

35. Offences in relation to the enemy and not punishable with death.— Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) is taken prisoner, by want of due precaution, or through disobedience of orders, or wilful neglect of duty, or having been taken prisoner, fails to rejoin his service when able to do so; or
- (b) without due authority holds correspondence with or communicates intelligence to the enemy or having come by the knowledge, of any such correspondence or communication, wilfully omits to discover it immediately to his commanding or other superior officer; or
- (c) without due authority sends a flag of truce to the enemy; shall, on conviction by court-martial be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

NOTES

1. Offences under this section should not be dealt with summarily under [AA.ss.80, 83](#) or [84](#).
2. Clause (a): Where the conduct of any person subject to the AA. when being taken prisoner by or while in the hands of the enemy is to be inquired into, the COAS may
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order a court of inquiry to be held for this purpose and on the basis of the finding of the said court, the pay and allowances of such person may be forfeited by order of the Central Govt; see [AA.s.90\(h\)](#) and [96](#). Such a court of inquiry held in the absence of the said person is provisional and as such has no effect except on the pay and allowances of that person.

3. **Clause (b):** *This offence is less grave in form than the one under [AA.s.34\(d\)](#).*

4. (a) **'Communicates intelligence to'.**— *A man must be taken to intend the natural consequences of his acts, and this clause appears to be wide enough to cover the case of intelligence reaching the enemy through the capture or the re-publication (e.g., by relatives or newspapers) of letters, sketches, photographs, etc. Everyone connected with the forces should recognise the grave danger of assisting the enemy by gossip, whether verbal or written, as to plans, prospects, operations, numbers, etc. As to unauthorised publication of official documents see [Regs Army para 318](#) and Official Secrets Act, 1923 (reproduced in part III).*

(b) In a charge under this clause however, it must be proved that the intelligence did in fact reach the enemy.

5. **Clause (c):** *The offence under this clause is less grave in form than the one under [AA.s.34\(f\)](#).*