CHAPTER V
LEGISLATIVE PROVISIONS FOR THE TENURE, TERMINATION AND PROCESSUAL JUSTICE IN THE DEFENCE FORCES

Prelude

India has a profound socio political as well as the defence history. This is evident from the factors responsible for the evolution of the concept of the tenure, termination and the processual Justice in the defence forces and the principles evolved in this field. The English authors see the origins of the Indian defence forces with effect from the time when they themselves first set their feet on the Indian shores. Hence the origin as per them dates back to the time when the East India Company recruited the local guards. In the first half of the seventeenth century A.D., the East India Company enrolled guards at Surat, Masulipatam, Armagon, Madras, Hooghly and Balasore for the protection of their factories and the trading posts.\(^1\) Besides providing protection to the company property from intruders, the Indian guards also added to the display of the officials of the company. Not to be forgotten was the rich Royal tradition which encompassed the whole of Britain which came with the East India Company. The company replicated the Royal richness in their status which they could not otherwise enjoy being traders in England. The company officials were also wary of the strength of the local people and the likelihood of revolt if their numbers were allowed to increase indiscriminately. Hence Special restrictions were placed on the strength of the guards, with a view to prevent them from acquiring any military

importance. But as the business of the Company expanded, there was an increased requirement of these guards and thus strength and organisation of these guards was improved. Eventually, from them arose the East India Company's European and the local troops called the ‘Natives’. Both these compliments increased steadily in numbers, until in 1857, when the native army reached its maximum strength as it numbered (including local forces and contingents, and a body of 38,000 military police) not less than 311,038 officers and men.²

5.1 Indian Defence Forces – British Regime

The Indian defence forces are the second largest in the world. The law relating to them assumes immense importance by virtue of being the law governing these massive forces. The beginning of the Statutory law which is deemed to have been the foundation for the law of the Defence forces in India, lies in the East India Company Mutiny Act, 1754. The writings previous to this legislation spoke about the trials of soldiers by courts martial. An expression, ‘Earl Marshal’ is found in the old records of military history. As recorded by Dr Rama G. vidhu, ‘The modern system of court- martial ....evolved over the centuries since its seminal existence in the Aula Regis of William, the conqueror (1066-1087 AD).³ The courts were known as the ‘curia militaris’ ⁴ and those dispensed justice much in conformity with the customs of war in the like cases. In fact, during the late 14th century, the ‘Earl Marshal’ held the court, the ‘curia militaris’ alone⁵ by himself, contrary to the present system of jury trial which is duly assisted by a Judge Advocate.

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4. Ibid., p.3.
5. Ibid.
Maintenance of discipline is the primary concern of the forces and has been as much in the past as well. With a view to impose the disciplinary code on the troops raised by the Company for the protection of its property on the Indian soil, the first statutory provision for their discipline was made by an Act passed in the year 1754. This Statute dealt with the punishments for ‘Mutiny’ and ‘Desertion’ of officers and soldiers in the service of the United Company of Merchants of England trading to the East Indies. The next purpose it served was that it catered for the punishment of offences committed in the East Indies, or at the Island of Saint Helena. One of the provisions viz., section 8 of this Act empowered the Crown in England to formulate the ‘Articles of War’ for the governance of the troops in India. These Articles of War were published through the Royal Gazette of the United Kingdom. The terms of the Act were wide enough as those covered both the European as well as the ‘Native troops’. Originally, the text as well as the context of these Articles of war, was relevant only to the Europeans. But since there was no other code available for the administration of the troops in the Presidencies established in India, the Governments of Bengal, Madras, and Bombay applied these Articles of war with such modifications and adaptations as appeared necessary to them. The present Indian Army is considered as the descendant of these bodies of native troops maintained by the Presidencies.

In 1813, certain provisions were inserted in the Act owing to the doubts having arisen as to the legal validity of the existing arrangements for the discipline of the native armies. This legalized the existing system and gave power to each of the Governments of Fort William, Fort Saint George and Bombay to

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6. The first Mutiny Act passed by the Parliament of England was the Act of 1689. (Rama G. Vidhu, p.3.)
make laws, regulations, and Articles of War for the Government of all officers and soldiers in their respective services who were natives of the East Indies or other places within the limits of the Company’s Charter. It was further provided in 1823 that such legislation should apply to the native troops of each presidency, wherever serving, and whether within or beyond his Majesty’s dominions.\(^7\)

Perusal of the published documents relating to the Defence forces like the Manual of Military Law, 1922 Edition, reveals that under the statutory sanction of enactments of 1754 and 1813, a military code was framed by the then Government of each presidency and put in force as regards its own troops. These codes still followed to a great extent the Articles of War then applicable to the Company’s Europeans, but the only punishments awardable to native officers, as revealed from the manual were, death, dismissal, suspension, and reprimand, and to the native soldiers, the punishments varied from death to corporal punishment. Transportation and imprisonment were not awardable during that time.

### 5.1.1 Articles of War

Perusal of section 73 of the Government of India Act, 1833, reveals that the power to legislate for the whole native army was restricted to the Governor General in Council, and laws so made were given general application to all *native officers and soldiers* wherever serving.\(^8\) This expression included the natives of the East Indies and other territories within the limits of the Company’s Charter.\(^9\) This is confirmed by the fact that in later legislation the existence of three military codes in India are

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recognized, i.e., the military code for the Queen’s troops, code for the Company’s Europeans and code for the Company’s troops who were the natives of the East Indies or other places within the limits of the Company’s Charter.\textsuperscript{10}

After the Act of 1833, the Indian Legislature for the first time provided a common code for the native armies of India in 1845, “Articles of War” for those armies being enacted by the Governor General in Council as Act XX of that year. This Act is found to have been repealed and replaced by the Act XIX of 1847 which, having been frequently amended in the intervening period, was also repealed by Act XXIX of 1861 (an Act passed with a view to consolidate and amend the Articles of War for the Government of the Native Officers and soldiers in Her Majesty’s Indian Army). This too was repealed by Act V of 1869 (The Indian Articles of War). The preamble to this Act for the first time referred to the native officers, soldiers, and other persons in Her Majesty’s Indian Army, which in fact was a formal recognition of what is now commonly known as followers.\textsuperscript{11}

The amalgamation of the three native armies into one composite force took place in 1895. This necessitated considerable amendments in the Indian Articles of War. These amendments were brought in by the Act XII of 1894 and the Indian Articles of War, as altered by this Act, and by various minor amending Acts, furnished the statutory basis of the Indian military code until 1911. As the time went on, and the Indian

\textsuperscript{10}. \textit{Ibid.}
\textsuperscript{11}. Section 2(1) (i) of the Army Act,1950 (46 of 1950). \textit{2. Persons subject to this Act.}—(1)
The following persons shall be subject to this Act wherever they may be, namely:
(a)- (h) xxxxxx.
(i) persons not otherwise subject to military law, who, on active service, in camp, on the march or at any frontier post specified by the Central Government by notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of, the regular Army.”
Army began to take its share in the imperial responsibilities of the British Army, it appeared to have been felt that the codes applicable for the discipline of the three separate local forces, each serving as a rule in its own Presidency, failed to provide adequately for the discipline and administration of that army under the changed conditions. Hence there was a necessity to overhaul the old codes of military and enact a new legislation for the governance of the force.

5.1.2 The Indian Army Act, 1911

The Indian Articles of War of 1869 were still in existence and being followed as amended in 1894. Hence a Bill was accordingly drafted consolidating the existing law as to the Indian Army into one simple and comprehensive enactment and adding such provisions as experience had shown to be necessary. This was passed into law on the 16th March 1911 as the “Indian Army Act” and came into force on the 1st January 1912. All previous statutes dealing with the subject of military law on the issue of the governance of the defence forces (Military) were repealed by section 127 of the present Act i.e., the Act of 1911.

During the Second World War from the years 1914-18, temporary Acts were passed to provide for the suspension of sentences. With a view to provide for the suspension of sentences of imprisonment or transportation passed by courts-martial on persons subject to the Indian Army Act, an Act was passed on the 23rd March 1920. This act which was known as the ‘Indian Army (Suspension of Sentences) Act’ was to be read along with the Indian Army Act, 1911.

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5.1.3 Status Post Independence

Post Independence, in spite of the amendments, the Indian Army Act of 1911 which was still in operation was found to be unduly harsh and inadequate in its enumeration of offences. Besides the above, by this time, various Indian State Forces had also become a part of the Indian defence Forces and the *pleasure powers of the Governor General* were also to be now replaced by that of the *President* who now was the Highest Executive of the Nation. In addition, the Ordinances No XXXVI of 1943 and XXXVII of 1945 relating to the penal deductions of pay and allowances of prisoners of war were also required to be included in the new Statute. Hence, a Bill termed as the ‘Army Bill’ to incorporate these amendments in the Army Act of 1911 was introduced in the parliament. The Army Bill received the assent of the President on 20th May, 1950 and the Act came into force as the Army Act, 1950 (46 of 1950) on 22nd July 1950.

5.2 Legislations relating to the defence forces of the Union – A category of special laws

The legislations relating to the defence forces of the Union fall in the category of special laws framed under the provisions of the constitution. A reference to the following minutes of the “Report of The Union Powers Committee to The Constituent Assembly” by V.T. Krisnamachari and B.L. Mittar is made:

“Defence” connotes the defence of the union and of every part thereof and includes generally all preparations for defence as well as all such acts in times of war as may be conducive to its successful prosecution.

“Defence” includes – (1) the raising, training, maintenance and control of Naval Military and Air forces and employment thereof for the defence of the union and the execution of the
laws of the union and its units; the strength, organisation and control of the existing armed forces raised and employed in Indian states;

(2) Defence industries;

(3) Naval, Military and Air Force works;

(4) Local self Government in cantonment areas, the constitution and powers within such areas of cantonment authorities, the regulation of house accommodation in such areas and the delimitation of such areas;

(5) Arms, ammunition and explosives;

(6) Atomic energy, and mineral resources essential to its production.

“We recommend further that in order to enable the union Government effectively to discharge its responsibility for defence, it should be vested with the powers similar to those contained in sections 102 and 126 A of the Government of India Act, 1935”.

Whenever the power of termination is exercised against an individual subject to the law of the defence forces his fundamental right guaranteeing him the equal opportunity of employment under Article 16 is definitely breached. While presenting the interim report on fundamental rights at the constituent assembly of India on 29th April, 1947, Sardar Vallabhbhai Patel said, “The fundamental rights should be divided into parts- the first part justiciable and the other part non justiciable”. However the constitution of India, when attained, the final shape did not have such a distinction as the complete provision is subject to judicial review. While laying down the justiciable fundamental rights, a proviso was added to the rights of freedom which read as
“Provision may be made by law to impose such reasonable restrictions as may be necessary in the public interest including the protection of minority groups and tribes”.

5.3 The Army Act, 1950 (Act No 46 of 1950)

With a view ‘to consolidate and amend the law relating to the Government of the regular Army’, the Army Act, 1950 came into force into the new Indian Republic. The rule making power of the Parliament was put to its ultimate use and the laws relating to the defence forces were enacted. Bernard Schwartz described this power as an outstanding discretion in the following words:-

*Rule making power is an outstanding feature of the modern administrative agency.*

The Army of today is being governed by the Act of 1950. Chapter III of the Act deals with the Commission, Appointment and Enrolment into the Army. Section 10 provides that the President may grant to such person as he thinks fit, a commission as an officer, or as junior commissioned officer or appoint any person as a warrant officer of the regular Army. The commission or appointment so made is not a contract in its real sense as its grant or termination/withdrawal is not legally dependent on the consent of the grantee. Section 11 deals with the ineligibility of the aliens for enrolment in the Army but makes an exception in respect of the subjects of Nepal. Section 12 of this chapter lays down that females will be

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15. See Appendix- 1.
16. See Appendix- 1.
eligible for employment only in the auxiliary Corps.\textsuperscript{17} For instance the Military Nursing Service under the Military Nursing Services (India) Ordinance (No. xxx) of 1943, under which Military Nursing Service has been raised and maintained as an auxiliary to the regular Army. The chapter also lays down the procedure for enrolment thereby making it as a statutory function.\textsuperscript{18} It prescribes enrolling officers under Army Rule 7 and the forms of enrolment in the Appendix I to the Army Rules. The conditions of service, in these forms, are embodied in the questions which are put to the person to be enrolled and his acceptance of these conditions is duly recorded therein. Mode of enrolment Attestation etc are given in the subsequent sections.\textsuperscript{19}

5.3.1 The tenure and termination vis-a-vis the conditions of service under the Army Act

The most important aspect of the defence services is their terms and conditions, Chapter IV of the Act lays down the conditions of service in respect of the persons subject to the Army Act, 1950. The chapter governs the tenure and lays down authorities competent to terminate the services of the persons subject to the Act.\textsuperscript{20} The authorities so provided are the President under section 18 as \textit{every person subject to the Act holds office during the pleasure of the President.}\textsuperscript{21} And to follow the power of the President is the power of the Central Government to terminate the service of an army personnel enshrined in section 19, to be exercised in accordance with the procedure provided under Army Rule 14.\textsuperscript{22} The next is the Power

\textsuperscript{17} See Appendix-1.\textsuperscript{18} See Appendix-1.\textsuperscript{19} See Appendix-1.\textsuperscript{20} See Appendix-1.\textsuperscript{21} See Appendix-1.\textsuperscript{22} See Appendix-1.
of the Chief of The Army Staff and other officers for dismissal, removal and reduction as contained in section 20, to be exercised in accordance with the procedure contained in Army Rule 17.

Section 18 in fact reiterates the provision set out in Article 310(1) of the Constitution. The President’s powers to terminate the service of any person subject to the Army Act by way of dismissal, removal or otherwise, under the said Article are unqualified and unfettered and no show cause notice is necessary. Section 19 of the Act has empowered the Central Government to dismiss or remove from service any person subject to the Army Act but only in accordance with the provisions of the Army Act or of any rules or regulations made under the Act. The restrictions are contained in ARs 13A, 14 and 15 which mandate issue of a show cause notice to be served upon an officer before his services are terminated by way of removal or dismissal on the grounds of his having failed to qualify an examination or course, misconduct or inefficiency. Such show cause notice can also be dispensed with by the Central Government but only when it considers it inexpedient or impracticable to do so or when the officer has already been convicted by a criminal court for his proven misconduct.

Army Rule 15A provides for the release of an officer on medical grounds. The release in this case is to be carried out on the recommendations of a Medical Board. Generally, the Dismissal under this section, Army Act Sections 18 or 20 is not considered as a punishment as under Army Act Section 71 but merely amounts to termination of a person’s commission/service without his consent. Removal is considered as a less grave form of dismissal.

23. See Appendix-1.
24. See Appendix-1.
The parliament has been further empowered to make rules and regulations to give effect to the provisions of the Army Act.\(^\text{25}\) The provisions are to be read in conjunction with the procedure laid down in the Rules for their strict compliance every time any of these sections was ever invoked. The relevant Rules are Army Rules 13\(^\text{26}\), 13A\(^\text{27}\), 14\(^\text{28}\), 15\(^\text{29}\), 15A\(^\text{30}\) and 17.\(^\text{31}\) Release and the ages of retirement have been given under Army Rules 16\(^\text{32}\) and 16A\(^\text{33}\) respectively. Law on Retirement, release or discharge is contained in Sections 22, 23 and 24 of the Army Act.\(^\text{34}\)

**5.3.2 Relevance of provisions not directly related to the tenure and termination**

Certain provisions which have no direct bearing on the tenures or the powers of termination of the persons subject to the Army Act, are still relevant for the simple reason that recruitment and commission in the defence forces confers a right on the soldier or the officer to continue in service unhindered for a specified period of time. Termination of service is not an incidence of service occurring as a matter of due course. It is rather an exceptional occurrence which has to pass the acid test of equitability and reasonableness which in turn have to follow the Rule of Law, for instance the provisions relating to the conditions of service other than the tenure and termination. The portion of the Act which deals with the modification of fundamental rights\(^\text{35}\) is definitely an important part of the legislation relating to the Army. Similarly the provisions relating

\(^{25}\) See Appendix-1.
\(^{26}\) See Appendix-1
\(^{27}\) See Appendix-1
\(^{28}\) See Appendix-1
\(^{29}\) See Appendix-1
\(^{30}\) See Appendix-1
\(^{31}\) See Appendix-1
\(^{32}\) See Appendix-1
\(^{33}\) See Appendix-1
\(^{34}\) See Appendix-1
\(^{35}\) See Appendix-1
to the service privileges are enshrined in Chapter V of the Act.\(^{36}\) Section 25 provides that the pay of every person subject to Army shall be paid to him or her without any deduction other than the deductions authorised by or under this or any other Act. Similarly, sections 26 - 32 provide for Remedies against actions by superior officers; immunity from attachment of arms, clothes, equipment, accoutrements or necessaries by direction of any civil or revenue court or any revenue officer in satisfaction of any decree or order enforceable against him; immunity from arrest for debt; immunity of persons attending courts-martial from arrest; privileges of reservists and priority in respect of army personnel's litigation, respectively. Section 33 is a saving clause for these rights and privileges.\(^{37}\) While coming to the processual justice, the procedural aspect of Military law is found in the provisions relating to the enquiries and investigations, Show cause notice, taking replies thereto and consideration of those replies by the respective heads of defence forces i.e., the chiefs of Army, Navy and the Air Staffs contained in the respective Army and Air Force Rules and the Navy Regulations. With regard to the Military, reference can be made to Rules 14 to 17, 22, 23, 24, 26 and 177 to 184.

With respect to the law on termination, the Supreme Court examined the scope of Article 310 of the Constitution. The Court relied on its own judgement in *State of U.P. & Others v. Babu Ram Upadhyaya*,\(^ {38}\) and determined the scope of the powers of termination of service as vested in the executive authority. The court held that in India every person who is a member of a public service described in Article 310 of the Constitution holds office during the pleasure of the President or the Governor, as

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36. See Appendix-1.
37. See Appendix-1.
38. AIR 1961 SC 751.
the case may be, subject to express provisions therein. Secondly, the power to dismiss a public servant at pleasure is outside the scope of Article 154 and, therefore, cannot be delegated by the Governor to a subordinate officer, and can be exercised by him, only in the manner prescribed by the Constitution. Thirdly, the tenure of service is subject to the limitation or qualifications mentioned in Article 311 of the Constitution and lastly, the Parliament or the Legislatures of States cannot make a law abrogating or modifying the tenure so as to impinge upon the overriding power conferred under Article 310 as qualified by Article 311.39

5.3.3 Regulation of the conditions of service

The Parliament or the Legislatures of the respective States in India can make laws to regulate the ‘conditions of service’ and set out the proceedings for taking disciplinary action. This is clear from the provisions of Article 309. Besides, this power does not affect the powers of the President or the Governor under Article 310 of the Constitution read with Article 311 thereof. The Constitution lays stress on the doctrine of ‘reasonable opportunity’. The Parliament and the Legislatures are required to and thus may make laws to ensure ‘reasonable opportunity’ to the State employees. 40 Any law made within the specified permissible limits, in exercise of the power provided there under, too would be efficacious within the said limits.41

5.3.4 Military Law as interpreted by the Supreme Court

The Supreme Court like in other case interpreted the Military Law and in the process explained its various intricate

39. Ibid.
40. Ibid.
41. Ibid.
provisions. An important observation came in the case of Lt Colonel PPS Bedi. The court held:

“Reluctance of the Apex court more concerned with the Civil Law to interfere with the internal affairs of the Army is likely to create distorted picture in the minds of the Military personnel that persons subject to Army Act are not Citizens of India.”

Certain terms like removal, dismissal often find mention in the Military law. The supreme court in Abdul Majid’s case, examined the scope of the word ‘removal’ and held, that the word removal has been used as a ‘close derivative of termination’. Removal being referred here is the removal appearing in Article 311(2). The court declined to accept a very wide interpretation of the term removal and held, “The word “removal” like the two other words “dismissal” and “reduction in rank” used in Article 311(2) refer to cases of major penalties which were specified by the relevant service rules. Therefore, the true position is that Articles 310 and 311 must no doubt be read together, but once the true scope and effect of Article 311 is determined, the scope and effect of Article 310(1) must be limited in the sense that in regard to cases falling under Article 311(2) the pleasure mentioned in Article 310(1) must be exercised in accordance with the requirements of Article 311.....”

5.4 The Navy Act, 1957 (Act No 62 of 1957)

Before independence the Naval Forces of India were being governed by the Indian Navy (Discipline) Act, 1934 which was passed pursuant to section 66 of the Government of India Act,

42. 1982(2) SLJ 582.
43. PPS Bedi’s case as quoted by Surinder Paul Shori in ‘Legislative safeguards and immunities to the Military Personnel in India’, Tagore Printers, Jalandhar city, 2000, p.148.
45. Ibid.
1919 which was later replaced by section 105 of the Government of India Act, 1935. In fact this provision empowered the then Indian Legislature to apply the provisions of the United Kingdom Naval Discipline Act to the Naval Forces raised in India. In 1950 the Army and the Air Force Acts were passed. However, The Navy still continued to be dealt in accordance with the Act of 1934. Independent India required a legislation of its own passed by the Indian Parliament. Hence the Navy Bill was introduced in the Parliament and was eventually passed as the Navy Act after receiving the President’s assent on 27th December, 1957. It came into force with effect from the 1st January, 1958 as the Navy Act, 1957(62 of 1957).

With a view ‘to consolidate and amend the law relating to the Government of the Indian Navy’, the Navy Bill was introduced in the lower house of the Parliament. Having been passed by both the Houses of Parliament, the Bill received the assent of the President on 27th December, 1957 and came into force into the new Indian Republic on 1-1-1958 as the NAVY ACT, 1957 (62 of 1957). The Navy, today, is being governed by the provisions of this Act and the regulations made under the authority of this Act. With the promulgation of the Navy Act, every person belonging to the Indian Navy during the time of promulgation became liable for service under this Act. Besides the above, the persons belonging to the Indian Naval Reserve forces also came under subjection of this Act under the following conditions:

(i) On Active service, or

47. Navy Act, 1957 Section 2
(ii) in or on any property of the Naval service including Naval establishments, ships and other vessels, aircraft, vehicles and armories, or

(iii) called up for training or undergoing training in pursuance of regulations made under this Act, until he is duly released from his training, or

(iv) called up into Actual service in the Indian Navy in pursuance of regulations made under this Act, until he is duly released there from, or

(v) In uniform.\textsuperscript{48}

The Act also extended to those persons who were not mustered in the Navy but were the members of the regular Army and air force when embarked on board any ship or aircraft of the Indian Navy. The Act applied to them to such an extent and subject to such conditions as may be prescribed by the Act or by the regulations made there under.\textsuperscript{49}

If any person not otherwise subject to the Naval law, entered into an agreement with the Central Government to serve in a particular ship or such a ship as the central Government or the Chief of the Naval Staff or the prescribed officer would from time to time determine; and if such a person agreed to become subject to the Naval Law upon entering into engagement, that person was also subject to the Act so long as the engagement remained in force.\textsuperscript{50}

The other persons subject to the Naval Law are the persons belonging to any auxiliary forces raised under this Act; and those who, although would not otherwise be subject to naval

\textsuperscript{48} Ibid.
\textsuperscript{49} Ibid.
\textsuperscript{50} Navy Act Section 6; also see section 2(1)(d).
law, are by any other Act or during Active service by regulations made under this Act are made subject to Naval law.\(^{51}\)

The other expression used under the Naval law is the ‘*deemed subjection*’ under section 2(2) (a) & (b). The deemed subjection applies to every person ordered to be received, or being a passenger, on board any ship or aircraft of the Indian Navy; and to every person sentenced under this Act to imprisonment or detention, during the term of his sentence, notwithstanding that he is discharged or dismissed with or without disgrace from the Naval service or would otherwise but for this provision cease to be subject to Naval law.\(^{52}\)

### 5.4.1 Modification of the Fundamental Rights in respect of the persons subject to the Navy Act

The law on modification of the Fundamental Rights available to the persons subject to the Navy Act is the same as that to the persons subject to the Army Act. There are, however, certain provisions concerning the ‘*Relationship between the members of the Navy, Army and Air Force acting together*’. The provisions are contained in section 7 of the Act and provide that when members of the regular Army and the Air force or either of these forces are serving with members of the Indian Navy or Indian Naval Reserve Forces under prescribed conditions, then those members of the regular Army or the Air Force shall exercise such command, if any and be subject to such discipline as may be prescribed. But this shall not authorize the exercise of powers of punishment by members of the regular Army or the Air Force over the members of the Indian Navy or the Indian Naval Reserve forces, except as provided in

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51. Navy Act Section, 1957 Section 2 (1) (e)&(f).
52. Navy Act, 1957 Section 2 (2) (a)&(b).
clause (e) of sub section (3) of section 93, or in such cases and subject to such conditions as may be prescribed.⁵³

5.4.2 The law governing the commission, appointment and enrolment in the Navy

The law on commission, appointment and enrolment in the Navy is contained in chapter IV of the Act which lays down that no person who is not a citizen of India shall be eligible for appointment or enrolment in the Indian Navy or the Indian Naval Reserve Force except with the consent of the Central Government.⁵⁴ However, this stipulation does not debar a subject of Nepal from seeking employment in the Indian Navy. The law lays down restrictions on appointment or enrolment of women in the Indian Navy or the Indian Naval Reserve Force except in such department, branch or other body forming part thereof or attached thereto and subject to such conditions as the Central Government may, by notification in the official Gazette, specify in this behalf.⁵⁵ The officers other than subordinate officers are appointed by commission granted by the President. The grant of commission is notified in the Official Gazette and such notification is the conclusive proof of the grant of such commission. The subordinate officers are appointed in such manner and hold rank as may be prescribed.⁵⁶ Enrolment of sailors is governed by the provisions of section 11 of the Act. The terms and conditions of service of sailors, the person authorized to enroll, for service as sailors and the manner and procedure of such enrolment is prescribed in the Navy Regulations. For instance, no person shall be enrolled as a sailor in the Indian Navy for a period exceeding fifteen years in the first instance.⁵⁷

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⁵³ Navy Act, 1957, Section 7.
⁵⁴ Navy Act, 1957, Section 9.
⁵⁵ Ibid.
⁵⁶ Navy Act, 1957, Section 10.
⁵⁷ Navy Act, 1957, Section 11.
Enrolment so made in accordance with the provisions of section 11 of the Act shall be considered as valid in case a person after his enrolment, has for a period of three months, from the date of such enrolment been in receipt of pay as a sailor; and he shall not, thereafter be entitled to claim his discharge on the ground of any irregularity or illegality in his engagement or any other ground whatsoever.\textsuperscript{58} Every officer and every sailor shall, as soon as may be, after appointment or enrolment makes and subscribe before the commanding officer of the ship to which he belongs, or the prescribed officer on oath or affirmation.\textsuperscript{59} The provision related to the oath or affirmation is section 13 of the Act.\textsuperscript{60}

5.4.3 Liability and tenure of service of persons subject to the Navy Act

The conditions of service in the Navy are enshrined in chapter V of the Act, section 14 of which lays down the liability of service in respect of the officers and the sailors. The sailors as per the Act shall be liable to serve in the Indian navy or the Indian Naval Reserve Forces, as the case may be, until they are duly discharged, dismissed with disgrace, retired, permitted to resign, or released.\textsuperscript{61} The Act denies the liberty to an officer to resign his office except with the permission of the Central Government. The same provision prohibits a sailor to resign his

\textsuperscript{58} Chapter IV, Commissions, Appointments and Enrolments; Section 12, Navy Act, 1957.

\textsuperscript{59} “I....................... do swear in the name of God / solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will, as in duty bound, honestly and faithfully serve in the Naval service and go wherever ordered by sea, land or air, and that I will, observe and obey all commands of the president and the commands of any superior officer set over me, even to the peril of my life.”

\textsuperscript{60} Chapter IV, Commissions, Appointments And Enrolments; Section 13, Navy Act, 1957.

\textsuperscript{61} Section 14 (1), Navy Act, 1957.
The acceptance of any resignation shall be a matter within the discretion of the Central Government or the officer concerned, as the case may be. The officers retired or permitted to resign shall be liable to recall to Naval service in an emergency in accordance with the Naval regulations and on such recall shall be liable to serve until they have been duly discharged, dismissed, dismissed with disgrace, retired, permitted to resign or released.\(^{63}\) With regard to the tenure of service, every officer and sailor shall hold office during the pleasure of the President.\(^{64}\) At the same time, subject to the provisions of the Navy Act and the regulations made there under, the Central Government may dismiss or discharge or retire from the Naval service any officer or sailor.\(^{65}\) The Chief of the Naval Staff or any prescribed officer may also dismiss or discharge from the Naval Service any sailor.\(^{66}\) The power of termination vested in the authorities other than the President is found to be governed by the act itself as well as the regulations made under the Act. The power of the president though unfettered under the Act is subject to judicial review on the grounds specified in various cases relating to the Naval personnel. Reiterating the views of ‘Kiran Bedi’\(^{67}\) “however high or mighty one might be, rule of law is above you.”\(^{68}\) Indian administration works on the above adage.

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63. Section 14(3)&(4), Navy Act, 1957.
64. Section 15(1), Navy Act, 1957.
67. The first woman Police officer from the Indian Police service, now a popular Social activist.
68. On CNN news channel at 2030 hours on 07 Feb 2013 in a programme called ‘Amanpour’.
5.4.4 ‘Termination’, ‘Dismissal’ and ‘Discharge’ under the Navy Act

Since the persons subject to the Navy Act are governed by a specified tenure of service, subject to the provisions of section 18 of the Act, a sailor shall be entitled to be discharged at the expiration of the term of service for which he is engaged. This tenure can be varied in special conditions viz., during Active service in which case he shall be liable to continue to serve for such further period as may be required by the Chief of the Naval Staff or he is re-enrolled in accordance with the regulations made under the Navy Act. An officer, in one case, joined Navy as a Sailor and was later commissioned as an officer. On account of certain alleged misconduct and irregularities, he was tried by General Court Martial where he was found guilty of the charges and consequently a penalty of dismissal from service was imposed on him. The Supreme Court upheld the validity of sentence of dismissal awarded under the provisions of the Act and also the forfeiture of pension under the regulations. The Act provides that a sailor when becomes entitled to be discharged under section 16 of the Act, shall be discharged with all convenient speed and in any case within one month of his becoming so entitled. Whenever a sailor is dismissed, discharged, retired, permitted to resign or released from service shall be furnished by the prescribed officer with a certificate in the language which is the mother tongue of such sailor and also in the English language setting fourth, the authority terminating his service, the cause for such termination, and the full period of

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69. Section 16(a)&(b), Navy Act, 1957.
71. Section 17(1), Navy Act, 1957.
his service in the Indian Navy and the Indian Naval Reserve Forces.\textsuperscript{72}

\subsection*{5.4.5 Service privileges and immunities}

As the subjection to the Act brings liability to serve in a particular manner, it also brings certain privileges to the Officers and the sailors. Chapter VI of the Act enshrines the service privileges in the navy. The arms, clothes equipments, accoutrements or necessaries of any person in the Naval service, while subject to Naval law, shall not be seized, nor shall the pay and allowances or any part thereof of such person be attached under any process or direction issued by, or by the authority of, any Court or public servant in respect of any claim decree or order enforceable against him.\textsuperscript{73} Similarly, any person in the Naval service shall, so long as he is subject to Naval law, be liable to be arrested for debt under any process or direction issued by, or by the authority of, any Court or public servant. If any such person is arrested, the Court or public servant by whom or by whose or by whose authority such process or direction was issued shall on complaint by the person arrested or by his superior officer enquires into the case and if satisfied that the arrest was made in contravention to the provisions of the Navy Act, shall make an order for the immediate discharge of the person arrested and may award to the complainant the costs of the complaint to be recoverable in the same manner as if such costs were awarded to him by a decree against the person at whose instance such process or direction was issued.\textsuperscript{74} The other immunity, extended to the president or other member of a court martial or disciplinary court, judge advocate or any party to the proceedings before a court martial or the disciplinary

\begin{footnotes}
\item[72.] Section 17(4), Navy Act, 1957.
\item[73.] Section 20, Navy Act, 1957.
\item[74.] Section 21(2), Navy Act, 1957.
\end{footnotes}
court while proceeding to or attending court - martial or disciplinary court, is from arrest under any civil or revenue process. If any such person is arrested under any such process, he may be discharged by order of the Court-martial or disciplinary Court, as the case may be.

Besides the above, 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 complaint in accordance with the regulations made under the Navy Act. Priority of hearing of cases in any civil or revenue Court is the next important privilege available under the statute. The Act also provides that every criminal Court before which a case is pending against a person in the Naval service shall, so far as may be possible arrange for the early hearing and final disposal of such case.

Termination of service of two kinds is found among the punishments under Section 81 of the Navy Act, viz., the termination by way of dismissal with disgrace from the naval service and by dismissal from the naval service. Some minor punishments may also be inflicted according to the customs of the navy. While the power of the president to terminate the services of persons subject to the Navy Act are absolute, under Section 15(1), the power of the central Government and the Chief of the Naval Staff is regulated by the Act and the Regulations made there under. The power is subject to the procedure which is mandatory while ordering the termination of service under the Navy Act is provided in the Regulations for the

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75. Section 22(1), Navy Act, 1957.
76. Section 22(2), Navy Act, 1957.
77. Section 23(1), Navy Act, 1957.
78. Section 24(1)-(4), Navy Act, 1957.
80. Navy Act section 15(1) & (2).
Navy Part II (Discipline and Miscellaneous Provisions). What is found contained in the Rules 14, 15, 15A and 17 of the Army Rules, 1954, in respect of the army persons is mutatis mutandis found under the Navy Regulations 216, 217 and 218.81

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81. **Regulations for the Navy Part-II (Discipline and Miscellaneous provisions):**

**216. Misconduct of Officers—termination of service by Government on grounds of misconduct:**

-(1) When it is proposed to terminate the service of an officer under section 15 on account of misconduct, he shall be given an opportunity to show cause in the manner specified in sub-regulation (2) against that action:

Provided that this sub-regulation shall not apply:

(a) Where the service is terminated on the ground of misconduct which has led to his conviction by a civil court; or

(b) Where the 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.

(2) When after considering the reports on an officer’s misconduct, the Government or the Chief of the Naval 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 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, in writing, his explanation and defence;

Provided that the Chief of the Naval Staff may withhold from disclosure any such report or portion thereof, in his opinion, its disclosure is not in the interest of the security of the state.

(3) 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 Government with the officer’s defence and the recommendation of the Chief of the Naval Staff as to the termination of the officer’s service in the manner specified in sub-regulation (5).

(4) Deleted

(5) When submitting a case to the Government under sub-regulation (3), the Chief of the Naval Staff shall make his recommendation whether the officer’s service should be terminated and if so, whether the officer should be-

(a) dismissed from the Naval Service; or

(b) discharged from the service; or

(c) called upon to retire; or

(d) Called upon to resign.

(6) The Government after considering the reports and the officer’s defence, if any, as the case may be, 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.

**217. Termination of service of officers by the Government on grounds other than misconduct:**

-(1) When the Chief of the Naval Staff is satisfied that an officer is must unfit to be retained in the service due to inefficiency or physical disability, the officer-
(a) shall be so informed,
(b) shall be furnished with the particulars of all matters adverse to
him, and
(c) shall be called upon to urge any reasons he may wish to put
forward in favor of his retention in the service.
Provided that clause (a) (b) and (c) shall not apply if the Chief of the
Naval Staff is satisfied that for reasons to be recorded by him in
writing, it is not expedient practicable to comply with the provisions
thereof;
Provided further that the Chief of the Naval Staff may not furnish to
the officer any matter adverse to him if, in his opinion, it is not in the
interest of the security of the state to do so.
(2) In the event of the explanation being considered by the Chief of the
Naval Staff unsatisfactory, the matter shall be submitted to the
Government for orders, together with the officer's explanation and
recommendation of the Chief of the Naval Staff as to whether the
officer should be-
(a) called upon to retire; or
(b) Called upon to resign.
(3) The Government after considering the explanations, if any, of the
officer and the recommendation of the Chief of the Naval Staff, may
call upon the officer 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.

218. Release on medical grounds: - (1) An officer who is found by a
medical board to be permanently unfit for any form of Naval service
may be released from the service in accordance with the procedure
laid down in this regulation.
(2) The president of the medical board shall, immediately after the
medical board has come to the conclusion that the officer is
permanently unfit for any form of Naval service, issue a notice
specifying the nature of the disease or disability he is suffering from
and the finding of the medical board and also intimating him that in
view of the finding he may be released from the services;
Provided that where in the opinion of the medical board the officer is
suffering from a mental disease and it is either unsafe to
communicate the nature of the disease or disability to the officer or
the officer is unfit to look after his interest, the nature of the disease
or disability shall be communicated to the officer's next-of-kin who
shall also have the right to petition under sub-regulation (3).
(3) Every such notice shall also specify that the officer may, within
fifteen days of the date of receipt of the notice prefer a petition
against the finding of the medical board to the Chief of the Naval Staff
through the President of the medical board.
(4) If no petition is preferred within the time specified in sub-
regulation (3) the officer may be released from the service by an order
to that effect by the chief of the naval staff.
(5) If a petition is preferred within the time specified in sub-regulation
(3), it shall be forwarded to the Government together with the records
thereof and the recommendation of the Chief of the Naval Staff and
the Government may, after considering the petition and the
recommendation of the Chief of the Naval Staff, pass such order as it
deems fit.”
5.4.6 The provisions relating to the processual justice under the Navy Act

Provisions on the processual justice in the Indian Navy are as markedly important as those in the Army and the Air force. Accordingly, there is a close similarity between these provisions. The provisions start with taking Naval personnel into custody\(^82\) and progress further towards investigation of charges by the departmental or the Divisional officer in accordance with the procedure laid down under the regulations.\(^83\) The accused in this case is given full opportunity and assistance to defend himself depending upon the nature of the case or the charge.\(^84\) This

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82. Section 85, The Navy Act, 1957.
83. Regulation 22, Regulations for the Navy Part II (Discipline And Miscellaneous Provisions):-
   “Investigation of departmental offences: - (1) If a sailor commits a departmental or a divisional offence, the offence shall be investigated by his departmental or Divisional officer as the case may be, and he may be summarily tried and punished by his Departmental officer or his Divisional officer provided that the offence can be adequately punished within the powers of punishment delegated to such officer.
   (2) If the Departmental or the Divisional officer decides not to deal with the case himself, he shall refer the case to the Executive officer.
   (3) Where a sailor commits any other offence such offence may be investigated and the sailor may be tried and punished by the officer of the watch or the officer of the day provided that the offence can be adequately punished within the powers of punishment delegated to the officer of the watch or the officer of the day.
   (4) If the officer of the watch or the officer of the Day decides not to deal with the case himself, he shall refer it to the Executive officer.
   (5) The Executive Officer may investigate and try and punish summarily any offence referred to him provided it can be adequately punished within the powers of punishment delegated to him.
   (6) If the Executive officer decides not to deal with the case himself, he shall refer it to the Commanding Officer.”
84. Regulation 22, Regulations for The Navy Part II (Discipline And Miscellaneous Provisions)
responsibility squarely lies on the commanding officer. In all investigations, the charge is heard first. Immediately after the charge has been read out to the delinquent (the accused), the investigating officer shall warn him that he should not make any statement or give any evidence on his own behalf until all the evidence against him has been heard. On conclusion of the evidence in support of the charge, the investigating officer shall decide whether a case has been made out against the delinquent (the accused). If there is no case, the investigating officer shall either dismiss the case or, if further evidence is likely to become available, stand it over and if there is a prima facie case, and it is a simple one with which the investigating officer thinks he can deal with himself, he shall ask the delinquent if he admits the charge. If the accused does not admit the charge and the matter is one within the investigating officer’s powers of punishment, he shall inform the accused that he will proceed to try the case, giving him an opportunity of making a statement and calling witnesses. Besides the commanding officer, the officer of the watch, the officer of the Day, or the Executive

85. Regulation 26, Regulations for The Navy Part II (Discipline And Miscellaneous Provisions).

“Assistance to the accused: - (1) if the alleged offence is one which may be brought before the Commanding officer, the accused may request and shall be afforded at the earliest stage at which this is practicable, the assistance of any officer or other person in his ship whose assistance is reasonably available.
(2) 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, having regard to the requirements of the case, to advise the accused at all stages.
(3) The officer or person advising the accused may be changed at any stage either at the request of the accused or on account of exigencies of service.”

86. Navy Regulation 27(1).
87. Navy Regulation 27(2).
88. Navy Regulation 27(3).
89. Navy Regulation 27(4).
90. Regulation 27(5), Regulations For The Navy Part II (Discipline And Miscellaneous Provisions).
officer in the Navy are also empowered to carry out investigation in support of the charge.  

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91. **Regulation 28, Regulations For The Navy Part II (Discipline And Miscellaneous Provisions).** (1) if, after hearing the evidence in support of the charge, the officer of the watch, the officer of the Day or the Executive officer is of opinion that the charge, if proved, would be beyond his power to punish, he must bear in mind that a confession made before him by the accused will not be admissible in evidence at any further proceedings unless the accused has been cautioned, before he speaks, that he is not obliged to say anything unless he wishes to do so, and that any statement he may make may be given in evidence. Care should be taken to avoid any suggestion that the accused’s answers can only be used in evidence against him, as this may discourage an innocent person from making a statement which might help to clear him of the charge. The investigating officer must also bear in mind that in a case beyond his power of punishment, his functions are to see whether there is a Prima facie case, to collect evidence when it is important that evidence be collected immediately, and, to give the accused a chance to make a statement. If the alleged offence is one which is likely in itself to lead at least to a warrant punishment (as distinct from one which may lead to a warrant punishment because it is the culminating offence in a series of minor offences), the investigating officer should address the accused in the following words after hearing the evidence in support of the charges: - 

“Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you wish to do so; but whatever you say will be taken down in writing and may be given in evidence.”

(2) The officer of the watch or officer of the Day need not use these words unless he decides to hear then defence before sending the case to the Executive Officer.

(3) If the accused makes a statement, it should be taken down in writing. On conclusion of this statement the investigating officer should not ask any question save to point out any ambiguity and ask if the accused wishes to clear it up or to point out that no reference has been made to some charge and ask if the accused wishes to say anything about it. In particular, nothing must be said which indicates that the accused is expected to make any further statement.

(4) If he has not already done so, the investigating officer must then make up his mind whether the case against the accused has been made out. If he decides that no case has been made out, he is to dismiss the charge.

(5) If the investigating officer decides to refer the case to higher authority, the accused is to be informed accordingly, the customary terminology “Commander’s report” or “Captain’s report”, as the case may be, being used.”
5.4.7 **Investigation of the charge/charges by the Commanding Officer as a part of the processual justice under the Navy Act**

The investigation of any offence by the commanding officer is regulated by the Navy regulations.\(^92\) If, after hearing the evidence in support of the charge, the Commanding officer is of opinion that there is a Prima facie case and that the charge, if proved, would be within his power to punish, he shall proceed to try the case.\(^93\) But if the Commanding Officer decides to apply for trial by court-martial, or to give a warrant punishment, the commanding officer shall inform the accused that his case has been “remanded”.\(^94\) The regulations further provide that if the commanding officer is of the opinion that the punishment to be awarded is likely to be a warrant punishment, requiring approval of superior naval authority, a summary of evidence in the case shall be recorded.\(^95\) This complete process actually sets the ball of disciplinary process in respect of the naval personnel rolling.\(^96\)

An important step in the field of processual justice under the Navy Act and regulations is the right of the delinquent to elect trial by court-martial. Regulation 30 lays down that if the accused, elects to be tried by court-martial, the necessary steps for the purpose shall be taken. But Should the exigencies of service, such as a single ship being on detached service, not permit a court-martial to be assembled within a reasonable period, the senior officer present may, if he considers it necessary, direct the Commanding officer to deal with the case.

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92. Regulation 29 (1), Regulations for The Navy Part II (Discipline And Miscellaneous Provisions).
93. Regulation 29 (2), Regulations for The Navy Part II (Discipline And Miscellaneous Provisions).
94. Regulation 29 (3), Regulations for The Navy Part II (Discipline And Miscellaneous Provisions).
95. Regulation 29 (4), Regulations for The Navy Part II (Discipline And Miscellaneous Provisions).
summarily and if in these circumstances, the Commanding officer reduces a Chief Petty officer or Petty Officer to a lower rank, the appropriate Administrative Authority shall order a ‘board of enquiry’ to assemble at the earliest possible date; if the report of board of enquiry indicates that a lighter punishment would have been sufficient, the said authority may restore the rank from a date to be fixed by it.

The accused and the complainant together with the defending officer shall be present during the whole of the time that witnesses are being examined before the board of enquiry. A report, including the minutes of the enquiry, and a copy of warrant shall be forwarded by the Administrative Authority to the chief of the Naval Staff. Termination of service in the form of dismissal in the Navy is also a summary punishment which is nonexistent under the Army or the Air force law. Regulation 30 of the Regulations for the Navy Part II (Discipline and Miscellaneous Provisions) provides for this peculiar procedure.

97. Similar to the court of inquiry assembled under the Army Rules (AR 177-188).
98. Regulation 30, Regulations for The Navy Part II (Discipline And Miscellaneous Provisions).
99. “Dismissal from the Naval service (1) Although an offender considered unworthy of retention may be punished with summary dismissal from Naval service, such punishment shall not, save in exceptional cases, be awarded before the various punishments to which he has rendered himself liable have been inflicted upon him and found to have no effect; nor such punishment shall be awarded, if the Chief of the Naval Staff considers that he is likely to reform if transferred to another ship. (2) A sailor who has committed an offence deserving imprisonment shall, if his past record clearly shows that he is unworthy of retention, be punished with imprisonment and dismissal. (3) The punishment of dismissal does not automatically entail any other punishment except deprivation of Good Conduct Medal. The punishment of reduction in rank or the deprivation of Good Conduct Bage(s) shall be included in the sentence, if appropriate. (4) An order for dismissal of a person from Naval service, whether accompanied by other punishments or not shall be made only by the Chief of the Naval Staff, and no punishment shall be inflicted on each person until a decision has been obtained on the question whether such person should be dismissed from Naval service or not.
5.5 The Air Force Act, 1950 (Act No 45 of 1950)

Prior to the independence, the Air Forces of India were being governed by the Indian Air Force Act, 1932 which was more or less modeled on the Indian Army Act, 1911. The only departure was in the two chapter’s viz., the offences and the punishments. With revision in the Army Act taking place in the years 1949-50, revision in the Air Force law also became inevitable. Hence the Air Force Bill, 1949 was introduced in the Parliament and was eventually passed as the Air Force Act after receiving the President’s assent on 18th May, 1950. It came into force as The Air Force Act, 1950 (Act No 45 of 1950).

With a view ‘to consolidate and amend the law relating to the governance of the Air Force’ the Air Force Act, 1950 came into force into the new Indian Republic in the first Year of the Republic of India. Like the Army and the Navy Acts, the Air Force Act also applies to its officers and warrant officers of the Air Force; persons enrolled under the Air Force Act; and the persons belonging to the Regular Air Force Reserve or the Air defence Reserve or the Auxiliary Air Force. Persons who are not otherwise subject to the air force law, but were on active service, in camp, on the march, or at any frontier post specified by the Central Government by notification in this behalf, and were employed by, or were in the service of, or were the followers of, or accompanied any portion of the Air Force, also came to be

(5) If a person dismissed from Naval Service desires it and there is no objection on the part of the local authorities to his landing, he may be dismissed abroad, and where such person desires to return home, he may be sent at the first opportunity by a navy ship or merchant vessel.

(6) Where such person is sent in a Naval ship under sub-regulation (5), its Commanding Officer shall be informed of his offence, and the Commanding officer shall not order him to work except in emergency and on arrival in India such person shall be immediately discharged to shore.” Regulation 30, Regulations For The Navy Part II (Discipline And Miscellaneous Provisions).

subject to the Air Force Act. Every person who became subject to the Air Force Act remains so subject until duly retired, discharged, released removed, dismissed or cashiered from the service.

5.5.1 Tenure, termination and conditions of service Under the Air Force Act

The Conditions of Service for the Air Force personnel are enshrined in chapter IV of the Act. Being one of the three defence forces of the Union, the Air Force is amenable to the pleasure of the President in the same manner as the Army and the Navy. Accordingly, section 18 of the Act provides that every person subject to this Act shall hold office during the pleasure of the President. The power of termination of service vested in the Central Government is drawn from section. Similar powers of ‘dismissal’, ‘removal’ or ‘reduction’ are available with the ‘Chief of the Air Staff’ and other officers of the Air Force under section 20 of the Act.

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102. Ibid. Section 2 (d).
103. Ibid. Section 3.
105. Section 19 Air Force Act, 1950. “Subject to the provisions of this Act and the rules and regulations made thereunder, the Central Government may dismiss, or remove from the service any person subject to this Act.”
106. The expression " the Commander-in-Chief" was replaced by the term Chief of the Air Staff.
107. Section 20. Dismissal, removal or reduction by the Chief of the Air Staff and other officers.- (1) The Chief of the Air Staff may dismiss or remove from the service any person subject to this Act other than an officer.
(2) The Chief of the Air Staff may reduce to a lower grade or rank or the ranks, any warrant officer or any non-commissioned officer.
(3) An officer having power not less than an air officer in charge of a command 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 warrant officer.
(4) On active service, an officer commanding the air forces in the field may reduce to a lower rank or to the ranks any warrant officer or non-commissioned officer under his command.
The law of tenure and termination is dependent upon the fact that that the retirement, release or discharge of the persons subject to the Air Force Act is regulated by the law contained in section 22 of the Act which provides that any person subject to this Act may be retired, released or discharged from the service by such authority and in such manner as may be prescribed. The manner prescribed is found in the Air Force Rules framed by the Central Government consequent to the power conferred on it by section In the similar vein, section Power to make regulations. The Central Government may make regulations for all or any of the purposes of this Act other than those specified in section 189.

5.5.2 Law relating to the processual justice in respect of the Air Force personnel

Being guided by the principles of Natural Justice, the law on the tenure and termination of service in the Air Force, is subject to the mandatory procedures. Rules 16, 17 and 18 stipulate that whenever the dismissal, removal or reduction is contemplated, the order should be preceded by a Show Cause Notice to the delinquent unless for reasons to be recorded it can be dispensed with in accordance with the process provided in the Rule itself, though strong reasons are required to justify

(5) The Chief of the Air Staff or an officer specified in sub-section (3) may reduce to a lower class in the ranks any airman other than a warrant officer or non-commissioned officer.
(6) The commanding officer of an acting non-commissioned officer may order him to revert to his substantive rank as a non-commissioned officer, or if he has no such substantive rank, to the ranks.
(7) The exercise of any powers under this section shall be subject to the other provisions contained in this Act and the rules and regulations made thereunder."
dispensation of the show cause notice. In other words, before a conclusion is drawn in respect of Air Force personnel to

108. Air Force Rules 16, 17 and 18. “16. Dismissal or removal of officers for misconduct. - (1) An officer may be dismissed or removed from service for misconduct by the Central Government but before doing, so and subject to the provisions of sub-rule (2) he shall be given an opportunity to show cause against such action.
(2) Where the dismissal or removal of an officer is proposed on ground 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 in cause against his dismissal or removal.
(3) 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 opinion that further retention of such officer in the service is undesirable, that Government may dismiss or remove such officer from the service.
(4) In any case not falling under sub-rule (3), when the Chief of the Air Staff after considering the reports on an officer’s misconduct, 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 the service is undesirable, he shall so inform the officer and subject to the provisions of sub rule (5) furnish to the officer all reports adverse to him calling upon him to submit in writing within a reasonable period to be specified, his explanation in defence and any reasons which he may wish to put forward against his dismissal or removal.
(5) The Chief of the Air Staff may withhold from disclosure any report 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.
(6) 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.
(7) The Central Government may, after considering the reports against the officer and his defence, if any, and the recommendations of the Chief of the Air Staff, dismiss or remove the officer from service.
(8) In this rule and in rule 17 the Chief of the Air Staff while submitting a case to the Central Government may recommend that instead of removing 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 the service.

17. Removal from service of officers on grounds other than misconduct.- (1) When the Chief of the Air Staff is satisfied that an officer is unfit to be retained in service due to inefficiency, physical disability or other ground other than misconduct the officer-
terminate his service, the laid down procedure of investigation is compulsorily followed. The law on hearing of charge, appreciation of evidence, and grant of sufficient opportunity to the delinquent are the hallmark of the Air Force law.

(a) Shall be so informed;

(b) Shall be furnished with the particulars of all matters adverse to him; and

(c) Shall be called upon to submit in writing, within a reasonable period, any reasons he may wish to urge for not being removed from the service:

Provided that all or any of clauses (a), (b) and (c) shall not apply if the Central Government is satisfied that for reasons, to be recorded by it in writing, it is not expedient or reasonably practicable to comply with the provisions thereof-

Provided further that the Chief of the Air Staff may withhold from disclosure the particulars of any matter adverse to the officer, or any portion thereof, if in his opinion, its disclosure is not in the interests of the security of the State.

(2) If no reply is received from the officer within the specified period, or the reasons submitted by him are considered not satisfactory by the chief of the air Staff, the matter shall be submitted to the Central Government for orders, together with the explanation of the officer, if any, and the recommendation of the Chief of the Air Staff for the removal of the officer from the service.

(3) The Central Government may, after considering the explanation, if any, of the officer and the recommendations of the Chief of the Air Staff, and after satisfying itself that the failure, where applicable, to disclose matters adverse to the officer was in the interests of the security of the State, may remove or compulsorily retire the officer from the service.

18. Dismissal or removal of a person subject to the Act other than an officer.

(1) Save in a case where a person subject to the act other than an officer is dismissed or removed from the service on the ground of conduct which had led to his conviction by a criminal court or a court-martial, no such person shall be dismissed or removed under sub-section (1) or sub-section (3) of section 20 unless he has been informed of the particulars of the cause of action against him and allowed reasonable time to state in writing any reasons he may have to urge against his dismissal or removal from the service.

(2) Notwithstanding anything contained in sub-rule (1), if in the opinion of the officer competent to order the dismissal or removal of such person, it is not expedient or reasonably practicable to comply with the provisions of sub-rule (1), he may, after certifying to that effect, order the dismissal or removal.

(3) All cases of dismissal or removal without complying with the procedure prescribed in sub-rule (1) shall, without delay, be reported to the Central Government.”

109. Wing Commander Hazara Singh’s case.
Appraisal

It has been seen that our democracy is firmly entrenched in the rule of law which is obligatory for the forces to follow in the exercise of their administrative functions. The law on tenures and termination occupies an important place in the statutes relating to the defence forces. The supremacy of Parliament is a fact and will remain as such and considering the nature of our constitution should remain as such if the rule of law is to prevail in all circumstances. Accountability in administrative functions is the hallmark of any good democracy. However certainty of rule of law lies in the extent of checks and balances which Statutes lay down on their own provisions relating to exercise of administrative authority. Circulation of various ideas and propounding of corresponding theories and ideologies influence the socio political milieu of a country. It determines the manner in which a person understands the exercise of power by elected or nominated functionaries viz., the President, the Governor, The Central Government or the authorities other than the Central Government for instance the chiefs of Staff of the three defence forces in respect of their personnel of various ranks in the instant case. The judgments pronounced by the courts in India and opinions expressed by various jurists, determine the scope of their powers. Andrew Heywood, a political thinker has put it in the following words:

“Ideas and ideologies influence political life in a number of ways. In the first place, they provide a perspective through which the world is understood and explained. People do not see the world as it is, but only as they expect it to be; in other words, they see it through a veil of ingrained beliefs, opinions and assumptions. Whether consciously or unconsciously everyone subscribes to a set of political beliefs and values that guide their behavior and influence their conduct.”
The same author puts it again that, the ‘power is seldom sought for its own sake’ but to achieve certain objectives, its exercise is best accomplished when it conforms to the rule of law. When a reference is made to the rule of law, mention of the provisions of the constitution is inevitable. The opening words of Article 309 of the constitution of India expressly provide that the article itself is subject to the provisions of the constitution and the Rules made under the proviso to Article 309. Besides, those would also be subject to Articles 310(1) and 311.

Finally, the legislations relating to the defence forces of India i.e., the Army, Navy and the Air Force, have been scrutinized and tested on the anvil of legal and constitutional validity. All their provisions have been adjudged as legally and constitutionally valid. However, the role of courts and the lawyers is vital in interpreting these legislations and it is quite often that we find courts and lawyers luring in unfolding the meaning of ambiguous words and expression and resolving inconsistencies. The following words of wisdom by GP Singh, Chief Justice High Court of Madhya Pradesh would aptly conclude the position on the legislations “Enacted laws, specially the modern Acts and Rules, are drafted by legal experts and it could be expected that the language used will leave little room for interpretation or contribution.”

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