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DISCIPLINE AT SEA
Evolution of Naval Law

The Earlier Centuries

Ever since man began to sail me seas, masters of ships and craft have had to resort to various punitive measures to ensure discipline on board, bom at sea and in harbour. Some of these measures were extremely harsh because, besides me spirit of adventure and the lure of the unknown that encouraged men to go to sea, me more important reasons for them to opt for a maritime profession in the olden days were unemployment, banishment from the state, slavery, questionable antecedents, fugitation from law and debt and piraticalpropensities.Nocodeforsuchpunishmenthadhowever,beenlaid down or adopted during the earlier centuries of bluewater seafaring and for several millennia it continued to be totally arbitrary.

The first instance of codification of laws for ensuring shipboard disci-plirte in the Indiansubccmunent is found in the recowis pertaining to the War Office of Emperor Chandragupta (321 B.C. to 297 B.C.) who has been describedasoneof thegreatestandmostsuccessfulkingsknownto history. These records include the writings of Megasthenes and Strabo and

Kauti-lya's *Arthashastra,* an important landmark in the history of Indian civilisation.

In its chapter on the Naval department of Chandragupta, the *Arthashastra* describes in detail the administrative machinery of the department and the duties and responsibilities of *Neoadhyaksha,* i.e, the Superintendent of Ships. Besides his other functions, the *Navadhyaksha* was entrusted with the maintenance of discipline and bringing to book all violators of harbour regulations and miscreants that were dangerous to public peace. Ships of pirates, ships violating customs, coastal or harbour regulations and ships bound for the enemy's country were destroyed. The persons arrested by the port or harbour authorities for violating the norms of behaviour were: a person eloping with another's wife or daughter, a person committing larceny, a person suspected to have committed an offence, a person with a 'perturbed appearance', a traveller without any baggage, a person who attempted to conceal or evade the cognisance of a load carried by him, a person in disguise,ap)ersonstealthily carryingvaluables,apersonattempt-ing to pass himself off as anascetic, a person pretending to be suffering from a disease, a person in a state of alarm, a person spying for a foreign country or agent, a person who had committed murder or assault, a person carrying weapons, explosives or poison and, finally, a person not in possession of a valid pass or entry document.

During the period from the 16th century to the 18th, i.e., from the reign of Akbar to that of Aurangzeb, the functions of the Mughal Admiralty, knownastheMcerBeAry, were governedby the regulations laid downby the Mughal government. These have been described in detail in *Ain-i-Akbari,* the well-known treatise on the life and work of Akbar. According to the records left by Abul Fazl, elaborate regulations had been framed for the organisation of the Naval Department, which had four main functions: constructionand supply of ships and boats for waging war and for transportation of troops, passengers and merchandise; recruitment and supply of sailors to the ships of the Admiralty; surveillance of rivers and other waterways; and the imposition, realisation and remission of duties. These regulations very closely correspond to those of Chandragupta's Navadhyaksha, formulated nearly two millennia before the advent of the Mughals. The harbour regulations of the Mughals also provided for measures to be adopted for the maintenance of discipline and a code of conduct for persons manning ships and ports.

During the earlier centuries, the navies of the littoral states of the mdian subcontinent had a suitable organisational structure for their naval forces down the centuries but in most cases, their administration was not formalised and was left to the discretion of the commanders of such forces. Consequently, the grading of punitive measures resorted to for maintaining discipline varied from region to region and from commander to commander. It was only with the coming into being in the seventeenth century of the East India Company's Marine, which was largely modelled on the British Navy, that the administration of shipboard discipline, which had remained amorphous for centuries, began to crystallize

The British Model

The evolution of naval law, so far as today's navy is concerned, owes its origin to the laws and customs of the sea

which formed the original body of rules for the day-to-day maintenance of order and discipline afloat in Great Britain's navy. No requirement for a statutory code of law was felt, largely due to there beingno standing navy in England until the 16thcentury. Fleets were raised, as the nation's interests demanded, from private ships acquired for the occasion and fitted out. When the expedition was ready, the commander of the expedition would issue specific instructions to the assembled fleet for the punishment of offences and the maintenance of discipline. These instructions were limited to the particular service for which the fleet had been raised.

With the passage of time, it became customary for commanders, on subsequent occasions, to issue the same broad instructions that had been put forth by their predecessors, modifying them as they considered neces-sary for their particular purpose or mission and thusdeveloped an informal body of law based on the customary practices of the seafaring community. One remarkable feature of these instructions was their undue harshness which was probably necessitated by the 'lumpen' section of society from which sailors were recruited at that time.

As the greatmajority of the rank and file were unable to read, it became tile custom to read out these instructions, which were later termed the 'articles of war', at a muster of the men once a month. This explains the genesis of the provisions in the Queen's Regulations for the Royal Navy requiring the articles of war to be read out to the 'ship's company[7], i.e., all officers and sailors on board, at the first opportunity after the commissioning of the ship and to be displayed in a prominent position in the ship for the information of the men. This practice has also been adopted by the Indian Navy and is incorporated in Regulations for the Navy, Part n (Statutory).

Brutal Punishments

It is interesting to observe that disciplinary powers were originally vested only in the ships' operational commanders, who would delegate them to their captains, reserving to themselves the right to deal with more serious offences such as mutiny, murder and manslaughter. The captains were to exercise these powers in accordance with the laws and customs of the sea and according to the gravity of the offence. The early British military law provided for such macabre punishments as tying a murderer to the dead body of his victim and throwing both into the sea. At one time, dismissal from the naval service entailed first ducking a man under two fathoms of water and them towing him from the stem of a ship to the shore where, if the man survived, he was dismissed from the service.A man convicted of causing grievous injury to another could be buried alive or have his limbs hacked off or have boiling water poured over his head. With the passage of time, the punishments became slightly more humane and the convicted man was lashed to the bowsprit (a strong spar projecting over the bows of a sailing ship) given a biscuit, a can of beer and a knife. He then had the choice of starving to death or cutting his bonds and falling into the sea. Then there was 'keel-hauling', i.e., punishing the convicted man by hauling him under the keel of a ship by ropes from one side to the other while the ship was under way or the man being subjected to 'marrying (or kissing) the gunner's daughter[7], i.e., being tied to a gun and then being flogged. It was said of these punishments that they could tame the most crude and savage sailors in the world.

The Three Forms of Trial

The rules of discipline were formally prescribed for the first time in 1645 when an ordinance and articles concerning martial law for the governance of the navy were produced by the Lord Commissioners at the Navy Office, London. These enjoined trial by a council of war and laid down three forms of trial. Firstly, the commander-in-chief, assisted by a council of war, could try and punish all offences committed against any article of war, though the approval of the Lords Commissioners was required before inflicting the punishment of death or mutilation. Secondly, the flag officer of a fleet or division of ships could call to council at least three of his captains to try all offences arising in his division but punishments involving the penalities of death, mutilation or the cashiering of an officer were to be ratified by the Lords Commissioners. The third form was the ship's court. The captain, with the assistance of his second-in-command and other officers on board, was empowered to try all offences committed by those onboard his ship but in mis case also, sentences of death, mutilation or the cashiering of any officer were to be referred to the superior authority.

These courts were essentially courts of rough but effective justice, concerned only with the maintenance of discipline and harmony in the fleet. It is interesting to find that the present-day system of naval justice has changed very little over the last 300 years and our existing general court martial, disciplinary court and summary trial by the commanding officer are virtually the continuance of the three courts conceived as early as the 17th century but with progressive modifications. The original direction to the Commander to inflict punishments according to civil law, martial law and customs of the sea has been continued in the successive Navy Acts

The Judge Advocate

The requirement of appointingajudgeadvocateatacouncil of war,charged w ith the responsibility to administer an oath to witnesses, to advise the court on matters of law and to prepare minutes of the proc eedings, was prescribed as early as 1653. The term 'judge advocate' withits suggestion of completely opposite functions being performed by the same individual is today curiously and potentiallymisleading.lt might leadanaccused person to mink that the judge advocate is not only a legal adviser to me court but also an advocate for the prosecution as well. It is, however, true mat until late in the 19th century, it was the dual function of the judge advocate at a naval court martial to act as an 'assessor^Le.,to advise the court email points of law and practice which might arise, and also when no prosecutor was appointed, to conduct the proceedings in support of the charge before the court on behalf of the public. A better explanation of the title may lie in the description given in 1864 by Lord Cransworth of the duties of the judge advocate, where he refers to him as 'judex advocatus', Le., judge called to assist the court, though forming no constituent part of it.

The transition from a council of war to a court martial in its present form wasa matter more of name than of substance. The exact time at which courts martial under thatname began to be held is not precisely known but they are mentioned for the firet time in the Admiralty Regulations issued on May 1,1663. It is not necessary for the purpose of this chapter to go into the subsequent history of the evolution of Naval Law in the RoyalNavy. Suffice it to say mat after the great mid-19th century legal reforms, an attempt was made to bring the system of naval justice closely in line with the procedure of the English criminal law and the Naval Discipline Act 1866 was the result of these reforms. This act remained

in force for 9i years although numerous amendments were made to it from time to time, and was ultimately replaced, so far as the Indian Navy was concerned, by the Navy Act, 1957.

Indian Military Law

The Incuan Military lawhadits origin in the British military laws which were made applicable to the Indian troops employed by the East India Company. Statutory provision was first made for the discipline of the East India Company's troops by an act passed in 1754 for punishing acts of mutiny and desertion by officers and soldiers. This act empowered the Crown to frame articles of war for the effective command of these troops. Although mere was doubt as to the applicability of the Britishact,in theabsence of any other court, the Governments of Bengal, Madras and Bombay applied the act and the articles of war with such modifications and omissions as appeared necessary for the administration of the Indian troops maintained by mem.

In order to clear doubts that had arisen in regard to the legal validity of the then existing arrangements for the discipline of the Indian troops, a specific provision was made in the Act of 1813 which gave power to the Governments of Bengal, Bombay and Madras to frame laws, regulations and articles of war for the governance of all officers and soldiers in their respective service. It was specifically provided in the 1823 Act that such legislation would apply to the Indian troops of each Presid wherever serving.

Regulations of the Navy Framed

Soon after World War I, the question of reency, organisation of the Royal Indian Marine as a combatant force came under active consideration and subjected to continued discussion during the period from 1919 to 1926. As a sequel to these discussions and with the concurrence of the Secretary of State and the Admiralty, it was decided in 1926 to establish the Royal Indian Navy. In the following year, a bill was passed in the BritishParliament amending Section 66 of the Government of India Act, 1919, which provided for the establishment of the Royal IndianNavy, applying the BritishNaval Discipline Act to this force with such modifications and adoption as was found necessary. Accordingly, a bill was placed before the Central Legislative Assembly of India in 1928. However, the House, then led by Shri Shanmukham Chetty and having stalwarts like Pandit Motilal Nehru, Pandit Madan Mohan Malaviya, Lala Lajpat Rai, Mr Mohammed Ali Jinnah, Sir Hari Singh Gaur and others, defeated the motion to refer the bill to a Select Committee by one vote. The main ground on which the motion was then passed was that the Indian Legislature would not have any control over the Royal Indian Navy but would be required to maintainit and pay for it and, further, that the forcecould be requisitioned by the British Government without the consent of the Legislature. In 1934, however, the bill was again presented but this time itwas passed by the Indian Legislature after a lengthy and heated debate and became the Indian Naval (Discipline) Act, 1934 with the Royal Indian Marine becoming the Royal Indian Navy. In order to give effect to this Act, the Regulations for the Indian Navy (Indian Navy Book of Reference No. 2, short titled INBR 2) were framed and promulgated in 1938 as the

Regulations for the Navy (INBR 2).

The Indian Navy Discipline Act, 1934

The law relating to discipline in the Indian Navy was thus contained in the IndianNavy (Discipline) Act, 1934, passed in pursuance of Section 66 of the Government of India Act, 1919 which was later replaced by Section 105 of the Government of India Act, 1935. The Government of India Acts of 1919 and 1935 empowered the men Indian Legislature to apply to title naval forces raised in India, the provisions of the British Naval Discipline Act, 1866 which was set forth in the First Schedule to the IndianNavy (Discipline) Act, 1934. The Independence of India necessitated, the adoption of certain acts for the purpose of the Governance of the Navy in keeping with the constitutional changes, and action was taken to adopt the Indian Navy (Discipline) Act, 1934, by virtue of the two orders: the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948 and die Adaptation of Laws Order, 1950.

The Indian Navy (Discipline) Act, 1934 largely dealt with disciplinary provisions and there were no statutory provisions concerningvarious other matters such as administration, enrolment, grant of commissions and deductions frompay and allowances of officers and sailors. The necessity was, therefore, felt to have a consolidating statute covering discipline, administration, appointment of officers and enrolment of sailors, statutory deductions, applicability of fundamental rights and various other aspects.

The Navy Act, 1957

The revised Army Act and the Air Force Act were passed by the Parliament in 1950. The revision of the Naval Act proved a more formidable task and it was felt that as the conditions of service at sea differed from that on land and that the Indian Navy (Discipline) Act, 1934 was in many respects different from the law relating to the Army and the Air Force, no attempt should be made to assimilate the revised Navy Act in other respects to the lawrelating to the Army and the Air Force. Besides, in the United Kingdom a Select Committee had been appointed to examine the revision of the BritishNaval Act andit was thought that advantage should be taken of it by adopting some of the recommendations of mat Committee, commonly known as me PUcher Committee.

The draft of the revised Navy Bill closely followed the report of the Pilcher Committee. The draft bill was referred to a Select Committee and, after having been examined by that Committee over a period of four years, was passed into law and became effective from January 1,1958. Consequent to the passage of the Navy Act, 1957, three earlier Acts were repealed These were the Indian Navy (Discipline) Act, 1934 (XXXIV of 1934), the Indian Naval Reserve Forces (Discipline) Act, 1939, and the Naval Forces (Miscellaneous Provisions) Act, 1950 (LVII of 1950).

Some important changes were made by the Navy Act, 1957 over the law as contained in the Indian Navy (Dicipline) Act, 1934. Firstly, the maximum punishments were modified to conform to the agreed decision concerning punishments in the three Services; secondly, specific provisions were included concerning grant of commissions and enrolment in the Service and for prescribing conditions of service; thirdly, provisions were inserted inpursuance of Article 33 of the Constitution to restrict or abrogate the application of fundamental rights to the members of

the Armed Forces in so far as this was necessary for the maintenance of discipline; fourthly, provisions were incorporated for the deduction from pay of officers and sailors for absence without leave, damage to Government property, naval messes, canteens and similar places; fifthly, the penal sections were rationalised and a few amendments made as necessitated by experience; sixthly, the jurisdiction to try civil offences was modified to conform to that existing in the Army and the Air Force; seventhly, the main points of procedure of courts martial were incorporated in the Act itself; eighthly, officers of the non-Executive branches of the Navy, who were formerly not eligible to sit at courts martial, were made eligible, it being provided, however, that the majority of the officers wouldbeof the Executive Branch with theadditional provision that in certain special cases, only officers of the Executive Branch should sit as members of a court martial; ninthly, provision was made for the issue of commissions to examine witnesses; tenthly, the Indian Evidence Act was made applicable to the proceedings of courts martial; eleventhly, the judicial review of the Judge Advocate General of the navy, hitherto known as the Judge Advocate of the Fleet, was placed ona statutory footing and the qualifications for appointment of officers to the Department of the Judge Advocate General were prescribed, twelfthly, the existing naval court martial procedure, permitting the accused to give evidence on oath, was continued with a slight modification to conform to the provisions of the Criminal Procedure Code, as amended by the Criminal Procedure Code Amendment Act, 1955 and finally, provision was made for winding up of the estates of deceased persons.

It would thus be evident that the Navy Act, 1957 brought about a revision of the naval lawby incorporatinginit necessary provisions of other related enactments and regulations with a view to making the law itself sufficient and to adopting the then existing provisions to suit the new constitutional set up and present-day requirements.

Inter-Service Act Differences

The Army and the Air Force Acts had been cast in the same mould and initially the draft Navy Bill was also drawn up on the same pattern but this was later given up and significant differences were allowed as these were dictated by the peculiar conditions of serviceatsea and naval traditions and usages. Nine important points of difference between the Navy Act, 1950 are given below:

(a) The Army has four kinds of courts martial such as general cour martial, district court martial, summary general court martial and summarycourt martial. The Navy, on the other hand, has only one type of court martial in peace time and of course one more during war time for the trial of officers for certain specified offences, called the disciplinary court During peace time, the Navy has five types of tribunals: the Commanding Offic^theFkgOfficerCoinnwnding-m^MettheauefoftheNavalStaff, the Central Government and the court martial.

(b) The sentence of a court martial under the Navy Act is not sub to revisionorconfirmati by the court martial except in the case of a sentence of death which requires confirmation of the Central Government before execution. The provisions relating to revision and confirmation of the findings and sentence of an Army court martial are peculiar to the Army. The existing naval court martial procedure does, however, give power to the convening authority not to

putasentenceintoeffect,shouldhedoubtits legality; provisionexists for the Central Government or theChief of theNavalStaff to reduceor remitthe sentences.

(c) So far as anacquittal by a naval court martial is concerned, it is notsubject to any revision or review by any authority. Under the Army Act, till recently an acquittal by a court martial was not final but by an amendment to Army Rules, 1954, the provisions of the Navy Act have now been incorporated in the Army Act as well.

(d) In the case of the Navy, the accused person is not required to be present at the time of recording the summary of evidence against him andtherefore cannot cross-examine the witnesses whose summary of evidenceis being recorded.

(e) Another important difference is that under the Navy Act, anaccused person can be a witness in his own trial whereas in the Army Actthere was no such provision, till very recent times. The Navy Act thus incorporated the change in the law of me land by the Criminal ProcedureCode Amendment Act, 1955. The Army has woken up to this developmentonly recently.

(f) There are different scales of punishment for similar types of offences committed by persons in the Army and the Navy. These differences were referred to Sir Arthur Trevor Harries, the then Chief Justice, forhis views. Based on his recommendation, the Chiefs of Staff of the threeServices agreed on a common scale of punishment which have been incor porated in the Navy Act, 1957. The Army and the Air Force have agreed to incorporate this common scale when their respective Acts go for amenments before the Parliament.

(g) Whereas the Navy Act has made statutory provisions in the NavyAct itself for the main steps of the procedure of court martial, thas left it to the Army Rules.

(h) The Navy Act makes statutory provision for the judicial review of all proceedings of court martial by the Judge Advocate General. This is not so in the Army and the Air Force Acts, which only provide for confirmation and revision of the findings and sentenceofacourtmartialby the prescribed military commanders. Besides, the duties, qualification and functions of the Judge Advocate General and the officers of his department are laid down in the Navy Act, 1957 which is not so under the Army Act.

(i) The summary powers of punishment of a Commanding Officer under the Navy Act, 1957 are more extensive than under the Army Act. A Commanding Officer can award up to three months' imprisonment or detention to a sailor, subject to approval of the administrative authority; whereas, under the Army Act, his powers of punishment in relation to persons other than commissioned officers, junior commissioned officers or warrant officers, are restricted to 28 days' imprisonment in militar y custody or detention.

The rationale for the above differences lies in the fact that the disciplinary needs of the navy differ from the other two Services in three major respects:

— There is a high proportion of cases in the navy that are triedsummarily. A court martial cannot normally be held with convenience asea, and the navy is a highly mobile force whose movements cannot be held up while a court martial is held in a port to try a comparatively triviabffence. For this reason, a high degree of disciplinary power must always be instantly available to the Commanding Officer of a ship.

— Since the safety of a ship and her complement must depend on the same high standard of discipline at all times, there cannot be any major difference between naval discipline in peace time and in war, unlike the practice in the other two Services where penalties for offences are lighter in peace time than they are in war. The reason for this is that life at sea has its own hardships, and there would inevitably be resentment if there was this added knowledge that the same conduct were to be punished more severely afloat than when committed by a sailor asore.

— As a matter of historical tradition, the Navy Act has incorporated some of the salutory provisions of the British Naval Discipline Act, taking advantage of the recommendations of the Pilcher Committee which thor oughly examined the British Naval Code.

Comparison with Civil Courts

It would also be instructive to make a comparison of the procedure **and** system of trials by court martial with the procedure and method of trials as it exists in the ordinary civil courts in India. Such comparison would reveal that the naval system of justice incorporates not only some of the essential conditions in relation to the administration of justice but also in relation to its procedure, by its freedom from technical forms and obstructive habits mat delay the operation of civil courts. This has resulted in a summary and swift administration of justice well worthy of imitation in some respects by the civil courts.

The procedure by which charges against an accused sailor or officer are investigated and brought to trial is in many respects similar to those by which an alleged offence is investigated and tried by the, civil courts. In the naval system, the function undertaken by the magistrate of himself disposing of minor charges or conducting a preliminary investigation of those to be brought to trial before a superior court, is undertaken by the commanding officer of the ship or establishment, who, in his capacity as the examining magistrate, may dismiss any charge if he is not satisfied it is made out; if he dismisses a charge, his dismissal is final and the accused cannot be tried on that charge by any military authority.

In order that an accused person is not kept in custody for an unreasona-bly long period of time, the administrative instructions provide for time-bound disposal of cases. As a result, a sailor arraigned on a charge is brought to expeditious trial within a matter of days and the proverbial delays of civil criminal courts are unknown to the naval system of justice. If the case is one which the commanding officer is not empowered to deal with or not prepared to try summarily, he takes steps to have the evidence reduced to writing, with a view to trial by court martial. On the basis of documents submitted to him, the convening authority decides to convene a court martial, and copies of summary or abstract of evidence serve, like the deposition in a trial or indictment, to inform the accused of the case against him. The accused is entitled before trial, as a matter of course, to a copy of at least the substance of the expected testimony of every prospective witness against him and to information regarding every item of evidence in possession of the prose cution which may be used against him.

The procedure at a court martial attended by a judge advocate is substantially similar to the proceedings of a

trial before an ordinary criminal court, there being a striking resemblance to the procedure before a tria l by jury. The only difference is that whereas a jury is chosen by lot, the members of a court martial are appointed by the convening authority. Like the number of jury men, the number of members of a court martial is within the statutory limits. As in the Criminal Procedure Code, the law makes allow ance for challenge against the jury both by the prosecution and the accused. This right has also been secured to the naval accused. There is again sirnilarity in the manner of swearing in of thejury,opening of the case by the prosecution and the defence, the taking of special pleas by the accused, viewing of the place of offence, summing up of their respective cases by the prosecution and the defence, and the judge's charge to the court. The object is to obtain a competent and impartial tribunal actuated neither by partiality, nor favour or affection. The main differences between a trial by court martial and a trial by jury in a criminal court are, firstly, the court martial may arrive atits findings or sentenceby a majority and under the Ihdianlaw, the Criminal Procedure Code permits the majority verdict of a jury to be received, whereas a jury, under English law, must be unanimous; and secondly, members of a court martial fix the sentence and the role of the judge advocate in the determination of the sentence is only advisory, whereas under the Criminal Procedure Code, a jury has nothing to do with the sentence which is decided by the judge alone.

The evidence against the accused in a court martial is given under the sanction of an oath or affirmation as in any judical proceedings before civil courts. The witnessesare liable topunishment for perjury committedbefore a court martial. The competency and credibility of witnesses is also tested by the same rules of evidence as prevail in the civil courts. In fact, courts martial are bound in general to observe the fundamental rules of law and principles of justice as observed and expounded by civil courts. They are also governed by the Indian Evidence Act as followed by the criminal courts, subject to certain exceptions as dictated by the exigencies of naval service. One lacuna in this procedure is that the Indian Evidence Act is drawn chiefly from English Law and was enacted in 1872 when Britannia ruled the waves and Queen Victoria ruled over the Indian subcontinent. Despite repeated exhortations by legal luminaries for a review of the 1872 Act, the continued application of its archaic provisions to conditions prevailing after the lapse of over a century, under a totally different environment and in an ethos which is radically different from that of our former rulers, has become an anachronism.

As in the civil administration of justice, a court martial has a coercive power to secure the attendance of witnesses. The witnesses are liable to penalties and punishments upon complaint of non-attendance in like manner as any witness neglecting to attend a trial in any civil court. Protection from arrest is also given to witnesses in going to and returning from a court martialin the same manner as witnesses attending any of the courts of law are privileged. A court martial like a civil court is an opencourt to all persons other than the witnesses.

It would thus be evident that the procedure of trial by court martial is almost analogous to the procedure of trials in the ordinary criminal courts, and mat the naval justice system affords to an accused person some of the basic protections available to an accused before an ordinary criminal court. Notwithstanding this, the system of trial by court martial has some acknowledged faults which prevent it from being equated with the civilian criminal justice. In some respects, the present system is so antiquated mat one is inclined to agree with what Justice Willian O. Douglas said in an American

case, 'A civilian trial is held in an atmosphere conducive to the protection of individual rights, while a military trial is marked by the age-old manifest destiny of retributive justice.' The main defects in the existing system of naval justice are, firstly, the absence of the right to bail to an accused person; secondly, the ad-hoc composition of the court martial and its determination of both guilt and the sentence; thirdly, the invidious positionof the judge advocate;fourthly,the possible command influenceby the convening authority; and, fifthly, there is no right of appeal to any superior court.

As a result of these shortcomings, courts martial are prone to be regarded as summary and arbitrary proceedings. Although the description of the naval system of justice as 'drumhead justice' is over-drawn, there are indeed glaring defects as regards the safeguards afforded to an accused person and a court martial is in fact regarded as an instrumentality of the executive power to enforce discipline in the Service. Though the other democratic countries have carried out large-scale revision of their military codes to bring them in line with the changing conditions and concepts of penology and administration of justice, our system of justice has remained static and is now lagging behind the systems of justice in other countries.

Friend of the Accused

'Friend of the Accused' has been an institution in the Service which has become considerably diluted over the years and there would be many reasons for this. True, law has become more complex and therefore, some may feel happier in the 'company[7] of civil lawyers to assist them to obtain justice in Courts Martial. Generally, Courts Martial in which prosecution and defence have been conducted by competentnaval officers gets down to brass tacks in a quick, direct and unfussy manner yet preserving an aura of equanimity and dignity. Civilian lawyers certainly bring a wide, strong knowledge of law to bear on the cases they handle and it is an education for service personnel to listen to some of them. On the other hand, there have been instances when much time was spent on what was, in plain terms, regarded as no more than pettyfogging over matters of no worthwhile import, as frequently happens in civil courts.

Adistinguishedoldtimer,whorosetobetheCorrarianding-in-CIhiefof the Western Naval Command before retirement and who has been a legendary 'friend of the accused' for over a quarter of a century, reminisces:

> I was never trained in law and my involvement in Courts Martial was essentially that of an amateur who, by some sedulous self-study, a small accumulation of experience and a few successes, found himself the object of more faith and respect than he deserved. I took to acquiring a knowledge of naval law and discipline because I regarded it as a necessary part of a naval officer's professional equipage. My experiences of our Courts Martial system of trial generated and sustained a wholesome respect for it. It is up to those who administer this syste achieve the high quality of justice it was structured to attain.
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> I always found it essential (and fascinating) to carefully study thedemeanour of witnesses, as recommended by many famous judges and lawyers. It gave me precious insights into the strengths and weaknesses of their evidence and helped me to decide how to tackle them in cross examination. The law books say that cross examination is a two-edged tool. How true.

Professional lawyers probably develop a certain dispassion in handling the cases of their clients. Not being one of them, I found it hard to be distantly aloof from the fears and hopes of those I defended. That is probably why I regarded the label Triend of the Accused' an ideal one. It implied an act of comradeship rather than a more sang froid lawyer-client contract.

Unified Inter-Service Code

It would be interesting to allude at this stage to the efforts made by the Government of India to bring about uniformity in the three Services' Acts. The war-time experience of countries like the United States, Canada and the United Kingdom indicated the desirability of making the rights and duties of the members of the Armed Forces readily ascertainable with reference to a single code. These countries had thus gone in for a uniform code for the three Services. The Government of India, also being convinced of the importance of allowing the three Services to develop a feeling of the essential oneness of the Defence organisation, set up in 1965 a committee consisting of representatives from the Ministries of Defence and Law and Justice, and the three Service Headquarters, with the avowed objective of drafting a uniform code for the three Services. The aim was to rationalise the three Services' Acts, taking into consideration the developments in criminology and also the fact mat members of the Armed Forces would in future come from more educated and politically conscious classes.

The Uniform Code Committee, after having deliberated over the matter for nearly 14 years, brought out a draft uniform code. Whilst this draft uniform code was in the final stage of consideration the Army Headquarters wished to reconsider the usefulness and desirability of having a single uniform code for the three Services and withdraw from the committee, advocating that each Service should bring about amendments to its own Service Act to meet its own peculiar conditions. As a result, the efforts at bringing about a uniform code of Service discipline were given up and the draft uniform code was put in cold storage. Recently, however, the Army Headquarters has had second thoughts about its earlier stand and there is a feeling that militaryjustice also needs to be brought in conformity with the modern notions of criminal justice. This thought has obviously emanated from the flood of court cases involving the Army which has made the present higher echelons of the Service rethink about the antiquity of the Army Act, 1950 and the need to reform it and bring it in conformity with the changed notions of justice.

Naval law, or 'the laws of the navy' as it is termed in a popular ditty, has gradually developed into its present form over the last three millennia, i.e., from the days of triremes and galleys to the days of nuclear submarines and ballistic missiles, and has attempted to keep abreast of the changes in the perceptionofhumanrights,requirements of discipline ashore and afloat and the growing transcendence of civil procedures into the Services. like many other disciplines, it is basically protean in nature and would thus continue to evolve in keeping with developments within the Services and without, and to constitute the most important implement for the maintenance of discipline at sea.