

46. Certain forms of disgraceful conduct. — Any person subject to this Act who commits any of the following offences, that is to say, —

- (a) is guilty of any disgraceful conduct of a cruel, indecent or unnatural kind; or
- (b) malingers, or feigns, or produces disease or infirmity in himself, or intentionally delays his cure or aggravates his disease or infirmity; or
- (c) with intent to render himself or any other person unfit for service voluntarily causes hurt to himself or that person;

shall, on conviction by court-martial, 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 should not be dealt with summarily under [AA.s.80, 83 or 84](#).
 2. Clause (a). —The particulars of a charge of disgraceful conduct under this clause must specify the details of the act or acts alleged to constitute the disgraceful conduct of the kind charged. In the case of an officer accused, the same facts may constitute an offence either of disgraceful conduct under this clause or of unbecoming conduct under [AA.s.45](#); but see note [3 to AA.s.45](#).

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3. In the absence of any evidence of a definite act of indecency or attempted indecency, mere words that an indecent or unnatural act was committed are not sufficient to constitute an offence under this clause though a charge may probably lie under [AA.s.63](#).

4. Disgraceful conduct of an unnatural kind ordinarily implies the commission or at least the attempted commission of an offence under [IPC.s.377](#). Therefore, in framing charges under this clause, the charge should invariably be laid for disgraceful conduct of an indecent kind unless the evidence permits of the averment in the particulars that an unnatural offence as ordinarily understood was committed or at least attempted

5. To allege in a charge under this clause conduct of an indecent and unnatural kind would be bad for duplicity, since they are two separate offences: [AR 30](#).

6. Cruel.— Cruelty usually involves the doing of some positive act, such as beating or killing or torturing. In most cases therefore the conduct alleged will amount to an offence under some other section of AA. But there are circumstances in which cruelty can be charged against a person who has culpably failed to do what he ought to have done e.g., where a definite duty was imposed upon a person to do something and he failed to perform that duty.

7. There can be no attempt to commit this offence. See [note 1 to AA.s.45](#).

8. Clause (b)— To 'maligner' is to pretend illness or infirmity which does not exist, in order to escape duty.

To 'feign' disease or infirmity means that the accused person exhibits appearances resembling the genuine symptoms of disease or infirmity which, to his knowledge, are not due to such disease or infirmity, but have been produced artificially or purposes of deceit; e.g., simulating fits or mental disease.

To 'produce' disease is willfully to cause genuine disease to develop, e.g., by the infection of microbes or poisonous drugs. The involuntary production, aggravation, or prolongation of delirium tremens by intemperate habits, or of sexually transmitted diseases by immoral conduct, does not render a person liable under this clause; but see note 7(c) to [AA.s.42](#) as to concealment of sexually transmitted diseases.

Similarly a person who refuses to undergo a surgical operation or to be inoculated or vaccinated does not incur any liability under this clause or [AA.s.41](#) as any puncturing or cutting of the skin, mucuous membrane or tissues amounts to a surgical operation nor can he be punished for refusing to allow anaesthetic to be administered.

9. 'Intentionally'. —In a case under this clause and clause (c), evidence must be given of the intent required therein but it would be sufficient to raise a presumption of that intention if the act in question was shown to have been done willfully and not accidentally

10. Clause (c). —Intent: see [note 9](#) above.

It is usual to prefer an alternative charge under [AA.s.63](#) to a charge under this clause alleging that the accused improperly or negligently rendered himself temporarily unfit for duty.

11. For the definition of the term 'voluntarily causing hurt': See [IPC.ss.319](#) and [321\(Part III\)](#).

12. 'Any other person' means any other person subject to AA and not a civilian.

13. Offences of this nature, even when committed in the presence of the enemy should be charged under this clause and not under [AA.s.34\(c\)](#).