

## CHAPTER VI OFFENCES

**34. Offences in relation to the enemy and punishable with death—** Any person subject to this Act who commits any of the following offences, that is to say.—

- (a) shamefully abandons or delivers up any garrison, fortress, post, place or guard, committed to his charge, or which it is his duty to defend, or uses any means to compel or induce any commanding officer or other person to commit any of the said acts; or
- (b) intentionally uses any means to compel or induce any person subject to military, naval or air force law to abstain from acting against the enemy, or to discourage such person from acting against the enemy; or
- (c) in the presence of the enemy, shamefully casts away his arms, ammunition, tools or equipment or misbehaves in such manner as to show cowardice ; or
- (d) treacherously holds correspondence with, or communicates intelligence to, the enemy or any person in arms against the Union; or
- (e) directly or indirectly assists the enemy with money, arms, ammunition, stores or supplies; or
- (f) treacherously or through cowardice sends a flag of truce to the enemy; or
- (g) in time of war during any military operation, intentionally occasions a false alarm in action, camp, garrison or quarters, or spreads report calculated to create alarm or despondency; or
- (h) in time of action leaves his commanding officer or his post, guard, piquet, patrol or party without being regularly, relieved or without leave ; or
- (i) having been made a prisoner of war, voluntarily serves with or aids the enemy; or
- (j) knowingly harbours or protects an enemy not being a prisoner; or
- (k) being a sentry in time of war or alarm, sleeps upon his post or is intoxicated; or
- (l) knowingly does any act calculated to imperil the success of the military, naval or air forces of India or any forces co-operating therewith or any part of such forces; shall, on conviction by court-martial, be liable to suffer death or such less punishment as is in this Act mentioned.

### NOTES

1. Offences under this section should not be dealt with summarily under [AA.s.80, 83](#) or [84](#); also see [Regs Army para 451](#).

*Because the maximum punishment for offences under this section is death,—*

*(a) a summary of evidence must be taken.*

- (b) a plea of guilty cannot be accepted ([AR 52\(4\)](#)).
- (c) the trial should not take place before a DCM/ SCM.

2. 'Subject to this Act': see [AA.s.2](#).

3. **Clause (a): 'Shamefully abandons', etc.**— (a.) This offence can only be committed by the person in charge of the garrison, post, etc., and not by the subordinates under his command. The surrender of a place by an officer charged with its defence can only be justified by superior's orders or the utmost necessity, such as want of provisions or water, the absence of hope of relief, and the certainty or extreme probability that no further efforts could prevent the place with its garrison, their arms and ammunition, falling into the hands of the enemy.

(b) It must be proved that the accused had no necessity to surrender or abandon the post before a conviction can be obtained. Particulars of a charge under this clause must detail some circumstances which make abandonment in a military sense shameful. 'Shameful' means a positive and disgraceful dereliction of duty and not merely negligence or misapprehension or error of judgment.

(c) 'Post' includes any point or position (whether fortified or not) which a detachment may be ordered to hold; and the abandonment of a post would also include the abandonment of a siege if there were no circumstances to warrant such a measure. It has not the same meaning as in clauses (h) and (k) or [AA.s.36\(c\)](#) or (d), where it has reference to the position of an individual.

4. **Clause (b): 'Intentionally'**— As a state of mind (e.g. intention, knowledge) is not capable of positive proof, the court may infer intention from the circumstances proved in evidence. As a general rule, a person is presumed in law to have intended the natural and probable consequences of his act. A court may also presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of events and human conduct. See [IEA.s.114](#).

5. Enemy—See [AA.s.3\(x\)](#).

6. **Clause (c): 'Shamefully'**— (a) The particulars of the charge must show the circumstances which make the act in a military sense shameful; see note [3\(b\)](#) above.

(b) The presence of the enemy must be near at hand and a soldier not in the forward area could not be convicted of an offence if, for example, he casts away his arms during an air raid.

(c) Enemy: see [AA.s.3\(x\)](#). The term includes any person in arms against whom it is the duty of a person subject to military law to act. A person subject to the AA, therefore, who, when a comrade 'runs amok', shows cowardice by refraining from acting against him is liable to trial under this clause. See also [Regs Army para 348](#).

7. **'Misbehaves'**— (a) This means that the accused, from an unsolder-like regard for his personal safety, in the presence of the enemy, failed in respect of some distinct and feasible duty imposed upon him by a specified order or regulation, or by the well-understood custom of the service, or by the requirements of the case, as applicable to the position in which he was placed at the time. Misbehaviour of any kind not evidencing cowardice cannot be charged under the last sentence of this clause.

(b) Where there is evidence that an accused has committed some other offence which is specifically mentioned in the Act as under clause (a) or (b) or [AA.s.38\(1\)](#) such an offence should be charged in preference to a charge under this clause.

8. **Clause (d): 'Treacherously'**— (a) see [note 9\(a\)](#) and [\(b\)](#) below.

(b) If there is no evidence of treachery, the charge should be laid under [AA.s.35\(b\)](#).

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

9. Clause (f): 'Treacherously' or 'through cowardice'. —(a) Treacherously implies an intention to assist the enemy and must be carefully distinguished from 'through cowardice'

which occur in this clause. The Intention to help the enemy is an essential ingredient of the offence of treachery and must be proved before a conviction can be sustained.

(b) The particulars of the charge must show the circumstances which indicate the treachery or cowardice, if there is no treachery or cowardice, the charge should be laid under [AA.s.35\(c\)](#).

(c) Enemy: see [AA.s.3\(x\)](#).

10. Clause (g): Intentionally.—see [note 4](#) above.

11. **'Occasions a false alarm'**.— The particulars of the charge must set out briefly the means whereby the alarm was caused.

12. **'Spreads reports'**.— The particulars of the charge must detail the reports alleged to have been spread, and should indicate how they were calculated to create alarm or despondency. It is not necessary to aver or prove that the reports were false, indeed the truth may increase the offence ; nor is it necessary to show that any effect was actually produced by the reports spread ; it would, however, seldom be expedient to try an officer or soldier under this section for reports which could not be shown to have had some effect. The offence may be committed either with reference to the troops with whom the offender is serving, or with reference to the inhabitants of the country. When the false alarm is occasioned or such reports are spread otherwise than in time of war or during any military operation, the charge should be framed under [AA.s.36\(e\)](#) which makes punishable such spreading of reports etc., even though through neglect.

13. **Camp**.— Includes a bivouac and any quarters, shelter or other place where troops are temporarily located.

14. **Clause (h)**: Commanding Officer.—see [AA.s.3\(v\)](#).

15. **'Post'**.— (a) When used with respect to an individual as in this clause and clause (k), means the position or place in which it may be the duty of a person subject to the AA to be, especially when under arms. In determining what, in any particular case is a post, the court will use their military knowledge ([AA.s.134](#)). The place in which the person was posted is material and should be stated in the charge.

(b) When a person is charged with leaving his post, it is always necessary to prove that he had been regularly posted.

(c) This offence can be committed by any member of the guard, picquet etc., even the guard etc., commander but a joint charge cannot be preferred.

16. **Without being regularly relieved or without leave**.— These words are in the nature of an exception, and the principle laid down in section [105](#) of IEA applies. Therefore, though the charge must aver the absence of regular relief or leave, this need not be proved, and the fact of the accused person having quitted his guard, etc., being established it will be for him to show that he was regularly relieved or had leave to quit his guard; nevertheless, any evidence bearing on this point which is known to the prosecutor should be adduced.

17. **Clause (i): 'Voluntarily'**.— The term as defined in [s.39](#) of the IPC relates to the causation of effects and not to the doing of acts from which those effects result. However, here it has been used more in its ordinary meaning e.g. of his own free will rather than in its technical sense i.e. it means merely that the accused was willing to do the act charged; it is not necessary to show that he volunteered to do it, or even that he wished to do it. In the absence of any evidence that compulsion was applied the court may find that the accused acted voluntarily; but if from the whole of the evidence given the court think that the accused's will may have been overborne by fear they should acquit him. The test is whether the particular accused was in fact so frightened as to have lost control of his will, not whether the methods used by his captors were such as would cause a reasonably brave man to lose control. Coercion will, therefore, be a defence to such a charge.

18. **Clause (j) : 'Knowingly'**.— Evidence should, if possible, be given that the accused knew the person harboured or protected to be an enemy who is not a prisoner but if the

fact of the harbouring or protecting is proved, the court may infer knowledge from the circumstances.

19. **'Harbouring'.—** The word 'harbour' includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance or the assisting of a person by any means, whether of the above kinds or not to evade apprehension : [IPC section 52A](#).

20. **Enemy.—** See [AA.s.3\(x\)](#).

21. **Clause (k): 'Post'.—** (a) As used with respect to an individual in this and other clauses the term refers to the position or place in which it may be the duty of a person subject to this Act to be, especially when under arms. With respect, in particular, to a sentry, it applies (i) to the spot where the sentry is left to the observance of his duties by the officer, JCO or NCO posting him, or (ii) to any limits specially pointed out as his beat. The fact that a sentry has not been regularly posted is immaterial if he is charged with an offence committed while on his post provided evidence is given to prove that he adopted the duty of sentry.

(b) In determining what, in any particular case, is a post the court will use their military knowledge : [AA.s.134](#).

(c) A sentry found sleeping even a short distance from his 'post' should be charged with leaving his post under clause (h) or [AA.s.36\(d\)](#); he cannot be charged with sleeping on his post under this clause. However, where a sentry is found intoxicated, he could be charged under this clause though he is so found at a short distance away from his post as the place where he is found intoxicated is immaterial not being ingredient of the offence.

(d) A policeman on gate duty is not a sentry.

(e) Two or more accused cannot be tried jointly with committing an offence under this clause.

(f) The same offence when committed by a sentry in circumstances which do not fall under this clause is triable under clause (c) of [AA.s.36](#).

22. **Clause (l): 'Knowingly'.—** See [notes 4](#) and [18](#) above.

A charge under this clause should particularise the actual acts alleged. The act or acts must be shown to have been deliberately done by the accused with the intention of imperiling the success of the said forces. Such intention may be proved in evidence or may be inferred from the circumstances.