

**69. Civil offences.** — Subject to the provisions of section 70, any person subject to this Act who at any place in or beyond India commits any civil offence shall be deemed to be guilty of an offence against this Act and, if charged there with under this section, shall be liable to be tried by a court-martial and, on conviction, be punishable as follows, that is to say, —

(a) if the offence is one which would be punishable under any law in force in India with death or with imprisonment for life<sup>1</sup>, he shall be liable to suffer any punishment, other than whipping, assigned for the offence, by the aforesaid law and such less punishment as is in this Act mentioned;

(b) in any other case, he shall be liable to suffer any punishment, other than whipping, assigned for the offence by the law in force in India, or imprisonment for a term which may extend to seven years, or such less punishment as is in this Act mentioned.

#### NOTES

1. (a) An offence under this section should not be dealt with summarily under [AA.ss.80, 83](#) or [84](#).

(b) A SCM cannot try an offence punishable under this section unless the provisions of [AA.s.120\(2\)](#) have been complied with.

(c) Before trial is ordered on any charge under this section, as a rule the advice of the DJAG command concerned should be obtained. [Regs Army para 458](#).

2. 'Civil offence' means an offence triable by a criminal court ([AA.s.3\(ii\)](#)). For definition of 'criminal court' See [AA.s.3\(viii\)](#). It therefore follows that a person subject of AA who while stationed in any country other than India commits an act or omission such is an offence under the civil law of that country but which if committed in India would not amount to a 'civil offence' cannot be charged under this section though a charge may properly be framed under [AA.s.63](#) if the facts so warrant.

3. 'Subject to the provisions of [AA.s.70](#)'. — [AA.s.70](#) prohibits trial by court-martial three civil offences viz., murder, culpable homicide not amounting to murder of a person not subject to military, naval or air force law e.g. a civilian or rape in relation for such a person, unless the said offence was committed:

(a) While on active service (for definition see [AA.ss.3\(i\)](#) and [9](#), or

(b) at any place outside India, or

(c) at a frontier post specified by the Central Govt, by notification in, this behalf.

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

*The test is where the offence was committed and not where the trial is held. If the offence was committed at a place and in the conditions which permit of the offence being tried by court-martial; the court-martial may be held anywhere ([AA.s.124](#)) where courts-martial may be convened.*

4. *Certain Acts of Parliament require that, before proceedings can be instituted in the criminal courts, the consent of the appropriate Govt. must be obtained (e.g., under s.13(3) of the Official Secrets Act, 1923). It is not, however, necessary, before a person is charged with an offence under this section alleging that the civil offence is against such an Act, to obtain such a consent.*

5. *For adjustment of jurisdiction between a criminal court and a court-martial when both have jurisdiction in respect of the same civil offence, see [AA.s.125](#) and [126](#) and notes thereto. Also see [AR 197A](#) and [Regs Army para 418](#).*

6. *See [AA.s.139\(6\)](#) and notes thereto, which enables a court-martial, when trying a person for a civil offence to find him not guilty of that offence but guilty of any other offence of which he might have been found guilty under the Cr. PC.*

7. (a) *For offences falling under clause (a), except only those offences for which an obligatory punishment is provided under the law in force in India (e.g., death or imprisonment for life for murder), a court-martial may award any of the following punishments: —*

(i) *Any punishment, other than whipping, assigned to the offence under the law in force in India; and*

(ii) *In addition to the above, one or more of the punishments specified in [AA.s.71](#).*

(b) *For offences falling under clause (b), courts-martial may award:*

(i) *the punishment, other than whipping, assigned to the offence under the law in force in India, or*

(ii) *imprisonment which may extend to seven years, or*

(iii) *if the offender is under the rank of WO and the offence was committed on active service, field punishment up to 3 months, and*

(iv) *in addition to any of the above one or more of the punishments specified in [AA.s.71](#).*

(c) *Fines are awardable (as penalties authorised under the law in force in India) under both clauses of this section.*

8. *Chapter VI deals generally with offences punishable by the ordinary civil law which are made offences against AA by this section.*