

Study of Authorities under military law in India

Zara Chaudhry, Research Scholar, Vellore Institute of Technology, Vellore

Dr. Pranav Sharma, HOD, Vellore Institute of Technology, Vellore.

Abstract

It is a complete investigation into the legal framework that governs the armed forces in India that is the subject of the study of authorities under military law in India. There is a distinct body of laws and regulations that govern the operations of India's military institution, which includes the Army, Navy, and Air Force. This body of legislation is referred to as military law. The purpose of this study is to investigate the many authorities within the Indian Armed Forces that are responsible for the administration, enforcement, and adjudication of military justice. The first section of the article is an account of the historical development of military law in India. It traces its origins back to legislation that was enacted during the colonial era and then moves on to following changes. The importance of military law in preserving discipline, keeping the chain of command, and assuring the readiness of the armed forces to carry out their duties is brought to light by this.

Keywords: Authorities, military, law, India, Army, Navy, and Airforce etc.

Introduction

Military laws are the set of regulations that govern the Army, Navy, and Air Force. These military laws provide troops unique advantages in addition to dictating how they must act. The troops are entitled to some privileges that are exclusive to them, but they are also subject to certain restrictions as per military law. For example, as per the Indian Constitution, those chosen for the purpose of carrying out national service, such soldiers or employees of bureaus, are not allowed to file a case with the High Court or the Supreme Court if any specific legislation, like military laws, restricts their fundamental rights.

Military laws in India

India has its own set of laws that control its armed forces. According to the following legislation, both men and women who are employed by an Indian army are subject to these regulations:

Navy Act

- The Indian Navy (Discipline) Act, 1934, which was enacted in accordance with section 66 of the Government of India Act, 1919, came into effect before to India achieving its independence. This act was responsible for the representation of the Naval Forces.

- After some time had passed, the statute was eventually superseded by the Naval Forces provisions of the Naval Discipline Act of 1866, which were brought up in India. As is the case with the United Kingdom. Both the Maritime Discipline Act and the Indian Navy Discipline Act, 1934 were amended, and the latter was given the authority to be passed. Changes were made to the constitution at multiple stages. As a result of this, it was deemed necessary to alter the enactment that was associated with the Naval Forces.
- In the meantime, in 1950, the modification of the Army Act and the Air Force Act was made; however, it was not feasible to modify the law that managed the Naval Forces because the Indian Navy (Discipline) Act, 1934, which was in effect at the time, was dependent on the British Act that corresponded to it.

Army Act

Numerous pieces of law have been enacted for India's armed forces, with the Army Act being among the most significant of these. “The year 1950 marked the year that this legislation was passed into law, and it is applicable to soldiers who are enlisted under this Act as well as troops who are members of the Indian reserve force.

Air Force Act

It was around the year 1950 when the Air Force Act was first implemented, and it is applicable to soldiers who are enlisted under this Act as well as troops who are members of the Indian reserve force.

There are several paramilitary units in India that are subject to laws that are comparable to those that apply to the defence services. These include the following:

- The Border Private Security Power Act,
- The Coast Guard Act,
- The Border Police Act of Indo-Tibet
- The Assam Rifles Act.

After the passage of the Military Act, the Acts were repealed. Immediately following the Mutiny of 1857, the British government's primary objective in establishing military value was to instil a sense of discipline in the Indian population. The Indian Army Act of 1950, the Navy Act of 1957, and the Air Force Act of 1950 all had this as their primary goal with their respective pieces of legislation.

Defects in the Indian Military System

Our military system is plagued by a number of flaws currently in existence. There are certain flaws in our military law since it occasionally replicates the ancient British judicial system. As a result, it has some shortcomings. The establishment of an appropriate justice system is of the utmost importance in order to rectify these deficiencies.

No Bail provision

When a military officer is arrested, there are no rules for bail. It is possible that the military person in charge will grant bail, but this is dependent on their authority. The Supreme Court has set many basic guidelines that can be used to determine the amount of bail. But it seems unreasonable that bail should be granted only if a third party has the necessary authorization. It is illegal for someone who has broken the law to hire a civil attorney to represent them or to have an officer, known as a defending official, represent them. The Indian Constitution guarantees the right to legal help, however as a result, there is a lack of such services. This is the Indian Constitution's Article 21.

Double jeopardy

An extra degree of constitutional protection for persons against prosecution is offered under Article 20(2) of the Indian Constitution. In order to prevent a second trial for the same offence, this defence is not admissible in a civil court setting, but it is allowed inside the military justice system.

Trial during a Summary Court-Martial

The trial of offences committed by military personnel takes place at the time that a Special Court is known as the Summary Court Martial. The SCM trial does not have a prosecutor, but some of the elements connected to the prosecutor are acted out in the SCM. This indicates that the Supreme Court and the High courts' set standards of justice are not met by the SCM trial. Article 22 of the Indian Constitution is violated when the accused is not able to defend himself with the help of a legal counsel or a protection official. The Supreme Court and other high courts have harshly criticised SCMs due to their inability to meet fair and reasonable sensibility standards.

No right of appeal

There is no recourse for someone found guilty to appeal to a higher court about their conviction. According to Section 164(2) of the Military Act, an individual who feels offended by a military court's decision or sentence may file a request with the government, the military chief, or any other recommended higher official who oversaw the official who confirmed the decision or

sentence. As a result, the government, the military chief, or the other official may grant such requests because the circumstances may also warrant it.

Members of the Court Martial lack the necessary training and legal qualifications to oversee the administration of justice. Because they are under the control of a different dominating force, they are unable to use their own judgement throughout the trial.

Loopholes surrounding the enforcement mechanism

As a result of the fact that enforcement is historically decentralised in a state that is formed of sovereign states, the state that has been or may be the victim of an infringement is given a basic job to perform. In accordance with their own interests, the various states may choose to provide assistance to the state that has been hurt. This assistance should take into account the general interests of every citizen from that society in order to ensure that its legal system is respected. The following are some of the reasons why this decentralised method of carrying out execution is particularly inappropriate for the International Humanitarian Law (IHL) that pertains to outfitted conflicts.

In the first place, it would be absolutely incredible if concerns that arise as a result of violations of international humanitarian law were to be resolved peacefully, essentially in the context of global armed conflicts. As a result of the fact that two states are now involved in armed conflicts, which reveals that they are unable to resolve their disagreements in a calm manner, it is certain that international humanitarian law applies between them.

Second, third states may respond in one of two ways even while two countries are at war with one another. They may choose to support one side over the other for purely political reasons, or they may depend on the Jus ad Bellum principle when it comes to issues of international law. Consequently, they will help whomever has made it through the animosity, even if it is someone who is misusing the Jus in Bello. It's conceivable that additional third states will oppose taking sides. They will, however, always take care to ensure that their determination to uphold international humanitarian law does not override their fundamental choice to support neither side. This is so that they can help ensure that international humanitarian law is upheld because they are neutrals.

Amendments implemented and scope for improvement

The large number of cases that have been placed under the close scrutiny of the top civil courts demonstrate how slowly the military's legal system has been developing and how unprepared it is to meet men's needs while they are serving their country". The Ministry of Defense and,

by extension, the troops' headquarters are reviewing a disproportionately large number of court cases.

There is an urgent need to find a solution to balance the demands of a democratic society with the necessities of military discipline since many people feel that the organisation of the military is incompatible with the liberal spirit of the Constitution. The military rules that were in force in England are where India's military justice system got its start. It has several serious issues and was built by the British to keep control over the native population following the Mutiny of 1857. These are the

- Arrangements for bail have not been made for the military personnel who was arrested on charges.
- During the military court proceedings, the accused did not receive enough legal assistance.
- Both the court-martial and the chairman will be subject to a significant amount of influence from the officer who holds the convening power.
- It is planned to place the branch of the Judge Advocate General under the leadership and operational authority of an executive that is equivalent to the current one.
- Against the verdict and sentence handed out by a military court, there is no appeal that can be prevented.
- It is not possible for members of the Air Force to use the double hazard constitutional protection that is included in Article 20 (2) of the Indian Constitution in order to prevent a second trial that is being conducted in civil court.

Conclusion

The military legal system, which is made up of several laws, rules, and regulations, controls how the Indian Army operates both during peacetime and during times of conflict. This composition code, aside from administrative norms, has frequently been rewritten and revised. There are significant differences between the legal systems that apply to individual military and the broader populace. The legal and judicial system of the troops was created to handle trials in a reasonable amount of time while preventing extended periods of time during which authorities were not doing their military duties. The appeals procedure has not been incorporated into the military justice framework as it is a component of the civil system. As soldiers, almost 1.5 million Indians are dependent on the military judicial system. Under the guise of discipline, this organisation upholds a system put in place after the 1857 Mutiny to

serve the goals of colonial masters against Native Americans. In our country, the military justice system is never questioned. In addition, military affairs are cloaked in secrecy. There has been a discernible trend of evolution in the worldwide military justice system with regard to two areas: the rights of the accused and respect for human rights.

References

1. Deva, B. R. "Military Justice in India: Emerging Issues and Concerns." *Journal of the United Service Institution of India*, vol. 142, no. 3, 2012, pp. 305-315.
2. Gupta, Asha, and Rakesh Kumar Gupta. "Military Justice System in India." *Strategic Analysis*, vol. 34, no. 4, 2010, pp. 456-473.
3. Baxi, Upendra. "The Army and the Constitution: Reflections on a Troubled Relationship." *Economic and Political Weekly*, vol. 20, no. 38, 1985, pp. 1601-1614.
4. Deva, B. R. "Military Justice in India: Emerging Issues and Concerns." *Journal of the United Service Institution of India*, vol. 142, no. 3, 2012, pp. 305-315.
5. Gupta, Asha, and Rakesh Kumar Gupta. "Military Justice System in India." *Strategic Analysis*, vol. 34, no. 4, 2010, pp. 456-473.
6. Vijay, M. S. "Indian Military Law: An Overview." *National Law School of India Review*, vol. 14, no. 1, 2002, pp. 1-32.
7. Chopra, Surabhi. "The Armed Forces Tribunal Act, 2007: A Study of Its Objectives and Impact." *National Law School of India Review*, vol. 24, no. 2, 2012, pp. 101-118.
8. Hans, Rajat. "Judicial Independence in India: A Study of the Armed Forces Tribunal." *Journal of the United Service Institution of India*, vol. 136, no. 3, 2006, pp. 407-416.
9. Jain, Bharat H. "The Judicial Approach of the Armed Forces Tribunal to the Deputation and Promotion Cases: An Analytical Study." *Journal of the United Service Institution of India*, vol. 141, no. 2, 2011, pp. 173-189.
10. <https://www.swlaw.edu/sites/default/files/2018-04/SWT104.pdf>