

**“THE OFFENCES RELATED TO ARMY, NAVY AND AIR FORCE UNDER
INDIAN PENAL CODE, 1860”**

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ABSTRACT

The Indian Penal Code, 1860 deals with the offences relating to army, navy and Air force in a separate Chapter VII which includes sections from 131 to 138. These provisions under the IPC stand more or less redundant as they are governed by their special act. The section under IPC making them redundant is Section 139 of the Indian Penal Code. The major objective of these provisions is to maintain the chain of command. The paper makes a detailed analysis of the nature of the crimes under these sections. The laws governing Military, Army and Air force of different countries are also discussed so as to draw a better understanding of provisions dealt in hands. The concerns related to dealing such crimes by their special courts have been expressed. The paper also contains the law commission reforms along with drawing a comparative analysis between offences under IPC and the Army Act. The paper concludes with making suggestions with regards to the topic at hand while drawing inferences from the detailed analysis in the chapter.

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1. INTRODUCTION

Chapter VII of Indian Penal Code, 1860 (Herein after IPC) deals with the offences relating to army, navy and air force. It relates to the offences which might be committed by civilian population in relation to the defence personnel. The essence of this chapter is that it deals with those offences in which the civilians abet the offences committed by the army, navy or air force personnel. The laws governing IPC have been seen in usual course to not reach the offenders. The main reason being that such offences like the act of insubordination etc. which is a resultant of their abetment may be either trivial or no offence at all under IPC irrespective of how grave as a breach of military discipline they are. By the provisions of the Section 139³ of IPC these acts despite the fact that they fall under IPC will not be punishable under IPC as they are subject to punishment under their special acts which they are subject to. The special acts are-

1. Army Act, 1950 (46 of 1950).
2. Naval Discipline Act, the Indian Navy (Discipline) Act, 1934 (34 of 1934).
3. Air force Act, or the Air Force Act, 1950.

1.1. Purpose of the following chapter under IPC.

The basic purpose of this chapter is to maintain discipline under Army, Navy and Air Force. The Army, Navy and Air Force have certain code of conduct for the men and women serving in them. But this chapter is from the point of view of the civilians. What about the third party or civilians who could hamper the discipline and chain of command in them. Hence to cater to this the following chapter was added in order to maintain that perfect discipline and order in the armed forces by defining these crimes from civilian angle in relation to Army, Navy and Air Force.

3 S. 39, The Indian Penal Code, 1860.

2. Classification of Offences

The Indian Penal Code under its separate Chapter VII deals with the offences relating to the army, navy and air force in the sections 131 to 138. The classification for the abetment of offences by the civilian population relating to defense personnel can be studied in the following manner-

2.1. *Abetment of Mutiny.*

Section 131 and 132 deals with abetment of mutiny.

Section 131: Abetting mutiny, or attempting to seduce a soldier, sailor or airman from his duty- Whoever abets the committing of mutiny by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India or attempts to seduce any such officer, soldier, sailor or airman from his allegiance or his duty, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.⁴

Section 132: Abetment of mutiny, if mutiny is committed in consequence thereof.—Whoever abets the committing of mutiny by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India, shall, if mutiny be committed in consequence of that abetment, be punished with death or with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.⁵

2.2. *Abetment of Assault by an Officer on a Superior Officer.*

Section 133- Abetment of assault by soldier, sailor or airman on his superior officer, when in execution of his office.—Whoever abets an assault by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India, on any superior officer being in the execution of his office, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.⁶

Section 134: Abetment of such assault, if the assault committed.—Whoever abets an assault by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India,

⁴ S. 131, *The Indian Penal Code*, 1860.

⁵ *Ibid*, s. 132.

⁶ *Ibid*, s. 133.

on any superior officer being in the execution of his office, shall, if such assault be committed in consequence of that abetment be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.⁷

2.3. *Abetment of Desertion.*

Section 135: Abetment of desertion of soldier, sailor or airman.—Whoever, abets the desertion of any officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.⁸

Section 136: Harbouring deserter.—Whoever, except as hereinafter excepted, knowing or having reason to believe that an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India, has deserted, harbours such officer, soldier, sailor or airman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.⁹

Exception- This provision does not extend to the case in which the harbour is given by a wife to her husband.

Section 137: Deserter concealed on board merchant vessel through negligence of master.—The master or person in charge of a merchant vessel, on board of which any deserter from the Army, Navy or Air Force of the Government of India is concealed, shall, though ignorant of such concealment, be liable to a penalty not exceeding five hundred rupees, if he might have known of such concealment but for some neglect of his duty as such master or person in charge, or but for some want of discipline on board of the vessel.¹⁰

2.4. *Abetment of an Act of Insubordination.*

Section 138: Abetment of act of insubordination by soldier, sailor or airman.—Whoever abets what he knows to be an act of insubordination by an officer, soldier, sailor or airman, in the Army, Navy or air Force, of the Government of India, shall, if such act of insubordination be

⁷ Ibid, s. 134.

⁸ Ibid, s. 135.

⁹ Ibid, s. 136.

¹⁰ Ibid, s. 137.

committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.¹¹

¹¹ Ibid, s. 138.

3. Proposals for Reform

The Fifth Law Commission report discusses about certain reforms under the Chapter VII of IPC. A few of the prominent parts are discussed as follows:

(1) Extension of scope of who is governed by this chapter- The chapter is only limited to only army, navy and air force personnel and does not extend to all other armed forces of the Union of India. Thus the recommendation was to change the subject matter to Offences relating to armed forces instead of offences relating to army, navy and air force.

They even proposed to define it in a new section by way of addition of Section 130A. The contents of the section aimed at defining the key expressions 'armed forces', 'member' and 'officer'.

(2) Enhancement of punishment to 2 years from 6 months in case of abetment of an offence insubordination when the attempt is successful.

(3) Deletion of Section 137 on grounds that it does not appear to be of any consequence.

(4) Addition of Section 138A and 138B, punishable with simple or rigorous imprisonment for a term up to 3 years, or with fine, or with both. The crimes to be defined by this section are inciting mutiny or an act of insubordination and dissuading from recruitment to armed forces.

(5) The punishment under Section 135 is increased to 5 years where the offence of desertion actually takes place. This would help in differentiating the magnitude of when it's only abetment and when the desertion takes place on account of the abetment.

(6) Referring to the kinds and quantum of punishment provided for abetment to mutiny, not committed in consequence thereof or otherwise, and for attempt to seduce a defence personnel (sections 131 & 132, IPC), it opined that the punishment of imprisonment for life provided for abetment to mutiny that is not committed in consequence of the abetment and for an attempt to seduce defence service personnel is unduly harsh. It suggested that abetment of mutiny by an officer or a member of armed forces should be punished: (i) with death or imprisonment for life or with rigorous imprisonment for a term up to fourteen years (in lieu of the existing ten years), if mutiny is committed in pursuance of the abetment, and (ii) with rigorous imprisonment for a term up to ten years, if mutiny is not committed in pursuance of the abetment. An attempt to

seduce an officer or member of the armed forces from his duty, it opined, should be made punishable by rigorous imprisonment for a term up to ten years with fine.¹²

Effect given to these recommendations in the Indian Penal Code (Amendment) Bill 1978, premised on recommendations of the Fifth Law Commission, gives effect to these proposals for reform.

The Fourteenth Law Commission not only endorsed the proposed reforms but also approved contents of the 1978 Bill incorporating those suggestions.¹³

However, these proposals are not yet transformed into statutory provisions as the 1978 Amendment Bill, as mentioned earlier, lapsed due to the dissolution of the Lok Sabha during the year.

¹² P.S.A. Pillai, *Criminal Law*, LexisNexis, Gurgaon, Haryana, 2014, pg. 355.

¹³ Law Commission of India, 'One Hundred and Fifty-Sixth Report: The Indian Penal Code', Government of India, 1997, ch. XII.

4. Comparison

The comparative analysis of the offences punishable under IPC and the Army Act, 1950 is as follows:

(1) Section 131 and 132 of the Indian Penal Code, 1950 and Section 37 of the Army Act, 1950 –

Under the Army Act the same is punishable with capital punishment.

Section 37 of Army Act- Mutiny

Any person subject to this Act who commits any of the following offences, that is to say, - (a) begins, incites, causes, or conspires with any other persons to cause any mutiny in the military, naval or air forces of India or any forces co-operating therewith ; or (b) joins in any such mutiny; or 227 (c) being present at any such mutiny, does not use his utmost endeavours to suppress the same ; or (d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny or of any such conspiracy, does not, without delay, give information thereof to his commanding or other superior officer; or (e) endeavours to seduce any person in the military, naval or air forces of India from his duty or allegiance to the Union; shall, on conviction by court-martial, be liable to suffer death or such less punishment as is in this Act mentioned.¹⁴

(2) Section 133 and 134 of the Indian Penal Code, 1950 and section 40 of the Army Act.

Under the army act such offence same is punishable with imprisonment up to 14 years.

Section 40 of Army Act- Striking or threatening superior officers

Any person subject to this Act who commits any of the following offences, that is to say, - (a) uses criminal force to or assaults his superior officer ; or (b) uses threatening language to such officer ; or (c) uses insubordinate language to such officer; shall, on conviction by court-martial, if such officer is at the time in the execution of his office or, if the offence is committed 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 in other cases, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned:

¹⁴ The *Army Act*, 1950, s. 37.

Provided that in the case of an offence specified in clause (c), the imprisonment shall not exceed five years.¹⁵

(3) Section 135 and 136 of the Indian Penal Code, 1950 and Section 38 of the Army Act.

The same is punishable with imprisonment up to 7 years under the army act.

Section 38- Desertion and aiding desertion

(1) Any person subject to this Act who deserts or attempts to desert the service shall, on conviction by court-martial, if he commits the offence on active service or when under orders for active service, be liable to suffer death or such less punishment as is in this Act mentioned; and if he commits the offence under any other circumstances, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned. (2) Any person subject to this Act who knowingly harbours any such deserter 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. (3) Any person subject to this Act who, being cognizant of any desertion or attempt at desertion of a person subject to this Act, does not forthwith give notice to his own or some other superior officer, or take any steps in his power to cause such person to be apprehended, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.¹⁶

(4) Section 138 of the Indian Penal Code, 1950 and Section 42 of the Army Act, 1950..

The same is punishable with seven years of imprisonment.

Section 42 of the Army Act- Insubordination and obstruction

Any person subject to this Act who commits any of the following offences, that is to say,- (a) being concerned in any quarrel, affray, or disorder, refuses to obey any officer, though of inferior rank, who orders him into arrest, or uses criminal force to or assaults any such officer ; or (b) uses criminal force to, or assaults any person, whether subject to this Act or not, in whose

¹⁵ Ibid, s. 40.

¹⁶ Ibid, s. 38.

custody he is lawfully placed, and whether he is or is not his superior officer; or (c) resists an escort whose duty it is to apprehend him or to have him in charge ; or (d) breaks out of barracks, camp or quarters ; or (e) neglects to obey any general, local or other order; or (f) impedes the provost-marshal or any person lawfully acting on his behalf, or when called upon, refuses to assist in the execution of his duty a provost-marshal or any person lawfully acting on his behalf ; or (g) uses criminal force to or assaults any person bringing provisions or supplies to the forces ; shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend, in the case of the offences specified in clauses (d) and (e) to two years, and in the case of the offences specified in the other clauses to ten years or such less punishment as is in this Act mentioned.¹⁷

¹⁷ Ibid, s. 42.

5. Nature of Crimes- A Tabular Analysis.

| Section | Offence | Nature |
|----------------|--|--|
| 131 and 132 | Mutiny | Cognizable and non-bailable and triable by a Court of Session. Not compoundable. |
| 133 | Abetment to assault | Cognizable and bailable and it may be tried by judicial magistrate of first class power. |
| 134 | Abetment to assault resulting in assault | Cognizable and non bailable and may be tried by a judicial magistrate of first class. |
| 135 | Abetment to desertion | Triable by any magistrate as a summon case, cognizable, bailable and not compoundable. |
| 136 | Abetment to desertion resulting into desertion | Triable by magistrate (other than an Executive Magistrate), as a summons case. Offence is cognizable, bailable and non-compoundable. |
| 137 | Deserter concealed on board merchant vessel through negligence of master | Non cognizable, bailable, and may be tried by any Judicial Magistrate. |
| 138 | Insubordination | Cognizable offence, trial by any magistrate as summons case: It is bailable and not compoundable |

6. Cases and Sample of a Model Charge

The following chapter contains the relevant cases to the chapter seven of the Indian Penal Code, 1860. Chapter seven lacks precedents but here are few cases dealing with few aspects.

In the case of *J.K. Cotton v State of U.P.*¹⁸, it was held that, “Persons subject to these special acts are punishable under those Acts and not under the Penal Code. The provisions of 139 have been incorporated as an abundant caution because the law is well settled that when there is a conflict between specific provision and the general provision specific provision prevails over general provision. General provision however applies only to such cases which are not governed by the special provision. It may further be recalled that a special rule applies to penal statutes. If a later statute again describes an offence created by an earlier one, and affixes a different punishment to it, or varies the procedure applicable, the earlier statute is impliedly repealed by the later.”¹⁹

Cases with reference to Section 131- The offence of ‘mutiny’ consists in extreme insubordination, as if a soldier resists by force, or if a number of soldiers rise against or oppose their military superior, such acts proceeding from alleged or pretended grievances of a military nature. Acts of a riotous nature directed against the Government or civil authorities rather than against military superiors seem also to constitute mutiny.²⁰ Publishing a letter purported to be willing by a sympathizer of an Indian Soldier trying to impress upon the Indian Soldiers to come out of their allegiances answers an offence under Section 13. The printer abets the offence.²¹

The Madras High Court in 2009 refused to transfer case (Lance Havaldar killing his wife) to Military Court. The view was that military men accused of crimes like murder, rape etc. must be tried by criminal courts than military courts. Something similar was discussed in the case of *Major E. G. Barsay v. The State of Bombay*²².

¹⁸ *J.K. Cotton v State of U.P.*, AIR 1961 SC 1170.

¹⁹ Maxwell on Interpretation of Statutes, 12th ed., p.195.

²⁰ M & M 112.

²¹ *Pindi Das v Emperor*, 6 CrLJ 411.

²² *Major E. G. Barsay v The State of Bombay*, 1962 SCR (2) 195.

Sample of a Model Charge:

I, _____ (name and office of the Sessions Judge, etc.), hereby charge you (name etc. of the accused person) as here below:

That you, on or about the _____ day of _____, at _____ within P.S. _____ Distt. _____, abetted the commission of mutiny by....., an officer (or soldier, or sailor, or airman) in the Army (or Navy or Air Force) of the Government of India (or attempted to seduce _____ an officer (or soldier, or sailor, or airman in the Army or Navy or Air force of the Government of India, from his allegiance (or duty), and thereby committed an offence punishable under Section 131/132/133/134/135//136/138 of the Indian Penal Code, and within my cognizance of this Court of Sessions.

And hereby direct that you be tried on the said charges.²³

²³ Ratanlal & Dhirajlal, *The Indian Penal Code*, LexisNexis, Gurgaon, Haryana, 2016, pg. 845.

7. How does the Armed Forces Decide Punishment for Crimes?

In countries across the world the defence personnel usually submit to their own law i.e. the special law that they are governed by. Usually the offences are of less or sometime with no punishments at all but amongst their discipline they are considered very harsh and hence they are governed by their personnel laws.

One such example would be the Machil killings in Kashmir in which 6 army men were sentenced to life imprisonment for cold blooded killings of 3 civilians passed off as militants.

“They (military personnel) can be tried by civil (criminal) courts if they commit serious crimes like rape, murder and culpable homicide not amounting to murder,” explains retired wing commander U.C. Jha who has authored several books on the subject of military law. However, if the offence is in relation to a civilian, then military courts have no jurisdiction.

“Machil killings were an act against civilians but the area of operation was active service and hence the army’s court martial,” explains retired major general Neelendra Kumar, who was judge advocate general (JAG) of the Indian Army during 2001-08. JAG is the legal and judicial chief of the Army.

As Kumar says, “it’s a substantial and procedural law that takes care of everyone from the sepoy to the chief.” As is the case with much of India’s Penal Code, even the Military Act has remained by and large unchanged from its colonial days. The proceedings, for instance, are recorded in English. The majority of the troops and junior commissioned officers are not fluent in the language, making their access to case papers difficult. During the course of the court martial, the accused is denied bail and not even allowed to meet his family, provisions that are available in the trial stage in civil courts.²⁴

²⁴ Live Law, Time to court Martial the court Martial,
<http://www.livemint.com/Opinion/x38SVJm93ISFe41NnAgBzI/Time-to-court-martial-the-court-martial.html>,
(accessed 27 September 2017).

The problems with this system, experts argue, are manifold. First and foremost, none of the officers are legally qualified. Secondly, since the convening officer is of the highest rank, there is the question of whether the other officers who constitute the court martial can act in an independent manner. “Most army officers will tell you that the rank of the convening officer plays no role in determining the outcome. The reason why a board of odd numbers (usually 5) is constituted is so that if there is dissent, then the ayes gain sway over the nays. The officer who is not happy or satisfied is required to attach a dissent note,” explains a serving brigadier who has served on a court martial.

Like India USA also authorizes for a military judicial system and so does other countries. It is authorized by the Constitution itself. The position is although different in Germany where the defence personnel are governed under the ordinary civil jurisdiction. But there exists special acts concerning only to the soldiers and deal mostly with crimes like mutiny, possession of illegal weapons etc. There aren't even federal or military prisons. The position in UK again resumes to being one of the oldest systems to arrange for military crimes. UK like India has special defence acts. The position in Canada is such that it Is governed by one National defence act.

8. Conclusion

Military legal system in India was designed and implemented after the Mutiny of 1857 to prevent such situations to occur in the future. The political situation of the country at that time was different and no consideration of Human Rights was given by the British Government. The system might have been the necessity of the times but in the present era of welfare state, the concepts of Human Rights, Fundamental Rights of the Armed forces personnel cannot be neglected. In the present times, there is a need to value Rules of Natural Justice, Human Rights, and International developments in Military Laws in other countries of the world.

The fact that the provisions are mentioned in the Indian Penal Code but the same cannot be enforced is a baffling point. It leads one to think through the purpose of the chapter and making an entirely different chapter on the same.

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Thus the stand is different in different countries with regards to offences related to army, navy and air force.