

## CHAPTER VII 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)<sup>1</sup>;
- (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 officers 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 a 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 467 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](#)  
'See [IPC.s.53A](#).

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 fine 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 SCM, 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) 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 passed 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](#).

(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 sentenced to death or imprisonment must first be sentenced to be cashiered. [AA.s.74](#).

(f) For forms of warrants, see Appx V to AR.

7. Clause (b).—(a) Imprisonment 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 circumstances of the case.

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

(b) For calculating 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 sentences of imprisonment for life and forms of warrants see [AA.ss.168](#), [170](#) and [172](#) and notes thereto. Form A and 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". Sentences 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 years 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 an officer who has been cashiered cannot hold an 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 an 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, or a lance Naik to the ranks, is inoperative. See; [Regs Army para 131](#) for definition of ranks and appointments.

(c) Reduction of a WO or 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 [A.A.s.20\(4\)](#) is an administrative measure resorted to on grounds of inefficiency or unsuitability. See [Regs Army paras 172](#) and [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 with a sentence of forfeiture if 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 under 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 as if his name had appeared a specified number of places lower in the list of 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 from the date specified in [AR168](#), 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 or 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 the 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 the sentence.

19. A court-martial acting under 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](#) or [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 Punishment 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 other punishment the punishment specified in clause (d) or clause (e) of section [71](#) and any one or more of the punishments specified in clauses (f) to (1) 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) stoppages 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 [note7toAA.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 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. Omitted**

**76. Omitted**

**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)<sup>1</sup>, 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)<sup>1</sup> 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)<sup>1</sup> 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 persons 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 persons 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 as an officer, junior commissioned officer or warrant officer who is charged with an offence under this Act and award such person, to the extent 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;

<sup>1</sup>See [IPC.S 53A](#).

<sup>2</sup>Substituted by Act No. 19 of 1955,

- (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 section [91](#);
- (j) Omitted

#### NOTES

1. "Subject to the provisions of Section [81](#)". — [AA.s.81](#) imposes certain 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 or 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.121](#). If, for example, he has been acquitted or convicted of, or summarily punished 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 condoned 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 this 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 or more of the punishments specified in clauses (d) to (i).

(b) In the case of a 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 up to 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 an 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 or 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.

11. 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 therefrom. 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 instructions. (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 notes [9 \(b\), \(g\) and \(h\)](#) above.

12. 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.SS.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 for 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<sup>1</sup>

- (2) In the case of an 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)]<sup>2</sup> 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 a non-commissioned officer.

**NOTES**

1. See notes [9\(b\)](#), [\(g\)](#) & [\(h\)](#)s 15 (a) and [18 \(c\) to AA.s.89](#).
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)<sup>1</sup> 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 punishments may be awarded.

**NOTES**

1. This section empowers the Chief of the 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](#).

<sup>1</sup> Substitute by Act No. 19 of 1955,

<sup>2</sup> Substituted by [Act 37 of 1992 w.e.f. 6-9-1992](#)

**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<sup>1</sup> 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 Appendix IV to AR and [Regs Army para 444](#).
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.

**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<sup>1</sup> 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;

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<sup>1</sup> Substituted by Act No. 19 of 1953.

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- (c) 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 [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 IV to AR and [Regs Army para 444](#).
4. Charges against an officer, 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 proposes to award this punishment he shall ask the accused "Do you elect to be tried by court-martial or will you accept my award? "
6. For period of limitation for trial see [AA.s.122](#) and notes thereto.

**85. Punishment of junior commissioned officers.**—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>1</sup> 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 punishment 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 is below the rank of Colonel]<sup>2</sup>

#### **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](#), forms 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 as been awarded under any of the sections [83](#), [84](#) and [85](#), certified true copies of the proceedings shall be forwarded, in the prescribed manner, by the officer awarding the punishment, to a superior military authority as defined in section [88](#).

#### **NOTE**

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.

<sup>1</sup> Substituted by Act No 19. of 1955.

<sup>2</sup> Substituted **Vide** [Act 37 of 1992 w.e.f. 6-9-1992](#)

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 authorized 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: These, 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)<sup>1</sup> or other officer specified by the (Chief of the Army Staff)<sup>1.12</sup>

NOTE

**Clause (a).** —In cases where a detachment etc., commander can exercise the 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.** —(1) 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 judgement, 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 authorises the imposition of a collective fine on a company or similar unit for the purpose of enforcing collective responsibility. Such a collective fine must

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1. Substituted by Act No 19 of 1955.

2. See [41776/AG/DV-1 dated 5-1-1993](#)

*be distinguished from a joint fine based on individual responsibility. The intention of the section is not to permit of the punishment by 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](#).*



**CHAPTER VIII****PENAL DEDUCTIONS****90. Deduction from pay and allowances of officers-The following penal deductions 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) all 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)<sup>1</sup> 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 wilful 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]<sup>1</sup> 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.

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<sup>1</sup> Inserted vide [Act 37 of 1992 w.e.f. 6-9-1992](#)

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 deductions 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 governing 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 (a), (d), (e) and (f) of this section have been made mandatory and those 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 [AR205](#). It is unnecessary 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 [Regs Army para346](#), 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 to be convicted of an offence under that section before a deduction may be made under this clause.

10. Clause '(d). —'Occasioned by'. In order to put an officer under stoppages by way of penal deductions, under either 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 to such property during the Continuance of such user 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 term 'expenses' and 'losses' etc., In this clauses 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 policeman 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 (1) 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 wilful neglect of duty or that he has served with or under or has aided the enemy, etc., a provisional court of inquiry will be assem-

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bled at the earliest moment to investigate the circumstances: See [Regs Army para 522](#). The COA is 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, [AR181\(a\)](#). 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 \(i\).—\(a\) This clause, like clause \(i\) of AA.s.91](#), was enacted mainly in order to prevent any financial hardship being caused to the wife or children by the provisions of [AAs 28](#) under which the pay and allowances of a person subject to AA 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 the wife or children, the amount decreed can be deducted from the pay and allowance of a person and paid to the wife or children under this clause. Such being the intention, deductions should not, as a rule, be ordered under this clause or clause (i) of [AA.s.91](#) except to give effect to a decree for maintenance granted by a civil court.

(b) [See notes to AA.s.28](#).

**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)<sup>1</sup> or imprisonment awarded by a criminal court, a court-martial or an officer exercising authority under section [80](#).

(b) all pay and allowances 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 awarded imprisonment by an officer exercising authority under section [80](#).<sup>2</sup>

(c) all pay and allowances 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;

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1 See [IPC.s.53A](#).

2 Substituted vide [Act 37 of 1992 w.e.f. 6-9-1992](#)

- (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 clauses (a), (b), (c) and (f) of this section have been made mandatory; sec Rule 51 of P & 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 [AAs.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 [AR195\(c\)](#) remits the forfeiture; see [AA.ss.98](#) to [100](#), [ARs.178](#), [181](#) and [196](#) and [Regs Army para 522](#).*

6. *[AA.s.92](#) prescribes how days of absence etc., are to be calculated for the purposes of this clause and clause (b).*  
*For instance, if a person absented himself from 9 P.M. on 1st Jun 78 and returned at 2.45 A.M. on 2nd 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 1st Jun 78 and remains absent until 4 A.M., on the 2nd Jun 78, he would forfeit one day's pay, and if he remained absent until 2 A.M., on the 9th 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 1st and 9th Jun 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 AAs.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 (i) 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) Stoppages 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 (1). —A person subject to AA other than an officer forfeits his pay and allowances while a prisoner of war under clause (a) read with Rule 51 (c) P and A Regs (OR). See note 5 above. This clause authorise 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.3\(x\)](#).

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 stoppages 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 [22toAA.s.90](#), which applies *mutates 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.*

(c) Also see note [6 to AA.s.91](#).

**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 205](#), see [notes 6](#) and [8 to AA.ss.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 [\(a\).\(b\).\(c\).\(d\)](#), 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 AA. 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 [A.A.s.90](#) or clause (h) of [A.A.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)<sup>1</sup> 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 or misconduct on his part and the forfeiture has been remitted by the competent military authority specified in [AR195\(3\)](#). 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 COAS 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 allowance 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.s91\(a\)](#).

2. And to such extent.—The remission may be partial, but there is nothing to prevent a further remission made subsequently.

**98. Provision 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 dependants of such persons, 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 recommendation, 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 [ARs195](#) 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. Provision for dependants 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 dependants of any person subject to this Act who is a prisoner of war or is missing out of his pay and allowances.

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1. Substituted by Act No. 19 of 1955.

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 'prescribed authorities'—See [AR.196](#).

3. Under this section, unlike, [AA.s.98](#), provision can be made for a 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.

**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.—Sec [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. *This sub-sec which applies in the case of officers as well as 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 Sunday 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 with out investigation. The absence of an important witness would justify a remand: or the accused might be ordered to 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 they are not so excluded for any other purpose e.g., time reckoned for the purposes of punishment or of any deduction of pay.*

5. *Sub-sec (4).—See [AR 27](#).*

**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 (Part 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 travelling 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.s3\(ix\)](#).*

*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 care, or in any arms, ammunition, equipment, instruments, clothing or necessities; and if satisfied of the fact of such absence without due authority or other sufficient cause, the court shall declare 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 court-martial. As to dispensing with the court of inquiry in the case of a reservist 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 assembles 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 [AAs.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 [ARs183](#) 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—i.e., Government property issued to him for his use or entrusted to 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.183](#) 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 AR183](#); 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 [AR183](#), 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 \(Part 111\)\)](#).

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\(l\)\(e\)](#); 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)<sup>1</sup> 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 :

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<sup>1</sup>Substituted by Act No. 19 of 1955.

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 [AR197](#).

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. [AR175](#) 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, [AR151\(3\)](#) 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-sec (3), an officer can be arrested or detained 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.

**COURTS-MARTIAL****CHAPTER X**

**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; and
- (d) summary courts-martial.

**NOTE**

*For purposes of easy reference, provisions dealing with the convening, composition etc., of the four types of courts-martial are tabulated below—*

*Convening Composition Powers Confirmation*

*AA.s. AA.s. AA.s. 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 'A-1' 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 sections 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 name-

- (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\(j\)](#). Also see [AA.s.9](#).*

**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 [AAs. 117\(1\)](#). It is desirable that every court should consist of an uneven number of officers.*

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<sup>1</sup>Substituted by Act No. 19 of 1955.

(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 ([AR44](#)), 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 a 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 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. Set 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 AAs.113](#).

2. (a) Though there is no statutory requirement as to the rank or service of a member of a 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 [AR 74](#) (member or prosecutor not to confirm proceedings) applicable, to far as practicable, to a SGCM,



**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 proceedings shall be attended throughout by two other persons who shall be officers or junior commissioned officers 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, but the medical officer in charge of a regimental medical establishment is not, unless that establishment is detached, the "Commanding Officer" of the 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 [note3to AA.s.105](#).

3. Sub-sec(2).—(a)For definitions 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 [RegsArmypara381](#) 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 court-martial**— (1) If a court martial after the commencement of a 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 finding, 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 a 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 option 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 authorized 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)<sup>1</sup>, or imprisonment for a term exceeding two years; Provided that a district court-martial shall not sentence a warrant officer to imprisonment.

#### NOTES

*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 by law, i.e., imprisonment not exceeding two years and confirmed ([AR.73and 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.

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<sup>1</sup>See [IPCs,53A](#).

(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)<sup>1</sup> 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 active 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 debar 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 for on active service a SGCM) for the trial of the alleged

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<sup>1</sup>See [IPCs.53A](#).

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 document. 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 of 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](#) refer.

5. A NCO or a sepoy cannot be attached to another unit for the purpose of his trial by SCM except as provided in [Regs Army para 381](#).

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 448](#).

**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, gives 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 upon the charge-sheet then before the court, of the offence charged at the second 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 again under [AA.ss.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. ss.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 raise 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 knowledge of such person or authority, whichever is earlier; 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 offence or to the authority competent to initiate action, whichever is earlier.]<sup>1</sup>

(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 sec-[37](#).

(3) In the computation of the period of time mentioned in sub-section (1), time spent by such person as a prisoner of war, or in enemy territory, or in adding 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-sec (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 a 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 finding.*

*(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 [91\(a\), \(f\)](#) 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 no red ink entry in his 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 Reg 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 or 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 the 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 2[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 has 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 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)<sup>1</sup> or imprisonment, this Act shall apply to him during the term of his sentence, though he is cashiered or dismissed 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.

<sup>1</sup>See [IPC-s.53A](#).

<sup>2</sup>Substituted vide [Act 37 of 1992 w.e.f. 6-9-1992](#)



**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 or 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 has 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 takes 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 definitions 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 or 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 9 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 refer 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.- Omitted**

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1Omitted Vide [Act 37 of 1992 w.e.f. 6-9-1992](#)

**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 trials 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 more 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 to 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.** — (i) 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 duly 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 in [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 courts of inquiry]<sup>1</sup>, 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 disperse 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\(5\)](#). 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 [AR150\(3\)](#) 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 document etc., which is in his possession or power he must bring it to court, not with standing 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.

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<sup>1</sup>Inserted vide [Act 37 of 1992 w.e.f. 6-9-1992](#)



**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 purpose, 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 course 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 commission to any district magistrate or magistrate of the first class, within 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 2[Code of Criminal Procedure 1973 (2 of 1974)]or any corresponding law in force in (the State of Jammu and Kashmir)1.

(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 XXII of the Code of Criminal Procedure, 1973 (2 of 1974)]3 or of any corresponding law in force in (the State of Jammu and Kashmir)1.

(5) In this and the next succeeding section, the expression "Judge Advocate General"includes a Deputy Judge Advocate General.

1 Substituted by the Adaptation of Laws (No.3) Order 1956.

2. Substituted for words"Code of criminal Procedure, 1898(5 of 1898)" vide [Act 37 of 1992 w.e.f. 6-9-1992](#)

3.Substituted for "Chapter XI of the Code of Criminal Procedure, 1898 (5 of 1898)"vide [Act 37 of 1992 w.e.f. 6-9-1992](#)



**NOTES**

1. *This section and the next provide for the examination of witness "on commission", that is, by 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-sec (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 or 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 on commission necessary. Any questions which the prosecutor or the accused desire to have put to the witness, and which the court considers 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 in convenience. The following considerations 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 and re-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 there under 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 there to 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 reasonably 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 [IEA.s.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 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 one 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 (2 of 1974),]<sup>1</sup> 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*

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1. Substituted for "Code of criminal Procedure, 1898(5 of 1898)" vide [Act 37 of 1992 w.e.f. 6-9-1992](#)

in this section (see [notes in AR 30](#)). A Court may, however, (as allowed by [AR 62\(5\)](#)) find 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 accuse 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 wilfully 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) An 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 there in 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 there under 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 by the 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

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<sup>1</sup> Substituted by Act No. 19 of 1955

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 to Government [or any of the Government Scientific Experts, namely, the Chief Inspector of the Explosive, the Director of Finger Print Bureau, the Director, Haffkeine Institute, Bombay, Director of a Central Forensic Science Laboratory or a state Forensic Science Laboratory and Serologist to the Government ]<sup>1</sup> 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 sees is upon mere production on oath or affirmation to the court prima facie evidence of the facts there in 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, 'it the accused disputes the. identity, great caution is required as to the sufficiency of the evidence and 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 [AR198](#).

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' specified in [RegsArmypara610](#) to be maintained by corps and departmental.

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 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 entires 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.

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<sup>1</sup> Inserted Vide [Act 37 of 1992 w.e.f. 6-9-1992](#)



### **THE ARMY ACT 1950 WITH NOTES**

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 [ARs64](#) 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 occurrence [IEA.ss.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.

In the case of a court-martial whose finding requires confirmation, confirmation is required in both the cases mentioned above.

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 or 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 actions.

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.P.C. 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 area 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 he 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 (2 of 1974)]<sup>2</sup>, or any corresponding law in force in (the State of Jammu and Kashmir)<sup>1</sup>

(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 may have been converted or exchanged, and anything acquired by such conversion on 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 value 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 (2 of 1974)]<sup>3</sup>.

**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.*

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1 Substituted by the Adaptation of laws (No 3) order, 1956.

2. Substituted for "Code of criminal Procedure, 1898(5 of 1898)" vide [Act 37 of 1992 w.e.f. 6-9-1992](#)

3. Substituted for Section 480 and 482 of the Code of Criminal Procedure, 1898(5 of 1898)" vide [Act 37 of 1992 w.e.f. 6-9-1992](#)

## 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 courts-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. ([SeeAR.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.s.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 GOs-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 officers 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.
2. 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 directs, 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 thereof 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 sentence.**—

(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 (2), 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) [A sentence of transportation shall not be commuted for a sentence of imprisonment for a term exceeding the term of transportation awarded by the court]<sup>1</sup>.

<sup>1</sup>See [IPC53-A](#)



**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 authorized 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 that 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.

(e) 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 while on board a ship, the finding and sentence so far as not confirmed and executed on board the ship, may be confirmed and executed in like manner as if such 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 sentence—** (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 [AR133](#) 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 proceeding!; 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](#).

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<sup>1</sup>Substituted by Act No. 19 of 1955

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](#).

**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 a 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) or 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 considers 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 a brigade commander ([AR 201](#)).
- (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 aggrieved 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\(k\)](#).

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<sup>1</sup>Substituted by Act No. 19 of 1955.

**CHAPTER XIII**  
**EXECUTION OF SENTENCES**

**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 to 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 [171](#) 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 a summary court-martial by the court.

**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 months' 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 no effect on its currency. See [AAs.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 June 78, he was convicted and awarded 3 months RI. The term of his sentence shall reckon to commence w.e.f. 15 May 78. It is, therefore, essential that the proceedings be dated as well as signed. When, however, a presiding officer or 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.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 despatch 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 [AR 166](#).

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<sup>1</sup>See [IPCs.53A](#).



3 Civil prison. —A prison maintained under the prisons Act, 1894 (IX of 1894). See [AAs.3 \(iii\)](#).

4. For forms 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 despatch 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.

#### NOTES

1. See [notes 1,3 and 4 to AA.s168](#).

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. Sentences 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 their turn 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 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 out. 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 \(3\)](#).

[169-A .Period of Custody undergone by the officer or person to be set off against the imprisonment- 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 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.]<sup>2</sup>

<sup>1</sup>See [IPC.s.53A](#). <sup>2</sup>Inserted vide [Act 37 of 1992 w.e.f. 6-9-1992](#)



**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 provisions of section [169](#) such officer may direct that such sentence or portion of 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 reason, 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 despatched 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 person under sentence of (imprisonment for life)<sup>1</sup> 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 prison and Form F to those in which he remains in a civil or military prison but with a reduced sentence, and 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 or K in Appendix V to AR with the necessary variations, will be used. See [AR 4](#)

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See [IPC s. 53A](#).

2. The order, after promulgation, should be sent to the JAG AHQ, for attachment to the court-martial proceedings.

3. Prescribed officer see [AR.167](#).

**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 (2 of 1974)] or any corresponding law in force in (the State of Jammu and Kashmir )<sup>1</sup> 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\(h\)](#).*

**175. Establishment and regulation of military prisons.** — The Central Government may set apart any building or part of a building, or any place under its control, as a military prison for the confinement of persons sentenced to imprisonment under this Act.

**176. Informality or error in the order or warrant.** — Whenever any person is sentenced to (imprisonment for life)<sup>2</sup> 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 respects 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 in 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 authorise 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.

<sup>1</sup>Substituted by the Adaptation of Laws (No.3) Order 1956.

<sup>2</sup>Sec [IPC.s.53A](#).

**CHAPTER XIV****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 Act; (Proviso 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 superior 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 sentenced 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

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<sup>1</sup>Substituted by Act No 19 of 1955.

<sup>2</sup>See [IPC.s.53A](#).

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 had not been granted.

(2) A person whose sentence of Transportation 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 the 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 [note 3 to AA.s.179](#).

**182. Suspension of sentence of (transportation)<sup>1</sup> or imprisonment.**— (1)

Where a person subject to this Act is sentenced by a court-martial to (transportation)<sup>1</sup> or imprisonment, the Central Government, the (Chief of the Army Staff)<sup>2</sup> or any officer empowered to convene a general or a summary general court-martial may suspend the sentence whether or not the offender 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.ss.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 these sections.

2. The authority/officer specified in sub-sec (1) may in his discretion, issue a general direction that no person under his command sentenced to imprisonment for life or imprisonment is to be committed to prison or to military custody until his orders 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

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<sup>1</sup>See [IPC.s.53A](#).

<sup>2</sup>Substituted by Act No.19 of 1955.

expires even 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 officer "for" him, so long as it makes it clear that the competent authority/officer himself considered the case and arrived at the decision.

**183. Orders 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 orders of the authority or officer specified in section 182 have been obtained.  
 (2) Where a sentence of imprisonment is imposed by a 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 cases in which and by whom a direction under this 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 a DCM unless the confirming officer happens to be one of the authorities specified in [AA.s.182\(1\)](#);
  - (c) 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.

#### NOTE

*Suspension does not affect the finding or the continuity of the sentence 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.

#### NOTE

*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.187\(1\)](#) 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., 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 emission 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 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, and 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 a 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 an 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.

**NOTE**

*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 for life or imprisonment can be suspended. In this connection see [notes to AAs.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 remit such dismissal

## **CHAPTER XV** **RULES**

**191. Power to 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 generality of the power conferred by subsection (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 courts-martial;
- (f) the adjournment, dissolution and sitting of courts-martial;
- (g) the procedure to be observed in trials 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 decide for what persons, to 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 officers, warrant officers, 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 regulation** -The Central Government may make regulations for all or any of the purposes of this Act other than those specified, in section [191](#).

### **NOTE**

*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.

**193A Rules and Regulations to be laid before-** Every rule and every regulation made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, For a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session, or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation shall thereafter have an effect only in such modified form or be of no effect as the case may be so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation]<sup>3</sup>

194. (Repealed)<sup>2</sup>

1 See [1PC.s.53A](#).

2 See Act No. 36 of 1957, sec.2,

3. Inserted vide [Act 20 of 1983](#)

**TRANSITORY PROVISIONS**

**195. Omitted**

**196 Omitted**

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Omitted Vide Act 37 of 1992, w.e.f. 6-9-1992

