6.1 CONCLUSION

The research topic titled as, “Administration of Justice in Armed Forces: Role of Armed Forces Tribunal” is undertaken to study and analyze the modes and manner to administer justice to the members of the Armed Forces who never hesitates even for supreme sacrifice for the safety and security of the Nation. Therefore, the administration of justice to the Armed Forces personnel needs due care and attention. Accordingly, the present topic of research was chosen. The whole research has been carried out in the six chapters including the present one. The present chapters consists of the concrete conclusion of the research work and certain valuable suggestions which may be useful for the government, legislators, judges, academicians and researchers to carry out further research. The chapterwise conclusion is drawn as under:

I

The law enacted by the parliament is in conformity with Constitutional provisions, but there is no application of the Constitutional mechanism or the procedures which are stipulated by the Constitution of India or it can be said that there is non est application of mind with regard to the Principles of Natural Justice. The Constitution of India provides for equality of law and equal protection of law but the Military Organizations are actively applying the protection of law to help the superiors or the Commanders. Without going into details of each Act, it can be concluded that the there is no mechanism to apply the provisions of the Constitution of India. Constitution of India guarantees the basic rights of a human to live with dignity which has no application for the members of the Armed Forces. Also, such things recur because there is no encroachment from outside or there is no watchdog for the actions of the Armed Forces. There are several Acts contrary to legal system which are prevalent in our Armed Forces, bit these will divert the topic and the research may tend to a different direction, rather separate research book can be published on those issues. The main focus in the research is modes and manners in which the justice is being administered without looking into bias against anything, and what reforms can be suggested, so that administration of justice can be
delivered to members of the Armed Forces in the true spirit in conformity with Constitutional Provisions.¹

The Manual of Military Law and Regulations spells out rules and procedures for the investigation, prosecution, and punishment of military offenses and crimes in the armed forces. Basic authority rests in the Constitution of India, the Army Act, 1954, the Air Force Act, 1950, and the Navy Act, 1957. The Army and Air force have three kinds of Courts. They are, in descending order of power, the General Court, which conducts General Court-Martial, the District Court-Martial and the Summary General Court-Martial. Additionally, the Army has a fourth kind of Court, the Summary Court-Martial. The Navy uses only one kind of Court-Martial in addition to the non-judicial powers established for commanders in the Navy Act, 1957. There are channels of appeal and stages of judicial review, although procedures differ among the three services. Members of the Armed Forces remain subject concurrently to both civilian and military law, and criminal Courts with appropriate jurisdictions assume priority over military Courts in specific cases. With the approval of the government, a person convicted or acquitted by a Court-Martial can undergo re-trial by a criminal Court for the same offense and on the same evidence. Once tried by a civilian Court, however, one cannot be tried by a military Court for the same offense. Each of the three services has its own judge advocate general's department, relatively free and independent of the other branches in the discharge of its judicial functions. The various departments have officers among the adjutant general's staff at Army Headquarters, in the chief of personnel's staff at Navy Headquarters, and in the administration staff of the Air Force Headquarters. It is pertinent to mention here that the justice to those who are called upon to serve the needs of the country at the odd hours and they are ready even for supreme sacrifice are almost unavailable in case they have the grievances. The appeals made by them to the higher authorities are returned without any just and reasonable cause and based on the inputs received from the intermediate officers in chain of command. Even further to that they are being subjected to mental torture and harassment under the instructions of the top officials of the military organization which are resulting in mental stress and agony and even further they

¹ For details, see chapter- I
fall under the trauma of depression and more dangerously to suicidal tendency amongst the soldiers.\(^2\)

The term Law can well be defined as the principles and regulations established in a civilized nation in the form of enactments, judicial guidelines, customs, conventions, policies, bye laws etc. for the purpose of maintaining discipline in the civilized society and accepted by the civilized nations. There is a cardinal principle of the law and the administration of justice as well that justice delayed is justice denied and justice not only to be done but it also seems to be done. There was an urgent need to relook and understand the basis of inception of specialist tribunal namely Armed Forces Tribunal. Military justice system was always an eyewash since the time of colonial era contrary to the legal provisions formulated under various statutes, rules and regulations etc. Although discipline is the utmost need of any military organization or even to any Governmental Organizations, but it can’t be permitted that employees are being subjected to tyranny and exploitation in the name of the discipline which is unfortunately prevalent in the Armed Forces of the Union of India and laws are being interpreted according to the desire of the higher officers of the Armed Forces. It was analyzed that either there were conspicuous deficiencies of trained lawyers in conducting trials and or the Judge Advocates were not professionally trained, rather they were acting as mere instruction following agents of the higher officials of the Armed Forces. This has resulted in quashing of the most findings/sentences/orders of the Court-Martial and even worst scenarios were experienced that Court-Martial were mere formalities. The decisions were already instructed in one or the other way by the higher officials.\(^3\)

Even far worst part of the Military justice system was experienced that in most of the cases Military Organizations are hesitant of conducting Court-Martial to its higher officials, unless there is immense political or executive pressure from other agencies like Parliament or the Central Government. Another wonderful mockery of the Military Justice System is that when top officials are facing Court-Martial, they are being subjected to the slightest of the slight sentence or even they are being acquitted without inflicting any sentence whereas in the case of the low level officers/subordinates the conditions are contrary. The Military Organizations

\(^2\) For details, see chapter- I
\(^3\) For details, see chapter- I
were adopting dual standards in convening Court-Martial for different rank structure in the Armed Forces. The autocratic and anarchist approaches are adopted for convening Court-Martial. In the Indian Air Force the situation is even far worse as the Court-Martial are convened against officers according to their branch which is greatest mockery of the Laws enacted by the Parliament. Although the provisions are prevalent in the system of dispensing of justice in Military Laws wherein the aggrieved person with the decision of the Court-Martial can submit statutory representations against the grievances pertaining to service matters before and after confirmation of the findings of the Court-Martial. In the Indian navy, in addition to this, an aggrieved person has the right to submit the complaints relating to service matters and has the right to be heard before the Judge Advocate General of the Navy in reference to the findings and sentences of the Court-Martial before they are finally put to the Chief of the Naval Staff.\(^4\)

There was no effective mechanism for redressal of their grievance in the Armed Forces. The Supreme High Court and the High Courts had pending large number of litigations which were taking time to dispose the matters pertaining to Armed Forces of the union of India. The persons do not become slave by accepting the jobs in the Armed forces. All the Constitutional and legal safeguards are available to them. But still even today it is interpreted by the higher officials according to their suitability on the name of discipline not according to the true spirit of the law and the Constitution of India. The glaring example of this can be cited with the Constitutional safeguard of double jeopardy which has been embedded by the framers in the Constitution of India. The provisions of the double jeopardy was deleted by the amendment Act of 1992 but still it exists in Air Force Act, 1950 which states that a person convicted or acquitted by a Court-Martial may, with the previous sanction of the Central Government, be tried again by a Criminal Court for the same offence, or on the same fact. This is a clear violation of the Constitutional protection which is available to each and every person. Human rights are violated every day within the fore-walls of the military campuses. It is shameful condition that in the 21st century also our warriors are being subjected to mental torture and harassment on the name of discipline.\(^5\)

\(^4\) For details, see chapter- I
\(^5\) For details, see chapter- I
With the advent and establishment of the Armed Forces Tribunal in India, the higher officials of the Armed Forces of the Union of India are feeling pressure, because the specialist Tribunal is in existence for looking after of legal and procedural lacuna and injustice done to its members subjected to military law. However, there is a strong demerit of the Armed Forces Tribunal is that they have been ousted from the jurisdiction of entertaining appeals against the summary trials and dispositions where punishment of dismissal or sentence imprisonment for the period of three months have not been awarded. The basic question still remains unanswered that again in case the aggrieved person has to approach to the High Court under or the Supreme Court. The parliament while enacting the Armed Forces Tribunal Act, 2007 has again left basic weapon in the hands of the top officials in the form of summary dispositions and trials which are inherently and potentially dangerous from the true spirit of the law. There is only one way to appeal to the appellate authority of the organisation against the summary trials but still of no much utility from the legal aspect as the result of the appeal has to be rejected by the appellate authority as it has become a permanent trend in the Armed Forces of the union of India. The three acts of the Armed Forces did not contain a single provision which can be considered as proper appeal in the judicial way, however there were provision in the Acts at the pre and post conformation stage but these were mere formalities rather than being of practical utility. The Supreme Court and High Courts could entertain writs for intervention of the violation of the fundamental rights or legal rights or statutory provisions or where the sentences rendered were not in proportion to the quantum of the offence. The three acts are without enough checks to prevent gross miscarriage of justice. Presiding officers of the Court-Martial are neither the judicial officers nor they have the legal understanding of the administration of justice. They are mere officers of the Armed Forces. All procedural formalities before the Court-Martial, Courts of Inquiry, Summary of evidences etc. are conducted by the officers of the Armed Forces, who are following the statute book according to the instructions of the top officials and not in the interest of administration of justice. This has also lead to the need of establishment of the Armed Forces Tribunal.6

6 For details, see chapter- I
On paper, and in theory, the grievances redressal mechanisms may satisfy many of these attributes. The problems may lie in actual implementation on the ground. It may be worthwhile to see how many of these attributes the military grievance management system satisfies in actual practice. With the advent and proliferation of information Technology, the system can certainly be made more prompt by using modern electronic communication means to reduce the time limits for dealing with complaints. This will enable speedy online processing of complaints and early communication of decisions to the aggrieved individuals. It is important to ensure timely redressal of grievances and one must remember the dictum- justice delayed is justice denied. By processing grievances online, the present time periods can be reduced to a few days. If redressal of grievances and resolution of complaints is done promptly and speedily in an efficient, fair and transparent manner, officers and soldiers will develop faith in the grievances redressal system. In a regimented organization like the military, it is very important for the grievances redressal system to be non-vindictive. An officer or soldier must be able to submit a complaint without fear or retribution from senior officers. He must have no fear of reprisal from those who he is complaining against even if they are his seniors. Checks and balances must be put in place in order to ensure that there is absolutely no victimization or harassment of the individual who is submitting a grievance or making a complaint and whistle blowers must be protected. In theory and on paper, these exist, but they must be ensured in practice.\(^7\)

The system must be absolutely non-punitive and there must not be the slightest perception or even a shred of doubt in the mind of the persons submitting a grievance for redressal that they will be punished for making complaint. The grievance redressal mechanism must function without fear or favour. There must be a total transparency in the procedure and justice must not only be done but justice also seems to be done in a free and fair manner. The hallmark of a good grievances redressal system is that it is absolutely fair, transparent and most importantly, it is seen by all stake holders to be absolutely fair, just and transparent. It is always best way to prevent grievances as far as possible by Good Human Resource management practices. In which areas do defence personnel have grievances? If one goes by media reports, it seems that the maximum number of grievances pertains to

\(^7\) For details, see chapter- I
promotion. If the promotion system is made fair, just and transparent, most of these grievances will disappear. Is there any need to have so much intrigue and secrecy by making performance appraisal so opaque and selection process so nebulous? Of course, there may be a need to keep Annual Confidential Report or appraisal reports confidential till the selection board meets. But once, the selection is over, will it not be better to have total transparency and declare the entire result publicly by giving all Annual Confidential Report points, cut offs etc. of the entire batch. This transparent approach will not only demonstrate fairness and instill confidence in the promotion system, but it will also make it difficult to indulge in favouritism. Another area where there are grievances, especially among ex-servicemen, is pertaining to service conditions, pay and pension. Many of these issues can be mitigated in-house too in order to reduce avoidable litigation.  

Thus, the power based that be need to introspect whether the present system meets the seven attributes of a good grievances management system listed above and whether there is any scope of improvement. If the internal grievances redressal management system is good, most problems will be resolved in-house and there will be no need for officers and soldiers to go to external agencies like bureaucracy, tribunals and Courts to seek justice for redressal of their grievances. The objective of the defence services must be to have a grievance free Army, Navy and Air Force. This will ensure happy servicemen and ex-servicemen with high morale. Defence services must follow the Grievances Redressal Motto: “MITIGATION PREVENTS LITIGATION”.

II

Indian military law has its origin in the military law of England. It was conceived to discipline a 'mercenary' force after the Mutiny of 1857. Under the British system, military justice was a command dominated system. The system was designed to secure obedience to the commander, and to serve the commander’s will. The independence of India and the resultant constitutional changes necessitated the revision of the Indian Army Act, 1911 and the Regulations. The Army Act came into force on 22 July 1950. The Government framed Army Rules 1950, which was replaced by the Army Rules, 1954. In 1993, certain amendments were incorporated in the Army Act and the Army Rules. The Air Force Act came into force on 22 July

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8 For details, see chapter- I
9 For details, see chapter- I
1950. The Air Force Rules, 1969 were made as per the provisions of Section 189 of the Air Force Act, 1950. The Naval Discipline Act in existence at that time differed from the laws relating to the Army and the Air Force in many respects. In the UK, a special committee had been set up to examine the question of revision of the British Naval Codes, and the Government of India awaited the committee's report. The Navy Act, 1957, came into effect from 1 January, 1958. In 2005, certain amendments were made in the Navy Act.10

The biggest roadblock could be the attitude of the military hierarchy. The military has the reputation of being encumbered by its traditions and fixed ideas. The military carries the grave responsibility of protecting the nation and its ideals. It has to prove itself in the war and also combat the terrorism in the present scenario as the modern role of military forces is at the stage of transformation due to attack on various military installations like Pathankot, Dinapur and Uri etc. in addition to the foregoing problems of Jammu and Kashmir and in some of the north eastern states where the military forces are bound to combat terrorism, when a single error may jeopardize the existence of a country. Perhaps this may be the reason why the military mind relies so heavily on time tested methods and practiced routines. The information relating to military law remains 'secret' and not available for public scrutiny. Since we do not have an enlightened civil society or a lawyers' forum that could be entrusted with the task of giving inputs for the modernization of military law, military related research institutions would have to play a greater role in bringing changes in the system. Once agreed to by the Service Headquarters, these research institutions could undertake certain tasks, like creating awareness on the advantages of a unified system of military justice, collecting the views of retired military officials, and gathering data related to the new system.11

Since it’s inheritance in the 1950s, no serious attempt has been made towards the modernization of the military justice system in India. Some piecemeal amendments were made as and when the civil laws underwent change. However, the law still denies service personnel certain basic rights on the pretext that Article 33 of the Constitution abrogates their fundamental rights. What we have failed to understand is that the military justice system is about maintaining discipline as well as delivering justice. This is not an either or proposition. A fair military justice

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10 For details, see chapter- II
11 For details, see chapter- II
A system is vital for upholding the morale and discipline of the Armed Forces and for retaining public confidence in the Armed Forces. A system that fails to protect adequately the rights of those accused of misconduct will undermine discipline just as much as a system that fails to enforce the rules and protect the law abiding. In either case, the system's failure will have an adverse effect on morale, mutual trust and respect for authority. A system that does not take care to assess guilt for innocence carefully and to punish fairly and appropriately is a system that is not tied to accountability. Every soldier, sailor or airman, regardless of rank, must be responsible and accountable for his actions and regardless of circumstances, must be entitled to being treated fairly and with dignity and due respect for which they are entitled by the tenets enshrined in the Constitution of India.12

The military is a specialized society that has developed laws and traditions of its own. The object of military law is to provide for the maintenance of good order and discipline among members of the armed forces and in certain circumstances among others who live or work in a military environment. This is done by supplementing the ordinary criminal law with a special code of discipline and a special system for enforcing it. Such special provision is necessary to maintain, in time of peace as well as war, the operational efficiency of an armed force. Military law also regulates certain aspects of administration aspects, which affect individual rights in spheres such as enlistment and discharge, terms of service, promotion and forfeiture of and deduction from pay. Most often in practice, however, the term "military justice system" is used with regard to disciplinary provisions rather than administrative ones. The Supreme Court held that the absence of even one appeal with power to review the decisions of Court-Martial was a distressing and glaring lacuna in the military justice system. It urged the government to take steps to provide at least one judicial review in the case of service matters. However, due to political and bureaucratic apathy, 23 years passed before the Minister of Defence introduced the Armed Forces Tribunal Bill, 2005 in the Parliament. This Bill was referred to the Parliamentary Standing Committee on Defence for making a report. The Standing Committee has submitted its Tenth Report to the Parliament on May 23, 2006. The report contains various recommendations for making changes in the proposed Armed Forces Tribunal Bill.

12 For details, see chapter- II
The Standing Committee was of the view that an 'expert committee be constituted urgently to review thoroughly the Army Act, 1950, the Air Force Act, 1950, and the Navy Act, 1957, and bring them at par with the norms followed in other democratic countries. The Committee has also recommended the framing of a common disciplinary code for the three Services.\(^\text{13}\)

The provisions contained in the Military Laws are not similar. Under the Air Force Act, 1950, only three types of Court-Martial, i.e., General Court-Martial, District Court-Martial and Summary General Court-Martial have been provided. The Army Act, 1950 in addition to the above three types of Court-Martial also has Summary Court-Martial which can try personnel upto the rank of Havildar and can award punishments of dismissal and imprisonment upto one year. However, the Navy has only one type of Court-Martial during peace time and a disciplinary tribunal during war. Unlike the Army and the Air Force, where the senior most officer of the Court-Martial becomes the presiding officer, in the Navy the convening authority always nominates the president of the Court-Martial, invariably from Executive branch. In the Navy, the findings and sentence of Court-Martial do not require confirmation of the convening authority or any superior authority and become operative the moment they are pronounced, except in the case of a sentence of death which requires prior confirmation by the Central Government. The verdict of acquittal is final in the case of the Navy and not subject to confirmation or revision as in the Army and the Air Force. In the Army and the Air Force the presence of a Judge Advocate in the district and summary general Court-Martial is not mandatory. In the Navy, every Court-Martial is required to be attended by a Judge Advocate. In the Army and the Air Force, the Judge Advocate remains present when the Court deliberates on the findings, whereas in the Navy the Judge Advocate does not sit with the Court when the Court is considering the findings. Unlike the Army and the Air Force the commanding officer of a ship may summarily try any person belonging to the ship, other than an officer, for an offence not being a capital offence and can award imprisonment or detention up to three months. This power of summary trial is limited in the Army and the Air Force where punishment up to 28 days of imprisonment can be awarded to persons below the rank of Non Commissioned Officer. The proceedings of a Court-Martial or

\(^{13}\) For details, see chapter- II
disciplinary Court are reviewed by the Judge Advocate General of the Navy either on his own motion or on application made by an aggrieved person. The Judge Advocate General is to transmit the report of the review together with his recommendations to the Chief of the Naval Staff for his consideration. In the Army and the Air Force, the officers of the Department of the Judge Advocate General, before confirmation, review the proceedings of Court-Martial and may make recommendations. These reviews are advisory and not binding on the Chiefs of the respective Service. Notwithstanding these differences, the will of the Chiefs of the three Services, rather than the rule of law reign supreme in the Indian military justice system.14

The term ‘Administration of justice’ in India owes its origin in the ancient power in British Crown authorizing Company and Governors for several places in India to administer justice and to judge all persons in all causes whether civil or criminal. The term ‘Administration of justice’ is a very wider connotation which primarily refers to set of enactments, precedents, customs, conventions, policies, byelaws etc. recognized and applied for smooth functioning of the State/Organization. Here in the Armed Forces of the Union of India members are being subject to special laws in addition to law of the land which are applicable to common citizens. In our country armed forces means Army, Air Force and Navy including Indian Coast guards and they are governed by Ministry of Defence and President of India is their Supreme Commander but the most unfortunate part of it is that the paramilitary forces which are governed by Ministry of Home and internal affairs which consists of CISF, BSF, ITBP, CRPF etc. primarily they are also encountering the enemies more than the Army, Air Force, Navy and Indian Coast Guard and their life is far more riskier and also they are lesser privileged in comparison to the members of the Armed Forces of the Union of India where-being they are being subject to their respective laws.15

It is extremely unfortunate that even after six decades of independence, there was no appropriate legal safeguard against the arbitrary and capricious action of the higher official of the Armed Forces of the Union of India on the name of the discipline to those who are serving the nation at the odd hours whenever they are called upon to serve the nation and they are never ever hesitant in going even for

14 For details, see chapter- II
15 For details, see chapter- II
supreme sacrifices. In fact there is no meaning for natural justice, due process of laws and rule of law for the members of the Armed Forces which were enshrined in the Constitution of India by founding fathers of the nation. The members of the Armed Forces are subjected to face trials on the whims and fancies of the top bosses of the Armed Forces which commences from units/brigades/stations etc. In the event of being punished by Summary Court-Martial and summary disposals, there is no proper forum to adjudicate and redress the issues what wrongs have been done by them indeed. There is no proper forum to decide justiciable issues borne out of summary disposals and trials except invoking of extra-ordinary jurisdiction of the High Courts or of the Supreme Court. This part of the Armed Forces Act remains in the same state even after the enactment of the Armed Forces Tribunal Act, 2007. This issue will be discussed separately at length in further chapters. If someone dares to think to approach higher Courts of justices, various statutory provisions and the ignorance and high fees of the Advocates and complex legal formalities blocks their path. Since, there is no provision of Summary Court-Martial in the Air Force and Navy, the Army also can function smoothly without it. Military Law in India is a dire need of revision and revamp on the humanitarian angles. There is no need that the members of the highly disciplined forces who are very much akin to fighting the war in odd times can be subjected to unfair and harsh military justice. There are generally two different modes of the dispute resolution mechanism in Armed Forces of the Union of India. One is the summary trials which are alternative punishment of the Court-Martial and the other one is the Court-Martial and both varies according to the rank of the accused and the nature of the offence committed by the accused soldier. In the summary trials generally punishments are inflicted by the Commanding Officers according to the rank of the Commanding Officers as well as rank of the accused as per the procedures established in different enactments for the three wings of the Armed Forces of the Union of India. Court-Martial is a military Court or tribunal specially empowered by Military Law to act quasi- judicial functions in three wings for acting in contraventions of the Military Laws and according to the offences defined in three Acts namely Army Act, 1950, Air Force Act, 1950 and Navy Act, 1957. The Court Martial is also empowered to convict the military offenders charged with the offences of the Criminal Law in force except for the offences of the culpable
homicide amounting to murder and not amounting to murder as well as for the
offences of the rape.\textsuperscript{16}

The Military trial generally refers to the entire justice process from actual
Court proceedings to punishment in violation of the military offences and criminal
offences in Army, Air Force and Navy or other service rules and regulations
consisting of officers of the same organization who act as both finders of the fact as
the Presiding Officers of the Court of Inquiry/Investigating Officers of Formal
Investigations and as Presiding Officer/Trial Judge Advocate of the Court Martial
proceedings for the application of the Law. The Court-Martial determines the guilt
of the members of the Armed Forces and to determine the quantum of punishment
if the member of the tri services found guilty. Military Laws deal with the elaborate
procedure of Court-Martial and other summary trials during peace and war
formulated in the form of Statutes, Rules and Regulations. The Court Martial
proceedings are generally criminal proceedings.\textsuperscript{17}

Army Act, 1950 deals with the military and civil offences, e.g., offences in
relation to the enemy and punishable with death, offences in relation to the enemy
and not punishable with death, offences punishable more severely on active service
than at other times, mutiny, desertion and aiding desertion, absent without leave,
striking or threatening superior officer, disobedience to superior officer,
insubordination and obstruction, fraudulent enrolment, false answers on enrolment,
unbecoming conduct, certain forms of disgraceful conduct, ill-treating a
subordinate, intoxication, permitting escape of person from custody, irregularity in
connection with arrest or confinement, escape from custody, offences in respect of
property, extortion and corruption, making away with equipment, inquiry to
property, false accusation, falsifying official documents and false declaration,
signing in blank and failure to report, offences relating to Court--Martial, false
evidence, unlawful detention of pay, offences in relation to aircraft and flying,
violations of good order and discipline etc.\textsuperscript{18}

Army Act, 1950 states that punishments may be inflicted in respect of
offences committed by persons subject to this act and convicted by Court-Martial
according to the following scale, Death, Imprisonment for life, Imprisonment either

\textsuperscript{16} For details, see chapter- II
\textsuperscript{17} For details, see chapter- II
\textsuperscript{18} For details, see chapter- II
rigorous or simple, for period not exceeding 14 years, Cashiering in the case of officers, Dismissal from service, Reduction to the ranks or to a lower rank or grade or place in the list of their rank, in the case of Warrant Officers and reduction to the ranks to a lower rank or grade, in the case of non-commissioned officers. However, a Warrant Officer reduced to the ranks shall not be required to serve in the ranks as a sepoy. Forfeiture of seniority of rank, in the case of officers, junior commissioned officers, Warrant Officers and non-commissioned officers; and forfeiture of all or any part of their service for the purpose of promotion, in the case of any of them whose promotion depends upon length of service, Forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose, Severe reprimand or reprimand, in the case of officers, junior commissioned officers, Warrant Officers and non-commissioned officers, Forfeiture of pay and allowances for a period not exceeding three months for an offence Committed on active service, Forfeiture in the case of a person sentenced to cashiering or dismissal from the service of all arrears of pay and allowances and other public money due to him at the time of such cashiering or dismissal, Stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good. The Act provides that the punishments may also be inflicted for offences committed by the persons subject to this Act without the intervention of Court-Martial. The Act also provides provision of trial by the Commanding Officer or such officer as is, with the consent of the Central Government, specified by the Chief of the Army Staff to the persons other than the officers, junior commissioned officers and the Warrant Officers who is charged with an offence under this Act and award such person to the extent prescribed, one or more of the following punishments, i.e. to say imprisonment in military custody up to 28 days, Detention up to 28 days, Confinement of the lines up to 28 days, Extra guards or duties, Deprivation of a position of the nature of an appointment or of corps or working pay, and in the case of non-commissioned officers, also deprivation of acting rank or reduction to a lower grade of pay, Forfeiture of good service and good conduct pay, Severe reprimand or reprimand, Fine up to 14 days pay in any one month and Penal deductions. However, Act provides that certain punishments shall not be awarded to any person who is of the rank of non-commissioned officers or was, at the time of committing the offence for which he is punished, of such rank. The Act further provides that an officer having power not
less than a brigade, or an equivalent commander or such other officer as is, with the
consent of the Central Government specified by the Chief of the Army Staff may, in
the prescribed manner, proceed against an officer below the rank of a field officer, a
junior commissioned officer or a Warrant Officer, who is charged with an offence
and award one or more of the following punishments, i.e., to say severe reprimand
or reprimand, Stoppage of pay and allowances until any proved loss or damage
occasioned by the offence of which he is convicted is made good.19

The Act provides that an officer having power not less than an area
commander or an equivalent commander or an officer empowered to convene
general Court-Martial or such other officer as is, with the consent of the Central
Government, specified by the Chief of the Army Staff may, in the prescribed
manner, proceed against an officer below the rank of lieutenant-colonel, a junior
commissioned officer or a Warrant Officer, who is charged with an offence under
this Act, and award one or more of the following punishments, i.e., to say,
Forfeiture of seniority, or in the case of any of them whose promotion depends
upon length of service, forfeiture of service for the purpose of promotion for a
period not exceeding 12 months, but subject to the right of the accused previous to
the award to elect to be tried by a Court-Martial, Severe reprimand or reprimand
Stoppage of pay and allowances until any proved loss or damage occasioned by the
offence of which he is convicted is made good.20

The Army Act, 1950 does not specifically provide for any right to appeal
against summary punishments awarded under the Act. However, if any punishment
is awarded under any of the sections appears to a superior authority to be illegal,
excessive and unjust, he may cancel, vary or remit the punishment or make such
other direction as may be appropriate in the circumstances of the case. Powers to
review the proceedings under this provision shall normally be exercised within a
period of two years from the date of award of the punishment. The following are the
reasons whereby punishment may be cancelled, varied are remitted by the superior
military authority:

(a) A punishment is wholly illegal if the finding of guilty cannot be upheld or
the only punishment awarded is of a kind which cannot be awarded for the offence
charged e.g., stoppage of pay and allowances for an offence which is not alleged to

19 For details, see chapter- II
20 For details, see chapter- II
have occasioned any loss or where the punishment awarded is of a kind which is the authority dealing with the case is not authorized to award. Where the punishment is wholly illegal, it must be cancelled and appropriate directions made by the superior authority.

(b) Where the punishment though not in excess of the punishment authorized appears to be unjust or severe, the superior military authority has the power to remit the whole or part of the punishment. If the whole of the punishment is remitted there will be nothing left except the finding which will stand good and the accused will suffer the forfeiture or penalties which are consequential on conviction.

(c) A punishment is excessive when it is in excess of the punishment authorized by law for the offence i.e., where it is of a kind which the authority dealing with the case is authorized to award for the offence charged but is greater in amount than he is authorized to award e.g., if an authority under were to award stoppages greater than the amount of the loss proved to have been occasioned by the offence. In such cases the superior military authority can vary the punishment by reducing the punishment to an amount which is authorized by Law.21

The punishments under Military Laws may be reviewed by an officer superior in Command to the officer who awarded the punishment, and if any such punishment appears to be illegal, unjust or excessive, such officer may cancel, vary or remit the punishment and make such direction as may be appropriate in the circumstances of the case. However, where punishment is wholly illegal, or is in excess of the punishment authorized by Law, it may be cancelled or varied by an officer in charge records also. The power of review of punishment shall normally be exercised within the period of two years from the date of award of the punishment. Administrative action is not punitive in nature. It is meant to be corrective and rehabilitative. Administrative actions include measures e.g., reproof, displeasure, severe displeasure, dismissal, removal, reduction, discharge and compulsorily retirement etc. The factors which needs to be considered in deciding whether it is appropriate to take administrative action in a particular cases are the context in which the incident occurred and its impact on operational effectiveness, the likelihood and the extent of adverse impact on the individual, unit or service, the rank of the individual or the level of the responsibility, the age and the maturity of

21 For details, see chapter- II
individual, the individual’s previous conduct and warning administered to him earlier, any relevant personnel circumstances or mitigating factors and the individual’s response following the discovery of the incident. In the Army, the Administrative Action implies award of reproof or displeasure to officers and junior commissioned officers. It is awarded as an official condemnation by a superior officer for a specific misconduct of minor nature, where disciplinary action by means of a summary disposal or Court is not considered warranted or expedient. The Administrative Action consisting of reproof, displeasure and severe displeasure are called censure which are customs of the service.\textsuperscript{22}

The administration of justice is the very vital function of the state to maintain the law and order and persons are made acquainted with it. The purpose of administration of justice is to protect the rights of the persons and also to enforce the duties on them. The function of the judiciary now come into play which is an organ of the state is to maintain the administration of justice wherein it protects the rights of the individuals and punishes the wrong-doers. Thereby it can be concluded that the administration of justice refers to deciding rights and duties of the persons on the basis of the laws enacted by the legislature which is other wing of the state. The administration of justice is divisible into mainly two parts. The First part is the private wrongs are civil wrongs and are subjected to civil proceedings and these are infringement or privation of the private or civil rights belonging to individuals, considered as individuals, and are thereupon called civil injuries and the second part is that the public wrongs are criminal wrongs and are subjected to criminal proceedings and these are a breach and violation of public rights and duties which affect the whole community considered as community and are distinguished by the harsher appellation of crimes and misdemeanors. A crime is thus an act which is harmful to society in general, even though an immediate victim is an individual.\textsuperscript{23}

Thus, it can be concluded that in fact, a perfect system of criminal justice could never be based on any single theory of justice. It would have to be a combination of all. Every theory has its own merits and demerits and sincere endeavour should be made to extract the good points of each. For instance, the reformative aspect must be given its proper place. The offender is not only a criminal to be punished, but also a patient to be treated. Punishment should be

\textsuperscript{22} For details, see chapter- II
\textsuperscript{23} For details, see chapter- II
proportionate to the gravity of the crime. A first offender should be leniently treated. Special treatment should be given to a juvenile delinquent. Special Courts should be set up for the trial of the children and those in charge of such Courts should strive to find ways and means of reforming the child and not simply punishing him. A criminal should be able to secure his release by showing improvement in his conduct. The object of any concession given to an offender should be to convince him that normal and free life is better than life in jail. The establishments of hospitals and improvement of living conditions in jail would better serve the purpose of rehabilitation.24

A statute can exclude that element, but it is a sound rule of construction adopted in England and also accepted in India to construe a statutory provision creating the offence by necessary implication excludes mens rea. There is a presumption that mens rea is an essential ingredient of a statutory offence but this may be rebutted that a statute creating the offence or by necessary implication. But the mere fact that the object of a statute is to promote welfare activities or to eradicate grave social evils is in itself not decisive of the question whether the element of guilty mind is excluded from the ingredients of the offence. It is also necessary to enquire whether a statute by putting a person under strict liability by their act or omission to assist the promotion of the law. The nature of mens rea will be implied in a statute creating an offence depends upon the object of the Act and the provisions thereof. Thus the mens rea is an essential ingredient in every offence except in three cases; cases not criminal in nature but in the interest of general public prohibited under a penalty, public nuisance and cases in criminal in form but which are really only a summary mode of enforcing a civil right. There are two tests to determine mens rea, viz, whether the impugned act was a voluntary act of the accused, and whether the accused had the foresight of the consequences of his conduct, i.e. whether the result was foreseen.25

III

Since the time when monarchy system was prevalent, the military justice system was an essential part of the administration. There existed a rule that a deserter from the ranks might be killed or even burnt to death. There was also an injunction that the king should, in time of war, put to death those men who opposed

24 For details, see chapter-II
25 For details, see chapter-II
his orders, the soldiers who run away and did not keep their weapons, avaricious or greedy Generals who fought treacherously and men who did not face the enemy, fought against each other, deceitfully informed the enemy the king’s designs, gave away to the enemy or rejoiced in the king’s misfortune. A punishment of death was prescribed for disobedience of military regulations and a requirement of such regulations being communicated to soldiers every eighth day was also laid down. Our administration of Justice is reproduction of the colonial legal system and it does not match with ancient legal jurisprudential administration of justice which was prevalent in India. The chronological substantiation profusely reveals that the Indian Military Legal System is direct reproduction of British Military Legal System.26

The Court-Martial being composed of service officers, who irrespective of their rank and experience in military affairs, may be merely lay persons in the field of law, the concerned Acts provide for the trial to be attended by a professional known as the Judge Advocate compulsorily at the highest level Court i.e. General Court-Martial in the Army and the Air Force and Naval Court Martial and advisedly at Summary General Court Martial and District Court Martial too. The designation of the Judge Advocate, comprising of the words denoting two entirely different functions, appears to be somewhat interesting, more so in view of its incumbent being factually neither a judge nor an advocate judging no matter, advocating for none. However, a close look at the related historical facts would suggest several possible explanations, the most agreeable one being in the description of the Judge Advocate is that he is called in to advise the Court through forming no constituent of it.27

The story of the office of the Judge Advocate in England is marked with a constant struggle between the forces representing the monarchical traditions and the democratic ideal of judicial independence. The Court of the Constable and Martial was assisted by a civilian lawyer to superintend the procedures of the trial and advise the Courts as to the provisions of the civil laws. He was called the judge Martial or by the old Roman names the Praetor. His attendance at the Martial’s Court would have been clearly an accepted thing. The Judge advocate is not to prosecute and should be completely impartial. In his capacity as advisor of the

26 For details, see chapter- III
27 For details, see chapter- III
Court, the Judge Advocate is charged with the administration of military justice. There is a Judge Advocate General separately for each of the three services in the United Kingdom, the United States of America and the India. In the United Kingdom Judge Advocate General of the Navy is appointed by the Government and need not be a person in uniform. Judge Advocate General (Army) and Judge Advocate General (Air Force) are appointed like other General Officers of the services from amongst the Commissioned Officers. In case of Army, he is the principal legal advisor to the Chief of the Army Staff in the matters of military, Martial and the International Law. He is being assisted by various appointments at various formations down the line. Irrespective of their rank and designation and appointment, in the Court Martial in the Army and Air Force they are called as trial Judge Advocate. Thus, it can be concluded that Since Judge Advocate General is a military executive appointed by the chief of the staff. He has no functions of an advocate or of a judge and remains under the functional control of the convening authority. Hence, they cannot be expected to give a fair and just opinion.\textsuperscript{28}

Court-Martial is a military Court or administrative tribunal which is empowered by military law and acts quasi- judicially for violation of the offences of military (Army, Air Force and Navy) law and criminal law. It often refers to the entire justice process from actual Court proceedings to punishment in violation of the military offences and criminal offences in Army, Air Force and Navy or other service rules and regulations consisting of officers of the same organization who acts as both finders of the fact as presiding officer of the Court of Inquiry and as Presiding Judge for the application of the law. It determines the guilt of the members of the armed forces and to decide upon if the members are found guilty. Usually a Court-Martial takes the form of trial with the Presiding judge, prosecutor and defense counsel in all the three wings of the Armed Forces of the Union of India under different legislative enactments namely, Army Act, 1950, Air Force Act, 1950 and Navy Act, 1957. The provisions of the Army Act, 1950 are based on model code of Army Act, 1911 and the Act of 1950 are replica of the code of 1911. The provisions of the Air Force Act, 1950 are also more or less the same. However, the contents of the Navy Act, 1957 are little different. These laws deal with the various administrative and legal provisions applicable to uniform personnel of the

\textsuperscript{28} For details, see chapter- III
respective wings namely, Army, Air Force and Navy. Court-Martial is a body of officers convened for trial of military accused, but so many a times it has been observed by the Supreme Court and various High Courts that the law and procedure on the basis of which Court-Martial have been convened, has not been adhered to, hereby the decision of the Court-Martial has been declared in nullity.\textsuperscript{29}

The Court-Martial process implies the whole system which involves the conduct of the Court-Martial and also the proceedings thereof and therefrom. Underlying principle behind the dispensing of justice through various Court-Martial are imbibed with the varying powers of the different facets of the Court-Martial and sounded on the reasoning that military discipline requires the speedy disposal of the offences relating to the members of the Armed Forces of Union of India according to their respective laws. Supreme Court of India has held that Court-Martial is not the Court in the strict sense of the term as understood in relation to implementation of the civil law. In the Military justice system, the convening authority plays a influential function. The Convening authority is a senior military commander who decides whether to refer a case to a Court-Martial, the type of Court-Martial to be convened and appoints the members of the Court-Martial. In general terms Court-Martial can be considered as juries. Court-Martial is of various kinds in three wings of the military.\textsuperscript{30}

In the Armed forces of the Union of India through Court-Martial also which is also an effective and alternative method of Administration of Justice wherein the military offenders are being tried depending upon the nature of the offence and also the rank of the accused is very much vital for convening different types of Court-Martial under different wings of the Military Forces of the Union of India. The Court-Martial is the military tribunals convened to dispense the Administration of justice in the Military Forces. The Concept of the Court-Martial in India is originated from the British Military System. The very object of Administration of Justice is the efficacious and speedy justice for the offences related to Military according to their respective laws for their respective wings. A Court-Martial is an ad-hoc military Court, convened under military authority to try and punish those who violate the military law. Thus Court-Martial is an ad-hoc Military Tribunal and a Criminal Court and constituted under the authority of the Army Act, 1950,

\textsuperscript{29} For details, see chapter- III
\textsuperscript{30} For details, see chapter- III
Air Force Act, 1950 and Navy Act, 1957 to try and punish the Military offenders according to the gravity of the offence and rank of the accused as applicable to their respective laws. The trial by Court-Martial is itself a quasi-judicial proceeding. The Hon’ble Supreme Court of India has categorically stated that in the proceedings before Court-Martial, rules of natural justice should be meticulously followed.\textsuperscript{31}

The Military trial generally refers to the entire justice process from actual Court proceedings to punishment in violation of the military offences and criminal offences in Army, Air Force and Navy or other service rules and regulations consisting of officers of the same organization who act as both finders of the fact as the Presiding Officers of the Court of Inquiry/Investigating Officers of Formal Investigations and as Presiding Officer/Trial Judge Advocate of the Court-Martial proceedings for the application of the Law. The Court-Martial determines the guilt of the members of the Armed Forces and to determine the quantum of punishment if the member of the tri services found guilty. Military Laws deal with the elaborate procedure of Court-Martial and other summary trials during peace and war formulated in the form of statutes, rules and regulations. The Court-Martial proceedings are generally criminal proceedings.\textsuperscript{32}

Generally Court-Martial takes the form of trial with the Presiding Judges consisting of Presiding Officer generally detailed from any branch and if not detailed Senior most member in the jury to act as presiding Officer except under Navy Act, 1957 in which the Officer of the Executive branch is invariably to preside the Court-Martial irrespective of rank, Members and Trial Judge Advocate, Prosecutor and defending Officers and also the defense Counsel if opted for by the accused in all the three wings of the Armed Forces of the Union of India under different legislative enactments namely Army Act, 1950, Air Force Act, 1950 and Navy Act, 1957. The provisions of the Army Act, 1950 are based on the model of the Army Act 1911 and reproduced thereby and the provisions of the Air Force Act, 1950 are also more or less the same. However, the contents of the Navy Act, 1957 are little different. These laws deal with the various administrative and legal provisions applicable to uniform personnel of the three wings of the Armed Forces of the Union of India. Court-Martial are the body of officers convened for trial of military accused, but so many a times it has been observed by the Hon’ble Supreme

\textsuperscript{31} For details, see chapter- III
\textsuperscript{32} For details, see chapter-III
Court and various High Courts that the law and the procedures on the basis of which the Court-Martial have been convened, has not been adhered to, hereby the decision of the Court-Martial have been declared in nullity. The Army Act, 1950 describes four kind of Court-Martial namely General Court-Martial, District Court-Martial, Summary General Court-Martial and Summary Court-Martial. According to Army Act, 1950, Army Rules and Regulations framed under it, the Army Courts can try the personnel subject to Army Act for all kinds of offences except for murder and rape, which shall primarily be tried by Civil Courts. The Air Force Act, 1950 describes three kinds of Court-Martial namely General Court-Martial, District Court-Martial, Summary General Court-Martial. According to Air Force Act, 1950, Air Force Rules and Regulations framed under it, the Air Force Courts can try the personnel subject to Air Force Act for all kinds of offences except for murder and rape, which shall primarily be tried by Civil Courts. Here the terms Civil Courts includes the Criminal Courts as defined in the Criminal Procedure Code, 1973. The Air Force Act, 1950 does not stipulate for the Summary Court-Martial like Army Act 1950. Naval tribunal means a Court-Martial constituted and includes a Disciplinary-Court, a Commanding Officer or other officer or authority exercising powers of punishment under this Act. The Naval Courts can try the personnel subject to Navy Act for all kinds of offences except for murder and rape, which shall primarily be tried by Civil Courts. Here the terms Civil Courts includes the Criminal Courts as defined in the Criminal Procedure Code, 1973. Unlike Army and Air Force, Navy does not have rules and every provision is meticulously stated in the Act itself. Any Trial by a Court-Martial under the provisions laid down in the Army Act shall be deemed to be a judicial proceeding within the meaning of the Indian Penal Code, 1860 and the Court-Martial shall be deemed to be a Court within the meaning of the Code of the Criminal Procedure, 1973.  

An officer before convening a General or District Court-Martial shall first satisfy himself that the charges to be tried by the Court are for offences without meaning of the Army Act, 1950 and that the evidence justifies a trial on those charges. If he is not so satisfied shall or der release of the accused or refer the case to the superior authority. The declaration as to military exigencies dispensing with certain rules should be in a separate order. The declaration as to the officer

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33 For details, see chapter-III
convening the Court-Martial shall also satisfy himself that the case is a proper one to be tried by the kind of Court-Martial which he proposes to convene. He shall appoint or detail the officers to form the Court and, may also appoint or detail such waiting officers as he thinks expedient. He may also, where he considers the services of an interpreter to be necessary appoint or detail an interpreter to the Court. The officer convening a Court-Martial shall furnish to the senior member of the Court with the original charge-sheet on which the accused is to be tried and where, no Judge Advocate has been appointed, also a copy of the summary of evidence and the order for the assembly of the Court-Martial. He shall also send, to all the other members, copies of the charge-sheet and to the Judge Advocate when one has been appointed, a copy of the summary of evidence. The object underlying this provision is to enable the presiding officer and members of the Court-Martial to have an idea of the charge/charges on which the accused is to be arraigned. If the amendment to the charge/charges is considered expedient by the presiding officer, he should communicate his views to the convening officer before the trial begins. Only when Judge Advocate is not appointed, a copy of the summary of evidence and convening order is to be sent to the presiding officer. A copy of the summary of evidence sent to the presiding officer should have the portions of evidences which, being inadmissible or irrelevant, are not being led at the trial, completely expurgated. The Judge Advocate is responsible to inform the convening officer of any informality or defect in the charge or in the Constitution of the Court. Members of the Court must take care that they are not unduly influenced by any statement appearing in the summary of evidence, though they will naturally have regard in testing the credibility of a witness, to the fact that his evidence given at the trial is contradictory to his statement at the summary.  

Recently, the law makers of the Country realized that the persons do not become slave by merely accepting the jobs in the Armed Forces of the Union of India. All the Constitutional and legal safeguards are available to them and their rights must be protected by all means. But even today it is being interpreted by the higher officials according to their stability on the name of the discipline not according to the true spirit of the Law and the Constitution of India. The glaring example of this can be cited with the Constitutional Safeguards of the double

34 For details, see chapter-III
jeopardy which has been embedded by the framers in the Constitution of India. Provisions of the double jeopardy was deleted in the Army Act by the Amendment Act of 1992 and Constitutional safeguards as guaranteed by the framers of the Constitution were incorporated but in the Air Force Act the status remains unchanged as no amendment was brought out by the Parliament to delete Section 126 of Air Force Act, 1950 which states that a person subject to Air Force Act, 1950 whether convicted or acquitted by a Court-Martial may, with the previous sanction of the Central Government, be tried again by a Criminal Court for the same offence or on the same facts. This provision clearly violates the Constitutional Safeguard which is available to each and every person but an Airwarrior is deprived of the same which has made the law defective. It is brought out that human rights are violated every day within the fore-walls of the military campuses and are being shielded by the higher officials on the name of national security which is nothing but a mockery of democracy and law which governs them. It is shameful state that in the 21st century also our warriors are being subjected to face harassment and mental torture on the name of discipline. With the advent and establishment of the Armed Forces Tribunal in India, the higher officials of the Armed Forces of the Union of India are feeling pressure, because the specialist tribunal is in existence for looking after legal and procedural lacuna and the injustice being done its members subject to Military Laws.35

It has been experienced in the past and even the same has also been expressed by the Supreme Court in various judgments and the several High Courts in different cases that there has been gross misuse by the top officials in the absence of proper appellate provisions in the Armed Forces of the Union of India. Thus, it was considered imperative to undertake reappraisal of Military Justice System because the present statute is nothing but a reproduction of British Statute, which was applicable to the Royal British Forces and mainly to its dominion. Its basic concept and interpretation are unjust, arbitrary and unreasonable towards a disciplined soldier of the Armed Forces of the Union of India. It is reiterated herein that according to the provisions of Article 33 of the Constitution of India, a soldier is being deprived of very basic fundamental right, which are available to all other citizens as enshrined in Part III of the Constitution of India. Thus, by the liberal

35 For details, see chapter- III
interpretation of the Constitution of India it can emerge that a citizen has a legal
eright to seek redressal of any legal injury, inflicted on him. Hence, any citizen can
seek direct redressal before the Supreme Court for violations of fundamental rights
and before High Court for violations of any legal or fundamental right. Restrictions
or abrogation of fundamental rights in respect of a soldier has been expressly
incorporated in the Army Act, 1950, Air Force Act, 1950 and Navy Act 1957. If a
soldier is involved in any civil case, the same can be transferred to the Army
authorities even though both ordinary Criminal Court as well as Court-Martial may
have concurrent jurisdiction. However, if there will be a difference of opinion then
the same is referred to the Government of India, whose decision on the subject is
final.36

It has been observed that in generally the Court-Martial is initiated at the
instances of the Commanding Officers by the prejudiced thought in the case of the
subordinates and in the case of the officers when their personnel interests are
conflicted for whatsoever the reason may be. Even further, more interestingly the
Trial Judge Advocate takes briefings from the Convening Officer of the Court-
Martial and it remains pre-determined that what punishment shall be awarded to the
alleged offender if convicted and what observations should be made at the time of
disposal. Even at the time of the trial if any charge is to be added or altered or
deleted, then convening officers is the person who decides by sitting at remote
place, which seems to be totally inappropriate. Then, how can we expect the fair
justice delivery system in Armed Forces.37

IV

A fundamental transformation took place in the Constitutional law and a
new era begun in the Constitutional History which inserted new Part XIVA on
‘Tribunals’ in the Constitution which consists of tribunals on administrative
matters and tribunals on others matters. Constitution provides that Parliament, by
law, for the adjudication or trial by administrative tribunals of disputes and
complaints with respect to recruitment and conditions of service of persons
appointed to public services and posts in connection with the affairs of the Union or
of any State except for the members of the Armed Forces. The law may provide for
the establishment of an administrative tribunal for the Union and a separate

36 For details, see chapter- III
37 For details, see chapter-III
administrative tribunal for each State or for two or more States. The law may take
out adjudication of disputes relating to service matters from the hands of the civil
courts and the High Courts. Hence, Parliament enacted the Administrative
Tribunals Act, 1985 to establish an Administrative Tribunal for the Union, viz., the
Central Administrative Tribunal and a separate Administrative Tribunal for a State
or a Joint Administrative Tribunal for two or more States. The establishment of
Administrative Tribunals necessitated because a large number of cases relating to
service matters were pending before Supreme Court as well as various High Courts.
Administrative Tribunals were set up not only reduce the burden of courts, but also
provide rapid redressal of grievances to the aggrieved service personnel. In the case
of S. P. Sampath Kumar v. Union of India and others, the Supreme Court directed
the carrying out of certain measures with a view to ensuring the functioning of the
Administrative Tribunals along with Constitutional validity on the sound principles.
The jurisdiction of the Supreme Court was restored. Constitutional validity of the
Administrative Tribunal Act, 1985 was upheld, to certain amendments relating to
the form and content of the Administrative Tribunals. The Administrative Tribunals
became an effective and real substitute for the High Courts and the result was that
the High Courts restrained themselves from entertaining service writs.38

It was extremely unfortunate that even after 60 years of independence and
57 years after India became sovereign republic, there was no proper legal protection
against the arbitrary action on the name of discipline to those who are serving the
nation at the odd hours whenever they are called upon and they are never ever
hesitant in going even for supreme sacrifices. There was no meaning of the
principles of natural justice, due process of law and rule of law. In the event of
being punished by the Court-Martial and summary disposals, there was no proper
forum to adjudicate and redress the issues what wrongs have been done to them,
except to invoke the extraordinary jurisdiction of the High Courts or the Supreme
Court. If someone dares to think for going to higher Courts of justice, various
Constitutional provisions, and respective laws out the Army Act, 1950 or Air Force
Act, 1950 or Navy Act, 1957, as applicable, the ignorance of the legal provisions
and high fees of the Advocates and as well as complex legal formalities blocks their
path. Military law in India needs to rethink and revise the legal system in the

38 For details, see chapter- IV
military on the humanitarian lines. There is no need that the members of highly
disciplined forces who are very much akin to fighting the war in odd times can be
subjected to unfair and harsh military justice system in the name of maintenance of
discipline.39

There are various grounds of the judicial review which has been considered
by the Supreme and the High Courts in the catena of decisions like doctrine of
Proportionality wherein Irrationality and perversity are recognized grounds of
judicial review. The punishment awarded, if so strikingly disproportionate as to call
for and justify interference. It cannot be allowed to remain uncorrected in judicial
review. The Supreme Court of India has propounded a sound example of judicial
leniency to the members of the Armed Forces of the Union of India. The cases of
such Sailors (not limited to the original applicants before the Tribunal) must be
considered by the Competent Authority within three months for grant of a “Special
Pension” from three years prior to the date of application made by the respective
Sailor and release payment after giving adjustment of Gratuity and Death-cum-
Retirement-Gratuity already paid to them from arrears. The test of bias is whether a
reasonable intelligent man, fully apprised of all circumstances, would feel a serious
apprehension of bias. A Court of inquiry may generally examine the shortfall to
ascertain how many persons are responsible. In the course of such an inquiry there
may be a distinct possibility of character or military reputation of a person subject
to the Act likely to be affected His participation cannot be avoided on the specious
plea that no specific inquiry was directed against the person whose character or
military reputation is involved. To ensure that such a person whose character or
military reputation is likely to be affected by the proceedings of the Court of
inquiry should be afforded full opportunity so that nothing is done at his back and
without opportunity of participation.40

Although the doctrine of pleasure is adopted in India, but not exactly on the
same footing, rather it can be said as similar footing. Procedural safeguards are laid
down in the Constitution of India and the principles of natural justice are imbibed in
it. The right to equality guaranteed under the Constitution of India imposes
restrictions on the doctrine of pleasure. The Persons entitled to procedural
safeguards are the persons who are the members of the Civil Services of the Union,

39 For details, see chapter-IV
40 For details, see chapter- IV
members of the All India Services and civil services of a State or a person holding a civil post under the Union or the state. However, there are certain persons who are not entitled for procedural safeguard like when a person is dismissed or removed or reduced in rank on the ground of his conduct which led to his conviction on criminal charge, when the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for reason to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry or where the President or the Governor as the case may be, is satisfied that in the interest of the security of the state it is not expedient to hold such inquiry. The Supreme Court of India has pronounced a new theory of pre-trial custody of the offenders while interpreting the statutory provisions and held that whenever any offender is sentenced by a Court-Martial to a term of imprisonment not being imprisonment in default of payment of fine, the period spent by him in civil or naval custody during investigation, inquiry or trial of the same case, and before the date of order of such sentence, shall be set off against the terms of imprisonment imposed upon him, and the liability of such offender to undergo imprisonment on such order of sentence shall be restricted to the remainder, if any, of the term of imprisonment imposed upon him. Delhi High Court while seeking redressal of discrimination on the basis of rank / cadre meted out in dispensation of medical services to the ex-servicemen of the Armed Forces at the Ex-servicemen Contributory Health Scheme Polyclinics in India. The said display boards are found to be objectionable by ex-servicemen of other ranks, when there is no provision therefor in Ex-servicemen Contributory Health Scheme, under which both categories are at par.  

The Supreme Court held a word of caution that the power to do a particular act must be located in the statute, and if the rules framed under the statute ordain an action not contemplated by the statute, it would suffer from the vice of excessive delegation and would on this platform be held ultra vires. Rules are framed for dealing in detail with myriad situations that may manifest themselves, for the guidance of the concerned Authority. Rules must, therefore, be interpreted in a manner which would repose them in harmony with the parent statute. It seems that the Army Authorities are often consumed by the Army Rules without fully comprehending the scope of the Army Act, 1950 itself. The Apex Court held that

41 For details, see chapter- IV
power to do particular act must be located in some statute, and if rules framed under such statute ordain action not contemplated by statute, it suffers from vice of excessive delegation and it would be declared ultra vires. It is one of the fundamental features of our Constitution that a person subject to Army Act continues to be a citizen of India and is not wholly deprived of his rights under the Constitution. In the larger interests of national security and military discipline the Parliament may restrict or abrogate such rights in their application to Armed forces but the basic feature which the Parliament would not like to alter is that persons subject to Army Act cannot be denied equality before law and equal protection of law. Therefore the guarantees contained under the Constitution are available to the members of the Armed Forces in the same manner in which these guarantees are available to the other citizens of India. If the inquiry is sought to be held into the conduct of the Army Offices or into his reputation, a procedure which is fair, just and reasonable is to be adopted and the persons holding such an enquiry must be unbiased. The Supreme Court and the High Courts have played pivotal role in administration of justice in Armed Force by setting aside the decisions of the Court-Martial. The decisions of the Court-Martial are generally pre-determined and the same has not been appreciated several times by the judiciary and the same has laid the foundation of the evolution of the Armed Forces Tribunal, but it is yet to attain the desired result.\textsuperscript{42}

In the civil justice system the universally accepted dictum is that justice should not only be done, it must seem to be done. The same should also hold good in case of military trials. But in Military trials in India, a judge and the accused put on the same uniform, have the same sense of discipline and have a strong hierarchical character. A feeling of bias in such circumstances is considered but natural. Hence, at least one review of the decisions of military trials by way of appeal to an appellate Court, composed of non-military jurists should be afforded in the justice system to the Armed Forces personnel was felt by legal experts. Hence, Armed Forces Tribunal (Benches) was created in almost all the large areas. Military law is acknowledged for its easiness in function and power, its inflexible discipline, is conscientious emergence of honour and its reforms in the time of peace. Recently, it has attracted a significant number of scholars to pursue a legal research

\textsuperscript{42} For details, see chapter- IV
on the military law. They have established that military justice system is a system of law shaped to inflict definite standards of performance and few are identical to standards imposed in civil life. These standards have significance in upholding the discipline in the Armed Forces and public admiration for such forces.  

It must be borne in the mind of the every person that the persons do not become slave by accepting the jobs in the Armed forces. All the Constitutional and legal safeguards are available to them. But, even today it is interpreted by the higher officials according to their suitability on the name of discipline not according to the true spirit of the law and the Constitution of India. The glaring example of this can be cited with the Constitutional safeguard of double jeopardy which has been embedded by the framers in the Constitution of India. The provisions of the double jeopardy was deleted by the Army by the amendment Act of 1992 but still it exists in Indian Air Force which states that a person convicted or acquitted by a Court-Martial may, with the previous sanction of the Central Government, be tried again by a Criminal Court for the same offence, or on the same fact. This is a clear violation of the Constitutional protection which is available to each and every person. Human rights are violated every day within the fore-walls of the military campuses. It is shameful condition that in the 21st century also our warriors are being subjected to face mental torture and harassment on the name of discipline.

It would be appropriate to provide further that every service matter should necessarily be decided by a bench of two members, one of whom shall be a Judicial Member. In case of the difference of opinion between the members of the bench, the matter shall be referred to the bench of three members, at least one of whom shall be a judicial member. In such a situation, it would be easier to convince the Supreme Court of the desirability of such a direct appeal mainly on the ground that the necessity of prompt disposal of service disputes in the Armed Forces and in the interest of the discipline therein justify such a course. While indiscipline in any public service is not desirable and every service dispute should be adjusted promptly, their need is much more so in the case of the Armed Forces. In this context, it must be remembered that the Armed Forces are treated as a separate class even by the Constitution of India. The Constitution of India provides that

43 For details, see chapter- IV  
44 For details, see chapter-V
Parliament may, by law, determine to what extent any of the fundamental rights shall apply to Armed Forces. The provisions of the Constitution of India contains very important protections to members of service is made inapplicable to defence forces. The service tribunal so created shall be common to all the three services. The machinery provisions of the Administrative Tribunals Act, 1985 can be imported to the extent necessary, for giving shape to this idea. Such a course will undoubtedly contribute towards a more satisfactory and prompt adjudication of such disputes. But this has to be an independent service tribunal apart from and in addition to the appellate tribunal.\textsuperscript{45}

The concept of the Tribunal was adopted by the 42\textsuperscript{nd} amendment Act and new provisions were added to the Constitution of India and consequently Administrative Tribunal Act, 1985 was enacted by the parliament. The various Central and State Administrative tribunals were established thereafter but the Constitution of India excluded the members of the Armed Forces and the system of grievances redressal continued till 2007 as there were no specialist grievances redressal mechanisms for the members of the Armed Forces. Recently, the law makers of the Country realized that the persons do not become slave by merely accepting the jobs in the Armed Forces of the Union of India. All the Constitutional and legal safeguards are available to them and their rights must be protected by all means. But even today it is being interpreted by the higher officials according to their stability on the name of the discipline not according to the true spirit of the Law and the Constitution of India and this can be well understood in the context of the Constitutional safeguards of the double jeopardy is a part of the fundamental rights under Constitution of India. It is brought out that human rights are violated every day within the forwalls of the military campuses and are being shielded by the higher officials on the name of national security which is nothing but a mockery of democracy and law which governs them. It is shameful state that in the 21\textsuperscript{st} century also our warriors are being subjected to face harassment and mental torture on the name of discipline. With the advent and establishment of the Armed Forces Tribunal in India, the higher officials of the Armed Forces of the Union of India are feeling pressure, because the specialist tribunal is in existence for looking after

\textsuperscript{45} For details, see chapter-V
legal and procedural lacuna and the injustice being done to its members subject to Military Laws.46

It has been experienced in the past and even the same has also been expressed by the Supreme Court in various judgments and the several High Courts in different cases that there has been gross misuse by the top officials in the absence of proper appellate provisions in the Armed Forces of the Union of India. Thus, it was considered imperative to undertake reappraisal of Military Justice System because the present statute is nothing but a reproduction of British Statute, which was applicable to the Royal British Forces and mainly to its dominion. Its basic concept and interpretation are unjust, arbitrary and unreasonable towards a disciplined soldier of the Armed Forces of the Union of India. It is reiterated herein that according to the provisions of the Constitution of India, a soldier is being deprived of very basic fundamental right, which are available to all other citizens as enshrined in Part-III of the Constitution of India. If the liberal interpretation of the Constitution of India is taken on account, it can emerge that a citizen has a legal right to seek redressal of any legal injury, inflicted on him. Any citizen can seek direct redressal before the Supreme Court for violations of fundamental rights before High Court for violations of any legal or fundamental right. Restrictions or abrogation of fundamental rights in respect of a soldier has been expressly incorporated in the Army Act, 1950, Air Force Act, 1950 and Navy Act, 1957. These have been further amplified in the Army Rules and Air Force Rules. It can be concluded that these provisions curtail or restrict the freedom of speech and to form associations or union. According to the provision contemplated in the Army Act, 1950, Air Force Act, 1950 and Navy Act, 1957, if a soldier is involved in any civil case, the same can be transferred to the Army authorities even though both ordinary Criminal Court as well as Court-Martial may have concurrent jurisdiction. However, if there will be a difference of opinion then the same is referred to the Government of India, whose decision on the subject is final. Now, the Armed Forces Tribunals were established under the provisions of the Armed Forces Tribunal Act, 2007, which came into force from 2009. At present ten benches of the Armed Forces Tribunals are established with New Delhi bench acting as the Principal bench. Now, it has been observed that the specialist ministries are

46 For details, see chapter-V
influencing the decisions of the Tribunal, and this is more so in the case of Armed Forces Tribunals, it has been planned by the Central Government to bring all the Tribunals including the Armed Forces Tribunal under the supervision and control of the Ministry of Defence.47

The Armed Forces Tribunal Act was enacted in the year 2007 to provide for adjudication or trial by the Armed Forces Tribunal of disputes and complaints with respect to commission, appointments, enrolment and conditions of service in respect of persons subject to the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950 and also to provide for appeals arising out of orders, findings or sentences of Court-Martial held under the said Acts and for matters connected therewith or incidental thereto. The Armed Forces Tribunal Act, 2007 came into force with effect from the 15th June, 2008 with a view to provide for quicker and less expensive justice to the members of the three services (Army, Navy and Air Force). The provisions of this Act shall apply to all persons subject to the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950. This Act shall also apply to retired personnel subject to the Army Act, 1950 or the Navy Act, 1957 or the Air Force Act, 1950 including their dependants, heirs and successors, in so far as it relates to their service matters. The Principal Bench of the Armed Forces Tribunal had started functioning in Delhi from the 10th August, 2009. Regional Benches of the Tribunal functions at ten places, namely, Jaipur, Chandigarh, Lucknow, Guwahati, Kolkata, Chennai, Kochi, Srinagar, Jabalpur and Mumbai, have also started functioning subsequently and some of the circuit benches are also functioning. In accordance with the provisions of the Armed Forces Tribunal Act, 2007, the Chairperson or a Member of a Tribunal shall hold office for a period of four years from the date on which he enters upon his office and shall be eligible for reappointment. However, no Chairperson shall hold office as such after he has attained in case he has been a Judge of the Supreme Court, the age of seventy years and in case he has been the Chief Justice of a High Court, the age of sixty-five years.48

The Tribunal shall exercise all the jurisdiction, powers and authority exercisable under this Act in relation to appeal against any order, decision, finding or sentences passed by a Court-Martial or any matter connected therewith or

47 For details, see chapter-V
48 For details, see chapter-V
incidental thereto. Any person aggrieved by an order, decision, finding or sentences passed by a Court-Martial may prefer an appeal in such form, manner and within such time as may be prescribed. The Tribunal shall have power to grant bail to any person accused of an offence and in military custody, with or without any conditions which it considers necessary. The Tribunal shall allow an appeal against conviction by a Court-Martial where the finding of a Court-Martial is legally not sustainable due to any reason whatsoever, or the finding involves wrong decision on a question of Law, or there was a material irregularity in the course of the trial resulting in miscarriage of justice but, in any other case, may dismiss the appeal where the Tribunal considers that no miscarriage of justice is likely to be caused or has actually resulted to the appellant. The Tribunal may allow an appeal against conviction, and pass appropriate order thereon. The Tribunal may have the powers to substitute for the findings of the Court-Martial, a finding of guilty for any other offence for which the offender could have been lawfully found guilty by the Court-Martial and pass a sentence afresh for the offence specified or involved in such findings or if sentence is found to be excessive, illegal or unjust, the Tribunal may remit the whole or any part of the sentence, with or without conditions, mitigate the punishment awarded, commute such punishment to any lesser punishment or enhance the sentence awarded by a Court-Martial. The Tribunal may release the appellant, if sentenced to imprisonment, on parole with or without conditions; suspend a sentence of imprisonment, or pass any other order as it may think appropriate. Notwithstanding any other provisions in this Act, for the purposes of jurisdiction and powers, the Tribunal shall be deemed to be a criminal court for the purposes of relevant sections of the Indian Penal Code, 1860 and Chapter XXVI of the Code of Criminal Procedure, 1973. The Tribunal shall exercise all the jurisdiction, powers and authority, exercisable immediately before that day by all Courts except the Supreme Court exercising jurisdiction under the Constitution of India in relation to all service matters. A person aggrieved by an order pertaining to any service matter may make an application to the Tribunal in such form and accompanied by such documents or other evidence and on payment of such fee as may be prescribed. On receipt of an application relating to service matters, the Tribunal shall, if satisfied after due inquiry, as it may deem necessary, that it is fit for adjudication by it, admit such application; but where the Tribunal is not so satisfied, it may dismiss the application after recording its reasons in writing. For
the purpose of adjudicating an application, the Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely, Summoning and enforcing the attendance of any person and examining him on oath, requiring the discovery and production of documents, receiving evidence on affidavits, subject to the provisions of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office, issuing commissions for the examination of witnesses or documents, reviewing its decisions, dismissing an application for default or deciding it ex-parte, setting aside any order of dismissal of any application for default or any order passed by it ex-parte, and any other matter which may be prescribed by the Central Government. The Tribunal shall decide both questions of law and facts that may be raised before it.\(^{49}\)

The Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable under this Act in relation to appeal against any order, decision, finding or sentence passed by a Court-Martial or any matter connected therewith or incidental thereto. Any person aggrieved by an order, decision, finding or sentence passed by a Court-Martial may prefer an appeal in such form, manner and within such time as may be prescribed. The Tribunal shall have power to grant bail to any person accused of an offence and in military custody, with or without any conditions which it considers necessary, however, no accused person shall be so released if there appears reasonable ground for believing that he has been guilty of an offence punishable with death or imprisonment for life. The Tribunal shall allow an appeal against conviction by a Court-Martial where the finding of the Court-Martial is legally not sustainable due to any reason whatsoever, or the finding involves wrong decision on a question of law, or there was a material irregularity in the course of the trial resulting in miscarriage of justice, but, in any other case, may dismiss the appeal where the Tribunal considers that no miscarriage of justice is likely to be caused or has actually resulted to the appellant, however, no order dismissing the appeal by the Tribunal shall be passed unless such order is made after recording reasons thereof in writing.\(^{50}\)

The Tribunal may allow an appeal against conviction, and pass appropriate order thereon. The Tribunal shall have the power to substitute for the findings of the

\(^{49}\) For details, see chapter-V
\(^{50}\) For details, see chapter-V
Court-Martial, a finding of guilty for any other offence for which the offender could have been lawfully found guilty by the Court-Martial and pass a sentence afresh for the offence specified or involved in such findings under the provisions of the Army Act, 1950 or the Navy Act, 1957 or the Air Force Act, 1950, as the case may be; or if sentence is found to be excessive, illegal or unjust, the Tribunal may remit the whole or any part of the sentence, with or without conditions, mitigate the punishment awarded or commute such punishment to any lesser punishment or punishments mentioned in the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950, as the case may be, enhance the sentence awarded by a Court-Martial, however, no such sentence shall be enhanced unless the appellant has been given an opportunity of being heard and release the appellant, if sentenced to imprisonment, on parole with or without conditions, suspend a sentence of imprisonment, and pass any other order as it may think appropriate. The Tribunal shall be deemed to be a Criminal Court for the purposes of the Indian Penal Code, 1860 and Chapter-XXVI of the Code of Criminal Procedure, 1973. The Tribunal, while hearing and decision an appeal, shall have the power to order production of documents or exhibits connected with the proceedings before the Court-Martial, order the attendance of the witnesses; receive evidence; obtain reports from Court-Martial, order reference of any question for enquiry, appoint a person with special expert knowledge to act as an assessor, and determine any question which is necessary to be determined in order to do justice in the case. On and from the date from which any jurisdiction, powers and authority becomes exercisable by the Tribunal in relation-to service matters under this Act, no Civil Court shall have, or be entitled to exercise, such jurisdiction, power or authority in relation to those service matters.\footnote{For details, see chapter-V}

Where the conviction of a person by Court-Martial for an offence has been quashed, he shall not be liable to be tried again for that offence by a Court-Martial or by any other Court. The Tribunal shall have the power of quashing a conviction, to make an order authorizing the appellant to be retried by Court-Martial, but shall only exercise this power when the appeal against conviction is allowed by reasons only of evidence received or available to be received by the Tribunal under this Act and it appears to the Tribunal that the interests of justice require that an order under
this section should be made, however, an appellant shall not be retried under this section for an offence other than the offence for which he was convicted by the original Court-Martial and in respect of which his appeal is allowed, any offence for which he could have been convicted at the original Court-Martial on a charge of the first-mentioned offence, any offence charged in the alternative in respect of which the Court-Martial recorded no finding in consequence of convicting him of the first-mentioned offence. A person who is to be retried under this section for an offence shall, if the Tribunal or the Supreme Court so directs, whether or not such person is being tried or retried on one or more of the original charges, no fresh investigation or other action shall be taken under the relevant provision of the Army Act, 1950 or the Navy Act, 1957 or the Air Force Act, 1950 as the case may be, or rules and regulations made there under, in relation to the said charge or charges on which he is to be retried. ⁵²

An appeal shall lie to the Supreme Court against the final decision or order of the Tribunal other than an order passed, however, such appeal is preferred within a period of ninety days of the said decision or order subject to the provisions stipulated the Armed Forces Tribunal Act, 2007. But there shall be no appeal against an interlocutory order of the Tribunal. An appeal shall lie to the Supreme Court as of right from any order or decision of the Tribunal in the exercise of its jurisdiction to punish for contempt. However, an appeal under this provision shall be filed in the Supreme Court within sixty days from the date of the order appealed against. Pending any appeal under this provision, the Supreme Court may order that the execution of the punishment or the order appealed against be suspended, or if the appellant is in confinement, he be released on bail. However, where an appellant satisfies the Tribunal that he intends to prefer an appeal, the Tribunal may also exercise any of the powers conferred to it. Where any decree or order has been made or passed by any Court other than a High Court or any other authority in any suit or proceeding before the establishment of the Tribunal, being a suit or proceeding the cause of action whereon it is based, is such that it would have been, if it had arisen after such establishment, within the jurisdiction of the Tribunal, and no appeal has been preferred ‘against such decree or order before such establishment or if preferred, the same is pending for disposal before any Court

⁵² For details, see chapter-V
including High Court and the time for preferring such appeal under any law for the
time being in force had not expired before such establishment, such appeal shall lie
to the Tribunal, within ninety days from the date on which the Tribunal is
established, or within ninety days from the date of receipt of the copy of such
decree or order, whichever is later.\footnote{For details, see chapter-V}

It can be analyzed critically that the Supreme while deciding the case of
Union of India and others v. Major General Shashi Kant Sharma and others left out
certain portions so as to maintain effectiveness of the system of administration of
justice in Armed Forces of the Union of India and the most glaring lacuna in the
administration of justice in Armed Forces of the Union of India is that the Summary
trials and punishments which is an important weapon in the hands of the
Commanding Officers/local commanders have been deliberately left out in the
Armed Forces Tribunal Act, 2007. The punishments during Summary trials are the
whims and caprices of the Commanding Officers. Generally the punishments are
decided prior to trials which are contrary to the legal system of the Country. No due
process is being adopted by the Commanding Officers and the subordinates are
being forced to undergo punishments for satisfying the egos and grudges of the
officers. Although there is provisions of reviews against the punishments provided
in the respective laws but in the rarest of the rare cases the punishments are actually
being reviewed otherwise the requests of reviews are being declined by the higher
officials of the Armed Forces with the most favourite reply “Lacks in substance and
devoid of merit.” There are only two efficacious ways to approach High Court or to
approach the Supreme Court. After the ibid judgment by the Supreme Court, the
High Court May hesitate to entertain the writs. If the judgments of the L. Chandra
Kumar v. Union of India and others are truly interpreted in context of the Armed
Force Tribunal and bare reading of the provisions laid down together with
Administrative Tribunal Act 1985, it can be concluded that the status of the Armed
Forces Tribunal are similar to that of the Central Administrative Tribunal and it also
derives its authority from the Administrative Tribunal Act, 1985 like Central
Administrative Tribunal which was enacted by the parliament under the provisions
of the Article 323-A of the Constitution of India. Thus, the Hon’ble Supreme Court
should consider it refresh and review the judgment of Major General Shashi Kant
Sharma’s case as the no law can take away the powers of the High Court under Article 226/227 of the Constitution of India and it’s a part of basic structure theory and the judgment rendered in Major General Shashi Kant Sharma’s case is in conflict with the basic structure theory as enshrined in the Constitution and also in conflict with the L. Chandra Kumar’s case. It is most noteworthy problem that as on date many benches of the Armed Forces Tribunal became non-functional due to non-availability of Judicial and Administrative members. The Central Government has been very reluctant on appointment of judges in the High Courts and the Supreme Court. The similar trauma is faced by the various tribunals including Armed Forces Tribunal. It has now become travesty of justice that the principle underlying in the Constitution of India so secure justice to all its citizens are confined to mere words only and it has no significance in objective reality.

The Union government has changed the rules governing appointment in the Armed Forces Tribunal, giving more powers to the Defence Secretary who would now have a role in ordering inquiries against members of the tribunal and their removal. The facilities and benefits of retired High Court Judges appointed as Judicial Members have been downgraded to regular Group ‘A’ (Class I) officers of the Central Government. While the Supreme Court had directed a longer tenure for tribunal members without a provision for re-appointment to ensure independence, the new rules have decreased even the existing tenure to three years and have provided for re-appointment by a selection committee, of which the Defence Secretary is a member. Further, the Armed Forces Tribunal should come under the ambit of the Ministry of Law and not Ministry of Defence. It cannot function independently as all infrastructure is provided by Ministry of Defence.

6.2 SUGGESTIONS

Thus, it can be concluded that even after the establishment of the Armed Forces Tribunal, the actual justice to our military personnel is too far away because of various reasons discussed in the preceding chapters. Therefore in order to make a serious effort towards administration of justice to Armed Forces personnel, certain valuable suggestions have been drawn such as:

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54 For details, see chapter-V
55 For details, see chapter-V
The similar provisions should be brought in for all kinds of trials and disposals for Armed Forces personnel placed in similar situation irrespective of rank.

There is a need to bring the common legislation for Armed Forces by repealing the existing legislations for Army, Air Force and Navy.

All the three wings of the Armed Forces should be unified and brought under the control of one Chief of Defence Forces.

The provisions related to redressal of grievances should be streamlined and should be made online directly under the control of the Ministry of Defence, not under the respective chiefs of three wings i.e., Army, Navy and Air Force.

The fundamental rights of the Armed Forces personnel should not be suspended at any cost.

The Armed Forces personnel should be adequately trained about the right to redress grievances and procedure to be followed for the redressal of grievances.

The grievances of the Armed Forces personnel should be redressed by the independent body, not by the defence officers.

There should be strict compliance of the provisions with regard to processing of statutory complaints and limitations provided in the respective statutes.

The provisions with regard to de novo trial or re-trial must be abolished.

The strict compliance of the second principle of Natural Justice to issue the show cause notice must be made before taking any adverse action against the delinquent.

The recording of summary of evidence should be made compulsory for all summary trials irrespective of rank of the accused.

The exemplary punishment should be imposed on the higher officials for abusing the powers by violating the provisions of the respective laws while dealing with the cases of the subordinates.

The provisions with regard to trials should be made commensurate with the trials in Criminal Courts.
➢ The strict compliance of the provisions of the Indian Evidence Act, 1872 should be made during the redressal of grievances of the Armed Forces by Internal Mechanism.

➢ The branch of Judge Advocate should appoint trained judges, lawyers and prosecutors for all kinds of trials in the Armed Forces.

➢ Interim measures should be adopted to bring the judges from the civilian Courts to sit in all the trials with the service officers.

➢ The provisions with regard to trials should be common for all the three wings of the Armed Forces.

➢ There should be common branch of Judge Advocate for all the three wings of the Armed Forces.

➢ The provisions with regard to Summary General Court-Martial in Air Force and Army should be abolished as it has proved to be the wastage of time and resources.

➢ The provisions with regard to Summary Court-Martial in the Army should also be abolished as it unwarranted and inexpedient as the other two wings are discharging the Administration of Justice in a much better way than the Army without the provisions of Summary Court-Martial.

➢ The provisions with regard to war time Disciplinary Court in Navy should be abolished as it is totally unwarranted.

➢ The procedural safeguards must be ensured by appointing independent officers in all kinds of proceedings to rule out the possibility of biasness.
The strict compliance of principles of Natural Justice should be made invariably in all kinds of proceedings.

The rights of bail must be introduced in all kinds of trials wherein the sentence of imprisonment is being awarded and the offence falls under the category of bailable offences.

All the trials of Armed Forces must be in open and there should be free access to media.

The word accused should be replaced with the word alleged offender for Armed Forces personnel before the framing of charges by the Competent Court.

The legal opinion from the Law officers appointed by Government should be obtained prior to conduct of trials in addition to the opinion of the respective Judge Advocate.

The provision in violations of the principle of double jeopardy contemplated in Section 126, Air Force Act, 1950 should be abolished.

The concept of pre-trial custody should be treated as custody for setting off against the total sentence of imprisonment in all kinds of trials.

The provisions contemplated in Articles 136(2) and 227(4), Constitution of India debarring Armed Forces personnel to file special leave to petition and the delay prompts the notion of justice delayed is justice denied, should be abolished to invoke the right to equality.

The adequate measures should be adopted to ensure the application of doctrine of proportionality while imposing penalty upon the delinquent.

The adequate measures should be adopted to ensure the safeguards against arbitrariness in the functioning of the officers appointed to conduct Court of Inquiries and Court-Martial.

The adequate measures should be adopted to conduct trials within the time frame fixed by the respective laws as the right to speedy trial has been declared as fundamental right of the accused.

The adequate measures should be adopted to ensure the safeguards against the abuse of doctrine of pleasure and Constitutional safeguards to be made applicable to the defence forces personnel.

The doctrine of legitimate expectations should be made applicable to the members of the Armed Forces.
There is a dire need to stop the colourable exercise of power by the authorities in the Armed Forces.

The Armed Forces Tribunal should not be subject to the executive control and it should be independent like ordinary law Courts.

The Armed Forces Tribunals should be brought under the Administrative control of the respective High Courts.

The power to punish for civil contempt should be enhanced to the Armed Forces Tribunals at par with the High Courts for effective compliance of the orders passed by the Tribunals.

The matters relating to leave, posting and transfers should also be brought in the purview of the definition clause dealing with the definition of “service matters” under the Armed Forces Tribunal Act, 2007.

The matters regarding summary trials should also be brought in the definition of the service matters under the Armed Forces Tribunal Act, 2007.

The provision regarding the appeal against the order of the Armed Forces Tribunal before the High Court should be reintroduced for cheap, expeditious and speedy disposal.

The qualification for appointment of judicial members should be at par of becoming a High Court Judge.

The law teachers having teaching and research experience of at least 10 years should also be considered for appointment as judicial members.

The personal accountability of the legal advisors of the respective departments should be fixed for advising to file frivolous appeals against the decisions of the Tribunals.

The adequate amendments should be made in the Armed Forces Tribunal Act, 2007 for adjudication within the period of six months or so but in no case beyond one year.

The adequate amendments should be made in the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and also in the Armed Forces Tribunal Act, 2007, so that the disputes of eviction etc. can be determined by the Armed Forces Tribunals dealing with the matters of Armed Forces personnel.
The procedure regarding the appointment of the judicial members and administrative members should be initiated before three months of the expiry of the tenure of incumbent members so that the post does not remain vacant.

The Administrative members of the Tribunals should also be appointed from the officers of the Indian Administrative Services or Indian Police Services as they are well trained to handle quasi-judicial proceedings.

The paramilitary forces should also be brought within the jurisdiction of the Armed Forces Tribunals.

There is an immediate need to establish at least one Bench of the Armed Forces Tribunals in each state and several circuit Benches in the bigger states like Uttar Pradesh, Bihar, Maharashtra and Madhya Pradesh etc.