within their jurisdiction, upon a requisition signed by his CO.

**105. Capture of deserters.**

(1) Whenever any person subject to this Act deserts, the commanding officer of the corps, department or detachment to which he belongs, shall give written information of the desertion to

such civil authorities as, in his opinion may be able to afford assistance towards the capture of the deserter; and such authorities shall thereupon take steps for the apprehension of the said deserter in like manner as if he were a person for whose apprehension a warrant had been issued by a magistrate, and shall deliver the deserter, when apprehended into military custody.

(2) Any police officer may arrest without warrant any person reasonably believed to be subject to this Act, and to be a deserter or to be traveling without authority, and shall bring him without delay before the nearest magistrate, to be dealt with according to law.

#### NOTES

1. The section lays down the procedure to be followed for apprehending deserters or suspected deserters and for dealing with persons so arrested. For detailed instructions as to action to be taken by the CO, see Regs Army Para 377.

2. This section is a special application of the powers granted to the civil authorities under AA.s. 104.

3. The 'corps' referred to in this section is the corps as defined in AR 187 (3).

Department – see AA.s. 3 (ix).

Detachment – recruiting parties, including enrolled recruits accompanying them under the orders of a RO or ARO, enrolled personnel forming the establishment for the time being, of AOC establishment or ordnance or clothing factory and enrolled personnel forming the establishment, for the time being, of a military hospital are examples of a detachment.

Civil authorities – This includes political and police authorities.

4. Sub-sec (2) – This sub-sec does not make the man's desertion a civil offence punishable by a criminal court.

#### **106. Inquiry into absence without leave.**

(1) When any person subject to this Act has been absent from his duty without due authority for a period of thirty days, a court of inquiry shall, as soon as practicable, be assembled, and such court shall, on oath or affirmation administered in the prescribed manner inquire respecting the absence of the person, and the deficiency, if any, in the property of the Government entrusted to his car, or in any arms, ammunition, equipment, instruments, clothing or necessaries; and if satisfied of the fact of such absence and the period thereof, and the said deficiency, if any, and the commanding officer of the corps or department to which the person belongs shall enter in the court-martial book of the corps or department a record of the declaration.

(2) If the person declared absent does not afterwards surrender or is not apprehended, he shall, for the purposes of this Act, be deemed to be a deserter.

#### NOTES

1. For procedure of courts of inquiry held under this section, see AR 183.

2. In the event of a person subject to AA being absent without leave for a period of 30 clear days, a court of inquiry must be assembled at once, unless before such court of inquiry has been assembled it has come to the knowledge of the person's CO that he has been apprehended or has surrendered or that he was involuntarily absent (e.g., in prison). In that case no court of inquiry will be held and the fact of his absence and of the deficiency (if any) of his clothing, etc., must be proved by oral evidence at any subsequent who has failed to attend for training, etc., see Rule 9 of the Indian Reserve Forces Rules, 1925 (Part III).

3. In calculating the period of 30 days, the day on which the person became absent and the day on which the court of inquiry assembled must both be excluded. If the court of inquiry assembles a day too soon, the record of its declaration is not admissible in evidence as an entry has not made in the regimental books in accordance with AA.s. 142 (3). The person, however, should be declared illegally absent and charged with absence as from the day on which absence commences.

4. Prescribed manner – See ARs 183 and 140. Evidence must be taken on oath or affirmation.

5. Before declaring any deficiency of arms, etc., the court of inquiry will satisfy itself by evidence that the absentee was in possession of the missing articles within a reasonable period before the date of absenting himself. It will record the values of the unexpired wear of all articles of Government property including arms, equipment, public clothing, etc., found to be deficient.

6. The property of Government entrusted to his care – ie., Government property issued to him for his use or entrusted in his care for military purposes.

A court of inquiry under this section does not inquire respecting a deficiency of public money or stores which had been in the absentee's charge

7. The declaration of the court of inquiry should contain the date and place from which the person absented himself, the date of the deficiency (if any) of clothing, etc., and the place where it occurred. Under AR 182 and this section the witnesses will be sworn/affirmed, but not the members of the court of inquiry. As to the form of declaration, see notes to AR 183; the actual values of missing articles will be stated.

8. In order to make the record admissible in evidence it must be a record in the regimental books of the unit to which the person belonged at the time of the holding of the court of inquiry and entered by the then CO (AA.s. 142(3)). The actual proceedings of the court of inquiry (which ought, under AR 182, to be destroyed as soon as its declaration is recorded in the regimental books) are not admissible in evidence.

The record of the finding of the court of inquiry will be admissible, notwithstanding that the person had already surrendered or been apprehended, provided that such surrender or apprehension had not come to the knowledge of his CO when the court of inquiry assembled.

9. As soon as the declaration of illegal absence has been made and recorded the person is struck off the strength of the unit as a deserter, but he does not thereby cease to belong to the corps in which he is enrolled; see Regs Army Para 376.

10. When a person, who has been 'struck off' as a deserter rejoins, the CO, if satisfied that the evidence does not justify a charge of desertion, may legally deal with the case as one of absence without leave.

11. As to disposal of deserter's property, see Army and Air Force (Disposal of Private property, Act, 1950 (Part III)).

12. As to the period of limitation for trial, see AA.s. 122.

13. This section and AR 183 do not apply to the enrolled persons of the TA, when subject to AA. see AA.s. 2(1)(e); Rule 24 of the TA Rules, 1948 and scheduled II to Rule 24.

## **107. Provost marshals.**

(1) Provost-marshals may be appointed by the (Chief of the Army Staff) or by any prescribed officer.

(2) The duties of a provost-marshal are to take charge of persons confined for any offence, to preserve good order and discipline, and to prevent breaches of the same by persons serving in, or attached to, the regular Army.

(3) A provost-marshal may at any time arrest and detain for trial any person subject to this Act who commits, or is charged with, an offence and may also carry into effect any punishment to be inflicted in pursuance of the sentence awarded by a court-martial, or by an officer exercising authority under section 80 but shall not inflict any punishment on his own authority'

Provided that no officer shall be so arrested or detained otherwise than on the order of another officer.

4. For the purposes of sub-sections (2) and (3), a provost-marshal shall be deemed to include a provost-marshal appointed under any law for the time being in force relating to the Government of the Navy or Air Force, and any person legally exercising authority under him or on his behalf.

## NOTES

1. For definition of a 'provost –marshal', see AA.s. 3(xx). So far as his duties and powers are concerned, a 'provost-marshal' is also deemed to include a provost-marshal appointed under naval and air force law or any person legally exercising authority under him or on his behalf, see sub-sec 4.

2. 'Prescribed office' see AR 197.

3. It is an offence under AA.s. 42 (f) to impede the provost-marshal or any person, lawfully acting on his behalf or to refuse to assist the provost-marshal or person lawfully acting on his behalf.

4. AR 175 enjoins upon a provost-marshal to supervise the carrying out of the sentence of field punishment when such sentence cannot be carried out regimentally.

Under AR 39(3) a provost-marshal or assistant provost-marshal is disqualified from serving as a member of a GCM or DCM. Similarly, AR 151 (3) prohibits the provost-marshal or his assistant from sitting as members of the SGCM. An officer, who is serving with the corps of Military Police, should not normally sit as a member of any court-martial.

5. A provost-marshal or any officer working under him may, at any time, arrest and detain for trial any person subject to AA (Even though superior in rank) who commits or is charged with an offence. However, vide proviso to sub-sect (3), an officer can be arrested or detailed only on the order of another officer. Similarly, though any member of the Corps of Military Police can legally arrest a JCO, a JCO should not be so placed in arrest except under orders of an officer or another JCO of the Corps of Military Police.

## CHAPTER X

### COURTS-MARTIAL

**108. Kinds of courts-martial-** For the purposes of this Act there shall be four kinds of courts-martial, that is to say:-

- (a) general courts-martial;
- (b) district courts-martial;
- (c) summary general courts-martial;
- (d) summary courts-martial;

For purposes of easy reference, provisions dealing the convening, composition etc., of the four types of courts-martial are tabulated below :-

	Convening AA.s.	Composition AA.s.	powers AA.s.	Confirmations AA.s.
GCM	109	113	118	154
DCM	110	114	119	155
SGCM	112	115	118	157
SCM	..	116	120	No confirmation required but see AA.s. 161 (2)

**109. Power to convene a general court-martial.-** A general court-martial may be convened by the Central Government or the (Chief of the Army Staff)<sup>1</sup> or by any officer empowered in this behalf by warrant of the (Chief of the Army Staff).<sup>1</sup>

## NOTES

1. For form of warrant, see Part IV. The 'A1' warrant is at present, issued by the COAS to officers Commanding Army, Corps, Division/Area and Independent Brigade and to officers prescribed by the Central Government under AA.s. 8.
2. When a warrant has been issued and its contents communicated to the addressees, he can act upon it before it actually reaches him. It follows that he cannot act after he has received notification that the warrant has been revoked though he may not have received the actual order.
3. (a) In granting a warrant, it should be clearly shown that during the absence of the officer to whom such warrant is issued, the powers therein conferred may be exercised by the officer on whom the command devolves, if he is not under a specified rank. It is, therefore, common to address such a warrant to an officer by designation of his office and not by name.  
  
(b) If the officer on whom the command devolves is the CO of the person to be tried or an officer who has investigated the case, he cannot (except on board a ship or in such special cases as may be determined by the Central Government) afterwards act as convening officer in the same case, but must refer it to a superior authority. See Regs Army Para 449 (b).
4. An officer cannot convene or confirm a court-martial held outside the territorial limits of his command; but an officer having power to convene a GCM at a port of embarkation can issue a warrant to the OC of the troops on board a ship empowering the latter to convene and confirm, on board the ship, during the period of the voyage, DCM in respect of a person under his command, who is subject to AA. The warrant thus given should be granted for the period of the voyage only, and will become inoperative as soon as the troops reach the port of disembarkation.
5. As to the duty of an officer before convening a court, see AR 37.

**110. Power to convene a district court-martial.**- A district court-martial may be convened by an officer having power to convene a general court-martial or by any officer empowered in this behalf by warrant of any such officer.

## NOTES

1. For form of warrant, see Part IV 'B-1' warrant which empowers the holder thereof to convene as well as confirm the findings and sentences of DCsM is at present, issued to Sub Area/ Brigade Commanders by the officers empowered to convene a GCM. Such a warrant, has also been issued to officers prescribed by the Central Government under AA.s. 8.
2. also see notes 2 to 5 to AA.s. 109.

**111. Contents of warrants issued under section 109 and 110.**- A warrant issued under section 109 or section 110 may contain such restrictions, reservations or conditions as the officer issuing it may think fit.

**112. Power to convene a summary general court-martial.**- The following authorities shall have power to convene a summary general court-martial namely :-

- (a) an officer empowered in this behalf by an order of the Central Government or of the (Chief of the Army Staff);<sup>1</sup>
- (b) on active service, the officer commanding the forces in the field, or any officer empowered by him in this behalf.
- (c) an officer commanding any detached portion of the regular Army on active service when, in his opinion, it is not practicable, with due regard to discipline and the exigencies of the service, that an offence should be tried by a general court-martial.

## NOTES

1. The object of this section is to provide for the speedy trial of offences committed abroad or on active service in cases where it is not practicable, with due regard to the interests of



discipline and of the service, to try such offences by an ordinary GCM or DCM. A SGCM can try any offence committed on active service but when troops are not on active service it can only be convened by an officer empowered in this behalf by an order of the Central Government or of the COAS.

2. The court can be convened by an officer commanding under clause (c) without a warrant or authorisation. For definition of 'regular Army': see AA.s. 3 (xxi). Frequently, limitations are imposed by general orders if the Commander of the Forces as to who shall convene such courts.

3. If troops on board a ship are on active service, the OC troops can convene a SGCM for trial of an offender on board.

4. For definition of active service, see AA.s. 3(i). Also see AA.s. 9.

### **ORDER OF THE CHIEF OF ARMY STAFF FOR CONVENING SUMMARY GENERAL COURT-MARTIAL**

To,

THE OFFICER NOT BEING UNDER THE RANK OF A FIELD OFFICER COMMANDING THE PUNJAB, HARYANA AND HIMACHAL PRADESH (INDEPENDENT) SUB AREA.

In pursuance of the provisions of Section 112 (a) of the Army Act, 1950 (XLVI of 1950), I do hereby empower you, or the officer on whom your command may devolve during your absence, not under the rank of Field Officer, from time to time, as occasion may require, to convene Summary General Court-Martial for the trial, in accordance with the said Act and the Rules made there under, of any Military Nursing Service Officer under your Command who is subject to Military Law and is charged with any offence mentioned in the said Act, and is liable to be tried by a Summary General Court-Martial.

And for so doing, this shall be, as well to you as to all others whom it may concern, a sufficient authority.

Given under my hand at New Delhi this Eleventh day of May 2004.

Sd/- x x x x  
(NC Vij)  
General

**113. Composition of general court-martial.**- A general court-martial shall consist of not less than five officers, each of whom has held a commission for not less than three whole years and of whom not less than four are of a rank not below that of captain.

#### **NOTES**

1. For definition of 'officer' see AA.s. 3(xviii).

2. Number of officers.-

(a) A convening officer can increase beyond the legal minimum the number of officers to sit on a court-martial, but cannot decrease the number below the minimum; he must therefore take care to convene a court with not less than the minimum, otherwise the proceedings are void. See also AA.s. 117 (1). It is desirable that every court should consist of an uneven number of officers.

(b) If originally more than the legal minimum sat and during the trial one was incapacitated by illness etc, the court could proceed with the trial provided the number did not fall below the legal minimum. The member who retired through sickness etc, cannot, of course, take his place when he recovers or is available once the court has sat without him. See AR 86.

(c) "Waiting" members can be detailed to replace absentees, or members successfully challenged (AR 44), before the court is sworn/affirmed but if a waiting member sits in addition to all the members detailed, and not in place of an absentee etc, the court will be improperly constituted.

(d) If before the accused is arraigned, the full number of officers detailed are not available to serve and a sufficient number of waiting members have not been detailed, the court shall ordinarily adjourn unless it is of opinion that in the interests of justice and for the good of the service, it is inexpedient so to adjourn or unless it is reduced in number below the legal minimum (AR 38 (1) ).

3. Service.- A court would have no jurisdiction if each member had not held a commission for the required period, or if its composition differed in any respect from that detailed in the convening order. Any period during which an officer has held a commission in any of the three services shall count as commissioned service for this purpose, but no account shall be taken of an ante-date of seniority.

4. Rank.- Not less than four officers must be of the rank of Captain or above. Further, no officer below the rank of Captain can be member of a court-martial for the trial of a field officer (AR 40 (3) ).

5. As to the composition of GCsM and DCsM generally see ARs 39 and 40 and Regs Army Para 459.

6. (a) The presiding officer of the GCM, DCM or SGCM is not detailed in the convening order but the senior member sits as the presiding officer (AA.s. 128).

(b) The members and waiting members of the court may be detailed by name or by their ranks and units to which they belong, and in case where units to which they belong, and in case where units cannot be specified they should be named.

**114. Composition of district court-martial.-** A district court-martial shall consist of not less than three officers, each of whom has held a commission for not less than two whole years.

#### NOTES

1. See notes to AA.s. 113.

2. There is no statutory requirement as to the rank of a member of a DCM, but see Regs Army Para 459 (d).

**115. Composition of summary general court-martial.-**A summary general court-martial shall consist of not less than three officers.

#### NOTES

1. See notes 1,2 and 6 to AA.s. 113.

2. (a) Though there is no statutory requirement as to the rank of service of a member of SGCM, officers appointed or detailed as members should have held commission for not less than one year and if any officers with commissioned service of not less than three years are available, they should be selected in preference to officers of less service (AR 151 (2)).

(b) Any available officer, other than the provost-marshal, assistant provost-marshal, a prosecutor or witness for the prosecution may be appointed a member of the court. AR 151 (3). For instance, the convening officer can himself be a member of the court, but see AR 164 which makes inter-alia AT 74 (member or prosecutor not to confirm proceedings) applicable, so far as practicable, to a SCM.

**116. Summary court-martial.**

(1) A summary court-martial may be held by the commanding officer of any corps, department or detachment of the regular Army, and he shall alone constitute the court.

(2) The proceeding shall be attended throughout by two other persons who shall be officers or junior commissioned officer or one of either, and who shall not as such be sworn or affirmed.

#### NOTES

1. Sub-sec (1) - 'Commanding officer'-

(a) see AA.s. 3(v).

(b) A medical officer commanding a hospital or other medical unit is the “Commanding Officer” of medical personnel under his command and is also, for the time being, the “Commanding Officer” of a person subject to AA not belonging to the medical, who is a patient in, or is employed in, that hospital or medical unit and may either himself dispose of a charge against such person or refer it for disposal, after the person has left the hospital or medical unit, to the officer commanding the corps, department or detachment to which such person belongs or is attached by the medical officer in charge of a regimental medical establishment or of any person who is a patient in, or is employed in, the medical unit to which that establishment belongs.

(c) An officer of the Indian Navy or the Air Force may become a CO of a person subject to AA when such person is serving under conditions prescribed in AR 188.

2. Corps – see AR 187 (3).

Department – see AA.s. 3(ix).

Detachment – means every separate body of persons subject to AA which is not a corps or department ; see note 3 to AA.s. 105.

3. Sub-sec (2)

(a) For definition of ‘officer’ and, ‘JCO’. See AA.s. 3(xviii) and (xii) respectively.

(b) Unless two officers or JCOs or one of either attend the trial throughout the court will have no jurisdiction. Such officers or JCOs, who cannot take part in the proceedings as such, need not, however, belong to the unit of the accused.

4. If the CO does not himself take the interpreter’s oath, one of the officers or JCOs attending the trial may be appointed interpreter. He may legally combine this duty with attendance at the trial under this section.

5. See Regs Army para 381 for the circumstances under which a CO of a different unit may hold the trial by SCM of a person subject to AA.

#### **117. Dissolution of courts-martial.**

(1) If a court-martial after the commencement of trial is reduced below the minimum number of officers required by this Act, it shall be dissolved.

(2) If, on account of illness of the judge advocate or of the accused before the findings, it is impossible to continue the trial, a court-martial shall be dissolved.

(3) The officer who convened a court-martial may dissolve such court-martial if it appears to him that military exigencies or the necessities of discipline render it impossible or inexpedient to continue the said court-martial.

(4) Where court-martial is dissolved under this section, the accused may be tried again.

#### **NOTES**

1. “shall be dissolved” – Apart from the conditions laid down in this section. In which the court must be dissolved, a court always has the power to adjourn (AR 82) and report to the convening officer when something has occurred, which, in the opinion of the court, makes it improper or undesirable that it should continue to hear the case, e.g., if through inadvertence a previous conviction of the accused for a similar offence had been brought to the notice of the court before the finding, In such a case the convening officer, if he agrees with the opinion of the court, may dissolve it and convene a fresh court (AR 83). The members who sat on the dissolved court will be ineligible to sit on the fresh court (AR 39 (2)(c)).

2. Sub-sec (1) – The trial is for the purposes of this section, held to have commenced when the accused is arraigned. See ARs 48, 85 and 86.

3. Sub-sec (2) – Illness of the accused or the JA- A medical certificate should always, where possible, be obtained, stating that the illness of the accused/JA renders his presence in court

impracticable or dangerous to himself or others; it will also state the medical officer's opinion as to when the accused/JA will be able to be present. See ARs 84 and 104.

4. Impossible to continue – This means to continue within a reasonable time having regard to all the circumstances.

5. Sub-sec (4) – It may frequently be inexpedient to convene a fresh court for a re-trial under this sub-sec, especially where the accused has been for some time under arrest or in confinement.

**118. Powers of general and summary general courts-martial.** A general or summary general court-martial shall have power to try any person subject to this Act for any offence punishable therein and to pass any sentence authorised thereby.

#### NOTE

When the court has a discretion whether to pass sentences of death or not, a sentence of death cannot be so passed by a GCM without the concurrence of at least two-thirds of the members or by a SGCM without the concurrence of all members of the court (AA.s. 132 (2) and (3)).

**119. Power of district courts-martial.** A district court-martial shall have power to try any person subject to this Act other than an officer or a junior commissioned officer for any offence made punishable therein, and to pass any sentence authorised by this Act other than a sentence of death, (imprisonment for life), or imprisonment for a term exceeding two years.

Provided that a district court-martial shall not sentence a warrant officer to imprisonment.

#### NOTE

Powers of a DCM are limited in as much as it has no jurisdiction to try an officer or a JCO nor can it pass a sentence of death, imprisonment for life or imprisonment over two years. If such a court, therefore, passes a sentence of death or imprisonment for life or sentences a WO to imprisonment, it will be wholly illegal and must be sent back for revision by the confirming officer (AA.s. 160 and AR 68) and if wrongly confirmed action should be taken under AA.s. 163 to substitute a valid sentence. However, a sentence of imprisonment for a period of three years to a NCO or sepoy being in excess of the punishment authorised by law can be varied by the confirming officer to a sentence authorised bylaw, i.e., imprisonment not exceeding two years and confirmed (AR 73 and notes thereto).

**120. Powers of summary courts-martial.**

(1) Subject to the provisions of sub-section (2), a summary court-martial may try any offence punishable under this Act.

(2) 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 not try without such reference any offence punishable under any of the sections 34, 37 and 69, or any offence against the officer holding the court.

(3) A summary court-martial may try any person subject to this Act and under the command of the officer holding the court, except an officer; Junior commissioned officer or warrant officer.

(4) A summary court-martial may pass any sentence which may be passed under this Act, except a sentence of death or (imprisonment for life) or of imprisonment for a term exceeding the limit specified in sub-section (5).

(5) The limit referred to in sub-section (4) shall be one year if the officer holding the summary court-martial is of the rank of lieutenant-colonel and upwards and three months if such officer is below that rank.

#### NOTES

1. The discipline of the regular Army depends in a great measure on the SCM. When a person amenable to AA has committed an offence which is ordinarily triable by SCM, a CO when determining by what court the accused is to be tried, must bear in mind that the legislature, in conferring upon him the power of a SCM, intends that he shall exercise those powers.

2. Sub secs (1) and (2)

(a) Though a SCM may, subject to the provisions of sub sec (2), try an offence punishable under AA, it is obvious that its powers of punishment are insufficient for many of the graver offences known to military law. COs should, therefore, notwithstanding the increased powers of summary trial vested in them, submit to higher authority any cases which appear to require more exemplary punishment than a SCM can award. It should, however, be remembered that even a comparatively slight punishment promptly inflicted is often more deterrent than a heavier one which follows long after the offence.

(b) The CO is the best and sole judge, at the time, of the necessity which justified him in trying, without reference, cases which should ordinarily be tried only after reference and sanction. If it should subsequently appear to superior authority that his action was not justified, this should merely be viewed as a grave irregularity for which the CO may be held responsible but it does not affect the legality of the finding or sentence, nor, in ordinary circumstances, furnish reason for setting aside the trial, in whole or in part. Where, however, the officer holding the trial loses sight of the law, and tries without considering whether an emergency exists or not, the trial is illegal. See AR 130 for certificate to be attached to the proceedings 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 DCM, or, on action service, a SGCM.

(c) The offences which are not ordinarily triable by a SCM without reference and sanction are : offences punishable under AA.ss. 34, 37 and 69 and offences against the officer holding the court.

(d) Offence against the officer holding the trial. It is difficult to lay down a definite rule in this matter, but, speaking generally, a consideration of personal interest which would suffice to disqualify an officer to sit as a member of a GCM or DCM debars him from holding a SCM (save in case of emergency) without previous reference. Offences under AA. ss. 40 and 41 when committed towards a CO fall under this category, and should not, except in case of emergency, be tried by SCM without previous reference to the officer empowered to convene a DCM (or on active service a SGCM) for the trial of the alleged offender. Theft or misappropriation of property of which a CO is either part-owner or trustee (e.g., mess or regimental property) should not, except as aforesaid, be tried by SCM without such reference. The reasons behind this restriction are :

(i) It is most undesirable that an offence against an individual should be tried by that individual, and the reason for immediate action would require to be unusually weighty to justify the provision as to reference to higher authority being disregarded when the offence is one against the officer holding the trial.

(ii) At a trial by SCM the officer holding the trial cannot himself give evidence against an accused person appearing before him, except evidence of a formal character such as the production of documents. But see AR 123 which authorises the court to record "of its own knowledge" certain facts for guidance in determining the sentence. If he gives formal evidence, he must be sworn/affirmed as a witness.

Where it is necessary for the CO if the accused to give material evidence for the prosecution, he should apply for a DCM so as to secure an impartial trial.

3. sub-sec (3) – A SCM can only try a NCO or a sepoy.

4. Under the command of the officer holding the court – An officer holding the court, i.e., the CO of a unit cannot try a NCO or a sepoy by SCM unless such person is under his command, e.g., belongs to that unit on the date of trial. The only two exceptions to this rule are, in the case of trial of deserters or absentees without leave and in cases where such a person is a patient in a hospital Regs Army Para 381 and 443 refers.

5. Deleted.

6. Sub-secs (4) and (5)- The maximum punishment awardable by a SCM is imprisonment for one year if the officer holding the court is of the rank of Lt Col and above and for three months if such an officer is below that rank.

7. As to the principles to be observed by a SCM in awarding sentence, see notes to AA.s. 169 and Regs Army para 44.

**121. Prohibition of second trial.** When any person subject to this Act has been acquitted or convicted of an offence by a court-martial or by a criminal court, or has been dealt with under any of the sections 80, 83, 84 and 85, he shall not be liable to be tried again for the same offence by a court-martial or dealt with under the said sections.

#### NOTES

1. Finding of a GCM, SGCM or DCM, if not confirmed is of no validity, in such case, therefore, the accused has not been acquitted or convicted, and may legally be tried again; see AA.s. 153; but re-trials should rarely be resorted to, and only when the needs of discipline and justice demand that an offender shall not escape punishment on account of a legal technicality. Re-trial should not be ordered until the DJAG of the command has been consulted and the sanction of superior authority obtained.

2. Where a court is not legally constituted and has no jurisdiction- as for example, if the convening order is signed by or on behalf of an officer not authorised to convene such a court, or if the number of officers composing the court is below the legal minimum required for that type of court, or if unqualified officers sit- it is no court at all. The accused will not have been really tried and may be tried again, even though the proceedings of such illegally constituted court have been inadvertently confirmed.

Where, however, a conviction is confirmed and then quashed, not for improper constitution of the court, but because the trial was unsatisfactory- e.g., because evidence was improperly admitted – the accused has stood a trial and cannot be tried again.

3. It is a general principle of law- also incorporated as a fundamental right in Art 20 of the constitution – that a person cannot be tried twice in respect of the same offence; but the application of the rule is not always easy. Where the same incident, or set of incidents, given rise to two trials, the test of whether the offence is “the same” offence would appear to be this: Could the accused have been lawfully convicted at the first trial? If so, the second trial is illegal and void. Thus, on a charge of desertion, a person could by virtue of AA.s. 139 (1) be convicted of absence without leave; if he is acquitted generally, the acquittal applies to both offences and he cannot subsequently be charged with absence (upon the same facts); if, however, the court while acquitting him of desertion; convicts him of absence, and this finding is not confirmed, he has not been acquitted of absence, and can be charged again with that offence.

4. Where a person is re-tried on the same charge, it is not usual to impose a more severe punishment than that awarded on the first trial, and a confirming officer should exercise his powers of mitigation, etc., when confirming the proceedings, if a greater punishment has been awarded on the second trial.

5. Where a new trial is ordered, no officer may serve on it who sat on the former court; AR 39 (2)(c).

6. The section merely prohibits a second trial by court-martial or being dealt with under AA.s. 80, 83, 84 and 85 but the civil law remains supreme and a person acquitted or convicted by a court-martial or dealt with under AA.s. 80, 83, 84 or 85 can be tried again by a criminal court for the same offence or on the same facts; see AA.s. 127 and notes.

7. See ARs 53(1) and 114, which provide that a plea in bar of trial may be raised on this ground.

## 122. Period of Limitation for trial.

(1) Except as provided by sub-section (2), no trial by court-martial of any person subject to this Act for any offence shall be commenced after the expiration of a period of three years and such period shall commence :-

(a) on the date of the offence; or

(b) Where the commission of the offence was not known to the person aggrieved by the offence or to the authority competent to initiate action, the first day on which such offence comes to the knowledge of such person or authority, whichever is earliest ; or

(c) Where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the action, whichever is earlier.

(2). The provisions of sub-section (1) shall not apply to a trial for an offence of desertion or fraudulent enrolment or for any of the offences mentioned in section 37.

(3). In the computation of the period of time mentioned in sub-section (1), any time spent by such person as a prisoner of war, or in enemy territory, or in evading arrest after the commission of the offence, shall be excluded.

(4) No trial for an offence of desertion other than desertion on active service or of fraudulent enrolment shall be commenced if the person in question, not being an officer, has subsequently to the commission of the offence, served continuously in an exemplary manner for not less than three years with any portion of the regular Army.

### NOTES

1. Sub-secs (1) and (2)

(a) The effect of this section is that on the expiration of three years from the commission of the offence – the period of three years to be computed in accordance with sub-sec (3)- the offender is free from being tried or punished under AA by Court-martial for any offence except those mentioned in AA.s. 37, desertion or fraudulent enrolment. It follows that where an accused person is charged with desertion commencing on a date more than three years before his trial begins, he cannot be found guilty under AA.s. 139 (1) of absence without leave from that date, but such absence must be restricted to a period not exceeding three years immediately prior to the commencement of the trial. Where, however, such a finding and sentence has been wrongly confirmed, the authorities specified in AA.s. 163 may substitute a valid finding and pass a sentence for the offence specified or involved in such finds.

(b) A plea in bar of trial may be raised on this ground : AR 53 (1) (c).

2. The section, does not prohibit deductions being ordered from his pay and allowances under AA.s. 90(a), (c), (g) and (h) or 9(a), (f) and (g) even though the period of limitation for trial has expired. Though the section specifically stipulates the period of limitation for trial by court-martial, the same principle would equally apply to summary disposal of offences under AA.s. 80, 83, 84 or 85.

3. (a) Offences mentioned in AA.s. 37 and desertion on active service can be tried at any time by a court-martial. For desertion not on active service and fraudulent enrolment, a person, not being an officer, cannot be tried if he has since served continuously in an exemplary manner for not less than three years with any portion of the regular Army. See sub-sec (4).

(b) A person is considered as having served in an exemplary manner if at any time during his service subsequent to the commission of the offence he has had not red ink entry in this conduct sheet for a continuous period of three years (Regs Army para 465). For 'red ink entries' see Regs Army Paras 386 and 387 (b).

4. (a) An 'offence' includes a 'civil offence' as defined in AA.s. 3(ii); see AA.s. 3(xvii), where, therefore, a person subject to AA has committed a civil offence and his trial by court-martial is barred under this section, he may be handed over to the civil authorities to be dealt with according to law as a civil offence is triable by a criminal court at any time.
5. For forfeiture of service in the case of desertion and fraudulent enrolment, see Regs Pension Regs 123.
6. Sub-sec (3) : The period of three years referred to in sub-sec (1) is extended by any time spent by the offender as a prisoner of war, or in enemy territory or in evading arrest after the commission of the offence; for instance, if a person absconds immediately after misappropriating Govt of regimental funds and later surrenders or is apprehended after the expiry of three years, he can still be tried by a court-martial, the period during which he had absconded being ignored.
7. 'Enemy territory' means any area, at the time of presence therein of the person in question, under the sovereignty of or administered by or in the occupation of a state at that time at war with the Union.
8. Sub-sec (4) - 'On active service' see AA.ss. 3(i) and 9.
9. See note 3(b) above. This exemption does not apply to an officer.
10. 'Regular Army' see AA.s. 3 (xxi).

### **123. Liability of offender who ceases to be subject to Act.**

(1) Where an offence under this Act had been committed by any person while subject to this Act, and he has ceased to be so subject, he may be taken into and kept in military custody, and tried and punished for such offence as if he continued to be so subject.

(2). No such person shall be tried for an offence, unless his trial commences within a period of three years after he had ceased to be subject to this Act; and in computing such period, the time during which such person had avoided arrest by absconding or concealing himself or where the institution of the proceeding in respect of the offence has been stayed by an injunction or order, the period of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

Provided that nothing contained in this sub-section shall apply to the trial of any such person for an offence of desertion or fraudulent enrolment or for any of the offences mentioned in section 37 or shall affect the jurisdiction of a criminal court to try any offence triable by such court as well as by a court-martial.

(3) When a person subject to this Act is sentenced by a court-martial to (imprisonment for life) or imprisonment, this Act shall apply to him during the term of his sentence, though he is cashiered or dismissal from the regular Army, or has otherwise ceased to be subject to this Act, and he may be kept, removed, imprisoned and punished as if he continued to be subject to this Act.

(4) When a person subject to this Act is sentenced by a court-martial to death, this Act shall apply to him till the sentence is carried out.

### **NOTES**

1. This section meets the case of a person who commits an offence against AA whilst subject to it, and then ceases to be subject to it. Such cases will occur, for example, when an officer relinquishes his commission or is dismissed or when a JCO, WO and OR is discharged.
2. (a) Such a person though he has ceased to be subject to AA even before discovery of the offence may nevertheless be arrested, tried and punished just as if he were still so subject but he can only be tried within six months after he has ceased to be so subject; the six months will not be deemed to have expired if the trial has commenced within that period. An exception has been made in the case of desertion, fraudulent enrolment and offences mentioned in AA.s. 37, for which he can be tried at any time subject to the restrictions in AA.s. 122. Further, a criminal court can try such offence, if triable by it as well as a court-martial, though the offence is no longer triable by a court-martial under sub-sec (2).



(b) When the six months have once expired, the offender is protected and his liability is not revived in respect of the earlier offence, by his again becoming subject to AA.

3. Sub-sec (3) – Under this sub-sec, which deals with the case of a person subject to AA who is tried and sentenced to imprisonment for life or imprisonment to be undergone in a civil prison. AA applies to such a person during the term of his sentence, notwithstanding that his cashiering or dismissal from the service has been formally carried out, or that he had otherwise ceased to be subject to AA. Consequently he may be tried by court-martial for an offence committed by him while under sentence at any time before his sentence is completed or he may be kept in or removed to military custody and made to undergo his sentence there although the sentence is one to be undergone in a civil jail. Also see AR 168.

**124. Place of trial.** Any person subject to this Act who commits any offence against it may be tried and punished for such offence in any place whatever.

#### NOTES

1. 'Any place whatever' means any place in which the offender may for the time being be and which is within the jurisdiction of an officer authorised to convene a court-martial for his trial as if the offence had been committed where the trial place and the offender were under the command of the officer convening such court.

2. The section enables a court-martial convened in India to try a person for an offence committed elsewhere and vice versa. See Regs Army para 452 (c).

**125. Choice between criminal court and court-martial.** When a criminal court and a court-martial have each jurisdiction in respect of an offence, it shall be in the discretion of the officer commanding the army, army corps, division or independent brigade in which the accused person is serving or such other officer as may be prescribed to decide before which court the proceedings shall be instituted, and if that officer decides that they should be instituted before a court-martial, to direct that the accused person shall be detained in military custody.

#### NOTES

1. (a) For definition of 'criminal court' and 'court-martial' see AA.s. 3(viii) and (vii) respectively.

(b) All civil offences can be tried by a court-martial (subject to the provisions of AA.s. 70) or by a criminal court. See also Regs Army para 419 (a).

(c) Where there is a dual jurisdiction as indicated above, the choice initially lies with the military officers mentioned in this section to decide whether an accused should be dealt with by a court-martial or he should be handed over to the civil authorities for being dealt with according to civil law.

(d) The 'prescribed officer' for the purpose of this section is the officer commanding the brigade or station in which the accused person is serving, except where death has resulted from the alleged offence, in which case the lowest competent military authority is the officer commanding a division/area of independent brigade. AR 179-A.

2. (a) Where a criminal court having jurisdiction considers that the accused should be tried before itself, it may, in writing, call upon the officer referred to in this section to hand over the accused to it for trial, in which case the said officer should either hand over the accused as demanded or pend the proceedings and refer the case to the Central Govt (AA.s. 126).

(b) When a person subject to AA is brought before a magistrate and charged with an offence for which he is liable to be tried by a court-martial, such magistrate, unless he is moved by the competent military officer referred to in AA.s. 125 to proceed against the accused under the Cr PC, 1973, shall before so proceeding give written notice to the CO of the accused and, until the expiry of fifteen days from the date of service of such notice, shall not proceed to try such person or to inquire with a view to his commitment for trial by the court of sessions for any offence triable by such court. See Govt of India Ministry of Home Affairs notification SO 488 dated 09 Feb 1978, the criminal courts and court-martial (Adjustment of jurisdiction) Rules, 1978 and Regs Army para 418.

3. An offender is normally handed over to the civil authorities for trial where he is alleged to have committed an offence in collaboration with other persons who are not subject to military law.

**126. Power of criminal court to require delivery of offender.**

(1) When a criminal court having jurisdiction is of opinion that proceedings shall be instituted before itself in respect of any alleged offence, it may, by written notice, require the officer referred to in section 125 at his option, either to deliver over the offender to the nearest magistrate to be proceeded against according to law, or to postpone proceedings pending a reference to the Central Government.

(2) In every such case the said officer shall either deliver over the offender in compliance with the requisition, or shall forthwith defer the question as to the court before which the proceedings are to be instituted for the determination of the Central Government, whose order upon such reference shall be final.

**NOTE**

See notes to AA.s. 125.

**127. Successive trials by a criminal court and court-martial.** The principle Act shall be omitted.

**CHAPTER XI**

**PROCEDURE OF COURTS-MARTIAL**

**128. Presiding officer.** At every general, district or summary general court-martial the senior member shall be the presiding Officer.

**NOTES**

1. see note 6 to AA.s. 113 and Regs Army para 459.
2. As to duties of presiding officer, see AR 76.

**129. 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 any of his deputies.

**NOTES**

1. (a) Presence of a JA at a GCM is a legal necessity and his non-attendance there at will invalidate the proceedings.  
(b) A court-martial, in the absence of a judge advocate (if such has been appointed) shall not proceed and shall adjourn. AR 82(4).
2. Any officer of the JAG's department or, if such officer is not available, an officer approved by the JAG or one of his deputies can attend as JA. Although at a DCM and SGCM appointment of a JA is not legally necessary, in practice a JA is nominated by the DJAG command concerned. Invalidity in the appointment of a JA does not vitiate the trial: AR 103.
3. The accused has no right to object to the JA, see AA.s. 130.
4. As to powers and duties of a JA, see AR 105.
5. For substitution of a JA on death, illness or absence see AR 104.

**130. Challenges.**

(1) At all trial by general, district or summary general court-martial, as soon as the court is assembled, the names of the presiding officer and members shall be read over to the accused, who shall thereupon be asked whether he objects to being tried by any officer sitting on the court.

(2) If the accused objects to any such officer, his objection, and also the reply thereto of the officer objected to, shall be heard and recorded, and the remaining officers of the court shall, in the absence of the challenged officer decide on the objection.

(3) If the objection is allowed by one-half or ore of the votes of the officers entitled to vote, the objection shall be allowed, and the member objected to shall retire, and his vacancy may be filled in the prescribed manner by another officer, subject to the same right of the accused to object.

(4) When no challenge is made, or when challenge has been made and disallowed, or the place of every officer successfully challenged has been filled by another officer to whom no objection is made or allowed, the court shall proceed with the trial.

#### NOTES

1. As to challenges generally see AR 44 and notes thereto; as t adjourning for the purpose of appointing fresh members, and the power to convene another court see AR 38; and as to challenges where a court is being sworn/affirmed to try several persons, see AR 89.

2. The accused has no right to object to the JA or prosecutor.

### **131. Oaths of member, judge advocate and witness.**

(1) An oath or affirmation in the prescribed manner shall be administered to every member of every court-martial and to the judge advocate before the commencement of the trial.

(2) Every person giving evidence before a court-martial shall be examined after being duty sworn or affirmed in the prescribed form.

(3) The provisions of sub-section (2) shall not apply where the witness is a child under twelve years of age and the court-martial is of opinion that though the witness understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation.

#### NOTES

1. Sub-sec (1)

(a) Prescribed form/manner of oath or affirmation.

(i) for a member of the court, ARs 45, 109 and 155.

(ii) for the JA, officer attending for the purposes of instruction, shorthand writer and interpreter, ARs 46, 109 and 155.

(b) The person to administer oaths or affirmation is prescribed by AR 47.

2. The oath/affirmation taken by the members of the court binds them in their capacity of jurors to find a true verdict according to the evidence (discarding from their minds any private knowledge or information they may happen to possess, and in their capacity of judges to administer justice; and to keep secret the votes or opinions of other members. See note 8 to AR 45 and AA.s. 132 (2).

3. No member can be added to the court after it is sworn/affirmed.

4. Sub-sec (2) – The prescribed form of oath or affirmation for witness and the person to administer it are prescribed I AR 140.

5. (a) Refusal by a witness subject to AA to take an oath or make an affirmation is punishable under AA.s. 59(b).

(b) Giving false evidence on oath/affirmation is an offence under AA.s. 60.

(c) If a civilian witness refuses to take the oath or make an affirmation or gives false evidence on oath/affirmation, action should be taken by the court as indicated in AR 150 (3). See notes to AR 150 (3).

6. Sub-sec (3) – This provision is based on the proviso to s. 5 of the Oaths Act, 1873.

### **132. Voting by members**

(1) Subject to the provision of sub-section (2) and (3), every decision of a court-martial shall be passed by an absolute majority of votes; and where there is an equality of votes on either the finding or the sentence, the decision shall be in favour of the accused.

(2) No sentence of death shall be passed by a general court-martial without the concurrence of at least two-thirds of the members of the court.

(3) No sentence of death shall be passed by a summary general court-martial without the concurrence of all the members.

(4) In matters, other than a challenge or the finding or sentence, the presiding officer shall have a casting vote.

#### **NOTES**

1. As to manner of voting, see AR 87 and notes.

2. See note 6 to AA.s. 71 regarding endorsement to be made where a GCM or SGCM sentences the offender to death.

3. As to procedure on incidental questions, see AR 88.

**133. General rule as to evidence.** The Indian evidence Act, 1872 ( 1 of 1872), shall, subject to the provisions of this Act, apply to all proceedings before a court-martial.

#### **NOTES**

1. Indian Evidence Act 1872 has been reproduced in part III of the manual. Also see generally Part I chapter VI.

2. “subject to the provisions of this Act” – see AA.ss 134, 140 to 144 and ARs 134 to 143.

**134. Judicial Notice.** A court-martial may take judicial notice of any matter within the general military knowledge of the members.

#### **NOTES**

1. “Judicial notice” means that the court will recognize a matter without formal evidence. Thus, evidence need not be given as to the relative rank of officers, as to the general duties, authorities and obligations of different members of the service, or generally as to any matters which an officer, as such, may reasonably be expected to know.

2. For other matters of which a court may take judicial notice, see IEA.s. 57. Also see IEA..ss. 56 and 58.

### **135. Summoning Witnesses.**

(1) The convening officer, the presiding officer of a court-martial or court of inquiry the judge advocate or the commanding officer of the accused person may, by summons under his hand, require the attendance, at a time and place to be mentioned in the summons, of any person either to give evidence or to produce any document or other thing.

(2) In the case of a witness amenable to military authority, the summons shall be sent to his commanding officer, and such officer shall serve it upon him accordingly.

(3) In the case of any other witness, the summons shall be sent to the magistrate within whose jurisdiction he may be or reside, and such magistrate shall give effect to the summons as if the witness were required in the court of such magistrate.

(4) When a witness is required to produce any particular document or other thing in his possession or power, the summons shall describe it with reasonable precision.

## NOTES

1. As to privilege from arrest under civil or revenue process of a witness summoned to attend before a court-martial, see AA.s. 30.
2. When an application has been made for a court-martial, no military witness will be allowed to leave the station without the sanction of the convening authority nor will witnesses dispense after trial without the previous sanction of such authority. See Regs Army para 455.
3. For form of summons, see Appendix III (Part III) to AR.
4. See also ARs 22(1), 137 and notes thereto.
5. Sub-sec (1)
  - (a) Under this sub-sec , a civilian witness can be required to attend before a CO and at the taking of the summary of evidence or a court-martial; but see AR 23 (50). They cannot, however, be compelled to attend before a court of inquiry.
  - (b) `Under his hand' such summons be signed by the officer specified in this sub-sec; but see AR 5.
6. Sub-sec (2) - Witnesses who are subject to AA should be ordered by the proper authority to attend without the issue of a formal summons. If no summons has been issued, the witness cannot be dealt with under AA.s. 59 for making default in attending, but he may be dealt with under AA.s. 41 or 63, as the case may be.
7. Sub-sec (3) – for action where a civilian witness, who has been duly summoned and whose expenses have been tendered, makes default in attending, see AR 150 (3) and notes thereto. A civilian witness is not deemed to be duly summoned unless the summons is served on him through a magistrate as required under this sub-sec.
8. Sub-sec (4) – When a witness is directed by summons to produce a documents etc., which is in his possession or power he must bring it to court, notwithstanding any objection that he may have with regard to its production or admissibility. After this has been done, it rests solely with the court to hear the objection or the claim as to privilege, and to decide whether it should be allowed; IEA.s. 162. Also see, Regs Army para 320.
9. A witness summoned merely to produce a document shall be deemed to have complied with the summons if he causes it to be produced instead of attending personally to produce the same.

### **136. Documents exempted from production.**

- (1) Nothing in section 135 shall be deemed to affect the operation of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or to apply to any letter, postcard, telegram or other document in the custody of the postal or telegraph authorities.
- (2) If any document in such custody is, in the opinion of any district magistrate chief presidency magistrate, High Court or Court of Session, wanted for the purpose of any court-martial such magistrate or Court may require the postal or telegraph authorities, as the case may be, to deliver such document to such person as such magistrate or Court may direct.
- (3) If any such document is, in the opinion of any other magistrate or of any commissioner of police or district superintendent of police, wanted for any such purposes. He may require the postal or telegraph authorities, as the case may be, to cause search to be made for and to detain such document pending the orders of any such district magistrate, chief presidency magistrate or High Court or Court of Session.

## NOTES

1. Sub-sec (1) – IEA. ss. 123 and 124 deal with “ affairs of State” and “official communications”. See Regs Army para 320, as to how such matters are protected from disclosure in courts of law, including courts-martial, except under adequate guarantees for public interests being safeguarded. “Affairs of State” include all matters of a public nature with which the Government is concerned.

2. Sub-secs (2) and (3) – These sub-secs indicate the only way in which letters, postcards, telegrams and similar documents in the custody of the postal or telegraph authorities can be made available as evidence. If none of the authorities mentioned in sub-sec (2) are available, and it is considered necessary that the document should be detained until such authority is communicated with, application should be made to one of the authorities mentioned in sub-sec (3), one of whom is certain to be present in or near any military station in India, however small.

### 137. Commissions for examination of witnesses

(1) Whenever, in the court of a trial by court-martial, it appears to the court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, in the circumstances of the case, would be unreasonable, such court may address the Judge Advocate General in order that a commission to take the evidence of such witness may be issued.

(2) The Judge Advocate general may then, if he thinks necessary, issue a commission to any district magistrate or magistrate of the first class, within the local limits of whose jurisdiction such witness resides to take the evidence of such witness.

(3) The magistrate or officer to whom the commission is issued, or if he is the district magistrate, he or such magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is or shall summon the witness before him and shall take down his evidence in the same manner and may for this purpose exercise the same powers, as in trials of warrant cases under the Code of Criminal Procedure, 1973 (Act V of 1973), or any corresponding law in force in (the State of Jammu and Kashmir).

(4) When the witness resides in a tribal area or in any place outside India, the commission may be issued in the manner specified in Chapter XL of the Code of Criminal Procedure, 1973 (Act V of 1973) or of any corresponding law in force in (the State of Jammu and Kashmir).

5. In this and the next succeeding section, the expression “Judge Advocate General” includes a Deputy Judge Advocate General.

### NOTES

1. The section and the next provide for the examination of witness” on commission” that is, be means of a series of written questions decided upon by the court trying the case, which questions are sent to another court at a distance and put by it to the witness, whose answers are then recorded. It will be noticed that the procedure here laid down can only be set in motion by a court-martial assembled for the trial of the accused, and then only in the circumstances specified in sub-sect (1), while the actual issue of the commission can only be effected by the JAG or the DJAG.

When a court-martial considers that the evidence of a witness should be taken on commission it should forward to the DJAG of the command (or to the JAG if the trial is not held in command for is held in a command in which there is not a DJAG) a list of questions to be put to the witness, along with an explanation of the circumstances which appear to render his examination desire to have put to the witness, and which the court consider relevant, should be added.

2. The taking of evidence by commission in courts-martial should be most sparingly resorted to , and ought not to be adopted save in extreme cases of delay, expense or inconvenience. The following consideration should guide courts-martial in this important matter :-

(a) A complainant, or a witness who practically fills the role of complainant, should never be examined on a commission; the risk of injustice to the accused is too great.

(b) A material prosecution witness, the value of whose evidence can only be made apparent under full examination and cross-examination in court should very seldom be so examined.

(c) A merely “formal” or corroborative witness for either side, or a material witness for the defence, if the accused is fully satisfied by this action, might generally be examined on a commission. By “formal” is here meant a witness who has to prove a document, entry, or similar fact, which must be legally proved, but which when so proved cannot rationally be disputed by the accused or by the prosecution.

### **138. Examination of a witness on commission**

(1) The prosecutor and the accused person in any case in which a commission is issued under section 137 may respectively forward any interrogatories in writing which the court may think relevant to the issue, and the magistrate or officer executing the commission shall examine the witness upon such interrogatories.

(2) The prosecutor and the accused person may appear before such magistrate or officer by counsel or, except in the case of an accused person in custody, in person, and may examine, cross-examine as the case may be, the said witness.

(3) After a commission issued under section 137 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder to the Judge Advocate General.

(4) On receipt of a commission and deposition returned under sub-section (3), the Judge Advocate general shall forward the same to the Court at whose instance the commission was issued, or if such court has been dissolved to any other court convened for the trial of the accused person; and the commission, the return thereto and the deposition shall be open to inspection by the prosecutor and the accused person, and may, subject to all just exceptions be read in evidence in the case by either the prosecutor or the accused, and shall form part of the proceedings of the court.

(5) In every case in which a commission is issued under section 137, the trial may be adjourned for a specified time reasonable sufficient for the execution and return of the commission.

### **NOTES**

1. See notes to AA.s. 137.

2. Evidence taken on commission at the instance of a court-martial which has been dissolved is admissible before another court-martial assembled for the trial of the accused (of course, only on the same or substantially the same charges). If great delay in the return of a commission is anticipated, advantage may be taken of this provision and the original court dissolved. In such a case, however, each of the witnesses who gave evidence at the first trial must repeat this evidence on oath or affirmation at the second trial unless :-

(a) he is dead or cannot be found; or

(b) he is incapable of giving evidence; or

(c) he is kept out of the way by the adverse party; or

(d) his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable.

In any of these cases the evidence given at the first trial can, under IEAs. 33, be read and considered at the second trial.

### **139. Conviction of offence not charged**

(1) A person charged before a court-martial with desertion may be found guilty of attempting to desert or of being absent without leave.

(2) A person charged before a court-martial with attempting to desert may be found guilty of being absent without leave.

(3) A person charged before a court-martial with using criminal force may be found guilty of assault.

(4) A person charged before a court-martial with using threatening language may be found guilty of using insubordinate language.

(5) A person charged before a court-martial with any of the offences specified in clauses (a), (b), (c) and (d) of section 52 may be found guilty of any other of these offences with which he might have been charged.

(6) A person charged before a court-martial with an offence punishable under section 69 may be found guilty of any other offence of which he might have been found guilty if the provisions of the Code of Criminal Procedure, 1973 (Act V of 1973), were applicable.

7. A person charged before a court-martial with any offence under this Act, may, on failure of proof of an offence having been committed in circumstances involving a more severe punishment, be found guilty of the same offence as having been committed in circumstances involving a less severe punishment.

(8) A person charged before a court-martial with any offence under this Act may be found guilty of having attempted or abetted the commission of that offence, although the attempt or abetment is not separately charged.

## NOTES

1. The object of this section is to prevent a miscarriage of justice by permitting a person charged with one of the offences mentioned in it to be found guilty of a cognate offence. But a court-martial has no power to find a person guilty of offence other than that with which he is charged in the statement of the offence except in the cases specified in this section (see notes in AR 30). A Court may, however, (as allowed by AR 62 (5) ) and a person guilty of a charge with the exception of certain words in the particulars of the charge or with certain immaterial variations, and this finding will be valid as long as in its reduced or varied form it discloses the offence which forms the subject of the charge.

2. Alternative charges should not be preferred in the cases provided for in this section but in other cases where the facts disclose a greater and a lesser offence it may in practice be expedient to prefer alternative charges, the more serious offence being placed first in order (see note to AR 52(3)).

3. This section does not permit a court-martial to find an accused guilty of one or other of two offences e.g., a finding of “not guilty of theft but guilty of dishonest misappropriation or criminal breach of trust”

4. This section does not apply to summary awards under AA.s. 80,83,84 or 85 but in such cases the officer dealing with the case, if not the CO, can have the charge amended by the CO.

5. Sub-sec (1) care must be taken in this case to ensure that the provisions of AA.s. 122 are not offended.

6. Sub-sec (5) The special finding under this sub-sec applies only where the charge is laid under one of the specified clauses of AA.s. 52 and not when the accused is charged under AA.s. 69 with having committed the civil offence of theft etc., for which see sub-sec (6).

7. Sub-sec (6) – For the special findings referred to in this sub-sec, see Cr PC, 1973, ss. 221 and 222 (Part III).

8. Sub-sec (7) Thus, a person charged with using criminal force to his superior officer in the execution of his office may be convicted of using criminal force to his superior officer; or a person charged with an offence committed on active service may be found guilty of the same offence committed not on active service, or a person charged with willfully allowing the escape of a person in his charge may be found guilty of allowing his escape without reasonable excuse.

9. Sub-sec (8)

(a) Where a person charged with an offence is found guilty of having attempted or abetted the commission of that offence and no express provision has been made for the punishment for such attempt or abetment, the punishment will be laid in as specified in AA.s. 65 for attempt and AA.ss. 66 to 68 for abetment.

(b) AA.ss. 38(1), 51 and 64(e) make attempt to commit the offences specified therein as substantive offences.



**140. Presumption as to signatures.-** In any proceeding under this Act, any application, certificate, warrant, reply or other document purporting to be signed by an officer in the service of the Government shall, on production, be presumed to have been duly signed by the person by whom and in the character in which it purports to have been signed, until the contrary is shown.

#### NOTES

1. Purporting – See note 3 to AA.s. 142.
2. The presumption only relates to the signature and the character by whom and in which it purports to have been signed and not to the contents of the document. The application, certificate, warrant etc, must be admissible in evidence as such, and upon its being admitted, the presumption in question can be drawn.

#### **141. Enrolment paper.**

- (1) Any enrolment paper purporting to be signed by an enrolling officer shall in proceedings under this Act, be evidence of the person enrolled having given the answers to questions which he is therein represented as having given.
- (2) The enrolment of such person may be proved by the production of the original or a copy of his enrolment paper purporting to be certified to be a true copy by the officer having the custody of the enrolment paper.

#### NOTES

1. On the trial of a person subject to AA for making a false answer on enrolment or for fraudulent enrolment, the answer made or the fact of enrolment can be proved by the production of his enrolment paper. The fact of the enrolment (but not any answer made on enrolment) may also be proved by a properly certified true copy of the enrolment paper. The enrolment paper, or when admissible the true copy thereof, must be produced by a witness on oath or affirmation and the accused identified as the person referred to.
2. Where a certified true copy of the enrolment paper is admissible, it must purport to be so certified by the officer having custody of the enrolment paper and not by a subordinate officer 'for' him.
3. See generally notes to AA.s. 142.

#### **142. Presumption as to certain documents :-**

- (1) A letter, return or other document respecting the service of any person in, or the cashiering, dismissal or discharge of any person, from any portion of the regular Army, or respecting the circumstances of any person not having served in, or belonged to any portion of the Forces, if purporting to be signed by or on behalf of the Central Government or the (Chief of the Army Staff),<sup>1</sup> or by any prescribed officer, shall be evidence of the facts stated in such letter, return or other document.
- (2) Any Army, Navy or Air Force List or Gazette purporting to be published by authority shall be evidence of the status and rank of the officers, junior commissioned officers or warrant officers therein mentioned, and of any appointment held by them and of the corps, battalion or arm or branch of the services to which they belong.
- (3) Where a record is made in any regimental book in pursuance of this Act or of any rules made thereunder or otherwise in pursuance of military duty, and purports to be signed by the commanding officer or by the officer whose duty it is to make such record, such record shall be evidence of the facts therein stated.
- (4) A copy of any record in any regimental book purporting to be certified to be a true copy by the officer having custody of such book shall be evidence of such record.
- (5) Where any person subject to this Act is being tried on a charge of desertion or of absence without leave, and such person has surrendered himself into the custody of any officer or other

person subject to this Act, or any portion of the regular Army, or has been apprehended by such officer or person, a certificate purporting to be signed by such officer, or by the commanding officer of that portion of the regular Army, or commanding officer of the corps, department or detachment to which such person belongs, as the case may be, and stating the fact, date and place of such surrender or apprehension, and the manner in which he was dressed, shall be evidence of the matters so stated.

(6) Where any person subject to this Act is being tried on a charge of desertion or of absence without leave, and such person has surrendered himself into the custody of, or has been apprehended by, a police officer not below the rank of an officer in charge of a police station, a certificate purporting to be signed by such police officer and stating the fact, date and place of such surrender or apprehension and the manner in which he was dressed shall be evidence of the matters so stated.

(7) Any document purporting to be a report under the hand of any Chemical Examiner or any of the Govt scientific experts namely, the Chief Inspector of the Explosives, the Director of Finger Print Bureau, the Director, Haffkine Institute, Bombay, the Director of a Central Forensic Science Laboratory or a State Forensic Science Laboratory and the Serologist to the Government upon any matter or thing duly submitted to him for examination or analysis and report may be used as evidence in any proceeding under this Act.

## NOTES

1. As to documentary evidence generally see IEA.ss. 61 to 90 (Part III). The provisions of the Indian Evidence Act, which apply to the court-martial proceedings are further supplemented by the provisions relating to evidence in AA e.g., AA.ss. 134, 140 to 144.

2. (a) This section provides for the admissibility in evidence of a variety of documents or copies of documents used in connection with military administration, but does not make them conclusive proof of the facts stated in them: therefore evidence may be given to contradict them.

(b) The documents made admissible in evidence by this section can only be received as such when produced by a witness on oath or affirmation.

(c) A document purporting to be such a document as a specified in the various sub-secs is upon mere production on oath or affirmation to the court prima facie evidence of the facts therein stated; but, of course, it is not evidence that the accused is the person to whom it relates; and evidence must be given on oath or affirmation by a witness to prove that the accused is in fact the person referred to in the document. If the accused disputes the identity, great caution is required as to the sufficiency of the evidence, and if he disputes the accuracy or completeness of the books, further evidence on the disputed points must be adduced.

3. Purporting.- This expression that if the paper appears to be certified or signed, as mentioned in the sub-sec, it can be accepted without calling a witness to prove that it has been so certified, signed, etc, unless indeed some evidence is given to the contrary. If any evidence is given casting a doubt on the authenticity of a document, the court should require evidence of the certificate or signature, etc, to be given by a witness.

4. Sub-sec (1):-

(a) This sub-sec is limited to proof of the fact of length of service or date of dismissal or discharge; it does not assist proof of particular incidents occurring during such service. A telegram, as delivered by the telegraph department, respecting the service of a person is not signed at all and would not be admissible.

(b) As to prescribed officer, see AR 198.

5. Sub-sec (2).- Documents under this sub-sec need not be produced on oath/affirmation but may be handed in to the court.

6. Sub-sec (3).- The phrase 'any regimental book' means 'any regimental book'

7. It should be noted that every entry in a regimental book is not made evidence under this sub-sec; the entry must be made for the purpose of being used as a record, and must be made in

pursuance of AA or of any rules made thereunder or in pursuance of military duty, and it must purport to be signed by the CO or by the officer whose duty it is to make the record. No hard and fast rules can be laid down as to what entries can properly be considered as "records", but as a general rule this sub-sec should only be taken advantage of in cases, where a formal record, prima facie of non-controversial character, is made in a regimental book of record in pursuance of AA, the AR or of military duty and purporting to be signed in accordance with this sub-sec. Entries which cannot properly be considered as records, such as daily entries in accounts, and entries in books not being "regimental books", such as books of a brigade or station office and company order books, can, of course, be proved under the ordinary provisions of the Indian Evidence Act.

8. The fact that a statement is recorded in a "regimental book" does not make it admissible in evidence if it is otherwise legally objectionable, e.g., if a court of inquiry under AA.s. 106 be held before 30 clear days have expired, a record of its finding is inadmissible.

9. Sub-sec (4).- Such a copy cannot be certified by another officer "for" the officer having the custody of the book.

10. Where a certified true copy of a record in any "regimental book" is to be produced, the copy should show clearly that the record purports to have been signed by the CO or by the officer whose duty it was to make the record.

11. Where IAFD-918 is to be produced, it must be signed by the officer having the custody of the books from which it is compiled. The original declaration of the court of inquiry even if in existence, is not admissible in evidence. Nor is IAFD-918, unless the entry in the court-martial book ( of which it is a certified copy) purports to have been signed by the officer in actual command of the accused's corps or department, as required by AA.s. 106.

12. Sub-sec (5).- In this sub-sec and sub-sec (6), the certificate should only state the fact, date and place of surrender or apprehension and the manner in which the offender was dressed; it can only be admitted as evidence of those facts and then only cases of desertion or absence without leave. If it is necessary to prove the circumstances of the surrender or apprehension, a witness must be called.

13. If the deserter or absentee surrenders to or is apprehended by any officer, the certificate must purport to be signed by that officer, But if the offender surrenders himself to a JCO, WO, NCO or Sepoy of any unit, department or detachment, or if the offender is apprehended by a JCO, WO, NCO, or Sepoy, the certificate must purport to be signed by the CO of such JCO etc, of that unit, department or detachment.

14. The certificate must purport to be signed by the officer indicated and not by another officer 'for' him.

15. Sub-sec (6).- See note 12 above.

16. Under this sub-sec it is essential that the certificate should be actually signed by a police officer not below the rank of officer incharge of a police station. It is, however, not necessary that it must be signed by the police officer incharge of the police station concerned. The certificate should be on IAFD-910.

17. Sub-sec (7).- This sub-sec applies only to the report signed by any Chemical Examiner to the Government or his assistant and not to the report of any other 'expert'.

#### **143. Reference by accused to Government officer :-**

(1) If at any trial for desertion or absence without leave, overstaying leave or not rejoining when warned for service, the person tried states in his defence any sufficient or reasonable excuse for his unauthorised absence, and refers in support thereof to any officer in the service of the Government, or if it appears that any such officer is likely to prove or disprove the said statement in the defence, the court shall address such officer and adjourn the proceedings until his reply is received.

(2) The written reply of any officer so referred to shall, if signed by him be received in evidence and have the same effect as if made on oath before the court.

(3) If the court is dissolved before the receipt of such reply, or if the court omits to comply with the provisions of this section, the convening officer may, at his discretion, annul the proceedings and order a fresh trial.

#### NOTE

This section goes much further than AA.s. 140 in as much as the document, e.g., written reply is prima facie evidence not only of the signature of the writer and the character in which it was signed but also of the truth of the facts stated therein.

#### 144. Evidence of previous convictions and general character :-

(1) When any person subject to this Act has been convicted by a court-martial of any offence, such court-martial may inquire into, and receive and record evidence of any previous convictions of such person either by a court-martial or by a criminal court, or any previous award of, punishment under any of the sections, 80, 83, 84 and 85, and may further inquire into and record the general character of such person and such other matters as may be prescribed.

(2) Evidence received under this section may be either oral, or in the shape of entries in, or certified extracts from, court-martial books or other official records; and it shall not be necessary to give notice before trial to the person tried that evidence as to his previous convictions or character will be received.

(3) At a summary court-martial the officer holding the trial may, if he thinks fit, record any previous convictions against the offender, his general character, and such other matters as may be prescribed, as of his own knowledge, instead of requiring them to be proved under the foregoing provisions of this section.

#### NOTES

1. This section should be read with ARs 64 and 123 which prescribe the other matters which may be proved.

2. Character includes both reputation and disposition but apart from previous conviction, evidence of character, where admissible, may only be given of general reputation and general disposition and not of particular acts by which reputation or disposition were shown (IEA.s. 55, Explanation).

3. In criminal proceedings, which include trials by court-martial, the fact that the accused is of general good character is always relevant but evidence of the accused's bad character is relevant and admissible only in the following cases :-

(a) after a finding of 'guilty', to enable the court to determine the quantum of punishment.

(b) Before the finding of guilty :-

(i) If the accused has in the first instance through the defence witnesses given evidence of good character, the whole question of his character, good or bad, is opened and the prosecutor is at liberty to tender evidence of general bad character, See AR 143 (3).

(ii) In cases where guilty knowledge or intention or design is of the essence of the offence, proof may be given that the accused did other acts similar to those which form the basis of the charge; such evidence is admissible not to show that because he has committed one offence, he would, therefore, be likely to commit another offence of the same nature but to prove intention, knowledge, good faith etc., of the accused with regard to the act or to rebut (even by anticipation) the defence of accident, mistake etc, and to show that the offence charged formed part of a series of similar occurrences IEA.s. 14 and 15.

#### 145. Lunacy of accused

(1) Whenever, in the course of a trial by a court-martial, it appears to the court that the person charged is by reason of unsoundness of mind incapable of making his defence, or that he committed the act alleged but was by reason of unsoundness of mind incapable of knowing the nature of the act or knowing that it was wrong or contrary to law, the court shall record a finding accordingly.

(2) The presiding officer of the court, or, in the case of a summary court-martial the officer holding the trial, shall forthwith report the case to the confirming officer, or to the authority empowered to deal with its finding under section 162, as the case may be.

(3) The confirming officer to whom the case is reported under sub-section(2) may, if he does not confirm the finding, take steps to have the accused person tried by the same or another court-martial for the offence with which he was charged.

(4) The authority to whom the finding of a summary court-martial is reported under sub-section (2), and a confirming officer confirming a finding in any case so reported to him shall order the accused person to be kept in custody in the prescribed manner and shall report the case for the orders of the Central Government.

(5) On receipt of a report under sub-section (4) the Central Government may order the accused person to be detained in a lunatic asylum or other suitable place of safe custody.

#### NOTES

1. As to insanity in connection with responsibility for crime, see IPC.s. 84, which lays down the legal test of responsibility in cases of alleged unsoundness of mind.

2. It is to be observed that two distinct cases are contemplated. A person may have been sane at the time when he did act or made the omission charged, but may not be sane enough to make his defence; while on the other hand, a person insane at the time when he did the act or made the omission charged may have recovered sufficiently to take his trial.

3. An application that the accused is of unsound mind and consequently incapable of making his defence should be made before arraignment. The application will normally be made by counsel for the defence or the defending officer, but should, if necessary, be made by the prosecutor. Evidence in support of the application may of course, be given.

4. Where a court-martial finds that an accused person committed the act (or made the omission) alleged as constituting the offence (or offences) specified in the charge or charges but was by reason or unsoundness of mind incapable of knowing the nature of the act of that it was wrong or contrary to law, such finding does not amount to a conviction, but means that on the facts proved the court would have found him, guilty of the offence (offences) had it not been established to its satisfaction that the accused at the time was not responsible for his action.

If such a finding is recorded, no pay and allowances are forfeited automatically under AA.ss. 90 and 91 and P and A Regs, e.g., in respect of the period during which the accused is in custody awaiting trial.

5. Prescribed manner – See AR 199 (3). The authority /officer mentioned in sub-sec (4) should then forward the proceedings to Army HQ.

6. Sub-sec (5) – Other suitable place, in view of the provisions of Cr.PC, 1973. s.337, the place of safe custody must, if it is not a lunatic asylum, be a jail.

**146. Subsequent fitness of Lunatic accused for trial** – Where any accused person, having been found by reason of unsoundness of mind to be incapable of making his defence, is in custody or under detention under section 145, the officer commanding the army, army corps, division or brigade within the are of whose command the accused is in custody or is detained, or any other officer prescribed in this behalf, may :-

(a) if such person is in custody under sub-section (4) of section 145, on the report of a medical officer that he is capable of making his defence or

(b) if such person is detained in a jail under sub-section (5), of section 145, on a certificate of the Inspector general of Prisons, and if such person is detained in a lunatic asylum under the said sub-section on a certificate of any two or more of the visitors of such asylum that he is capable of making his defence.

Take steps to have such person tried by the same or another court-martial for the offence with which he was originally charged or, if the offence is a civil offence, by a criminal court.

#### NOTE

Prescribed officer : see AR 199 (1) and (2).

**147. Transmission to central Government of orders under section 146.** A copy of every order made by an officer under section 146 for the trial of the accused shall forthwith be sent to the Central Government.

**148. Release of lunatic accused.** Where any person is in custody under sub-section (4) of section 145 or under detention under sub-section (5) of that section :-

(a) if such person is in custody under the said sub-section (4), on the report of a medical officer, or.

(b) if such person is detained under the said sub-section (5), on a certificate from any of the authorities mentioned in clause (b) of section 146 that in the judgment of such officer or authority such person may be released without danger of his doing injury to himself or to any other person, the Central Government may order that such person be released or detained in custody, or transferred to a public lunatic asylum if he has not already been sent to such an asylum.

**149. Delivery of lunatic accused to relatives.** Where any relative or friend of any person who is in custody under sub-section (4) of section 145 or under detention under sub-section (5) of that section desires that the should be delivered to his care and custody, the Central Government may upon application by such relative or friend and on his giving security to the satisfaction of that Government that the person delivered shall be properly taken care of and prevented from doing injury to himself or any other person, and be produced for the inspection of such officer, and at such times and places, as the Central Government may direct, order such person to be delivered to such relative or friend.

**150. Order for custody and disposal of property pending trial.** When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before a court-martial during a trial, the court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the trial, and if the property is subject to speedy or natural decay may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

**151. Order for disposal of property regarding which offence is committed.**

(1) After the conclusion of a trial before any court-martial, the court or the officer confirming the finding or sentence of such court-martial, or any authority superior to such officer, or, in the case of court-martial whose finding or sentence does not require confirmation, the officer commanding the army, army corps, division or brigade, within which the trial was held, may make such order as it or he thinks fit for the disposal by destruction, confiscation, delivery to any person claiming to be entitled to possession thereof, or otherwise, of any property or document produced before the court or in its custody, or regarding which any offence appears to have been committed or which has been used for the commission of any offence.

(2) Where any order has been made under sub-section (1) in respect of property regarding which an offence appears to have been committed, a copy of such order signed and certified by the authority making the same may, whether the trial was held within India or not, be sent to a magistrate within whose jurisdiction such property for the time being is situated, and such magistrate shall thereupon cause the order to be carried into effect as if it were an order passed by him under the provisions of the Code of Criminal Procedure, 1973 (Act V 1973), or any corresponding law in force in (the State of Jammu and Kashmir).

(3) In this section the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any person, but also any property into or for which the same have been converted or exchanged and anything acquired by such conversion or exchange whether immediately or otherwise.

## NOTES

1. Theft or misappropriation of property does not alter the ownership, and therefore, prima facie the person from whom property has been stolen or misappropriated is the lawful owner of it, and can recover it from the holder.
2. Where stolen property has not been recovered, the clause of the property should be stated in the particulars of the charge and proved in evidence. Stoppages may then be awarded to recoup the owner; AR 30(6). In a case of theft followed by sale to an innocent purchaser, stoppages may be awarded to recoup the purchaser on a charge of theft, provided that charge contains an additional averment informing the accused of the further liability he has incurred in respect of the innocent purchaser.

**152. Powers of court-martial in relation to proceedings under this Act.** Any trial by a court-martial under the provisions of this Act, shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (Act XLV of 1860), and the court-martial shall be deemed to be a court within the meaning of sections 345 and 346 of the Code of Criminal Procedure, 1973 (Act V of 1973).

## NOTES

1. See note 3 to AA.s. 59 and notes to AR 150.
2. This section indicates that summary proceedings under AA.s. 80, 83, 84 or 85 are not deemed to be 'judicial proceedings' nor is the officer disposing of the case summarily under those sections a 'court' within the meaning of the Cr.PC.

## CHAPTER XII

### CONFIRMATION AND REVISION

**153. Finding and sentence not valid, unless confirmed.** No finding or sentence of a general, district or summary general court-martial shall be valid except so far as it may be confirmed as provided by this Act.

## NOTES

1. (a) For details as regards the authorities/officers empowered to confirm findings and sentences of court-martial see AA.ss. 154 to 157 and notes thereto.  
(b) The finding(s) and sentence of a SCM do not require confirmation ; AA.s. 161.
2. (a) Confirmation is complete when the proceedings are promulgated (see AR 71). At any time before promulgation the confirming authority may cancel his minute of confirmation and revoke the minute or order a revision. If proceedings are confirmed in error by an officer not having power to confirm, his act and the subsequent promulgation are null, and it is open to the proper authority to confirm.  
(b) A CO who has investigated the case cannot subsequently confirm the proceedings of a court-martial arising out of the same matter. Regs Army para 471.  
(c) Similarly a member of a court-martial or an officer who has acted as prosecutor cannot confirm the proceedings of that court-martial. AR 74.
3. (a) The result of this section is that if a finding of 'guilty' or 'not guilty' is not confirmed it is invalid; consequently there is no conviction or acquittal, and the accused has not been convicted or acquitted by a court-martial for the purpose either of any subsequent trial or of any entry in regimental books or of any forfeiture. See AA.s. 121 and notes as to a second trial, and AR 149 as to merely technical errors not involving injustice to the accused.  
(b) Confirmation of the sentence alone implies confirmation of the finding also, but is not the correct mode of recording confirmation.
4. Confirmation ought to be withheld in the following cases :-

- (a) Where the provisions of AA relating to jurisdiction have been contravened. See AA.ss. 109 to 115, 118 and 119 and 128 to 132.
- (b) Where evidence of a nature prejudicial to the accused has been wrongly admitted.
- (c) Where the accused has been unduly restricted in his defence.
- (d) Where a finding of 'guilty' has been come to with the exception of certain words of the charge, and these words so far describe the essence of the offence, that the finding with the words omitted fails to disclose an offence of which the court could legally have convicted.
- (e) Where a special finding of 'guilty' fails to disclose an offence of which the court could have legally convicted.
- (f) Where the charge is bad in law, even though the accused has pleaded guilty.
- (g) Where there has been such a deviation from the ARs that injustice has been done to the accused.

5. A confirming officer cannot substitute a special finding on any charge for the court's finding; he can only confirm, reserve confirmation for superior authority, send back for revision, or refuse to confirm.

**154. Power to confirm finding and sentence of general court-martial.** The findings and sentences of general courts-martial may be confirmed by the Central Government, or by any officer empowered in this behalf by warrant of the Central Government.

#### NOTES

1. A-2 warrant is at present issued by the central Government to the COAS, and A-3 warrants are issued by the said central Govt, to GOsC-in-C commands GOsC corps, division/area and commandants Independent brigade/sub-area and to officers exercising such powers under AA.s. 8.
2. For forms of warrant, see Part IV of the Manual.
3. See notes to AA.s. 153 and notes 2 and 3(a) to AA.s 109.

**155. Power to confirm finding and sentence of district court-martial.** The findings and sentences of district courts-martial may be confirmed by any officer having power to convene a general court-martial or by any officer empowered in this behalf by warrant of such officer.

#### NOTES

1. For forms of warrant see Part IV of the Manual. B-2 warrants, which also empower the holders to convene DCsM, are at present issued to brigade/sub area commanders and officer exercising the power of a brigade etc., commander under AA.s. 8 by the GOsC-in-C commands, or GOsC corps, division/area.
2. An officer having power to convene a GCM at a port of embarkation can issue his warrant to the officer commanding the troops on board a ship empowering the latter to confirm during the period of the voyage the findings and sentences of DCM held on board the ship.
3. See notes to AA.s. 153 and notes 2,3 (a) and (4) to AA.s. 109.

**156. Limitation of powers of confirming authority.** A warrant issued under section 154 or section 155 may contain such instructions, reservations or conditions as the authority issuing it may think fit.

#### NOTES

1. As to restrictions, etc., see forms of warrants (part IV) – For instance, a sentence of death must be reserved for confirmation by the Central Government.
3. See Regs Army para 471.



**157. Power to confirm finding and sentence of summary general court-martial.** The findings and sentences of summary general courts-martial may be confirmed by the convening officer or if he so directed, by an authority superior to him.

#### NOTES

1. In the case of a SGCM, the convening officer can confirm the finding and sentence thereof, if he so desires.
2. A member of a SGCM or an officer who has acted as prosecutor thereat should not, so far as practicable, confirm the proceedings of that court-martial; see ARs 164 and 74.

**158. Power of confirming authority to mitigate, remit or commute sentences**

(1) Subject to such restrictions, reservations or conditions, as may be contained in any warrant issued under section 154 or section 155 and to the provisions of sub-section 92), a confirming authority may, when confirming the sentence of a court-martial, mitigate or remit the punishment thereby awarded, or commute that punishment for any punishment or punishments lower in the scale laid down in section 71.

2. (Repealed).

#### NOTES

1. As to mitigation of sentence for offences in several charges, where the finding on one or more of them is not confirmed, see AR 72; and as to the power of the confirming officer to vary a sentence informally expressed or in excess of the punishment authorised by law, see AR 73.
2. The powers conferred by this section may be exercised by the confirming officer, as such, only when confirming the sentence. After promulgation, when the confirmation is complete the power of the confirming officer in that capacity ceases and the above powers can only be exercised by one of the authorities mentioned in AA.s. 179.
3. A confirming officer may also, under AA.s. 183 direct that an offender sentenced to imprisonment for life or imprisonment be not committed until the orders of the authority/officer specified in AA.s. 182 are obtained. If himself an authority under AA.s. 182 he has further powers as such under this section.
4. 'Mitigation' is awarding a less amount of the same species of punishment, as, for example, by reducing the length of imprisonment to which an offender has been sentenced; and is in effect equivalent to a remission of part of the sentence. The power to mitigate etc, cannot be exercised whilst execution of the sentence is suspended.
5. 'Remission' may be remission of the whole or of part of the sentence; thus a sentence of imprisonment may be remitted altogether, or a portion of the term may be remitted.

A confirming officer cannot remit such forfeiture of pay and allowances, as follow automatically ( under AA.ss. 90 and 91 and P and A Regs) upon the finding of the court.

6. (a) 'Commutation' is changing the description of punishment by awarding a punishment lower in the scale of punishments in AA.s. 71, as imprisonment in lieu of imprisonment for life, or dismissal in lieu of cashiering, or forfeiture of seniority in lieu of reduction in rank.

(b) 'Other punishments'. There is no standard of comparison between one punishment and two or more other punishments, and as it is necessary that the commuted sentence should be less than the original sentence, commutation of one punishment to two or more punishments is only permissible where it is obvious that the two are together less severe than the one, e.g., death commuted to cashiering and imprisonment for life or dismissal to forfeiture of seniority and severe reprimand. Partial commutation of any one punishment by the substitution for a portion thereof of another punishment is illegal; thus where in a case of "losing by neglect" a court passed a sentence of imprisonment, but omitted to pass a sentence of stoppages of pay which would have been valid, a portion of the imprisonment cannot be commuted to stoppages.

(c) If a confirming officer purports (by way of commutation) to substitute for a valid sentence a sentence which the court had no power to award, neither the original sentence- since it has been commuted- nor the new sentence- since it is illegal – can stand. That conviction, however, remains good.

7. Where a term of imprisonment or field punishment is reduced in length by remission or mitigation, automatic forfeiture of pay under AA.s. 91 and P & A Regs is governed by the term actually undergone-not by that originally imposed. So, too, pay and allowances are not automatically forfeited, whilst a sentence is suspended.

**159. Confirming of findings and sentences on board a ship.** When any person subject to this Act is tried and sentenced by a court-martial whole on board a ship, the findings and sentence so far as not confirmed and executed person had been tried at the port of disembarkation.

#### NOTES

1. On active service the officer commanding the troops on board a ship can convene a SGCM on board under clause (c) of AA.s. 112.

2. See also notes to AA.ss 110 and 155.

#### **160. Revision of finding or sentences**

(1) Any finding or sentence of a court-martial which requires confirmation may be once revised by order of the confirming authority and on such revision, the court, if so directed by the confirming authority, may take additional evidence.

(2) The court, on revision, shall consist of the same officers as were present when the original decision was passed, unless any of those officers are unavoidably absent

(3) In case of such unavoidable absence the cause thereof shall be duly certified in the proceedings, and the court shall proceed with the revision, provided that, if a general court-martial, it still consists of five officers, or, if a summary general or district court-martial, of three officers.

#### NOTES

1. See notes to AR 68.

2. 'Which requires confirmation' The finding or sentence of a SCM can, therefore, never be revised.

#### **161. Finding and sentence of a summary court-martial.**

(1) Save as otherwise provided in sub-section (2), the finding and sentence of a summary court-martial shall not require to be confirmed, but may be carried out forthwith.

(2) If the officer holding the trial is of less than five years service. He shall not, except on active service, carry into effect any sentence until it has received the approval of an officer commanding not less than a brigade.

## NOTES

1. 'Carried out forthwith' The officer holding the trial when passing sentence may, if a sentence of imprisonment be awarded, direct under the provisions of AA.s 183 (2) that the offender be not committed until the orders of the authority/officer specified in AA.s 182 are obtained. See notes to AA.s 183.
2. See AR 132 and notes thereto.

**162. Transmission of proceedings of summary court-martial.**- The proceedings of every summary court-martial shall without delay be forwarded to the officer commanding the division or brigade within which the trial was held, or to the prescribed officer; and such officer, or the (Chief of the Army Staff),<sup>1</sup> or any officer empowered in this behalf by the (Chief of the Army Staff),<sup>1</sup> may, for reasons based on the merits of the case, but not any merely technical grounds, set aside the proceedings or reduce the sentence to any other sentence which the court might have passed.

## NOTES

1. 'Division or brigade' : also area and sub area. See table under SRO 135-A dated 22 Jul 1950 Part IV).
2. Prescribed Officer. See AR 200.
3. The proceedings of a SCM cannot be sent back for revision and do not require confirmation, and any sentence passed by the court should, except as provided in AA.ss. 161 (2), 182 and 183 and AR 132, be put into execution forthwith.
4. Under this section and AR 133 the proceedings must be forwarded for review to the reviewing authority (through the DJAG of the Command in which the trial is held, who, if he considers that justice has been done, should countersign the proceedings and return them to the accused's corps for preservation. (AR 146). If a direction under AA.s. 182 has been passed, he should issue his orders thereon, or, if not himself the authority/officer specified in AA.s.182, forward the proceedings to such an authority/officer for orders. The reviewing authority can, for reasons based on the 'merit of the case', but not on merely technical grounds (as to which, see note to AR 133), set aside the proceedings or mitigate, remit or commute the sentence. If the sentence is illegal he must set it aside, or under AA.s. 163 a valid sentence may be substituted by one of the authorities mentioned in AA.s. 179.
5. A sentence of imprisonment for three months or less unaccompanied by dismissal should normally be undergone in military custody. See AA.s. 169 and notes thereto. A reviewing authority may direct that such a sentence should be undergone in military custody, either when reducing a sentence of imprisonment to three months or less or when the court omits to add such a direction to the sentence. But in the former case if the accused is sent to a civil jail, his consent for being reinstated in the service after the expiration of the sentence is necessary in view of the provisions of AR 168.
6. As to the scale of punishments awardable by SCsM see Regs Army Para 448.

## **REVIEW OF SUMMARY COURT-MARTIAL PROCEEDINGS**

In exercise of the powers vested under sec 162 of the Army Act 1950, the Chief of the Army Staff has empowered the following officers to review the proceedings of a Summary Court-Martial and pass such orders as mentioned in the said section :-

- (a) Chiefs of Staff HQ Commands in respect of troops directly under the Command HQ and not forming part of any Corps, Division or Brigades.
- (b) Chiefs of Staff HQ Corps in respect of troops directly under the Corps HQ and not forming part of any Division or Brigades.

(Auth : AHQ letter No 76229/AG/DV-1 dt 19 Mar 85).

## **163. Alteration of finding or sentence in certain cases.**

- (1) Where a finding of guilty by a court-martial, which has been confirmed, or which does not require confirmation, is found for any reason to be invalid or cannot be supported by the

evidence, the authority which would have had power under section 179 to commute the punishment awarded by the sentence, if the finding had been valid, may substitute a new finding and pass a sentence for the offence specified or involved in such finding:

Provided that no such substitution shall be made unless such finding could have been validly made by the court-martial on the charge and unless it appears that the court-martial must have been satisfied of the facts establishing the said offence.

(2) Where sentence passed by a court-martial which has been confirmed, or which does not require confirmation, not being a sentence passed in pursuance of a new finding substituted under sub-section (1), is found for any reason to be invalid, the authority referred to in sub-section (1) may pass a valid sentence.

(3) The punishment awarded by a sentence passed under sub-section (1) of sub-section (2) shall not be higher in the scale of punishments than, or in excess of the punishment awarded by, the sentence for which a new sentence is substituted under this section.

(4) Any finding substituted, or any sentence passed, under this section shall, for the purposes of this Act and the rules made thereunder, have effect as if it were a finding or sentence, as the case may be, of a court-martial.

### NOTES

1. Sub-sec (1).

(a) This sub-sec enables any of the authorities mentioned in AA.s. 179 to substitute a new finding for an invalid finding or for one which cannot be supported by the evidence, which have been confirmed and which are thus not open to revision and to pass a sentence in respect of the new finding. It also gives these authorities similar powers in regard to a finding not requiring confirmation, i.e., any finding of a SCM.

(b) The confirming officer himself has no power to substitute or change the finding; if in his opinion the court has arrived at a wrong finding, he can only send it back for revision or not confirm it.

(c) The procedure does not apply where the charge is bad in law or where the charge offends AA.s. 122.

2. Sub-sec (2).- It similarly enables the said authorities to substitute a valid sentence for an invalid sentence not being a sentence passed in pursuance of a new finding under sub-sec (1).

3. Sub-sec (3).

(a) This sub-sec requires that the new sentence substituted for an invalid sentence must not be higher in scale than, or in excess of, the original sentence. The words 'invalid sentence' are used to mean a sentence which is authorised under AA but which is inapplicable in relation to the accused or to the offence with which he is charged, as distinct from an illegal sentence or a sentence which is unknown to the said Act e.g., reproof. In case a sentence which is not specified in the scale of punishments in AA.s. 71, is awarded by a court-martial, it is not feasible for the authority specified in sub-sec (1), to say that any sentence which such authority may propose to substitute for the sentence of the court is not "higher" in the scale of punishments. In such cases action under this section for the substitution of the sentence is not permitted and the accused will receive no punishment though the conviction will stand.

4. The substituted finding and/or sentence has the same effect as if it were the original finding and/or sentence.

5. As to mitigation of sentence after confirmation, see AA.s. 179 and AR 72 (2).

### **164. Remedy against order, finding or sentence of court-martial.**

(1) Any person subject to this Act who considers himself aggrieved by any order passed by any court-martial may present a petition to the officer or authority empowered to confirm any finding or sentence of such court-martial, and the confirming authority may take such steps as may be considered necessary to satisfy itself as to the correctness, legality or propriety of the order passed or as to the regularity of any proceeding to which the order relates.

(2) Any person subject to this Act who considers himself aggrieved by a finding or sentence of any court-martial which has been confirmed, may present a petition to the Central Government, the (Chief of the Army Staff)<sup>1</sup> or any prescribed officer superior in command to the one who confirmed such finding or sentence, and the Central Government the (Chief of the Army Staff)<sup>1</sup> or other officer, as the case may be, may pass such order thereon as it or he thinks fit.

#### NOTES

1. See Regs Army Para 364.
  2. Prescribed officer : see AR 201.
  3. (a) A person subject to AA who consider himself aggrieved by any order, finding or sentence of a court-martial has a right, under this section to submit a petition against such order, finding or sentence. The officers or authorities to whom such petitions may be addressed are as follows :-
    - (i) Before confirmation – the officer or authority empowered to confirm the finding and sentence of that court-martial.
    - (ii) After confirmation – the Central Government, the COAS or any authority superior in command to the confirming authority.
    - (iii) Trial by SCM – an officer superior in command to the officer who held the SCM provided he has power not less than brigade commander (AR 20).
  - (b) Petitions by persons still in service will be addressed to any of the authorities mentioned in note 3(a) above through the confirming or reviewing authority, as the case may be. Unless the redress asked for is granted by a subordinate authority, the petition will be forwarded to the addressee with the remarks of all the intermediate commanders concerned.
  - (c) A person, who addressed a petition to the confirming officer before confirmation, will have the right to address another petition to any of the authorities mentioned in note 3 (a) (ii), above.
  - (d) A petition can only be addressed by an aggrieve person either personally or through a representative appointed by a power of attorney. A petition received from a person, other than the aggrieved one, or his duly constituted attorney, or a petition from an aggrieved person which has already been finally disposed of will be returned to the petitioner explaining the correct legal position to him.
  - (e) The orders of the officer or authority to whom the petition is addressed will be final and will exhaust the legal rights of redress under AA but see note 3 (c) above. Such orders will be attached to the proceedings, if the proceedings have been called for, or will be forwarded to the JAG, Army Headquarters, for attachment to the proceedings.
4. The types of reliefs that can be granted and the authorities empowered to grant them are set out in AA.s. 179.

**165. Annulment of proceedings.**- The Central Government, the (Chief of the Army Staff)<sup>1</sup> or any prescribed officer may annul the proceedings of any court-martial on the ground that they are illegal or unjust.

#### NOTES

1. Prescribed officer. See AR 202.
2. Before passing orders under this section the authorities specified in the section should invariably obtain the advice of the DJAG of the Command concerned. See Regs Army Para 364 (k).

**166. Form of sentence of death.**- In awarding a sentence of death a court-martial shall, in its discretion, direct that the offender shall suffer death by being hanged by the neck until he be dead, or shall suffer death by being shot to death.

#### NOTES

1. A person sentenced by a court-martial to death remains subject of AA until the sentence is carried out ; AA.s. 123 (4).
2. See also AA.s. 132 (2) and (3) and notes thereto.
3. For forms of warrants see ARs 169 to 170 and Appx V to AR.

**167. Commencement of sentence of (imprisonment for life)<sup>1</sup> or imprisonment.** Whenever any person is sentenced by a court-martial under this Act to (imprisonment for life)<sup>1</sup> or imprisonment, the term of his sentence shall, whether it has been revised or not, be reckoned to commence on the day on which the original proceedings were signed by the presiding officer or, in the case of summary court-martial.

#### NOTES

1. (a) Under this section a term of imprisonment for life or imprisonment cannot be made to commence at the expiration of a previous term, but must commence on the day on which the original proceedings are signed. If, therefore, the court desires to inflict, e.g., six months' additional imprisonment on a prisoner already undergoing six month's imprisonment, of which three months are unexpired, the court must award nine months.  
(b) A term of imprisonment for life or imprisonment awarded by way of commutation must commence on the date of the signing of original proceedings even though such sentence was one of a different character.  
(c) The suspension of a sentence of imprisonment for life or imprisonment has not effect on its currency. See AA.s. 185.
2. Original proceedings were signed. – Means the day on which the first verdict and sentence, if any, was announced. For example, on his trial by a court-martial, 'A' was found not guilty on 15 May 78. On revision, on 15 Jun 78, he was convicted and awarded 3 months RI. The term of his sentence shall reckon to commence wef 15 May 78. It is, therefore, essential that the proceedings be dated as well as signed. When, however, a presiding officer holding the trial omits either to sign or date the proceedings, he can even after confirmation sign them and date his signature as of the true date.
3. For framing sentences of imprisonment see Regs Army Para 467 (e) and note 8 (g) to AA.s. 71.
4. For forms of warrants see Part II of Appendix IV to AR.

**168. Execution of sentence of (imprisonment for life)<sup>1</sup>.**- Whenever, any sentence of (imprisonment for life)<sup>1</sup> is passed under this Act or whenever, any sentence of death is commuted to (imprisonment for life)<sup>1</sup>, the commanding officer of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer in charge of the civil prison in which such person is to be confined and shall arrange for his dispatch to such prison with the warrant.

#### NOTES

1. "Passed". – A sentence requiring confirmation (see AA.s. 153) is inoperative until confirmed; action in respect of such a sentence cannot, therefore, be taken under this section before confirmation. Until promulgation has been effected, confirmation is not complete (see AR 71).
2. Prescribed Officer. – See A 166.
3. Civil prison. - A prison maintained under the prisons Act, 1894 (IX of 1894). See AA.s. 3 (iii).
4. For form of warrants, see Part II of Appendix IV to AR.

When a death sentence is commuted by the confirming officer to imprisonment for life or imprisonment, Forms J and K in Appendix V to AR will be used.

**169. Execution of sentence of imprisonment.**

(1) Whenever any sentence of imprisonment is passed under this Act by a court-martial or whenever any sentence of death or (imprisonment for life)<sup>1</sup> is commuted to imprisonment, the confirming officer or in case of a summary court-martial the officer holding the court or such other officer as may be prescribed, shall, save as otherwise provided in sub-sections (3) and (4), direct either that the sentence shall be carried out by confinement in a military prison or that it shall be carried out by confinement in a civil prison.

(2) When a direction has been made under sub-section (1) the commanding officer of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer in charge of the prison in which such person is to be confined and shall arrange for his dispatch to such prison with the warrant.

(3) In the case of a sentence of imprisonment for a period not exceeding three months and passed under this Act by a court-martial, the appropriate officer under sub-section (1) may direct that the sentence shall be carried out by confinement in military custody instead of in a civil or military prison.

(4) On active service, a sentence of imprisonment may be carried out by confinement in such place as the officer commanding the forces in the field may from time to time appoint.

**169A.** When a person or officer subject to this Act is sentenced by a court-martial to a term of imprisonment, not being an imprisonment in default of payment of the fine, the period spent by him in civil or military custody during investigation, inquiry or trial of the same case, and before the date of order of such sentence, shall be set off against the term of imprisonment imposed upon him, and the liability of such person or officer to undergo imprisonment on such order of sentence shall be restricted to the remainder, if any, of the term of imprisonment imposed upon him.

**NOTES**

1. See notes 1,3 and 4 to AA.s. 168.

2. Sub-sec (1).- Prescribed officer: see AR 203.

3. Sentence of imprisonment combined with dismissal should, as a rule, be carried out by confinement in a civil prison. Sentence of imprisonment not exceeding three months, to which no sentence of dismissal has been added, should be carried out by confinement in military custody, or, if sufficient accommodation in cells does not exist, in a military prison. Where an offender has been sentenced to imprisonment exceeding three months (but not exceeding nine months) and circumstances exist which justify the return of the offender to military service, the competent authority should give a direction that he should be committed to a military prison.

4. When the power of directing imprisonment to be undergone in military custody or a military prison vests in the confirming officer, the direction should be part of the confirmation minute, but when, as in the case of a SCM, it vests in the court, the direction should form part of the sentence. The direction may also be given by an authority having power, under AA.s. 162 or AA.s. 179, to mitigate the sentence.

5. Sub-sec (2).- Prescribed officer. – See AR 166.

Forms of warrants.- See Forms B, C and F I in Part II of Appendix IV to AR.

6. See notes 3 and 4 above.

7. Sub-sec (4).- The officer commanding the forces in the field on active service can establish military prisons in the field in which sentences of imprisonment of any length may be carried. This enables a sentence of imprisonment to be carried out locally on active service and the prisoner, unless he is dismissed, to be sent back to duty on its expiration. The officer commanding the forces in the field can also appoint a local civil prison as a place in which such sentences may be carried out, if he considers the civil prison to be a suitable place and accommodation is available. Such civil prison not being a 'civil prison' within the meaning of AA.s. 3 (iii), the offender's subjection to AA would not cease under AR 168 (3).

**170. Temporary custody of offender.**- Where a sentence of (imprisonment for life)<sup>1</sup> or imprisonment is directed to be undergone in a civil prison the offender may be kept in a military custody or in any other fit place, till such time as it is possible to send him to a civil prison.

#### NOTE

Under this section, which deals with interim custody, a prisoner can be kept in any fit place until the prisoner reaches the civil prison (AA.s. 3 (iii) ) where he is to undergo his sentence.

**171. Execution of sentence of imprisonment in special cases.** Whenever, in the opinion of an officer commanding an army, army corps, division or independent brigade, any sentence or portion of a sentence of imprisonment cannot for special reasons, conveniently be carried out in a military prison or in military custody in accordance with the sentence shall be carried out by confinement in any civil prison or other fit place.

#### NOTES

1. 'Army, Army Corps, division' : See SRO 135A dated 22 Jul 50 (Part IV).

2. The power conferred in this section might be of use in an emergency, such as an epidemic. It will also admit of local arrangements being made for the execution of a sentence of rigorous imprisonment passed in any place outside India when it is, for any reasons, inconvenient or undesirable that an offender should be sent to India to undergo his sentence.

In such a case, the warrant of commitment in Form B (see part II of Appendix IV to AR) must be suitably varied (See AR 4) and must cite the order made under this section. When the prisoner is to be dispatched to India he should be demanded by a warrant in Form G in the said Appendix and must be committed to the civil prison in INDIA ON a fresh warrant of commitment.

3. This section differs from AA.s. 169 (4) in that (a) the direction may be made by the specified authorities even though the troops are not on active service and (b) the direction can be made only when the imprisonment is to be carried out in a military prison or military custody.

**172. Conveyance of prisoner from place to place.** A prisoner under sentence of (imprisonment for life) or imprisonment may during his conveyance from place to place, or when on board ship, aircraft, or otherwise, be subjected to such restraint as is necessary for his safe conduct and removal.

**173. Communications of certain orders to prison officers.** Whenever an order is duly made under this Act setting aside or varying any sentence, order or warrant under which any person is confined in a civil or military prison, a warrant in accordance with such order shall be forwarded by the officer making the order or his staff officer or such other person as may be prescribed to the officer in charge of the prison in which such person is confined.

#### NOTES

1. For form of warrants under this section, see Forms D to G in part II of Appendix IV to the AR. The heading of each of these shows clearly the cases in which it is to be used. It will be noticed that Form D is applicable to cases in which the person concerned is to be released, Form E to those in which he remains in a civil or military he remains in a civil prison and Form F to Form G to those in which he is to be transferred to military custody, i.e., to cases in which his sentence, in its new form, admits of or requires such custody. When a death sentence is commuted, subsequent to confirmation, to one of imprisonment for life or imprisonment, Form J to K in Appendix V to AR with the necessary variations, will be used. See AR 4.

2. The order, after promulgation, should be sent to the JAG AHQ, for attachment to the court-martial proceedings.

**174. Execution of sentence of fine.** When a sentence of fine is imposed by a court-martial under section 69 whether the trial was held within India or not, a copy of such sentence, signed and certified by the confirming officer, or where no confirmation is required, by the officer holding the trial may be sent to any magistrate in India, and such magistrate shall thereupon cause the fine to be recovered in accordance with the provisions of the Code of Criminal Procedure 1973 (Act V of 1973), or any corresponding law in force in (the State of Jammu and Kashmir) for the levy of fines as if it were a sentence of fine imposed by such magistrate.



## NOTE

This provision should be used when the fine imposed by sentence of a court-martial is not recoverable under AA.s. 90 (f) or 91 (b).

**175. Establishment and regulation of military persons.** The central Government may set apart any building or part of building or any place under its control, as a military prison for the confinement of person sentenced imprisonment under this Act.

**176. Informality or error in the order or warrant.** Whenever any person is sentence to (imprisonment for life) or imprisonment under this Act, and is undergoing the sentence in any place or manner in which he might be confined under a lawful order or warrant in pursuance of this Act, the confinement of such person shall not be deemed to be illegal only by reason of any informality or error in or as respect the order, warrant or other document, or the authority by which, or in pursuance whereof such person was brought into or is confined in any such place, and any such order, warrant or document may be amended accordingly.

**177. Power to make rules ion respect of prisons and prisoners.** The Central Government may make rules providing -

- (a) for the government, management and regulation of military prisons ;
- (b) for the appointment, removal and powers of inspectors, visitors, governors and officers thereof ;
- (c) for the labour of prisoners undergoing confinement therein, and for enabling persons to earn, by special industry and good conduct, a remission of a portion of their sentence ;
- (d) for the safe custody of prisoners and the maintenance of discipline among them and the punishment, by personal correction, restraint or otherwise, of offences committed by prisoners ;
- (e) for the application to military prisons of any of the provisions of the prisons Act, 1894 (IX of 1894), relating to the duties of officers of prisons and the punishment of persons not being prisoners ;
- (f) for the admission into any prison, at proper times and subject to proper restrictions, of persons with whom prisoners may desire to communicate, and for the consultation by prisoners under trial with their legal advisers without the presence as far as possible of any third party within hearing distance.

**178. Restriction of rule-making power in regard to corporal punishment.** Rules made under section 177 shall not authorize corporal punishment to be inflicted for any offence, nor render the imprisonment more severe than it is under the law for the time being in force relating to civil prisons.

## PARDONS, REMISSIONS AND SUSPENSIONS

**179. Pardon and remission.** When any person subject to this Act has been convicted by a court-martial of any offence, the Central Government or the (Chief of the Army Staff)<sup>1</sup> or, in the case of a sentence, which he could have confirmed or which did not require confirmation, the officer commanding the army, army corps, division or independent brigade in which such person at the time of conviction was serving or the prescribed officer may :-

- (a) either with or without conditions which the person sentenced accepts pardon the person or remit the whole or any part of the punishment awarded ; or
- (b) mitigate the punishment awarded ; or
- (c) commute such punishment for any less punishment or punishments mentioned in this in this Act :

(Provisio omitted).<sup>2</sup>

- (d) either with or without conditions which the person sentenced accepts, release the person on parole.

## NOTES

1. As to mitigation, remission and commutation of sentences, see notes to AA.s. 158; as to substitution of a valid for an invalid sentence, see AA.s. 163; and as to mitigation of the sentence when the finding on one of several charges is found to be invalid, see AR 72 (2).
2. Prescribed officer. See AR 204.
3. Any order made under this section should, after promulgation, be sent to the JAG, Army HQ, for attachment to the court-martial proceedings.
4. The powers conferred by this section should not be exercised by an officer holding a command inferior to that of the authority confirming the sentence unless such officer is authorised by such confirming authority or an authority to the confirming authority to exercise such power. Similarly, the powers conferred by this section shall not be exercised by an officer mentioned therein if such officer holds a command inferior to that of the authority/officer who has already once taken action under this section, without reference to such latter authority/officer. Regs Army para 473.
5. (a) A sentence of dismissal might be remitted on the conditions that the person sentence shall not receive pay in respect of or count service for any purpose during the period spent under dismissal. The conditions, if any, must be clearly stated and the written acceptance of the person obtained. Mitigation or commutation cannot be made conditional.  
  
(b) A 'pardon' takes away the conviction, and when a pardon has been granted the record of the conviction must be removed from the pardoned persons' conduct sheet and will not be provable against him should he be again tried by a court-martial and convicted of any offence.  
  
(c) Release on parole with conditions has, like 'suspension, no effect on the finding but merely suspends the execution of the sentence. Unconditional release on parole is tantamount to remission of the unexpired portion of the sentence.

### **180. Cancellation of conditional pardon, release on parole or remission.**

1. If any condition on which a person has been pardoned or released on parole or a punishment has been remitted is, in the opinion of the authority which granted the pardon, release or remission, not fulfilled, such authority may cancel the pardon, release or remission and thereupon the sentence of the court shall be carried into effect as if such pardon, release or remission has not been granted.
2. A person whose sentence of (imprisonment for life)<sup>1</sup> or imprisonment is carried into effect under the provisions of sub-section (1) shall undergo only the unexpired portion of his sentence.

## NOTES

1. 'Unexpired portion' : This is the period of the sentence less the period the person was in custody in consequence of the sentence i.e., less the period from the effective date of sentence to date of release in consequence of remission.
2. See note 3 to AA.s. 179.

**181. Reduction of warrant officer or non-commissioned officer.** When under the provisions of section 77 a warrant officer or a non-commissioned officer is deemed to be reduced to the ranks, such reduction shall, for the purpose of section 179. be treated as a punishment awarded by a sentence of a court-martial.

## NOTES

1. The remission of the punishments mentioned in AA.s. 77 would not of itself avoid the reduction to the ranks consequent on the sentence. If it is desired to avoid such reduction to the ranks the reduction may, by reason of this section, be remitted as well.

2. A NCO sentenced by court-martial to imprisonment etc, is ipso facto reduced to the ranks, and the suspension of his sentence does not cancel or suspend the reduction. There is, however, no legal bar to a person receiving promotion or an appointment whilst under a suspended sentence.

3. See also not 3 to AA.s. 179.

**182. Suspension of sentence of (imprisonment for life) or imprisonment.** (1) Where a person subject to this Act is sentenced by a court-martial to (imprisonment for life)<sup>1</sup> or imprisonment, the Central Government, the (Chief of the Army Staff)<sup>1</sup> or any officer empowered to convene a general or a summary general court-martial may suspend the sentence whether or not the officer has already been committed to prison or to military custody.

(2) The authority or officer specified in sub-section (1) may in the case of an offender so sentenced direct that until the orders of such authority or officer have been obtained the offender shall not be committed to prison or to military custody.

(3) The powers conferred by sub-sections (1) and (2) may be exercised in the case of any such sentence which has been confirmed, reduced or commuted.

#### NOTES

1. AA.s. 182 to 190, which deal with suspension of sentence only apply to sentences of imprisonment for life or imprisonment passed on persons subject to AA but from the word 'dismissal' in AA.s. 190 (2) it appears that the Parliament intended to exclude officers from the purview of the sections.

2. The authority/officer specified in sub-sec (1) may in his discretion, issue a general direction that no person under his command sentence to imprisonment for life or imprisonment is to be committed to prison or to military custody until his order have been obtained. Sentence of imprisonment exceeding two years will, since only a GCM or SGCM can pass such a sentence, always require confirmation by an officers who will himself be one of the authorities specified in sub-sec (1).

3. The authority or officer under sub-sec (1) read with AA.s 186 can at any time suspend a sentence, order it into execution and again suspend it etc., until the sentence expires event though the offender has ceased to be subject to AA under AR 168; see AA.s. 123 (3).

4. An order putting a suspended sentence into execution must be signed by the competent authority under sub-sec (1) ; a minute of suspension may be signed by a staff office "for" him, so it makes it clear that the competent authority/officer himself considered the case and arrived at the decision.

**183. Order pending suspension.** (1) Where the sentence referred to in section 182 is imposed by a court-martial other than a summary court-martial the confirming officer may when confirming the sentence, direct that the offender be not committed to prison or to military custody until the order of the authority or officer specified in section 182 have been obtained.

(2) Where a sentence of imprisonment is imposed by summary court-martial the officer holding the trial or the officer authorised to approve of the sentence under sub-section (2) of section 161 may make the direction referred to in sub-section (1).

#### NOTES

1. The case in which any by whom a direction under the section may be recorded are as under :-

(a) by the authority/officer specified in AA. s. 182 (1) ; see AA. s. 182 (2).

(b) by the confirming officer in the case of any sentence awarded by DCM unless the confirming officer happens to be one of the authorities specified in AA. s. 182 (1);

(b) in the case of a SCM :-

(i) the officer holding the trial ; or.

(ii) the officer authorised to approve the sentence under AA.s. 161 (2).

2. It should be noted that the officer holding the trial can only so direct when passing sentence, the officer authorised to approve under AA.s. 161 (2) when approving and the confirming officer when confirming.

**184. Release on suspension.** Where a sentence is suspended under section 182 the offender shall forthwith be released from custody.

#### NOTES

Suspension does not affect the finding or the continuity of the sentences but the offender is released from custody and if in service can carry on his duties.

**185. Computation of period of suspension.** Any period during which the sentence is under suspension shall be reckoned as part of the term of such sentence.

#### NOTES

Suspension of a sentence does not affect its continuity. Under the provisions of AA.s. 167, a sentence of imprisonment for life or imprisonment, whether suspended or not, commences on the date on which the original proceedings of the court were signed and runs continuously until it expires.

**186. Order after suspension.** The authority or officer specified in section 182 may, at any time while a sentence is suspended, order :-

- (a) that the offender be committed to undergo the unexpired portion of the sentence ; or
- (b) that the sentence be remitted.

#### NOTES

1. If the authority/officer specified in AA.s. 87 (1) considers at the periodical review that a sentence ought not to remain suspended, he will refer the case to the authority or officer specified in AA.s. 182 (1) unless he is himself such authority etc, see notes to AA.s. 187. A suspended sentence may, however, be referred to the authority/officer mentioned in AA.s. 182 (1) at any time with a view either to its remission or to the committal of offender to undergo the unexpired portion of the sentence.

2. This section does not contemplate the partial remission of a sentence ; the only power of remission under clause (b) is to remit the whole. Partial remission must be effected (if at all) under AA.s. 179. See AA.s. 189.

3. When an offender is committed to prison to undergo the 'unexpired portion' of his sentence the unexpired portion should be stated in the warrant. As to signing committal warrants, see AR 166. Also see AA.s. 185.

**187. Reconsideration of case after suspension.** (1) Where a sentence has been suspended, the case may at any time, and shall at intervals of not more than four months, be reconsidered by the authority or officer specified in section 182, or by any general or other officer not below the rank of the field officer duly authorised by the authority or officer specified in section 182.

(2) Where on such reconsideration by the officer so authorised it appears to him that the conduct of the offender since his conviction has been such as to justify a remission of the sentence, he shall refer the matter to the authority or officer specified in section 182.

#### NOTES

1. See notes to AA.s. 186. Unless the authority referred to in sub-sec (1) is also one specified in AA.s. 182 (1), the former can only :-

(a) keep a suspended sentence further suspended by ordering it to be brought forward for reconsideration on such and such a date not more than four months ahead ; or

(b) refer it to the authority/officer specified in AA.s. 182 (1)-unless he is himself such authority-with a recommendation either that the offender be committed to undergo the unexpired portion of the sentence or that the sentence be remitted.

2. Failure to reconsider a suspended sentence at the proper date has no effect upon the sentence; it can be subsequently reconsidered, and a further suspension or a committal may then be ordered.

**188. Fresh sentence after suspension.** Where an offender, while a sentence on him is suspended under this Act, is sentenced for any other offence, then :-

(a) if the further sentence is also suspended under this Act, the two sentences shall run concurrently ;

(b) if the further sentence is for a period of three months or more and is not suspended under this Act, the offender shall also be committed to prison or military custody for the unexpired portion of the previous sentence, but both sentences shall run concurrently ; and

(c) if the further sentence is for a period of less than three months and is not suspended under this Act, the offender shall be so committed on that sentence only, the previous sentence shall subject to any order which may be passed under section 186 or section 187, continue to be suspended.

#### NOTES

1. Clause (b).

(a) Under this, clause, the offender is committed to undergo the unexpired portion of the previous sentence from the date the further sentence is effective. An order by competent military authority under AA.s. 182 (1) is not required.

(b) Committal warrants must, in order to comply with the provisions of the Prisoners Act, 1900 (III of 1900), be forwarded to the authorities of the prison to which the offender is sent. It will generally be convenient to prepare separate warrants ; in preparing the warrant in respect of the former sentence care must be taken to state the unexpired portion which the offender has to undergo.

2. Clause (c).

(a) If dismissal has been added to the further, unsuspended sentence and no order has been passed under AA.s. 169, that the imprisonment is to be undergone in military custody, the offender should not be committed to a civil prison until the competent authority under AA.s. 182 (1) has had opportunity to order the unexpired portion of the former sentence into execution.

(b) As to preparation of committal warrants ; see note 1 (b) above.

**189. Scope of power of suspension.** The powers conferred by sections 182 and 186 shall be in addition to and not in derogation of the power of mitigation, remission and commutation.

#### NOTES

The authority or officer referred to in AA.s. 182 (1) can also in addition exercise the powers of mitigation, remission and commutation under AA.s. 179 provided such authority is also one of the authorities specified in the latter section.

**190. Effect of suspension and remission or dismissal.**

1. Where in addition to any other sentence the punishment of dismissal has been awarded by a court-martial, and such other sentence is suspended under section 182, then, such dismissal shall not take effect until so ordered by the authority or officer specified in section 182.

2. If such other sentence is remitted under section 186, the punishment of dismissal shall also be remitted.

## NOTES

1. Sub-sec (1). In the case of a sentence of dismissal combined with imprisonment for life or imprisonment which is suspended the dismissal does not take effect until so ordered by the competent authority under AA.s. 182 (1). This is so even if the sentence is subsequently ordered into execution by the competent authority or is automatically put into execution under clause (b) of AA.s. 188. A competent authority who orders into execution a sentence of imprisonment for life or of imprisonment other than imprisonment to be undergone in a military prison or military custody should, if dismissal has been added to such sentence, as a rule, order the dismissal to take effect when the offender is received into a civil prison. If the dismissal accompanies a sentence of imprisonment for life or imprisonment which is not suspended, it takes effect as provided in AR 168, that is, when the sentence is one of imprisonment for life or of imprisonment which has to be undergone in a civil prison it takes effect immediately on the offender being received into such a prison and he therefore, ceases to be subject to the Act. In such a case, therefore, the dismissal must be remitted before the sentence of imprisonment can be suspended. In this connection see notes to AA.s. 188.

2. Sub-sec (2). The effect of this sub-sec is that whenever dismissal has been added to a sentence of imprisonment for life or imprisonment and such sentence is remitted under AA.s. 186 the dismissal is also automatically remitted. The remission of a sentence of imprisonment for life or imprisonment under AA.s. 179 does not operate so as to remit a sentence of dismissal, which accompanied such sentence. If a suspended sentence to which dismissal has been added runs out whilst still under suspension the dismissal should as a rule, be formally remitted under AA.s. 179 by one of the authorities/officers empowered under that section to do so as this sub-sec, does not automatically remitted such dismissal.

### **191. Power of make rules.**

(1) The Central Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) Without prejudice to the generally of the power conferred by sub-section (1), the rules made thereunder may provide for :-

- (a) the removal, retirement release, or discharge from the service of persons subject to this Act.
- (b) the amount and incidence of fines to be imposed under section 89;
- (c) omitted.
- (d) the assembly and procedure of courts of inquiry, the recording of summaries of evidence and the administration of oaths or affirmations by such courts.
- (e) the convening and constituting of courts-martial and the appointment of prosecutors at trials by court-martial ;
- (f) the adjournment, dissolution and sitting of courts-martial ;
- (g) the procedure to be observed in trial by courts-martial and the appearance of legal practitioners thereat ;
- (h) the confirmation, revision and annulment of, and petitions against, the findings and sentences of courts-martial ;
- (i) the carrying into effect of sentences of courts-martial ;
- (j) the forms of orders to be made under the provisions of this Act relating to courts-martial, (imprisonment for life)<sup>1</sup> and imprisonment ;

(k) the constitution of authorities to be decided for what persons, so what amounts and in what manner, provisions should be made for dependants under section 99, and the due carrying out of such decisions ;

(l) the relative rank of the officers, junior commissioned officer, warrant officer, petty officers and non-commissioned officers of the regular Army, Navy and Air Force when acting together;

(m) any other directed by this Act to be prescribed.

#### NOTES

1. (a) The Central Government is empowered to make rules for the purpose of carrying into effect the provisions of AA. The rules so made must not contain anything contrary to or inconsistent with any provision of the said Act itself. Consequently, if any rule is found to conflict with some section of AA, the section must prevail.

(b) The Army Rules, 1954 have been made in pursuance of this section.

2. Sub-sec 2 (m). See AA.s. 3 (xix).

**192. Power to make regulations.** The Central Government may make regulation for all or any of the purposes of this Act other than those specified in section 191.

#### NOTES

The Regulations made under this section may cover a wider field than the limited purposes for which rules can be framed under AA.s. 191 (1).

**193. Publication of rules and regulations in Gazette.** All rules and regulations made under this Act shall be published in the Official Gazette and, on such publication, shall have effect as if enacted in this Act.

**194.** (Repealed)2.

#### TRANSITORY PROVISIONS

**195. Definition of “British Officer”.**

(1) In this Chapter “British Officer” means a person of non-Indian domicile holding a commission in His Majesty’s Land Forces or in the Royal Marines or in the Territorial Army and serving in the regular Army.

(2) The expression “superior officer” in this Act shall be deemed to include a British officer.

**196. Powers of British officer.** A British officer shall have all the powers conferred by this Act on an officer of correspondence rank or holding a corresponding appointment.