SUMMARY

The term Law can well be defined as the principle of rules 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 all the civilized nations. Justice is the legal theory which aims not only to be done. It ensures the fairness in just and proper manner. It varies from place to place, culture to culture and organisation to organisation.

ADMINISTRATION OF JUSTICE

The administration of justice is the maintenance of the right within a political community by means of the physical force of the State. There are three organs of the State which plays an effective role in the administration of justice in the civilized nations. The laws are being framed by the legislature, executive secures the obedience of law and judiciary ensures the fairness in the application of law as well as framing of laws.

The concept of administration of justice has undergone tremendous changes and it emerged that the law should be applied for the benefits of the people and the law Courts should ensure the rule of law by all means. There are two broad categories for the administration of justice, namely, civil and criminal. The civil justice system refers to the violations of the civil or legal rights of the individuals only and the society as a whole is not affected and may be compensated in terms of money. Whereas, the criminal justice system refers to the violations of the public rights although the individual may have been the victim of the crime and it affects the rights of the society as a whole and thereby, punitive in nature. At present the administration of justice has become very important function of the State as it is uniform in nature, impartial and equally being applied in all cases according to the principles of jurisprudence.

The punishment can be inflicted to the criminal in consideration to protect the society by minimising the incidents of crime. The punishment can be viewed either as a method to protect the society by minimizing the incidents of crime or we can consider it as departure of crime itself from the society. In the theory of punishment,
the society can be protected by deterring the offenders, prevention of crime by the actual offender and by reformation of the individuals and conversion of the society wherein rule of law is prevalent not the autocracy and turning the citizens as a law abiding citizen. Offences are committed due to conflicts of interests between the wrongdoer and the society or the different persons. Punishment prohibits the offences by vanishing this conflict of interests to which they are indebted their cause by making all performances which are harmful to others and also to the doers of them by making crime/offence. Where punishment is disabling or preventive, its aim is to prevent recurrence of offence by rendering the offender unable to commit it.

The purpose of the punishment is to put off the perpetration of acts classified as criminal because they are regarded as being socially damaging. The contravention of such detrimental acts in modern times is prohibited by a intimidation or approval of punishment administered by the state. Thus, the punishment is the sanction obligatory on the accused for the infringement of the established rules and norms of the society. The article of the punishment is to save the society from harm, mischievous and undesirable elements by deterring potential offenders, by preventing the actual offenders from committing further offences and by reforming and turning into law-abiding citizens. It is also asserted that respect of law grows fundamentally out of antagonism to those who contravene the law. The public dislikes a criminal and this aversion is articulated in the form of punishment. The aim of shielding civilization is sought to be achieved by preclusion, bar, justice and restoration and thus deterrence is practically regarded as the most important function of the punishment.

There are various theories of the punishment. The deterrent theory is to prevent the wrongdoer from doing so again and also to make him example in the society so as to prevent others who also have such tendencies wherein they should not think of committing crime. Preventive theory is to prevent or put the offender out of action from wrongdoing. Offenders are rendered inoperative from repeating the offence by awarding punishments, e.g. death, exile or forfeiture of an office. The retributive theory was prevalent in the primitive societies. The person wronged was allowed to have revenge against the wrongdoer. The principle of ‘an eye for an eye’, ‘a tooth for a tooth’, ‘a nail for a nail’, ‘a limb for a limb’ was the basis of criminal justice system. The reformative theory is inflicted only for the reformation of the criminals. The crime should be vanished, not the criminals. In the crime no act per se
is criminal. The mens rea is an essential ingredient of the crime. It means that some blameworthy mental condition, whether constituted by intention or knowledge and its absence will result in non commission of crime. The principle of natural justice plays very vital role in the administration of justice and there are two parts of the principles of natural justice. The first one is audi alteram partem means fair hearing and the second part is nemo judex causa sua means no one can be judge in his own cause.

**ADMINISTRATION OF JUSTICE IN ARMED FORCES**

The administration of justice in Armed Forces is entirely different from the civil society e.g., the offences of desertion, disobedience of orders and insubordination are considered very severe in the Armed Forces whereas these are taken very lightly in the civil organisations. In the Armed forces, the traditional mechanism of the administration of justice is the sole proprietary of the Commanding Officers. He has the discretion to choose whether to dispose off the case summarily or take administrative action or refer the case to be tried by the Court-Martial. He can decide also decide not to initiate any action against the alleged offender. There was no effective mechanism whereby it can be transpired that the principles of natural justice has been complied with, although statutory provisions are in conformity with the principles of natural justice. The Hon’ble Supreme Court and the High Courts have pointed out in the catena of decisions that the traditional mechanism of the administration of justice was done without following the principles of natural justice and without compliance of the procedures contemplated. There was no remedy available for such violations and the Armed Forces personnel were compelled to take the recourse of law before the High Court under Article 226 of the Constitution of India or before Supreme Court under Article 32 of the Constitution of India. Hence, the need was felt that there should be at least one specific tribunal which can be act as the appellate tribunals against the decisions of the Military Courts. After a lot of deliberations, recommendations of various committees including the Law Commission of India and exhaustive research, the Armed Forces Tribunals were created by the enactment of the Armed Forces Tribunal Act, 2007 and commenced functioning from the year 2009.

The Armed Forces personnel occupies the most dignified position in our society as they protect the sovereignty, integrity and unity of India, both at the time of peace and war. They possess highest degree of discipline and thereby their fundamental rights were restricted to certain extent by virtue of the Constitutional
provisions as well as the respective laws. Article 33 of the Constitution of India provides that the extent upto which the fundamental rights of the Military personnel can be restricted. The Military Laws apply differently to their members in comparison to their civilian counterparts. The Military Laws deals with various kinds of offences like offences in relation with enemy, mutiny, desertion, absent without leave, disobedience, insubordination, extortion, corruption, false accusation and violations of good order and respective military discipline. The respective Military Laws stipulates the punishments which can be inflicted by the internal mechanism of the Court-Martial for military offences like, death, imprisonment for life or simple imprisonment not exceeding fourteen year, cashiering, dismissal, reduction, forfeiture of seniority, severe reprimand, reprimand and stoppages/mulcts of pay and allowances etc. The Military Laws also provide the punishments which can be inflicted without intervention of the Court-Martial, e.g., imprisonment or detention in military custody, confinement to camps, extra duties, deprivation of acting ranks, forfeiture of good service and good conduct badges, severe reprimand, reprimand, fine and penal deductions etc. The traditional mechanism of the Administration of justice is entirely different than the present system of the Administration of justice. There are various modes for administering justice to the Armed Forces personnel and they vary in accordance with their respective laws and are as under:

(a) The first internal mechanism is administrative action which is initiated for trivial offences, or when the procedure for trial becomes inexpedient or impracticable,

(b) The second inbuilt mechanism deals with the summary trials whereby the punishment is awarded summarily by the Commanding Officer.

(c) The third inbuilt mechanism is Court-Martial whereby the punishment are being awarded as authorised by the respective laws.

The Army and the Air Force have three types of Court-Martial namely General Court-Martial, Summary General Court-Martial and District Court-Martial. The Army has one more kind of Court-Martial namely Summary Court-Martial, which does not exist in the Air Force and in the Navy. The Navy has only one kind of Court-Martial and the procedures are akin to the General Court-Martial in the Navy and the Air Force. The Navy has one war time Disciplinary Court in addition to the Court-Martial which is similar to Summary General Court-Martial in the Army and the Air Force. The Military Laws categorically deals with three kinds of offences:
(a) The offences which are primarily military in nature e.g., misconduct in the face of enemy, muting, desertion, absent without leave, disobedience, sleeping on the post, violations of good order and military discipline, civil offences commuted at any place in or beyond India, but deemed to be the offences committed under the Military Laws,

(b) The offences which are specifically civilian nature i.e., murder, and rape committed by a person subject to military laws are triable only in criminal courts, and

(c) If there offences mentioned in category (b) above, are committed while on active service, or at any place outside India or at a frontier post specified by the Central Government, against person subject to Military Laws, the accused shall be deemed to be the guilty of offence under the Military Law and shall be triable by the Court-Martial.

A person subject to military Laws, who consider himself to be aggrieved by an order, finding and sentence of Court-Martial, has a right to submit petition to the convening officer before conformation and if it is not confirmed to the superior officer of the convening officer. In the Navy, the application may be addressed to the Chief Legal Advisor for consideration before the Chief of the Naval Staff, who shall decide the case according to the recommendations of the Chief Legal Advisor as well as on the merits of the case. Further, if any person aggrieved by the orders in pre and post confirmation petitions, they had to take recourse before the high court under article 226 or before the Supreme Court under article 32 of the Constitutional of India.

The grievances redressal mechanisms in the Armed Forces are not working effectively in the traditional mechanism of the administration of justice. The grievances of the Armed Forces were not adequately redressed in accordance with the established procedure and law and the principle of natural justice was also not complied with. Resulting in the large number of litigations was pending before various High Courts and the Supreme Court. The endeavour should be made to resolve the grievances of the Armed Force personnel, which were adversely affecting the morale of the Armed Forces in the traditional mechanism. The officers against whom the grievances had arisen, the same people were dealing with the trial. This was contrary to the principles of natural justice as no fair hearing was expected and also there was element of bias because the officers of the same organisation were detailed as jury members in the Court-Martial. This also violates the principle of natural justice that nobody can be judge in his own cause.
There were no other forums, where the aggrieved person could seek the remedy. There was a long outstanding demand for specific tribunal for the member of the Armed Forces. It would be appropriate to provide further that every service matter related to the Armed Forces 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 about such direct appeals mainly on the ground that the necessity of prompt disposal of service disputes of the Armed Forces. While indiscipline in any public service is not desirable and every service dispute should be resolved promptly, their need was 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 Parliament may, by law, determine to what extent any of the fundamental rights shall apply to Armed 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.

**OBJECT OF ARMED FORCES TRIBUNAL ACT, 2007**

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 Law, the Naval Law and the Air Force Law and also to provide for appeals arising out of orders, findings or sentences of Court-Martial held under the said Laws and for matters connected therewith or incidental thereto.

**JURISDICTION OF THE ARMED FORCE TRIBUNALS**

The Tribunal is having all the jurisdiction, powers and authority exercisable in relation to appeal against any order, decision, finding or sentences passed by a Court-Martial or any matter connected therewith or 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. 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 is having all the jurisdiction, powers and authority, exercisable immediately before that day by all Courts except the Supreme Court or a High 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.

**APPEAL AGAINST DECISION OF TRIBUNAL**

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 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.
An appeal to the Supreme Court shall lie with the leave of the Tribunal, and such leave shall not be granted unless it is certified by the Tribunal that a point of law of general public importance is involved in the decision, or it appears to the Supreme Court that the point is one which ought to be considered by that Court. An application to the Tribunal for leave to appeal to the Supreme Court shall be made within a period of thirty days beginning with the date of the decision of the Tribunal and an application to the Supreme Court for leave shall be made within a period of thirty days beginning with the date on which the application for leave is refused by the Tribunal. An appeal shall be treated as pending until any application for leave to appeal is disposed of and if leave to appeal is granted, until the appeal is disposed off, and an application for leave to appeal shall be treated as disposed off at the expiration of the time within which it might have been made, but it is not made within that time. The Supreme Court may, upon an application made at any time by the appellant, extend the time within which an appeal may be preferred by him to that Court.

HYPOTHESIS

The administration of Justice in India 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, which was to be on the sentries recruited for the protection of the factories or trading posts established by East India Company at various places. There have been numerous decisions of the Supreme Court wherein the Apex Court has reiterated the need of establishment of at least one specialist Tribunal so as to ensure that no injustice is being done to the members of the Armed Forces who never hesitate even for supreme sacrifice for the safety and security of the Nation.

The present research work critically examines the various facets of Administration of justice in Armed Forces of the Union of India, role of Armed Forces Tribunal, its evolution and role of judiciary in the administration of justice. The main objects behind the research topic are that, how the military justice system is administered in the modern era, where discipline is the most vital aspect to run military organizations. The thesis shall cover the introduction, various modes of Administration of Justice in Armed Forces, internal mechanism for Administration of Justice, role of judiciary and the role of Armed Forces Tribunal in the Administration
of justice. The legal and justice system in the Armed Forces were intended to be relatively rapid in implementation in order to maintain discipline and evade long absence of officers and men from military and combat duties. Hence, the system of appeals was not included in the Military justice system. Military justice system is considered retrogressive and retributive by some legal researchers. The public also considers it as unduly harsh. Hence the need was felt by the researcher for the present research work.

RESEARCH METHODOLOGY

The brief outline of the present research work has been prepared under the proficient guidance and dynamic analysis of Dr. Ashok Kumar Makkar Assistant Professor. The present research study has been concluded by the doctrinal research methods and the present study shall be carried out by analyzing the existing various statutory legislations, books, reports, judgments, papers, manuals and journals etc. So the secondary sources for data collections shall be used. Hence, the present study has been concluded by analyzing various legislative enactments made by the legislature, cases laws pronounced by the judiciary in connection with different angles and also the decisions made by the newly established Armed Forces Tribunal, arranging them, ordering and systematizing legal propositions related to the concepts derived for the present research work and further study of legal institutions, statutory provisions, text books and commentaries given by renounced authors from time to time.

SCHEME OF RESEARCH WORK/CHAPTERIZATION

The scheme of the research study is divided into the six chapters and the brief descriptions about the chapters are appended below:

Chapter-I is titled as; “INTRODUCTION”. The chapter deals with the introduction of the Administration of justice with regard to the members of the Armed Forces and the genesis of the emergence of the 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 hardships 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 in accordance with the desire of the higher officers of the Armed Forces. There were conspicuous deficiencies of trained lawyers in conducting trials and the Judge Advocates were not professionally trained, rather they were acting as mere instruction following agents of the officials of the Armed Forces. This has resulted in quashing of the findings/sentences/orders of the Court-Martial. The worst scenarios were experienced that Court-Martial became mere formalities. The decisions were already pre-determined and instructed in one or the other way by the higher officials, contrary to the principles of natural justice and the principles underlying in the statutes.

It is also felt that the 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. Even further to that regarding 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 acquitted without inflicting any sentence. But, in the case of the low level officers/subordinates the conditions are contrary and being subjected to harsher punishment. The Military Organizations are adopting dual standards in convening Court-Martial for different rank structure in the Armed Forces. The autocratic and anarchist approaches are prevalent. Further to that in the Air Force the situation is even far worse as the Court-Martial is convened against the officers in accordance to their branch, which is the 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 but no substantive redressal of grievances are taking place. 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 in addition to the pre and post confirmation petitions.
It has being been claimed that several grievance redressal mechanism has been put in place by the Central Government especially by the Ministry of Defence, but the objective reality is that the soldiers are being subjected to hardships less by the enemy and more by the officers. They are being subjected to mental agony, torture and harassment by their superiors in the garb of discipline and safety and security of the nation. They are being subjected to do act as personal servants specially in Army and the situation is not different in the Navy. However, the situation is slightly better in the Air Force. In case someone is trying to seek justice from their superiors, either they are being subjected to face disciplinary action or they are being declared as psychiatric patients without any reason and rhyme and even to the extent that they are being sent to mental asylum for rehabilitations. Their families are being subject to suffer on that account, and there is no one to help them. The members of the Armed Forces are oblivious about their rights and they are aware about their duties only, nothing else. If their rights are being looked after properly, there will be less number of litigations and also the less number of psychiatric patients in Armed Forces of the Union of India.

Chapter-II is titled as; “MODE OF ADMINISTRATION OF JUSTICE IN ARMED FORCES”. The chapter deals with various the modes of administration of justice and covers all the aspects of the administration of justice except Court-Martial which has been discussed in the next chapter. 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. The members of the Armed Forces of the Union of India are being subject to special laws in addition to law of the land which are applicable to common citizens. 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 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. 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 even today which are arising out of summary disposals and trials except invoking of extra-ordinary jurisdiction of the High Court under Article 226 of the Constitution of India or of the Supreme Court under Article 32 of the Constitution of India. This part of the Armed Forces Act remains in the same state even after the enactment of the Armed Forces Tribunal Act, 2007. Since, there is no provision of Summary Court-Martial in the Air Force and Navy, the Army also can function smoothly without it as the other two wings are functioning without any problem. 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 are 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 in accordance 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 his rank 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 the Armed Forces 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 offence of the rape.

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 well as the Presiding Officers of the Court of Inquiry/Investigating Officers of Formal Investigations and also the 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 also determines 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 in nature. Instant chapter deals the procedure for administration of justice in Armed Forces except Court-Martial which has been discussed in the next chapter.

Chapter-III is titled as; “INTERNAL MECHANISM FOR ADMINISTRATION OF JUSTICE IN ARMED FORCES”. The chapter deals with the manner in which the internal mechanism i.e. Court-Martial plays an effective role in administration of justice for the members of the armed forces and critical analysis thereof. Since there were no specific judicial precedents available for the application of Military Law, an official publication called Manual of Military Law was brought out by the British War Office to assist all concerned in the Conduct of the Court-Martial and day-to-day functioning of the Army. The Manual of Indian Military Law was published in diglot form in three volumes in the year 1983. Volume-I consists of eight chapters dealing with a brief history of Military Law in India, outline of the Army Act, 1950, arrest and investigation of charges, Court-Martial, evidences, civil offences, duties in aid of civil power and service privileges. Volume-II contains the Army Act, 1950 and Army Rules, 1954 with explanatory notes, forms and appendices and Volume-III contains the texts or relevant extracts from certain Acts of Parliament which includes the Armed Forces (Special Powers) Act, 1958, the Assam Rifles Act, 1944, the Official Secrets Act, 1923, the Indian Evidence Act, 1872 and the Indian Penal Code, 1860 and also Ordinances in addition to the extracts from the Constitution of India. This volume also contains some of the modifications issued under the Army Act, 1950. Similarly the Manual of Air Force law was compiled by Department of Judge Advocate General (Air) in the year 1988 which is divided into two volumes. Volume-I contains the Air Force Act, 1950 with explanatory notes and case laws and Volume-II contains the Air Force Rules, 1969
with explanatory notes and various forms and notices and whereas Manual Naval consists of only one volume containing the Navy Act, 1957 and Court-Martial procedures thereof.

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 are service officers 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. These laws deal with the various administrative and legal provisions applicable to uniform personnel of the respective wings namely, Army, Air Force and Navy. The 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 the various High Courts that the law and procedures on the basis of which Court-Martial have been convened, has not been adhered to, hereby the decision of the Court-Martial to be declared as null and void.

Chapter-IV is titled as; “ADMINISTRATION OF JUSTICE IN ARMED FORCES: ROLE OF JUDICIARY”. The chapter deals with the aspect of judicial interpretation and decisions of the Supreme Court and the High Courts. 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 to be 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. Therefore, various Benches of the Armed Forces Tribunal were created in almost all the large areas. The 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. In the recent past, significant number of research scholars have been attracted to pursue a legal research on the military law. It is settled principle that the 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 except certain restrictions imposed by the Constitutional provisions as well as the respective statutory laws. But still even today it is interpreted by the higher officials according to their suitability in the name of discipline, not in accordance with the true spirit of the law and the Constitution of India, which can be cited with regard to the Constitutional safeguard of double jeopardy.

Chapter-V is titled as; “ROLE OF ARMED FORCES TRIBUNAL IN ADMINISTRATION OF JUSTICE”. The chapter deals with the establishment, powers, jurisdiction and functioning of the Armed Forces Tribunal and how this has affected the Administration of Justice and what changes has taken place in the Armed Forces after establishment of the Tribunal. 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 in accordance to their suitability in the name of the discipline, not in accordance with the true spirit of the Law and the Constitution of India. 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.

It has been experienced that 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. 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 a soldier is being deprived of very basic fundamental right, which are available to all other citizens. Thus, by the liberal interpretation of the Constitution of India, it can emerge that a citizen has a legal right to seek redressal of any legal injury suffered by him, be it an ordinary citizen or a member of the Armed Forces of the Union of India.

The recent institution of the Armed Forces Tribunal established under the provisions of the Armed Forces Tribunal Act, 2007, having an original as well as appellate jurisdiction. However, it does not have any jurisdiction in matters relating to transfers, postings, leave and Summery Court-Martial except where punishments involve dismissal or imprisonment for more than three months. This serious shortcoming in its original jurisdiction leaves space for arbitrary practices to seep in the form of discretion of the Commanding Officers. There is no provision of legal aid in the new law which itself undermines the fair trial. Though, there is an exclusive body to deal with such litigation, some in-house attitudinal changes are much desired to match with the civilian justice delivery system. The Armed Forces Tribunal cannot be a panacea for all problems. Having regard to the facts that, a large number of cases relating to the service matters of the members of Armed Forces have been pending in the various Courts for the long time, the question of constituting an independent adjudicatory forum for the defence personnel has been engaging the attention of the central government for quite some time, thereby the Armed forces tribunals were established.

VI Chapter-VI is titled as; “CONCLUSION AND SUGGESTIONS”. The first part of the chapter will deal with the conclusion of the scheme of the study, wherein 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 chose. 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.
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