INTRODUCTION

India became independent in 1947. Three separate Acts, namely Army Act 1950, Air Force Act 1950 and the Navy Act 1957 were enacted for the Armed Forces. These Acts are, modelled, generally, on the lines of the British military law, obviously, because India was a colony of the British rule in India. Till date, very few amendments have been made into the military laws. However, no serious thought has been given to this important field of special law to bring it in consonance with the liberty-oriented Constitution and the rule of law, which is the uniting and integrating force in our political society.

Somehow or the other, we have been averse to a change of our military laws. In accordance with Article 33 of the Constitution of India, restrictions on various Fundamental Rights have been imposed in relation to the members of the Armed Forces. Sections 21 of the Army and Rules 19 to 21 framed thereunder are relevant. Ordinarily, one would tend to believe and consider that curtailment of Fundamental Rights of the Armed Forces personnel is confined to the Section and the Rules ibid. But it is not so. The Supreme Court in the case of Ram Swaroop V Union of India\(^1\), had laid down that restrictions on Fundamental Rights should not be thought to be limited to those set out in the provisions of the Army Act Section and Army Rules ibid. According to the Apex Court, the complete Army Act was passed by the Parliament in pursuance of powers vested in it under Article 33 of the Constitution. They, inter alia, observed, “--------- We agree that the Act is a law made by the Parliament and that if any such provision tends to effect the Fundamental Rights under Part III of the Constitution, that provision does not, on that account, become void, as it must be taken that Parliament has thereby, in the exercise of its power under Article 33 of the Constitution, made the requisite modification to affect the respective Fundamental Right.”

The Supreme Court in the case of Prithi Pal Singh V Union of India\(^2\) had observed that, “Ours is still an antiquated system. The wind of change blowing over the country has not permeated the close and sacrosanct precincts of the Army. If in civil courts the universally accepted dictum is that justice must not only be done but it must seem to be done, the same holds with all the greater vigour in case of court-martial where the judge and the accused don the same dress, have the same mental discipline, have a

\(^1\) AIR 1965 SC 247
\(^2\) AIR 1982 SC 1413
strong hierarchical subjugation and a feeling of bias in such circumstances irremovable. We, therefore, hope and believe the changes all over the English speaking democracies will awaken our Parliament to the changed value system. The Apex court in this case felt appropriate to quote the observations of Justice Black in *Reid Vs Covert*, “Courts-martial are typically ad hoc bodies appointed by the military officer from among his subordinates. They have always been subjected to varying degrees of “Command influence”. In essence, these tribunals are simply executive tribunals whose personnel are in the executive chain of command. Frequently, the members of the courts-martial must look to the appointing officer for promotions, advantageous assignments and efficiency ratings – in short for their future progress in the service...” The Hon'ble court further observed that, “Absence of even one appeal with power to review evidence, legal formulation, conclusion and adequacy or otherwise of punishment is a glaring lacuna in a country where a counter-part convict can prefer appeal after appeal to hierarchy of court.” Nothing concrete had taken place since this judgement till the year 2000, when the Apex Court had to reiterate their views in the case of *Union of India V Charanjit Singh Gill and others*, in the words, “Despite lapse of about two decades neither the Parliament nor the Central Government appears to have realized their constitutional obligations, as were expected by this court, except amending Rule 62 that after recording of finding in each charge the court shall give brief reasons in support thereof. Even today, the law relating to Armed Forces remains static which requires to be changed keeping in view the observations made by this court in *Prithi Pal Singh Bedi’s* case, the constitutional mandate and the changes effected by other democratic countries...”

Judicial approach by the people well-versed in objective analysis of evidence, trained by experience to look at facts and law objectively, fair play and justice cannot always be sacrificed at the alter of military discipline. Unjust decisions would be subversive of discipline. There must be a judicial admixture of both. More than five decades of working with the winds of change blowing over the world necessitates a re-look into the military judicial system so as to bring it in conformity with the liberty-oriented constitution and the rule of law. We are aware that most of the developed democratic countries of the world have brought in many improvements in their military judicial systems, which have been brought out in the relevant

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\[3 (1957) 1 Law ed 2d 114^*\]
\[4 2000(2) SLR 755 (SC)\]
\[5 Note 2 Supra\]
chapters. However, to recapitulate a few major changes, it may be brought out that we find the system of appeal exists in all the developed military judicial systems, viz, the United States of America, United Kingdom, Australia, France and Canada etc. We also find that both the trial and the post-trial stages have been fully revamped, strengthening the aspect of 'professionalism' in the military judicial system. A great amount of consideration has been laid to ensure that 'judicial review' in both letter and spirit, is given not only to the post trial reviews but also even to matters connected with conditions of service, such as 'promotion' etc. It would be seen that the Military Justice Act of 1968 of the U.S.A. represents unquestionably the most significant advance in military justice which was further amended by the Military Justice Act, 1983. The philosophy of the Act is the removal of every vestige or possibility of 'command influence' upon the decisions of the courts-martial.

If the necessary reforms, as indicated, are carried out in the administration of justice in the Armed Forces in India, most of the defects in the court-martial system would disappear and there would be little ground for complaint against the military justice system. The introduction of these reforms would also contain certain basic safeguards to the accused in uniform as are available to a civilian counterpart under the ordinary criminal justice. Therefore, it is desired that the military law should maintain a fair balance between the needs of discipline and our liberty-oriented constitution and the rule of law.

Though the research-work necessarily highlights certain salient features in the military judicial systems of the United Kingdom and the United States of America, yet, reference has also been made to certain other countries viz. Russia, France, Canada, Australia, Sweden and China etc while analysing a particular aspect of military justice system so as to bring out and identify the glaring anomalies in our military judicial system.

It may be brought out that the procedure followed at the trial is far from satisfactory. It is neither just nor very fair. All decisions are taken by the members of the court-martial (Jury) who are laymen, pooled in from various fields of service in a given case, on ad hoc basis, to administer justice. More often than not, some of the officers are seen to be lacking interest and do not possess required skill and expertise. They are generally found to be ignorant of the provisions of both civil and military law. The position of the Judge Advocate, on the other hand, is merely in an advisory
capacity unlike the Uniform Code of Military Justice under the American law. There are many areas where improvement is needed in system of justice in the armed forces. To remove the anomalies, we got to peep into the systems of certain other countries, especially the developed ones such as the U.K., U.S.A., Russia, Canada, France and Australia etc. to compare and see where we stand. It would always be fair to follow the good features of a particular system.

Being a member of the military judiciary, dealing with various aspects of military discipline and administrative matters for over two decades, I have observed certain drawbacks in the existing legal framework. This tempted me to take up this topic for my research so as to see and consider what ails our system of justice. This is to find answers to questions which still remain unaddressed and consequently to make suggestions towards improvement of the existing provisions of law.

The scope of this study has been divided into eight chapters. The first chapter is devoted to the origin and historical development of our military judicial system since ancient period. Besides, the systems of military law prevailing in United Kingdom, United States of America, Russia and Sweden etc. have been discussed. A passing reference is also made to the military law of France, Canada, Australia and China.

The second chapter is titled as “Position of Armed Forces personnel and the Constitutions.” In this chapter, the relevant constitutional provisions as also the constitutional status of armed forces personnel has been discussed.

The third chapter dwells on “Investigative System and Summary Trials.” The investigative mechanism through various means and the scope of these trials viz to deal with the cases of higher ranking officers summarily and provision for appeal etc. has been discussed.

“Trials by courts-martial,” their strengths and weaknesses in their present form are dealt with in the fourth chapter. The issues such as subjection, position of the Judge Advocate vis-à-vis the members of the court martial especially enhancement of his powers in view of the amended provisions under the Military Justice Acts 1968 and 1983, curtailment of powers of summary court martial and provisioning of safeguards therein, provisioning of counsels to the accused before, during and after the trial, trial by the Judge Advocate alone and mistrials and new trials etc. have been discussed.

The fifth chapter is devoted to “Judicial Reviews and Appeals” against the verdicts of the courts – Martial. Whether or not we have an effective
system of ‘review’ against the court-martial verdict and the desirability
to have an appellate forum for the armed forces on the lines of the U.K.,
U.S.A. and Australia have been dealt with.

“Command Influence and the Role of the Judge Advocate
General’s Department” have been covered in the sixth chapter. An
endeavour has been made to see how best we can exclude the command
influence in the administration of military justice at the same time
improving the role and status of the Judge Advocate General’s
Department.

What ails the “Redressal System” in the armed forces has been
discussed in the seventh chapter. Is the Complaints and Advisory Board
(CAB) capable of discharging its intended role and whether there should
be a window available to an aggrieved personnel in the form of review
forum, etc. similar to the one in the U.S.A. to air their grievances, have
been dealt with.

Conclusion has been drawn at the end of each chapter, pointing out
the drawbacks in the existing Military Judicial System in India,
distinguishing it from the state of law prevailing under the system of other
countries.

Epilogue has been given in the last chapter, pointing out the areas
which need immediate legislation in order to make the system of justice in
the armed forces not only to provide an efficacious system of justice but
something which is more responsive and vibrant in nature.

Finally, I must admit that the journey to complete this work wasn’t
quite easy, especially in view of the non-availability of the relevant
informations on the subject, which is so very new. I am sure the learned
readers would bear with me. In this regard, I wish to quote Mr.
Blackstone:

“And if some points he is still mistaken, the candid
and judicious reader will make due allowance for a
research so new, so extensive and so laborious.”