



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820  
 Editor-in-Chief – Prof. (Dr.) Rishikesh Dave; Publisher – Ayush Pandey

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## Military Law vs Civilian Law in India: A Comparative Study

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*Received* 06 January 2023; *Accepted* 23 January 2023; *Published* 28 January 2023

*It is widely acknowledged that the Indian legal system is among the world's earliest. Every Indian is protected by its well-defined framework and governing system. Naturally, the military is an exception to this rule. Disputes are dealt with via a separate channel. This parallel structure, a holdover from the days of the British Raj, has survived the test of time mostly intact. In this essay, we shall examine the differences and similarities between civilian law and military law in India. Military justice is a system of laws and procedures that govern members of the military. Every nation has its legal structures that govern the behaviour of its Armed Services members. Military justice now needs timely choices, which cannot be obtained only via debate and discussion along with comparative reasons. In this article, we will compare the justice system present in India, its legal proceedings, and punishments along with the challenges faced by military law in comparison to civilian law.*

**Keywords:** *military laws, civilian laws, military court trials, governing system, challenges.*

### INTRODUCTION

The military is governed by military law, a body of legislation whose primary focus is on enforcing order and discipline within the armed forces. Military law refers to the body of legislation that governs the establishment, organization, and operation of armed forces at the

national level. However, the phrase is often limited to disciplinary military law, which is the branch of the code that seeks and enforces the maintenance of discipline in the armed services. A historical word for this was "martial law," which now refers to the use of military force to maintain order among civilians in an occupied region or in times of widespread chaos.

For several reasons, military and military-related offences have their unique system of adjudication. For starters, rapid and immediate decisive action or punishment is required due to the nature and importance of the armed forces. To put it another way, the military simply cannot afford to wait for the many adjournments and delays inherent in the civilian court system. For regularity and the incorporation of the discipline characteristic of the military, speedy trials and predictable outcomes are essential. This frees up the armed forces to concentrate on protecting the country.

**THE SECOND APPEAL:** There is no system in place for those who have been found guilty to file an appeal with a higher court. A person who is aggrieved by a military court finding or sentence may file a request with the central government, the head of the military, or any recommended superior official in charge of the one that confirmed the finding or sentence; the central government, the head of the military, or the other official may pass such requests because the case may likewise be appealed to a higher court. (Section 164(2)<sup>2</sup>.

## THE MILITARY JUSTICE SYSTEM IN INDIA

To a large extent, the Indian military is governed by the regulations set down in the Indian Constitution.

- **Article 33**<sup>3</sup> gives the parliament the authority to pass laws that limit or abolish any of the basic rights of service members, with the goal of preserving order and ensuring that they can appropriately perform their tasks.

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<sup>2</sup> Army Act 1950, s 164(2)

<sup>3</sup> Constitution of India 1950, art 33

- Articles 136<sup>4</sup> and 227<sup>5</sup> severely limit and restrict the higher judiciary's authority to issue orders, conclusions, and punishments related to court-martial proceedings.
- Army Act 1950.
- Army Rules 1954.
- Navy Act.
- Air Force Act.
- The armed Forces Tribunal Act, 2007 was passed in 2007 and was regarded as an important piece of legislation that permitted the foundation of the Armed Forces Tribunal (AFT).
- The Act gave the tribunal the authority to resolve disagreements and hear grievances about problems experienced by service members, including commissions, appointments, enrolments, and terms of service for everyone covered by the Army Act of 1950, the Navy Act of 1957, and the Air Force Act of 1950. In addition to this, it allowed for appeals to be filed against orders, findings, or sentences handed down by courts-martial that were held by the above Acts as well as similar cases that were linked to it.

## THE CIVILIAN LAW IN INDIA

The personal rights of people are the only focus of civilian law. It refers to disagreements involving any kind of legal responsibility or connection involving several people or legal bodies. Civilian law seeks to function in two different ways: prevent the violation of people's rights, and in event of a violation, restore people's rights. In most countries, the body of legislation governing civil matters is codified. A civil law code and criminal law code are made up of several articles written in the form of broad principles that may be interpreted in various ways depending on the specifics of any given case. However, the spirit of the code must be considered in a court of law when applying such an application.

The imposition of civilian law liability here on the offender is one of the distinctive aspects of civilian law. The term 'civil liability' is used to describe a person's legal responsibility to pay for

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<sup>4</sup> Constitution of India 1950, art 136

<sup>5</sup> Constitution of India 1950, art 227

the harm done to some other person or their property depending upon the severity. So if one citizen wrongs another citizen, that wrongdoer must pay damages to that victim. By the principles of civil law, there is a need to pay damages in proportion to their severity.

**THE SECOND APPEAL:** If the High Court determines that the matter involves a serious point of law, it may hear an appeal from any decision issued by a lower court on appeal under **Section 100 of the CPC**<sup>6</sup>. In this light, the appeal memorandum must explicitly identify the material issue of law at stake. If the High Court agrees that it is adequate, it will proceed to create the necessary issues upon which the appeal will be decided. The High Court may also consider the appeal if it determines that the matter raises a serious point of law that was not previously articulated by the court. It is important to keep in mind that a second appeal may only be brought based on a mistake in the application of the law and cannot be used to challenge a finding of fact. On the same page, if the specific Court offers evidence to support its conclusions, then such findings will be declared final in the absence of any flaws or deficiencies in the method.

## **THE CIVILIAN JUSTICE SYSTEM IN INDIA**

The Code of Civil Procedure and Code of Criminal Procedure's primary goal is to standardize and improve the rules governing civilian court proceedings. The Code of Civil Procedure as well as the Code of Criminal Procedure are considered core procedural legislation in India; it does not grant or revoke rights; rather, it focuses only on the regulation of court procedure.

- The first section is basic and may only be changed by an act of parliament, however, the High Courts have the authority to nullify, amend, or add to the regulations set out in the second section, so long as doing so does not contradict the requirements of the first section.
- The Code of Civil Procedure and the Code of Criminal Procedure recognize the powers of and the constraints on the courts, however, there are other powers that are vested in

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<sup>6</sup> Code of Civil Procedure 1908, s 100

the court system but not stipulated in the Code; these are the inherent powers. The court's inherent powers are in contrast to those granted to it by the Code.

- They enhance the effectiveness of certain abilities. The court is authorized to utilize them as necessary to achieve justice or avoid the misuse of judicial procedures. The explanation is simple. Since the legislator cannot foresee all the various scenarios that may happen in future litigations, the functions of the courts are not thoroughly spelled out. When faced with an unexpected problem, inherent abilities step in to help. Absent statutory restrictions, they may be applied *ex debito justitiae*. However, they should be used cautiously and not arbitrarily.

### WHY IS AMENDMENT REQUIRED IN THE MILITARY JUSTICE SYSTEM BUT NOT IN THE CIVIL JUSTICE SYSTEM?

*Lance Naik Mirza Ahmed v Union of India*<sup>7</sup>, The summary court-martial processes were challenged because the commanding officer was biased towards the petitioner, the commanding officer wrote the summary of evidence and so was not competent to conduct the court, and no evidence was presented against the petitioner. After reviewing the case, the Jammu and Kashmir High Court rejected the first two arguments but found the third to be plausible because the petitioner was charged under **section 52(b)**<sup>8</sup> of the Army Act, and the proceedings revealed no evidence of entrustment or disposal of property by the petitioner, so the proceedings were set aside. Section 108, Chapter X of the military manual specifies that there are four types of court-martial:

- general court-martial;
- district court-martial;
- summary general court-martial;
- summary court-martial.

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<sup>7</sup> *Lance Naik Mirza Ahmed v Union of India* Writ Petition No 317/1981

<sup>8</sup> Army Act 1950, s 52(b)

Military justice now needs quick choices, which cannot be achieved only via debate and discussion. In most cases, a commander's perspective of view is imposed on subordinate officers. Military justice in India glides smoothly. A court must have at least three elements to hold a fair trial: the judges must be competent, which means they must have the appropriate legal qualifications; the judges' appointment in any department, promotion, and tenure must be independent of the executive; and the trial must be fair and reasonable. Our military justice system is defective in every way. In several instances, the high courts have condemned the judicial system, as well as the summary court-martial. The summary court-martial trial was deemed unfair and unreasonable.

### **THE CIVILIAN LAW AND MILITARY LAW**

There seems to be a lot of surprise and misunderstanding when the topic of civilian law v military law comes up in conversation. People generally aren't aware of the two distinct legal codes. Whenever the topic of law is addressed, it is commonly presumed that civil law is being discussed. To an outsider, a conversation with a service member on law may easily seem like a discussion of military regulations. When discussing legal systems, the distinction between civil law and military law sometimes seems to confuse. Most people do not realize there are two separate legal systems. When talking about law, it is usually assumed that we are talking about civil law. Any interaction with a service member runs the risk of being misconstrued as an examination of military regulations. There are five primary differences between civilian law and military law are as follows:

While the legal codes regulating both systems are national in scope, there are notable variations when talking about military law, as denoted by The Code. The 'Code of Conduct' often holds military members to a higher standard than the broader public. The military does and visits locations that no civilian ever would. This method was created to preserve order among the military forces as a result of the vast range of countries in which they may operate.

**The Court-Martial process:** Although military Court-Martials are reserved for the most serious abuses, civilian courts handle a far wider variety of cases.

**A Judge Advocate:** A Judge Advocate is the military's and the public's go-to legal expert on both military and civilian law. None of these functions would exist in a court system based on civil law.

**Appeals:** May be brought from the appeals court to the federal appeals court in the civilian judicial system. The military has its distinct process for handling appeals of decisions. It has its own internal appeals process. Each branch of the armed forces has its court of appeals.

**The judge advocate must complete specialized training:** The representative's knowledge of civil law and military justice is required.

### **CRIMES AND PUNISHMENT IN THE MILITARY vs THE CIVILIAN JUSTICE SYSTEM**

The military's judicial system is governed by a body of rules known as "military law." Courts-martial and military courts are the appropriate venues for prosecuting and convicting military individuals by these rules. The legal process in a military court is quite different from the civil legal process. The problems of being subject to two sets of regulations are constantly brought to the member's attention by the fact that he or she must comply with the same civil norms whether on leave or in a neighboring town after work. Some individuals take comfort in the fact that they will be held to a higher standard in the military than in civilian life, even though military law is more stringent and punitive than civilian law.

**Sexual misconduct** covers a wide range of Sexually-related offences, including adultery, internet sex crimes, child pornography, sexual harassment, and sexual assault, which are all possible here. No one doubts that some of these infractions are less serious than others. The military does not insist on the death penalty, despite the strict nature of the legislation. The penalties are proportional to the seriousness of the crime.

**Mutiny:** The military equivalent of treason is mutiny. It's against the rules of military conduct. And it intensifies the situation to the point that other troops refuse to obey commands and seek to grab control from the person or people designated to lead them.

**Sedition:** The military equivalent of treason is mutiny. It's against the rules of military conduct. And it intensifies the situation to the point that other troops refuse to obey commands and seek to grab control from the person or people designated to lead them, which is equivalent to sedition.

**AWOL:** A member of the Armed Forces who go AWOL (Absent without Leave) faces severe punishments under military law. However, in a civil court, this type of behaviour is not acceptable. It's also possible that a service member may be guilty of sedition under military law, but a civilian wouldn't be under civilian law.

The question of whether or not a person may be prosecuted and convicted in both civil and military law courts naturally arises for anybody with even a cursory understanding of both sets of legal procedures. Yes, even if a trial has already taken place in a state court, the military may still hold its own. This is because military courts and civilian courts are two separate systems with distinct standards and procedures. Due to the nature of the offences and the groups they represent, military law is very difficult to implement in its entirety.

**Case analysis:** In *Ranjit Thakur v Union of India*<sup>9</sup>, the appellant Ranjit Thakur was serving a sentence of 28 days of harsh imprisonment for breaking service regulations by submitting representations to senior officers against the decision of his commanding officer at the time of the alleged violation. He had made a formal complaint to higher-ranking commanders about his commanding officer's mistreatment. His commanding officer prosecuted him summarily for this and sentenced him under **Section 80**<sup>10</sup>. He was handcuffed and kept in the quarter cell to complete his sentence. He committed another offence while serving his term and was prosecuted under **Section 41(2)**<sup>11</sup> of the Army Act for disregarding a valid instruction provided by his higher officer. The offence was that he did not consume his meal when asked to do so by Subedar Ram Singh, an Orderly Officer in the same regiment.

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<sup>9</sup> *Ranjit Thakur v Union of India* (1988) SCR (1) 512

<sup>10</sup> Army Act 1950, s 80

<sup>11</sup> Army Act 1950, s 41(2)



## **MILITARY COURTS v/s CIVILIAN COURTS**

The civilian judicial system may be broken down into two distinct categories: the criminal court, which deals with illegal conduct, and the civil court, which covers all other types of legal issues. Both of these categories are part of the civilian court system. You may be tried in civilian court, military court, or both if you are accused of committing an offence that is considered to be a violation of both civilian law and military law. There are three different methods by which military trials may be conducted, and each one is determined by the intensity of the crime and the potential punishments that are available.

**General Court-martial:** The most serious and high-level offences are prosecuted in a general court-martial:

- Dishonorable dismissal from the military;
- loss of pay;
- life in jail;
- or even the death sentence.

These are all examples of possible punishments. The judge and at least three-quarters of the enlisted members of a general court-martial must reach a unanimous decision for it to be considered the ultimate judgment. This is for the most serious offence, a felony in a civilian system. Before the trial under the general court-martial, a preliminary hearing called an 'Article 32 hearing' is held by jury trials in a civilian system to check that the charges are correctly formulated and that they are supported. The trial might be handled by a single military judge or by a panel of five military judges. Only capital cases require the unanimous agreement of all members of the ruling panel to issue the sentence. In cases when the penalty is detention for more than ten years, a three-fourths majority is required to approve the sentence. Any lesser offence requires a two-thirds majority vote to convict the offender. A general court-martial may impose any penalty, including death that is stipulated in the court-martial manual and it must be proportionate to the gravity of the crime or offence.

**Summary Court-martial:** According to Section 116 of the Army Act, The summary court-martial deals with less serious offences by following straightforward processes. If guilt is established, potential consequences include:

- The loss of pay;
- Incarceration for up to a month;
- Forced labour;
- A reduction in military rank.

When military members are accused of minor offences, their cases are examined by summary court-martial, but those involving officers, cadets, and midshipmen are not. It is evaluated by a sworn officer who may or may not be a lawyer rather than a military court or attorney general. The accused may refuse summary court-martial and instead seek any other sort of court-martial. The accused may also select a civil attorney general to defend him at his own cost. Except for the Air Force, neither military members get free legal assistance. If the suspect is found guilty, he faces a maximum sentence of 30 days in prison, the loss of two-thirds of his monthly wage, or being demoted to the absolute lowest salary.

**Summary general court-martial:** A general court-martial may be convened on behalf of the Central Government or by order of the Army Chief, or by an officer in service, the officer in charge of the troops in the field, or any officer authorized by him in this capacity, according to section 112<sup>12</sup> of the Army Act. A summary general court-martial must include at least three officers, according to Section 115<sup>13</sup> of the Army Act. Deals with minor offences and punishments may include:

- Rigorous labour for up to 90 days;
- A bad-conduct discharge;
- Forfeiture to pay;
- Incarceration for up to one year depending on the severity of the offence;

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<sup>12</sup> Army Act 1950, s 112

<sup>13</sup> Army Act 1950, s 115

- For this court to bring charges against the suspect, at least three-quarters of the court's four enlisted members need to be in accord.

**District Court-martial:** According to Section 110<sup>14</sup> of the Army Act, a district court-martial may be summoned by an officer who can conduct a general court-martial or by any such officer on his behalf who has the right to issue the warrant. At least three officers from the district court-martial must have served in the armed forces for at least two years. Section 114 of the Army Act establishes the district court martial.

### CASE ANALYSIS

In **Bachan Singh v Union of India**<sup>15</sup>, the petitioner challenged his summary Court-martial conviction, which condemned him to three months in jail and discharge from service. He appealed the ruling on many grounds. When the J&K High Court studied the summary Court martial procedures, it was discovered that the trial had been completed in one hour and forty-five minutes on the same day. The records provided no information regarding the charge hearing, which was held in compliance with an Army Rules directive mandating the recording of the summary of evidence. The summary of evidence record had no date, and there was nothing on the record to suggest that the commanding officer reviewed the summary of evidence before remanding the petitioner's trial by summary Court-martial. The plea of guilty was entered in blatant violation of Rule 115. It was also unclear who recorded the plea and if it was done in the presence of the accused. The High Court granted the writ petition because the whole process violated **Army Rules 22, 24, and 115**.

### CHALLENGES FACED BY THE MILITARY JUSTICE SYSTEM AS COMPARED TO THE CIVILIAN JUSTICE SYSTEM

**Right to Bail:** If a service member is arrested and facing charges, they will not be eligible for bail. It's up to the judgment of the Commanding officer, or the highest military official. While the Supreme Court has established the grounds on which bail should be granted, this has not

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<sup>14</sup> Army Act 1950, s 110

<sup>15</sup> *Bachan Singh v Union of India* Civil Appeal No 3110/2004

been extended to service members detained by the military. Bail decisions made with such broad power are arbitrary, open to abuse, and undermine Article 21's<sup>16</sup> protection.

**Double Jeopardy:** While the constitutional protection against double jeopardy that is written in Article 20(2)<sup>17</sup> is accessible before a court-martial, it is not available to prevent a second trial on the same offence before a civil court. This is because a court-martial is a military court. A person who is subject to the Air Force Act and has previously been tried and convicted or acquitted before a court-martial may be tried again on the same charge by a civil court.

**Absence of Right to Appeal:** There is no option for appealing a court martial findings and punishment. Sections 153 to 165 of Chapter XII of the Act allow for the verification and amendment of the military court order. According to Section 153, 'no judgment or sentencing of a general, district, or summary general military trial shall be lawful unless validated as specified by the AA.' Section 160 allows for the adjustment of a court martial decision or sentence by an order of the affirming authority. Section 164 addresses confirmation and the remedies accessible to people who have had a judgment or sentence confirmed against them. Section 164 (2) states that "Any person. who considers himself aggrieved by a finding or sentence of a court-martial may present a petition to the central government, the Chief of the Army Staff, or any predefined officer superior in control to the one who confirmed such finding or sentence, and the central government, the Chief of the Army Staff, or any predefined officer superior in authority to the one who confirmed such finding or sentence, and the central government, the Chief of the Army Staff, or any prescribed officer superior in command This remedy is only available once the sentence has been determined. As a result, the accused does not have the right to seek redress until the sentence is confirmed. Furthermore, this remedy is a paper exercise that takes place in closed chambers where the accused has no recourse to personal counsel. As a result, there is no recourse to challenge the court martial decision. The Supreme Court (Article 227(4))<sup>18</sup> in the case

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<sup>16</sup> Constitution of India 1950, art 21

<sup>17</sup> Constitution of India 1950, art 20(2)

<sup>18</sup> Constitution of India 1950, art 227(4)

of high courts) cannot provide special permission to appeal against any verdict, ruling, or sentence of a military court or tribunal, according to Article 136(2)<sup>19</sup> of the Constitution.

## CONCLUSION

Military law requires new jurisprudence, new legal thought, and a new focus on human rights protection. What is most important to a regular Indian soldier is the issue of making a living. Political and civic liberty, as well as constitutional protection, are distant concepts to him. In such a case, the State's first responsibility is to preserve its right to a fair judicial system. The military justice system, particularly the use of summary Court-martials, has been condemned by the Supreme Court. The handful of examples of summary court-martial trials that have come before higher civil courts give sample evidence of the level of justice accessible to Indian troops. We must recognize that members of a highly disciplined and efficient force should not be subjected to an unjust judicial system to preserve discipline. We must remember that a robust defensive force is required for modernization to flourish and that such a powerful but ineffective force is composed of individuals, people who ought to be treated with decency and fairness. While the advantages of having a distinct system for addressing military matters are evident, change must also be implemented.

Transparency is essential, as is stronger assistance and legal aid for the accused, as well as the obvious changes to the bail terms. The Indian military justice system has its origins in a period when the fight was far away and the Armed Forces needed to be self-sufficient. No legal system can or should operate in a vacuum, disregarding changing cultural standards. The military justice system is outdated, and just creating an appeals tribunal would not improve its functioning. Rather than making changes by forming a "tribunal," it may be wiser to assess the overall situation as compared to civilian courts and their proceedings.

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<sup>19</sup> Constitution of India 1950, art 136(2)