

An Analysis of the origin and growth of the Indian Military Justice System and its Drawbacks

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Abstract:

Military justice in any nation refers to a collection of laws aimed at regulating the personnel of the country's armed forces. Each state requires a code of regulations and guidelines for the raising, support, and organization of its military, which may all be viewed as the field of military regulation. The object of the disciplinary code is to guarantee that the desire of the commandant is placed into impact. Military regulation in this way traces its origin to the prerogative force of rulers. The Indian Army, Air Force, and Naval Force in India have special laws formed to govern the Land, Air and Water forces, also known as The Indian Army, Air Force, and Naval Force in India. The purpose of military regulation is to ensure that the trooper is not empowered to get away from the commitments of his country's normal regulation or of global regulation. The three Army, Navy and Air Force Acts are nearly identical, but there are a few differences in the authorities and processes.

The Air Force has three kinds of Court Martial - General Court Martial, District Court Martial and Summary General Court Martial. The Indian Army has one kind of court-martial during peacetime and also a disciplinary tribunal during times of war. The Indian Military Justice System has multiple drawbacks that often lose out on the purpose of granting justice and restrict it for the military officials. The Indian Armed Forces have a structure of regulation, standards, and methods called military regulation, which has encountered rehashed modifications and changes. This research slightly touches and compares certain drawbacks of the Indian Military Justice System to the procedures of the USA and UK military forces. The Armed Forces Tribunal (AFT) was established in 2007, but it failed to make a mark due to the rigidity of the tribunal and the lack of support from the Government. The AFT has failed to provide adequate verdicts for the cases due to lack of experts in the tribunal, and there is a serious case of the non-execution of the final orders that could've granted relief to the complainants.

Keywords: Indian Military, Army, Air Force, Navy, AFT, Drawbacks

Introduction:

Every country, state city and a village as well requires a certain set of rules that need to be followed for the smooth functioning of the nation internally. While these laws are protecting us on the inside, the military plays an important role in being the wall that obstructs ill-actions, encroachments or any terrorist activities of enemy states or any other terrorist organization and help safeguard the nation. Therefore, as it is rightly said 'Bravery is being the only one who knows you're afraid.' the military stands tall and firm on the nation's border or in times of sudden terror attacks safeguarding us common

people. During state of emergencies of sudden terror attacks like the 26/11, it was the military that helped in weighing down the intensity of the terror and thus are always present when needed.

Military justice alludes to a bunch of regulations and decides that control individuals from the armed services. Each nation has own particular organisations that control the activities of its Military staff. Military justice in any nation refers to a collection of laws aimed at regulating the personnel of the country's armed forces.¹

Each state requires a code of regulations and guidelines for the raising, support, and organization of its military, which may all be viewed as the field of military regulation. The term, notwithstanding, is for the most part bound to disciplinary military regulation as characterized above — i.e., that piece of the code that focuses on and sanctions the support of discipline in the military. In the past this was similarly known by the name of military laws, a term that at present has the significance of military necessity of solicitation upon a typical people either in elaborate space or in time of disarray.

Individuals from military don't stop under current circumstances to have obligations as residents and as people. All frameworks of military regulation subsequently should plan to guarantee that the trooper is not the slightest bit empowered to get away from the commitments of his country's normal regulation or of global regulation as perceived in different shows.

Thus every Nation has a specific set of laws to govern its Military so as to not cause a dent in the military discipline and thereby ensuring that as every army officer is a citizen of the country first they are not given any additional empowerment against the basic duties as a citizen and human. Thereby there are special laws formed to govern the Land, Air and Water forces, also known as The Indian Army, Air Force and Naval Force in India.

Origin:

The object of the disciplinary code is to guarantee that the desire of the commandant is placed into impact. Military regulation in this way traces its origin to the prerogative force of rulers. The recognized history of Indian Armed force goes back in excess of 10,000 years. However sparse subtleties are accessible of the early contentions between the attacking powers, proof shows that a portion of the trespassers figured out how to gradually overwhelm western India and solidified their hold along the Indo - Gangetic fields, and in the process repressed various local ancestral realms through pitched fights. Their development further south was for the most part stopped by the wilderness covered Vindhya Mountains. Those separated, certain regions along the western coast and the Deccan level were bumpy and meager - unacceptable for the movements of groups of soldiers. Notwithstanding, this immense region likewise loaned itself well to obstruction against intrusion by free battling fighters, for example, the Marathas who were a force to reckon with.

Indian-sub continent was passed down many rulers including the Mauryas, Mughals; Marathas etc. each had their distinct military regulations, rules, training and development. The Mughals ruled over India for over 300 years and later came the East India Company, The Portuguese and then the Bruisers. The Britisher's then bought modern day military equipment and trained the Indian soldier with an aim to include them from the English side in the world war.

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The current role and aim of the Indian Military according to the Indian Army is mandated to safeguard National Interests from External Aggression and Internal Subversion.²

The military in India has since long avoided functions and affairs in the public sphere. As a matter of fact, the military has numerous distinct customs and practices, which are restricted to those in the military. Among these qualifications is a to a great extent special arrangement of rules, regulations, and lawful practices. Basically, there is a different arrangement of military laws to oversee the exercises of military authorities. A greater part of these laws and arrangements are identified in the Army Act, Navy Act, and the Air Force Act.

In the same way as other different standards and resolutions, military regulation also is a tradition of the British Raj. It had a significant number of its initial establishments being laid in the setting of the revolt of 1857. Independence from English rule saw the emergence of progresses to the Indian Army Act, 1911.

These progressions came as the Military Act, which came into force on 22nd July, 1950. This was trailed by the Military Guidelines 1950 (later supplanted by Army Rules 1954). Later on, in 1993, alterations were by and by made to the Army Act and the Army Rules.

Further, similar rules, laws and provisions were organized for different wings of the military. This incorporates the Air Force Act, which was brought into force on 22nd July 1950. Likewise, the Air Force Rules of 1969 were established as per segment 189 of the Air Force Act, 1950.

Every one of the three acts is almost indistinguishable, with a couple of little contrasts. The regulative arrangements that apply to people in uniform are framed in these rules Military powers have their own arrangement of regulations, yet they are indistinguishable from to the Army, Navy, and Air Force Acts. Border Security Forces Act, Coastal Guards Act, Indo Tibet Border Police Act, and Assam Rifles Act are all military-inspired laws of India.³

Indian Military Acts:

• Indian Navy Act, 1957

Before India achieved freedom the Naval Forces were being represented by the Indian Navy (Discipline) Act, 1934 which was passed as per section 66 of the Government of India Act, 1919 (later supplanted by segment 105 of the Government of India Act, 1935), which enabled the then Indian Legal system to apply to the Naval Forces brought up in India-the arrangements of the U.K. Naval Discipline Act. Appropriately U.K. Maritime Discipline Act was altered and the Indian Navy Discipline Act, 1934 was established. After autonomy a few established changes were made. Because of this it was felt important to change the regulation connecting with Naval Forces. Meanwhile, in 1950 the updated Army Act and Air Forces Act were relaxed it was unrealistic to re-examine the law directing the Naval Forces as the then existing Indian Navy Act, 1934 depended on the Corresponding British Act.⁴ In U.K. a unique council had been designated to inspect the subject of the correction of the British Naval Code. The state authority felt that it would be a benefit to anticipate the report of the British Committee. Considering of the report of that advisory group the Indian Navy Bill was presented in the Parliament.

The act has further been amended several times as mentioned below:

1. The Repealing and Amending Act, 1960 (58 Of 1960)

² Indian Army Role-indianarmy.nic.in

³ International Journal of Law management and Humanities-Overview of Indian Military Justice System- (ISSN 2581-5369)

⁴ (The Navy Act, 1957, n.d.)

2. The Army, Air Force and Naval Law (Amendment) Act, 1970 (30 of 1970)
3. The Navy (Amendment) Act, 1974 (53 of 1974)
4. The Navy (Amendment) Act, 1982 (48 of 1982)
5. The Navy (Amendment) Act, 1987 (34 of 1987)
6. The Navy (Amendment) Act, 2005 (23 of 2005)

- **The Indian Army Act, 1950**

Like the other regulation in India, the Army Act is additionally the regulation presented by the English during their system. The Indian Army Act, 1911 was presented after the revolt of 1857.

After the enormous battle of freedom, when English rule finally came to an End, the previous demonstration, the Indian Army Act, 1911, was repealed, and new regulation, the Indian Army Act, 1950 was passed.

This Act was formulated and introduced with every one of the fundamental changes expected according to the circumstance. The Army Rules, 1950, later followed the act. The Army Rules of 1950 later got revoked by The Army Rules of 1954. The act and the principles are amended and altered every once in a while to meet the necessities of society.

Military law provisions govern the part of the Indian Army during the expression of peace and war in the form of bills, Rules and Regulations. The legal and justice system of the army is entirely different from the ordinary legal system. The distinction in the legal and justice system of the fortified forces is to maintain discipline and avoid the prolonged shortfall of military officials and men from their duties. The prayers system isn't included in the military justice system, as it's in the civil system.

The Army Act, 1950 has prevailed with regards to keeping up with the likeness of order in the military for quite a long time since Freedom.

- **The Air Force Act, 1950**

The Indian Air Force act was introduced in the year 1950 to bind together existing regulations overseeing the Aviation based armed forces and modify them. Unless released or eliminated from the Air Force, the Act applies to an Air Force official irrespective of spot, whether or not outside or inside India. The Indian government can apply this Act to any power brought and kept up with in the country. The government can also suspend other laws from being used on the force.

The government decides regulations that to apply to people in the power as they would to an Air force personnel with comparative position; or on the other hand individuals working, serving, following, or going with the force. The central government establishes the authority that exercises governance, powers and responsibilities while applying the clauses of the Act. The central government can coordinate the arrangement of the people working for or going as a part of the Air Force as warrant officials, officials, or non-dispatched officials. Other such individuals are considered to be of a lower rank than the non-commissioned officers.

The public authority can proclaim anybody subject to this act to be on dynamic assistance in a space they are serving or as to the Act's provisions or some other The Indian Air Force has been actively protecting Indian air space and has solidified India in aspects of both offence and defense. The Force has

a strict regime that is bolstered by the Air Force Act. The Act emphasizes the entire judicial proceedings and lays down comprehensive provisions.⁵

Although the Act has drawbacks such as no provision for resignation provision, lack of legal aid to the accused, the retrial of the accused by a civil court after the court martial carried on the trial on similar grounds, and absence of allure provisions, the Indian Air Force Act has accomplished its unbiased to merge military air law of the country, since it is the essential regulation overseeing the Indian Aviation based armed forces today and will keep on doing as such in future.

Key differences in these three Acts:

Although the three acts are nearly identical there are a few differences in the authorities and the processes etc. The legislative provisions that apply to men and women in uniform are outlined in these statutes. Military forces are independent and hold their own set of laws which are identical to the Army, Navy and Air Force Acts. Border Security Forces Act, Coastal Guards Act, Indo Tibet Border Police Act, and Assam Rifles Act are all military-inspired laws of India.

1. Court Martial :

A court martial is a military court that practices purview over issues including individuals from forces who disregard military regulations. The reason for a court martial is to keep up with discipline and guarantee that individuals from the military are considered responsible for their activities. A court military is ordinarily made out of military officials who act as both appointed authority and jury. The court martial is a tribunal and determines the punishment in cases of conviction.⁶

According to the military manual, in section 108, Chapter X there are four types of court martial across the three military forces, they are listed below:

- a) General Court Martial
- b) District Court Martial
- c) Summary General Court Martial
- d) Summary Court Martial

The Air Force has three kinds of Court Martial - General Court Martial, District Court Martial and Summary General Court Martial.⁷

The Indian Army Act, along-with court martial provisions similar to the Air force the Indian Army have provision of the summary court martial.⁸ Meanwhile The Indian Navy has only one kind of court-martial during peacetime and also a disciplinary tribunal during times of war. An Indian Navy court-martial may be held ashore or afloat In contrast to the Army and the Air Force, where the senior-most officer of the court-martial automatically takes up the position of presiding officer, in the Navy, the convening authority always nominates the president of the courts-martial.

In the Navy, the findings and sentence of courts-martial do not require the express confirmation of the convening authority or any other superior authority and they become operative the moment a pronouncement is made. This practice is however excluded on account of a capital punishment which expects earlier affirmation from the Central Government.⁹ In the Air Force and Indian Army the acquittal decision unlike the Navy is not final and may be subject to change and revision through appeals

⁵ An overview of the Indian Air Force Act, 1950, Sreeraga-Get Legal India

⁶ <https://getlegalindia.com/air-force-act/>- Air Force Act 1950 an Overview

⁷ Air Force Act 1950

⁸ Indian Army Act 1950

⁹ Indian Navy Act 1957

Concerning the Army of the Air Force, the presence of an appointed judge advocate in the region and summary general court-martial isn't required.

This, however, is not the case with the Navy. In the naval force, it is expected that every single court-military is gone to by a Judge-advocate. Also, in the Army and the Air Force, the judge advocate remains present when the court makes a decision during the trial from the findings; however, in the Navy Naval force the presence of a judge-advocate isn't needed when the court is thinking about the findings. Besides, on account of the Naval force, the commanding officer of a ship might attempt any individual having a place with the ship promptly with no earlier approval for offenses that are not in that frame of mind of a capital offense likewise the superior is completely justified to grant detainment or confinement up to a time of 90 days. This provision, however, is not applicable to those of an officer rank. In the meantime, the force of rundown preliminary is restricted in the Military and the Air Force wherein punishment of up to 28 days of imprisonment can be granted to people underneath the position of NCO.

The proceedings of a court-martial or disciplinary court are checked on by the Judge Advocate General (JAG) of the Navy either on his own movement or on an application made by a distressed individual. The JAG is to send the report of the survey along with his suggestions to the Chief of the Naval Staff (CNS) for his consideration.

This cycle is somewhat divergent on account of the other two military branches. In the Army and the Air Force, the officers of the Department of the JAG, before confirmation, review the proceedings of courts-martial and may make recommendations. These reviews are advisory and not binding on the Chiefs of the respective Service. One notable area of commonality is the overarching influence that the will of the various chiefs of staff hold over the outcome of cases, in contrast to civilian cases which are centred on the rule of law.¹⁰

As per the Army Act, armed force courts can attempt faculty for a wide range of offenses, with the exception of murder and rape of a regular citizen of India, which are principally tried in a civilian courtroom.

Drawbacks in the provisions for Military Official

As the country has progressed and set itself free from the clutches of the British and have built their own set of laws, in the current times, the propaganda to evolve completely from the roots of the laws and rules of the British; India has renamed and made subtle changes to the Indian Penal Code, Criminal Procedural Code and the Indian Evidence Act introduced the bills as Bhartiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita and Bharatiya Sakshya Bill.

The Army Act, which is loaded up with defects, is a portrayal of the previous overall set of laws set up in British era as well as different measures taken by the various military powers. Taking out these deficiencies is essential to keep them from harming or in any event, obliterating the tactical equity framework.

¹⁰ All you need to know about the Army Act, the Navy Act, and the Air Force Act- Pratap Alexander Muthalaly-
ipleaders.com

Listed below are the few major drawbacks alongside the provisions in other countries for the same:

a. **No Provision for Bail:**

In all the three Acts for the Military there are no provisions made for the bail of any arrested military official. The bail for a blamed official is in the hands of their superior or in charge and the specific military court directing the case. The Supreme Court has laid out the standards for conceding bail, and these standards ought to be applied to detained military individuals only depending on their superior.

This is a clear violation of the Article 21 and Article 22 of the Indian Constitution which gives every individual a right to bail and against detention of any Individual without being educated regarding the grounds of arrest and that no individual will be denied the right to appoint a legal practitioner in his/her favour. Military laws don't allow an offender to hire a civil lawyer to defend him or to be defended by an officer known as a defending official.¹¹

Meanwhile, according to The Armed Forces (Conditional Release from Custody) Order 2009, in the UK a military official can be granted bail as this article applies where a judge advocate grants a person bail subject to any conditions that shall be met before the person is released¹². Unlike the Indian Military justice system where the final call is given in the hands of the superior official or the Tribunal in the UK the court grants the bail on certain conditions to be met depending upon the offence.

Bail will be provided only to guarantee the presence of the defendant and will not be provided to guarantee the payment of fines or civil damages. Local US military authorities are expected to provide bail, in any case, only after other reasonable efforts have been made to secure release of pre-trial custody to the US.¹³

Double Jeopardy:

According to the now omitted section 127 of the Indian Army Act 1950 an acquitted officer from the military would be tried again in the criminal court with civil jurisdiction for the same offence or for the same circumstances. This section was contradiction to the Article 20 (2) of The Indian Constitution which stated that no person who was acquitted for one offence will not be tried again for the same offence. In the case of Surinder Singh v. Union of India, the petitioner moved to the Madhya Pradesh High Court in Jabalpur to have the proceedings of the general Court martial that was summoned to try him set aside after his summary court-martial conviction was overturned. His main argument was that he had already been tried and punished for the same offence by a summary Court-martial, and that a retrial was barred under the provisions of Section 121 of the Army Act and Article Contended that the summary Court-martial proceeding in which he had been tried previously was quashed for non-compliance with the mandatory provisions of Army Rule 22.¹⁴

However, even though the military justice system prohibits conducting the trial again, the civil court can conduct the trial of the same offence again.

¹¹ Sehgal, D. R. (2021, October 3). Military laws in India : a critical analysis of the enforcement mechanism - iPleaders.]

¹² (The Armed Forces (Conditional Release from Custody) Order 2009, n.d.)

¹³ (The Armed Forces (Conditional Release From Custody) Order 2009, n.d.)

¹⁴ <https://www.ijlmh.com/wp-content/uploads/Overview-of-Indian-Military-Justice-System.pdf>

Trial in a Summary Court Martial

The Summary Court Martial is a unique court that is specially held for trials of military offences. Because of the absence of an advocate, the Summary Court Martial misses the mark regarding the guidelines of reasonableness laid out by the Supreme Court and the High courts. According to Article 21 and 22 of the Indian Constitution every person has the right to protection by a legal officer whereas in a Summary Court Martial the Military Officials conduct trials, hearings etc. thereby having no independent legal officer to safeguard the accused and follow a specific procedure to conduct trials and hence leaving room for mistakes.

A trial in a Summary Court Martial cannot be considered to be professional as the Judges lack qualifications, autonomy, knowledge and expertise in the legal field. As the Judges are presiding officers there is a higher chance of having an influence over the judgements as the decision making won't be fair. Despite having multiple amendments, the Court Martials have failed to include legal professional to lead the trials. Currently, the Presiding officer is responsible to conduct trials with autonomy and reasonableness. The Summary Court Martial is often criticised by the Supreme Court and High Courts for lacking sensibility in its trials.

People from Court Military Individuals aren't knowledgeable or lawfully qualified to manage equity. They're under an influence and don't rehearse their judgment with autonomy during a preliminary.

No provision for Right to Appeal in Higher Courts:

The Military officials who are granted decisions against their favour do not have a formal right to appeal against it in the higher courts. The present method for what is referred as to the confirmation and revision of court martial procedure is enumerated in chapter XII of the AA, notably sections 153-165. It is stated in section 153 that no decision or sentence of parties such as a General, district, or summary General, or a court martial, may be deemed legal until it is confirmed as mention in the AA.¹⁵

In circumstances wherein an officer would want to appeal in the higher court, the presiding officer has the authority to pass the appeal. The option of seeking remedy is thus for all intends and purposes inaccessible to the individual on trial prior to the sentence being confirmed furthermore, the solution is merely a formality and is not carried out to the highest possible standard. Essentially, the afore mentioned clause weakened, and the majority of proceedings takes place behind closed doors, with the accused being denied the right to counsel¹⁶

Likewise, furthermore, the cure is to a greater degree a convention and isn't done to the best quality. Thus, in truth there is no genuine choice to claim against a court-martial order. Under the provisions in the military act it is held that an individual can only appeal if the judgement has been passed or a verdict has been given however the trial takes place in an environment where no legal counsel is present to safeguard. In the UK however a separate Court Martial Appeal Court is established to grant relief to the officials seeking remedy through an appeal and generally constitutes of the Judges from the Civilian Court of Appeal for England and Wales and furthermore lies at the hands of the Supreme Court of England and a similar provision is available in the US for the same.

¹⁵ Manual of military law ,available at <http://indianarmy.nic.in>

¹⁶ <https://www.ijlmh.com/wp-content/uploads/Overview-of-Indian-Military-Justice-System.pdf>

The Armed Forces Tribunal and its limitations:

The Armed Forces Tribunal or the AFT was established in the year 2007 under **The Armed Forces Tribunal Act, 2007**. Upon its establishment the AFT was considered to be of immense importance and use for effective trials regarding the military matters however it failed to make a mark due to the rigidity of the tribunal as it could not expand itself throughout the country.

A majority of cases in the AFT were against the Union Government and thereby holding the ministry of defense as the respondent. It was further observed through cases that the remedies were merely orders passed on paper due to lack of professionalism and duty. Due to the lack of support from the Government the AFT has failed to carry itself for the cause created as there is a major delay in providing adequate verdicts for the cases due to lack of experts in the tribunal. There is a serious case of the non-execution of the final orders that could've granted relief to the complainants and have yet remained only on paper

Conclusion:

The Indian Armed force's obligations in both peacetime and struggle are constrained by a structure of regulation, standards, and methods called military regulation. Notwithstanding regulatory guidelines, it is a composing style that has encountered rehashed modifications and changes. Troops depend on their own legal frameworks, which are exceptionally unmistakable from the overall equity framework. To oversee prepares and stay away from the drawn out shortfall of Military assignments from specialists, the law and legal cycle for troops was intended to be sensibly quick in activity.

Over 1.5 million Indians are dependent on the arrangement of military regulation as troops. The arrangement of military Law is never addressed in our country. In addition, military-related matters are stowed away from general visibility. While the three military Acts have prevailed with regards to keeping a similarity to arrange in our military soon after freedom, there is still a lot of left to be wanted. The on-going position over bail is in critical requirement for correction. Likewise, it is pivotal that in a majority rule government, for example, our own the official being attempted should be offered sufficient legitimate guide and backing. Likewise, the absence of help and inadequate funds allocated to the Military Council is a reason for stress. The excess of cases, absence of a satisfactory number of courts and protection are ending up an irritated point for some veterans who have had their cases postponed for quite a long time. Moreover, there have been requires the unification of the three Acts into one lately, numerous nations like the US have proactively executed this. In the event that our military neglects to stay aware of the times, it might take a chance with inward conflicts and breakdown which is all exceptionally unfortunate.

The Military Officials who put their lives on risk 24/7 for us citizens should be granted more funds and AFT's as there is no match to the sacrifices and work done by them just for every citizen to get a good night's sleep. Therefore, it is the need of the hour that provisions for the Military Officials be amended so as to protect them from succumbing to the carelessness of the authorities.

Abstract

This paper and the research behind it would not have been possible without the exceptional mentoring of Adv. Prashant Trivedi Sir. Due to his constant support and motivation, the research work began and furthermore under his guidance was completed.

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I will forever be grateful for their guidance.

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