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**STANDING COMMITTEE
ON DEFENCE
(2005-06)**

FOURTEENTH LOK SABHA

MINISTRY OF DEFENCE

THE ARMED FORCES TRIBUNAL BILL, 2005

TENTH REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

May, 2006/Vaisakha, 1928 (Saka)

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STANDING COMMITTEE ON DEFENCE
(2005-06)

(FOURTEENTH LOK SABHA)

MINISTRY OF DEFENCE

THE ARMED FORCES TRIBUNAL BILL, 2005

*Presented to Lok Sabha on 23.5.2006
Laid in Rajya Sabha on 23.5.2006*



LOK SABHA SECRETARIAT
NEW DELHI

May, 2006/Vaisakha, 1928 (Saka)

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COMPOSITION OF THE STANDING COMMITTEE
ON DEFENCE (2005-06)

Shri Balasaheb Vikhe Patil—*Chairman*

MEMBERS

Lok Sabha

2. Shri Churchill Alemao
3. Shri Iliyas Azmi
4. Shri A.V. Bellarmin
- ***5. Shri Suresh Chandel
6. Shri Thupstan Chhewang
7. Smt. Sangeeta Kumari Singh Deo
8. Shri Milind Deora
- **9. Smt. Priya Dutt
10. Shri Ramesh Jigajinagi
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13. Shri S.D. Mandlik
14. Dr. K.S. Manoj
15. Shri Raghuraj Singh Shakya
16. Shri Mahadeorao Shivankar
17. Shri Ganesh Prasad Singh
18. Shri Manvendra Singh
19. Shri Balashowry Vallabhaneni
20. Ms. Ingrid Mcleod
21. Shri Dharmendra Yadav

** Nominated *w.e.f.* 9.12.2005.

*** Ceased to be a Member of the Committee *w.e.f.* 22.12.2005.

(iv)

Rajya Sabha

- @@22. Shri R.K. Anand
23. Dr. Farooq Abdullah
§24. Shri Jai Prakash Aggarwal
*25. Gen. Shankar Roy Chowdhury (Retd.)
26. Shri T.T.V. Dhinakaran
27. Smt. N.P. Durga
†28. Shri Janardan Dwivedi
@@@29. Shri Pramod Mahajan
30. Shri Mukhtar Abbas Naqvi
@31. Shri Anand Sharma
32. Shri Lalit Suri

SECRETARIAT

- | | | |
|----------------------|---|-----------------------------|
| 1. Shri S.K. Sharma | — | <i>Additional Secretary</i> |
| 2. Shri R.C. Ahuja | — | <i>Joint Secretary</i> |
| 3. Smt. Anita Jain | — | <i>Deputy Secretary</i> |
| 4. Shri D.R. Shekhar | — | <i>Under Secretary</i> |

* Ceased to be a Member of the Committee *w.e.f.* 18.8.2005.

@ Ceased to be a Member of the Committee *w.e.f.* 29.1.2006.

† Ceased to be a Member of the Committee *w.e.f.* 8.3.2006.

§ Nominated *w.e.f.* 8.3.2006.

@@ Ceased to be a member of the Committee *w.e.f.* 2.4.2006.

@@@ Demised on 3.5.2006, consequently his seat remained vacant *w.e.f.* 3.5.2006.

INTRODUCTION

I, the Chairman, Standing Committee on Defence (2005-06) having been authorized by the Committee to submit the Report on their behalf, present this Tenth report on 'The Armed Forces Tribunal Bill, 2005'.

2. The Standing Committee on Defence (2005-06) was constituted on 5th August, 2005. One of the functions of the Standing Committee, as laid down in Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha, is to examine such Bills pertaining to the concerned Ministry/Department as are referred to the Committee by the Chairman, Rajya Sabha or the Speaker, as the case may be, and to make a Report on the same to the House.

3. The Armed Forces Tribunal Bill, 2005 was introduced in Rajya Sabha on 20 December 2005 and was referred to the Standing Committee on Defence by the Hon'ble Speaker on 23 December, 2005.

4. The Committee had the briefing of the representatives of the Ministry of Defence on the Bill on 13 January, 2006 and oral evidence on 28 April, 2006. Besides this, the Committee also took evidence of the Ministry of Law & Justice. The Committee also sought the opinion of experts in the field on 23, 24 and 29 March and 13 April, 2006.

5. The draft report was considered and adopted by the Standing Committee on Defence at their sitting held on 16 May, 2006.

6. The Committee were greatly benefited from the views/suggestions of various individuals/associations/experts on various provisions of the Bill. They wish to express thanks to all of them who furnished memoranda and appeared before the Committee for evidence.

7. The Committee wish to express their thanks to the representatives of the Ministry of Defence and Ministry of Law & Justice for appearing before the Committee for evidence and for furnishing the valuable material and information in a very short span of time which the Committee desired in connection with the examination of the Bill.

8. For facility of reference and convenience, the observations/recommendations of the Committee have been printed in bold type in the body of the report.

NEW DELHI;
16 May, 2006

26 Vaisakha, 1928 (Saka)

BALASAHEB VIKHE PATIL,
Chairman,
Standing Committee on Defence.

THE ARMED FORCES TRIBUNAL BILL, 2005

INTRODUCTORY

The existing system of administration of justice in the Armed Forces provides for submission of statutory complaints against grievances relating to service matters and pre and post confirmation petitions to various authorities against the findings and sentences of courts-martial. There is no independent adjudicatory forum for hearing complaints of defence personnel relating to the service matters and appeals against the judgment of Court Martial.

2. A large number of cases relating to service matters of the members of the Armed Forces have been pending in the courts for a long time. In a note to the Committee, the Ministry of Defence informed that the number of cases pending before the Supreme Court & various Courts as on 31.10.05 are as under:

	Supreme Court	High Courts
Army	94	7611
Navy	12	463
Air Force	22	1250
Total	125	9324

3. Emphasising the need for setting up an independent adjudicatory forum for defence personnel, various Committees have opined as under:—

- (i) Law Commission in its 169th report at chapter V has opined that it is necessary to provide an appropriate appellate forum to entertain appeals against final orders passed by the Courts Martial'. The Commission in its recommendations has strongly recommended for setting up an Appellate Tribunal for the Armed Forces.
- (ii) Supreme Court, in 1982, held that the absence of even one appeal with power to review evidence, legal formulation, conclusion and adequacy or otherwise of punishment in the laws relating to the armed forces was a distressing and glaring lacuna and urged the Government to take steps to provide for at least one judicial review in service matters.

- (iii) The Estimates Committee of the Parliament in their 19th Report presented to the Lok Sabha on 20th August, 1992 had desired that the Government should constitute an independent statutory Board or Tribunal for service personnel.
- (iv) The Standing Committee on Defence in their 20th Report presented to Lok Sabha on 19.8.2003 *inter alia* recommended that special court of appeal on the line of countries like France, Germany, Russia, Sweden and United Kingdom be constituted for redressal of grievances of the service personnel, where aggrieved personnel may appeal against the judgment of military court. In pursuance thereof, the Standing Committee on Defence (2004-05) in their 2nd Report presented on 25.4.2005 again stressed on the urgency of new mechanism to deal with the large number of cases pertaining to the Armed Forces.

4. Article 323A of the Constitution of India empowers Parliament to provide, by law, for the adjudication or trial by administrative tribunals. Under this Article, Parliament enacted the Administrative Tribunals Act, 1985. As a sequel thereto, the Central Administrative Tribunal (CAT) adjudicates service matters concerning Central Government employees. The Central Administrative Tribunal Act, 1985 does not apply to the personnel of the Armed Forces.

5. The proposal of Ministry of Defence for setting up of an Armed Forces Tribunal for adjudicating service matters excluding transfer and postings of the Armed Forces personnel, and appeals arising out of the verdicts of the courts martial was approved by the Cabinet in its meeting held on 29th September, 2005. The Armed Forces Tribunal is proposed to be set up under Article 246 of the Constitution read with Entry 2 of List-1 (Union List) in the Seventh Schedule to the Constitution.

6. In view of the above, Ministry of Defence has proposed to enact a new legislation by constituting an Armed Forces Tribunal for the adjudication of complaints and disputes regarding service matters and appeals arising out of the verdicts of the courts-martial of the members of the three services (Army, Navy and Air Force) . The Armed Forces Tribunal Bill, 2005 was introduced in Rajya Sabha on 20 December, 2005. The Speaker referred the bill to Standing Committee on Defence on 23 December, 2005 for examination and report.

7. As per Objects and Reasons of the Bill, the establishment of an independent Armed Forces Tribunal will fortify the trust and confidence amongst members of the three services in the system of dispensation of justice in relation to their service matters and will provide for a judicial appeal on points of law and facts against the verdict of court martial which is a crying need of the day. It will provide quicker and less expensive justice to the members of the Armed Forces. The salient features of the proposed Armed Forces Tribunal Bill, 2005 as given by the Ministry of Defence are as under:—

- (i) There will be one Tribunal to deal with service matters (original jurisdiction) and appeals from the verdicts of Courts-Martial (appellate jurisdiction). The number of benches will be determined by the Central Government after appointment of Chairperson.
- (ii) The Chairperson of the Armed Forces Tribunal shall be either a retired judge of the Supreme Court or a retired Chief Justice of a High Court.
- (iii) The Administrative member(s) shall be a serving or retired Major General or above in the Army or equivalent rank in the Navy or the Air Force with three years of service in that rank.
- (iv) The judicial member should be a serving or retired judge of the High Court. However, serving or retired Judge Advocate Generals who are of the rank of Major General in the Army or equivalent in the Navy or Air Force can also be appointed. The serving officers shall have to seek retirement before assuming such appointment.
- (v) One or more member(s) of the Tribunal may be appointed as Vice-Chairperson(s) by the Central Government.
- (vi) The Chairperson and members shall have a 4 year non-extendable tenure, subject to the maximum age of 70 years if he/she is a retired judge of the Supreme Court and 65 years if he/she is a retired Chief Justice of a High Court.
- (vii) The Tribunal shall have powers to punish for its contempt.
- (viii) The Tribunal shall decide both question of law and facts. The Central Government shall have powers to make rules to carry out the provisions of the proposed Tribunal.
- (ix) All appointments to the Armed Forces Tribunal will be made in consultation with the Chief Justice of India.

8. Keeping in view that the Armed Forces Tribunal Bill, 2005 deals with servicemen and ex-servicemen of the Armed Forces personnel who live all over India including remote and hilly terrain of the country, the Committee decided to invite memoranda on the Bill from public in general and expert organizations/associations interested in the subject in particular. A Press communiqué was issued in various newspapers on 28.2.2006 in this regard and text of the Bill was put on internet at the web site www.parliamentofindia.nic.in for soliciting views/suggestions thereon.

9. The Committee received a number of memoranda from the various individuals on the provisions of the Bill. After going through the memoranda, the Committee invited Wing Commander U. C. Jha (Retd.) research scholar, Col. Satwant Singh (Retd.), Col. Jag Mohan (Retd.) to depose and place their view points before the Committee on 29 March 2006. The Committee further heard the views of Wing Commander, U.C. Jha (Retd.) on 13 April, 2006. The Committee also heard the views of Shri Ajay Vikram Singh, Defence Secretary (Retd.) and General V.P. Malik (Retd.) on the Bill on 23 March and 24 March 2006 respectively. The Committee also called representatives of the Ministry of Defence for evidence on 13 January and 28 April, 2006. The Committee also sought clarifications from the representatives of the Ministry of Law and Justice on various provisions of the Bill.

CHAPTER I

MILITARY JUSTICE SYSTEM IN INDIA

10. The Armed Force personnel of the three services are subject to the Indian Army Act, 1950, Indian Air Force Act, 1950 and the Navy Act, 1957. In this connection several submissions have been received that the Acts suffer from inherent defects and violate the constitutional rights of a person. The Supreme Court and High Courts have in their judgments in several cases taken note of harsh punishments being awarded to service personnel by commanding officers for relatively minor offences.

11. Answering the query whether the Acts have been amended in the light of the Supreme Court judgment, the Ministry stated :—

“The Government have not amended the existing Acts of the Armed Forces in the light of the judgements delivered by the Courts. However, some changes have been introduced in the last 50 years. The review of the existing Acts of the Armed Forces is a continuous process. Further changes would be introduced as and when it is required.”

12. Asked about the need to create common disciplinary code for the three services the Ministry informed :—

“So far as creation of common disciplinary code for the three services is concerned, the matter is under deliberations of the Chiefs of the Staff Committee.”

13. The Committee note that the proposed Armed Forces Tribunal will deal with appeals from Court Martial verdicts and the grievances related to service matters. Service matters of Defence personnel and Court Martial trials are governed by the Army Act, 1950, the Air Force Act, 1950 and the Navy Act, 1957. The Committee have been given to understand that all these Acts have originated from the related Acts enacted during the British rule which were colonial and oppressive in nature. The Committee are conscious that Military laws should be strict enough to deal with Military offences firmly and effectively to enforce discipline among the forces, but at the same time hold the view that the laws should not be oppressive to the extent of having a demoralizing affect on the defence personnel. In

this connection the Committee note that Supreme Court in a number of cases of the Armed Forces personnel has given the ruling that punishments given to the accused were not commensurate with the offences committed and has set aside the orders of the commanding authorities. The Committee therefore, strongly feel that it is high time that these Acts be reviewed in totality in the light of the judgments delivered by the courts to make their provisions more democratic. The Committee, therefore, recommend that an expert committee be constituted to thoroughly review their Acts and make recommendations to bring them in tune with the norms being followed in other democratic countries. The Committee would like that review of the above Acts be taken up urgently so that the revised Acts are in place before the establishment of the Tribunal. Since the Tribunal would deal with cases of all the three forces, the Committee desire that the common disciplinary code be created so as to bring uniformity in dispensation of justice to the Armed Forces Personnel.

CHAPTER II

ARMED FORCES TRIBUNAL BILL

14. The Armed Force Tribunal Bill contains 43 Clauses pertaining *inter alia* about composition of tribunal jurisdiction authority etc. It provides that every rule made by the Central Government under the Act shall be required to be laid down before each House of Parliament. The Committee after carefully consideration of various Clauses of the Bill in light of various submissions by non-officials and Ministry's view point have come to the following conclusions:—

15. The Committee note that as per the statement of the objects and reasons of the Bill, the establishment of Armed Force Tribunal as an independent adjudicating forum for defence personnel will fortify their trust and confidence in the system of dispensation of justice. It will also provide quicker and less expensive justice to the members of Armed Forces. The Committee desire that concept of quicker and less expensive justice should be implemented in letter and spirit and by following principle of natural justice. The Committee, however, while making indepth study of the various provisions of the Bill find that the aims and objects mentioned in the Bill, have not been adequately reflected in its provisions.

16. The most important issue is the composition of the tribunal. The Bill provides for appointment of administrative member from retired Armed Force services personnel while judicial members can be appointed from amongst the retired High Court Judges or retired JAG. The Committee find that it could lead to a situation where in the two member bench, both the member administrative and judicial would be with the armed forces background. The Committee feel that then there would be hardly any difference in the existing system of administration of justice and the judicial review proposed under the Bill. The Committee, therefore, recommend that the judicial member of the tribunal should necessarily be a retired High Court Judge.

17. The Committee note that Summary Disposals and Trials have been kept within the purview of the proposed tribunal in the Bill. The Ministry, however, in their subsequent note have proposed that summary disposals and trials be kept outside the purview of the

Tribunal since the punishments awarded under this process are minor in nature. The Committee note that punishments awarded under summary disposals and trials by the commanding officers have invariably and deeply affected the career prospects of the serving personnel. The Committee, therefore, recommend that summary disposals and trials must be in the purview of the Tribunal in order to ensure justice to the Armed Forces Personnel.

18. The Committee note that appeal against the judgment of the Tribunal will go to Supreme Court. However, the Committee were informed that in a judgment, the Supreme Court has held that powers of the High Court under Art 226 and 227 cannot be taken away by an Act of Parliament. The Committee are of the view that the appeal against the Tribunal should be preferred as per provisions of the Constitution.

19. The Committee note that more than 9000 cases are pending in various courts which will be transferred to Tribunal upon its establishment. The number of cases are likely to be increase further with the establishment of the Tribunal. The Committee desire that in order to clear the backlog it is essential that Government should set up temporary/special benches for the purpose. The Committee, therefore, are of the view that for smooth adjudication and to avoid inordinate delay in such large number of cases, regional benches be appointed in various parts of the country.

Keeping in view, the large number of cases pending in High Court and Supreme Court, the Committee desire that the Government should explore the possibility to refer the cases pertaining to Ex-Serviceman to *Lok Adalat* so that number of pending cases may come down significantly.

The Committee also feel that, provision should be made in the Bill to empower The Tribunal, wherever necessary, to appoint Arbitrator for negotiation/conciliation of the matter.

20. The Committee note that proposed Bill provides that the Tribunal shall decide every application made to it as expeditiously as possible. Keeping in view the large number of cases already pending in the court, the Committee feel that the term 'as expeditiously as possible' needs to be defined and a fixed time limit should be laid down. The Committee desire that a time limit of six months should be fixed within which tribunal should dispose of every application.

The Committee also desire that provision be made in the Bill for free legal aid to the military personnel particularly for Personnel Below Officer Rank (PBOR).

21. The clause wise examination of the Bill by the Committee is given in succeeding paragraphs. The Committee desire that modifications/amendments suggested by them in the paragraphs may be incorporated in the bill and the revised AFT bill may be presented in the Parliament at an early date.

CHAPTER III

PREAMBLE OF THE BILL

22. The preamble of the Bill reads as under:

“to provide for the adjudication or trial by Armed Forces Tribunal of disputes and complaints with respect to commission, appointments, enrolment and conditions of service in respect of persons subject to the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950 and also to provide for appeals arising out of orders, findings or sentences of court-martial held under the said Acts and for matters connected therewith or incidental thereto.”

23. In this regard a non-official witness submitted during evidence that since tribunal under the bill is adjudicating service matters for the armed personnel and appeals arising out of verdicts of court marshal, the word ‘trial’ be deleted from the preamble.

24. Giving their clarification, the Ministry however in a note to the Committee stated:—

“The Armed Forces Tribunal would be both an appellate as well as trial court. Since the proposed Armed Forces Tribunal will be adjudicating the disputes both in criminal and service matters, it would be conducting trial in the legal sense. In view of this, there is no proposal to delete the word “trial” from the preamble of the Bill.”

25. The Committee, are not convinced with the Ministry’s reply and recommend that since proposed Tribunal is an adjudicatory and appellant authority, the word ‘trial’ may be deleted from the preamble of the Bill.

Clause 2(2)

26. The sub-clause states:—

This Act shall also apply to retired personnel subject to the Army Act, 1950, or the Navy Act, 1957 or the Air Force Act 1950, including their dependents, heirs and successions in so far as it relates to their service matters.

27. On the query of the Committee whether the scope of the Bill also includes released, discharged and dismissed personnel, the Ministry stated:—

“The definition of ‘retired personnel’ has wider connotation and includes personnel released, discharged, and dismissed. This provision would be amplified at the time of drafting the Rules in this regard.”

28. The Committee do not agree with Ministry’s reply that the provision would be amplified at the time of drafting the Rules and recommend that Clause (2) may be suitably modified to specifically include personnel released, discharged and dismissed in the purview of the Bill.

Clause 3 (f)

29. This sub-clause defines the term court-martial:

3 (f) “court-martial” means a court-martial held under the Army Act, 1950 or the Navy Act, 1957 or the Air Force Act, 1950.

30. On query of the Committee as to whether the Court Martial under the proposed Bill also includes judgements of disciplinary courts under Section 15 (1) of the Navy Act, the Ministry in a written note submitted:—

“Section 15 (1) of the Navy Act, 1957 deals with the doctrine of pleasure of President and does not relate to Disciplinary Courts. Disciplinary Courts are dealt with in Section 95 and 96 of the Navy Act, 1957. Cases of Disciplinary Courts being tried under the Navy Act are expected to be covered by the Armed Forces Tribunal”

31. The Committee desire that to remove ambiguity the clause should be modified so as to mention that disciplinary courts under the relevant Section of the Navy Act, are covered by the Armed Forces Tribunal.

Clause 3 Definition of Service Matters:

32. This Clause defines the certain words and expressions used in the bill. The Clause 3 (o) of the Bill reads as under:

In this Act, unless the context otherwise requires:

(o) “service matters”, in relation to the persons subject to the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950, mean

all matters relating to the conditions of their service and shall include—

- (i) remuneration (including allowances), pension and other retirement benefits;
- (ii) tenure, including commission, appointment, enrolment, probation, confirmation, seniority, training, promotion, reversion, premature retirement, superannuation, termination of service and penal deductions;
- (iii) leave of any kind;
- (iv) summary disposal and trials;
- (v) any other matter, whatsoever, but shall not include matters relating to—
 - (i) orders issued under section 18 of the Army Act, 1950, sub-section (1) of section 15 of the Navy Act, 1957 and section 18 of the Air Force Act, 1950; and
 - (ii) transfers and postings in relation to the persons subject to the Acts mentioned in this clause.

33. The Committee have received several representations on various provisions of this clause which includes leave of any kind, summary disposals and trial and transfer and postings. The Committee examined these issues in the light of the suggestions given by non-official and evidences tendered by the Ministry.

34. The Committee wanted to know the break up of cases filed in various courts by the armed forces personnel, the Ministry furnished the following information:—

	Army	Navy	Air Force	Total
1. Court Martial	840	42	84	996
2. Leave	05	02	-	07
3. Summary Trial	60	34	07	101
4. Posting & Transfer	42	01	31	74
5. Service Conditions	4826	234	1122	6182
6. Other Misc.	1811	20	204	2035
Total	7584	333	1448	9365

CHAPTER IV

LEAVE OF ANY KIND

35. The sub-section 3(o)(iii) provides that in service matters 'leave of any kind' is included in the purview of the tribunal.

36. When the Committee desired to know the rationale for keeping 'leave of any kind' in the purview of the Tribunal, the representative of the Ministry of Defence during oral evidence stated:

"The leave has been included in the service matter because leave is something of a direct pertinent relevance. However, any scope of a person rushing to the Tribunal in the case of denial of leave may not really come about because care has been taken that a person has to first apply for and make use of the existing remedy. The existing remedy is that he has to go to the Commanding Officer for a remedy. If the Commanding Officer does not grant him leave, then he has to put up a statutory complaint. It is only when a final order has been given by the Central Government on the case of denial."

37. However, in a subsequent note to the Committee the Ministry stated:

"The suggestion of the Committee that 'leave of any kind' should not be included within the jurisdiction of the Tribunal appears to be appropriate. Therefore, clause 3 (o) (iii) of the Armed Forces Tribunal Bill, 2005 could be deleted."

38. Elaborating further the representative of the Ministry further stated:

"It is apprehended that Units may be burdened with excessive litigation arising out of leave, which may affect their operational preparedness and discipline."

39. In view of the above suggestion of the Ministry and after detailed discussion on the subject, the Committee recommend that 'leave of any kind' under clause 3(o) (iii) may be deleted from the purview of the Tribunal.

CHAPTER V

SUMMARY DISPOSALS AND TRIALS

40. Summary disposal and trials have been included in the purview of the Bill vide 3 (o) (iv). However, the Ministry subsequently informed the Committee that summary disposals and trials are proposed to be deleted from the purview of the tribunal.

In this connection, a non-official deposed before the Committee:—

“This has been correctly included in the proposed definition of “Service matters” and should not be deleted. It should be appreciated that summary trials carry scope for punishment upto 42 days imprisonment and detention/confinement to a soldier by this Commanding Officer. His liberty is curtailed. He is put to monetary loss by way of deduction of his pay and allowances. Such serious consequences of punishment given by non-legal persons and without any scope for appeal, may have grave consequences in the disciplined forces like the Armed Forces.”

41. The Committee enquired the reasons for subsequent proposal for excluding the summary disposals and trials out of the scope of the Tribunal, the Ministry stated:—

“Commanding Officers are authorized to award only minor punishments during summary disposal of charges under Armed Forces Act. These powers are essential for expeditiously meting out justice and maintenance of discipline of the Unit. It is apprehended that if appeals are permitted in case of summary disposal of charges, units may be embroiled in innumerable litigations. Therefore, the Ministry of Defence propose exclusion of summary disposal and trials from the definition of ‘service matters.’”

42. In this regard the Committee enquired about the specific cases relating to decision of summary Court Martial, the Ministry furnished the summary of judgments of the few cases relating to summary Court Martial (SCM) (**Annexure-I**). The Committee after going through these cases observed that the Supreme Court in most of cases held that punishment awarded was not commensurate with the offence and the same was therefore set aside and matter remanded back to SCM.

43. On the query of the Committee on how punishments given on summary trials can affect the prospects and career of defence personnel, the Ministry stated:—

“In certain cases these punishments affect the prospects and the career of the service personnel adversely.”

44. When asked to give the number of summary trial that took place in armed forces in the last five years the Ministry stated:—

“The cases of the summary trials are conducted at the Unit level for minor offences and these are not reported to the Service Headquarters and the Ministry. In view of this, it is not possible to furnish the number of such cases during the last 5 years.”

45. From the foregoing, the Committee feel that summary disposals and trials are important and vital issues and as admitted by the Ministry in certain cases these decisions have long lasting effect on career and prospects of the armed forces personnel. The Committee take a serious note of the fact that in several cases the Supreme Court has ruled that judgment given by the SCM was vindictive, unduly harsh and disproportionate to the offence as to shock the conscience and amounted in itself to conclusive evidence of bias without any scope for appeal. The Committee in order to ensure fair dispensation of justice to armed forces personnel, strongly recommend that summary disposals and trials must be kept in the purview of the Tribunal.

The Committee are surprised to note that cases of summary trials are not reported to service headquarters. They desire that a note on each summary trial conducted in the unit and punishment awarded must be communicated to service headquarters within a specified period.

CHAPTER VI

TRANSFER AND POSTING

46. The matter of exclusion of transfer and posting from the purview of the Bill was also commented upon by various non-officials. It was strongly mentioned by some non-officials that matter relating to transfer and posting should be included in the purview of the Bill. A submission made by non-official in this regard is as follows:—

“Transfers and posting should not be excluded from the purview of the proposed Tribunal, because if these important service matters are kept beyond the scope of the said Tribunal, it shall cause grave injustice to the Armed Forces personnel. If exempted, then for a genuine case, where a person is victimized or his posting/transfer is ordered due to *malafide*, for example, posting beyond normal tenure at high altitudes, it shall be denial of a legal remedy under this act. Then such persons shall have no option but to approach High Courts under their writ Jurisdiction.”

47. The Committee enquired the reasons for not including transfers and postings in the definition of service matters. The Ministry in a written reply stated:—

“Transfer is an incidence of service. For operational requirements and in the interest of discipline, transfer and posting can not be included in the purview of the Tribunal.”

48. The Committee examined the pros and cons of the issue carefully and are of the view that transfer and posting should not be kept in the purview of the tribunal as it would affect the operational requirements and discipline of the forces. The Committee, however, desire that where there is a clear case of bias or harassment in the matter relating to transfers and postings, the aggrieved person as a special case should be given right to go to Tribunal to redress his grievances. The Committee also desire that a clear cut transfer policy should be formulated by the services and genuine and justified cases should be sympathetically considered by the officers.

CHAPTER VII

CLAUSE 6 (2) (B): QUALIFICATION FOR APPOINTMENT OF CHAIRPERSON AND MEMBERS

49. Qualification for appointment of Chairperson and the members of the proposed Tribunal.

Clause 6 provides for appointment of Chairperson and other Members. It reads as:—

(1) A person shall not be qualified for appointment as the Chairperson unless he is a retired Judge of the Supreme Court or a retired Chief Justice of a High Court.

(2) A person shall not be qualified for appointment as a Judicial Member unless—

(a) he is or has been a Judge of a High Court; or

(b) he has held the post of Judge Advocate General in the rank of Major General in the Army or equivalent rank in the Navy or the Air Force, as the case may be.

Explanation.—When a serving person referred to in clause (b) is appointed as Judicial Member, he shall have retired from service prior to assuming such appointment.

(3) A person shall not be qualified for appointment as an Administrative Member unless he has held or is holding the rank of Major General or above for a total period of at least three years in the Army or equivalent rank in the Navy or the Air Force.

Explanation.—When a serving person is appointed as an Administrative Member, he shall have retired from service prior to assuming such appointment.

50. On a specific query of the Committee that rank of JAG is not equivalent to the Major General in Air Force and Navy, meaning thereby no official from Air Force and Navy would be appointed in the proposed Tribunal, the Ministry stated:—

“The suggestion of the Committee about the qualification of service personnel to be appointed as judicial member of the Tribunal is

accepted. Therefore, the existing clause contained in clause 6 (ii) (b) could be amended to read as "He is holding or has held the post of Judge Advocate General in the Army, Navy or Air Force."

51. The Committee have however, received several representations on the non-desirability of a person with military background as judicial member of the Tribunal. In this regard a non-official witness elaborated:—

"The presence of an ex-serviceman from military background as "Judicial Member" of the Tribunal may be detrimental to its image, as it may not be perceived as an independent judicial forum. An officer who has served in the armed forces under the 'command influence' for around 30 years cannot be expected to sever his ties and loyalty overnight. In the case of a Bench of the Tribunal [Clause 5 (2) and (3) of the Bill] consisting of one Judicial Member and one Administrative Member, both may be former service officers and the Bench then may not present the appearance of independence. The actual lack of independence need not be established. The test should be whether an informed and reasonable person would perceive the tribunal to be independent."

52. Supreme Court in its judgment in *Prithvi Pal Singh vs Union of India* (1982) stated:—

"With the expanding horizons of fair play in action even in administrative decisions, the universal declaration of human rights and retributive justice being relegated to the uncivilized days, a time has come when a step is required to be taken for at least one review and **it must truly be a judicial review** as and by way of appeal to a body **composed of non-military personnel** or civil personnel."

53. Comparing the provisions in the proposed Bill with systems prevalent in other countries, the non-official informed that in United Kingdom, Judges of the Court are *ex-officio* and ordinary Judges of the Court of Appeal and judges of the High Court are appointed by Lord Chief Justice. In United States of America, in United Courts of appeals for Armed Forces have five civilian judges appointed by the President and confirmed by Congress (**Annexure-II**).

54. The Ministry also furnished a comparative chart showing military justice system of some other countries (**Annexure-III**).

55. When the Committee asked the Ministry to reply on the issue, they stated:—

"The Chairperson of the Tribunal will be retired Judge of the Supreme Court or retired Chief Justice of a High Court and the

Judicial member of the Tribunal will be a retired High Court Judge or a retired Judge Advocate General (JAG) of three services. Further, any apprehension about in-house Service Member influencing the Tribunal would be misplaced because the service officers will have to retire before they are appointed as members of the Tribunal. As such, he would be outside the influence of the Government. Use of purely and exclusively civil Judges would not enable utilization of technical expertise warranted in a military matter of discipline. Further, only a Tribunal with a military member can properly take judicial notice of a question based on armed forces situation."

56. The Committee observe that Supreme Court in the case of Prithvi Pal versus Union of India had stated that review must be a judicial review as and by way of appeal to a body composed of non-military personnel or civil personnel. The Committee also feel that the presence of ex-serviceman with military background as judicial member in the tribunal may lead to a situation whereon a two member bench, both the members would be with military background. It may dilute the faith and creditability of servicemen in the efficacy and independence of the proposed Tribunal. The Committee in order to ensure unbiased and credible delivery of justice to the armed forces personnel, strongly recommend that Clause 6(2)(b) of the proposed Bill be deleted.

As regards the administrative member of the proposed Tribunal, the Committee are of the view that he should be appointed amongst the three services.

CHAPTER VIII

CLAUSE 8: TERM OF THE OFFICE OF THE CHAIRPERSON AND OTHER MEMBERS

57. This clause provides for the term of office of the Chairperson and other Members of the Tribunal for holding the office.

The Chairperson or a Member shall hold office for a term of four years from the date on which he enters upon his office and shall not be eligible for re-appointment.

- (a) In case he has been a Judge of the Supreme Court, the age of seventy years;
- (b) In case he has been the Chief Justice of a High Court, the age of sixty-five years;

Provided further that no other Member shall hold office as such Member after he has attained the age of sixty-five years.

58. A non-official witness submitted before Committee, that tenure of Chairperson & Member limited to one term under this Clause is not logical, and this restriction is not there in any other tribunal.

59. When asked by the Committee reasons for fixing the term of the Chairperson and members of the Tribunal for one term only, the representative of the Ministry of Defence stated:

“Tenure of four years is considered adequate. But there is no apparent reason to limit the tenure to one term only. There is no such condition in any other Tribunal or for higher judiciary. The maximum age is already provided. In case, where required after one term, renewal may not be granted in cases when so felt necessary. Hence, the clause banning reappointment could be deleted.”

60. The Committee endorse the views of the Ministry of Defence and recommend that the proviso to clause 8 banning re-appointment of the Chairperson and Members on the proposed Tribunal be deleted.

CHAPTER IX

CLAUSE 14 (2) : JURISDICTION AND POWER OF THE TRIBUNAL FEE

61. The Clause 14(2) provides:—

Subject to the other provisions of this Act, a person aggrieved by an order pertaining to any service matter may make an application to the Tribunal in such form accompanied by such documents or other evidence and on payment of such fee as may be prescribed.

62. In a written memorandum a non official witness submitted before the Committee that imposition of any court fee would be against the aims and objectives of the Tribunal.

63. When the Committee asked the Ministry on justification to pay prescribed court fees with the application, the Ministry replied:

“Court fee is an administrative requirement. Also such a stipulation will discourage superfluous litigations. Free legal aid has already been provided for by the Legal Services Authorities Act, 1987. Any appellant who falls within the categories specified under the said Act is entitled to free legal aid.”

64. The Committee after due consideration, observe that court fee is a administrative requirement and it is also charged in Central Administrative Tribunal while application is filed. The Committee, however, desire that in order to provide speedy and less expensive justice, the fee prescribed should be nominal and affordable for all service personnel and Ex-Servicemen. Therefore, the Committee recommend that in this clause the word ‘fee’, may be substituted by ‘nominal fee’.

CHAPTER X

SUB CLAUSE 15 (3) : GRANT OF BAIL

65. Provides that the Tribunal shall have powers to grant bail except in an offence punishable with death or imprisonment for life which reads as under:—

“The Tribunal shall have power to grant bail to any person accused of an offence and in military custody, with or without any conditions which it considers necessary:

Provided that no accused person shall be released if there appears reasonable ground for believing that he has been guilty of an offence punishable with death or imprisonment for life.”

66. On being asked by the Committee for non-granting bail to guilty of the offence punishable to the death or imprisonment for life, the Ministry of Defence stated as under:

“The question was whether the Tribunal can give bail if an appeal is against death or life imprisonment. So, our recommendation is that except these two, the Tribunal has been given powers to grant bail, but not on people who have been sentenced with death or life imprisonment.”

67. During the evidence when the Committee desired to know the comments of the Ministry of Law & Justice on issue of granting bail to the personnel punishable with death or life imprisonment, they stated:

“Under Section 437(1) of the Cr. P.C., similar provision exists for granting bail for non-bailable offences. Since the provision is similar to Section 437, I do not think that there is any legal objection to this provision.

There are some other enactments like Cr. P.C. etc. In narcotic offences also there is no provision for bail. But then the Hon. Supreme Court and the High Court, in cases where they found that someone’s right to personal liberty is being violated, they have granted bail. So, the powers of the High Court and the Supreme Court cannot be denied even by this Act.”

68. The Committee after elaborate discussions on the issue find that no convincing reason has been given for restricting the Tribunal's power to grant bail to a person charged of an offence punishable with death or imprisonment for life. The Committee hold a view that the Tribunal may have discretion to grant bail to Armed Forces personnel charged with offences punishable with death or imprisonment for life, as is being provided by the High Courts to accused person under section 437 of Cr. PC. The Committee, therefore, recommend that the matter may be reconsidered and a similar provision be added as per operational and disciplinary requirement of Armed Forces.

CHAPTER XI

CLAUSE 15 (4) : COMPENSATION OF MISCARRIAGE OF JUSTICE

69. This clause provides that the Tribunal shall allow an appeal against conviction by a court-martial where—

- (a) The finding of the court-martial is legally not sustainable due to any reason whatsoever; or
- (b) The finding involves wrong decision on a question of law; or
- (c) There was a material irregularity in the course of the trial resulting in miscarriage of justice,

But, in any other case, may dismiss the appeal where the Tribunal considers that no miscarriage of justice is likely to be caused or has actually resulted to the appellant:

Provided that no order dismissing the appeal by the Tribunal shall be passed unless such order is made after recording reasons therefor in writing.

70. The non-official in this regard submitted before the Committee that:

“Clause 15 (4) of the Bill though mentions about miscarriage of justice, but there is no provision for award of compensation for miscarriage of justice.”

71. He further submitted:

“The provisions for award of compensation for miscarriage of justice is contained in ICCPR, to which India is a signatory. Article 14 of the ICCPR deals with the “Right to a Fair Trial”.

72. He quoted Article 14 (6) of ICCPR as under:

“When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of

such conviction shall be compensated according to law, unless it is proved that non-disclosure of the unknown fact in time wholly or partly attributable to him.”

73. He further informed that the provision for compensation of miscarriage of justice has been introduced in the UK military justice system since 2001 and has also been incorporated in the proposed Armed Forces Act, 2006 (Section 275).”

It is an evolving concept of justice and the tribunal must be empowered to award cost as well as compensation for miscarriage of justice. Otherwise individual will be forced to seek second remedy either from a civil court or the Supreme Court.

74. In this connection, the Committee asked the Ministry to give their comments, the Ministry replied:

“Clause 15 (6) (f) of the proposed Bill empowers the Tribunal to pass any other orders as it may think appropriate. Under this clause, the Tribunal may also award compensation.”

75. The Committee, after careful consideration, are of the view that miscarriage of justice in the case of any person, should be adequately compensated by the Government as per the international norms. The Committee are not convinced by the reply furnished by the Ministry that general provision regarding the power of tribunal to pass any order under Clause 15(6) will take care of a case where there is a need to award compensation for miscarriage of justice. They, therefore, desire that a specific provision may be made in this regard.

CHAPTER XII

CLAUSE 21 (1) : PERIOD FOR AVAILING REMEDIES AVAILABLE

76. This clause provides:

The Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of the remedies available to him under the Army Act, 1950 or the Navy Act, 1957 or the Air Force Act, 1950 as the case may be, and respective rules and regulations made thereunder.

77. For the purpose of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the Army Act, 1950 or the Navy Act, 1957 or the Air Force Act, 1950, and respective rules and regulations.

- (a) If a final order has been made by the Central Government or other authority or officer or other person competent to pass such order under the said Acts, rules and regulations, rejecting any petition preferred or representation made by such person;
- (b) Where no final order has been made by the Central Government or other authority or officer or other person competent to pass such order with regard to the petition preferred or representation made by such person, if a period of six months from the date on which such petition was preferred or representation was made has expired.

78. When the Committee desired to know the comments of the Ministry if time limit of six months be reduced to one month, the Ministry replied:

“Fixing the period as one month would be too little for a person to decide and exercise his right to seek remedy from the Tribunal or for the authorities to dispose.”

79. The Committee while agreeing in principle with the Clause feel that time limit of six months for which a person has to wait after the date of filing a complaint for seeking alternative remedy, is on the higher side. The Committee, therefore, recommend that time limit of six months be reduced to three months so that such cases are disposed of on priority basis by the officers and they do not keep such files pending for long and there may not be any delay in dispensation of justice.

CHAPTER XIII

CLAUSE 23 (2) : FIXING OF TIME FRAME

80. The sub-clause 23 (2) deals with procedures and powers of the tribunal. It states:

23 (2) The Tribunal shall decide every application made to it as expeditiously as possible after a perusal of documents, affidavits and written representations and after hearing such oral arguments as may be advanced.

81. The Committee during evidence pointed out that the term 'as expeditiously as possible' is vague and a time frame be fixed for finalisation of cases by the tribunal.

82. When enquired the view of Ministry on fixing of this frame for the Tribunal to dispose off the cases, the Ministry stated:

"A time limit of one year is considered appropriate for disposal of grievances in a majority of the cases. This one year period should be reckoned from the date of filing of application (appeal) complete in all respect. Extension of period, on merit, could be allowed by the Chairperson. The views of the Supreme Court always stress early and quick disposal of pending cases."

83. The Committee note that it has been mentioned in sub clause 23(2) of the Bill that Tribunal may decide every application made to it as expeditiously as possible. The Committee feel that the expressions 'as expeditiously as possible' is vague. The Committee, therefore, desire that Tribunal should decide every case within six months.

CHAPTER XIV

CLAUSE 30 : JURISDICTION OF TRIBUNAL AND HIGH COURT IN MATTERS RELATING TO APPEAL

84. Clause 30 provides

1. Subject to the provision of section 31, an appeal shall lie to the Supreme Court against the final decision or order of the Tribunal (other than an order passed under section 19):

Provided that such appeal is preferred within a period of ninety days of the said decision or order.

Provided further that there shall be no appeal against an interlocutory order of the Tribunal.

2. An appeal shall lie to the Supreme Court as of right from any order or decisions of the Tribunal in the exercise of its jurisdiction to punish for contempt.

Provided that an appeal under this sub-section shall be filed in the Supreme Court within sixty days from the date of the order appealed against.

3. Pending any appeal under sub-section (2), the Supreme Court may order that:

- (a) the execution of the punishment or the order appealed against be suspended;
- (b) if the appellant is in confinement, he be released on bail;

Provided that where an appellant satisfies the Tribunal that he intends to prefer an appeal, the Tribunal may also exercise any of the powers conferred under clause (a) or clause (b), as the case may be.

85. The Committee enquired about the nature of the proposed Tribunal, whether it would be a judicial, quasi judicial body in the line of Central Administrative Tribunal, the Ministry replied:

“Since the Armed Forces Tribunal would be dealing with offences, legally awardable punishments and termination of service etc. and the Tribunal is being armed with the powers of contempt, it would be a judicial body. It would be a permanent Tribunal and a Court of record.”

86. When Committee asked, whether appeal would be preferred in High Courts or Supreme Court, the Ministry stated:

“Clause 30 of the Armed Forces Tribunal Bill, 2005 provides that an appeal against the final decision or order of Armed Forces Tribunal shall lie to the Supreme Court. Under the Constitution, the power of superintendence of High Court is already excluded against a Court Martial verdict.”

87. On a specific query to the representatives of the Ministry of Law & Justice, on the issue of appeal against the order of the Tribunal, they stated:

“In a case, L. Chandrakumar’s case, which was relating to the Central Administrative Tribunal, which was established by an Act of Parliament, similar provisions were there where an appeal against the orders of the Central Administrative Tribunal was preferred to the Supreme Court but for some time it was entertained by the Supreme Court. But later on, subsequently in L. Chandrakumar’s case, the Supreme Court said that the powers of the High Court under articles 226 and 227 cannot be taken away by an Act of Parliament. Thus, you know again from the orders of Central Administrative Tribunal, we have started preferring appeals to the High Court under article 226.”

88. They further supplemented:

“It is not only in one case but also subsequently in a number of cases, the Supreme Court reiterated that principle. Many High Courts have reiterated that principle. When in another Bill, that is, National Tax Tribunal was being processed in this Committee Room by another Committee, there also many hon. Members of the Standing Committee said that in view of L. Chandrakumar’s case, you cannot have a touch tribunal from which you can directly go to the Supreme Court and we had accede that before that Committee that article 226 is still there with the High Court. The minute you abolish article 226, then it will be treated by the Supreme Court as a violation of the essential characteristics of the basic structure of the Constitution, which is a limitation even on the power of Parliament to amend the Constitution.”

89. When the Committee asked the Ministry of Law & Justice regarding possible solution of it, they stated that:

“We have processed the Bill. In the Bill we have taken the precaution that the Chairman of the Tribunal should be a retired

judge or a sitting judge of the Supreme Court. If the Chairman of the Tribunal himself is a Supreme Court judge, then you know the High Courts are slightly hesitant in interfering with the judgment. That is only thing but if a judge finds that there is a Constitutional violation of certain fundamental rights or there is a gross arbitrariness in an order of the Tribunal, then it will exercise its jurisdiction under article 226.”

In this connection, the Ministry of Defence in a written note stated:

“The proposed Armed Forces Tribunal Bill, 2005 does not envisage a situation where an accused can approach the High Court in an appeal against the order of the Tribunal. There can be no equation between the High Court and any other Tribunal. On the other hand, analogy can be drawn between the CAT and the proposed Armed Forces Tribunal. In CAT, single member also constitutes a Bench [section 5(6)]. However, in the Armed Forces Tribunal, the minimum number of members to constitute a Bench is two. Further, as opposed to the CAT where the Chairperson is a serving or retired High Court judge, the Chairperson of the Armed Forces Tribunal is a retired Supreme Court Judge or retired Chief Justice of the High Court. Further Article 227(iv) of the Constitution excludes the power of superintendence of High Courts over any court or Tribunal constituted by or under any law relating to the Armed Forces. Therefore, an accused cannot go to the High Court in appeal against the order of the Armed Forces Tribunal.”

90. The Committee note that clause 30 provides that subject to provisions of section 31, an appeal shall lie to Supreme Court against the final decision or order of the Tribunal. The Committee, however, are given to understand that in the case of L. Chanderkumar, where appeal against the order of the Central Administrative Tribunal was preferred to Supreme Court, the Court stated that powers of the High Court under Articles 226 and 227 cannot be taken away by an Act of Parliament. The Committee are of the view that the appeal against the Tribunal should be preferred as per the provisions of the Constitution.

NEW DELHI;
16 May, 2006

26 Vaisakha, 1928 (Saka)

BALASAHEB VIKHE PATIL,
Chairman,
Standing Committee on Defence.

SUMMARY OF JUDGMENTS

1. Ranjit Thakur Vs. UOI and others [1987(4) SCC 611]

This judgment dealt with a Summary Court Martial where for an offence of disobedience lawful command of not eating food, the accused petitioner was sentenced to one year rigorous imprisonment with dismissal. This judgment deals with scope of judicial review and judicial review of punishments awarded by a Court Martial.

In the above regard it was held by the Hon'ble Supreme Court that 'Judicial review, generally speaking, is not directed against a decision, but is directed against the "decision-making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review. In the present case the punishment is so strikingly disproportionate as to call for and justify interference'.

2. Chaudhary M.R. Ex. Sepoy Vs Union of India [CWP No. 563 of 1990 (HP)]

The present case related to a trial of the petitioner by a Summary Court Martial under Army Act Section 40(a) for using criminal force to a JCO, his superior officer while serving with the IPKF in Sri Lanka. The criminal force used was a push to the JCO. The Summary Court Martial found the petitioner guilty and sentenced him to suffer RI for six months and dismissal. At the time of review, the RI was reduced to one month. Still when the petitioner challenged his trial, the Hon'ble HP High Court held that the punishment awarded was not commensurate with the offence and was therefore set aside and the matter remanded back to SCM.

3. Duraibabu R. Vs Union of India [WP No. 11525 of 1990 and WQA No. 794 of 1992 dated 9 Apr. 1992 (Madras)]

The present case related to the legality of second trial after the first trial was set aside by the Army Authorities for want of jurisdiction due to non-compliance of the provisions of Army Rule 22. The petitioner was tried by SCM for overstaying of leave and awarded three months RI and dismissal by the first trial and on its setting aside was awarded dismissal by the second trial. Holding that the second trial was prohibited by Army Act Section 121, the Court held that whether the order is void or illegal was for the petitioner to question and not for the respondents to set aside the earlier order on that ground and order fresh inquiry and punish the petitioner again. On the above ground Hon'ble Madras High Court set aside the second trial by SCM.

4. Balwant Singh Vs Union of India [1992 Cri LJ 1512 (J&K)]

The present related to the effect of the non-compliance with the procedure at a Summary Court Martial. Holding that non-compliance with the provisions of Army Rule 115, which deals with procedure on plea of guilty, is fatal. On that ground the proceedings of SCM were set aside by the Hon'ble J&K High Court.

5. Uma Shankar Pathak Vs Union of India [1989(3) SLR 405 (Allahabad)]

The present case related to challenge of the order passed by the Summary Court Martial sentencing the petitioner to reduction to ranks and two months rigorous imprisonment for an offence of theft. The proceedings were challenged on the ground of non-compliance with the provisions of Army Rule 34 which deals with preparation of defence and Army Rule 115 (2) which deals with procedure on plea of guilty. With reference to Army Rule 34, it was alleged that whereas the said rule provides for minimum 96 hours notice before trial, the said provision was violated in respect of petitioner. As regards Army Rule 115(2), it was alleged that the said provision was not complied with.

As regards the nature of Army Rule 34, the Hon'ble Allahabad High Court held that the requirement that at least 96 hours notice should be given the accused is mandatory and that the breach of the said rule would vitiate the entire trial. With reference to the scope of Army Rule 115(2), the Hon'ble Court held that if the plea is recorded without complying with the provisions of the said rule, the trial would be vitiated. On facts, the court found that the provisions of Army Rule 34 as well as 115(2) were violated and, therefore, the petition was allowed.

**6. L/Nk Mirza Nazir Ahmed Vs Union of India [WP No. 317 of 1981
Dated 30 January, 1988 (J&K)]**

The case pertains to the trial of the petitioner by an SCM for an offence of disobedience of lawful command wherein the petitioner on conviction was sentenced to one year RI and dismissal. Relying on the judgment of the Hon'ble Supreme Court in Ranjit Thakur Vs. UOI and others [1987(4) SCC 611], Hon'ble J&K High Court held that the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh or so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias.

The Court further held that the doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. On facts, the Court found the sentence as grossly disproportionate and quashed the same.

7. Ex-Naik Sardar Singh Vs Union of India [1991 (3) SCC 213]

The present case is also related to the quantum of punishment. The petitioner was tried by a Summary Court Martial for an offence of carrying more than the permitted quota of liquor from Army Canteen while proceeding for home town on leave and enroute passed through an area under prohibition where he was arrested by the Civil Police and later handed over to Army for disciplinary action. The SCM found him guilty of the offence and sentenced him to suffer RI for three months and dismissal. The Hon'ble Supreme Court, holding that the punishment awarded by Court Martial must be commensurate with the gravity of the misconduct and that disproportionately severe punishment is arbitrary and open to court's interference, set aside the punishment as severe.

8. Ex Hav Prithpal Singh Vs Union of India [1984 (3) SLR 675 (J&K)]

The present case deals with the effect of non-compliance with the provisions of Army Rule 115(2), which deals with procedure on plea of guilty, in a Summary Court Martial. The petitioner was tried by Summary Court Martial on three charges of which one was for absent without leave and the remaining two were for using in subordinate language to his Commandant and Deputy Commandant and on conviction was dismissed from the service. As per the SCM proceedings,

the petition had pleaded guilty to all the charges and he was found guilty accordingly. The petitioner challenged the SCM proceedings alleging non-compliance with the provisions of Army Rule 115(2). Holding that the provisions of Army Rule 115(2) are mandatory, the Hon'ble J&K High Court, on facts, found that the said provisions were not complied with and, therefore, held that the trial was vitiated.

9. Ravinder Singh Vs Union of India and others [97 (2002) DLT 756 (Delhi)]

The present case related to the quantum of sentence. Aggrieved by his dismissal by an SCM for an offence of overstaying of leave by about two months, the present Writ Petition was filed. The Hon'ble Delhi High Court on facts held that considering the young age of 25 years of the petitioner and his past record, the punishment was disproportionate. The same was set aside and the matter was remanded back for award of fresh sentence.

10. Surinder Singh Vs Union of India [Misc. Petition No. 2323 of 1991 (MP)]

The present case related to the legality of second trial after the first trial was set aside by the Army Authorities for want of jurisdiction due to non-compliance of the provisions of Army Rule 22. The petitioner was tried by an SCM for committing an offence of sodomy and was awarded six months RI and dismissal by the first trial. This trial was set aside on technical ground of non-compliance with the provisions of Army Rule 22 at the trial stage. Thereafter, the petitioner was sought to be re-tried by a General Court Martial, which the petitioner challenged on the ground of double jeopardy.

The Hon'ble court held that the second trial of the petitioner for the same offence was clearly barred by the express provisions of Army Act Section 121. The court also held that the petitioner also had a constitutional protection under Article 20(2), which prohibits re-trial.

11. Sep Veer Bhan Vs COAS [WP(C) No. 311 of 1995 (Delhi)]

Details not available.

COMPARATIVE CHART—MILITARY JUSTICE SYSTEM
OF OTHER COUNTRIES

United Kingdom	United States of America	Canada
1	2	3
<p>In respect of judicial review of decisions of Court Martial the U.K. had enacted a Court Martial (Appeals) Act of 1951, under which Court Martial Appellate Court has been established. This Act was, later, amended by the Court Martial (Appeals) Act, 1968. The Act empowers the Court Martial Appellate Court to hear appeals from the Army, Navy and Air Force Courts Martial. The Court has power of full judicial review with the leave, appeal from Court Martial Appellate Court lies to the House of Lords.</p>	<p>(a) The military appellate process involves mandatory review by the convening authority, often with the advice of a Staff Judge Advocate (SJA). Additionally, further reviews are catered for by superiors of the convening authority, Judge Advocate General; the Court of Criminal Appeals and the United States Court of Appeals for the Armed Forces. In rare cases, subsequent review by Supreme Court is also envisaged. Article 66(a) of the uniform Code of Military Justice Act, 1950, extensively revised in 2002 provides for setting up of a Court of Criminal Appeals (in short the CCA). This CCA reviews the cases referred to it by the Judge Advocate General. The CCA may issue all writs necessary or appropriate in aid of its jurisdiction and any party may petition the CCA for extra ordinary</p>	<p>(a) Under Section 9.3 of the National Defence Act, the Judge Advocate General of the Canadian Forces is required to annual report on the administration of Military Justice to the Minister of National Defence. The report is to be laid before the Parliament within 15 days. Section 201 of the Canada National Defence Act, 1985, provides for establishment of Court Martial Appeal Court. Under the said National Defence Act, every person who has been tried and found guilty by a Court Martial has a right to appeal against legality of finding and legality and severity of sentence. The Act also declares that the Court Martial Appeal Court is a superior court of record. (b) It may be pertinent to note that, under Section 208 of the Canada National Defence Act, against the judgment of the Court Martial Appeal Court,</p>

relief. CCA is composed of not less than three members usually selected from among Senior active or retired JAG officers who have previously been appointed as military Judges.

(b) Article 141 of the Uniform Code provides for United States Court of Appeals for the Armed Forces (USCAAF) established under Article 1 of the Constitution of the United States. This Court of Appeals reviews record in all cases in which the sentence as affirmed by a CCA extends to death, all cases reviewed by a CCA which the Judge Advocate General sends to it and all cases reviewed by CCA in which upon petition by the accused, it grants permission for review. It is to be noted that, as provided by Article 67(a), decisions of the Court of Appeals are subject to review by the Supreme Court for which an accused may make petition to the Supreme Court.

appeal lies to the Supreme Court of Canada. Such appeals may be made on any question of law which a judge of the CMAC dissents, or on any question of law if leave to appeal is granted by the Supreme Court of Canada.

ANNEXURE III

NOTE FURNISHED BY NON OFFICIAL SYSTEM PREVAILING IN OTHER COUNTRIES ON APPEAL AGAINST COURT MARTIAL

United Kingdom

The Court-Martial Appeals Court was established by the Court-Martial (Appeals) Act, 1951 for the purpose of hearing appeals from naval, army and air force courts-martial. The Appeal Court is a superior court of record. The Judges of the Appeal Court are ex-officio and ordinary judges of the Court of Appeal and judges of the High Court and appointed by the Lord Chief Justice. The Lord Chancellor may appoint other persons having legal experience as judges of the Court-Martial Appeals Court.

The United States

The United States Court of Appeals for the Armed Forces has five civilian judges, appointed by the President and confirmed by Congress, and serve for a term of 15 years. CAAF is also responsible for overseeing the military justice system.

Canada

The Court Martial Appeals Court of Canada is established under Section 234 of the National Defence Act. The judges of the Appeals Court are judges of the Federal Court of Appeal and designated by the Governor in Council.

Australia

The Defence Force Discipline Appeal Tribunal consists of a President, a Deputy President, and such other persons as are appointed by the Governor-General by commission to be members of the Tribunal. In order to qualify for appointment as President or Deputy President, a person must be a Justice or Judge of a federal court or of the Supreme Court of a state or territory; and to qualify for appointment as a member, a person must be a Justice or Judge of a federal court or of the Supreme Court of a state or territory or a judge of a district court or country court of a state.

ANNEXURE IV

LIST OF INDIVIDUALS/EXPERTS WHO APPEARED
BEFORE THE COMMITTEE

1. Shri U.C. Jha, Wing Commander (Retd.)
2. Col. Satwant Singh (Retd.)
3. Col. Dr. Jag Mohan (Retd.)
4. Shri Ajay Vikram Singh, Former Defence Secretary
5. Major General (Retired) Bikram Singh Kanwar, Ex-MP
6. Col. Sudhir Sawant, Ex-MP
7. Vice-Admiral Retired K.K. Nair
8. Gen. (Retired) V.P. Malik

MINUTES OF THE EIGHTEENTH SITTING OF THE STANDING
COMMITTEE ON DEFENCE (2005-06)

The Committee sat on Friday, the 13 January, 2006 from 1100 hrs. to 1245 hrs. in Committee Room 'C', Parliament House Annexe, New Delhi.

PRESENT

Shri R. K. Anand—*In the Chair*

MEMBERS

Lok Sabha

2. Shri A.V. Bellarmin
3. Dr. K. S. Manoj
4. Shri Raghuraj Singh Sakya
5. Shri Mahadeorao Shiwankar
6. Shri Ganesh Prasad Singh

Rajya Sabha

7. Smt. N.P. Durga
8. Shri Janardan Dwivedi
9. Shri Pramod Mahajan

SECRETARIAT

1. Shri R. C. Ahuja — *Joint Secretary*
2. Smt. Anita Jain — *Deputy Secretary*
3. Shri D.R. Shekhar — *Under Secretary*

LIST OF WITNESSES OF MINISTRY OF DEFENCE

1. Shri Shekhar Dutt, Defence Secretary
2. Shri V. K. Mishra, FA (DS)
3. Shri Ranjit Issar, Additional Secretary (I)
4. Shri Anand Misra, JS (E)
5. Smt. Anula Kumar, Dir (CP).

Services HQtrs.

6. Lt. Gen. S. Pattabhiraman, VCOAS
7. Air Mshl Ajit Bhavnani, VCAS

8. V Adml. Venkat Bharathan – VCNS
9. V Adml. Nirmal Verma, COP
10. Air Mshl. H. S. Garkal, AOA
11. Lt. Gen. A. S. Jamwal, AG
12. Lt. Gen. (Retd.) Mohinder Singh, EX-AG
13. Maj. Gen. Nilender Kumar, JAG (Army)
14. Gp. Capt. PC Grover, JAG (Air)
15. Cmde. Mohan Phadke, JAG (Navy)
16. Maj. Sachidananda Prabhu

2. In the absence of Chairman, the Committee chose Shri R. K. Anand, M.P. and Member of the Committee to act as Chairman for that sitting under sub Rule 3 of Rule 258 of the Rules of Procedure and conduct of Business in the Lok Sabha. The Chairman then welcomed the Members and representatives of the Ministry of Defence including three Vice-Chiefs of the Armed Forces. The Chairman informed the Members that 'The Armed Forces Tribunal Bill, 2005 had been referred by the Hon'ble Speaker to the Standing Committee on Defence for examination and Report thereon.

3. The Chairman thereafter requested the Ministry of Defence to brief the Committee on objects and reasons of the proposed Bill, details of existing system for adjudicating complaints and disputes regarding service matters and also details of new legislation for constituting an Armed Forces Tribunal. The representatives of the Ministry then made detailed Power Point presentation on the subject under consideration.

4. The Members of the Committee sought clarifications on issues viz. details of expenditure on the proposed Tribunal and its Benches, time prescribed for disposing of cases by Tribunal, provision for appeal during Court Martial proceedings, relevance of clause 3 (o) (iii) regarding leave of any kind, clause 6 regarding qualification for membership of the proposed Tribunal, need to maintain equality in representing JAGs of the three wings of the Armed Forces in the Tribunal and Summary Trial etc. The Defence Secretary and the three Vice- Chiefs of the Armed Forces responded to the queries raised by the Members. On clause 3 regarding leave of any kind and clause 6 regarding qualifications for membership of the proposed Tribunal, the Ministry assured the Committee to review these clauses in the light of the discussion with the Committee.

A verbatim record of the proceedings was kept.

The Committee then adjourned.

MINUTES OF THE THIRTY-FIRST SITTING OF THE STANDING
COMMITTEE ON DEFENCE (2005-06)

The Committee sat on Thursday, the 23 March, 2006 from 1500 hrs to 1630 hrs in Committee Room No. '074., Parliament Library Building, New Delhi.

PRESENT

Shri Balasaheb Vikhe Patil—*Chairman*

MEMBERS

Lok Sabha

2. Shri Churchill Alemao
3. Shri Iliyas Azmi
4. Shri Thupstan Chhewang
5. Shri Ramesh Jigajinagi
6. Shri Raghuraj Singh Shakya
7. Shri Mahadeorao Shiwankar
8. Shri Ganesh Prasad Singh
9. Shri Manvendra Singh
10. Ms. Ingrid Mcleod

Rajya Sabha

11. Smt. N.P. Durga
12. Shri Jai Parkash Aggarwal

SECRETARIAT

1. Shri S. K. Sharma — *Additional Secretary*
2. Smt. Anita Jain — *Deputy Secretary*
3. Shri D.R. Shekhar — *Under Secretary*

LIST OF NON-OFFICIAL WITNESSES

1. Shri Ajay Vikram Singh — Former Defence Secretary
2. Major General (Retired) — Ex-MP
Bikram Singh Kanwar
3. Col. Sudhir Sawant — Ex-MP
4. Vice-Admiral Retired K.K. Nair

2. At the outset, Hon'ble Chairman welcomed Shri Ajai Vikram Singh, Defence Secretary (Retd.) and requested him to put forth his view points on (i) Armed Forces Tribunal Bill, 2005, (ii) Threat perception, (iii) Demands for Grants (iv) Role of DRDO in Self-Reliance, and (v) Welfare of Ex-Servicemen.

On Armed Forces Tribunal Bill, he suggested the following points:—

1. It is not practical to fix a time frame within which Tribunal should dispose of cases. Some indicative time frame can be given to the Tribunal to try to complete its proceedings.
2. In Clause 16(3) of the Bill, drafting/composition is not clear.
3. Transfers & postings should not be included in the purview of the Bill. Otherwise, Tribunal would have so many cases of personnel who do not want to go to relatively harder stations.

On Defence Budget planning and Threat perception, Shri Singh shared his views on the following points, with the Committee:—

1. The threat to national security need not come in the form of military attack. It can be by denying some vital element in its requirement. Therefore, a country has to shape up its policies.
2. National Security Council or its secretariat has not been able to live up to the expectation and therefore every Ministry or organization and even within Ministry different organizations are acting in isolation or without coordination with each other. There should not be adhocism in decision taking during emergent situation.
4. The techniques used in counter insurgency operation as in J&K and North East are quite different from conventional battles. There is need for reshaping of the structure of training part viz. light soldiers, good intelligence network and highly sophisticated equipment.
6. About non-conventional threats, a well developed intelligence net work is the only safeguard.

In regard to relief to ex-servicemen, the former Defence Secretary was of the view that the Central Government and State Governments have to be more responsive to the requirements of Ex-Servicemen.

As regards DRDO, he stated that keeping in view the large size of procurement from outside, our main concern should be to make the R&D efforts of the country more effective by involving and working together closely with private sector, ordnance factories and Defence PSUs.

The witness then withdrew.

Then Hon'ble Chairman welcomed Maj. Gen.(Retd.) Vikram Singh Kanwar, Ex-MP to express his opinion on the Armed Forces Tribunal Bill, 2005, (ii) Threat perception (iii) Demands for Grants (iv) Role of DRDO in Self-Reliance and (v) Welfare of Ex-servicemen.

On Armed Forces Tribunal Bill 2005 the witness stated that In the applicability of the Act, Clause 2(2) only includes retired Personnel and not released, discharged and dismissed personnel. They should be included in this category.

On Ex-servicemen's Welfare he suggested the following points:—

- (i) In Family pension, Armed forces are discriminated. They get family pension at the rate of 30%. That discrimination should be avoided.
- (ii) With regard to disability pension, there is a difference between personnel who joined before 1996 and who joined after 1996. Those who have joined before, they get less pension and those who have joined after, get more pension. That discrimination should not be there.
- (iii) When a Havildar becomes Naib Subedar, he gets honorarium of Rs. 100. But when a subedar become major, he does not get any honorarium. Therefore, he must get same honorarium.
- (iv) As per the new rule of the Government the widow and widowed daughter of a jawan are treated as dependant on him. However, the unmarried daughters of the Jawans above 25 years is not considered dependant on him. She should also be treated as dependant.
- (v) Parity in Pension, which we have been claiming for the last three decades, i.e. one rank one pension should be given.
- (vi) All ex-servicemen should get 50% pay as pension as in the case of their civilian counterparts. Particularly the Jawan who retires after service of 17 years should also get a pension of 50% of their salary. Discrimination between Officers & Jawans in getting Pension should not be there.

- (vii) Armed Forces Personnel get their pension as per their designation. However, cases are there, where, a retired Major General is getting less pension than a Brigadier for the last 10 years. Court has given favourable decision. This anomaly be rectified.
- (viii) There should be a separate pay Commission for the Armed Forces.
- (ix) ECHS Facilities for Ex-servicemen are available in few cities. These should be extended to remote villages, because ex-soldiers live in remote areas.

The Witness then withdrew

Then Hon'ble Chairman welcomed Col. Sudhir Sawant, Ex-MP and request him to putforth his suggestions on the Armed Forces Tribunal Bill, 2005, (ii) Threat perception, (iii) Demands for Grants, (iv) Role of DRDO in Self-Reliance, and (v) Welfare of Ex-servicemen.

Col. Sudhir Sawant briefed the Committee on the following aspects/dimensions of security concerns/threat perception:

1. China is a key issue to our recently concern.
2. Criminal anarchy is the main threat to India.
3. Armed Forces should not be involved anywhere to counter terrorism and to meet internal insurgency.
4. We must develop a concept of small standing Army and a large reserve to be grouped into the territorial army companies. The territorial army can perform all support role.
5. Territorial army should be a nodal organization for disaster management.

Hon'ble Chairman then welcomed Vice Admiral (Retired) K.K. Nayyar and requested him to put forth his view point on the subject. He was of the view that problems in the armed forces could be resolved if there was a board consisting of three service Chiefs and the Minister.

The witnesses then withdrew.

A verbatim record of the proceedings was kept.

The Committee then adjourned.

MINUTES OF THE THIRTY SECOND SITTING OF THE
STANDING COMMITTEE ON DEFENCE (2005-06)

The Committee sat on Friday, the 24th March, 2006 from 1100 hrs. to 1430 hrs. in Committee Room 'G-074', Parliament Library Building, New Delhi.

PRESENT

Shri Balasaheb Vikhe Patil—*Chairman*

MEMBERS

Lok Sabha

2. Shri Iliyas Azmi
3. Shri Thupstan Chhewang
4. Shri Ramesh Jigajinagi
5. Shri Mahadeorao Shiwankar
6. Shri Ganesh Prasad Singh
7. Shri Balashowry Vallabhaneni

Rajya Sabha

8. Shri Jai Parkash Aggarwal

SECRETARIAT

- | | | |
|----------------------|---|-----------------------------|
| 1. Shri S.K. Sharma | — | <i>Additional Secretary</i> |
| 2. Shri R.C. Ahuja | — | <i>Joint Secretary</i> |
| 2. Smt. Anita Jain | — | <i>Deputy Secretary</i> |
| 3. Shri D.R. Shekhar | — | <i>Under Secretary</i> |

NON-OFFICIAL WITNESS

1. Gen. (Retired) V.P. Malik

LIST OF REPRESENTATIVES FROM MINISTRY OF DEFENCE

Department of Defence

6. Shri Shekhar Dutt, Defence Secretary
7. Shri K.P. Singh, Secretary (DP)

3. Dr. M. Natrajan, SA to RM
4. Shri S. Banerjee, DG (Acq)
5. Shri V.K. Misra, FA(DS)
6. Shri C.R. Mohapatra, DGDE
7. Dr. (Smt.) Rekha Bhargava, Addl. Secy. (B)
8. Shri K.P. Lakshmana Rao, FA(Acq) & AS
9. Shri Asad Ahmed, Offg. DGQA
10. Shri S.C. Narang, CCR&D(R)
11. Shri Alok Perti, JS(S)
12. Shri S.K. Sharma, JS&AM(Air)
13. Dr. Thomas Mathew, JS&AM(MS)
14. Shri T. Ramachandru, JS(OF)
15. Shri Amit Cowshish, Addl. FA(A)
16. Shri P.K. Jena, Addl. FA(J)
17. Smt. Anuradha Mitra, Addl. FA(AM)
18. Shri Mohd. Haleem Khan, Addl.FA(H)
19. Shri S.L. Bunker, FM (Air)
20. Shri G.S. Sood, FM (MS)
21. Shri Ashok Harnal, Addl. DGDE

Army Headquarters

1. Lt. Gen. G.D. Singh, PVSM, AVSM-DCOAS
2. Lt. Gen. Y.K. Jain, DG, MAP
3. Maj. Gen. S.B.S. Bains, VSM-ADG FP
4. Maj. Gen. A.K. Mehra, ADG (WE)

Naval Headquarters

1. Vice Adml. J.S. Bedi, DCNS
2. R. Adml. R. K. Dhowan, YSM-ACNS(P&P)
3. Cmde. Girish Luthra, PDNP
4. Cmde. Arvind Sharma, OIC Project 75 Cell

Air Headquarters

1. Air Mshl. A.K. Nagalia, AVSM, VM, VSM-DCAS
2. AVM, K.K. Nohwar, ACAS (Plans)
3. AVMN, Vijay Kumar, ACAS (FP)

2. At the outset, the Hon'ble Chairman welcomed Gen. (Retired) V.P. Malik to share his viewpoints on (i) Armed Forces Tribunal Bill, 2005; (ii) Threat Perception; (iii) Demands for Grants; (iv) Role of DRDO in self-reliance; and (v) Welfare of Ex-servicemen.

3. On Armed Forces Tribunal Bill, 2005 he suggested the following points:—

- (i) In the proposed Bill, provision be added for consideration by Tribunal, various administrative orders that are issued for dismissals, restricting pensions etc.
- (ii) Large number of benches will be required to deal with the case of growing number of Servicemen & Ex-servicemen.
- (iii) The decision of Medical Board on recommending enhanced pension due to disability on account of service condition should be final.
- (iv) As regards of the Administrative member of the Bench, he suggested that the Administrative member may be recommended by Chiefs of Staff Committee.
- (v) The decision of the Tribunal should be final.

4. On Threat perception he suggested the following points:—

- Today, the internal and external threats are meshed together. They have to be dealt with together. Our threats are no longer conventional in nature.
- We have to strengthen our surveillance system on our borders. There must be coordination among three services for the use of surveillance equipment.
- Internal as well as external threats require an immediate reaction. Therefore the political authority and the Armed Forces should start looking for the possible contingencies, where we may have to react very fast. There could be a mechanism to study and suggest contingency plans. He suggested that Cabinet Committee on Security is enough to do the needful. Regarding appointment of CDS, he opined that this will facilitate the decision making process.

5. On DRDO he suggested the following points:—

- Every year the budget allocation is increasing, without accountability. Our country is spending 2.5% of GDP on

defence and out of that 18 billion dollars worth equipment are being imported.

- There is a need to upgrade our DRDO. There is a need for capital investment and import of technology and involvement of private sector engaged in defence production.
 - The DRDO should do some in-house introspection as to what happened in those 10 years, where they have gone wrong, why they have not been able to stick to that plan. They themselves ought to do this introspection.
 - They should work now as a consortium with the private sector within the country.
 - Users should be closely associated with DRDO and manufacturers.
 - All the Ordnance Factories and all defence PSUs must be given total freedom to upgrade their R&D.
 - GSQR should always be done by the Armed Forces and DRDO together and it should be under the General staff.
 - DGQA has been wrongly placed and has failed in the services on very important equipment. Instead of expanding the capability, the Ministry is expanding the manpower. That is a wrong step. People who are manufacturing are cleaning their equipment.
 - There should be a Non-lapsable Fund.
6. On Ex-Servicemen's Welfare he suggested the following points:—
- All the Ex-Servicemen should get full pension.
 - Some Major General gets lesser pension than the Brigadier. This anomaly must be sorted out.
 - For Welfare of Ex-Servicemen State Govts. have to be given more authority and responsibility of getting people together and giving them employment.
 - Complete restructuring of Zila Sainik Boards and Rajya Sainik Boards should be carried out.
 - The State Governments must allot land to the Jawans as form of incentive to join Armed Forces.

The Witnesses then withdrew.

7. Then Hon'ble Chairman welcomed the representatives of Ministry of Defence to render oral Evidence on Demands for Grants(2006-07) relating to Navy. The Hon'ble Chairman and Members sought clarifications on certain important points on Demand No. 23 relating to Navy *i.e.* substantial cut in Capital Budget for Navy in the RE 2005-06 against BE 2005-06, reasons for decreased allocations, major cuts made in various acquisition programmes and its impact on various acquisition programmes and overall defence preparedness, decline in allocation for purchase of Naval vessels and submarine for Mazagon Dock Limited in RE 2005-06, modernisation of Naval Dockyard, Mumbai, Fifteen year long term plan for Navy, thrust areas in the 11th Plan and shortfall in the 10th Plan, status of indigenous production of submarines and acquisition of low level radars and long term fund support etc. The representatives responded to the queries of the Members one by one

The Witnesses then withdrew.

8. A verbatim record of the proceedings was kept.

The Committee then adjourned.

MINUTES OF THE THIRTY THIRD SITTING OF THE STANDING
COMMITTEE ON DEFENCE (2005-06)

The Committee sat on Wednesday, the 29th March, 2006 from 1100 hrs.
to 1240 hrs. in Committee Room '53', Parliament House, New Delhi.

PRESENT

Shri Balasaheb Vikhe Patil—*Chairman*

MEMBERS

Lok Sabha

2. Shri Illiyas Azmi
3. Shri Thupstan Chhewang
4. Dr. K.S. Manoj
5. Shri Raghuraj Singh Shakya
6. Shri Ganesh Prasad Singh
7. Shri Balashowry Vallabhaneni
8. Ms. Ingrid Mcleod

Rajya Sabha

9. Smt. N.P. Durga
10. Shri Pramod Mahajan
11. Shri Jai Parkash Aggarwal

SECRETARIAT

1. Shri S.K. Sharma — *Additional Secretary*
2. Smt. Anita Jain — *Deputy Secretary*
3. Shri D.R. Shekhar — *Under Secretary*

LIST OF WITNESSES

1. Shri U.C. Jha, Wing Commander (Retd.)
2. Col. Satwant Singh (Retd.)
3. Col. Dr. Jag Mohan (Retd.)

2. At the outset, Hon'ble Chairman welcomed the Members to the sitting of the Committee. The Chairman then informed that Committee would take oral evidence of the non-official witnesses on "The Armed Forces Tribunal Bill, 2005". The Committee then invited Shri U.C. Jha, Wing Commander (Retd.) for placing his views on the various provisions of the proposed Bill and invited his attention to the direction 58 of the Directions by the Speaker, Lok Sabha regarding maintaining confidentiality of the proceedings of the Committee. Shri U. C. Jha then submitted the following suggestions on the provisions of the Bill:—

- (i) Old laws of Armed Forces Act, 1950-1957 have not been amended effectively in the democratic spirit of the country. These laws are required to be reviewed and amended.
- (ii) Article 20 and 21 of the Constitution relating to right to life and personal liberty of the individual as available to a civilian, should also be made available to the Defence personnel.
- (iii) Free legal aid be provided to Armed Forces as is available to civilians.
- (iv) Judge Advocate General (JAG) from Armed Forces should not be a member and Chairman of the proposed Tribunal. A civilian Judge preferably of High Court or Supreme court would be more impartial and independent.
- (v) There should be a common code for all the three services as in UK and Australia.
- (vi) In summary trial, principles of natural justice must be observed.
- (vii) International covenants on Civil Political Rights have been incorporated in the Civil Laws but in military laws, these have not been incorporated.
- (viii) Provision relating to Court fee, as prescribed in the Bill, should be deleted.
- (ix) There should be a time limit for disposal of cases by the Tribunal.
- (x) As per clause 15 (6), (d), and (f), Tribunal should have full-fledged powers to determine any question necessary for the purpose.

The witness then withdrew.

The Committee then invited Col. Satwant Singh (Retd.), for placing his view on the Bill. He gave the following suggestions:—

- (i) Time frame be fixed to dispose of cases.
- (ii) No military officer should be member of the proposed Tribunal.
- (iii) Term of the Judges of the Tribunal should be three years.
- (iv) Retired High Court Judges be appointed Judicial member and Chairperson of the Tribunal.

The witness then withdrew.

The Committee then invited Col. Dr. Jag Mohan (Retd.). He gave the following suggestions on the Bill for consideration of the Committee:—

- (i) Judge Advocate General or equivalent from Armed Forces should not be appointed as judicial member.
- (ii) Leave of any kind, must not be taken out of the definition of “service matter”.
- (iii) Transfers and postings should be included in the purview of the Bill.
- (iv) Award of censure should also be included in “service matter” and inserted as Section 3 (o) (v) in the proposed Bill.
- (v) Confining the Tribunal Judges to serve only one tenure and laying down that they would not be eligible for reemployment is not logical.

The witness then withdrew.

The Committee then adjourned.

MINUTES OF THE THIRTY SIXTH SITTING OF THE STANDING
COMMITTEE ON DEFENCE (2005-06)

The Committee sat on Thursday, the 13th April, 2006 from 1100 hrs. to 1300 hrs. in Committee Room 'G-74', Parliament Library Building, New Delhi.

PRESENT

Shri Balasaheb Vikhe Patil—*Chairman*

MEMBERS

Lok Sabha

2. Shri Thupstan Chhewang
3. Dr. K.S. Manoj
4. Shri Mahadeorao Shiwankar
5. Shri Ganesh Prasad Singh

Rajya Sabha

6. Dr. Farooq Abdullah
7. Shri Jai Parkash Aggarwal

SECRETARIAT

1. Shri R.C. Ahuja — *Joint Secretary*
2. Smt. Anita Jain — *Deputy Secretary*
3. Shri D.R. Shekhar — *Under Secretary*

LIST OF REPRESENTATIVES FROM MINISTRY OF FINANCE

1. Dr. Adarsh Kishore, Finance Secretary and Secretary (Expenditure)
2. Shri Atanu Chakraborty, Joint Secretary, Department of Expenditure
3. Shri R.K. Arora, Director (E.II), Department of Expenditure
4. Shri P.R. Das, Additional Budget Officer, Department of Economic Affairs

NON OFFICIAL EXPERT

1. Wing Commander U.C. Jha (Retd.)

2. At the outset, Hon'ble Chairman welcomed the Representatives of Ministry of Finance to the Sitting of the Committee. Then Hon'ble Chairman and Members requested them to clarify some crucial issues pertaining to Defence Budget and Defence Planning. The representatives replied to all the queries of the Members one by one.

The witnesses then withdrew.

3. The Committee then invited Wing Commander U.C. Jha (Retd.) to make presentation on the Armed Forces Tribunal Bill, 2005. He then gave detailed presentation on the various provisions of the Bill. Members raised certain queries on the provision of the Bill. The same were responded to by the witness.

The witness then withdrew.

4. A verbatim record of the proceedings was kept.

The Committee then adjourned.

MINUTES OF THE THIRTY NINTH SITTING OF THE STANDING
COMMITTEE ON DEFENCE (2005-06)

The Committee sat on Thursday, the 28 April, 2006 from 1400 hrs. to 1600 hrs. in Committee Room 'D', Parliament House Annexe, New Delhi.

PRESENT

Shri Balasaheb Vikhe Patil—*Chairman*

MEMBERS

Lok Sabha

2. Shri Illiyas Azmi
3. Shri Thupstan Chhewang
4. Dr. C. Krishnan
5. Shri Raghuraj Singh Shakya
6. Shri Mahadeorao Shiwankar
7. Shri Ganesh Prasad Singh
8. Shri Balashowry Vallabhaneni
9. Shri Dharmendra Yadav

Rajya Sabha

10. Smt. N. P. Durga

SECRETARIAT

- | | | |
|----------------------|---|-------------------------|
| 1. Shri R. C. Ahuja | — | <i>Joint Secretary</i> |
| 2. Smt. Anita Jain | — | <i>Deputy Secretary</i> |
| 3. Shri D.R. Shekhar | — | <i>Under Secretary</i> |

LIST OF REPRESENTATIVES FROM MINISTRY OF DEFENCE

1. Shri Shekhar Dutt, Defence Secretary
2. Shri Bimal Julka, JS (E)
3. Shri S. C. Barmma, Director

Army HQrs.

1. Lt. Gen. A. S. Jamwal, AG
2. Lt. Gen. M. G. Girish, DG, DC&W
3. V. Adml. Nirmal Verma, COP
4. Air Mshl. H. S. H. S. Garkal, AOA
5. Maj. Gen. Nilendra Kumar, JAG (Army)
6. Cmde. Mohan Phadke, JAG (Navy)
7. Gp. Capt. PC Grover, JAG (Air)
8. Maj. Sachidanand Prabhu, AJAG (Army)

LIST OF REPRESENTATIVES FROM MINISTRY OF LAW & JUSTICE

1. Shri K. D. Singh, Additional Secretary
2. Shri S. S. Chahar, Joint Secretary

2. At the outset, Hon'ble Chairman welcomed the Members to the sitting of the Committee. The Committee thereafter took oral evidence of the Ministry of Defence & the Ministry of Law & Justice on The Armed Forces Tribunal Bill, 2005. During the discussions following points were raised:

- (i) Composition of the proposed Tribunal;
- (ii) Summary disposals and trials;
- (iii) Disposal of around 9000 cases pending in various courts;
- (iv) Review the existing Acts of Armed Forces;
- (v) Award of compensation in case of miscarriage of justice;
- (vi) Power of the Tribunal to grant Bail;
- (vii) Proposed Bill and Coast Guards;
- (viii) Provision for appeal against the orders of the Tribunal;
- (ix) Need to evolve uniform discipline code for three services.

3. The Committee also discussed with the representatives of the Ministries on various suggestions / views given by the non official witnesses on the Bill. The Committee also sought certain information from the Ministry of Defence & the Ministry of Law & Justice on the subject. They assured to submit written replies on the issues.

4. A verbatim record of the proceedings was kept.

The Committee then adjourned.

MINUTES OF THE FORTY FIRST SITTING OF THE STANDING
COMMITTEE ON DEFENCE (2005-06)

The Committee sat on Tuesday, the 16 May, 2006 from 1730 hrs. to 1845 hrs. in Committee Room 'C', Parliament House Annexe, New Delhi.

PRESENT

Shri Balasaheb Vikhe Patil—*Chairman*

MEMBERS

Lok Sabha

2. Shri Illiyas Azmi
3. Shri A. V. Bellarmin
4. Shri Thupstan Chhewang
5. Smt. Sangeeta Kumari Singh Deo
6. Smt. Priya Dutt
7. Shri S. D. Mandlik
8. Dr. K. S. Manoj
9. Shri Raghuraj Singh Shakya
10. Shri Ganesh Prasad Singh
11. Shri Manvendra Singh
12. Ms. Ingrid Mcleod

Rajya Sabha

13. Smt. N. P. Durga
14. Shri Jai Parkash Aggarwal
15. Shri Lalit Suri

SECRETARIAT

1. Shri R. C. Ahuja — *Joint Secretary*
2. Smt. Anita Jain — *Deputy Secretary*
3. Shri D.R. Shekhar — *Under Secretary*

2. At the outset, the Chairman welcomes the Members to the sitting of the Committee. The Chairman then informed the Members that the Committee would take up Draft Report on the 'The Armed Forces Tribunal Bill, 2005' for consideration and adoption.

3. The Committee then took up the Draft Report on the Bill for consideration. The Committee, after elaborate discussion on the provisions of the Bill, adopted the Draft Report with minor modifications.

4. The Committee then authorised the Chairman to make necessary amendments, if necessary, in the Report and present the same to the Parliament.

The Committee then adjourned.

TO BE INTRODUCED IN THE RAJYA SABHA

Bill No. CXXIX of 2005

THE ARMED FORCES TRIBUNAL BILL, 2005

ARRANGEMENT OF CLAUSES

Clauses

CHAPTER I

PRELIMINARY

1. Short title and commencement.
2. Applicability of the Act.
3. Definitions.

CHAPTER II

ESTABLISHMENT OF TRIBUNAL AND BENCHES THEREOF

4. Establishment of Armed Forces Tribunal.
5. Composition of Tribunal and Benches thereof.
6. Qualifications for appointment of Chairperson and other Members.
7. Appointment of Chairpersons and other Members.
8. Term of office.
9. Resignation and removal.
10. Salaries, allowances and other terms and conditions of service of Chairperson and other Members.
11. Prohibitions as to holding of offices, etc., by Chairperson or Member on ceasing to be such Chairperson or Member.
12. Financial and administrative powers of Chairperson.
13. Staff of the Tribunal.

Clauses

CHAPTER III

JURISDICTION, POWERS AND AUTHORITY OF THE TRIBUNAL

14. Jurisdiction, powers and authority in service matters.
15. Jurisdiction, powers and authority in matters of appeal against court-martial.
16. Re-trial.
17. Powers of the Tribunal on appeal under section 15.
18. Cost.
19. Power to punish for contempt.
20. Distribution of business among the Benches.

CHAPTER IV

PROCEDURE

21. Application not to be admitted unless other remedies exhausted.
22. Limitation.
23. Procedure and powers of the Tribunal.
24. Term of sentence and its effect on appeal.
25. Right of applicant or of a appellant to take assistance of a legal practitioner and of Government, etc., to appoint counsel.
26. Condition as to making of interim order.
27. Power of Chairperson to transfer cases from one Bench to another.
28. Decision to be by majority.
29. Execution of order of the Tribunal.

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Bill No. CXXIX of 2005

THE ARMED FORCES TRIBUNAL BILL, 2005

A

BILL

to provide for the adjudication or trial by Armed Forces Tribunal of disputes and complaints with respect to commission, appointments, enrolment and conditions of service in respect of persons subject to the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950 and also to provide for appeals arising out of orders, findings or sentences of court-martial held under the said Acts and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:

CHAPTER I

PRELIMINARY

- | | |
|-------------------------------|---|
| Short title and commencement. | 1. (1) This Act may be called the Armed Forces Tribunal Act, 2005.

(2) It shall come into force on such date as the Central Government may, by notification, appoint. |
| Applicability of the Act. | 2. (1) The provisions of this Act shall apply to all persons subject to the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950.

(2) This Act shall also apply to retired personnel subject to the Army Act, 1950 or the Navy Act, 1957 or the Air Force Act, 1950, including their dependants, heirs and successors, in so far as it relates to their service matters. |
| Definitions. | 3. In this Act, unless the context otherwise requires,—

(a) “Administrative Member” means a member of the Tribunal who is not a Judicial Member within the meaning of clause (g); |

46 of 1950.
62 of 1957.
45 of 1950.

(b) "application" means an application made under sub-section (2) of section 14;

(c) "appointed day" means the date with effect from which the Tribunal is established by notification under section 4;

(d) "Bench" means a Bench of the Tribunal;

(e) "Chairperson" means the Chairperson of the Tribunal;

(f) "court-martial" means a court-martial held under the Army Act, 1950 or the Navy Act, 1957 or the Air Force Act, 1950;

46 of 1950.
62 of 1957.
45 of 1950.

(g) "Judicial Member" means a member of the Tribunal appointed as such under this Act, and includes the Chairperson, who possesses any of the qualifications specified in sub-section (2) of section 6;

(h) "Member" means a member (whether Judicial or Administrative) of the Tribunal and includes the Chairperson;

(i) "military custody" means the arrest or confinement of a person according to the usages of the service and includes naval or air force custody;

(j) "notification" means a notification published in the Official Gazette;

(k) "prescribed" means prescribed by rules made under this Act;

(l) "President" means the President of India;

(m) "rules" means the rules made under this Act;

(n) "service" means the service within or outside India;

(o) "service matters", in relation to the persons subject to the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950, mean all matters relating to the conditions of their service and shall include—

(i) remuneration (including allowances), pension and other retirement benefits;

(ii) tenure, including commission, appointment, enrolment, probation, confirmation, seniority, training, promotion, reversion, premature retirement, superannuation, termination of service and penal deductions;

(iii) leave of any kind;

(iv) summary disposal and trials;

(v) any other matter, whatsoever,

but shall not include matters relating to—

(i) orders issued under section 18 of the Army Act, 1950, sub-section (1) of section 15 of the Navy Act, 1957 and section 18 of the Air Force Act, 1950; and

(ii) transfers and postings in relation to the persons subject to the Acts mentioned in this clause;

(p) "summary disposals and trials" means summary disposals and trials held under the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950;

(q) "Tribunal" means the Armed Forces Tribunal established under section 4.

CHAPTER II

ESTABLISHMENT OF TRIBUNAL AND
BENCHES THEREOF

4. The Central Government shall, by notification, establish a Tribunal to be known as the Armed Forces Tribunal to exercise the jurisdiction, powers and authority conferred on it by or under this Act.

Establishment
or Armed
Forces
Tribunal.

5. (1) The Tribunal shall consist of a Chairperson, and such number of Judicial and Administrative Members as the Central Government may deem fit and, subject to the other provisions of this Act, the jurisdiction, powers and authority of the Tribunal may be exercised by Benches thereof.

Composition
of Tribunal
and
Benches
thereof.

(2) Subject to the other provisions of this Act, a Bench shall consist of one Judicial Member and one Administrative Member.

(3) Notwithstanding anything contained in sub-section (1), the Chairperson—

(a) may, in addition to discharging the functions of a Judicial Member of the Bench to which he is appointed, discharge the functions of an Administrative Member of any other Bench;

(b) may transfer a Member from one Bench to another Bench;

(c) may, for the purpose of securing that any case or cases, which having regard to the nature of the questions involved, requires or require, in his opinion, or under the rules made under this Act, to be decided by a Bench composed of more than two members, issue such general or special orders, as he may deem fit:

Provided that every bench constituted in pursuance of this clause shall include at least one Judicial Member and one Administrative Member.

(4) Subject to the other provisions of this Act, the Benches of the Tribunal shall ordinarily sit at Delhi (which shall be known as the Principal Bench), and at such other places as the Central Government may, by notification, specify.

Qualifications for appointment of Chairperson and other Members.

6. (1) A person shall not be qualified for appointment as the Chairperson unless he is a retired Judge of the Supreme Court or a retired Chief Justice of a High Court.

(2) A person shall not be qualified for appointment as a Judicial Member unless—

(a) he is or has been a Judge of a High Court; or

(b) he has held the post of Judge Advocate General in the rank of Major General in the Army or equivalent rank in the Navy or the Air Force, as the case may be.

Explanation.—When a serving person referred to in clause (b) is appointed as Judicial Member, he shall have retired from service prior to assuming such appointment.

(3) A person shall not be qualified for appointment as an Administrative Member unless he has held or is holding the rank of Major General or above for a total period of at least three years in the Army or equivalent rank in the Navy or the Air Force.

Explanation.—When a serving person is appointed as an Administrative Member, he shall have retired from service prior to assuming such appointment.

Appointment of Chairperson and other Members.

7. (1) Subject to the provisions of this section, the Chairperson and other Members of the Tribunal shall be appointed by the President:

Provided that no appointment under this sub-section shall be made except after consultation with the Chief Justice of India.

(2) The president may appoint one or more Members of the Tribunal to be the Vice-Chairperson, or, as the case may be, the Vice-Chairpersons, thereof.

8. The Chairperson or a Member shall hold office for a term of four years from the date on which he enters upon his office and shall not be eligible for re-appointment;

Term of office.

Provided that no Chairperson shall hold office as such after he has attained,—

(a) in case he has been a Judge of the Supreme Court, the age of seventy years; and

(b) in case he has been the Chief Justice of a High Court, the age of sixty-five years:

Provided further that no other Member shall hold office as such Member after he has attained the age of sixty-five years.

9. (1) The Chairperson or a Member may, by notice in writing under his hand addressed to the President, resign his office:

Resignation and removal.

Provided that the Chairperson or a Member shall, unless he is permitted by the President to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(2) The Chairperson or a Member shall not be removed from his office except by an order made by the President on the ground of proved misbehaviour or incapacity after an inquiry made by a sitting Judge of the Supreme Court in which such Chairperson or other Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the Chairperson or other Member referred to in sub-section (2).

Salaries, allowances and other terms and conditions of service of Chairperson and other Members.

10. The salaries and allowances payable to, and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of, the Chairperson and other Members shall be such as may be prescribed by the Central Government:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson and other Members shall be varied to their disadvantage after their appointment.

Prohibitions as to holding of offices, etc., by Chairperson or Member on ceasing to be such Chairperson or Member.

11. On ceasing to hold office—

(a) the Chairperson shall be ineligible for further employment either under the Government of India or under the Government of a State;

(b) a Member other than the Chairperson shall, subject to the provisions of this Act, be eligible for appointment as a member of any other Tribunal but not for any other employment either under the Government of India or under the Government of a State;

(c) the Chairperson or other Members shall not appear, act or plead before the Tribunal.

Financial and administrative powers of Chairperson.

12. The Chairperson shall exercise such financial and administrative powers over the Benches as may be prescribed:

Provided that the Chairperson shall have the authority to delegate such of his financial and administrative powers as he may think fit to any other Member or any officer of the Tribunal, subject to the conditions that such

Member or officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the Chairperson.

13. (1) The Central Government shall determine the nature and categories of the officers and other employees required to assist the Tribunal in the discharge of its functions and provide the Tribunal with such officers and other employees as it may think fit.

Staff of the Tribunal.

(2) The salaries and allowances payable to, and the other terms and conditions of service of the officers and other employees of the Tribunal shall be such as may be prescribed.

(3) The officers and other employees of the Tribunal shall discharge their functions under the general superintendence of the Chairperson.

CHAPTER III

JURISDICTION, POWERS AND AUTHORITY OF THE TRIBUNAL

14. (1) Save as otherwise expressly provided in this Act, the Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority, exercisable immediately before that day by all courts (except the Supreme Court or a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to all service matters.

Jurisdiction, powers and authority in service matters.

(2) Subject to the other provisions of this Act, a person aggrieved by an order pertaining to any service matter may make an application to the Tribunal in such form and accompanied by such documents or other evidence and on payment of such fee as may be prescribed.

(3) On receipt of an application relating to service matters, the Tribunal shall, if satisfied after due inquiry, as it may deem necessary, that it is fit for adjudication by it, admit such

application; but where the Tribunal is not so satisfied, it may dismiss the application after recording its reasons in writing.

(4) For the purpose of adjudicating an application, the Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing an application for default or deciding it *ex parte*;

(h) setting aside any order of dismissal of any application for default or any order passed by it *ex parte*; and

(i) any other matter which may be prescribed by the Central Government.

(5) The Tribunal shall decide both questions of law and facts that may be raised before it.

Jurisdiction,
powers
and
authority
in matters
of appeal
against
court-
martial.

15. (1) Save as otherwise expressly provided in this Act, the Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable under this Act in relation to appeal against any order, decision,

finding or sentence passed by a court-martial or any matter connected therewith or incidental thereto.

(2) Any person aggrieved by an order, decision, finding or sentence passed by a court-martial may prefer an appeal in such form, manner and within such time as may be prescribed.

(3) The Tribunal shall have power to grant bail to any person accused of an offence and in military custody, with or without any conditions which it considers necessary:

Provided that no accused persons shall be so released if there appears reasonable ground for believing that he has been guilty of an offence punishable with death or imprisonment for life.

(4) The Tribunal shall allow an appeal against conviction by a court-martial where—

(a) the finding of the court-martial is legally not sustainable due to any reason whatsoever; or

(b) the finding involves wrong decision on a question of law; or

(c) there was a material irregularity in the course of the trial resulting in miscarriage of justice.

but, in any other case, may dismiss the appeals where the Tribunal considers that no miscarriage of justice is likely to be caused or has actually resulted to the appellant:

Provided that no order dismissing the appeal by the Tribunal shall be passed unless such order is made after recording reasons therefor in writing.

(5) The Tribunal may allow an appeal against conviction, and pass appropriate order thereon.

(6) Notwithstanding anything contained in the foregoing provisions of this section, the Tribunal shall have the power to—

(a) substitute for the findings of the court-martial, a finding of guilty for any other offence for which the offender could have been lawfully found guilty by the court-martial and pass a sentence afresh for the offence specified or involved in such finding under the provisions of the Army Act, 1950 or the Navy Act, 1957 or the Air Force Act, 1950, as the case may be; or

46 of 1950.
62 of 1957.
45 of 1950.

(b) if sentence is found to be excessive, illegal or unjust, the Tribunal may—

(i) remit the whole or any part of the sentence, with or without conditions;

(ii) mitigate the punishment awarded;

(iii) commute such punishment to any lesser punishment or punishments mentioned in the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950, as the case may be;

46 of 1950.
62 of 1957.
45 of 1950.

(c) enhance the sentence awarded by a court-martial;

Provided that no such sentence shall be enhanced unless the appellant has been given an opportunity of being heard.

(d) release the appellant, if sentenced to imprisonment, on parole with or without conditions;

(e) suspend a sentence of imprisonment;

(f) pass any other order as it may think appropriate.

(7) Notwithstanding any other provisions in this Act, for the purposes of this section, the Tribunal shall be deemed to be a criminal court for the purposes of section 175, 178, 179, 180, 193, 195, 196 or 228 of the Indian Penal Code and Chapter XXVI of the Code of Criminal Procedure, 1973.

45 of 1860.
2 of 1974.

16. (1) Except as provided by this Act, where the conviction of a person by court-martial for an offence has been quashed, he shall not be liable to be tried again for that offence by a court-martial or by any other Court. Re-trial.

(2) The Tribunal shall have the power of quashing a conviction, to make an order authorising the appellant to be retried by court-martial, but shall only exercise this power when the appeal against conviction is allowed by reasons only of evidence received or available to be received by the Tribunal under this Act and it appears to the Tribunal that the interests of justice require that an order under this section should be made:

Provided that an appellant shall not be retried under this section for an offence other than—

(a) the offence for which he was convicted by the original court-martial and in respect of which his appeal is allowed;

(b) any offence for which he could have been convicted at the original court-martial on a charge of the first-mentioned offence;

(c) any offence charged in the alternative in respect of which the court-martial recorded no finding in consequence of convicting him of the first-mentioned offence.

(3) A person who is to be retried under this section for an offence shall, if the Tribunal

or the Supreme Court so directs, whether or not such person is being tried or retired on one or more of the original charges, no fresh investigation or other action shall be taken under the relevant provision of the Army Act, 1950 or the Navy Act, 1957 or the Air Force Act, 1950, as the case may be, or rules and regulations made thereunder, in relation to the said charge or charges on which he is to be retried.

46 of 1950.

62 of 1957.

45 of 1950.

Powers of the Tribunal on appeal under section 15.

17. The Tribunal, while hearing and deciding an appeal under section 15, shall have the power—

(a) to order production of documents or exhibits connected with the proceedings before the court-martial;

(b) to order the attendance of the witnesses;

(c) to receive evidence;

(d) to obtain reports from court martial;

(e) order reference of any question for enquiry;

(f) appoint a person with special expert knowledge to act as an assessor; and

(g) to determine any question which is necessary to be determined in order to do justice in the case.

Cost.

18. While disposing of the application under section 14 or an appeal under section 15, the Tribunal shall have power to make such order as to costs as it may deem just.

Power to punish for contempt.

19. (1) Any person who is guilty of contempt of the Tribunal by using any insulting or threatening language, or by causing any interruption or disturbance in the proceedings of such Tribunal shall, on conviction, be liable to suffer imprisonment for a term which may extend to three years.

(2) For the purposes of trying an offence under this section, the provisions of sections 14, 15, 17, 18 and 20 of the Contempt of Courts Act, 1971 shall *mutatis mutandis* apply, as if a reference therein to—

(a) Supreme Court or High Court were a reference to the Tribunal;

(b) Chief Justice were a reference to the Chairperson;

(c) Judge were a reference to the Judicial or Administrative Member of the Tribunal;

(d) Advocate-General were a reference to the prosecutor; and

(e) Court were a reference to the Tribunal.

20. The Chairperson may make provisions as to the distribution of the business of the Tribunal among its Benches.

Distribution of business among the Benches.

CHAPTER IV

PROCEDURE

46 of 1950. 21. (1) The Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of the remedies available to him under the Army Act, 1950 or 62 of 1957. the Navy Act, 1957 or the Air Force Act, 1950, 45 of 1950. as the case may be, and respective rules and regulations made thereunder.

Application not to be admitted unless other remedies exhausted.

46 of 1950. (2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the Army Act, 1950 or the Navy act, 1957 or the Air Force 62 of 1957. Act, 1950, and respective rules and 45 of 1950. regulations—

(a) if a final order has been made by the Central Government or other authority

or officer or other person competent to pass such order under the said Acts, rules and regulations, rejecting any petition preferred or representation made by such person;

(b) where no final order has been made by the Central Government or other authority or officer or other person competent to pass such order with regard to the petition preferred or representation made by such person, if a period of six months from the date on which such petition was preferred or representation was made has expired.

Limitation. 22. The Tribunal shall not admit an application—

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 21 has been made unless the application is made within six months from the date on which such final order has been made;

(b) in a case where a petition or a representation such as is mentioned in clause (b) of sub-section of section 21 has been made and the period of six months has expired thereafter without such final order having been made;

(c) in a case where the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which jurisdiction, powers and authority of the Tribunal became exercisable under this Act, in respect of the matter to which such order relates and no proceedings for the redressal of such grievance had been commenced before the said date before the High Court.

(2) Notwithstanding anything contained in sub-section (1), the Tribunal may admit an application after the period of six months referred to in clause (a) or clause (b) of sub-section (1), as the case may be, or prior to the period of three years specified in clause (c), if the Tribunal is satisfied that the applicant had sufficient cause for not making the application within such period.

5 of 1908. 23. (1) The Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice and subject to the other provisions of this Act and any rules made thereunder, the Tribunal shall have the power to lay down and regulate its own procedure including the fixing of place and time of its inquiry and deciding whether to sit in public or *in camera*.

Procedure and Powers of the Tribunal.

(2) The Tribunal shall decide every application made to it as expeditiously as possible after a perusal of documents, affidavits and written representations and after hearing such oral arguments as may be advanced:

Provided that where the Tribunal deems it necessary, for reasons to be recorded in writing, it may allow oral evidence to be adduced.

(3) No adjournment shall be granted by the Tribunal without recording the reasons justifying the grant of such adjournment and cost shall be awarded, if a party requests for adjournment more than twice.

46 of 1950.
62 of 1957.
45 of 1950. 24. (1) The term of any sentence passed by the Tribunal under clause (a) of sub-section (6) of section 15 of this Act shall, unless the Tribunal otherwise directs, be reckoned to commence on the day on which it would have commenced under the Army Act, 1950, the Navy Act, 1957 or the Air Force Act, 1950, as the case may be, under which the court martial against which the appeal was filed, had been held.

Term of sentence and its effect on appeal.

(2) Subject to the provisions of sub-section (3), any sentence passed on an appeal from the Tribunal to the Supreme Court in substitution for another sentence shall, unless the Supreme Court otherwise directs, be reckoned to commence on the day on which the original sentence would have commenced.

(3) Where a person who is undergoing sentence is granted stay of the operation of the said sentence, either by suspension or otherwise, pending an appeal, the period during which he is so released due to the sentence having been so stayed, shall be excluded in computing the term for which he is so sentenced by the Tribunal or the Supreme Court, as the case may be.

Right of applicant or of appellant to take assistance of a legal practitioner and of Government, etc., to appoint counsel.

25. (1) A person making an application or preferring an appeal to the Tribunal may either appear in person or take the assistance of a legal practitioner of his choice to present his case before the Tribunal.

(2) The Central Government or the competent authority, as may be prescribed, may authorise one or more legal practitioners or any of its law officers to act as counsel and every person so authorised by it may present its case with respect to any application or appeal, as the case may be, before the Tribunal.

Condition as to making of interim order.

26. (1) Notwithstanding anything contained in any other provision of this Act or in any other law for the time being in force, no interim order (whether by way of injunction or stay or in any other manner) shall be made on an application or appeal, or in any proceeding relating thereto, unless,—

(a) copies of such application or appeal, as the case may be, and all documents in support of the plea for such interim order are furnished to the party against whom such application or appeal, as the case may be, is made or proposed to be made; and

(b) opportunity of being heard is given to the other party in the matter:

Provided that the tribunal may dispense with the requirements of clauses (a) and (b) and make an interim order as an exceptional measure if it is satisfied, for reasons to be recorded in writing, that it is necessary so to do for preventing any loss being caused to the applicant or to the appellant, as the case may be.

(2) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on an application or appeal or in any proceeding relating thereto under sub-section (1), without—

(a) furnishing to such party copies of such application or appeal, as the case may be, and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, and making an application to the Tribunal for the vacation of such order and furnishing a copy of such application or appeal, as the case may be, to the party in whose favour such order has been made or the counsel of such party;

the Tribunal shall dispose of the application within a period of fourteen days from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the Tribunal is closed on the last day of that period, before the expiry of the next working day; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next working day, stand vacated.

Power of Chairperson to transfer cases from one Bench to another.

27. On the application of any of the parties and after notice to the parties concerned, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairperson may transfer any case pending before one Bench for disposal, to any other Bench.

Decision to be taken by majority.

28. If the Members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ and make a reference to the Chairperson who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the Members of the Tribunal and such point or points shall be decided according to the opinion of the majority of the Members of the Tribunal who have heard the case, including those who first heard it.

Execution of order of the Tribunal.

29. Subject to the other provisions of this Act and the rules made thereunder, the order of the Tribunal disposing of an application shall be final and shall not be called in question in any Court and such order shall be executed accordingly.

CHAPTER V

APPEAL

Appeal to the Supreme Court.

30. (1) Subject to the provisions of section 31, an appeal shall lie to the Supreme Court against the final decision or order of the Tribunal (other than an order passed under section 19):

Provided that such appeal is preferred within a period of ninety days of the said decision or order:

Provided further that there shall be no appeal against an interlocutory order of the Tribunal.

(2) An appeal shall lie to the Supreme Court as of right from any order or decision of the Tribunal in the exercise of its jurisdiction to punish for contempt:

Provided that an appeal under this sub-section shall be filed in the Supreme Court within sixty days from the date of the order appealed against.

(3) Pending any appeal under sub-section (2), the Supreme Court may order that—

(a) the execution of the punishment or the order appealed against be suspended; or

(b) if the appellant is in confinement, he be released on bail:

Provided that where an appellant satisfies the Tribunal that he intends to prefer an appeal, the Tribunal may also exercise any of the powers conferred under clause (a) or clause (b), as the case may be.

31. (1) An appeal to the Supreme Court shall lie with the leave of the Tribunal; and such leave shall not be granted unless it is certified by the Tribunal that a point of law of general public importance is involved in the decision, or it appears to the Supreme Court that the point is one which ought to be considered by that Court.

Leave to appeal.

(2) An application to the Tribunal for leave to appeal to the Supreme Court shall be made within a period of thirty days beginning with the date of the decision of the Tribunal and an application to the Supreme Court for leave shall be made within a period of thirty days beginning with the date on which the application for leave is refused by the Tribunal.

(3) An appeal shall be treated as pending until any application for leave to appeal is

disposed of and if leave to appeal is granted, until the appeal is disposed of; and an application for leave to appeal shall be treated as disposed of at the expiration of the time within which it might have been made, but it is not made within that time.

Condonation. 32. The Supreme Court may, upon an application made at any time by the appellant, extend the time within which an appeal may be preferred by him to that Court under section 30 or sub-section (2) of section 31.

CHAPTER VI

MISCELLANEOUS

Exclusion of jurisdiction of civil courts. 33. On and from the date from which any jurisdiction, powers and authority becomes exercisable by the Tribunal in relation to service matters under this Act, no Civil Court shall have, or be entitled to exercise, such jurisdiction, power or authority in relation to those service matters.

Transfer of pending cases. 34. (1) Every suit, or other proceeding pending before any court including a High Court or other authority immediately before the date of establishment of the Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based, is such that it would have been within the jurisdiction of the Tribunal, if it had arisen after such establishment within the jurisdiction of such Tribunal, stand transferred on that date to such Tribunal.

(2) Where any suit, or other proceeding stands transferred from any court including a High Court or other authority to the Tribunal under sub-section (1),—

(a) the court or other authority shall, as soon as may be, after such transfer, forward the records of such suit, or other proceeding to the Tribunal;

(b) the Tribunal may, on receipt of such records, proceed to deal with such suit, or other proceeding, so far as may be, in the same manner as in the case of an application made under sub-section (2) of section 14 from the stage which was reached before such transfer or from any earlier stage or *de novo* as the Tribunal may deem fit.

35. Where any decree or order has been made or passed by any court (other than a High Court) or any other authority in any suit or proceeding before the establishment of the Tribunal, being a suit or proceeding the cause of action whereon it is based, is such that it would have been, if it had arisen after such establishment, within the jurisdiction of the Tribunal, and no appeal has been preferred against such decree or order before such establishment or if preferred, the same is pending for disposal before any court including High Court and the time for preferring such appeal under any law for the time being in force had not expired before such establishment, such appeal shall lie to the Tribunal, within ninety days from the date on which the Tribunal is established, or within ninety days from the date of receipt of the copy of such decree or order, whichever is later.

Provision for filing of certain appeals.

45 of 1860. 36. All proceedings before the Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code.

Proceedings before Tribunal to be judicial proceeding.

45 of 1860 37. The Chairperson, other Members and the officers and other employees provided under section 13 to the Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Members and staff of Tribunal to be public servants.

38. No suit, prosecution or other legal proceeding shall lie against the Central Government or against the Chairperson or any

Protection of action taken in good faith.

other Member or any other person authorised by the Chairperson, for anything which is done in good faith or intended to be done in pursuance of this Act or any rule or order made thereunder in the discharge of official duties.

Act to have overriding effect.

39. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Power to remove difficulties.

40. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

Power of Central Government to make rules.

41. (1) The Central Government may, by notification, make rules for the purpose of carrying out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the case or cases which shall be decided by a bench composed of more than two Members under clause (c) of sub-section (3) of section 5;

(b) the procedure under sub-section (3) of section 9 for the investigation of misbehaviour or incapacity of Chairperson or other Member;

(c) the salaries and allowances payable to, and the other terms and conditions of service of the Chairperson and other Members under section 10;

(d) the financial and administrative powers which the Chairperson may exercise over the Benches of the Tribunal under section 12;

(e) the salaries and allowances payable to, and other terms and conditions of service of the officers and other employees of the Tribunal under sub-section (2) of section 13;

(f) the form in which an application may be made under sub-section (2) of section 14, the documents and other evidence by which such application shall be accompanied and the fee payable in respect of the filing of such application or for the service of execution of processes;

(g) the other matter which may be prescribed under clause (i) of sub-section (4) of section 14;

(h) the form and manner in which an appeal may be filed, the fee payable thereon and the time within which such appeal may be filed under sub-section (2) of section 15;

(i) the rules subject to which the Tribunal shall have to regulate its own procedure under sub-section (1) of section 23;

(j) competent authority who may authorise legal practitioners or law officers to act as counsel under sub-section (2) of section 25;

(k) any other matter which may be prescribed or in respect of which rules are required to be made by the Central Government.

Power to
make rules
retrospec-
tively.

42. The powers to make rules under section 41 shall include the power to make such rules or any of them retrospectively from a date not earlier than the date on which this Act shall come into operation but no such retrospective effect shall be given to any such rule so as to prejudicially affect the interests of any person to whom such rule may be applicable.

Laying of
rules.

43. Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before, the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

The existing system of administration of justice in the Army and Air Force provides for submission of statutory complaints against grievances relating to service matters and pre and post confirmation petitions to various authorities against the findings and sentences of court-martial. In Navy, an aggrieved person has a right to submit a complaint relating to service matters and has a right of audience before the Judge Advocate General in the Navy in regard to the finding and sentence of a court martial before the same are finally put up to the Chief of the Naval Staff.

2. Having regard to the fact that a large number of cases relating to service matters of the members of the above-mentioned three armed forces of Union have been pending in the courts for a long time, the question of constituting an independent adjudicatory forum for the Defence personnel has been engaging the attention of the Central Government for quite some time. In 1982, the Supreme Court in *Prithi Pal Singh Bedi v. Union of India* and others (AIR 1982 SC 1413) held that the absence of even one appeal with power to review evidence, legal formulation, conclusion and adequacy or otherwise of punishment in the laws relating to the armed forces was a distressing and glaring lacuna and urged the Government to take steps to provide for at least one judicial review in service matters. The Estimates Committee of the Parliament in their 19th Report presented to the Lok Sabha on 20th August, 1992 had desired that the Government should constitute an independent statutory Board or Tribunal for service personnel.

3. In view of the above, it is proposed to enact a new legislation by constituting an Armed Forces Tribunal for the adjudication of complaints and dispute regarding service matters and appeals arising out of the verdicts of the courts-martial of the members of the three services (Army, Navy and Air Force) to provide for quicker and less expensive justice to the members of the said Armed Forces of the Union.

4. Establishment of an independent Armed Forces Tribunal will fortify the trust and confidence amongst members of the three services in the system of dispensation of justice in relation to their service matters.

5. The Bill seeks to provide for a judicial appeal on points of law and facts against the verdicts of courts-martial which is a crying need of the day and lack of it has often been adversely commented upon by the Supreme Court. The Tribunal will oust the jurisdiction of all courts except the Supreme Court whereby resources of the Armed Forces in terms of manpower, material and time will be conserved besides resulting in expeditious disposal of the cases and reduction in the number of cases pending before various courts. Ultimately, it will result in speedy and less expensive dispensation of justice to the Members of the above-mentioned three Armed Forces of the Union.

6. The Notes on clauses explain in detail the various provisions contained in the Bill.

7. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 15th December, 2005.

PRANAB MUKHERJEE

Notes on Clauses

Clause 1.—This clause provides for the short title of the Bill and its commencement. As certain preparatory steps are required to be taken before the proposed legislation is brought into force, it is proposed to empower the Central Government to bring the legislation into force from a date to be appointed by it.

Clause 2.—This clause specifies the persons to whom the provisions of the proposed legislation shall apply. It will be applicable to all persons who are subject to the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950. It will also apply to retired personnel subject to the aforesaid acts including their dependents, heirs and successors, in so far as it relates to the service matters of such retired personnel and others.

Clause 3.—This clause defines certain words and expressions used in the Bill. The definitions of “Administrative Member”, “court martial”, “military custody”, “service matters” etc., are some of them.

Clause 4.—This clause empowers the Central Government to establish the Armed Forces Tribunal to exercise the jurisdiction, powers and authority conferred on it by or under the proposed legislation.

Clause 5.—This clause contains the composition of the Tribunal and the Benches thereof. This clause also provides the duties of the Chairperson and the location of the Principle and other Benches.

Clause 6.—This clause specifies the qualifications for appointment of Chairperson and other Members of the Tribunal.

Clause 7.—This clause specifies the authority for selection and appointment of Chairperson, Vice-Chairperson and other Members of the Tribunal.

Clause 8.—This clause provides for the term of office of the Chairperson and other Members of the Tribunal for holding the office.

Clause 9.—This clause specifies the manner in which the Chairperson and a Member shall resign his office and the manner of their removal from office. Such a removal could be on the grounds of proved misbehaviour or incapacity. Sub-clause (3) of the said clause empowers the Central Government to make rules to regulate the procedure for the investigation of misbehaviour or incapacity of the Chairperson or other Members.

Clause 10.—This clause specifies the authority to determine the salaries, allowances and other terms and conditions of service (including pension, gratuity and other retirement benefits) of the Chairperson and other Members.

Clause 11.—This clause provides for the prohibitions for holding of offices, etc., by the Chairperson or other Members on ceasing to be such Chairperson or Member.

Clause 12.—This clause specifies the financial and administrative powers of the Chairperson.

Clause 13.—This clause empowers the Central Government to determine the nature, categories and salaries and allowances of the officers and other employees required to assist the Tribunal in the discharge of its functions.

Clause 14.—This clause specifies the jurisdiction, powers and authority in relation to service matters to be exercised by the Tribunal and also the procedure for filing an application by the aggrieved person and deciding the admissibility of such application by the Tribunal. The Tribunal shall decide both questions of law and facts that may be raised before it. Sub-clause (4) of the said clause confers certain powers of a Civil Court under the Code of Civil Procedure, 1908 to the Tribunal while trying a suit under the proposed legislation. These matters, *inter alia*, include the power to summon and enforce the attendance of any person and examine him on oath, receiving of evidence on affidavits and reviewing its decisions.

Clause 15.—This clause specifies the jurisdiction, powers and authority to be exercised by the Tribunal in relation to matters of appeal against any order, decision, finding or sentence passed by a court-martial or any matter connected therewith or incidental thereto. Sub-clause (2) specifies the right to any aggrieved person to prefer an appeal against an order, decision, finding or sentence passed by a court-martial. Sub-clause (3) provides that the Tribunal shall have powers to grant bail except in an offence punishable with death or imprisonment for life. Sub-clause (7) provides that the Tribunal shall be deemed to be a criminal court for the purposes of section 175, 178, 179, 180, 193, 195, 196 or 228 of the Indian Penal Code and Chapter XXVI of the Code of Criminal Procedure, 1973.

Clause 16.—This clause empowers the Tribunal for quashing a conviction and make order for retrial by a court-martial on certain conditions and specifies the offences for which an appellant shall not be retried under this clause.

Clause 17.—This clause specifies the powers of the Tribunal on appeal under clause 15 of the Bill. Such powers include the power to order the production of documents or exhibits connected with the proceedings before the court-martial, order attendance of witnesses and securing attendance of witnesses.

Clause 18.—This clause specifies the powers of the Tribunal to make such order as to costs as it may deem fit, while disposing of the application under clause 14, or an appeal under clause 15, of the Bill.

Clause 19.—This clause confers powers on the Tribunal to punish for its contempt for using any insulting or threatening language, or by causing any interruption or disturbance in the proceedings of such Tribunal. For the purposes of trying an offence under this clause, the provisions of sections 14, 15, 17, 18 and 20 of the Contempt of Courts Act, 1971 shall *mutatis mutandis* apply.

Clause 20.—This clause empowers the Chairperson to make provisions for distribution of the business of the Tribunal amongst its Benches.

Clause 21.—This clause specifies the condition for not admitting an application unless other available remedies are exhausted. It also specifies the remedies available and the time limit for preferring the petition or representation.

Clause 22.—This clause specifies the period of limitation for admitting or otherwise of an application and also to condone the limitation provided under this clause.

Clause 23.—This clause provides the procedural powers of the Tribunal such as laying down and regulation of its own procedure, fixing of place and time of inquiry, perusal of documents, affidavits or written representations or oral arguments, adjournment, etc. It also specifies the condition for grant of adjournment and awarding of cost.

Clause 24.—This clause specifies the reckoning or commencement of term of sentence on appeal.

Clause 25.—This clause provides the right to the applicant or of the appellant for taking assistance of legal practitioner or Government Counsels to present the case before the Tribunal.

Clause 26.—This clause specifies the condition and the procedure for making of interim orders.

Clause 27.—This clause empowers the Chairperson to transfer any case pending before one Bench for disposal to another Bench.

Clause 28.—This clause provides that if the Members of a Bench of the Tribunal differ in opinion on any point or points, the point or points shall be decided according to the opinion of the majority.

Clause 29.—This clause relates to the finality of the execution of the order of the Tribunal.

Clause 30.—This clause provides that an appeal shall lie to the Supreme Court against the final decision or order of the Tribunal (other than an order passed under proposed section 19).

Clause 31.—This clause provides that an appeal to the Supreme Court shall lie with the leave of the Tribunal and the manner of making appeal to the Tribunal for leave to appeal.

Clause 32.—This clause specifies the powers of the Supreme Court to extend the time within which an appeal may be preferred.

Clause 33.—This clause ousts the jurisdiction of the Civil Courts to exercise the jurisdiction, power or authority in relation to such service matters as are exercisable by the Tribunal.

Clause 34.—This clause specifies the condition for transfer of cases pending before any court including a High court or other authority, immediately on establishment of the Tribunal.

Clause 35.—This clause relates to the provisions for filing of appeal to the Tribunal and the period of limitation for filing of such appeal, where any decree or order has been made or passed by any court (other than a High Court).

Clause 36.—This clause provides that all proceedings before the Tribunals shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code.

Clause 37.—This clause provides that the Chairperson, other Members and the officers and other employees provided under clause 13 of the Bill shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Clause 38.—This clause seeks to provide the protection to the Central Government, the Chairperson, any other Member or any other person against suit, prosecution or other legal proceeding for the action taken in good faith or in discharge of the official duties.

Clause 39.—This clause provides that the provisions of the proposed legislation shall have an overriding effect on any other law for the time being in force or any instrument having the force of law.

Clause 40.—This clause empowers the Central Government to make, by order published in the Official Gazette, provisions for removal of difficulties in giving effect to the provisions of the proposed legislation. Such orders could be made only within two years from the commencement of the proposed legislation. Sub-clause (2) provides that every order issued under this clause is required to be laid before each House of Parliament.

Clause 41.—Sub-clause (1) of this clause empowers the Central Government to make, by notification in the Official Gazette, rules for the purpose of carrying out the provisions of the proposed legislation. Sub-clause (2) enumerates the matters in respect of which such rules may be made. These matters, *inter alia*, include the case or cases which shall be decided by a Bench composed of more than two members under item (c) of sub-clause (3) of clause 5; the procedure under sub-clause (3) of clause 9 for the investigation of misbehaviour or incapacity of Chairperson or other Members, the salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members under clause 10, the financial and administrative powers which the Chairperson may exercise over the benches of the Tribunal under section 12, the salaries and allowances payable to, and the other terms and conditions of service of the officers and other employees of the Tribunal under sub-clause (2) of clause 13, the form in which an application may be made under sub-clause (2) of clause 14, the documents and other evidence by which such application shall be accompanied and the fee payable in respect of the filing of such application or for the service of execution of processes, the other matters which may be prescribed under item (i) of sub-clause (4) of clause 14, the form and manner in which an appeal may be filed, the fee payable thereon and the time within which such appeal may be filed under sub-clause (2) of clause 15, the rules subject to which the Tribunal shall have power to regulate its own procedure under sub-clause (1) of clause 23 and competent authority who may authorise legal practitioners or law officers to act as counsel under sub-clause (2) of clause 25.

Clause 42.—This clause empowers the Central Government to make rules retrospectively from a date not earlier than the date on which this Act shall come into operation. But no such retrospective effect shall be given to any such rule so as to prejudicially affect the interest of any person to whom such rule may be applicable.

Clause 43.—This clause provides that every rule made by the Central Government shall be required to be laid before each House of Parliament.

FINANCIAL MEMORANDUM

Clause 4 of the Bill provides that the Central Government shall establish a Tribunal to be known as the Armed Forces Tribunal to exercise the jurisdiction, powers and authority conferred on its by or under the proposed legislation. Sub-clause (1) of clause 5 of the Bill provides that the Tribunal shall consist of a Chairperson and such number of judicial and administrative Members as the Central Government may deem fit. Clause 10 of the Bill provides that the salaries and allowances payable to, and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of the Chairperson and other Members shall be determined by the Central Government by rules made by it. Sub-clause (1) of clause 13 of the Bill empowers the Central Government to determine the nature and categories of officers and other employees require to assist the Tribunal. Sub-clause (2) of said clause empowers the Central Government to make rules specifying the salaries and allowances payable to, and the other terms and conditions of service, of the officers and other employees of the Tribunal.

2. It is proposed to establish, in the first instance, a Principal Bench of the proposed Armed Forces Tribunal. On a representative basis, the recurring annual expenditure on salary of the Chairperson, Members, officers and other staff of the Principal Bench would be estimated to be Rs. 1.90 crore and for one one Bench a similar recurring annual expenditure would be to the tune of Rs. 85 lakhs. The number of the benches, the manpower requirement and the total financial implication in terms of recurring and non-recurring expenditure as well as the modalities involved would, however, be determined after appointment of the Chairperson of the proposed Armed Forces Tribunal. Hence, it would be difficult to work out the exact expenditure, both recurring and non-recurring at this stage.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 41 of the Bill empowers the Central Government to make rules, by notification in the Official Gazette, for carrying out the provisions of the proposed legislation. Sub-clause (2) of that clause enumerates the matters with respect to which rules may be made under the proposed legislation. These matters, *inter alia*, relate to deciding of cases by a bench of the Armed Forces Tribunal composed of more than two Members, the procedure for investigation of misbehaviour or incapacity of the Chairperson and other Members, the salaries, allowances and other terms and conditions of service (including pension, gratuity and other retirement benefits) of the Chairperson and other Members of the Armed Forces Tribunal, financial and administrative powers of the Chairperson, the nature and categories of officers and other employees require for the Tribunal, the salaries, allowances and other terms and conditions of the service of officers and other employees, the fee for making application to the Tribunal, the matters to be tried by the Tribunal, the form, manner and time for preferring an appeal by an aggrieved person and the procedure of fixing of place and time of inquiry, and the authorisation of legal practitioners or any of its law officers to act as counsel before the Tribunal.

2. Clause 43 of the Bill requires that the rules made under the proposed legislation shall have to be laid before Parliament.

3. The matters in respect of which rules may be made relate to matters of procedure or administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of normal character.

RAJYA SABHA

A

Bill

to provide for the adjudication or trial by Armed Forces Tribunal of disputes and complaints with respect to commission, appointments, enrolment and conditions of service in respect of persons subject to the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950 and also to provide for appeals arising out of orders, findings or sentences of courts-martial held under the said Acts and for matters connected therewith or incidental thereto.

(Shri Pranab Mukherjee, Minister of Defence)