CHAPTER-II
ADMINISTRATION OF JUSTICE IN ARMED FORCES

2.1 INTRODUCTION

The term ‘Administration of justice’ owes its origin in the ancient power in British Crown authorizing Company and Governors for several places to administer justice and to judge all the persons in all the causes whether civil or criminal. The term ‘Administration of justice’ is a very wider connotation, which primarily refers to the set of enactments, precedents, customs, conventions, policies, bye-laws etc. recognized and applied for smooth functioning of the State/Organization. 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. It is extremely unfortunate that even after six decades of independence, there was no appropriate legal safeguard against the arbitrary and capricious actions of the higher officials of the Armed Forces of the Union of India in 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 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 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\(^1\). 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\(^2\) or the Supreme Court.\(^3\) This part of the Armed Forces Act remains in the same state even after the enactment of the Armed Forces Tribunal Act, 2007.

There are generally two different modes of the dispute resolution mechanism in Armed Forces of the Union of India. First one is the summary trials which are alternative punishment of the Court-Martial and the second one is the Court-Martial and both varies according to the rank of the accused and the nature of

\(^1\) Section 3(o), Armed Forces Tribunal Act, 2007
\(^2\) Article 226, Constitution of India
\(^3\) Article 32, Constitution of India
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 according to the rank of the accused as per the procedures established in the respective laws of the Armed Forces of the Union of India. Court-Martial is a military Court or Tribunal specially empowered by the Military Law to act quasi-judicial functions in all the three wings for acting in contraventions of the Military Laws and according to the offences defined in the respective laws, 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.

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 as the Presiding Officer/Trial Judge Advocate of the Court-Martial proceedings for the application of the laws. 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 military 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 internal mechanisms of administration of justice in Armed Forces except the procedure of Court-Martial, which shall be discussed in the next chapter.

2.2 MODES OF ADMINISTRATION OF JUSTICE IN ARMED FORCES

There are various modes of Administration of justice in the three wings of the Armed Forces which vary in accordance with the provisions contemplated in the respective laws such as:

2.2.1 Modes in Army

The administrative action is not punitive in nature. It is meant to be corrective and rehabilitative. The administrative actions include various measures
e.g., reproof, displeasure, severe displeasure, dismissal, removal, reduction, discharge and compulsory retirement. The factors which needs to be considered in deciding whether it is appropriate to take administrative action in a particular case 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 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, wherein 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 is part of the customs of the service.

The warning or a minor censure may be awarded in terms of reproof and can be administered verbally or in writing to the service personnel by the Commanding Officer or by an officer superior in Command to that Commanding Officer. A reproof must not take the form of insult or abuse. It may be strong, but should be directed to the actual fault committed and the language used should not be intemperate or offensive. A reproof should not be administered in the presence of the subordinates unless, it is necessary that the reproof be public. A warning is not to be recorded in the service documents of the person concerned. Before administering reproof by way of a warning, the competent authority must ascertain that the ends of justice would be met by closing the case the case with reproof. Once case has been closed by the administration of reproof by a competent authority, no superior authority can reopen the case.4

In accordance with the customs of service, displeasure or severe displeasure can be awarded to the officers and junior commissioned officers by a superior officer for an act, conduct, omission or offence of a minor nature. The award of censure may be recordable or non-recordable. The authority awarding censure needs to examine the evidence of the inquiry and ensure that a prima facie case

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4 Para 327, Regulations for the Army, 1987
exists for issuing a show cause notice. The reasonable opportunity must be afforded to the affected person whose character or military reputation is likely to be affected to reply to show cause notice.\(^5\) The reply also must be carefully considered by the competent authority and the censure order must be speaking order. The award of censure by the Central Government or the Chief of the Army Staff endorsed in the service records of the persons who has been awarded with that. If recordable censure has been awarded by the General Officer Commanding in Chief of the command, it may operate for three years from the date of the award, and thereafter it is removed from the records. A non-recordable censure does not exist into service records. The award of censure is being regulated by the customs of service since inception of the Army in India. The Army Law stipulates the existence of the customs of the service. The Commanding Officer, while discharging duties as a Commanding Officer has to abide by the customs of service and discharges his functions keeping in view the regulations. The rules of natural justice mandate that an adjudicating administrative authority should afford a reasonable opportunity of being heard to a party by the competent authority.

Where an officer, a junior commissioned officer or a warrant officer is remanded for the disposal of a charge against him by an authority empowered by the Army Law,\(^6\) to deal summarily with that charge, the summary of evidence shall be delivered to him, free of charge, with a copy of the charge sheet as soon as practicable after its preparation and in any case not less than 24 hours before the disposal.\(^7\) Where the authority decides to deal summarily with a charge against an officer, junior commissioned officer or warrant officer, he shall unless he dismisses the charge, or unless the accused has consented in writing to dispense with the attendance of the witnesses, hear the evidence in the presence of the accused. The accused shall have full liberty to cross-examine any witness against him, and to call any witness and to make any statement in his defence.\(^8\) The proceedings shall be recorded and whether the accused has given his consent in writing to dispense the attendance of witnesses at the trial or accused does not consent to dispense with attendance of witnesses at his summary trial to be recorded. Also, in every case in which punishment is awarded, the proceedings together with the conduct sheet,

\(^{5}\) Rule 180, Army Rules, 1954
\(^{6}\) Sections 83, 84 and 85, Army Act, 1950
\(^{7}\) Rule 26(1), Army Rules 1954
\(^{8}\) Rule 26(2), Army Rules 1954
summary of evidence and written consent to dispense with the attendance of witnesses of the accused, shall be forwarded through the proper channel to the superior military authority\textsuperscript{9} of the Army Law.\textsuperscript{10} An authority can dispose off the case summarily, not only if asked to do so but also if he is asked to convene a Court-Martial for trial of the offender. Even if he is asked to deal summarily with a case, he can convene a Court-Martial. If on perusal of the summary of evidence and other relevant documents, without bringing the accused before him, he can dismiss the charges or order a Court-Martial, or he can decide to hear the case summarily.\textsuperscript{11} After hearing the evidence, the authority can still dismiss the case or order a Court-Martial or he can deal summarily with it and award punishment.

An officer having power not less than a brigade, or an equivalent or such other officer, wherein the officiating brigade, sub-area or equivalent commander can also inclusive irrespective of his rank, with the consent of the Central Government, specified by the Chief of the Air Staff,\textsuperscript{12} may proceed against an officer below the rank of field officer wherein the officers of the rank of Major or above cannot be tried, a junior commissioned officer or a warrant officer, who is charged with an offence under the Army Act, 1950, and award one or more of the punishments namely severe reprimand or reprimand, and stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.\textsuperscript{13} However, the sentence of forfeiture of seniority or of service for the purpose of promotion cannot be awarded.\textsuperscript{14}

An officer having power not less than an area commander or an equivalent commander or an officer empowered to convene a General Court-Martial or such other officer\textsuperscript{15} inclusive of officiating area commander or other officer specified in the law irrespective of his rank with the consent of the Central Government, specified by the Chief of the Army Staff,\textsuperscript{16} may 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 the Army Law and award one or more of the

\textsuperscript{9} Section 88, Army Act, 1950
\textsuperscript{10} Rule 26(3), Army Rules 1954
\textsuperscript{11} Rule 23, Army Rules, 1954
\textsuperscript{12} Rule 26, Army Rules, 1954 and Para 444, Regulations for the Army, 1987
\textsuperscript{13} Section 83, Army Act, 1950
\textsuperscript{14} Appendix Q, Regulations for the Army, 1987
\textsuperscript{15} Section 84, Army Act, 1950
\textsuperscript{16} Rule 26, Army Rules, 1954, Para 444 and Appendix Q, Regulations for the Army, 1987
following punishments like 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 Court-Martial, wherein the accused person should be asked before awarding punishment that whether he chose to accept the award or wants to be tried by Court-Martial, severe reprimand or reprimand, and stoppages of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted are made good.\textsuperscript{17}

Commanding Officer or other officer with the consent of the Central Government may proceed against a junior commissioned officer, who is charged with an offence under the Army Law and award one or more of the punishments namely severe reprimand or reprimand and stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good. However, if the Commanding Officer or other officer conducting trial is below the rank of Colonel, he shall not award the punishment of severe reprimand and Reprimand.\textsuperscript{18}

The Army Law does not specifically provide for any right to appeal against summary punishments.\textsuperscript{19} However, if any punishment is awarded, 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.\textsuperscript{20} The powers to review the proceedings shall normally be exercised within a period of two years from the date of award of the punishment.\textsuperscript{21} 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 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 may be made by the superior authority.

\textsuperscript{17} Section 84, Army Act, 1950
\textsuperscript{18} Section 85, Army Act, 1950, Rule 26, Army Rules, 1954 and Appendix Q, Regulations for the Army, 1987
\textsuperscript{19} Sections 80 and 83-85, Army Act, 1950
\textsuperscript{20} Sections 87-88, Army Act, 1950 and Para 442, Regulations for the Army, 1987
\textsuperscript{21} Para 442, Regulations for the Army, 1987
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. 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 was 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. Punishments awarded under the Army Law 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.

The Central Government may dismiss, or remove from the service any person. The dismissal or removal may be on account of the reasons of failure to qualify at an examination or course, misconduct, or inefficiency or physical disability. The Central Government is empowered to dismiss or remove from service of any person, but only in accordance with the rules, which requires that a show cause notice is to be served upon an officer before his service is terminated on grounds of his failure to qualify at an examination or course, misconduct or inefficiency. Such show cause notice may be dispensed with by the Central Government when it is considered inexpedient or impracticable to do so or when the officer is already convicted by a Criminal Court for the misconduct. The Army

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22 Sections 83-85, Army Act, 1950
23 Section 88, Army Act, 1950
24 Sections 80 and 82, Air Force Act, 1950
25 Para 442, Regulations for the Army Act, 1950
26 Section 19, Army Act, 1950
27 Rules 13-A, 14 and 15, Army Rules, 1954
Rules provides for the release of an officer on medical grounds, which is to be carried out on the recommendations of a Medical Board.\(^{28}\)

When it is proposed to terminate the service of an officer under the Army Law\(^{29}\) on account of misconduct, he shall be given an opportunity to show cause against such action.\(^{30}\) However, this will not apply where the service is terminated on the ground of misconduct which has lead to his conviction by a Criminal Court or where the Central Government is satisfied that for reasons, to be recorded in writing, it is not expedient or reasonably practicable to give to the officer an opportunity of showing cause.\(^{31}\) After considering the reports on the misconduct of the officer, the Central Government or the Chief of the Army Staff is satisfied that the trial of the officer by a Court-Martial is inexpedient or impracticable, but is of the opinion, that the further retention of the said officer in service is undesirable, the Chief of the Army Staff shall so inform the officer together with all reports adverse to him and he shall be called upon to submit his explanation and defence in writing. However, the Chief of the Army Staff may withhold from disclosure any such report or portion thereof, if its disclosure is not in the interest of the security of the State. In the event of the explanation of the officer being considered unsatisfactory by the Chief of the Army Staff, or when so directed by the Central Government, the case shall be submitted to the Central Government, with the defence of the officer and the recommendations of the Chief of the Army Staff as to the termination of the service of the officer in accordance with the provisions of the Army Law.\(^{32}\)

Where, upon the conviction of an officer by a Criminal Court, the Central Government or the Chief of the Army Staff considers that the conduct of the officer which has led to his conviction renders his further retention in service undesirable, a certified copy of the judgment of the Criminal Court convicting him shall be submitted to the Central Government with the recommendation of the Chief of the Army Staff for the termination of the services of the officer. When submitting a case to the Central Government, the Chief of the Army Staff shall make his recommendation whether the service of the officers should be terminated, and if so, whether the officer should be dismissed from service, removed from the service or

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\(^{28}\) Rule 15-A, Army Rules, 1954

\(^{29}\) Section 19, Army Act, 1950

\(^{30}\) Rule 14, Army Rules, 1954

\(^{31}\) Provisions (a) and (b) Rule 14, Army Rules, 1954

\(^{32}\) Rule 14(4), Army Rules, 1954
compulsorily retired from the service. The Central Government, after considering the reports and the defence of the officer or the judgment of the criminal Court and the recommendations of the Chief of the Army Staff, may dismiss or remove the officer with or without pension or gratuity or compulsorily retire him from the service with pension and gratuity admissible to him.

The Chief of the Army Staff may dismiss or remove from the service of any person subject to Army Law other than an officer.\textsuperscript{33} The Chief of the Army Staff may reduce to a lower grade or rank or the ranks, any warrant officer or any non-commissioned officer. A Brigade Commander or equivalent commander or any prescribed officer may dismiss or remove from the service any person serving under his command other than an officer or a junior commissioned officer. Such an officer may also reduce to a lower grade or rank or the ranks, any warrant officer or any non-commissioned officer under his command. However, a warrant officer reduced to the ranks, under these provisions shall not be required to serve in the ranks as a sepoy. The Commanding Officer of a person holding the acting rank may order him to revert to his permanent grade as a non-commissioned officer, or if he has no permanent grade above the rank, to the ranks. The exercise of any power shall be subject to the provisions contained in the Army Act, 1950, the Army Rules, 1954 and the Army Regulations, 1987.

No person shall be dismissed or removed under the provisions of the Army Act, 1950, unless he has been informed about the particulars of the cause of action against him and allowable reasonable time to state in writing any reasons he may have to urge against the dismissal or removal from the service.\textsuperscript{34} However, if in the opinion of the officer competent to order the dismissal or removal, it is not expedient or reasonably practicable to comply with the provisions of this provision, he may, after certifying to that effect, order, the dismissal or removal without complying with the procedures set out in the Army Rules. All cases of dismissal or removal where the prescribed procedure has not been complied with, shall be reported to the Central Government. The Hon'ble Supreme Court has held in the case of \textit{Ramesh Kumar Sharma v. Union of India and others},\textsuperscript{35} that it is not

\textsuperscript{33} Rule 20, Army Rules, 1954
\textsuperscript{34} Rule 17, Army Rules, 1954
\textsuperscript{35} Civil Appeal No. 3222 of 2006 Decided on 01\textsuperscript{st} August 2006
necessary to hold a Court of Inquiry for initiating action under Army Rules, 1954 and action can be taken on the basis of information received from other sources.36

2.2.2 Modes in Air Force

A Commanding Officer or any superior officer may reprove an officer or warrant officer under his command for an offence, which is not of such a serious nature as to warrant disciplinary action under the provisions of the Air Force Law. The reproof of an officer or warrant officer is not a recognized punishment under the provisions of the Air Force Law, and will not be entered in the record of the officer or the warrant officer. In order to avoid any confusion with the word reprimand, which is a recognized punishment under the Air Force Law, it is not to be referred to by any terms other than ‘reprove’ or ‘reproof’.37 The censure should not be awarded without affording reasonable opportunity to the officer or warrant officer to explain his conduct, act or omission at a Court of Inquiry or Formal Investigation.38 If the incident was not investigated, or if investigated, could not be applied properly in accordance with the principles of natural justice, then a show cause notice listing out the facts, on account of which the award of censure is contemplated, will be served to the officer or the warrant officer. Extra care must be exercised to ensure that the procedure is not adopted when the superior authority is likely to consider that the offence warrants for disciplinary action under the Air Force Law, as the reproof might be held to the condonation of the offence and further it becomes a bar for disciplinary action.39 The censure is a matter of customs of service, which is awarded for trivial offences or minor lapses which are not so serious nature as to warrant disciplinary action under the provisions of the Air Force Law or where the disciplinary action is inexpedient or impracticable. The censure may take the form of reproof, displeasure or severe displeasure. The award of displeasure or severe displeasure carries negative marks for the consideration of the promotion board depending on the period for which it is expressed.

According to the provisions of the regulations,40 a Commanding Officer or any superior officer may reprove a master warrant officer, a warrant officer or a junior warrant officer under his command for an offence, which in his opinion is

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36 Rule 17, Army Rules, 1954  
37 Para 712(a), Regulations for the Air Force, 1964  
38 Para 790, Regulations for the Air Force, 1964  
39 Para 712(b), Regulations for the Air Force, 1964  
40 Para 712, Regulations for the Air Force, 1964
not of such a serious nature as to merit disciplinary action under the Air Force Law.\textsuperscript{41} The award of reproof is not a recognized punishment under the Air Force Law and will not be entered in the service record of the individual, though it may be referred to, in the confidential report of the individual. In order to avoid any confusion with the award of punishment of reprimand under the Air Force Law, it is not to be referred to by any terms other than ‘Reproved’ or ‘Reproof’. The Air Officer Commanding-in-Chief or the Air Officer in charge Administration or the Commanding Officer may also reprove a master warrant officer, a warrant officer or a junior warrant officer, who was serving under his command at the time of the commission or omission of the impugned act or misconduct.

The severe displeasure or displeasure may be awarded to an officer by the Central Government or the Chief of the Air Staff, or the Air Officer Commanding-in-Chief under whom the officer is serving or was serving at the time of the commission or omission of the impugned act or omission or misconduct or by the Air Officer in charge Administration, if the Officer/Airman is serving was serving in Air Head Quarters or in a Unit under the direct administrative control of Air Head Quarters.\textsuperscript{42} The severe displeasure or displeasure of the Central Government will normally be conveyed in the form of a letter and the same will be kept permanently in the personal file of the officer. The severe displeasure will be expressed in terms of a period not exceeding 36 months in the case of award by the Chief of the Air Staff and not exceeding 18 months in the case of award by the Air Officer Commanding-in-Chief or Air Officer in charge Administration. The period of award of severe displeasure will be awarded in multiples of six months and the same is to be specified at the time when such censure is approved by the competent authority. There will be no period of award for displeasure.

When a charge against an officer below the rank of Squadron Leader or a warrant officer is to be tried summarily,\textsuperscript{43} the summary of evidence is being ordered by the Commanding Officer in compliance of the provisions of Air Force Rules,\textsuperscript{44} after reading the charges framed by the Commanding Officer.\textsuperscript{45} The summary of evidence may be recorded by the Commanding Officer himself or by the officer

\textsuperscript{41} Air Force Order No. 03 of 2008  
\textsuperscript{42} Air Force Order No. 03 of 2008  
\textsuperscript{43} Section 86, Air Force Act, 1950  
\textsuperscript{44} Rule 24, Air Force Rules, 1969  
\textsuperscript{45} Rules 34-37, Air Force Rules, 1969
serving under his command and detailed by him in writing in pursuance of the clear terms that such officer has been detailed to record the summary of evidence. Summary of evidence cannot be recorded on oath. However, the basic guidelines of the Indian Evidence Act, 1872 is to be followed.

No summary trial can legally be held, unless a summary of evidence has been recorded against the accused and a copy each of the charge sheet and the summary of evidence has been delivered to the accused not less than forty eight hours before such summary trial. The copies of the charge sheet and summary of evidence are to be supplied to the accused free of charge, and should be given as soon as practicable after their preparation. The responsibility for doing this rests upon the Commanding Officer of the accused. While referring the case for summary trial under this section, it is desirable that the Commanding Officer should obtain a certificate from the accused to the effect that he is willing to dispense with the personal attendance of witnesses at the summary trial. If the accused declines to give such a certificate, the summary trial may be prolonged and may involve taking down evidence of witnesses. Hence, in such cases the officer empowered to hold the summary trial, may decide not to dispose of the charge. After recording the summary of the evidence the entire proceedings are submitted to the Commanding Officer, who after going through the entire proceedings shall either remand the accused for trial by Court-Martial or refer the case to the proper superior Air Force authority for disposal or if he thinks it desirable, re-hear the case and dispose off summarily. The entire procedures are completed under the guidance of the Judge Advocate branch at the Command or the Air Headquarters as the case may be. In case a station is being commanded by the officer of the rank of Air Commodore the persons of the lodger unit does not come directly under his command for such trial. The accused needs to attach in writing with movement order to the unit which is directly commanded by the Air Officer.

Further, when a charge against an officer upto the rank of Flight Lieutenant or the warrant officer is to be tried summarily a copy of the summary of evidence shall be furnished to the accused free of cost as soon as practicable after preparation, and in any case not less than 48 hours before such trial. The officer

46 Section 86, Air Force Act, 1950
47 Rule 25,.Air Force Rules, 1969
48 Rule 31(1), Air Force Rules 1969
dealing with the case summarily shall hear all the witnesses in the presence of the accused, but may dispense with the hearing of any or all witnesses, if the accused person consents in writing thereto.49 If the accused person demands the evidences to be taken on oath, the officer dealing with the case summarily shall administer to each witness before he gives his evidence, the oath or affirmation,50 but the accused person shall not be sworn.51 The accused may put questions in cross examination to any witness, call any witness and make a statement in his defence.52 The proceedings shall be recorded53 and used for summary disposal of charges against officers and warrant officers and in every case in which a punishment is awarded, the original and certified true copy of the proceedings together with the summary of evidence shall be forwarded through the proper channel to the superior Air Force authority.54

If a minor punishment awarded under the Air Force Law,55 appears to the Central Government, the Chief of the Air Staff, or any other officer superior in command to the officer who awarded the punishment, to be wholly illegal, such authority shall direct that the award can be cancelled and the entry in the records of the accused be expunged.56 If such minor punishment appears to the authority specified, to be in excess of the punishment authorized by law, such authority may vary the punishment awarded so that it shall not be in excess of the punishment authorized by the law, and the entry in the records of the accused shall also vary accordingly.57 If such minor punishment appears to the authority specified above to be too unjust or too severe having regard to all circumstances of the case, such authority may mitigate or remit the punishment awarded or commute the punishment for any other punishments lower in the scale,58 which the Commanding Officer or other officer exercising powers under the provision could have validly awarded. Such mitigation, remission or commutation shall be entered in the records

49 Rule 31(2), Air Force Rules 1969
50 Rule 118, Air Force Rules 1969
51 Rule 31(3), Air Force Rules 1969
52 Rule 31(4), Air Force Rules 1969
53 Fourth Schedule and Rule 31(5), Air Force Rules, 1969
54 Section 89, Air Force Act, 1950
55 Section 82, Air Force Act, 1950
56 Rule 33(1), Air Force Rules, 1969
57 Rule 33(2), Air Force Rules, 1969
58 Section 82, Air Force Act, 1950
of the accused. However, for the purpose of this provision, the field punishment shall be deemed to be higher than that of the detention. Further, the field punishment shall not be commuted for punishment of detention for a term exceeding term of such field punishment and the field punishment or detention shall not be commuted for a punishment of confinement to camp for a term exceeding the term of such field punishment or detention. Any authority specified may, in addition to or without any order passed under may in addition to or without any order passed under the aforesaid provisions issue such direction in any case as may appear to such authority to be necessary for doing justice in the matter.

An officer may be dismissed or removed from service for misconduct by the Central Government but before doing so, he shall be given an opportunity to show cause why such action is being initiated against him. Where the dismissal or removal of an officer is proposed on the grounds of misconduct, which has led to his conviction by a criminal Court, or where the Central Government is satisfied that for reasons to be recorded in writing, it is not expedient or reasonably practicable to do so, it shall not be necessary to give an opportunity to the officer of show cause against his dismissal or removal. Where an officer has been convicted by a Criminal Court and the central Government after examining the judgment of the Criminal Court in his case and considering the recommendation about him of the Chief of the Air Staff, is of the opinion that further retention of such officer in the service is undesirable, that Government may dismiss or remove such officer from the service. When the Chief of the Air Staff, after considering the reports on the misconduct of the officer, is of opinion that the trial of the officer by a Court-Martial is inexpedient or impracticable but the further retention of the officer in service is undesirable, he shall so inform the officer, all reports adverse to him calling upon him to submit in writing within a reasonable period, his explanation in defence and any reasons which he may wish to put forward against his dismissal or removal. The Chief of the Air Staff may withhold from disclosure any report

59 Rule 33(3), Air Force Rules, 1969
60 Provisio Rule 33(3) Air Force Rules, 1969
61 Additional provisio Rule 33(3), Air Force Rules, 1969
62 Rule 33(4), Air Force Rules, 1969
63 Section19, Air Force Act, 1950 and Rule 16(1), Air Force Rules, 1969
64 Rule 16(2), Air Force Rules, 1969
65 Rule 16(3), Air Force Rules, 1969
66 Rule 16(5), Air Force Rules, 1969
67 Rule 16(4), Air Force Rules, 1969
adverse to an officer or any portion thereof, if in his opinion its disclosure is not in
the interests of the security of the State.\textsuperscript{68} If no explanation is received from the
officer within the specified period or if the explanation received is considered to be
not satisfactory or, when so directed by the Central Government, the reports against
the officer as well as his explanation if any, shall be submitted to the Central
Government by the Chief of the Air Staff together with his recommendation as to
the dismissal or removal of the officer from the service.\textsuperscript{69} The Central Government
may, after considering the reports against the officer and his defence and the
recommendations of the Chief of the Air Staff, dismiss or remove the officer from
the service.\textsuperscript{70}

The provisions of the Air Force Rules contemplates that, the Chief of the
Air Staff while submitting a case to the Central Government may recommend that
instead of removing that an officer from service, he may be compulsorily retired or
that he should be called upon to resign his commission, and the Central
Government in passing orders may instead of removing an officer from service,
compulsorily retire him or give the officer an option to submit his resignation, and
if he refuses to do so, remove him from service.\textsuperscript{71} The dismissal under the Air Force
Law\textsuperscript{72} is not a punishment.\textsuperscript{73} It merely amounts to termination of service without
consent.

The Chief of the Air Staff may dismiss or remove from the service any
person other than the officer and also reduce to a lower grade or rank or the ranks,
any warrant officer or any non-commissioned officer.\textsuperscript{74} An officer having power
not less than an officer in charge of a Command or equivalent or any prescribed
officer may dismiss or remove from the service any person serving under his
command other than an officer or a warrant officer.\textsuperscript{75} The prescribed officer for the
purpose of this provision shall be the Air or other officer commanding group, and in
respect of airmen serving at Air Headquarters or units directly under Air
Headquarters, the Air Officer in charge Administration.\textsuperscript{76} The High Court of

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\textsuperscript{68} Rule 16(5), Air Force Rules, 1969
\textsuperscript{69} Rule 16(6), Air Force Rules, 1969
\textsuperscript{70} Rule 16(7), Air Force Rules, 1969
\textsuperscript{71} Rule 16(8) and Rule 17, Air Force Rules, 1969
\textsuperscript{72} Section 19, Air Force Act, 1950
\textsuperscript{73} Section 73, Air Force Act, 1950
\textsuperscript{74} Section 20(1) and 20(2), Air Force Act, 1950
\textsuperscript{75} Section 20(3), Air Force Act, 1950
\textsuperscript{76} Rule 160 A, Air Force Rules, 1969
Judicature at Allahabad in the case of *N.N. Chakravarthy v. Union of India and other*, has held that the powers granted are not unfettered and unguided. On Active service, an officer commanding in the field area may reduce to a lower rank or to the ranks any warrant officer or non-commissioned officer under his command. The Supreme Court in the case of *Union of India and others v. S.K. Rao*, has held that the powers exercisable in such cases are independent of each other. Therefore, a person could be removed under the Army Law or under the Air Force Law without resorting to the Court-Martial. A person who has been administratively dismissed or removed or reduced under this provision has a statutory right to submit a petition under the Air Force Law and the regulations.

### 2.2.3 Modes in Navy

The Central Government or the Chief of the Naval Staff or the Flag Officer Commanding-in-chief of a Naval command or the Commanding Officer of a ship or the Officer-in-charge of a Naval academy may impose summary punishment on any officer below the rank of Commander. The Naval Law mandates that the Central Government may impose on any officer below the rank of Commander one or more of the punishments, namely forfeiture of seniority in rank of not more than twelve months, forfeiture of time for promotion of not more than twelve months and muls of pay and allowances. The Chief of the Naval Staff may impose on any officer below the rank of Commander one or more of the punishments, like forfeiture of seniority in rank of not more than six months, forfeiture of time for promotion of not more than six months and muls of pay and allowances. The Flag Officer Commanding-in-Chief of a Naval Command may, impose on any officer below the rank of Commander one or more of the punishments, namely forfeiture of seniority in rank of not more than three months, forfeiture of time for promotion of not more than three months and muls of pay and allowances.

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77 1980 SLJ 545 All
78 Section 20(3), Air Force Act, 1950
79 Section 20(4), Air Force Act, 1950
80 AIR 1972 SC 1137
81 Section 19, Army Act, 1950
82 Section 20, Air Force Act, 1950
83 Sections 26 and 27, Air Force Act, 1950
84 Para 621 and 622, Regulations for the Air Force, 1964
85 Regulation 147 I, Regulations for the Navy, 1965
86 Regulation 147 H, Regulations for the Navy, 1965
87 Regulation 147 E, Regulations for the Navy, 1965
of not more than three months, severe reprimand or reprimand and muls of pay
and allowances.  

The Commanding Officer of a ship or the Officer-in-charge of the Naval
Academy may impose on any subordinate officer whilst under training, the
punishments may be awarded are severe reprimand, reprimand, stoppage of leave
for a period not exceeding 14 days and extra work or drill for a period not
exceeding 14 days. For imposing of punishment herein, it shall not be necessary
for the Commanding Officer of a ship or officer-in-charge of the Naval Academy to
serve a show cause notice to the accused officer or hear the accused officer in
person or by any friend or Counsel.  

When the Commanding Officer proposes to award a punishment of
forfeiture of seniority in rank or time for promotion to a subordinate officer, the
accused officer may be given an opportunity to show cause. When after considering
the report on a misconduct of a subordinate officer, if the Commanding officer is of
the opinion that the misconduct of the officer deserves to be punished, he shall so
inform the officer together with all reports adverse to him and call upon him to
submit in writing his explanation in defence. However, the Commanding Officer,
may withhold from disclosure any such report if its disclosure is not in the public
interest. On receipt of the explanation of the officer, the Commanding Officer shall
consider it and may impose the punishment of forfeiture of seniority in the rank or
time for promotion. Where the punishment awarded involves forfeiture of
seniority in the rank, the same shall require approval of the Chief of the Naval Staff,
or the Flag Officer commanding-in-Chief of a Naval Command if the accused is
serving in a command.  

The proceedings of the trial of an officer other than the subordinate officer
by the Flag Officer Commanding-in-Chief of a naval command, where the charges
if proved would justify an award of forfeiture of seniority in rank or time for
promotion, shall be recorded as far as possible, with such variations as may be
necessary by the circumstances of the each case. The report submitted to the Flag
Officer Commanding-in-Chief repeating to the misconduct of an accused officer

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88 Section 95, Navy Act, 1957
89 Section 94, Navy Act, 1957
90 Regulation 147 B, Regulations for the Navy, 1965
91 Section 94(3), Navy Act, 1957
92 Regulation 147C, Regulations for the Navy, 1965
shall contain the statement of the witnesses duly signed and a list of charges of which the accused officer is assigned. The trial of the accused officer may take place at a venue, date and time convenient to the Flag Officer Commanding-in-Chief. The Commanding Officer or any other suitable officer nominated by him shall present the case of the prosecution before the Flag Officer Commanding-in-Chief and act as the presenting officer during the trial. An officer appointed by the Flag Officer Commanding-in-Chief shall make a report of the proceedings of the trial under his directions. The accused shall defend himself and shall not be entitled to be defended by any other officer or counsel. The Flag Officer Commanding-in-Chief shall decide all questions arising in the course of the trial.93

On receipt of a report, when the Chief of the Naval Staff proposes to award a punishment of forfeiture of seniority in the rank or time for promotion,94 on account of misconduct of an officer, the officer may be given an opportunity to show cause against the proposed action. When, after considering the report of the misconduct of the officer, the Chief of the Naval Staff is of the opinion that the officer deserves to be punished, he shall so inform the officer together with all reports adverse to him and call upon him to submit in writing, his explanation and defence together with his opinion, if the same has not been exercised by him earlier, whether he consents to accept summary award95 or elects to be tried by the Court-Martial. However, the Chief of the Naval Staff may withhold from disclosure any such any such report, if its disclosure is not in the public interest. On receipt of the explanation rendered by the officer, if the same is found unsatisfactory, the Chief of the naval staff may impose the punishment of forfeiture of seniority in the rank or time for promotion,96 or if he considers that the punishment within his power shall not be adequate, submit a report of the case together with all the relevant records to the Central Government,97 for being dealt with or initiate steps to bring the accused officer to trial by the Court-Martial.98

On receipt of a report of misconduct of an officer, when the Central Government proposes to award a punishment of forfeiture of seniority in the rank or

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93 Regulation 147G, Regulations for the Navy, 1965
94 Section 94(2), Navy Act, 1957
95 Section 94, Navy Act, 1957
96 Section 94(2), Navy Act, 1957
97 Section 94(1), Navy Act, 1957
98 Regulation 147 H, Regulations for the Navy, 1965
time for promotion, he may be given an opportunity to show cause, if not already done so by the Flag Officer Commanding-in-Chief or Chief of the Naval Staff. Where forfeiture of seniority is proposed to be awarded for misconduct, the Central Government is of the opinion that the officer deserves to be punished, he shall be so informed together with all records adverse to him and call upon him to submit in writing his explanation in defence, together with his opinion, if the same has not been exercised by him earlier, whether he consents to accept summary award or elects to be tried by the Court-Martial. However, if the explanation of the officer is not satisfactory, and if the officer has not elected to be tried by Court-Martial, the Central Government shall consider it and may impose the punishment of forfeiture of seniority in the rank or time for promotion as empowered by the Law.

When it is proposed to terminate the service of an officer, on account of misconduct, he shall be given an opportunity to show cause. However, where the service is terminated on the ground of misconduct, which has led to his conviction by a civil Court, or where the Government is satisfied for the reasons, to be recorded in writing. It is not expedient or reasonably practicable to give to the officer an opportunity for showing cause. After considering the reports of the misconduct of the officer, the Central Government or the Chief of the Naval Staff, is satisfied that the trial of the officer by the Court-Martial is inexpedient or impracticable, but is of the opinion that the further retention of the said officer in the service is undesirable, the Chief of the Naval Staff shall so inform the officer together with all reports adverse to him and he shall be called upon to submit his explanation and defence in writing. However, the Chief of the Naval Staff may withhold from disclosure of any such report or portion thereof, if its disclosure is not in the interest of the security of the State. In the event of the explanation of the officer being considered unsatisfactory by the Chief of the Naval Staff, or when so directed by the Government, the case shall be submitted to the Central Government with the defence of the officer and the recommendation of the Chief of the Naval Staff as to the termination of the service of the officer. When submitting a case to the Central Government the Chief of the Naval Staff shall make his

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99 Section 94(1), Navy Act, 1957
100 Section 94, Navy Act, 1957
101 Section 94(1), Navy Act, 1957
102 Regulation 147 I, Regulations for the Navy, 1965
103 Section 15, Navy Act, 1957
recommendation whether the service of the officer should be terminated and if so, whether the officer should be dismissed from the Naval service, discharged from the service, called upon to retire, or called upon to resign. The Central Government after considering the reports and the defence of the officer and the recommendation of the Chief of the Naval staff, may dismiss or discharge the officer with or without pension or call upon him to retire or resign and on his refusing to do so, the officer may be compulsorily retired or discharged from the service on pension or gratuity, if any, admissible to him.

2.3 CONCURRENT JURISDICTION OF CRIMINAL COURT

Concurrent jurisdiction is the power to try offences by different Courts at the same time, within the same territory, and over the same subject matters. The Criminal Procedure Code, 1973 provides the option of concurrent jurisdiction for the trial, if the offender belongs to the Armed Forces of the Union of India. It prescribes the delivery to Commanding Officers of persons liable to be tried by the Court-Martial for the commission of civil offences. The Criminal Court and the Court-Martial, may each have jurisdiction in respect of the same offence. Adjustment of jurisdiction is provided in the Army Law and in the Air Force Law, which confers the powers to the military authorities the right of deciding by which Court the alleged offender is to be tried, however, when a criminal Court considers that proceedings ought to be instituted before itself, it may require the prescribed military authority to deliver over the offender or to postpone proceedings pending a reference to the Central Government. The civil offences contained in the Indian Penal Code, 1860, if committed by persons subject to Military Law are triable by the civil power and are therefore not triable by a Court-Martial under the Army Law and the Air Force Law. Such an offence may, however, be tried by the Court-Martial, if it amounts to a military offence or to some other civil offence triable under the Army Act, 1950 and if so charged. Though, a wide power of trial by the Court-Martial is given, it is not as a rule expedient to exercise the power universally. Where troops are stationed at places having no competent civil

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104 Section 15, Navy Act, 1957
105 Regulation 216, Regulations for the Navy, 1965
106 Section 475, Code of Criminal Procedure, 1973
107 Sections 125 and 126, Army Act, 1950
108 Sections 124 and 125, Air Force Act, 1950
109 Section 69, Army Act, 1950
110 Section 71, Air Force Act, 1950
(criminal) Courts, it is necessary to try all offences committed by persons subject to Army Law by military tribunals. But inside Indian territory, where a competent civil Court has been established, it is desirable to try by a civil (criminal) Court a civil offence omitted by a person subject to Military Law and if the offence is one which relates to the property or person of a civilian or is committed in conjunction with a civilian, or if the civil authorities intimate a desire to bring the case before a civil Court. The detailed procedure of concurrent jurisdiction is governed by Criminal Courts and Court-Martial (Adjustment of Jurisdiction) Rules, 1978.

The Code of Criminal Procedure, 1973 provides that the Central Government may make rules consistent with this Code and the Army Act, 1950, Navy Act, 1957 and the Air Force Act, 1950 and any other law, relating to the Armed Forces of the Union, for the time being in force, as to cases in which persons subject to Military, Navel or Air Force law, or such other law, shall be tried by a Court to which this Code applies or by a Court-Martial, and when any person is brought before a Magistrate and charged with an offence for which he is liable to be tried either by a Court to which this Code applies or by a Court-Martial, such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the Commanding Officer of the unit to which he belongs, or to the Commanding Officer of the nearest Military, Naval or Air Force station, as the case may be, for purpose of being tried by a Court-Martial. Every Magistrate shall, on receiving a written application for that purposes by the Commanding Officer of any unit or body of soldiers, sailors or airmen stationed or employed at any such place, use his utmost endeavours to apprehend and secure any person accused of such offence. A High Court may direct that a prisoner detained in any jail situated within the State be brought before a Court-Martial for trial or to be examined touching any matter pending before the Court-Martial. The civil offence committed by a person subject to Military laws, if the offence is one which relates to the property or person of a civilian or is committed in conjunction with a civilian, or if the civil authorities intimate a desire to bring the case before a civil Court. Court-Martial is restrained from trying cases of murder or culpable homicide of a person not subject to Military, Naval or Air Force law or cases of rape in relation to such a person, unless

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111 Section 475, Code of Criminal Procedure, 1973
the offence is committed on active service or at a specified frontier post or at any place outside India.

The Central Government is empowered to make rules consistent with the Code of Criminal Procedure, 1973 and the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950, and any other law relating to the Armed Forces of the Union of India, as to the cases in which the persons subject to Military, Naval, or Air Force law, or such other law, shall be tried by a Court to which the Code of Criminal Procedure, 1973 applies or by a Court-Martial. In exercise of the powers conferred by the Code of Criminal Procedure, 1973, the Government of India has made the Criminal Courts and Court-Martial (Adjustment of Jurisdiction) Rules, 1978. The rules provides the procedure to resolve any dispute concerning the trial of the persons subject to military, naval or Air Force Law, under the respective service Law by a Court-Martial or a Criminal Court. The Hon'ble Supreme Court in the case of Union of India and others v. Major S.K.Sharma, has held that the Criminal Courts and Court-Martial (Adjustment of Jurisdiction) Rules, 1978 empowers the magistrate, on coming to know that a person has committed an offence and proceedings in respect of which ought to be instituted before him and that the presence of such person cannot be procured except through Military, Naval or Air Force, to require the Commanding Officer of such person either to deliver such person to a magistrate for trial or to stay the proceedings against such person before the Court-Martial, and to make a reference to the Central Government for determination as to the Court before which the proceedings should be instituted.

In the Criminal Courts and Court-Martial (Adjustment of Jurisdiction) Rules, 1978, in relation to a person subject to Military Laws, the Commanding Officer means the officer commanding of the unit to which such person belongs or is attached, in relation to a person subject to Naval law, means the Commanding Officer of a ship or naval establishment or unit to which such person belongs or attached and in relation to a person subject to Air Force Law, means the officer for the time being in command of the unit to which such person belongs or is

112 Section 475(1), Code of Criminal Procedure, 1978
113 AIR 1987 SC 1878
114 Rule 2(a)(i), Criminal Courts and Court-Martial (Adjustment of Jurisdiction) Rules, 1978 and Section 3(v), Army Act, 1950
attached. The ‘Competent Military Authority’ means the Chief of the Army Staff or officer commanding the Army, corps, division, area, sub-area or independent brigade in which the accused person is serving, and except in cases falling under the Army Law, the officer commanding the brigade or sub-area or station in which the accused person is serving. The ‘Competent Naval Authority’ means the Chief of the Naval Staff or the Flag Officer Commanding-in-Chief of Western Naval Command Bombay or Eastern Naval Command Vishakhapatnam or Flag Officer Commanding Southern Naval Area, Cochin or Western Fleet or Eastern Fleet Senior Naval Officer where the accused person is serving. The ‘Competent Air Force Authority’ means the Chief of the Air Staff, the Air or other officer commanding any command, wing or station in which the accused person is serving, or where such person is serving in the field area, the officer commanding the forces or the Air Forces in the field. When a person subject to Military, Naval or Air Force is brought before a magistrate and charged with an offence for which he is also liable to be tried by the Court-Martial, such magistrate shall not proceed to try such person or to commit the case to the Court of Session unless he is moved thereto by a Competent Military, Naval or Air Force, or he is of the opinion, for the reasons to be recorded, that he should so proceed or to commit without being moved thereto by such authority.

The magistrate shall give a written notice to the Commanding Officer or the Competent Military, Naval or Air Force of the accused and until the expiry of a period of 15 days from the date of service of the notice, he shall not convict or acquit the accused under the provisions of the Code of Criminal Procedure, 1973, or hear him in his defence, frame in writing a charge against the accused, make an order committing the accused for trial to the Court of

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116 Rule 2(a)(iii), Criminal Courts and Court-Martial (Adjustment of Jurisdiction) Rules, 1978 and Section 4(xv), Army Act, 1950
117 Section 69, Army Act, 1950
118 Rule 2(c), Criminal Courts and Court-Martial (Adjustment of Jurisdiction) Rules, 1978
119 Rule 2(d), Criminal Courts and Court-Martial (Adjustment of Jurisdiction) Rules, 1978
120 Rule 2(b), Criminal Courts and Court-Martial (Adjustment of Jurisdiction) Rules, 1978
121 Rule 3(a), Criminal Courts and Court-Martial (Adjustment of Jurisdiction) Rules, 1978
122 Rule 3(b), Criminal Courts and Court-Martial (Adjustment of Jurisdiction) Rules, 1978
123 Rule 3(b), Criminal Courts and Court-Martial (Adjustment of Jurisdiction) Rules, 1978
124 Sections 252, 256 and 257, Code of Criminal Procedure, 1973
Session\textsuperscript{127} under the Code of Criminal Procedure, 1973,\textsuperscript{128} or makeover the case for inquiry or trial\textsuperscript{129} under the Code of Criminal Procedure, 1973.\textsuperscript{130} Where a magistrate has been moved by the competent Military, Naval or the Air Force,\textsuperscript{131} and such authority as, subsequently give notice to such magistrate that, in opinion of such authority, the accused should be tried by the Court-Martial and, such magistrate if he has not taken any action or made any order,\textsuperscript{132} before receiving the notice shall stay the proceedings and if the accused is in his power or under his control or under his control, shall deliver him together with a statement of offence to the Commanding Officer for trial by a Court-Martial.\textsuperscript{133}

Where within the period of fifteen days,\textsuperscript{134} or any time thereafter but before the magistrate takes any action or makes any order referred to in that provision, the Commanding Officer of the accused or the Competent Military, Naval or Air Force Authority, gives notice to the magistrate that in the opinion of such officer or authority, the accused should be tried by the Court-Martial and the magistrate shall stay the proceedings and if the accused is in his power or under his control, shall deliver him together with the statement of offence to the Commanding Officer.\textsuperscript{135}

Where an accused has been delivered by the magistrate,\textsuperscript{136} the Commanding Officer of the accused or the Competent Military, Naval or Air Force, shall as soon as may be, inform the magistrate whether the accused has been tried by a Court-Martial or other effectual proceedings have been taken or ordered to be taken against him. When the magistrate has been informed under the aforesaid provision that the accused has not been tried or other effectual proceedings have not been taken or ordered to be taken against him, the magistrate shall report the circumstances to the State Government, to take appropriate steps to ensure that the accused person is dealt with in accordance with law.

Where it comes to the notice of a magistrate that a person subject to Military, Naval or Air Force law, has committed an offence, proceedings in respect

\textsuperscript{127} Section 209, Code of Criminal Procedure, 1973
\textsuperscript{128} Rule 4(c), Criminal Courts and Court-Martial (Adjustment of Jurisdiction) Rules, 1978
\textsuperscript{129} Section 192, Code of Criminal Procedure, 1973
\textsuperscript{130} Rule 4(d), Criminal Courts and Court-Martial (Adjustment of Jurisdiction) Rules, 1978
\textsuperscript{131} Rule 3(a), Criminal Courts and Court-Martial (Adjustment of Jurisdiction) Rules, 1978
\textsuperscript{132} Rule 4, Criminal Courts and Court-Martial (Adjustment of Jurisdiction) Rules, 1978
\textsuperscript{133} Rule 5, Criminal Courts and Court- Martial (Adjustment of jurisdiction) Rules, 1978
\textsuperscript{134} Rule 4, Criminal Courts and Court-Martial (Adjustment of Jurisdiction) Rules, 1978
\textsuperscript{135} Rule 6, Criminal Courts and Court- Martial (Adjustment of jurisdiction) Rules, 1978
\textsuperscript{136} Rule 5 and 6, Criminal Courts and Court-Martial (Adjustment of Jurisdiction) Rules, 1978
of which ought to be instituted before him and that the presence of such person cannot be procured except through Military, Naval or Air Force authorities, the magistrate may by a written notice require the Commanding Officer of such person either to deliver such person to a magistrate to be named in the said notice for being proceeded against according to law, or the proceedings against such person before the Court-Martial and to make a reference to the Central Government for determination as to the Court before which proceedings should be instituted.137

2.3.1 Discretionary Power of Competent Authority

When the Criminal Court138 and the Court-Martial139 both have concurrent jurisdiction in respect of an offence, it shall be the sole discretion of the competent authority to decide before which Court the proceedings shall be instituted, and, if that officer decides that they should be instituted before a Court-Martial, to direct that the accused person shall be detained in Military or Naval or Air Force Custody as the case may be.140

2.3.2 Power of Criminal Court Regarding Delivery of Offender

When a Criminal Court having jurisdiction is of the opinion that proceedings shall be instituted before itself in respect of any alleged offence by written notice, require the specified officer141 at his option, it may either to deliver over the offender to the nearest magistrate to be proceeded against according to Law, or to postpone proceedings pending a reference to the Central Government.142 In every such case, the said officer shall either deliver over the offender in compliance with requisition, or shall forthwith refer the question as to the Court before which the proceedings are to be instituted for the determination of the Central Government, whose order upon such reference shall be final.143

If a Criminal Court having jurisdiction is of the opinion, that the proceedings shall be instituted before itself, it requires a written notice from the said Court to the specified officer referred to the Air Force Law144 or the Army Law145 either to deliver the offender to the nearest magistrate to be proceeded against him

137 Rules 1-7, Criminal Courts and Court-Martial (Adjustment of Jurisdiction) Rules, 1978
138 Section 3(viii), Army Act, 1950 and Section 4(xvii), Air Force Act, 1950
139 Section 3(vii), Army Act, 1950 and Section 4(xvi), Air Force Act, 1950
140 Section 125, Army Act, 1950 and Section 124, Air Force Act, 1950
141 Section 125, Army Act, 1950 and Section 124, Air Force Act, 1950
142 Section 125(1), Air Force Act, 1950 and Section 126(1), Army Act, 1950
143 Section 125(2), Air Force Act, 1950 and Section 126(2), Army Act, 1950
144 Section 124, Air Force Act, 1950
145 Section 125, Army Act, 1950
according to law, or to postpone proceedings pending a reference to the Central Government. Thus, the ordinary Criminal Court as well as the Court-Martial have concurrent jurisdiction to try an offender who has committed a civil offence and power has been given to an officer referred to in these two provisions to choose between the Court-Martial and the Criminal Court. Hence, it can be concluded that the conclusion that in respect of Civil offences the Criminal Courts and Court-Martial (Adjustment of Jurisdiction) Rules, 1978, which govern all the three wings of the military i.e., Army, Navy and Air Force with reference to any civil offence committed by any person subject to their respective laws, could be either tried by Ordinary Criminal Court or by the Court-Martial. The jurisdictions of the Criminal Court in respect of civil offences as defined in all three wings have not been ousted either expressly or impliedly. But at the same time, the ordinary criminal Courts cannot try an offender of their own without following procedures of the Criminal Courts and Court-Martial (Adjustment of Jurisdiction) Rules, 1978, which are mandatory in nature. Once the Criminal Court determines that there is a case for trial, and pursuant to the Criminal Courts and Court-Martial (Adjustment of Jurisdiction) Rules, 1978, delivers the accused to the Commanding Officer or the competent Military, Naval or the Air Force authority as the case may be, the law intends that the accused must either be tried by a Court-Martial or some other effectual proceedings must be taken against him. To ensure that proceedings are initiated against the accused the Criminal Courts and Court-Martial (Adjustment of Jurisdiction) Rules, 1978 requires the Competent Authority to inform the Magistrate of what has been done.

2.4 INQUIRIES IN THE ARMED FORCES

There are various mechanisms for conducting inquiries in the Armed Forces and procedures vary in accordance with relevant provisions as well as statutory provisions applicable in the respective forces.

2.4.1 Inquiries under Army Law

A Court of Inquiry is an assembly of officers or of officers and junior commissioned officers or warrant officers or non-commissioned officers directed to collect evidence, and to report with regard to any matter which may be referred to them. The Court may consist of any number of officers of any rank, or of one or

146 Rule 3-7, Criminal Courts and Court-Martial (Adjustment of Jurisdiction) Rules, 1978
147 Rule 177, Army Rules, 1954
more officers together with one or more junior commissioned officers or warrant officers or non-commissioned officers. The members of Court may belong to any branch or department of the service, according to the nature of the investigation. A Court of inquiry may be assembled by the officer in command of any body of troops, whether belonging to one or more corps. The members of Court of Inquiry are generally disqualified for serving on subsequent Court-Martial.\textsuperscript{148} A Court of inquiry has no power to compel the attendance of civilian witnesses. The Court of inquiry should normally consist of three members. The convening officer is responsible that a Court of Inquiry or station board is composed of members whose experience and training best fit them to deal with the matter at issue. The personnel detailed to constitute the Court of Inquiry or Station Board should have no personal interest or involvement, direct or indirect, in the subject matter of the investigation. A Court of Inquiry may consist of officers only, or of one or more officers together with one or more junior commissioned officers, warrant officers, and non-commissioned officers as may be desirable. Where the character or military reputation of an officer is likely to be a material issue, the presiding officer of the Court of Inquiry will be senior in rank and other members at least equivalent in rank to that officer. When investigating damages to service equipment, the evidence of a technical officer who is and fully conversant with the technical details of the equipment should be recorded.\textsuperscript{149} An officer of the defence accounts department may also be appointed to assist in any military Court of Inquiry assembled in connection with financial irregularities so that he may properly guide the investigations of the Court. However, he may not sit as a member of such a Court. In the event of the officer of the defence accounts department finds himself unable to agree with the conclusions of the Court, it will be open to him to record a note of dissent.\textsuperscript{150}

The Court shall be guided by the written instructions of the authority, which assembled the Court. The instructions shall be full and specific and shall state the general character of the information required. They shall also state whether a report is required or not. The officer who assembled the Court shall, when the Court is held on a returned prisoner of war or on a prisoner of war who is still absent, direct

\textsuperscript{148} Para 521-526, Regulations for the Army, 1987 and Rule 39(2)(c), Army Rules ,1954
\textsuperscript{149} Para 518, Regulations for the Army, 1987
\textsuperscript{150} Para 518, Regulations for the Army, 1987
the Court to record its opinion whether the person concerned was taken prisoner through his own willful neglect of duty, or whether he served with or under, or aided the enemy, he shall also direct the Court to record its opinion in the case of a returned prisoner of war, whether he returned as soon as possible to the service and in the case of a prisoner of war still absent whether he has failed to return to the service, when it was possible for him to do so. The officer who assembled the Court shall also record his own opinion on these points. Previous notice should be given of the time and place of the meeting of a Court of inquiry, and of all adjournments of the Court, to all persons concerned in the inquiry except a prisoner of war who is still absent. The Court may, put such questions to a witness as it thinks desirable for testing the truth or accuracy of any evidence he has given and otherwise for eliciting the truth. The Court may be re-assembled as often as the officer who assembled the Court may direct, for the purpose of examining additional witnesses, or further examining any witness, or recording further information. Any witness may be summoned to attend by order under the hand of the officer assembling the Court. The whole of the proceedings of a Court of inquiry shall be forwarded by the presiding officer to the officer who assembled the Court.151

Except in the case of a prisoner of war who is still absent whenever any inquiry affects the character or military reputation of a person subject to the Army Law, full opportunity must be afforded to such person of being present throughout the inquiry and of making any statement, and of giving any evidence, he may wish to make or give, and of cross-examining any witness whose evidence, in his opinion, affects his character or military reputation and producing any witnesses in defence of his character and military reputation. The presiding officer of the Court shall take such steps as may be necessary to ensure that any such person so affected and not previously notified receives notice of and fully understands his rights.152

The Army Rules, 1954 is framed under the Army Act, 1950 and has a statutory force and its provisions are binding on the authorities as also on the person who is brought before the Court of Inquiry. Whenever it appears possible that the character or military reputation of a person subject to Army Act, 1950 may be affected as the result of the Court of Inquiry, the authority who assembles the Court of inquiry will take all necessary steps to secure that the provisions of this rule are observed. The

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151 Rule 179, Army Rules, 1954
152 Rule 180, Army Rules, 1954
ultimate responsibility of ensuring that they are observed in every case will, however, rest upon the presiding officer of the Court of inquiry, and should it transpire during the sitting of the Court that the character or military reputation of any person subject to Army Act, 1950 is affected by the evidences recorded so far, the presiding officer, will immediately arrange for such person to be afforded the full facilities of the rule, adjourning the Court if necessary for the purpose of securing his attendance.

It is one of the fundamental features of our Constitution that a person subject to Army Law 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 Military Laws cannot be denied equality before law and equal protection of law. Therefore the guarantees contained in the Constitution are available to the persons subject to Military Laws in the same manner in which these guarantees are available to the other citizens of India.\(^{153}\) 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.\(^{154}\) The evidences shall be recorded on oath or affirmation when a Court of Inquiry is assembled on a prisoner of war, or to inquire into illegal absence,\(^{155}\) or in any other case when so directed by officer assembling the Court. The Court shall administer the oath or affirmation to witnesses as if the Court was a Court-Martial.\(^{156}\)

The proceedings of a Court of Inquiry, or any confession, statement, or answer to a question made or given at a Court of Inquiry, shall not be admissible in evidence against a person, nor shall any evidence respecting the proceedings of the Court be given against any such person except upon the trial or such person for willfully giving false evidence before the Courts, however, nothing in this rule shall prevent the proceedings from being used by the prosecution or the defence for the purpose of cross-examining any witness.\(^{157}\) Any person who is tried by a Court-

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\(^{153}\) Article 14, Constitution of India
\(^{154}\) Rule 180, Army Rules, 1954
\(^{155}\) Section 106, Army Act, 1950
\(^{156}\) Rule 181, Army Rules, 1954
\(^{157}\) Rule 182, Army Rules, 1954
Martial shall be entitled to copies of such statements and documents contained in
the proceedings of a Court of Inquiry, as are relevant to his prosecution on defence
at his trial. Any person whose character or Military reputation is affected by the
evidence before a Court of Inquiry shall be entitled to copies of such statements and
documents as have a bearing on his character or Military reputation as aforesaid,
unless the Chief of the Army Staff for reasons recorded by him in writing, orders
otherwise.\textsuperscript{158}

2.4.2 Inquiries under Air Force Law

A Court of Inquiry\textsuperscript{159} is an assembly of officers or of officers and warrant
officers directed to collect evidence to report with regard to any matter which may
be referred to them. A Court of Inquiry may be assembled by the officer in
command of any unit or portion of the Air Force. The Court may consist of any
number of officers of any rank or of one, or more officers together with one or more
warrant officers. The members of the Court may belong to any branch or
department of the service, according to the nature of the investigation. The previous
notice shall be given of the time and place of the meeting of a Court of Inquiry, and
of all adjournments of the Court, to all persons concerned in the inquiry except a
prisoner of war who is still absent. It is the duty of a Court of Inquiry to put such
questions to a witness as it thinks desirable for testing the truth or accuracy of any
evidence he has given and otherwise for eliciting the truth. The whole of the
proceedings of a Court of Inquiry shall be forwarded by the Presiding Officer to the
officer who assembled the Court. The Court may be re-assembled as often as the
officer who assembled the Court may direct, for the purpose of examining
additional witnesses, or further examining any witnesses, or recording further
information.

A Court of inquiry should consist of at least two members but desirably
three. Army or Navy Officers may be detailed as members in attendance of Air
Force Courts of Inquiry, but not as members. The primary task of a Court of Inquiry
is to collect the evidences with regard to any matter which has been referred to
them. A Court of Inquiry is not to content itself by recording the statement given by
a witness. They should put questions to witnesses to elicit the truth and also to
ascertain the veracity of the statements. A Court of Inquiry cannot compel the

\textsuperscript{158} Rule 184, Army Rules, 1954
\textsuperscript{159} Rule 154, Air Force Rules, 1969
attendance of civilian witnesses. When a Court of Inquiry is assembled to
investigate any given occurrence, a separate Court need not be held to investigate
any other matter arising out of that occurrence. However, where the assembling
authority considers that the two subjects cannot be conveniently dealt with by the
same Court of inquiry, he will convene two Courts. The evidence given at a Court
of Inquiry will be treated as confidential. But, higher security grading is
permissible, if it is considered necessary. A Court of Inquiry, or any member
thereof, must not make any admission of liability in respect of any matter being
investigated by it, or give any undertaking to satisfy any claim, or to initiate or
defend any legal proceedings, or negotiate or accept any settlement of any claim
made by or on behalf of, or against, the Air Forces or any unit or member
thereof.160

If an officer, requiring assembling161 of a Court of Inquiry, is unable to
provide for the constitution of the Court in accordance with the law, he will refer
the matter to higher authority. The assembling authority will detail an officer by
name to act as presiding officer and one or more officers junior to him, or warrant
officers as members. The rank of the presiding officer should not normally be
below that of Flight Lieutenant, and where the Court is directed to express an
opinion which may bear upon the conduct, character, or professional reputation of
an officer, the presiding officer must not be junior in rank and seniority to that
officer. However, where a Court is assembled to investigate a fatal flying accident
or where the forecasts of the loss in a flying accident is expected to exceed Rupees
ten lakhs, the rank of the presiding officer will not be less than that of a Wing
Commander provided the services of an officer of that rank can be made available
without undue delay. The personnel detailed to constitute the Court should have no
direct or indirect interest in the subject matter of the investigation, and where the
investigation may involve technical or professional knowledge or skill of any
description e.g., equipment and accounts, etc., at least one officer or warrant officer
having appropriate qualifications will be included on the Court either as a, member
or in attendance.

A Court of Inquiry is not a judicial tribunal. Therefore, it may receive such
evidence as it may think fit, whether written or oral, the sole test being that it

160 Para 795, Regulations for the Air Force, 1964
161 Para 783, Regulations for the Air Force, 1964
should be relevant to the issue. A Court of Inquiry is not bound to exclude evidence which would be inadmissible in a Court of law. A Court will ask such questions of any witness as it may think necessary, but a witness cannot be compelled to answer a question where the answer might incriminate him. It is the duty of a Court to secure evidence, if necessary by visiting the scene of occurrence, and to examine it carefully with view to finding out exactly what happened so that action may be taken to prevent a recurrence in future and bringing out the facts indicating negligence or lack of discipline. The evidence given to a Court of inquiry will be treated as confidential and will not be divulged by or to any person except as may be required by higher authorities.\textsuperscript{162}

A Court of Inquiry is not a public Court and should normally sit in private. The evidences should be recorded in chronological order. Each witness should be given a serial number and his statement should begin with brief details of his service particulars if he is a service witness, or his name, address, etc., if he is a civilian witness, followed by a brief description of his duties or his position. The evidence of witnesses in examination and cross-examination should be recorded in first person narrative form and not in the form of questions and answers unless the Court thinks fit to record any particular question or answer as such. Each witness should sign his evidence on every page on the original copy of the proceedings. Corrections on original copy should be initialed by the witness. When witness is illiterate, his statement should be read out to him, if necessary through an interpreter. The witness should then put down his thumb impression at the end of each page of his evidence, the thumb impression being attested by a member of the Court.\textsuperscript{163} When a Court of inquiry is held on prisoners of war and in any other case in which assembling authority so directs, the evidence shall be taken on oath or affirmation. The Court shall administer the same oath or affirmation to witness as if it were a Court-Martial. However, the members of the Court shall not themselves to be sworn or affirmed.\textsuperscript{164}

As soon as it appears to the Court that, the character or professional reputation of an Officer or Airman is affected by the evidence recorded, or that he is to be blamed, the affected person is to be so informed by the Court. All the

\textsuperscript{162} Para 787, Regulations for the Air Force, 1964
\textsuperscript{163} Para 788, Regulations for the Air Force, 1964
\textsuperscript{164} Para 789, Regulations for the Air Force, 1964
evidences recorded up to that stage should be read over to the affected person, and the Court is to explain to the person that in its opinion, it appears that the officer's or Airman's character or professional reputation is adversely affected, or how he appears to be to blameworthy. From the time an Officer or Airman is so informed, he has the right to be present during all the ensuing proceedings, except when the Court is deliberating privately. The fact that an Officer or Airman blamed is not present will be recorded in the proceedings. The affected Officer or Airman may, if he so desires, cross-examine any witness whose evidence was recorded prior to being blamed. He may cross-examine subsequent witnesses after their statements have been recorded. He may also request the Court to record the evidence of any witness in his defence and the Officer or Airman may make any statement in his defence.

In case the Officer or Airman affected cannot, for any reason be present to exercise his privilege, the Court is to inform him by letter or otherwise as may be convenient of the reasons why, in the opinion of the Court, his character or professional reputation appears to be affected, or he appears to be blameworthy. The affected person may make a statement in writing in denial, exculpation, or explanation. This statement is to be attached to the proceedings, and the Court is to endeavour, by examining or recalling witnesses, to accord, to the affected person. If, after recording all the evidence, and after taking such action as may be called for in the circumstances the Court is of the opinion that an Officer or Airman is to be blamed, or that his character or professional reputation, is affected, the entire proceedings are to be shown to the affected person, and he is to be asked whether he desires any further statement to make. Any such statement is to be recorded, and fresh points are to be fully investigated by the Court.

The findings and recommendations of the Court may then be made in accordance with the terms of reference. An Officer or Airman blamed does not have the right to demand that the evidence be taken on oath or affirmation, or, except so far as the assembling authority of the Court may permit, to be represented by a solicitor or other agent. If the assembling authority attributes blame to an Officer or an Airman other than the Officer or Airman held to blame by the Court, or attributes blame in a way substantially different from that of the Court, the proceedings will be returned to the presiding officer of the Court without any endorsement on the proceedings by the assembling authority together with a
statement from the assembling authority as to why that authority considers that blame should be attributed to such Officer or Airman or in a way substantially different from that of the Court. This statement will form part of the Court of inquiry proceedings. The Court of Inquiry will be reconvened and the Court will show to the affected person the entire proceedings and statement of the assembling authority. The Court will then obtain the statement from that person that, he may wish to make and record the evidence of any witnesses, he may wish to call in cross-examination or of any fresh witnesses. When complete, the proceedings will be forwarded to the assembling authority together with any additional findings and or recommendations that the Court may wish to record. The assembling authority will endorse its remarks on the proceedings only after completion of action.

If blame is attributed by any authority higher than the assembling authority to an Officer or Airman or other than the Officer or Airman held to be blamed by the Court or the assembling authority, the proceedings will be returned to the assembling authority together with such authority's statement for action. The concerned higher authority will endorse its remarks on the proceedings, only after the proceedings are received back from the assembling authority after completion of action. When forwarding the proceedings to higher authority after taking action, the assembling authority or any other intermediary authority may append remarks on any additional findings recommendations made. The Court which originally investigated the particular occurrence will be reconvened. A fresh Court is to be assembled only in exceptional circumstances.  

The Court will record its findings on the proceedings, and will be careful to ensure that such findings are supported by evidence and cover the points upon which it is required by the terms of reference or by regulation to report if it is unable to record a complete finding and the reasons for the same. The Court of Inquiry should endeavour in their findings to differentiate between incidents caused by error of judgment not involving disregard of orders and incidents due to disregard of orders or other causes directly within the control of the personnel involved. The Court should not regard itself as debarred from making the required differentiation, even if it is impossible, on account of the death of the personnel involved or from other cause to obtain evidence or a statement in defence. In

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165 Para 790, Regulations for the Air Force, 1964
determining the degree of responsibility of any persons for a loss, damage, etc., the Court will endeavour to determine whether the person was directly or indirectly to blame, or whether the loss, damage, etc., was due to culpable negligence or to negligence or to irregularity on the part of that person. The Court will draw attention to any irregularity disclosed in the course of the investigation even though, in its opinion, it was not a contributing factor to the incident under investigation and is outside its terms of reference. When the Court is of opinion that compensation should be paid by any person or persons deemed to be responsible, it will state the amount that it considers should be paid by such persons, but any recommendation made by it will be considered as being made without prejudice to any action that may be taken by higher authority. The findings will be signed by the presiding officer and all the members of the Court, but any member of the Court may sign subject to any reservations which he desires to make, or may express his dissent from any findings of fact or recommendation arrived at by the other members.166

When a Court of Inquiry is assembled to investigate any given occurrence, a separate Court need not be held to investigate any other matter which itself, by regulation, requires a Court of inquiry arising out of that occurrence e.g. an individual injured in a flying accident. Where, however, the assembling authority considers that the two subjects cannot be conveniently dealt with by the same Court, he will convene two Courts. If only one Court is held, the assembling authority will be careful to give directions for both matters to be investigated. A Court of Inquiry, however, on the illegal absence of one or more airmen will deal with the question of illegal absence and deficiencies, if any, and a Court of inquiry on the recovery of one or more prisoners of war will deal only with the circumstances the recovery of each such person as may be brought before it.167

2.4.3 Inquiries under Naval Laws

A Board of Inquiry may be convened by the Chief of the Naval Staff or any administrative authority, or when two or more ships are in company, by the senior Naval officer present, whenever any matter arises upon which he requires to be thoroughly informed. An administrative authority or the senior Naval officer present shall convene a Board of Inquiry, when so directed by superior authority or

166 Para 791, Regulations for the Air Force, 1964
167 Para 793, Regulations for the Air Force, 1964
when so required by any regulations, Government instructions or Navy orders.\textsuperscript{168} The Board of Inquiry may consist of any number of officers including officers of the Army or the Air Force or Civilian Gazetted officers and Master Chief Petty officers, provided the number of such Master Chief Petty Officers shall not exceed one half of the members constituting the Board of Inquiry. Army and Air Force Officers and Civilian Gazetted Officers, unless they are under the administrative control of the convening authority, shall be appointed only after the concurrence of the appropriate authority superior to the individuals to be appointed. The President and the members shall be senior or relatively senior to the person whose conduct is under inquiry and persons whose evidence may be required by the Board of Inquiry shall not be nominated as members. In selecting members, the convening authority shall have regard to the possibility that person who has sat on a Board of Inquiry may, if otherwise qualified to sit on a Court-Martial upon the same subject matter, be objected to and that such objection may be allowed by the Court.\textsuperscript{169}

The convening authority may appoint any suitable person to be President of the Board.\textsuperscript{170} The Board shall perform such duties as may be directed by the authority convening the Board. Such directions shall always be made in writing and may in cases of urgency be conveyed by signal and when a Board is convened by an administrative authority or senior Naval Officer present, shall conform to any general directions given in any Navy orders. Every order convening the Board shall be made in the prescribed form or as near thereto as circumstances permit and where directions are given by signal, it shall be sufficient to make reference to the said form, in respect of the general directions contained therein further directions being added as necessary. A Board may be required to collect evidence only, without being required to give any opinion or the Board may be required to report fully with regard to any matter, which may be referred to it and to make recommendations. The convening authority shall, when the Board is held on a returned prisoner of war or on a prisoner of war who is still absent, direct the Board to record its opinion whether the person concerned was taken prisoner through his own willful neglect of duty, or whether he served with or under, or aided the enemy, he shall also direct the Board to record its opinion in the case of a returned

\textsuperscript{168} Regulation 197, Regulations for the Navy, 1965
\textsuperscript{169} Regulation 198, Regulations for the Navy, 1965
\textsuperscript{170} Regulation 199, Regulations for the Navy ,1965
prisoner of war, whether he returned as soon as possible to the service and in the case of a prisoner of war still absent whether he failed to return to the service when it was possible for him to do so.\textsuperscript{171}

The Board shall be guided by the provisions of these regulations and also by the Navy orders in force for the time being and the written instructions of the convening authority provided that the Navy Orders and the written instructions are not inconsistent with anything contained in these regulations. The Board may put such questions to a witness as it thinks desirable for testing the truth or accuracy of any evidence he has given and otherwise for eliciting the truth.\textsuperscript{172}

Before examination, every witness shall be informed in the terms which shall be recorded in the minutes that he is privileged to refuse to answer any question and the answer to which may tend to expose you any penalty or forfeiture. It will be for him to raise the objection and for the board to decide whether he must answer the question or not. No one charged with any offence shall be bound to make any statement or answer any questions. The Board may be re-assembled as often and with such charges in its composition as the convening authority may direct for the purpose of examining additional witness or further examining any witness, or recording further information. A Board shall unless otherwise ordered, sit with closed doors. Except where a board is ordered to inquire into the propriety of a punishment of regulation to a lower rank awarded to a Chief Petty Officer or Petty Officer, in a case where such Chief Petty Officer or Petty Officer had elected trial by Court-Martial and due to the exigencies of the service, the Commanding Officer had exercised his powers under the regulations nevertheless to try the Chief Petty Officer or Petty Officer as the case may be summarily, no person shall be present in the character of a prosecutor nor any friend or professional adviser be allowed to assist any person concerned in the inquiry. If the inquiry should have reference to the loss or hazarding a ship,\textsuperscript{173} shall be adopted mutatis mutandis.\textsuperscript{174}

Except in the case of a prisoner of war who is still absent, whenever any inquiry affects the character or reputation of a person in Government service or may result in the imputation of liability or responsibility for any loss or damage or is made for the contravention of any regulations or general or local orders, full

\textsuperscript{171} Regulation 200, Regulations for the Navy, 1965
\textsuperscript{172} Regulation 202, Regulations for the Navy, 1965
\textsuperscript{173} Regulations 183, Regulations for the Navy, 1965
\textsuperscript{174} Regulation 203, Regulations for the Navy, 1965
opportunity shall be accorded to such person of being present throughout the inquiry and of making any statement and of giving any evidence he may wish to make or give and of cross-examining any witness whose evidence in his opinion affects him and producing any witness in his defence. The president of the Board shall take such steps as may be necessary to ensure that any such person so affected and not previously notified, receives notice of and fully understands, his rights under this regulation.\textsuperscript{175} Evidence shall be recorded on oath or affirmation when a Board is assembled on a prisoner of war or in any other case when so directed by the convening authority.\textsuperscript{176}

The proceedings of a board or any confession or answer to a question made or given before a board shall not be admissible in evidence against a person subject to Naval laws relating to the Government of the regular Army or Air Force nor shall any evidence respecting the proceedings of the board be given against any such person except upon the trial of such person for willfully giving false evidence before the board, provided that nothing in this regulation shall prevent the proceedings from being used for the purpose of cross-examining any witness.\textsuperscript{177} The proceedings of every board shall be recorded and prepared in accordance with any directions contained in the Navy orders in force for the time being and any instructions given by the convening authority. The minutes of such proceedings shall contain a verbatim report of all the evidence given and all questions and answers shall be numbered in one series throughout the minutes. In making up the record of the minutes the sheets shall be securely fastened and numbered consecutively. A list of the witnesses giving the serial number of questions put to each and a list of the exhibits shall be attached to the proceedings. All documentary exhibits shall be placed in the order in which such documents are produced at the inquiry and shall be numbered consecutively and attached to the proceedings, the minutes of which shall be forwarded together with all enclosures to the convening authority in the prescribed form. The written order convening the Board shall be returned to the convening officer with the minutes of the proceedings and shall form a part of the record. The convening authority shall, having regard to the fact that copies may have to be supplied to persons concerned in the result of the

\textsuperscript{175} Regulation 205, Regulations for the Navy, 1965
\textsuperscript{176} Regulation 206, Regulations for the Navy, 1965
\textsuperscript{177} Regulation 207, Regulations for the Navy, 1965
inquiry, should the proceedings be followed by a Court-Martial arising out of the same subject matter, give directions as to the number of copies of the proceedings which are required and it shall be the duty of the president of the board to see that enough copies of all exhibits are made, one copy to go with such set of papers. The minutes shall be signed by all the members of the Board and if a difference of opinion among the members arises then the board is required to make a report or give its findings the grounds of such difference shall be stated fully.

On receipt of the minutes of the proceedings including the report from the Board, the convening authority shall take such actions as is within its jurisdiction and as it may deem fit to take and submit the same together with its comments thereon to the higher authority if required to do so under the orders issued from time to time by the Chief of the Naval Staff or if the convening authority deems it necessary so to do. However, nothing shall be construed as debarring the convening authority from taking appropriate action with his jurisdiction.\(^\text{178}\) The persons entitled to a copy of the proceedings of a board not including any report made by the board any person subject to Naval law who is tried by a Court-Martial in respect of any matter or thing which has been reported on by a board, or any person in Government service whose character, conduct or reputation is, in the opinion of the chief of the Naval Staff, affected by anything in the evidence before or in the report of a board, unless the Chief of the Naval Staff sees reason to order otherwise. These proceedings shall include findings of the board but shall not include recommendations of the board.\(^\text{179}\)

### 2.5 MODES OF REDRESSAL OF GRIEVANCES IN ARMED FORCES

The various modes have been provided in the statutes for redressal of grievances for the members in the three wings of the Armed Forces and they vary in the respective forces.

#### 2.5.1 Redressal under Army Laws

Any person subject to this Act other than an officer who deems himself wronged by any superior or other officer may, if not attached to a troop or company, complain to the officer under whose command or orders he is serving and may, if attached to a troop or company, complain to the officer commanding the same. When the officer complained against is the officer to whom any complaint

\(^{178}\) Regulation 208, Regulations for the Navy, 1965  
\(^{179}\) Regulation 209, Regulations for the Navy, 1965
should be preferred, the aggrieved person may complain to such officer’s next superior officer. Every officer receiving any such complaint shall make as complete an investigation into it as may be possible for giving full redress to the complainant or when necessary he may refer the complaint to superior authority. Every such complaint shall be preferred in such manner as may from time to time be specified by the proper authority. The Central Government may revise any decision by the Chief of the Army Staff, but, subject thereto, the decision of the Chief of the Army Staff shall be final. To complaint under the Army Act, 1950, the complaint must be that the complainant has been denied or deprived of something to which he has a military right. 180 A non-regular officer applicant for a permanent regular commission has a right to have his application fairly considered but has no right to be granted such a commission, consequently he cannot complain under the Army Law, if his application is refused unless he can produce some evidence that his application was not properly considered. Similarly a junior commissioned officer or other ranks, who is refused compassionate leave or a compassionate posting has no right of complaint under this section unless he can produce some evidence of improper motive for the refusal of leave. The complaints may be made regarding such matter, but can be made by an individual only. The combined complaint of several can never be permissible, but should not, if well founded, be treated as mutinous, where it is plain that the only object of those making the complaint is to procure redress of the matter by which they think themselves wronged. A person can only complain once under this section in respect of any such matter.

A complaint cannot legitimately be preferred to a superior officer except in the regular course defined by this section. It is only where the immediate superior refuses or unnecessarily delays to redress or forward the complaint that direct application can be made to higher authority. The officer in question ought to be informed of the application being made to his superior. The authority competent to dispose off finally, in pursuance of regulations or the custom of the service, is authorized to dispose of that matter. He is the next superior officer to the officer against whom the complaint is made. If however, a person thinks himself wronged

180 Section 27, Army Act, 1950
by his Commanding Officer in respect of his complaint not being redressed, he may complain to the brigade commander.\(^\text{181}\)

A false accusation or false statement made in preferring a complaint under the Army Law\(^\text{182}\) is punishable,\(^\text{183}\) but the mere fact that a complaint appears to be baseless, or even frivolous, does not render the maker liable to punishment. But the repetitions of baseless complaints, or the submission of complaints in disrespectful languages, are offences under the Army Law.\(^\text{184}\) The persons to whom this section applies have no right to petition to the Central Government on matters arising out of their military service.

Any officer who deems himself wronged by his Commanding Officer or any superior officer and who on due application made to his Commanding Officer does not receive the redress to which he considers himself entitled, may complain to the Central Government in such manner as may from time to time be specified by the proper authority. It is the custom of the service to forward every complaint through the Commanding Officer of the unit, and an officer would not be justified in deviating from this course, unless the Commanding Officer should refuse, or unreasonably delay, to forward it. In such a case, an officer, on addressing himself directly to higher authority, should apprise his Commanding Officer of his doing so, and should observe in the channel of approach to the Central Government each intermediate gradation of command in so far as he is concerned. This provision is not applicable to the officers seconded for service with a civil department of a State, in respect of matters arising in the course of seconded employment. Although, the complaint is to the Central Government an intermediate authority is not debarred from expressing his own view of the case, and such expression of opinion may even in some cases suffice to render further steps unnecessary.\(^\text{185}\)

The complaints\(^\text{186}\) are generally of two types i.e. statutory and non-statutory. The statutory complaints can be made under the Army Law,\(^\text{187}\) by any person subject to the Army Law other than an officer who deems himself wronged by any superior or other officer or any other superior officer and against the decision of an

\(^{181}\) Para 364, Regulations for the Army, 1987
\(^{182}\) Section 27, Army Act, 1950
\(^{183}\) Section 56(b), Army Act, 1950
\(^{184}\) Section 63, Army Act, 1950
\(^{185}\) Section 27, Army Act, 1950
\(^{186}\) Para 364, Regulations for the Army,1987
\(^{187}\) Sections 26 and 27, Army Act, 1950
authority disposing off case under the Army Law.\textsuperscript{188} An officer has the right to complain to the Central Government. The junior commissioned officers and others can complain to the Chief of the Army Staff in the first instance. In case they are not satisfied with the decision of Chief of the Army Staff, they may complain to the Central Government whose decision shall be final. A second complaint to these authorities will be allowed only if fresh facts and circumstances have come to light necessitating reconsideration of the case. The procedure for submission and channel to be followed as Central Government by the officers and Chief of the Army Staff by junior commissioned officers, warrant officers and other ranks in the first instance and thereafter to the Central Government.

All statutory complaints will be made through proper channel and copies will not be forwarded direct to higher authorities. In order to facilitate, all intermediary formation headquarters and the concerned branch of directorate at Army Headquarters immediately. Advance copies of complaints on discipline and vigilance matters will be endorsed to the discipline and vigilance directorate at Army Headquarters. The complainant must desist from writing directly to Central Government or Army Headquarters with regards to progress of the case. However, if the final decision on the statutory complaint is not taken within a period of twelve or nine months from the date such a complaint is submitted to the immediate superior, the applicant will have a right to represent direct to Army Headquarters or the Central Government as the case may be after informing his Commanding Officer. The following channels will be followed while forwarding statutory complaints:

(i) Company Commander or other immediate superior,
(ii) Commanding Officer,
(iii) Brigade Commander or Sub-Area Commander,
(iv) Divisional Commander or Area Commander,
(v) General officer Commanding Corps, if applicable,
(vi) General Officer Commanding-in-Chief of the Command,
(vii) Chief of the Army Staff,
(viii) Central Government.

\textsuperscript{188} Sections 80, 83, 84 and 85, Army act, 1950
Statutory complaints from officers of Army Medical Corps and Army Dental Corps and from all junior commissioned officers, warrant officers and other ranks which pertain to matters relating to promotion, appointment, posting, release and discharge, will be processed through departmental channels, and where no departmental channels exists complaints will be processed through respective staff channels. The essentials ingredient of a complaint are an introduction which would state whether the complaint is statutory or non-statutory and the provisions of the statute or rules under which rule this is being made. In case of statutory complaints, it will not be stated as the authority under which the complaint is being made, background of the case, facts of the case set out briefly in logical and chronological order, giving specific grievances and a conclusion sustaining the specific redress sought for by the complainant. It will be ensured that the complaint is couched with respectful and proper language. A complaint containing a false statement or a false accusation the complainant will render a certificate ensuring that in that he will be liable for disciplinary action. If the complaint contains serious accusations against any superior officer pertaining to moral turpitude, maturity or professional competence, the next superior authority to the one against whom such accusation have been made will take necessary steps to conduct investigation, as considered necessary.

The intermediary superior authority in chain is to offer his detailed Para-wise comments on the compliant. He will ensure that if the following stipulated conditions are not satisfied, will withhold the complaint to inform the next superior authority and the complainant the reasons for withholding the complaint that the complaint is complete in all respect and is in correct form, the complaint is not couched in discourteous, disrespectful or improper language and the complaint does not contain official documents and correspondence, access to which does not have formal authority. Where a complaint is withheld due to any reason, the date of submission of the complaint will count from the date of revised complaint. An intermediary authority will examine the complaints set forth by the complainant and may take any of the actions like where the intermediary authorities arrive at their view that only a partial redress will meet the ends of justice, the same may be granted by the authorities concerned. In such cases, the intermediary authority such redress will further call upon the complainant to express as to whether he desires to withdraw the complaint, in view of the partial redress granted, within 90 days and if
he gives such occurrence it will be communicated to all concerned and the compliant proceed. Where the intermediary authority decides to grant full redress sought by the complainant, he shall be suitably informed. The next higher authority to the authority granting such relief will be kept informed of the sought of redress. Such cases will not be forwarded to the authority to whom the complaint is addressed and where the redress prayed for is not given at all the intermediary authority will forward the complaint along with his comments and recommendations through normal channels to the authority to whom the complaint is addressed for final disposal.

But before forwarding the complaint to the next higher authority, the intermediate superior authority to the aggrieved individual will endeavour to interview the complainant and make such investigations as he considers necessary. He will then forward the complaint, along with his detailed parawise comments and recommendations to the next superior intermediary authority. While forwarding the statutory complaint to the next higher authority, concerned formation headquarters will invariably inform Army Headquarters about the progress of the case and also inform the complainant through his Commanding Officer.

All complaints will be dealt expeditiously at all levels. The complaints which do not contain any accusation requiring investigation are to reach the Army Headquarters within 180 days, including transaction period. With a view to enable all intermediary formations and Army Headquarters to closely monitor the progress of statutory complaints mentioned in these provisions, all intermediary and higher authorities will be kept informed. All statutory complaints will be accompanied by a delay report, which will be duly filled and initialed, the receipt of the complaint as well as before forwarding the complaint to the next higher authority, will be conveyed to the complaint. Whenever any complaint is delayed for any period exceeding the stipulated time frame, reasons for the delay will be annexed on a separate sheet paper. The monitoring of statutory complaints through suitable monitoring schedules and standard operating procedure will be strictly enforced at all levels of the chain of Command. The delay apprehended will be projected in time to ensure timely processing and finalization of complaint. The intermediary formation headquarters will maintain a record and watch the progress of the complaints scrupulously, accountability for delays and action taken against the defaulting officers.
Orders of the authority disposing of the complaint are to be communicated to the complainant through normal channels. However, a copy of the orders will be endorsed direct to the complainant by the disposing authority which will be acknowledged by the individual directly to the authority disposing off the complaint. In addition, the formation or unit concerned will also inform the branch concerned at Army Headquarters, in writing that copy of the order has been handed over to the individual. The non statutory complaints can be made under the authority of the Army Order on the subject when the complainant considers himself wronged by any authority other than those mentioned in statutory complaints and is not covered under the Army Law.\(^{189}\) It can only be addresses to the immediate superior officer, Company Commander or the Commanding Officer, as the case may be. Such complaints will neither be addressed direct to higher authorities nor will the copies be endorsed to such.

2.5.2 Redressal under Air Force Laws

Any Airman who deems himself wronged by any superior or other officer may, if not attached to a unit or detachment, complain to the officer under whose command or orders he is serving, and may, if attached to a unit or detachment, complain to the officer commanding the same. When the officer complained against is the officer to whom any complaint should be preferred, the aggrieved Airman may complain to such officer’s next superior officer, and if he thinks himself wronged by such superior officer, he may complain to the Chief of the Air Staff. Every officer receiving any such complaint shall make as complete an investigation into it as may be possible for giving full redress to the complainant or when necessary, refer the complaint to superior authority. Every such complaint shall be preferred in such manner as may from time to time be specified by the proper authority. The Central Government may revise any decision by the Chief of the Air Staff, but subject thereto, the decision of the Chief of the Air Staff shall be final.\(^{190}\)

The right of a person subject to the Act to move his superior for redressal for grievances emanates from the Air Force Law.\(^{191}\) The regulations, instructions, and orders of the subject issued by the administrative authorities, including the Central Government only amplify the statutory provisions and lay down the

\(^{189}\) Sections 26 and 27, Army Act, 1950  
\(^{190}\) Section 26, Air Force Act, 1950  
\(^{191}\) Sections 26 and 27, Army Act, 1950
procedure for seeking redress and they do not and cannot restrict the scope of the Air Force Law. Before a person can complain, two conditions must be satisfied. Firstly, he must deem himself to be wronged by any superior or other officer in the case of officers, by his Commanding Officer or any superior officer and secondly, the wrong must relate to his treatment as such person by his superior in a matter pertaining to the service. Hence, the complainant must show that he has been denied or deprived of something to which he has a right under Air Force Law or procedures. The Air Force Law does not bestow a statutory right to have an interview with any Air Force authority. Whether to grant or reject an interview sought, is entirely at the discretion of the officer with whom the interview is requested. Complaints may be made respecting such matter, but can be made by an individual only. The combined complaint of several persons can never be permissible, but should not, if well founded, be treated as mutinous, where it is plain that the only object of those making the complaint is to procure redress of the matter by which they think themselves wronged. A person can complain only once in respect of any such matter. The repetitive complaint may be summarily rejected unless the applicant has brought out some new facts, occurring subsequently or which come to the knowledge of the complainant only subsequently.

A complaint cannot legitimately be preferred to a superior officer except in the regular course. The channels through which complaints must be preferred are specified in the Regulations for the Air Force, and it is only where the immediate superior refuses to give a legitimate redress or unnecessarily delays forwarding of the complaint that direct application can be made to higher authority. The officer in question ought to be informed of the application being made to his superior. A false accusation or false statement made in preferring a complaint is punishable under the Air Force Law, but the mere fact that a complaint appears to be baseless, or even frivolous, does not render the maker liable to punishment. If the repetition of baseless complaints continues, or the submission of complaints in disrespectful language is made, it amounts to offences punishable under the Air Force Law.

192 Sections 26 and 27, Army Act, 1950
193 Paras 621 and 622, Regulations for the Air Force, 1964
194 Section 56(b), Air Force Act, 1950
195 Section 65, Air Force Act, 1950
The manner in which an Airman should proceed to obtain redress for any grievance which he considers himself to be suffering from is prescribed in the Air Force Law. Every officer receiving any such complaint shall make as complete an investigation into it as may be possible for giving full redress to the complaint, or when necessary, refer the complaint to superior authority. Every such complaint shall be preferred in such a manner as may from time to time be specified by the proper authority. The Central Government may revise any decision by the Chief of the Air Staff but subject thereto, the decision of the Chief of the Air Staff shall be final. The scope of complaints purporting to be made must show that a service wrong has been done to the complaint in that he has been deprived of a service right or privilege. An Airman may make a complaint on matters not arising from the service, but such complaints will not be deemed to have been made under the Air Force Law. Joint or collective or anonymous petitions of any kind are forbidden. The collective petitions or representations include separate petitions or representations prepared by separate airmen in consultation with each other. The representations by Airmen direct to Chief of the Air Staff, or other government authorities. Any application for redress, be it for service wrong or on personal matters affecting morale and welfare, must in the first instance, be addressed by an Airman to his Commanding Officer and be submitted through proper channels. The practice of bypassing the normal service channels and making direct representations to higher authorities except as provided in these rules is prohibited. Airmen will render themselves liable to severe disciplinary/administrative action for any violation of these regulations. No notice will be taken of a representation on service matters submitted by relatives of airmen. An Airman's application for redress of grievance will be submitted through proper channels will always be submitted to his section commander in the first instance. Advance copies of the application will not be sent to any higher authority.

(i) Section Commander,
(ii) Unit/Detachment Commander,
(iii) Station Commander/Air Officer Commanding,
(iv) Group Headquarters, if applicable,
(v) Command Headquarters/Air Officer Commanding-in-Chief,

196 Section 26, Air Force Act, 1950 and Para 621, Regulations for the Air Force, 1964
197 Section 26, Air Force Act, 1950
(vi) Air Headquarters/Chief of the Air Staff.

On receipt of the application, the section commander will investigate the case, and if possible, redress the grievance of the Airman. If however, he is unable to do so, the application together with a report from him on the points raised in the application will be forwarded to the Unit/Detachment commander, and the Airman concerned informed of the fact in writing. The application will continue to be forwarded to the next higher authority in the chain in a similar manner, until such time as the grievance of the Airman is redressed or a final decision on the case is given by Air Headquarters. The complaints/applications for redressal of grievances may be addressed directly to the next higher authorities only when the Commanding Officer or next higher authority refuses to give legitimate redressal asked for or unnecessarily delays the forwarding of the complaints to higher authorities. Under such circumstances, the complainant will inform the intermediate authority of his action. If an aggrieved Airman feels that his application has not received due consideration in a reasonable period of time, he may seek an interview with the Station Commander or with an inspecting officer, i.e., the Chief of the Air Staff or Air Officer Commanding-in-Chief. When it is desired to seek an interview with an inspecting officer, the Airman will make a request to his Commanding Officer through his section commander for such an interview, if the time permits, full details of the case will be forwarded to the inspecting officer in advance and if, however, the notice for the inspection is short, the Commanding Officer will apprise the inspecting officer of the facts of the case before interview. It is entirely at the discretion of the inspecting officer to grant or refuse the interview. It is of utmost importance that application for redress of grievances by airmen are dealt with expeditiously so as to reach the authority competent to redress the grievance not later than forty five days from its date of submission by the aggrieved person. No intermediate authority will hold up the application for more than ten days and in the event of any longer delay a report indicating the reasons will be made to the next higher authority. Any method other than those specified in these regulations for seeking a remedy of grievance by Airman, is not possible.

Any officer who deems himself wronged by his Commanding Officer or any superior officer and who on due application made to his Commanding Officer does not receive the redress to which he considers himself entitled may complain to the Central Government in such manner as may from time to time be specified by the
proper authority.\textsuperscript{198} The manner of making complaints under this section is contemplated in the regulations.\textsuperscript{199} Whether or not an application is to be treated as a statutory complaint will depend upon its contents.\textsuperscript{200} Neither the title of the application, nor a request that it should be forwarded to Chief of the Air Staff, Central Government etc., would by itself make the application come within the scope of the Air Force Act, 1950.\textsuperscript{201} The rejection of a complaint need not be by a speaking order, and the applicant has no right to demand that a speaking order should be issued in the event of rejection of the application. This section does not create a statutory right to petition before the President of India against orders of the Central Government. The right under this section is not available to officers seconded for services with a civil department or organization of the Central or State Government or to one on deputation, in respect of matters arising in the course of such seconded employment or deputation.

The complaints made under the Air Force Law\textsuperscript{202} must show that a service wrong has been done to the complainant in that he has been deprived of a service right or privilege. An officer may make a complaint on matters not arising from the service, but such complaints will not be deemed to have been made under the Air Force Law.\textsuperscript{203} In applications for redress of grievances criticism of superiors should be scrupulously avoided.\textsuperscript{204} Joint or collective or anonymous petitions of any kind are forbidden. The collective petitions or representations include separate petitions or representations prepared by separate officers in combination with each other. An officer's application for redressal whether for service wrongs or on personal matters affecting his morale and welfare, must in the first instance be submitted by a service officer to his Commanding Officer. The practice of bypassing the normal service channels and making direct representations to higher authorities is prohibited. The officers will render themselves liable to severe disciplinary/ administrative action for any violation of these regulations. All grievances are to be addressed to his Commanding Officer. On receipt of the application the Commanding Officer will

\begin{footnotes}
\footnote{198 Section 27, Air Force Act, 1950}
\footnote{199 Para 622, Regulations for the Air Force, 1964}
\footnote{200 Sections 26 and 27, Air Force Act, 1950}
\footnote{201 Sections 26 and 27, Air Force Act, 1950}
\footnote{202 Section 27, Air Force Act, 1950}
\footnote{203 Section 27, Air Force Act, 1950}
\footnote{204 Para 569, Regulations for the Air Force, 1964}
\end{footnotes}
investigate the case and redress the grievance of the officer locally. However, if he is not in a position to do so, the application with a report from the Commanding Officer on the points raised in the application will be forwarded to the next higher formation in the chain of command and the officer concerned should be informed in writing.

If an officer is aggrieved by his Commanding Officer, his application for redress of grievance will nevertheless be addressed to the Commanding Officer, who will take action. If the Commanding Officer redresses the grievance, he will inform the applicant and obtain from him in writing a statement to the effect that his grievance has been redressed. On receipt of the application at higher formation similar, action will be taken and the application will continue to be forwarded to higher authority until it reaches Air Headquarters unless the grievance is redressed at an intervening stage. At each stage, if the grievance is not redressed, the applicant is to be informed that his application has been forwarded to the next higher authority. After due consideration at Air Headquarters, the officer will be informed through the normal channels as to what action has been taken on his grievance. If the officer is not satisfied with the redress granted by Air Headquarters, his application will be forwarded to the Central Government for a decision.

If an aggrieved officer feels that his application has not received due consideration in a reasonable period of time, he may seek an interview with an inspecting officer, i.e., the Chief of the Air Staff or Air Officer Commanding in Chief. When it is desired to seek an interview with the inspecting officer, the officer will make a request to his Commanding Officer for such an interview. If time permits, full details of the case will be forwarded to the inspecting officer in advance. However, if the notice for the inspection is short, the Commanding Officer will apprise the inspecting officer of the facts of the case before the interview. It is entirely at the discretion of the inspecting officer to grant or refuse the interview. It is of utmost importance that applications for redressal of grievances by the officers should be dealt with expeditiously at all levels. Any other method for seeking a remedy of grievance by officers is not permissible. No notice will be taken of a representation on service matters submitted by relatives of officers. An officer's application is to be addressed to his Commanding Officer and copies of the application are not to be forwarded to higher authorities. On receipt of the
application, the Commanding Officer will investigate the case and redress the grievance of the officer locally. If the Commanding Officer redresses the grievance, he will inform the applicant and obtain from him in writing a statement to the effect that his grievance has been redressed. However, if the Commanding Officer is not in a position to redress the grievance locally, the application together with a report from the command officer will be forwarded to the next higher formation in the chain of command, and the officer concerned should be informed in writing. On receipt of the application at higher formation similar action will be taken and the application will continue to be forwarded to higher authority until it reaches Air Headquarters and unless the grievance is redressed. The applicant is to be informed of the fact that his application has been forwarded to the next higher authority.

After due consideration at Air Headquarters, the officer will be informed through the normal channels, as to what action has been taken on his grievance. If the officer is not satisfied with the redress granted by Air Headquarters, his application will be forwarded to the Central Government for a decision. The Complaints/ applications for redress of grievance may be addressed to next higher authorities only when the Commanding Officer or the intermediate authority refuses to give a legitimate redress asked for or unnecessarily delays forwarding of the complaints to higher authorities. Under such circumstances, the complainant will inform the intermediate authority of his action. If an aggrieved officer feels that his application has not received due consideration in a reasonable period of time, he may seek an interview with an inspecting officer, i.e., the Chief of the Air staff, Air Officer Commanding-in-Chief or Air Officer Commanding as the case may be. When he desires to seek an interview with the inspecting officer, he will make a request to his Commanding Officer in writing for such an interview. If the time permits, full details of the case will be forwarded to the inspecting officer in advance. If, however, the notice for the inspection is short, the Commanding Officer will apprise the inspecting officer of the facts of the case before interview. It is entirely at the discretion of the inspecting officer to grant or refuse an interview. It is of utmost importance that applications for redress of grievance by officers are dealt with expeditiously so as to reach the authority competent to redress the grievance not later than 45 days from its date of submission by the aggrieved person. No intermediate authority will hold up the application for more than 10 days and in the event of such a delay a report indicating the reasons for the
delay will be made to the next higher authority. Any method other than those specified in this rule for seeking a remedy of grievances by officers is not permissible.

2.5.3 Redressal under Naval Laws

On receipt of any complaint, the Commanding Officer or other officer receiving the same shall satisfy himself that the complaint is made in accordance with law. He shall then deal with it in the exercise of his discretion as may seem to him right, and cause the complainant to be informed of his decision. If the Commanding Officer or the other officer receiving the complaint refuses or is unable to remedy the complaint so made, the complainant may respectfully ask that he may be allowed to make his complaint in writing, and on receiving such request, the Commanding Officer or the other officer shall give the complainant twenty four hours to reconsider the matter. The complainant, while still having the assistance of the officer, may then address his complaint to the Commanding Officer or the other Officer in writing, who shall then forward the complaint to his next superior officer, together with his own remarks thereon. If the complainant is not satisfied with the decision on his complaint, or if he does not get the redress asked for within a period of one month from the date of submission of his complaint or the date of its dispatch to the next superior authority, as the case may be, he may request that his complaint be forwarded to the next superior authority and so on to the Chief of the Naval Staff to be dealt with in accordance with procedure and finally to the Government and all such requests shall be complied with. The complainant shall be justified in appealing direct to the next superior authority if he does not receive the final reply within a period of six months from the date of submission of his complaint.205 No officer or sailor shall be penalized for having made a complaint in accordance with law. No officer or sailor shall make remarks or pass criticism on the conduct or orders of his superiors which may tend to bring them into contempt. No officer shall say or do anything which, if heard or seen by or reported to those under him, might discourage them or render them dissatisfied with their condition or with the service on which they are or may be employed.206

If an officer or sailor thinks that he has suffered any personal, oppression, injustice or other ill-treatment at the hands of any superior officer, he may make a

205 Regulation 239, Regulations for the Navy, 1965
206 Regulation 240, Regulations for the Navy 1965
complaint. The regulations provide that the complaint should be forwarded to the Central Government for its consideration, if the complainant is not satisfied with the decision on his complaint. Any sailor who wishes to make a representation affecting his welfare or who has any suggestion to make connected with the service, shall bring the subject to the notice of his Divisional Officer through his Divisional Petty Officer. Whether the matter affects one individual or more than one individual, the procedure prescribed shall invariably be followed. If the representation is one with which the Divisional Officer cannot himself deal, he shall bring it to the notice of the Executive Officer through the departmental officer, where applicable and subsequently, if necessary, through him to the Commanding Officer, and so to higher authority as the circumstances may require. It shall be the duty of every Chief Petty Officer, Petty Officer or leading sailor to keep himself informed of any cause of complaint or dissatisfaction among the sailors and to inform his Divisional Officer so that the matter may be investigated. The provisions shall not affect the procedure by which sailor may bring requests before Inspecting Officers at inspection in accordance with the custom of the service, the custom by which any sailor is allowed to request, through his Divisional Officer, to see the Commanding Officer with regard to matters of private nature, the custom by which complaints of an immediate nature other than those about food, may be taken before the officer of the watch and the customary procedure by which complaints of an immediate nature about food in ships and establishments under the general mess system taken to the senior cook sailor in the galley, or in ships and establishments organized for centralized messing, to the sailor in charge of the dining hall.

If an officer or a sailor thinks that he has suffered any personal oppression, injustice or other ill-treatment or that he has been treated unjustly in any way, he may after due consideration, make complaint. Any other method of seeking a redress from a superior authority is forbidden. If the complainant be a Commanding Officer of an Indian Naval Ship, his complaint shall be in writing and addressed to his immediate superior. If the complainant be an officer serving in one of the Naval Ship, his complaint shall be made orally to the Commanding Officer, in accordance with the Service custom whereby a complainant is to make an oral

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207 Section 23, Navy Act, 1957
208 Regulation 234, Regulations for the Navy, 1965
209 Regulation 235, Regulations for the Navy, 1965
request to see the Commanding Officer for that purpose. If the complainant is an
officer below the rank of Captain, such request shall be made through the Executive
Officer, and if the complainant is not the Head of Department, the request shall be
made in the first place to the Head of the Department.

If the complainant is serving in a Naval establishment not commissioned as
a ship and not under the command of a Commanding Officer of one of Indian Naval
Ship, the complaint shall be made orally to his immediate superior in addition to
Naval Head quarters and Naval Dockyard, include offices of administrative
authorities, Naval Officer-in-Charge and Resident Naval Officers of Ports and
Naval Advisers to Indian Missions abroad. If the complainant is an officer who is
not serving in a Naval establishment, he shall submit his complaint to his
immediate superior, either orally or in writing as may be practicable. If the
complainant is a sailor, his complaint shall be made orally to the Commanding
Officer. A request to see the Commanding Officer shall be made to the Executive
Officer through the complainant’s Divisional Officer and Head of the Department.
A sailor detached from his ship or establishment shall make his complaint to the
officer under whose command he may be at this time. If the complainant be an
officer of junior rank or a sailor, he may request any officer in his to advise and
assist him in the statement of his case at all stages. If no such request is made, it
shall be the duty of the Divisional Officer, or such other officer as the Commanding
Officer may detail, to give his assistance, such officer shall point out to the
complainant the rules to be observed. The complainant shall be confined to a
statement of facts complained of and to the alleged consequences to the
complainant himself. Joint complainants by two or more persons are not allowed
and each individual shall make his own complaint. It shall be an offence against
good order and Naval discipline to make a complaint, either oral or written, which
includes a statement of fact which is untrue to the knowledge of the complainant. It
shall be an offence against good order and Naval discipline to make a complaint in
terms, which comprise language or comments that are disrespectful or
insubordinate or subversive of discipline, except in so far as such language or
comments are necessary for an adequate statement of the facts.

210 Regulation 236, Regulations for the Navy, 1965
211 Regulation 237, Regulations for the Navy, 1965
212 Regulation 238, Regulations for the Navy, 1965
The old mechanism of redressal of grievances mechanisms were not functioning in accordance with its true spirit as contemplated in the respective laws. However, after establishment of the Armed Forces Tribunals by the enactment of the Armed Forces Tribunal Act, 2007, the grievances of the service personnel are redressed in much better way. It is proving to be a good mechanism for the redressal of grievances in the recent times and even the respective laws related to grievances are being enforced in its letter and spirit by this mechanism.

2.6 APPLICATION OF THE PRINCIPLE OF DOUBLE JEOPARDY IN ARMED FORCES

The application of the doctrine of double jeopardy which has been enshrined in the Constitution of India\(^{213}\) along with its various facets which have been discussed herein below:

2.6.1 Application in Army

When any person subject to the Army Law has been acquitted or convicted of an offence by a Court-Martial or by a Criminal Court, or has been dealt with under any of the provisions of the Army Law,\(^{214}\) he shall not be liable to be tried again for the same offence by a Court-Martial or dealt with under the provisions of the Army Law.\(^{215}\) The concept of prohibition of second trial has been derived from the Constitution of India,\(^{216}\) wherein a general principle has been laid down that a person cannot be tried twice for the same offence. The findings of a General Court-Martial, Summary General Court-Martial or District Court-Martial, if not confirmed, are not valid. In such cases, the accused is not acquitted or convicted and may legally be tried again. However, re-trials should be rarely be restored to, and only when the needs of discipline and justice demand that an offender shall not escape punishment on account of a legal technicality. The re-trial should not be ordered until the Deputy Judge Advocate General of the Command has been consulted and the sanction of superior authority obtained.\(^{217}\) Where a Court is not legally constituted and has no jurisdiction, e.g., if the convening order is signed by or on behalf of an officer not authorized to convene such a Court, or if the number of officers composing the Court is below the legal minimum required for that type

\(^{213}\) Article 20(2), Constitution of India
\(^{214}\) Sections 80, 83,84 and 85, Army Act, 1950
\(^{215}\) Section 121, Army Act, 1950
\(^{216}\) Article 20(1), Constitution of India
\(^{217}\) Section 153, Army Act, 1950
of Court, or if unqualified officers sits, it is no Court at all. The accused will not have been really tried, and may be tried again, even though the proceedings of such illegally constituted Court have been inadvertently confirmed.218

No trial by Court-Martial of any person subject thereto for any offence shall be commenced after the expiration of period of three years.219 Such period shall commence on the date of the offence, where the commission of offence was not known to the person aggrieved by the offence or to the authority competent to initiate Action, the first day on which such offence comes to knowledge of such person or authority, whichever is earlier, or where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the authority competent to initiate action, whichever is earlier. However, the limitation shall not apply to a trial for offences of mutiny,220 desertion on active service221 and fraudulent enrolment222 and these offences can be tried at any time by the Court-Martial. While computing the period of limitation for three years, time spent by such person as a prisoner of war, or the enemy territory, or in evading arrest after the commission of the offence, shall be excluded. No trial for an offence of desertion other than desertion on active service or of fraudulent enrolment shall be commenced if the person in question, not being an officer, has subsequently to the commission of the offence, served continuously in an exemplary manner for not less than three years with any portion of the regular army. The limitation of three years will run from the date when the competent authority takes a decision to initiate the disciplinary proceeding against the offender.

Thus, on the expiration of three years to be computed in accordance from the commission of the offence, the offender is free from being tried or punished under the Army Law by the Court-Martial for any offence except mutiny, desertion on active service or fraudulent enrolment. Where an accused person is charged with desertion commencing on a date more than three years before his trial begins, he cannot be found guilty under the Army Law223 for absent without leave from that date, but such absence must be restricted to a period not exceeding three years

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218 Section 117 Army Act 1950
219 Section 122 Army Act 1950
220 Section 37, Army Act, 1950
221 Section 38, Army Act, 1950
222 Section 43, Army Act, 1950
223 Section 39(1), Army Act, 1950
immediately prior to the commencement of the trial. Where, however, such a finding and sentence has been erroneously confirmed, the authorities specified under the provisions of the Army Law,\textsuperscript{224} may substitute a valid legal findings and pass a sentence for the offence specified or involved in such finding. Once a stay order has been vacated, in spite of the expiry of limitation for commencement of Court-Martial proceedings under the provisions of the Army Law,\textsuperscript{225} the option to have the accused tried by a Court-Martial or to invoke the provisions contemplated in the Army Law,\textsuperscript{226} in connivance with the other procedure laid down in the Army Rules,\textsuperscript{227} depending on the facts and circumstances of an individual case, would still be available to the Central Government or the Chief of the Army Staff. The provision dealing with the prohibition of second trial has no application where the accused is neither acquitted nor convicted by the Court-Martial or by a criminal Court nor has been dealt with under the Army Law.

When an offence under the Army Law had been committed by any person while subject thereto, and he has ceased to be subject, he may be taken into and kept in military custody, and tried and punished for such offence as if he continued to be so subject. No such person shall be tried for an offence, unless his trial commences within a period of three years after he had ceased to be subject to the Army Law.\textsuperscript{228} In computing such period, the time during which such person has avoided arrest by absconding or concealing himself or where the institution of the proceeding in respect of the offence has been stayed by an injunction or order, the period of the continuance of the injunction or order, the day on which it was issued or made, and the on which it was drawn, shall be excluded. The trial means an act of proving or judicial examination or determination of the issues including its own jurisdiction or authority in accordance with law or adjudging the guilt or innocence of the accused including all necessary steps thereto. The trial commences with the performance of the first act or steps necessary or essential to proceed with the trial. The trial commences the moment the General Court-Martial assembles for proceeding with the trial, consideration of the charge and arraignment of the accused to proceed further with the trial including all preliminaries like objections

\textsuperscript{224} Section 163, Army Act, 1950
\textsuperscript{225} Section 122, Army Act, 1950
\textsuperscript{226} Section 19, Army Act, 1950
\textsuperscript{227} Rule 14, Army Rules, 1969
\textsuperscript{228} Section 123, Army Act, 1950
to the inclusion of the members of the Court-Martial, reading out the charge or charges, amendment thereof and so on. However, where, the accused deliberately delays the commencement of the trial, he may not be allowed to take advantage of the same as rightly said in the legal maxim that “nullus commodum capere protest de injuria sua propria” which means no one can take advantage of his own wrongs squarely stands in the way of avoidance.

2.6.2 Application in Air Force

When any person subject to this Air Force Law has been acquitted or convicted of an offence by a Court-Martial or by a Criminal Court, or has been dealt with under the Air Force Law,\(^{229}\) he shall not be liable to be tried again for the same offence by a Court-Martial or dealt with under the said sections.\(^{230}\) The finding of a General Court-Martial, Summary General Court-Martial, or District Court-Martial, if not confirmed, is of no validity. Therefore, in such case the accused has not been acquitted or convicted, and may legally be tried again, but re-trials should rarely be resorted to. The re-trial should not be ordered until the Command Judge Advocate of the Command has been consulted and the sanction of superior authority obtained.\(^{231}\) There is no limitation on the number of occasions that an accused person can be tried by the Court-Martial on the same charges, when the findings of the earlier trials are not confirmed by the confirming officer. The re-trials, however, should be ordered in rare and exceptional cases when the requirements of discipline and justice dictate that the offender shall not escape punishment on account of a legal technicality. It is an established rule of criminal jurisprudence that an accused person should not be placed on trial for the same offence more than once, except in very special circumstances. Every trial involves hardship, humiliation, suffering and some expense to the accused. When a re-trial takes place, the accused has to undergo the same humiliation trouble and suffering once again.

Where a Court is not legally constituted and has no jurisdiction, it is not a Court, if the convening order is signed by or on behalf of an officer not authorized to convene such a Court, or if the number of officers composing the Court is below the legal minimum required for that type of Court, or if disqualified officers sit. In

\(^{229}\) Sections 82 and 86, Air Force Act, 1950
\(^{230}\) Section 120, Air Force Act, 1950
\(^{231}\) Section 152, Air Force Act, 1950
such cases, the accused will not have been really tried, and may be tried again, even though the proceedings of such illegally constituted Court have been inadvertently confirmed. It is a general principle of law, also incorporated as a fundamental right in the Constitution of India\textsuperscript{232} that a person cannot be tried twice in respect of the same offence. Where the same incident, or set of incidents, gives rise to two trials, the test of whether the offence is the same offence would appear to be this, could the accused have been lawfully convicted at the first trial upon the charge-sheet then before the Court, of the offence now charged at the second trial? If so, the second trial is illegal and void. Thus, on a charge of desertion, a person could by virtue of the Air Force Act, 1950\textsuperscript{233} be convicted of absence without leave, if he is acquitted generally the acquittal applies to both offences and he cannot subsequently be charged with absent without leave upon the same facts if, however, the Court while acquitting him of desertion, convicts him of absent without leave, and this finding is not confirmed, he has not been acquitted of absence, and can be charged again with the offence. Where a person is re-tried on the same charge, it is not usual to impose a more severe punishment than that awarded on the first trial, and a confirming officer should exercise his powers of mitigation, etc., when confirming the proceedings, if a greater punishment has been awarded on the second trial. In cases where it is established that a minor punishment has been awarded by a Commanding Officer or subordinate commander in contravention of the Air Force Law,\textsuperscript{234} such illegal award will not bar subsequent trial of the accused for the same offence. Where a fresh trial is ordered, no officer may serve on it who sat on the former Court.\textsuperscript{235}

No trial by Court-Martial of any person for any offence shall be commenced after the expiration of a period of three years from the date of such offence. However, this provision shall not apply to a trial for an offence of desertion or fraudulent enrolment or for any of the offences of mutiny. No trial for an offence of desertion, other than desertion on active service or of fraudulent enrolment shall be commenced if the person in question, not being an officer has, subsequently to the commission of the offence, served continuously in an exemplary manner for not less than three years with any portion of the Air Force. In the computation of the

\begin{itemize}
\item\textsuperscript{232} Article 20(2), Constitution of India
\item\textsuperscript{233} Section 38(1), Air Force Act, 1950
\item\textsuperscript{234} Section 83, Air Force Act, 1950
\item\textsuperscript{235} Rule 45 (2) (c), Air Force Rules, 1969
\end{itemize}
period of time any time spent by such person as a prisoner of war, or in enemy
territory, or in evading arrest after the commission of the offence, shall be
excluded.\textsuperscript{236}

Where an offence has been committed by any person and he has ceased to
be subject of the Air Force Law, he may be taken into and kept in Air Force
custody, and tried and punished for such offence as if he continued to be so subject.
However, such person shall be tried for an offence, unless his trial commences
within six months after he had ceased to be subject to the Act. These provisions
shall not apply to the trial of any such person for an offence of desertion\textsuperscript{237} of
fraudulent enrolment\textsuperscript{238} or for mutiny\textsuperscript{239} and nothing shall affect the jurisdiction of
a civil Court to try any offence triable by such Court as well as by a Court-Martial.
When a person is sentenced by a Court-Martial to transportation or imprisonment,
this Act shall apply to him during the term of his sentence, though he is cashiered or
dismissed from the Air Force, or has otherwise ceased to be subject to this Act, and
he may be kept, removed, imprisoned and punished as if he continued to be subject
to this Act. When a person is sentenced by a Court-Martial to death, the respective
Law shall apply to him till the sentence is carried out.\textsuperscript{240}

This section stipulates the case of a person who commits an offence against
Air Force Law, whilst subject to it, and then ceases to be subject to it. Such cases
will occur when an officer relinquishes his commission or is dismissed or when a
Warrant Officer or aircraftman is discharged. Such a person, though he has ceased
to be subject to Air Force Law even before discovery of the offence may
nevertheless be arrested, tried and punished just as if he were still subject but he can
only be tried within six months after he has ceased to be so subject, the six months
will not be deemed to have expired if the trial has commenced within that period.
An exception has been made in the case of desertion,\textsuperscript{241} fraudulent enrolment\textsuperscript{242} and
offence mutiny,\textsuperscript{243} for which he can be tried at any time subject to the restrictions in
the Air Force Law.\textsuperscript{244} Further, a Criminal Court can try such offence, if triable by it

\begin{itemize}
\item\textsuperscript{236} Section 121, Air Force Act, 1950
\item\textsuperscript{237} Section 38, Air Force Act, 1950
\item\textsuperscript{238} Section 43, Air Force Act, 1950
\item\textsuperscript{239} Section 37, Air Force Act, 1950
\item\textsuperscript{240} Section 122, Air Force Act, 1950
\item\textsuperscript{241} Section 38, Air Force Act, 1950
\item\textsuperscript{242} Section 43, Air Force Act, 1950
\item\textsuperscript{243} Section 37, Air Force Act, 1950
\item\textsuperscript{244} Section 121, Air Force Act, 1950
\end{itemize}
as well as a Court-Martial, though the offence is no longer triable by a Court-
Martial. When the six months have expired, the offender is protected and his
liability is not revived in respect of the earlier offence, by his again becoming
subject to Air Force Law.

The case of a person subject to Air Force Law, who is tried and sentenced to
imprisonment for life or imprisonment to be undergone in a civil prison, Air Force
Law applies to such a person during the term of his sentence, notwithstanding that
his cashiering or dismissal from the service has been formally carried out, or that he
has otherwise ceased to be subject to Air Force Law. Consequently, he may be tried
by Court-Martial for an offence committed by him while under sentence at any time
before his sentence is completed, or he may be kept in or removed to Air Force
custody and made to undergo his sentence there although the sentence is one to be
undergone in a civil jail.\textsuperscript{245} e.g., an Airman serving a sentence of imprisonment in
an Air Force establishment after a sentence of dismissal, takes part in a mutiny,
there, he can be tried by Court-Martial for an offence under the Air Force Law.\textsuperscript{246}
The fiction created by the Air Force Law\textsuperscript{247} does not relate to the pay and
allowances, and these will be governed by such regulations or orders as may be
framed from time to time, respecting these matters. Where the individual is
acquitted, it will be for decision as to whether the period of custody under the Air
Force Law\textsuperscript{248} should be left uncompensated. In cases when this section is invoked,
the term Commanding Officer will connote the Commanding Officer of the last
unit, or the Commanding Officer of the unit where attached for purposes of trial or
the Commanding Officer of the unit where trial will be carried out as applicable.

\begin{enumerate}
\item \textbf{2.6.3 Application in Navy}
\end{enumerate}

Every person subject to Naval Law who is charged with a naval offence or a
civil offence may be tried and punished regardless of where the alleged offence was
committed. However, a person subject to naval law who commits an offence of
murder against a person not subject to Army, Naval or Air Force Law or an offence
of culpable homicide not amounting to murder against such person or an offence of
rape in relation to such person shall not be tried and punished, unless he commits
any of the said offences while on Active service, or at any place outside India or at

\begin{footnotes}
\item[245] Rule 146, Air Force Rules, 1969
\item[246] Section 37, Air Force Act, 1950
\item[247] Section 122(1), Air Force Act, 1950
\item[248] Section 122(1), Air Force Act, 1950
\end{footnotes}
any place specified by the Central Government by notification in this behalf. Also, if a person commits murder of a civilian, and that person is not subject to Army, Naval or Air Force Law, at any place other than that mentioned above, he cannot be tried under the Naval Law, but must be tried by a Criminal Court.249 This principle was well supplemented by the Hon’ble Supreme Court in the case of KM Nanavati v. State of Maharashtra.250 No person, unless he is an offender, who has avoided apprehension or fled from justice or committed the offence of desertion or a fraudulent entry or the offence of mutiny shall be tried or punished in pursuance of this Act for any offence committed by him unless such trial commences within three years from the commission of such offence, however, in the computation of the said period of three years any time during which an offender was outside India or any time during which he was a prisoner of war shall be deducted however, no trial for an offence of desertion other than desertion on active service or fraudulent entry shall be commenced if the person in question not being an officer has subsequently to the commission of the offence served continuously in an exemplary manner for not less than three years in the Indian Navy.251

When any offence has been committed by any person while subject to Naval law and such person has since the commission of the offence ceased to be subject to naval law, he may be taken into and kept in custody, tried and punished under this Law for such offence in like manner as he may have been taken into and kept in custody, tried and punished if he had continued subject to Naval Law, however he shall not be tried for such offence except in the case of an offence of mutiny or desertion, unless the trial against him commences within six months after he has ceased to be so subject.252

2.7 CRITICAL APPRAISAL

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 sanction on them for commission of the offences. 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 or 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 or 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.

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. The punishment should be 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. The administrations of justice in Armed Forces are mere tools of oppression of the subordinates and it cannot serve its purpose unless, it is done in holistic manner.