



Court Martial in Military

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Abstract: - The judicial Process government by rule of Law is the established means for delivery of justice, the court with its own procedural culture and praxis of equal justice lapsed: of course; on interpretive methodology is the soul of the rule of law¹.

The Military discipline requires quick disposal of offences pertaining to persons subject to the Army Act. In order to achieve this aim; justice in the Army is dispensed through various types of tribunals vested with varying powers, which are constitution under the provisions of the Army Act; depending upon the nature and gravity of offences and ranks of the accused persons. These tribunals are called court Martial. The Court-Martial means a court-Martial held under the Section 3(vii) of the Army Act 1950.

The court Martial means Court constituted exclusively for the member of Armed forces personnel by the Military. The Courts-Martial are a kind of administrative tribunals being part of the Military administration. They are not part of the judiciary².

The Concept of Court-Martial has been transplanted to India from United Kingdom initially adopted by section 73 of the government of India Act, 1833, which empowered the Governor General-in-Council to legislate for the whole native Army.

Keywords: - Praxis, intrepid intelligent, impartial, interpretive, methodology, Pertaining, dispensed, tribunal, gravity, transplanted, obligation, transplanted superintendence, Peculiar Cantonment Combination, Dissolution in expedient.

Introduction :-The Court- Martial is a Court exclusively constituted by Military. The Military discipline requires quick disposal of offences pertaining to persons subject to the Army Act. In order to achieve this aim; justice in the Army is dispensed through various types of tribunals vested with varying powers, which are constitution under the provisions of the Army Act. In England before the revolution of 1688, every able-bodied adult male was potentially a soldier, liable to render service by virtue of feudal obligation or simply as king's subject³. In the earliest times, a tribunal called "Court of Chivalry" administered the Military Code and had jurisdiction over the soldier as such.

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The said Court on the Civil side was the Court of honour. It dealt with matters relating to Coat of arms, Precedence etc. In times of war it had jurisdiction over all military offences. The judges were the Lord High Constable who was the King's General and the Earl Marshal; whose duty it was to master the Army. Thus, the Court came to be known as the Court of Constable and Martial and it is from Martial the Courts Martial derive their name. The Practice was then instituted by the king granting Commission to the Commander-in-Chief authorising him to hold Courts for the trial of Military offenders. These courts came to be known as Councils of war and also as Marshal's Courts or Courts-Martial⁴.

The concept of Court-Martial has been transplanted to India from United Kingdom, initially adopted by Section 73 of the Government of India Act 1833 which empowered the Governor General-in-Council to legislate for the whole native Army. Accordingly Articles of War (Act XX of 1845) were evolved and applied to all native officer and soldier. These articles were replaced by Act XXX of 1847, which was further replaced in 1861 by Act XXIX of 1861, this was once again replaced by Indian Act V of 1869 and replaced by Indian Article of War. "The Indian Articles of war' were amended in the year 1884 by Act XII of 1894. In 1911, The Indian Articles of war were replaced and the Indian Army Act 1911 was enacted to consolidate the Laws relating to the Government of Indian Army. It came into force on 01 January 1912, on attainment of Independence in the year 1947 and coming into force of the Constitution, the Parliament passed the Army Act, 1950 which came into force of 22 Jan, 1950. It continued the system of trial by Court-Martial as previously established.

Nature of Court-Martial

The Court-Martial are a kind of Administrative tribunals being being part of the Military administration. They are not subject to superintendence by the High Court under Article 227(a) of the constitution of India. However, trial by a Court-Martial shall be deemed to be a judicial proceeding within the meaning of section 193 and 228 of the IPC and Court-Martial shall be deemed to be a Court within the meaning of SS 345 and 346 of the CrPC 1973. The Courts-Martial are convened under the Army Act separately for each case, as in Cape of Navy, Air force, Coast Guards, NSG and BSP, under their respective Acts.



The Courts-Martial are constituted of Army Officer, not necessarily trained in Law and follow the Procedure like a Jury trial. The Court-Martial under the Act are not Courts-Martial under the Act are not Courts in the Strict sense of term as understood in relation to implementation of the Civil Laws.

The Proceeding before Court-Martial are more administrative in nature and of the executive type. Such Courts under the Act, deal with two types of offences, namely 1) such acts and omissions which are peculiar to the armed forces regarding which no punishment is provided under the ordinary law of the land and 2) a class of offences punishable under the Indian Penal Code or any other legislation passed by the Parliament⁶.

In the case of UOI Maj V.J. Kharod 1987(5) SLR 630 (Gujarat); It has been held that “The Courts-Martial Act UP under Army Act, Air force Act and Navy Act are the tribunals which would be amenable to the writs of mandamus, probation and certiorary under Art 226 Neither the Parliament nor the State legislatures can take away the jurisdiction of the Supreme Court or the High Court to issue writs mentioned in Article 32 and 226.

When a soldier may be tried by Court-Martial

- (i) When the offence is committed during the course of duty.
- (ii) When most witnesses of the cases are military personnel.
- (iii) When the offence so committed in cantonment area or near cantonment and necessity of discipline demands that soldier be tried by Court-Martial.
- (iv) When classified documents essential for the defence of the country are to be examined during trial.
- (v) When speed disposal of the case is necessary for maintenance of discipline.
- (vi) When the offence is committed against the serviceman.
- (vii) When the offence is committed due to the condition of the service.

When soldier may be tried by Criminal Court

- (i) When offence is committed in Civil locality and witnesses of the case are also civilians.
- (ii) When offence has become time barred.
- (iii) When offence is committed by a soldier in combination with persons who are not subject to Army Act and it is necessary to try all the offenders jointly.



- (iv) When offence is committed against a Civilian and in the opinion of Criminal Court (or Central Govt.) it is advisable to try the offender by Criminal Court.
- (v) When appropriate military authority decide that offender be tried by Criminal Court.
- (vi) When appropriate Military authorities; well knowing the facts of the Case; obtain from directing that the accused by Court-Martial.
- (vii) Rape, murder, culpable homicide by Military Persons are always tried Civil Criminal Court.

Types of Courts-Martial in Air Force

There are three types of Court-Martial in Air force namely.

- (a) General Courts-Martial
- (b) District Courts-Martial
- (c) Summary General Courts-Martial

Types of Court-Martial in Navy

Under the Navy Act, there are following types of Court-Martial.

- (a) Court-Martial and
- (b) Disciplinary Court

Types of Courts in BSF

There are three kinds of Courts under the BSF Act, namely

- (a) General Security Force Courts
- (b) Petty Security Force Courts
- (c) Summary Security force Courts.

Types of Courts in NSG

Under the NSG Act, there are three types of Courts namely

- (a) General Security Guard Court
- (b) Petty Security Guard Courts.
- (c) Summary Security Guard Courts.



Types of Court Martial in Army⁷

Four types of Court Martial

- (a) General Court Martial (G.C.M)
- (b) District Court-Martial (D.C.M)
- (c) Summary General Court-Martial (S.G.C.M)
- (d) Summary Court-Martial (S.C.M)

General Court-Martial (G.C.M)

A General Court-Martial may be convened under the Provision of Army Act 1950 u/s 109 by

- (a) The Central government or
- (b) The Chief of the Army Staff or
- (c) By an officer empowered by warrant of the Chief of the Army Staff.

The Chief of Army staff may issue warrant to following officer for convening of the Court-Martial

- (a) GOC C-in-C Commands

Types of Courts in Coast Guard

Under the coast Guard Act, there only one type of Court, called “Coast Guard Court”

- (a) Director General Boarder Road
- (b) GOS C Coasts
- (c) GOS C Divisions and Areas
- (d) Chief Engineer Boarder Roads
- (e) Commanders of independent Brigades and independent Sub-Areas, empowering them to convene general Court-Martial.

Composition of General Court-Martial

The composition of General Court-Martial is as following



- (a) A General Court-Martial should consist of minimum five commissioned officers.
- (b) All members should have at least three whole years of commissioned service.
- (c) Not less than four officer must be of a rank not below that of captain⁸.
- (d) They must not belong exclusively to the Corps or department to which the accused belongs⁹.
- (e) For trial of an officer all the members shall be of the rank not below that of the officer, unless in the opinion of convening officer, officer of such rank are not available¹⁰.
- (f) No officer below the rank of captain shall be a member at the trial of a field officer¹¹.
- (g) A judge Advocate must attend¹².
- (h) The convening officer has to append a certificate to the Convening order if
 - (i) an officer below the rank of the allured sorts as member or Judge Advocate¹³ and
 - (ii) an officer below the rank of Colonel sets Presiding officer¹⁴ that with due regard to exigencies, an officer senior in rank to the accused/or an officer of the same rank is not available.
- (i) When a commanding officer of a Corps is to be tried, as many members as possible will be officers who have held or are holding commands equivalent to that hold by the accused¹⁵.

Powers of General Court-Martial

A General Court-Martial is empowered

- (a) To try any person subject to the Army Act.
- (b) For any offence punishable there in; and
- (c) To pass any sentence authorised under AAS 118
- (d) Sentence of death cannot be passed by G.CM without concurrence of atleast two-thirds of members of the Court¹⁶.

District Court-Martial



A District Court-Martial may be convened by an officer having Power to Convene a General Court-Martial or an officer empowered in this behalf by warrant of such officer¹⁷.

A District Court-Martial shall consist of¹⁸

- (a) Three or more officer
- (b) All the officers should have at least two years of commissioned service
- (c) The presiding officer should be of filed rank and
- (d) May be attended by a judge Advocate.

Powers of D.C.M.

A District Court-Martial is empowered

- (a) To try any person subject to the Act, other than an officer or a jeo.
- (b) For any offence punishable under the Army Act and
- (c) To pass any sentence authorised by Army Act, other than sentence of death imprisonment for life or imprisonment for a term exceeding two years.

Provided that a District Court Martial shall not sentence a warrant to imprisonment¹⁹

Summary General Court Martial Object

The object of summary General Court-Martial is to provide for the speedy trial of offences committed while on active service, in cases where it is not practicable with due regard to the interest of discipline and of the service, to try such offences by GCM or a DCM.

Summary General Court-Martial may be convened by

- (a) An officer empowered by an order of central government or the Chief of Army staff.
- (b) On active; the officer commanding the forces in the field or any officer empowered by him in this behalf and
- (c) An officer commanding of any detached portion of the regular Army on active service when in his opinion, it is not practicable with due regard to discipline



and exigencies of service, that an offence should be tried by a General Court-Martial.

Composition of S.G.C.M.

The following provisions will be adhered to in respect of composition of a SGCM

- (a) The Court shall consist of not less than three officers
- (b) Though there is no statutory requirement as to the rank or service of members of SGCM, they should have held minimum three years commissioned service
- (c) If the officers with commissioned service of three years or more are available, they should be selected in preference to officer of less service.
- (d) The presiding officer should normally be a field officer or captain with not less than seven years commissioned service. In the event of an officer of this seniority not being available, then provided that convening officer certifies to this effect, upon the convening order, a field officer or captain if not less than 5 years service may be appointed the other members of the Court should have not less than 3 years commissioned services.
- (e) Vide Army Act section 129 a SGCM may be attended by a Judge Advocate. However, a Judge Advocate must be appointed in the following cases.
 - (i) Trial of an officer or JCO, and
 - (ii) Complicated or serious cases e.g. fraud, indecency and offences against civil law²².

Eligibility for members

Any available officer other than the Provost Marshal, assistant Provost Marshal, Prosecutor or witness for Prosecution may be appointed as the member of the Court²³.

Power of Punishment

The Powers of summary General Court-Martial are the same as that of General Court Martial. The sentence of death shall not be passed by a S.G.CM without the concurrence of all the members.



Summary of Court-Martial

Summary of Court Martial is also known a court of Commanding officer

- 1) A summary Court-Martial may be held by the commanding officer of any Corps, department or detachment of the regular Army, and he shall alone constitute the Court.
- 2) The Proceedings shall be attended throughout by two other persons who shall be officers or junior commissioned officers or one of either, and who shall not as such be sworn or affirmed.

Dissolution of Court-Martial²⁵

The following are the circumstances when Court-Martial may dissolved

- 1) If a Court-Martial after the commencement of a trial is reduced below the minimum number of officers required by Army Act 1950 it shall be dissolved.
- 2) If, on account of illness of the Judge Advocate or if the accused before the finding, it is impossible to continue the trial, a Court-Martial shall be dissolved.
- 3) The officer who convened a Court-Martial may dissolved such Court-Martial if it appears to him that Military exigencies or the necessities of discipline render it impossible or inexpedient to continue to the said Court-Martial.
- 4) Where a Court-Martial is dissolved under Sec 117 of Army Act 1950, the accused may be tried again. Rendering justice is a difficult task it is actually a divine act²⁵

Conclusion

The Penalty imposed must be commensurate with the gravity of misconduct, and that any Penalty disproportionate to the gravity of the misconduct should be violat of Article of the Constitution²⁶ Court-Martial plays significant role in maintaining of discipline and administration in Defence.

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