**PARA 7**

| Question | Section 475 of the CrPC has empowered the Central Government to make rules consistent with the CrPC and the Army Act, Navy Act 1957 and the Air Force Act 1950 and any other law relating to the Armed Forces of the Union, as regards the cases in which persons subject to military, naval or air force law or such other law, shall be tried by a court to which the CrPC applies or by a court-martial. The first part of Section 475(1) recognizes the rule making power of the Central Government. The latter part of Section 475(1) contemplates an eventuality in which a person is brought before a Magistrate and is charged with offences for which that person is liable to be tried either by a court to which the CrPC applies or by a court martial. In such a situation, the Magistrate is to have regard to the rules and shall in proper cases deliver the person together with a statement of the offences of which he is accused to the Commanding Officer of the unit of the nearest military, naval or air force station, for the purpose of being tried by a court-martial. In the view of the Constitution Bench, there are a wide variety of circumstances which may be relevant in deciding whether an accused should be tried by a court-martial or by an ordinary criminal court. Due to this, the choice of making this decision is entrusted to the military officer under whom the accused was serving. The Court also noted that under Section 549 of the Code of Criminal Procedure 1898 (equivalent to Section 475 of the CrPC), the final choice about the forum of the trial of a person accused of a ‘civil offence’ rests with the Central Government, whenever there is a difference of opinion between a criminal court and the military authority. | |
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| Type | Comprehension | |
| Question | In which of the following cases the Supreme Court of India held that in case the trial is conducted by the ordinary criminal court and not a court-martial under the Army Act, the accused would not be able to avail the benefit of being awarded a lower punishment under the Army Act, 1950? | |
| Type | multiple\_choice | |
| Option | Lt Col. Nitisha v. Union of India, 2021 SCC OnLine SC 261 | Incorrect |
| Option | Ex. Hav. Prithpal Singh v. Union of India, AIR 1985 SC 264 | Incorrect |
| Option | State of Sikkim v. Jasbir Singh, 2022 SCC OnLine SC 128 | correct |
| Option | Ranjit Thakur v. Union of India, AIR 1987 SC 2386 | Incorrect |
| Solution | In a case where it was argued before the bench of Dr. DY Chandrachud and Surya Kant, JJ, in State of Sikkim v. Jasbir Singh, 2022 SCC OnLine SC 128 that in case the trial is conducted by the ordinary criminal court and not a court-martial under the Army Act, the accused would not be able to avail the benefit of being awarded a lower punishment under the Army Act, 1950, the Court has held,  “If that was the intent of the legislature – that is to protect persons subject to the Army Act by awarding them lesser punishment even for serious offences – then the Act would not have provided for concurrent jurisdiction of court-martial and ordinary criminal courts at all. Although the Army Act is special law compared to the IPC, if the statute in its text does not make any qualifications or exceptions to the general law, it would be impermissible for the court to read such qualifications in the Act.” | |
| Marks | 1 | 0.25 |
| Question | Which of the following statements is not true regarding ‘delivery to Commanding Officers’ of persons liable to be tried by Court-martial under Section 475 of Code of Criminal Procedure, 1973? | |
| Type | multiple\_choice | |
| Option | Section 475 of the CrPC has empowered the Central Government to make rules consistent with the CrPC and the Army Act, Navy Act 1957 and the Air Force Act 1950 and any other law relating to the Armed Forces of the Union, as regards the cases in which persons subject to military, naval or air force law or such other law, shall be tried by a court to which the CrPC applies or by a court-martial. | Incorrect |
| Option | The first part of Section 475(1) recognizes the rule making power of the Central Government. | Incorrect |
| Option | The latter part of Section 475(3) contemplates an eventuality in which a person is brought before a Magistrate and is charged with offences for which that person is liable to be tried either by a court to which the CrPC applies or by a court martial. | correct |
| Option | In such a situation, the Magistrate is to have regard to the rules and shall in proper cases deliver the person together with a statement of the offences of which he is accused to the Commanding Officer of the unit of the nearest military, naval or air force station, for the purpose of being tried by a court-martial. | Incorrect |
| Solution | Section 475 of the CrPC has empowered the Central Government to make rules consistent with the CrPC and the Army Act, Navy Act 1957 and the Air Force Act 1950 and any other law relating to the Armed Forces of the Union, as regards the cases in which persons subject to military, naval or air force law or such other law, shall be tried by a court to which the CrPC applies or by a court-martial. The first part of Section 475(1) recognizes the rule making power of the Central Government. The latter part of Section 475(1) contemplates an eventuality in which a person is brought before a Magistrate and is charged with offences for which that person is liable to be tried either by a court to which the CrPC applies or by a court martial. In such a situation, the Magistrate is to have regard to the rules and shall in proper cases deliver the person together with a statement of the offences of which he is accused to the Commanding Officer of the unit of the nearest military, naval or air force station, for the purpose of being tried by a court-martial. [Statements A, B, C and D are taken from the given excerpt.] | |
| Marks | 1 | 0.25 |
| Question | Which of the following statements is not one of the three kinds of offences under the Army Act, 1950? | |
| Type | multiple\_choice | |
| Option | Where an offence is created by the Army Act(Sections 34 to 68) itself, it would be exclusively triable by a court-martial. | Incorrect |
| Option | Where a 'civil offence' is also an offence under the Army Act or is deemed to be an offence under the Act, both the ordinary criminal court as well as court-martial would have jurisdiction to try the person committing the offence(Section 69). | Incorrect |
| Option | The third category (Section 70) consists of the offences of murder, culpable homicide not amounting to murder or rape committed by a person subject to the Army Act against a person who is not subject to military, naval or air force law. Subject to the three exceptions, such offences are not triable by a court- martial but by an ordinary criminal court. | Incorrect |
| Option | The second category (Section 71) consists of the offences of defiling any place of worship, or otherwise, intentionally insulting any religion or wounds the religious feelings of any person, such offences are not triable by a court- martial but by an ordinary criminal court. | correct |
| Solution | Three Kind Of Offences Under the Army Act:  Where an offence is created by the Army Act(Sections 34 to 68) itself, it would be exclusively triable by a court-martial.  Where a 'civil offence' is also an offence under the Army Act or is deemed to be an offence under the Act, both the ordinary criminal court as well as court-martial would have jurisdiction to try the person committing the offence(Section 69).  The third category (referred to in Section 70) consists of the offences of murder, culpable homicide not amounting to murder or rape committed by a person subject to the Army Act against a person who is not subject to military, naval or air force law. Subject to the three exceptions which are set out in Section 70, such offences are not triable by a court-martial but by an ordinary criminal court. | |
| Marks | 1 | 0.25 |
| Question | M, a cadet in the Air Force Academy, without permission of the concerned authorities took off with an aircraft of the Air Force, however later returned back to the air base, with no damage to the aircraft. The authorities also didn’t discover the act of M, and neither the aircraft was needed for duty at that period of time. After the discovery the authorities began proceedings against M in the Court of law. As per the settled precedent of the Court in this regard, decide. | |
| Type | multiple\_choice | |
| Option | M cannot be tried by the criminal court because no offence was committed by him given the circumstances. | Incorrect |
| Option | M can be tried by the criminal court for causing wrongful loss to the Air Force. | correct |
| Option | Whereas there was no harm done by the acts of M, and given the lackadaisical approach of the authorities, it is trite law that he cannot be punished but should be admonished for his misdemeanour. | Incorrect |
| Option | Whereas the authorities didn’t require and didn’t observe the missing aircraft, the same amounts to the situation of pari delicto, the proceedings therefore cannot continue as both parties are at equal fault. | Incorrect |
| Solution | Section 23 in the Indian Penal Code  "Wrongful gain".-"Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled.  "Wrongful loss".-"Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled.  Gaining wrongfully, losing wrongfully.-A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.  Based on the facts of K.N. Mehra v. State of Rajasthan, 1957 SCR 623 23.  The appellant, a cadet on training in the Indian Air Force Academy, Jodhpur, took off an aircraft without authorisation (and without observing any of the formalities pre requisite to an aircraft flight) and landed in Pakistan. The appellant was arrested and brought to India and prosecuted for theft of aircraft under section 379. Held, that taking out the aircraft by the appellant for an unauthorised flight and in fact given the appellant temporary use of the aircraft for his own purpose, and had temporarily deprived the owner of the aircraft, viz., the Government, of its legitimate use of the particular aircraft for the Indian Air Force on that day. Such an act was clearly a gain or loss by an unlawful means within section 23. | |
| Marks | 1 | 0.25 |
| Question | As per the scheme of the Indian Penal Code, the provisions of the other special Acts or local law have an overriding effect on the operation of the Indian Penal Code.  The above statement is: | |
| Type | multiple\_choice | |
| Option | False, since the Indian Penal Code expressly states to the contrary effect. | Incorrect |
| Option | True, since the Indian Penal Code expressly states to that effect. | correct |
| Option | False, as it is well settled that for stringency and effective deterrence of tendency to commit offence, punishment is to be awarded under both the legislations. | Incorrect |
| Option | Both A and C. | Incorrect |
| Solution | Section 6 in the Indian Penal Code states that:  6. Definitions in the Code to be understood subject to exceptions. - Throughout this Code every definition of an offence, every penal provision, and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the Chapter entitled "General Exceptions", though those exceptions are not repeated in such definition, penal provision, or illustration. | |
| Marks | 1 | 0.25 |
| Question | According to a recent judgement concerning the Supreme Court has observed that if the Commanding Officer doesn’t exercise his discretion under section 125 of the Army Act in order to initiate Court-Martial, | |
| Type | multiple\_choice | |
| Option | A Criminal Court cannot try the case against accused-army men. | Incorrect |
| Option | A Criminal Court is vested with the jurisdiction to try the case against the accused-army men. | correct |
| Option | Only the High Court is vested with the power to try the case against the accused-army men. | Incorrect |
| Option | Only the Supreme Court is vested with the power to try the case against the accused-army men. | Incorrect |
| Solution | In a case where it was argued before the bench of Dr. DY Chandrachud\* and Surya Kant, JJ that in case the trial is conducted by the ordinary criminal court and not a court-martial under the Army Act, the accused would not be able to avail the benefit of being awarded a lower punishment under the Army Act, 1950, the Court has held,  “If that was the intent of the legislature – that is to protect persons subject to the Army Act by awarding them lesser punishment even for serious offences – then the Act would not have provided for concurrent jurisdiction of court-martial and ordinary criminal courts at all. Although the Army Act is special law compared to the IPC, if the statute in its text does not make any qualifications or exceptions to the general law, it would be impermissible for the court to read such qualifications in the Act.”  If the argument that in case the trial is conducted by the ordinary criminal court and not a court-martial under the Army Act, the accused would not be able to avail the benefit of being awarded a lower punishment under the Army Act, is accepted, it would imply that a person who is convicted and punished by a Court-martial under the Army Act will be in an advantageous position than a person who, though subject to the Army Act, has been convicted by an ordinary criminal court.  [State of Sikkim v. Jasbir Singh, 2022 SCC OnLine SC 128] | |
| Marks | 1 | 0.25 |