

36. Offences punishable more severely on active service than at other times.—

Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) forces a safeguard, or forces or uses criminal force to a sentry; or
- (b) breaks into any house or other place in search of plunder; or
- (c) being a sentry sleeps upon his post, or is intoxicated; or
- (d) without orders from his superior officer leaves his guard, piquet patrol or post; or
- (e) intentionally or through neglect occasions a false alarm in camp, garrison, or quarters or spreads reports calculated to create unnecessary alarm or despondency; or
- (f) makes known the parole, watch ward or countersign to any person not entitled to receive it; or knowingly gives a parole, watchward or counter sign different from what he received; shall, on conviction by court-martial, if he commits any such offence when on active service, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and if he commits any such offence when not on active service, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

NOTES

1. Offences under this section when on active service should not be dealt with summarily under [AA.ss.80, 83](#) or [84](#).
2. Clause (a): *safeguard's*—A safeguard is a party of soldiers detached for the protection of some person or persons, or of a particular village, house, or other property. A single sentry posted from such party is still part of the safeguard, and it is as criminal to force him by breaking into the house or other property under his special care as to force the whole party. A man posted solely to control traffic is not a "safeguard" for the purposes of this provision.
3. 'Forces';— Does not necessarily mean use of physical force. Passing the sentry when warned by him not to do so will amount to this offence.

138

4. 'Uses criminal force'.— For definition of criminal force see [IPC.ss.349](#) and [350](#).
5. '**Sentry**'.— (a) A sentry is posted for protecting some place, property or person and any forcible interference with such protection amounts to an offence under this clause provided the accused was aware that the sentry was in fact acting as such.
(b) An accused charged under this clause for using criminal force to a sentry can be found guilty of attempting to use such criminal force under [AA.s.139\(8\)](#) or of assaulting the sentry under [AA.s.139\(3\)](#). Similarly, if the charge is laid under [AA.s.69](#) for using criminal force to a sentry, the accused can be convicted of attempting to use such criminal force to or assaulting him under [A.A.s.139\(6\)](#).
(c) See also note [21 to AA.s.34](#), as to duties of sentries,
(d) A policeman on gate duty is not a sentry.
6. Clause (b): (a) The 'other place' should be specified in the charge.
(b) This clause, having regard to special military significance of the term plunder, is applicable only to offences committed on active service.
(c) For definition of 'house-breaking' see [IPC.s.445](#). A house indicates some structure intended for affording some sort of protection to the person dwelling inside it or for the property placed there for custody. What is a house must always be a question of degree and circumstances.

7. Clause (c): 'Sentry'.—For definition see [note 21 to AA.s.34](#) and [note 5](#) above. A sentry found asleep even a short distance from his post should be charged with leaving his post under clause (d), he cannot properly be charged with being asleep on his post, though he may be charged under [AA.s.63](#) with being asleep when on sentry duty. However the words 'upon his post' do not qualify the words 'is intoxicated'. It is therefore enough to constitute the offence if a person subject to the AA acting as a sentry is found intoxicated on his post or elsewhere during his tenure of duty as a sentry.

8. Clause (d): Superior officer.—For definition see [AA.s.3\(xxiii\)](#).

9. 'Post'.—(a) See notes [15](#) and [21](#) to [AA.s.34](#). When a person is charged with leaving his post it is always necessary to prove that he had been regularly posted or had undertaken the duty on that post although he has not been regularly posted. Where a member of a guard or piquet furnishing a sentry for a post receives orders that he will relieve the sentry on the post at a fixed hour, and in due course does so, he will have been regularly posted although the officer, JCO or NCO in charge was not present himself at that time.

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

10. Clause (e): See notes to [AA.s.34\(g\)](#).

11. 'Through neglect: See [note3\(b\)to AA.s.63](#).

12. (f): (a) The particulars of the charge must aver that the accused made known the watchward etc., to a person and that person was not entitled to receive the watchward etc.

(b) 'Knowingly'.—see note [18 to AA.s.34](#) above.