

## Army Act, 1950

### Chapter X - Courts-martial

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For the purposes of this Act there shall be four kinds of courts-martial, that is to say,--

- (a) general courts-martial;
  - (b) district courts-martial;
  - (c) summary general courts-martial; and
  - (d) summary courts-martial.
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#### Section 109 - Power to convene a general court-martial

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A general court-martial may be convened by the Central Government of [1](#)[the Chief of the Army Staff] or by any officer empowered in this behalf by warrant of [1](#)[the Chief of the Army Staff].

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**1 .** Substituted b y Act 19 of 1955 , sec. 2 and Sch., for "the Commander-in-Chief."

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#### Section 110 - Power to convene a district court-martial

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A district court-martial may be convened by an officer having power to convene a general court-martial or by officer empowered in this behalf by warrant of any such officer.

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#### Section 111 - Contents of warrants issued under sections 109 and 110

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A warrant issued under section 109 or section 110 may contain such restrictions, reservations or conditions as the officer issuing it may think fit.

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#### Section 112 - Power to convene a summary general court-martial

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The following authorities shall have power to convene a summary general court-martial, namely: --

- (a) an officer empowered in this behalf by an order of the Central Government or of [1](#)[the Chief of the Army Staff];
  - (b) on active service, the officer commanding the forces in the field, or any officer empowered by him in this behalf;
  - (c) an officer commanding any detached portion of the regular Army on active service when, in his opinion, it is not practicable, with due regard to discipline and the exigencies of the service, that an offence should be tried by a general court-martial.
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### **Section 113 - Composition of general court-martial**

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A general court-martial shall consist of not less than five officers, each of whom has held a commission for not less than three whole years and of whom not less than four are of a rank not below that of captain.

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### **Section 114 - Composition of district court-martial**

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A district court-martial shall consist of not less than three officers, each of whom has held a commission for not less than two whole years.

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### **Section 115 - Composition of summary general court-martial**

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A summary general court-martial shall consist of not less than three officers.

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### **Section 116 - Summary court-martial**

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(1) A summary court-martial may be held by the commanding officer of any corps, department or detachment of the regular Army, and he shall alone constitute the court.

(2) The proceedings shall be attended throughout by two other persons who shall be officers or junior commissioned officers or one of either, and who shall not as such, be sworn or affirmed.

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### **Section 117 - Dissolution of courts-martial**

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(1) If a court-martial after the commencement of a trial reduced below the minimum number of officers required by this Act, it shall be dissolved.

(2) If on account of the illness of the judge-advocate or of the accused before the finding, it is impossible to continue the trial, a court-martial shall be dissolved.

(3) The officer who convened a court-martial may dissolve such court-martial if it appears to him that military exigencies or the necessities of discipline render it impossible or inexpedient to continue the said court-martial.

(4) Where a court-martial is dissolved under this section, the accused may be tried again.

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### **Section 118 - Powers of general and summary general courts-martial**

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A general or summary general court-martial shall have power to try any person subject to this Act for any offence punishable therein and to pass any sentence authorised thereby.

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### **Section 119 - Powers of district courts-martial**

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A district court-martial shall have power to try any person subject to this Act other than an officer or a junior commissioned officer for any offence made punishable therein, and to pass any sentence authorised by this Act other than a sentence of death, transportation, or imprisonment for a term exceeding two years:

Provided that a district court-martial shall not sentence a warrant officer to imprisonment.

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## **Section 120 - Powers of summary courts-martial**

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- (1) Subject to the provisions of subsection (2), a summary court-martial may try any offence punishable under this Act.
- (2) When there is no grave reason for immediate action and reference can without detriment to discipline be made to the officer empowered to convene a district court-martial or on active service a summary general court-martial for the trial of the alleged offender, an officer holding a summary court-martial shall not try without such reference any offence punishable under any of the sections 34, 37 and 69, or any offence against the officer holding the court.
- (3) A summary court-martial may try any person subject to this Act and under the command of the officer holding the court, except an officer, junior commissioned officer or warrant officer.
- (4) A summary court-martial may pass any sentence which may be passed under this Act, except a sentence of death or transportation, or of imprisonment for a term exceeding the limit specified in sub-section (5).
- (5) The limit referred to in sub-section (4) shall be one year if the officer holding the summary court-martial is of the rank of lieutenant-colonel and upwards, and three months, if such officer is below that rank.

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## **Section 121 - Prohibition of second trial**

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When any person subject to this Act has been acquitted or convicted of an offence by a court-martial or by a criminal court, or has been dealt with under any of the sections 80, 83, 84 and 85, he shall not be liable to be tried again for the same offence by a court-martial or dealt with under the said sections.

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## **Section 122 - Period of limitation for trial**

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- ( 1) Except as provided by sub-section ( 2), no trial by court-martial of any person subject to this Act for any offence shall be commenced after the expiration of a period of three years<sup>1</sup>[and such period shall commence,--
- (a) on the date of the offence; or
  - (b) where the commission of the offence was not known to the person aggrieved by the offence or to (he authority competent to initiate action, the first day on which such offence comes to the knowledge of such person or authority, whichever is earlier; or
  - (c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the authority competent to initiate action, whichever is earlier.]
- ( 2) The provisions of sub-section ( 1) shall not apply to a trial for an offence of desertion or fraudulent enrolment or for any of the offences mentioned in section 37.
- ( 3) In the computation of the period of time mentioned in sub-section ( 1), any time spent by such person as a prisoner of war, or in enemy territory, or in evading arrest after the commission of the offence, shall be excluded.
- ( 4) No trial for an offence of desertion other than desertion on active service or of fraudulent enrolment shall be commenced if the person in question, not being an officer, has subsequently to the commission of the offence, served continuously in an exemplary manner for not less than three years with any portion of the regular Army.

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1 . Substituted by Act 37 of 1992. s ec. 9. f or "from the date of such offence" (w .e.f . 6 - 9 - 1992 ).

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### **Section 123 - Liability of offender who ceases to be subject to Act**

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(1) Where an offence under this Act had been committed by any person while subject to this Act, and he has ceased to be so subject, he may be taken into and kept in military custody, and tried and punished for such offence as if he continued to be so subject.

(2) No such persons shall be tried for an offence, unless his trial commences 1 [within a period of three years after he had ceased to be subject to this Act; and in computing such period, the time during which such person has avoided arrest by absconding or concealing himself or where the institution of the proceeding in respect of the offence has been stayed by an injunction or order, the period of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded;]

Provided that nothing contained in this sub-section shall apply to the trial of any such person for an offence of desertion or fraudulent enrolment or for any of the offences mentioned in section 37 or shall affect the jurisdiction of a criminal court to try any offence triable by such court as well as by a court-martial.

(3) When a person subject to this Act is sentenced by a court-martial to transportation or imprisonment, this Act shall apply to him during the term of his sentence, though he is cashiered or dismissed from the regular Army, or has otherwise ceased to be subject to this Act, and he may be kept, removed, imprisoned and punished as if he continued to be subject to this Act.

(4) When a person subject to this Act is sentenced by a court-martial to death, this Act shall apply to him till the sentence is carried out.

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1. Substituted by Act 37 of 1992 sec. 10, for "within six months after he had ceased to be subject to this Act" (w.e.f 6-9-1992).

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### **Section 124 - Place of trial**

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Any person subject to this Act who commits any offence against it may be tried and punished for such offence in any place whatever.

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### **Section 125 - Choice between criminal court and court-martial**

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When a criminal court and a court-martial have each jurisdiction in respect of an offence, it shall be in the discretion of the officer commanding the army, army corps, division or independent brigade in which the accused person is serving or such other officer as may be prescribed to decide before which court the proceedings shall be instituted, and, if that officer decides that they should be instituted before a court-martial, to direct that the accused person shall be detained in military custody.

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### **Section 126 - Power of criminal court to require delivery of offender**

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(1) When a criminal court having jurisdiction is of opinion that proceedings shall be instituted before itself in respect of any alleged offence, it may, by written notice, require the officer referred to in section 125 at his option, either to deliver over the offender to the nearest magistrate to be proceeded against according to law, or to postpone proceedings pending a reference to the Central Government.

(2) In every such case the said officer shall either deliver over the offender in compliance with the requisition, or shall forthwith refer the question as to the court before which the proceedings are to be instituted for the determination of the Central Government, whose order upon such reference shall be

final.

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## Section 127 - Omitted

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1 . Section 127 omitted by Act 37 of 1992 , sec. 11 (vv .e.f 6 - 9 - 1992 ).

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