



Research Paper

A Critical Review of India's Military Justice System and The Armed Forces Tribunal

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ABSTRACT

India's military justice framework has developed from a predominantly colonial legal structure into a system that combines military discipline with constitutional safeguards. The Army Act, 1950, the Navy Act, 1957, and the Air Force Act, 1950 continue to provide the principal statutory foundations for service discipline, while the Armed Forces Tribunal Act, 2007 created a specialized forum for service matters and appeals arising from court-martial proceedings. This article critically reviews the evolution, structure, jurisdiction, and functioning of the Armed Forces Tribunal (AFT), with particular attention to the relationship between the Tribunal and the constitutional courts. The discussion examines the continuing tension between military necessity, command authority, procedural fairness, and individual rights. It also considers practical concerns relating to geographical accessibility, case pendency, vacancies, infrastructure, and the balance between military expertise and judicial independence. Particular attention is given to the constitutional position of **judicial review** under Articles 226 and 136 and to the jurisprudential developments culminating in **Union of India v. Parashotam Dass**. The review finds that the AFT remains an important institution for specialized military adjudication, but its effectiveness depends upon accessibility, timely disposal, institutional capacity, and a clear relationship with constitutional judicial review. Strengthening digital case management, virtual hearings, geographical coverage, legal assistance, and timely appointments can improve access to justice while preserving the discipline and operational requirements of the Armed Forces.

Keywords: *Armed Forces Tribunal; Military Justice; Court Martial; Judicial Review; Service Matters; Constitutional Remedies; Military Discipline; India*

“Army is always on alert for repelling external aggression and suppressing internal disorder so that the peace-loving citizens enjoy a social order based on rule of law; the same cannot be denied to the protectors of this order².”

--- Lt. Col. Prithi Pal Singh Bedi v. Union of India & Others on 25 August, 1982

I. Introduction

India's military justice system has developed through a combination of historical military law, statutory regulation and constitutional judicial review. Its principal statutory foundations are the Indian Army Act, 1950, the Navy Act, 1957, and the Air Force Act, 1950. These laws evolved from the British military legal framework, whose earlier foundations can be traced to the regulations governing the East India Company and the subsequent Articles of War. The Indian Army Act, 1911 represented an important stage in this historical development. The later establishment of the Armed Forces Tribunal (AFT) marked a significant institutional development by introducing a specialised forum for adjudicating service disputes and hearing appeals from court-martial decisions.³

Military justice has a distinctive purpose because the armed forces must preserve discipline, hierarchy, operational readiness and national security. Consequently, military personnel operate within a legal framework that differs in important respects from the ordinary civilian justice system. At the same time, service personnel

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² <https://indiankanoon.org/doc/278740/>

³ Ministry of Defence, Government of India, Indian Navy Act and related service legislation.

remain citizens entitled to lawful and fair treatment. The central challenge of military justice is therefore to maintain effective discipline without compromising procedural fairness and constitutional protections.

The Armed Forces Tribunal was established under the Armed Forces Tribunal Act, 2007 to provide a specialised mechanism for resolving complaints and disputes relating to service matters and for hearing appeals arising from court-martial proceedings involving members of the Army, Navy and Air Force. The Tribunal has its Principal Bench at Delhi and Regional Benches at Chennai, Jaipur, Lucknow, Chandigarh, Kolkata, Kochi, Guwahati, Mumbai, Jabalpur and Srinagar, functioning at Jammu.⁴

The creation of the AFT was intended to provide quicker and more specialised justice to members of the armed forces. Nevertheless, the literature identifies continuing concerns concerning geographical accessibility, delays in case disposal, vacancies, infrastructure and the relationship between the Tribunal and the constitutional courts. These concerns are particularly important because the effectiveness of a specialised tribunal ultimately depends not only on its statutory jurisdiction but also on its practical accessibility and institutional capacity.^{5&6}

This review examines the existing legal, academic and policy literature concerning India's military justice system, with particular emphasis on the evolution, jurisdiction, functioning, challenges and reform of the Armed Forces Tribunal.

II. Evolution of the Military Justice System in India

The historical development of military justice in India is closely connected with the colonial military legal system. Following the events of 1857, the British administration placed considerable emphasis on discipline and control within the armed forces. The legal framework that subsequently developed was strongly influenced by British military law. This historical background continues to shape contemporary discussions about the structure and philosophy of military justice in India. Prior to attainment of independence, the Indian Army was governed by:

- (a) The Indian Army Act 1911;
- (b) The Indian Army (Suspension of Sentences) Act, 1920;
- (c) The Active Service Ordinance, 1941;
- (d) The Prisoner of War (forfeiture of Emoluments) Ordinance, 1943;
- (e) The Active Service (Amendment) Ordinance, 1946;
- (f) The Indian Army Act Rule, 1911;
- (g) The provision as to minor punishments contained in the Regulations for the army of the India, which derived their statutory force from an order issued by the Commander-in-Chief under sec 20 of the Indian Army Act, 1911;
- (h) The Indian Military Nursing Services Ordinance, 1943; and
- (i) The Indian Military Nursing Services (India) Rules, 1944.

The Indian Army Act, 1950, the Navy Act, 1957, and the Air Force Act, 1950 became the principal statutory instruments governing the three Services. These enactments were designed for a highly disciplined and hierarchical environment in which command authority and operational effectiveness are essential. Courts martial consequently became a central component of the military justice system.

A recurring theme in the literature is the persistence of elements of the colonial legal legacy within the modern system. Critics have argued that the emphasis on discipline, command authority and military necessity has not always developed at the same pace as constitutional principles such as natural justice, fairness, individual rights and judicial independence. This creates a continuing tension between the legitimate requirements of military discipline and the constitutional rights of service personnel.

The Supreme Court has recognised that Article 33 of the Constitution permits Parliament to modify or restrict certain fundamental rights in their application to members of the armed forces. However, service personnel do not lose their status as citizens, and military proceedings must continue to operate within the framework of law and fairness.⁷

The military justice framework also provides different forms of court martial. Section 108 of Chapter X of the relevant military manual identifies four categories: General Court Martial, District Court Martial, Summary General Court Martial and Summary Court Martial.

⁴ Ministry of Defence, Government of India, Annual Report 2024–25.

⁵ International Journal of Law Management & Humanities (2021), discussion concerning accessibility of the Armed Forces Tribunal.

⁶ India Kanoon, relevant judicial material concerning the Armed Forces Tribunal

⁷ Kulwant Singh (Nk.) S/O Sardar Sadhu v. Union of India (24 June 1991).

III. Introduction and Role of the Armed Forces Tribunal Act, 2007

Before the creation of the AFT, service personnel seeking legal redress faced a fragmented system involving courts martial and the ordinary courts. The absence of a dedicated appellate forum for military matters was a longstanding concern. The Armed Forces Tribunal Act, 2007 was therefore enacted to establish a specialised judicial institution for disputes concerning service conditions and appeals arising from court-martial proceedings.

The need for such an institution had been recognised in judicial decisions and Law Commission recommendations. In *Lt. Col. Prithi Pal Singh Bedi v. Union of India* (1982), the Supreme Court criticised the limitations of the existing military justice framework and highlighted the need for an effective appellate mechanism.⁸ The Law Commission of India also recommended institutional reforms leading towards the establishment of a specialised tribunal.⁹

The AFT Act confers original jurisdiction in specified service matters and appellate jurisdiction over court-martial decisions. The legislation was intended to combine specialised understanding of military service conditions with judicial adjudication, thereby providing a more suitable mechanism for resolving disputes involving armed forces personnel.

The appellate structure of the AFT subsequently raised important constitutional questions. Section 31 of the Act provides a restricted route of appeal to the Supreme Court on specified questions of law. The question of whether High Court judicial review under Articles 226 and 227 could be excluded or substantially limited became a significant issue in constitutional jurisprudence.

In *S.P. Sampath Kumar v. Union of India* (1987), the Supreme Court accepted tribunalisation in principle, subject to the requirement that a tribunal must provide an effective institutional mechanism.¹⁰ The Constitution Bench decision in *L. Chandra Kumar v. Union of India* (1997), however, reaffirmed that judicial review by High Courts under Article 226 and by the Supreme Court under Article 32 forms part of the basic structure of the Constitution.¹¹

Article 227(4) of the Constitution creates a specific limitation concerning the supervisory jurisdiction of High Courts over courts and tribunals constituted under laws relating to the armed forces. This provision has contributed to continuing debate concerning the precise relationship between the AFT and the constitutional courts.

The Supreme Court's decision in *S.N. Mukherjee v. Union of India* (1990) further established that court-martial proceedings are subject to judicial review and emphasised the importance of recording reasons.¹² Thus, even before the creation of the AFT, constitutional judicial review had emerged as an important safeguard against jurisdictional error, denial of natural justice and violations of legal rights.

3a. The Armed Forces Tribunal (Procedure) Rules, 2008 and The Armed Forces Tribunal (Practice) Rules, 2009.

In exercise of the power conferred by clause (f), (g) and (k) of sub-section (2) of the section (2) of the Section 41 of the Armed Forces Tribunal Act, 2007 the central government has made these rules to give effect to the provision of the Act.

IV. Structure and Jurisdiction of the Armed Forces Tribunal

The AFT combines judicial expertise with specialised knowledge of military administration and service conditions. Its composition is intended to enable the Tribunal to understand the distinctive requirements of military service while maintaining an adjudicatory framework based on legal principles.

The Tribunal exercises jurisdiction over specified service matters and has appellate jurisdiction in matters arising from courts martial under the Armed Forces Tribunal Act, 2007. The literature nevertheless identifies limitations in the Tribunal's jurisdiction and raises questions concerning the extent to which military disciplinary decisions can be reviewed.

The relationship between the AFT and the constitutional courts is particularly important. Articles 226 and 227 of the Constitution and Article 136 of the Constitution continue to provide constitutional safeguards, subject to the applicable jurisprudence. Judicial review is intended to correct jurisdictional errors, procedural

⁸ *Lt. Col. Prithi Pal Singh Bedi Etc. v. Union of India*, (1982) 3 SCC 140.

⁹ Law Commission of India, Amendment of Army, Navy and Air Force Acts, Law Commission Report No. 15 (1999).

¹⁰ *S.P. Sampath Kumar v. Union of India*, (1987) 1 SCC 124.

¹¹ *L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261.

¹² *S.N. Mukherjee v. Union of India*, (1990) 4 SCC 594.

unfairness and violations of fundamental legal principles rather than to substitute the constitutional court's assessment for that of the competent military authority in every case.

V. Scope of Jurisdiction and Judicial Review

The scope of judicial review over AFT decisions has generated substantial constitutional and doctrinal discussion. In *Major General Shri Kant Sharma v. Union of India* (2015), the Supreme Court considered the relationship between the AFT framework and High Court writ jurisdiction.¹³ The decision contributed to uncertainty regarding the extent of High Court intervention in service matters.

The broader jurisprudence concerning tribunals, including *Union of India v. R. Gandhi* (2010), reaffirmed the constitutional importance of judicial independence and judicial review.¹⁴ The continuing debate demonstrates the need to reconcile the specialised nature of military adjudication with the constitutional role of superior courts.

In *Union of India v. Parashotam Dass* (2023), the Supreme Court reaffirmed the importance of judicial review under Article 226 and clarified the constitutional position concerning High Court writ jurisdiction in relation to AFT matters.¹⁵ The Court emphasised that judicial review is concerned principally with legality, jurisdictional error, procedural fairness and other recognised grounds of review rather than with a routine reappraisal of evidence.

The jurisprudence therefore reflects a balance: military authorities require a degree of institutional deference because of operational and disciplinary considerations, while constitutional courts retain the responsibility to ensure that public power is exercised lawfully and fairly.

VI. Challenges and Criticisms of the Armed Forces Tribunal

Although the AFT has made an important contribution to specialised adjudication of military service disputes, the literature identifies several institutional and procedural weaknesses. The principal concerns include limited geographical accessibility, delay and pendency, vacancies, infrastructure constraints and the continuing debate concerning the balance between military expertise and judicial independence.

6.1 Limited Accessibility

Geographical accessibility remains a significant concern. Serving personnel, veterans and their dependants may live or be posted far from the nearest AFT Bench. Travelling to another city for repeated hearings can impose financial costs, administrative difficulties and loss of time. These difficulties may be particularly burdensome for retired personnel and individuals pursuing pension or retirement-related claims.

Improving the geographical distribution of Benches, expanding electronic filing and making greater use of secure virtual hearings could reduce these barriers and make specialised military justice more accessible.

6.2 Delay and Pendency of Cases

The AFT was created with the objective of providing specialised and expeditious adjudication. However, delays and accumulated pendency can undermine this purpose. Vacancies among Tribunal members, insufficient administrative infrastructure, procedural requirements, heavy litigation volumes and case transfers may contribute to delays.

Prolonged litigation can have significant consequences for armed forces personnel and veterans. Disputes involving pensions, retirement benefits, promotions or disciplinary matters may directly affect an individual's financial security and professional status. Timely appointments, effective administrative support, modern case-management systems and greater use of technology are therefore important to improve efficiency.

6.3 Balance Between Military Expertise and Judicial Independence

The composition of the AFT seeks to combine judicial competence with military experience. Such expertise can assist in understanding command structures, operational requirements, service regulations and disciplinary procedures. At the same time, adjudication must remain independent of the administrative interests of the armed forces.

¹³ *Major General Shri Kant Sharma v. Union of India*, (2015) 6 SCC 773.

¹⁴ *Union of India v. R. Gandhi*, Civil Appeal No. 3067 of 2004 (2010).

¹⁵ *Union of India v. Parashotam Dass*, 2023 SCC OnLine SC 31.

The credibility of the Tribunal consequently depends on maintaining an appropriate institutional balance. Military knowledge should strengthen the quality of adjudication without creating a perception that judicial decision-making is influenced by military administration.

VII. Drawbacks from a Military Justice Perspective

From the perspective of military administration, extensive judicial intervention may also create practical concerns. The armed forces depend upon discipline, hierarchy, operational readiness and timely decision-making. The literature therefore identifies several possible drawbacks:

- a. Direct approaches to High Courts in appropriate circumstances may reduce the practical centrality of the specialised tribunal.
- b. Extensive constitutional litigation may weaken some of the efficiency-related rationale behind creating a specialised military tribunal.
- c. Applying general tribunal jurisprudence to military disputes may not always account fully for the distinctive requirements of military service.
- d. Litigation concerning promotions, postings and pensionary benefits can affect administrative continuity.
- e. Different approaches adopted by different High Courts may create uncertainty in the interpretation of service law.
- f. Prolonged litigation may affect organisational efficiency, morale and the timely implementation of service decisions.

Another concern is the possibility of inconsistent judicial outcomes across different jurisdictions. Because the armed forces operate through a centralised organisational structure, divergent approaches to similar service disputes may create administrative uncertainty. At the same time, these concerns must be balanced against the constitutional requirement that individuals should have access to an effective legal remedy.

VIII. Reform Proposals and Future Directions

The challenges identified in the literature do not reduce the importance of specialised military adjudication. Instead, they indicate the need for institutional strengthening and procedural reform.

First, the geographical reach of the AFT could be improved by establishing additional Benches or strengthening existing arrangements in regions with substantial numbers of serving personnel and veterans. Second, timely appointment of judicial and administrative members is essential to reduce vacancies and case backlogs.

Third, digital case-management systems, electronic filing and appropriately regulated virtual hearings can reduce travel requirements and improve administrative efficiency. Fourth, adequate legal assistance should be made available to eligible personnel and veterans so that the existence of a legal remedy translates into meaningful access to justice.

Some reform proposals also support strengthening the Tribunal's role in matters connected with court-martial proceedings, while others emphasise transparency, institutional resources and procedural efficiency. Any expansion of jurisdiction should, however, be carefully designed to avoid unnecessary duplication and to preserve the operational requirements of the armed forces.

The decision in *Union of India v. Parashotam Dass* illustrates the continuing need to reconcile specialised military adjudication with constitutional judicial review. The judgment reinforces the constitutional role of High Courts while retaining the AFT as a specialised forum. The broader reform challenge is therefore to design an appellate and review structure that combines efficiency, fairness, accessibility and constitutional accountability.

IX. Conclusion

The literature on India's military justice system demonstrates a continuing effort to reconcile two important objectives: maintaining discipline and operational effectiveness within the armed forces, and protecting the legal and constitutional rights of service personnel.

The decision in *Lt. Col. Prithi Pal Singh Bedi v. Union of India* (1982) was an important milestone in judicial criticism of the deficiencies of the military justice system. The Supreme Court highlighted the need for an effective appellate mechanism and emphasised that justice should not be sacrificed in the name of discipline.¹⁶

The establishment of the Armed Forces Tribunal under the 2007 Act represented a major institutional response to these concerns. The Tribunal has provided a specialised forum for service disputes and appeals arising from court-martial proceedings. Nevertheless, accessibility, case pendency, infrastructure, vacancies,

¹⁶ *Lt. Col. Prithi Pal Singh Bedi v. Union of India*, (1982) 3 SCC 140.

jurisdictional questions and the relationship between military expertise and judicial independence continue to influence its effectiveness.

The jurisprudence surrounding the AFT, particularly the decisions concerning High Court judicial review, demonstrates that specialised adjudication cannot operate outside the constitutional framework. *Union of India v. Parashotam Dass* reaffirmed the importance of Article 226 judicial review and reinforced the principle that service personnel must not be left without an effective constitutional remedy.¹⁷

Future reforms should therefore focus on improving accessibility, reducing delays, strengthening digital infrastructure, ensuring timely appointments and maintaining institutional independence. A balanced system should preserve the distinctive requirements of military discipline while ensuring fairness, legality and effective access to justice. Such reforms would strengthen the AFT's ability to fulfil its original purpose and contribute to a modern, credible and constitutionally consistent military justice system.

References / Footnotes

- [1]. Ministry of Defence, Government of India, Indian Navy Act and related service legislation.
- [2]. Ministry of Defence, Government of India, Annual Report 2024–25.
- [3]. International Journal of Law Management & Humanities (2021), discussion concerning accessibility of the Armed Forces Tribunal.
- [4]. India Kanoon, relevant judicial material concerning the Armed Forces Tribunal.
- [5]. Kulwant Singh (Nk.) S/O Sardar Sadhu v. Union of India (24 June 1991).
- [6]. Lt. Col. Prithi Pal Singh Bedi Etc. v. Union of India, (1982) 3 SCC 140.
- [7]. Law Commission of India, Amendment of Army, Navy and Air Force Acts, Law Commission Report No. 15 (1999).
- [8]. S.P. Sampath Kumar v. Union of India, (1987) 1 SCC 124.
- [9]. L. Chandra Kumar v. Union of India, (1997) 3 SCC 261.
- [10]. S.N. Mukherjee v. Union of India, (1990) 4 SCC 594.
- [11]. Major General Shri Kant Sharma v. Union of India, (2015) 6 SCC 773.
- [12]. Union of India v. R. Gandhi, Civil Appeal No. 3067 of 2004 (2010).
- [13]. Union of India v. Parashotam Dass, 2023 SCC OnLine SC 31.
- [14]. Lt. Col. Prithi Pal Singh Bedi v. Union of India, (1982) 3 SCC 140.
- [15]. Union of India v. Parashotam Dass, 2023 SCC OnLine SC 31.

¹⁷ *Union of India v. Parashotam Dass*, 2023 SCC OnLine SC 31.