

Chapter 1 : Manual of Military Law: War Office, - Google Books

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See Article History Military law, the body of law concerned with the maintenance of discipline in the armed forces. Every state requires a code of laws and regulations for the raising, maintenance, and administration of its armed forces, all of which may be considered the field of military law. The term, however, is generally confined to disciplinary military law as defined above. In the past this was also known by the name of martial law , a term that now has the meaning of military enforcement of order upon a civil population either in occupied territory or in time of disorder. Members of armed forces do not cease under modern conditions to have duties as citizens and as human beings. Historical development The object of the disciplinary code is to ensure that the will of the commander is put into effect. Military law therefore traces its origins to the prerogative power of rulers. In Rome , just as a sector of civil law developed from the imperium of the magistrates, so did military law derive from the imperium of those same magistrates in their capacity as commanders of the military forces. The Roman historian Tacitus indicates that military justice in the 1st century ce was somewhat rough-and-ready and heavy-handed and varied much with the individual commander. But it became more formalized years later in the Digest and Codex of the emperor Justinian. With the rise of the kingdoms of the Middle Ages , the maintenance of discipline was enforced by ordinances or articles of war issued by the sovereign or by a commander authorized by him at the beginning of each campaign. The earliest now extant are those of the English king Richard I in a charter of for the government of those going to the Holy Land. With mercenary armies drawn from many nations in the wars of the 16th and 17th centuries, each national contingent tended to apply the articles of the supreme commander according to its own rules of procedure. The articles of war of Maurice of Nassau, prince of Orange, and Gustav II Adolf had a considerable influence on the national commanders who served under them, when they came to command elsewhere. On the continent of Europe, the articles of Gustav Adolf continued to be followed until supplanted by the codification of the 19th century, which established throughout those countries a generally similar system that, with revision and amendments , continues to this day. With the introduction of a standing army in England in , Parliament aimed to prevent this force coming under complete control of the sovereign by a series of mutiny acts, normally passed annually, to which the prerogative articles were subordinate. By a statute of the power to make articles was embodied in the act. In the United States in and again in , articles of war were adopted that were modeled upon the mutiny acts and articles then in force in Great Britain. In the British army, the articles of war were replaced in by an annually renewed Army Act reformed in , although they continued in the Royal Navy until Jurisdiction Persons subject to military law The jurisdiction of military law is not necessarily confined to offenses injurious to the discipline of the forces committed by members of those forces. It extends in various countries in varying degrees to all offenses committed by members of the forces and to offenses injurious to discipline committed by persons who are not members of those forces. Military personnel In countries in which an obligation to military service exists, soldiers who fail to answer their initial call-up or report for duty are liable to military jurisdiction for such offenses as desertion or self-mutilation either because the military code makes such offenses applicable to them as a class of civilians as in Belgium, France, Italy, and Israel or because under the act introducing national service they are deemed to be enlisted on the dispatch of a calling-up notice as was the case in Great Britain when conscription was in force. They continue to be liable for such offenses, even if not otherwise subject to military law, during authorized absence from the conscripted service or temporary reserve service. Reservists are also subject as in Italy to military jurisdiction for such offenses as treason , communicating with foreign countries, and revelation of official secrets. In Belgium, released soldiers remain liable for rebellion or offenses against superiors committed within one year of their release. Civilians Civilians may become subject to military jurisdiction in any number of ways. In Italy and Turkey, for example, treason or rebellion can be dealt with under the military code, and in Norway breaches by a civilian of the Geneva Conventions of and their additional Protocols of are dealt with under military law. In other countries, civilians who instigate or

participate in military crimes may themselves be triable under military law. In other countries, only civilians associated with the armed forces may be triable under service law. In Israel, for example, civilians who are employed by the army, or who have been provided with army weapons, are subject to military law, as are those held in army custody. Under British military law, civilians accompanying armed forces stationed in a foreign country including families of soldiers as well as British civilians working for or with the services are triable under offenses against the good order of the military community. In the United States, however, civilians—even those forming part of a service community abroad—cannot in peacetime be tried at all under the military process, though they may become subject to military jurisdiction in time of war. Austria and Spain are among countries in which no civilian can be liable to military jurisdiction. Prisoners of war Also among those who fall under military jurisdiction are prisoners of war. Sometimes, as in France, Belgium, and Luxembourg, they are expressly included among those to whom the ordinary military law applies; elsewhere, special regulations concerning their behaviour and trial must be passed. Prisoners of war must not be sentenced to any penalties other than those which might be inflicted on members of the forces of the detaining power for the same act. Offenses against military law The military law of the Anglo-American countries and of countries deriving their military law from them, such as India and other independent members of the British Commonwealth, differs from that of the majority of the Continental countries in that the latter tend to divide military offenses into two classes: The former group of countries and a few others recognize no such distinction, regarding all military offenses as crimes. Apart from offenses of a peculiarly military nature, such as mutiny, insubordination, desertion, and misconduct in action or in performance of service duties, when an act committed by a soldier constitutes an offense in the civil code, it will frequently constitute an offense of which military law takes cognizance. In Belgium, for example, all civil offenses committed by soldiers, except very minor ones, are tried by military court. In France, Germany, Austria, and Scandinavia, in peacetime, all crimes, military or civil, are dealt with by civil courts. Great Britain, Canada, and other countries include as military crimes all actions committed by soldiers anywhere that would be offenses against the criminal law of their own country, although the most serious of these cannot be tried by a military court unless committed abroad, or in India at specified Frontier Posts. In the United States, because of the differences between the criminal law of different states, certain civil crimes are specifically made offenses against the military code. All countries have rules to prevent the double jeopardy of an offender being punished for one act by both civil and military jurisdiction. Generally, when civil jurisdiction may be exercised, this takes precedence over military jurisdiction. Procedure Summary punishment In both Anglo-American and Continental systems, soldiers are subjected to penalties imposed summarily as well as to those imposed by courts. In the majority of countries, summary penalties can be inflicted only by officers not lower than the rank of captain, the commanding officer of the military unit being the principal source of discipline. The forms of punishment so inflicted are normally loss of privileges for a specified period, fines, or deprivation of liberty. Higher military commanders usually have power to deal summarily with officers normally up to the rank of major, though in some countries these will not be liable to loss of liberty. Appeal Under the British and some other systems of military law, if a commanding officer has it in mind to award a punishment beyond a certain degree of severity usually including deprivation of liberty, he must first offer the accused the option of being tried by a court-martial. In other countries the soldier may appeal to a tribunal; in yet others, such as Norway and Sweden, he may have a right of appeal through the chain of military command up to a certain level the brigade commander in Norway; in Sweden, the regimental commander but, beyond that, to a tribunal in Sweden, the county court. In the Continental countries, military crimes and similar offenses are also dealt with judicially. Court-martial Pretrial procedure Military courts follow judicial procedures no less formal than those of the higher civil courts. Under other military legal systems, the preliminary investigation is likely to be in the hands of a military magistrate and set in motion by a military procurator, who corresponds to the official responsible in such countries for initiating civil prosecutions on the public behalf. In Israel, whose military judicial procedures otherwise derive from the British model, the responsibility for both the investigation and the decision to proceed to trial rests with a military advocate, the commanding officer being excluded altogether from the investigative process and forbidden to interfere with it. He must be allowed full facilities

for preparing his defense, and there are normally safeguards provided to protect him from being held unjustifiably in arrest before trial. In some systems his arrest must be ordered and authorized by a magistrate, usually for a limited period only. Composition of the court Courts-martial are generally composed, depending on the type of case, of between three and seven judges; these are usually military officers, though in some countries the membership of the court may include other ranks and even civilian judges. In the United States, for instance, the accused enlisted person may require that not less than one-third of the court be made up of enlisted persons. British military law provides for the court to include civilian crown servants when the accused is a civilian, one if the court is a district court-martial and two if the trial is by general court-martial. The military courts of most countries embody at least one lawyer, who may be a legally qualified serving officer or a civilian and whose role may be either that of a participating member of the judicial tribunal sometimes its president or that of a legal adviser to a tribunal composed of lay members of the military. The judicial independence of the professional lawyers, where they serve as participating judges, is commonly safeguarded by their appointment on a fixed tenure of office. In Israel, for example, a legally qualified officer on a five- to seven-year tenure sits as president with two lay officers. The Belgian military court consists of a civilian judge on a three-year tenure sitting with four serving officers. In Italy two permanent civilian judges sit with one military officer who is selected by lot for a two-month tour of duty as a member of the court. In France the military tribunal consists, in wartime, of two civil and three military judges since French soldiers in peacetime have come entirely under civil jurisdiction. The other mode of trial, in which the lawyer is advisory to a court-martial of laypersons, is more common in countries accustomed to the Anglo-American mode of jury trial, where the professional judge, having instructed a lay fact-finding body the jury as to the principles of law they must apply, takes no part in their subsequent deliberations. In a similar manner, the legal adviser to the court-martial sums up the law and the facts in open court and then retires, leaving the members of the tribunal to their own discussions and returning only when they announce their finding. In Britain and the countries of the Commonwealth, this legal adviser to a court-martial is termed a judge advocate. The British judge advocate is almost always a member of the judicial staff of the judge advocate general, a civilian official responsible to the lord chancellor and, thus, entirely independent of the service authorities. Many Commonwealth countries also make use of a civilian judge advocate. In the United States the erstwhile legal adviser to the court-martial has been replaced by a military judge, who is a serving officer but is part of an independent military judiciary. When sitting with a court-martial, his functions remain advisory, much as already described; he has, however, also been given an alternative jurisdiction to sit, at the request of the accused, as the sole judge in the case, determining guilt or innocence and, in the event of a finding of guilty, passing sentence. Courts of varying competence In some countries there are grades of courts-martial with varying competence as regards persons whom they may try or punishment they may impose. In the United States, Great Britain, and Canada, general courts-martial composed of not less than five officers with a legal adviser military judge in the United States may deal with all persons subject to military law and pass any sentence authorized by the code; special courts-martial United States, district courts-martial Britain, and disciplinary courts-martial Canada consist of at least three officers and have limited powers. Although under the Anglo-American system, in cases of minor importance, prosecution and defense may be conducted by regimental officers of no legal qualifications, in the majority of countries, the prosecution will normally be in the hands of a legally qualified official, known variously as commissioner, fiscal general, auditor, or military procurator. Counsel for the accused A soldier being dealt with summarily, or by disciplinary procedure that is not regarded as judicial action, is not usually defended—though this right has been introduced in the Netherlands. In trials before military courts, all countries allow the accused to be assisted in his defense by an advocate, and in some countries this is compulsory. All countries permit the employment of qualified civilian lawyers. In Greece the defense may be conducted by the family or friends of the accused. The stage at which a defender may operate varies. Normally, he may assist immediately after the first interrogation, when an accused is informed of his rights. He then has rights of intervention during the process of instruction and must be present at such features of it as the interrogation of the accused. In other countries as in Greece, the defender has no part in the instruction and appears only at the trial. They are also subject to further review at

higher levels in the military chain of command. The convicted soldier is entitled to petition the confirming officer and, subsequently, any reviewing authority against either the finding or the sentence. In some systems there may be, instead of or in addition to this right, a right of appeal from the court-martial to a superior military court. In most countries there is either an immediate or an ultimate right of appeal to a court of civilian judges—in Continental countries a Court of Cassation and in Britain a Courts-Martial Appeal Court consisting in practice of judges of the Criminal Division of the Court of Appeal. In both the United States and Britain, there can in some circumstances be a final appeal to the highest court in the land—namely, to the Supreme Court. In Israel too the right of appeal from courts-martial can extend to the Supreme Court. In general, appeal courts are concerned only with the legality of conviction, not with matters of sentence, and the supreme courts only with points of law. Normally, only the defense can appeal, but sometimes the prosecution too can appeal either against the original finding and sentence of the court-martial or on a question of law. The ombudsman In a few countries, representations about conditions of service and applications for advice and help outside the normal service channels may be made through specific officials. In Norway a military ombudsman was introduced in 1945. This official sometimes raises questions on disciplinary and penal offenses. The first military ombudsman was probably in Sweden, established in 1809 to take note of the sentences of military courts, conditions in military prisons, and other matters of military administration. This office as such, however, was abolished in 1908, and the supervision of the military, including complaints by soldiers, became part of the responsibilities of one of four parliamentary ombudsmen. The route of appeal by way of an ombudsman or similar civilian official in those countries that have them including, among others, Finland has developed into an effective means of protecting the rights of soldiers within the military system. Wartime procedure Almost all countries, including those that leave the soldier in peacetime to an exclusively civilian jurisdiction, make provision for trial in time of war or emergency by military courts composed wholly or predominantly of soldiers.

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General[edit] Military law provisions govern the role of India Army during peace and war formulated in the form of Statutes, Rules and Regulations. It is a written code which has seen periodic changes and review, apart from conventions read customs of service. There are two aspects significant for the purpose of this discussion. Firstly, military law publications were called by different names in the earlier years. However, these were all official publications. Law being complex and technical in nature, these text were not easy to comprehend and apply. These were prepared and duly inserted by the authorities, whose identity was not indicated. Secondly, military law was included in the syllabus for retention and promotion examinations for military officers. This was done with a view to make the officers study and assimilate relevant legal provisions necessary for enforcement of a disciplinary code amongst the men under their command. A need therefore, existed for publication of books that could explain, guide and amplify the rules. Thus such handbooks were required not only for application of law by the officers for unit routine but also for their understanding while preparing for obligatory examinations. These too were all in-house publications. Early Works[edit] The growth of military law literature emerged from sheer necessity. It was acknowledged by General C. One of them, the less important, is that he may pass his promotion examinations. The other, by far the more important, is that he may avoid injustice towards his countrymen whom it was his privilege to command. The author in his preface clarified the object of his work was to supply what is believed to be a want by supplementing for India the Manual of Military published by the war office in England. This publication was a pocket edition of about 4" by 5" in size. The publication carries valuable inputs for the conduct of courts martial. It would amaze one to find that common mistakes listed in the book are still often repeated today. Indian Military Law³ by Lt. Sanjeevarow Nayudu was perhaps the first book post independence on military law. The author had declared in the preface that he was induced to write the book driven by the extreme need and usefulness of a military handbook. The foreword was written by Mr. Ambedkar , the then Minister for Law, Government of India. Pradhan came up with Text Book of Military Law⁵ in The book running in nine chapters dealt with military law enforcement provisions, evidence, duties in aid of the civil power and lastly National Cadet Corps Act and Rules. Privileges of the Military Personnel in Courts of Law⁶ was written with a very concise aim. Its main feature was a very detailed and exhaustive treatment of the topic. A notable feature of the book was its coverage of the provisions concerning defence of mechanical transport drivers in claims for damages arising out of accidents. Perhaps a book of this nature duly updated is needed even now. Goswami was a concise work directed solely at the procedures to applicable at the trial stage. Another book by the same author dealt with the topic of courts of inquiry. A number of its chapters related to matters like conditions of service, penal deductions, service privileges, The Indian Soldiers Litigation Act, ; choice between criminal court and court martial and restrictions on fundamental rights. The next book worthy of note and written by a military lawyer was Military Law in India⁸ Rear Admiral OP Sharma, the author, in his book first published in had disclosed that text was the doctoral dissertation for the degree of Doctor of Philosophy in Law to the Bombay University. It was an exposition of the principles and procedures of military law as they had developed over the last few centuries. It indicated the ways in which it could be reformed so as to be in line with the role of a soldier in a democratic socialist set up. The publication was a scholarly work of merit and made a definite contribution to the knowledge of the law relating to the armed forces. Military Law at a Glance⁹ was a concise book which came in the form of a handbook for army promotion examinations. The author claimed that the publication should serve as a help book to find the solution of confronting problems without going into the voluminous material from which it may have to be dug out. This was a revised edition of the same title first brought out in January Hira, Adjutant General in his foreword to the first edition had hoped that the publication would be useful to officers preparing for promotion and DSSC entrance examination. Military Law in India was a joint effort¹⁰ by Dr. The work was in the form of a section wise narration of the Army Act provisions with a commentary for each clause. A significant feature of the book was incorporation of relevant

case law. Sharma, first published in , was for assisting regimental officers in dealing with disciplinary cases. The author claimed that his work was a means to find ready answers to the day to day legal problems, faced by commanders, staff officers and persons interested in the study and practice of military law. Beyond Exams Study Material[edit] The higher judiciary of law need to consult compilation of case laws on some or similar legal issues. Need for such a compilation was long felt by the judges, lawyers and military authorities. Relating to the Armed Forces in India¹² was the first and only book covering rulings given by Supreme Court and various High Courts on military law and service conditions of the armed forces as well as civilians paid from the defence estimates and ex servicemen. All the important judgments, reported or unreported were classified under main headings and sub headings and were listed subject wise in a chronological order. A publication titled Compendium of Law for Defence Services¹³ came up in It was essentially a reproduction of Manual of Military Law. Merit of special note were however to portions running into four pages that covered a brief appraisal of trial by courts martial and drawbacks in system of trials by courts martial. The author in the preface declared the main objective to present a useful and accurate guide to commanding officers, formation commanders and staff and regimental officers in regard to their powers and functions under the Army Act. This book was claimed by him to be, the only book which explains how to be refer to MML and RA, with practical examples to get, at the right answers. The book was divided in 20 chapters including specimen charges. A significant step with regard to military law publications is the Military Law Journal It is now a bi-annual journal brought out by the Institute of Military Law, Kamptee. It is divided in two parts. While the first contains articles and book reviews, the second one carries decisions of the high Courts, Supreme Court, High Courts in India and different benches of the Armed Forces Tribunal on different aspects concerning the Army. Yet another notable feature is its historical section in which earlier cases of relevance are also reproduced. With its maiden appearance in , the annual law journal carries complete text of relevant judgments of the Supreme Court. It also carries review of new books. Court Martial and Military Matters¹⁶ by Brig. Nilendra Kumar as an attempt to discuss the complexities of modern legal thought as pertaining to military canvas. It took into account a thorough overview of military law. It did not merely described the law but pointed the way ahead. The book in its 15 articles did not present merely abstract legal theory but a discussion of legal principles as well as ground realities. It took stock of practical infirmities in the law. The text traced the origin of the department and system of courts martial in India. Suitably divided in 10 chapters, the text dealt with pre and post independent eras, revision of publications, legal cells, origin of Corps Day and Institute of Military Law. It also carried a list of the officers serving in the department at the time of publication. The book came in time with the first reunion of the JAG Department. Military Law Handbook for Commanders¹⁸ was published with a firm belief of the author that sound administration and personnel management calls for due emphasis on fair play, adherence to laid down norms and humane treatment of the subordinates. The work was indeed of practical help to commanders at various levels. The second edition of the book in took into account new changes like setting up of the Armed Forces Tribunal, The Right to Information Act and adoption of information technology by the armed forces. Pension Regulations for the Army including 19 was the title chosen by Captain R. Dhull for his first book. The effort was indeed praiseworthy for it made available Pension Regulations to the courts, lawyers and litigants that were otherwise almost never to be found. Dhull was a compilation of decisions of higher judiciary in India. It also carried up-to-date orders and information relating to pension. It took into account 20 judgments of the Supreme Court and 47 of various High Courts. Soldiers invalided out from service on medical grounds are entitled to the award of disability pension when the disability recorded is found to be attributable to or aggravated by the service conditions. Law Relating to the Disability Benefit²¹ in the Armed Forces was a compilation of case law where the higher judiciary had examined the legality of executive decisions taken in the matter of award of disability pensions. It also discussed various dimensions of the provisions relating to award of disability benefits to the men in uniform. Case Studies on Military Law²² by Maj. Nilendra Kumar was first published in It presented live cases relating to investigations and enquiries, disciplinary and administrative action decisions starting with hearing of charge and leading on to disposal of cases. The identity of the offenders, witnesses and those who dealt with the matter as well as units and formations had been concealed. The case studies compiled in the book were

intender to help the commanders by drawing suitable lessons by way of an opportunity to carry out a critical analysis of actual and him situations. Gen Nilendra Kumar appeared as a discourse on divergent issues concerning operations, procurements litigation, human resource management, low intensity conflicts, international terrorism and peace enforcement operations. It was an exercise to analyse critical areas showing crucial deficiencies in the existing legal procedures as noted from academic scrutiny and actual application. Military Law and Writs²⁴ was brought out by Major J. Obheroi in as an author and publisher. The voluminous work spread over 30 chapters was meant to assist the practitioners of military law by providing them with a ready reckoner to deal with writ petitions. It also contained relevant case law. This was a unique publication in the form of interviews, articles, poems and pictures. The work was conceived, designed and produced by Maj.

Chapter 3 : Full text of "Manual of military law"

*Manual of Military Law [Great Britain War Office] on calendrierdelascience.com *FREE* shipping on qualifying offers. This work has been selected by scholars as being culturally important, and is part of the knowledge base of civilization as we know it.*

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The Manual for Courts-Martial, United States, as amended by section 1 of this order, is amended as described in Annex

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2, which is attached to and made a part of this order. Sec. 5.

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* * Sr. No. Page No. THE PAKISTAN ARMY ACT,

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PREFACE The Manual for Courts-Martial (MCM), United States (Edition) updates the MCM (Edition). It is a complete reprinting and incorporates the MCM (Edition), including all amendments to the Rules.