

ACT No. V OF 1863.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 29th January 1863).

*An Act to amend Act XXIX of 1861 (to consolidate and amend the Articles of War for the Government of the Native Officers and Soldiers in Her Majesty's Indian Army).*

Preamble. WHEREAS it is expedient to amend certain Articles of War enacted in the said Act XXIX of 1861 ; It is enacted as follows :—

1. Sections I to XVII, and Section XXVIII of Regulation XXII of the Bombay Code *(to declare and define Military Authority in its relations to the Civil Power and to the Community at large)* except Sections III and VII in so far as they regulate the jurisdiction, in small suits, of the Superintendents of Bazars ; Chapter VI of the same Regulation ; and Regulation II of 1829 of the Bombay Code *(for establishing Rules and Articles for the better government of the Native Officers and Sepoys in the service of the United Company of Merchants of England trading to the East Indies under the Presidency of Bombay)* are hereby repealed.

II. The Articles of War, numbered respectively 3, 32, 73, 78, 82, 117, and 166 in the said Act XXIX of 1861, are hereby repealed, and in lieu thereof the following Articles of War shall be read and taken as Articles 3, 32, 73, 78, 82, 117, and 166 respectively, of the said Act XXIX of 1861.

ARTICLE 3.

A Non-Commissioned Officer or Soldier shall be liable to dismissal or discharge by order of the Governor-General of India in Council, or of the Governor in Council, or the Commander-in-Chief

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in-Chief of the Presidency to which he belongs ; and the said Commander-in-Chief shall have power to reduce any Non-Commissioned Officer to the ranks.

The Commanding Officer of a Regiment or Corps shall have power to dismiss or discharge any Soldier below the rank of a Non-Commissioned Officer, and to dismiss, discharge, or reduce to the ranks any Non-Commissioned Officer belonging to such Regiment or Corps.

Discharge and reduction by Commanding Officer.

Every such dismissal or discharge shall involve forfeiture of claim to pension.

No Non-Commissioned Officer shall be reduced to the ranks for any stated period, nor suspended from his rank, nor reduced from a higher to a lower grade of Non-Commissioned Officer.

Proviso as to reduction and suspension.

Every Non-Commissioned Officer or Soldier discharged the service shall be furnished by the Commanding Officer of the Regiment or Corps to which he belonged with a discharged certificate in the vernacular language of such Non-Commissioned Officer or Soldier. Such certificate shall express the authority for, and cause of, the discharge, and the period of the entire service in the Army of such Non-Commissioned Officer or Soldier, and shall be accompanied with an English translation.

Certificate of discharge.

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ARTICLE 32.

Who shall wantonly and intentionally defile any place dedicated to religious worship, or shall wantonly and intentionally insult the religious feelings of any person.

Defiling place of religious worship.

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ARTICLE 73.

The Commander-in-Chief of the Presidency may appoint a General or other Court Martial, and may confirm, mitigate, or commute or remit the sentence of such Court. He may issue his Warrant to any General or other Officer under his command, having the command of any body of Troops in the Service of Her Majesty,

Powers of the Commander-in-Chief to appoint Courts Martial.

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*Punishment of Non-Commissioned Officers and Soldiers.*

A General, or District, or Garrison, or Regimental Court Martial may sentence a Non-Commissioned Officer to be reduced to the ranks; or may sentence a Non-Commissioned Officer or Soldier to be dismissed the service; or to be placed one or more steps lower in the list of the rank which he holds, whereby such Non-Commissioned Officer or Soldier shall lose the benefit of the corresponding length of service; or to suffer corporal punishment not exceeding fifty lashes; or to imprisonment which may be with or without hard labor, and which may include solitary confinement for any portion or portions of such imprisonment, not exceeding fourteen days at a time, nor eighty-four days in any one year, with intervals between the periods of solitary confinement of not less duration than such periods of solitary confinement.

No Soldier shall be kept in solitary confinement more than eighty-four days in any one year, whether by the sentence of one or more Courts Martial, or by order of the Commanding Officer of the Regiment or Corps to which such Soldier belongs.

No sentence of imprisonment shall be awardable by a General Court Martial for any period exceeding two years (except when otherwise expressly provided); nor by a District or Garrison Court Martial for any period exceeding one year; nor by a Regimental Court Martial for any period exceeding six calendar months.

No Non-Commissioned Officer shall be sentenced to imprisonment or corporal punishment without being first reduced to the ranks.

*Punishment for "Disgraceful Conduct."*

A General, or District, or Garrison Court Martial may, in addition to corporal punishment or to imprisonment, sentence a Soldier convicted of disgraceful conduct to forfeiture of all advantage as to additional pay and claim to pension on discharge, which otherwise might have accrued from the length

Reduction to ranks,  
corporal punishment, im-  
prisonment, or solitary con-  
finement.

Forfeiture of pay or  
pension in addition to  
corporal punishment or  
imprisonment.

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Majesty, empowering such Officer to appoint District or Garrison Courts Martial, as occasion may require, for the trial of any offence committed by any Officer, or Soldier, or Follower in the Service of Her Majesty, not being a European British subject of Her Majesty; and to confirm and mitigate, or commute or remit the sentence of any such Court Martial. No sentence, adjudging or involving forfeiture of additional pay, or of claim to pension on discharge, or of any prospective advantage, shall be carried into effect until sanctioned by the Commander-in-Chief of the Presidency to which the offender belongs. The Commander-in-Chief may remit any forfeiture awarded, and may order the restoration of any advantage of which the offender has been deprived by such forfeiture.

ARTICLE 78.

A General Court Martial may sentence for any crime, which by these Articles is made liable to such sentence, any Officer to <sup>Death, transportation, or imprisonment.</sup> death or to transportation for life, or for any period not less than seven years, or in cases falling under Article 22 or Article 66, to imprisonment with or without hard labor for any period not exceeding three years, and with or without solitary confinement; or may sentence any Soldier to death, or to transportation for life, or for any period not less than seven years, or to imprisonment for any period not exceeding fourteen years, for any crimes which are by these Articles of War expressly made liable to any such sentence and for such crimes only. No Court Martial inferior to a General Court Martial shall have power to pass a sentence of death or transportation or imprisonment for any longer period than three years.

*Punishment of Commissioned Officers.*

A General Court Martial may sentence a Commissioned Officer to be <sup>Dismissal, suspension, or reduction to ranks.</sup> dismissed the service; or to be suspended from rank and pay and allowances for a stated period; or to be placed one or more steps lower in the list of his rank, by an alteration of the date of the Commission, and such Officer shall lose the corresponding benefit of length of service.

No Court Martial inferior to a General Court Martial, shall have power to try a Commissioned Officer.

*Punishment*

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length or nature of his former service ; or to forfeiture of such advantage absolutely, whether it may have accrued from past service, or might accrue from future service.

No Soldier shall be tried for disgraceful conduct by any Court Martial inferior to a District or Garrison Court Martial.

A Court Martial may, in addition to any punishment involving dismissal or discharge, sentence any Officer or Soldier, whom it is authorized to try, to forfeiture of arrears of pay and allowances due at the time of dismissal or discharge, or of such portion thereof as may be required to make good any loss or damage arising out of his misconduct. A Court Martial, in addition to any punishment not involving dismissal or discharge, may sentence any Officer or Soldier to be put under stoppages not exceeding, in the case of an Officer two-thirds of his pay and allowances, and in the case of a Non-Commissioned Officer or Soldier one-half of his pay and allowances until any loss or damage arising out of his misconduct be made good.

Every Soldier subjected to confinement in the Quarter Guard or Defaulter's Room, or in a Solitary Cell, or in any other place of imprisonment, whether as a punishment by his Commanding Officer or on a charge of which he shall be afterwards convicted by Court Martial shall forfeit all claim to pay and allowances during such confinement, and shall be entitled to receive subsistence only according to the rates laid down in the Regulations.

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ARTICLE 82.

An Officer Commanding a Detachment of his own Regiment or Corps may assemble a Regimental Detachment Court Martial ; and an Officer Commanding a Detachment consisting of men of different Regiments or Corps, may assemble a Detachment or Line Court Martial. Every Court so assembled shall be constituted in the manner provided for a Regimental Court Martial under the provisions of these Articles of War, and shall have the like powers.

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The provisions of these Articles of War which relate to a Court Martial held in a Regiment or Corps shall, in all practicable cases, be taken to apply to a Court Martial held in a Detachment.

No Officer on detached command of less than three Troops or Companies, or of a Detachment not numerically equal to three Troops or Companies, and not being on the line of march or on board a ship or other vessel, shall carry into effect any punishment awarded by a Court Martial held by his order, until the sentence shall have been confirmed by the Officer Commanding the Regiment or Corps to which the offender belongs, or by the nearest Superior Officer holding a command of not less than a Regiment, who is hereby authorized to confirm every such sentence in like manner as an Officer Commanding a Regiment or Corps might do. Provided that in detached situations beyond the Sea, or out of the British Territories in India, or when on service in the field, or in cases where an immediate example is necessary, and reference cannot be made to such Commanding or Superior Officer without detriment to the service, the Officer Commanding such Detachment may exercise the powers relating to Courts Martial which are vested in an Officer Commanding a Regiment or Corps.

*Clause 2.*

The Commanding Officer of any Detachment of not less than three Troops or Companies, or of any Detachment numerically equal to or greater than three Troops or Companies; and the Commanding Officer of any European Detachment to which Native details are attached (of whatever strength or number such European Detachments, or such Native details may be); and any Commissary of Ordnance being a Commissioned Officer or other Commissioned Officer in charge of any Arsenal, Ordnance Establishment, or any Camp Equipage Depôt, may summarily try any offence against these Articles of War, committed by any person under his command or who is subject to such Articles (not being a Commissioned Officer); and may on conviction sentence such offender and carry out such sentence without confirmation or any further authority; provided that such sentence shall not exceed the powers of a Regimental Court Martial.

In detached situations beyond the Sea, or out of the British Territories in India, or when on service in the field, or in cases where an immediate example is necessary, and a Court Martial cannot be convened under Clause 1 of this Article without detriment to the service, and reference cannot be made without such

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such detriment to the Officer Commanding the Regiment or Corps to which the offender belongs, or to any other Superior Officer holding a command not less than that of a Regiment, the Officer Commanding any Detachment though of less than three Troops or Companies or not numerically equal to three Troops or Companies, may exercise the powers of summary trial, of sentencing the offender, and of carrying out such sentence, which might have been exercised by the Officer Commanding the Regiment or Corps to which the offender belongs. Provided that, if reference can be made to any other Superior Officer holding a command not less than that of a Regiment, such reference shall be made, and such Officer thereupon shall have authority summarily to try, and in case of conviction to sentence the offender, and to carry out such sentence as if the offender had been under his command.

Any Commanding Officer or other Officer holding a trial under this Article shall be deemed a Court Martial, and the words "Court Martial" in these Articles of War shall be deemed to include such Commanding Officer or other Officer holding a trial.

The proceedings of such summary trial shall be conducted, so far as may be practicable, and shall be recorded in the same manner as is provided in Article 81 for summary trials by an Officer Commanding a Regiment or Corps, and shall, in like manner, be signed and forwarded to the Officer Commanding the Division within which such Detachment shall be at the time, who is hereby authorized to set aside the trial for the same reasons that an Officer Commanding a Division is authorized by Article 81 to set aside a trial by an Officer Commanding a Regiment or Corps. Provided that every sentence so awarded by an Officer Commanding any such Detachment or by any other Officer holding a trial under this Article may be carried out without waiting for its approval by the Reviewing Officer.

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ARTICLE 117.

No person who shall have been acquitted or convicted by a Court Martial of any offence, shall be liable to be tried a second time by the same or any other Court Martial for the same offence. Provided that any person may be tried for the offence of murder, and punished for that offence, notwithstanding

No person to be tried a second time for the same offence.

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standing he may have been tried and punished for the act which caused death, if at the time of his conviction for the said act death shall not have resulted, or shall not have been known by the Court which passed sentence to have resulted.

When any person subject to these Articles of War shall have been found guilty by a Court Martial of any Military offence, such Court Martial shall enquire into and receive evidence of any previous conviction of such person before a Court Martial or a Court of Justice, and shall enquire into the general character of such person, if a Soldier, for the purpose of apportioning the punishment to which he is liable to be sentenced for the offence of which he has been so found guilty. And it shall not be necessary to give any notice to such person, previously to his trial, that such evidence will be received.

ARTICLE 166.

The Regulations by which in any Presidency the Office and powers of Commissariat Officers, or Officers in charge of the Police in any Cantonments, or Superintendents of Military Bazars, are at present defined and controlled; or by which Punchayets are constituted and guided, shall continue to be in full force, and to be observed at the several Presidencies respectively.

Regulations respecting  
Bazar and Cantonment  
Police, and Panchayets,  
declared in force.

Addition to Article 103 of  
Act XXIX of 1861.  
Act XXIX of 1861.

III. The following additional Clause shall be read as the second paragraph of Article 103 of the said

Every witness during attendance on a Court Martial, and during the time necessary for going and returning, shall be privileged from arrest in any Civil proceeding, and if arrested in any such proceeding, may be discharged by order of such Court Martial.

Construction:

IV. This Act shall be read and taken as part of the said Act XXIX of 1861.