

42. Insubordination and obstruction.— 'Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) being concerned in any quarrel, affray, or disorder, refuses to obey any officer, though of inferior rank, who orders him into arrest, or uses criminal force to or assaults any such officer; or
- (b) uses criminal force to or assaults any person, whether subject to this Act or not, in whose custody he is lawfully placed, and whether he is or is not his superior officer; or
- (c) resists an escort whose duty it is to apprehend him or to have him in charge; or
- (d) breaks out of barracks, camp or quarters; or
- (e) neglects to obey any general, local or other order; or
- (f) impedes the provost-marshal or any person lawfully acting on his behalf or when called upon, refuses to assist in the execution of his duty a provost-marshal or any person lawfully acting on his behalf; or
- (g) uses criminal force to or assaults, any person bringing provisions or supplies to the forces :

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

NOTES

1. Clause (a).— For definitions of affray, criminal force and assault, see [IPC.ss159](#) and [349-351 \(reproduced in Part III\)](#). An affray differs from assault in that the former cannot be committed in a private place whereas the latter may take place anywhere; further an affray is an offence against the public peace while an assault is an offence against the person of an individual.

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

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

4. As to intoxication as a defence to a charge see note [4to AA.s.48](#).

5. Clause (b).—A charge may be laid under this clause for assaulting a civil policeman, if the person committing the assault is subject to military law, and has been lawfully placed in the policeman's custody.

6. Clause (c).—Resistance may be direct violence but threatening words and a threatening attitude might amount to resisting an escort, if the threats were sufficient to deter the escort from arresting the accused. Resistance may also be passive, e.g. a person lying down and refusing to move, if physically able to move, could be said to resist. The particulars of the charge should specify the nature of the resistance. The court will use their military knowledge to determine whether it was the duty of the escort to apprehend the accused or to have him in charge.

7. Clause (d).—(a) This offence consists of a person quitting barracks, etc., at a time when he had no right to do so, either because he was on duty or under punishment, or because of some regulation or order; and it is immaterial whether the offence was managed by violence, stratagem, disguise, or simply by walking past a sentry unnoticed. The mode in which the act was effected will, however, assist a CO in determining whether a charge be preferred under this clause, or under [AA.s. 38\(1\)](#). The particulars of the charge must show that the absence from barracks etc., was without permission, or otherwise unlawful, and also if the accused was in any way confined to barracks that fact must be alleged in the charge.

(b) In a charge for breaking out of barracks, it must be proved that the accused left the confines of the barracks, as charged. A charge of breaking out of quarters would hold good in the case of a person quartered in one part of a barrack and improperly leaving that part for another part where he had no right to be.

Clause (e). —(a) The orders specified in this clause mean standing orders or orders having a continuous operation or applicable continuously over a period of time to all officers, JCOs, WOs and OR present in a certain geographical area, such as Command, Area, Sub Area or Station or in a certain military formation such as Army, Corps Division or Brigade. Disobedience of a specific order in the nature of a command should be dealt with under [AA.s.41](#) and non-compliance, through forgetfulness or negligence, with an order to do some specific act at a future time under [AA.s.63](#).

(b) Ignorance of the order is no excuse, if the order is one which the accused ought in the ordinary course to know. But a misapprehension reasonably arising from want of clarity in the order is a ground for exculpation. The existence of the orders and the fact of the neglect must be proved. The order contravened, (or a certified copy where such copy is admissible under [AA.s.142\(4\)](#) must be produced on oath to the court and the court will make a record in the

proceedings of its having been so produced. A written order cannot be proved by oral testimony. Evidence must also be given to show that the order was duly posted or brought to the notice of the accused, or that he was otherwise in a position to be acquainted with its contents. Disobedience of a regulation

may be punished under [AA.s.63](#) but if the regulation is published as a regimental order, it acquires the character of a general, local or other order, and disobedience to it may be punished under this clause.

(c) Concealment of venereal disease is to be dealt with under this clause if standing orders to the effect have been published that a person subject to AA. who is suffering from VD must report sick without delay. Also see [Regs Army para 351](#).

9. Clause (f). —As to the definition, appointment and duties of provost-marshals see [AA.ss.3\(xx\)](#) and [107](#).

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

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

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