

Commentary on ITBPF Law

Babu Joseph



INDIA • SINGAPORE • MALAYSIA



Notion Press

No.8, 3rd Cross Street, CIT Colony,
Mylapore, Chennai,
Tamil Nadu – 600004

First Published by Notion Press 2021
Copyright © Babu Joseph 2021
All Rights Reserved.

ISBN 978-1-64892-995-3

This book has been published with all efforts taken to make the material error-free after the consent of the author. However, the author and the publisher do not assume and hereby disclaim any liability to any party for any loss, damage, or disruption caused by errors or omissions, whether such errors or omissions result from negligence, accident, or any other cause.

While every effort has been made to avoid any mistake or omission, this publication is being sold on the condition and understanding that neither the author nor the publishers or printers would be liable in any manner to any person by reason of any mistake or omission in this publication or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this work. For any defect in printing or binding the publishers will be liable only to replace the defective copy by another copy of this work then available.

**Dedicated to the loving memory of my
'Appachan' Mr. W. C. Mani,
'Achachan' Mr. A. I. Joseph and
my younger brother Mr. Joseph K.**

Acknowledgements

- Law of Evidence – Ratan Lal & Dhiraj Lal
Human Rights and Police – Dr. S Subramanian IPS (Rtd)
'The Week' Magna Carta 800 – Malayala Manorama Publication

If any part of the book for which acknowledgement is required has been inadvertently left out, it shall be taken care of in subsequent editions, if brought to the notice of the author.

Disclaimer

Maximum care has been taken to avoid errors while quoting references and Case Law. Opinions, explanations, expressions, views and suggestions in the book are of the author. Inference may be drawn in conjunction with the relevant Sections of the law and the author gives no warranty of the absolute accuracy of the contents and for any loss, damage or inconvenience as a result of such information.

**'When God closes all doors, He opens a window.
Often we spend so much energy banging on closed doors
that we forget to feel and enjoy the breeze
coming through the open window.'**

**'To none shall we deny,
To none shall we delay,
To none shall we sell justice.'**

– Magna Carta

Contents

<i>Annexures</i>	<i>xxi</i>
<i>Preface</i>	<i>xxiii</i>
<i>India's Border on the North and North East</i>	<i>xxv</i>
<i>ITBPF – History in Brief</i>	<i>xxvii</i>

01. ITBPF Act and Rules	1
1.1 Special Features of ITBPF Act and Rules	2
1.1.1 ITBPF - An Armed Force of Union of India. (Preamble & Sec 4 (1)	2
1.1.2 ITBPF Act 1992 - A Special Law under Sec 5 CrPC	2
1.1.3 Protection under Art 311 of the Constitution not available to Force members	4
1.1.4 Restrictions on Constitutional Rights applicable to ITBPF personnel	6
1.1.5 Members of the Force not absolved of their obligations under the civil law	10
1.1.6 Special offences and special provisions	10
1.1.7 Special Courts known as Force Courts	10
1.1.8 Law of evidence applicable in trials by Special Courts (Sec 99; IEA Sec 1 (Extent)	11
1.1.9 Remedy against finding or sentence of Force Courts (FCs)	12
1.1.10 Appeal to the executive authority against termination of service (Rule 28)	14
1.1.11 Special Courts not subject to the superintendence of the High Court	14
1.1.12 High Court/Supreme Court has no appellate jurisdiction on Special Courts	14
1.1.13 Writ jurisdiction by Supreme Court & High Courts	16
1.1.14 No judicial review of merits of case decided by SFCs	20
1.1.15 Central Administrative Tribunal Act not applicable to ITBPF persons	22
1.1.16 No prior permission is required for filing a writ in High Court/Supreme Court	22
1.2 Tasks of the Force	22
1.3 Constitution of the Force	23

1.4	Categories of Personnel in the Force	24
1.5	Ranks in the Force (Sec 153 (1); Sec 2 (1) (s), (v), (x) & (j))	24
1.6	Members of the Force	26
1.7	Enrolment and Appointment	27
1.8	Conditions of service	29
1.9	Command and Supervision by DG.	31
1.9.1	Functions & responsibilities of DG, Addl. DG, IG, DIG, Addl. DIG and Commandant	32
1.9.2	Devolution of command	32
1.10	Exercise of Command & Powers	33
1.10.1	Officers responsible for command, discipline, administration & morale	34
1.11	Persons Subject to ITBPF Act and Rules	35
1.12	Tenure of service and withdrawal from service	37
1.13	Dismissal or Removal from Service	38
1.14	Termination of Service	39
1.15	Power of Reduction or Deprivation of Rank.	41
1.16	Redressal of Grievances	41
1.17	Evidence of the Rank & Status of Officers & SOs.	42
1.18	Law laid down by Supreme Court binding on the Force.	42
1.19	Service Matters.	43
1.20	President's Power of Pardon & Remission of Sentences of FC	43
1.21	Performae Appended to ITBPF Rules (Rule 4)	44
02.	Offences & Punishments	45
2.1	Definitions ITBPF Act	46
2.2	Offences & Sections in ITBPF Act	52
2.3	Grouping of Offences in ITBPF Act	54
2.4	Offences Punishable with Death.	54
2.5	Offences in Relation to Enemy	55
2.5.1	Offences in relation to enemy and punishable with death (Sec 16)	55
2.5.2	Offences in relation to the enemy – Not punishable with death (Sec 17)	56
2.6	Offences more Severely Punishable in Active Duty (Sec 18)	56
2.7	Offences Committed Collectively.	57
2.7.1	Mutiny – punishable with death (Sec 19)	57
2.7.2	Period of limitation for trial	57
2.8	Offences Normally Committed Individually	58
2.8.1	Desertion (Sec 20)	59
2.8.2	Absent Without Leave (AWL)	60

2.8.3	Overstayal from Leave (OSL)	62
2.8.4	Other offences in Sec 21	63
2.8.5	Authority for regularising AWL period	63
2.8.6	Comparison: Desertion & Absence without Leave	63
2.8.7	Insubordination and obstruction (Sec 24)	65
2.8.8	False information on enrolment (Sec 25)	66
2.8.9	Unbecoming conduct by officers or Subordinate Officers (Sec 26)	66
2.8.10	Disgraceful conduct (Sec 27)	66
2.8.11	Intoxication (Sec 29; Rule 36)	66
2.8.12	Permitting escape of a person in custody (Sec 30)	67
2.8.13	Escape from custody (Sec 32)	67
2.8.14	Extortion and corruption (Sec 34)	67
2.8.15	False accusation (Sec 37)	69
2.8.16	Falsifying official documents (Sec 38)	69
2.8.17	Signing in blank and failure to report (Sec 39)	70
2.8.18	Miscellaneous offences (Sec 44)	70
2.9	Offences Against Superior Officer (Sec 22, 23, 24 & 37)	71
2.9.1	Striking and threatening Superior Officer (Sec 22)	71
2.9.2	Disobedience of lawful command (Sec 23 & 24; Rule 8(5)	71
2.9.3	Insubordination & obstruction (Sec 24)	73
2.9.4	False accusation (Sec 37)	74
2.10	Offences Against Subordinates (Sec 28, 31, 34, 37 & 42)	74
2.10.1	Ill-treating a subordinate (Sec 28)	74
2.10.2	Irregularity with arrest or confinement (Sec 31)	74
2.10.3	Extortion & corruption (Sec 34)	74
2.10.4	False accusation (Sec 37)	74
2.10.5	Unlawful detention of pay (Sec 42)	75
2.11	Offences in Respect of the Property (Sec 33, 35 & 36)	75
2.11.1	Theft and misappropriation of property (Sec 33)	75
2.11.2	Making away with equipment (Sec 35)	75
2.11.3	Injury to property (Sec 36)	75
2.12	Violation of Good Order & Discipline (Sec 43)	76
2.12.1	Functions of Force police (Sec 75)	76
2.13	Offences Against Force Courts (Sec 40, 41)	77
2.14	Offences not to be Tried Summarily (Rule 49)	77
2.15	Civil Offences Triable by Force Courts (Sec 49)	79
2.16	Civil Offences Normally Charged Under Sec 49	79
2.17	Civil Offences not Triable and not to be claimed for trial by Force Courts (Sec 50, 86 (2); Rule 42, 48)	80

2.17.1	Offences Not triable by FCs (Sec 50; Rule 42):	81
2.17.2	Offences not triable by SFC without reference to DIG (Sec 86 (2); Rule 48):	81
2.18	Jurisdiction of Court	82
2.18.1	Plea to the jurisdiction of the court (Rule 74)	82
2.18.2	Considerations for determining jurisdiction	82
2.18.3	Jurisdiction to person	82
2.18.4	Jurisdiction to place	84
2.18.5	Jurisdiction to time	84
2.18.6	Jurisdiction to trial	86
2.19	Plea to Jurisdiction (Rule 74)	93
2.20	Plea on Objection to Charge (Rule 75).	93
2.21	Application for Separate Trial (Rule 78) & for Trial on separate Charge Sheet (Rule 79)	94
2.22	Punishments (Sec 51, 52, 56 & 58)	94
2.22.1	Major punishments awardable by FCs (Sec 51 (1)	94
2.22.2	Alternate punishments (Sec 52 & 49)	95
2.22.3	Minor punishments to Enrolled Persons in Summary Trial by Commanding Officer & Others (Sec 56)	95
2.22.4	Minor punishments to SOs (Sec 58 (2) & (3)	97
2.22.5	Minor punishments to officers (Sec 58 (1).	98
2.22.6	Cancellation, variation or remittance of punishments under Sec 58. (Sec 59)	98
2.22.7	Powers of reduction of rank (Sec 11, 51, 56)	98
03.	Arrest.	101
3.1	General Purposes of Arrest	101
3.2	Types of Arrest (Rule 30, 32)	101
3.3	Authority to Order Arrest (Sec 69, Rule 31)	102
3.4	Arrest when Imposed	104
3.5	Arrest How Imposed.	106
3.6	Rights of a Person Under Arrest	107
04.	Suspension	111
4.1	Stages in Punitive Action	111
4.2	Authority to Order Suspension (Rule 40 (1)	111
4.3	When Suspension is Deemed to have been Ordered (Rule 40 (2)	112
4.4	Continuation of Suspension (Rule 40 (3), (4), (5)	112
4.5	Powers Vested in the Suspended Person and his Headquarter during Suspension.	116

4.6	Financial Entitlements during Suspension (FR 53)	116
4.7	Rights of a Person Under Suspension.	119
05.	Termination of Service	119
5.1	Persons Subject to the Act	119
5.2	Provisions for Termination of Service	119
5.3	Modes of Administrative Termination of Service	120
5.3.1	Termination of service – grounds and powers.	122
5.3.2	Authority competent to order termination of service (Rule 17).	123
5.3.3	Retirement in the Force.	124
5.4	Termination of Service	125
5.4.1	By Force Court proceedings.	125
5.4.2	By administrative action	125
5.5	Procedure for Administrative Termination of Service	126
5.5.1	Termination of service on account of misconduct (Rule 18 & 20).	126
5.5.2	Termination of service of officers on grounds of unsuitability (Rule 19).	139
5.5.3	Termination of service on grounds of unsuitability of SOs & Enrolled Persons (Rule 24 & 25).	140
5.5.4	Discharge from service on grounds of unsatisfactory progress in training (Rule 21)	147
5.5.5	Termination of service on grounds of furnishing false or incorrect information at the time of appointment (Rule 22)	147
5.5.6	Retirement on grounds of physical unfitness.	147
5.5.7	Dismissal/Removal (Sec 10; Sec 11 (1), Sec 11 (2))	150
5.5.8	Termination of service while under probation (Rule 14)	151
5.5.9	Rights of a person whose service is terminated.	151
5.5.10	Fundamental rules not applicable in the Force	153
5.6	Termination by Administrative Action & Termination as Punishment	153
5.7	Resignation (Sec 8 & Rule 27)	153
5.7.1	Restrictions & conditions for accepting resignation.	154
5.7.2	Withdrawal of Resignation.	162
5.7.3	Counting of past service on resignation.	165
5.8	Voluntary Retirement	166
5.8.1	Notice for voluntary retirement on completion of 20 years' qualifying service.	166

5.8.2	Types of voluntary retirements	167
5.8.3	Appointing Authority to accept notice for voluntary retirement	167
5.8.4	Withdrawal of voluntary retirement – CCS Pension Rules Rule 48A (4)	167
06.	Offence Report and Charge Sheet.....	171
6.1	Charge	171
6.2	Statement of Allegations (Rule 43)	172
6.3	Offence Report.....	173
6.4	Contents of Offence Report.....	173
6.5	Charge Sheet (Rules 43 & 55)	174
6.6	Contents of Charge Sheet (Rule 55, 56).....	175
6.7	Objection to the Charge.....	176
6.8	Amendment to Charge Sheet.....	176
6.9	Points for Preparing Charge Sheet.....	177
6.10	Important Points about Charge Sheet	178
07.	Summary Trial.....	181
7.1	Modes of Disposal of an Offence.....	182
7.1.1	By Resorting to Administrative Action.....	182
7.1.2	By Resorting to Trial under the Act and Rules	182
7.2	Authority to Conduct Summary Trial	183
7.2.1	Officers authorised to conduct Summary Trial & powers	183
7.2.2	Functions of Summary Trial officer	186
7.3	Stages in Summary Trial	187
7.4	Commanding Officer Debarred to Deal with an Offence (Rule 48).....	187
7.5	Offences not to be Dealt with Summarily (Rule 49)	188
7.6	Offences that may be Tried by Summary Trial	189
7.7	Summary Disposal of Offences in a Nutshell	190
7.7.1	Summary disposal of offences against Under Officers and Enrolled Persons (Sec 55, 56 & 57; Rule 43 to 45, 48 to 53)	190
7.7.2	Procedure for summary disposal of cases against Enrolled Persons by Commanding Officer	192
7.7.3	Summary disposal of cases against Enrolled Persons by an officer not below the rank of Asst Commandant (Sec 56 (3); Rule 44).....	196

7.7.4	Summary disposal of cases against Enrolled Persons other than Under Officers by a Subordinate Officer not below the rank of Sub Inspector (Sec 56 (4)	197
7.7.5	Summary punishments awardable to Under Officers & Enrolled Persons (Sec 56 & 57).	197
7.7.6	Summary disposal of charges against Officers & SOs and powers of Summary Trial officers (Sec 55, 58; Rule 45, 46, 47 & 53).	198
7.7.7	Procedure for initial hearing & summary disposal of the charge against officers (Rule 46)	201
7.7.8	Procedure for summary disposal of charges against Subordinate Officer by Commanding Officer / Appropriate Authority (Rule 47)	206
7.8	Common Discrepancies in the Summary Trial of Officers & SOs	209
7.9	Summary Disposal of Disciplinary Case Against Enrolled Persons	210
08.	Force Courts.	211
8.1	Legality of Special Courts	211
8.2	Law Relating to Force Courts	212
8.3	Force Courts (Sec 76)	212
8.4	Extent of Authority of Force Courts.	213
8.5	Salient Features of Force Courts.	213
8.6	Convening Authority	220
8.7	Composition of Force Courts	220
8.8	Civil offences not Triable by Force Courts (Sec 50, 86 (2); Rule 42, 48)	221
8.8.1	Offences not triable by FCs (Sec 50; Rule 42):.	221
8.8.2	Offences not triable by SFC without reference to DIG (Sec 86 (2); Rule 48)	221
8.9	Disqualification of Officer for Serving in GFC/PFC.	221
8.10	Judge Attorney or Officer Approved in his Place.	221
8.11	Application for Convening GFC/PFC	223
8.12	Action by Superior Authority on Receipt of Application for Convening GFC & PFC (Rule 61)	225
8.13	Duties of Convening Officer (Rule 64)	225
8.14	When Commanding Officer is Debarred from Dealing with a Case (Rule 48)	226

8.15	Legal Status of Force Courts	228
8.15.1	Powers of Force Courts for awarding punishment	228
8.15.2	Punishments awardable by FCs (Sec 51)	229
8.15.3	Miscellaneous powers of Security Force Courts	230
8.16	Offences Against Force Courts (Sec 40, 41)	231
8.17	Assembly & Opening the Court & Commencement of Trial (Sec 94, 96 & 97; Rule 67, 68, 69, 70, 71 & 73)	233
8.18	Objection by the Accused against Members of the Court (Rule 68, 72; Sec 96)	237
8.19	Plea to Jurisdiction for Trial (Rule 74)	238
8.20	Plea on Objection to Charge (Rule 75; Sec 87, 88 & 89)	238
8.21	Plea in Bar of Trial (Rule 76)	238
8.22	Pleading to the Charge (Rule 79)	238
8.22.1	Rules concerning GFC / PFC	238
8.22.2	Rules concerning Summary Force Court:	240
8.23	Plea of ‘Guilty’ When Not Accepted (Rule 80)	241
8.24	Procedure on a Plea of ‘Guilty’	241
8.25	Procedure on Plea of ‘Not Guilty’	244
8.26	When a Trial may be Adjourned	244
8.27	Dissolution of GFC/PFC	246
8.28	Evidence by Witnesses	248
8.29	Defence by the Accused in Force Courts	254
8.29.1	Facilities for the Defence	254
8.29.2	Case for Defence	256
8.30	Conviction for Offences Not Charged (Sec 105)	259
8.31	‘Finding’ by Force Courts (GFC & PFC)	260
8.32	Sentence by Force Courts	265
8.32.1	Aims of punishment	266
8.32.2	Quantum of punishment	266
8.33	Decisions by the Court	277
8.34	Recording of Sentence in Force Courts (GFC/PFC/SFC)	278
8.35	Finding & Sentence in Force Courts	280
8.36	Revision of Finding and Sentence	282
8.37	Alteration / Substitution of Finding and Sentence	283
8.38	Remedy Against Order, Finding or Sentence of Force Court ...	284
8.39	Execution of Sentence	285
8.40	Annulment, Pardon, Remission & Suspension of Sentence by Superior Authority	287
8.41	Responsibilities of the Presiding Officer	290
8.42	Rights of the Accused in GFC & PFC	293

8.43	Review and Preservation of Proceedings.....	320
8.44	Composition and Powers of GFC, PFC& SFC at Annexure 'P - 1', 'P - 2' & 'P - 3'.....	320
09.	Summary Force Court	321
9.1	Composition – Summary Force Court.....	321
9.2	Powers of Summary Force Court (SFC).....	323
9.3	Limits in Trial & Punishments in SFC (Sec 86)	325
9.4	Sequential Procedure for Conduct of SFC.....	327
9.5	Plea of 'Guilty' and Procedure Thereon.....	339
9.6	Plea of 'Not Guilty' and Procedure.....	342
9.7	Evidence of Witnesses.....	343
9.8	Finding	346
9.9	Procedure on Conviction (Finding 'Guilty') in SFC	348
9.10	Sentence in SFC	349
9.11	Recording of Sentence in SFC	349
9.12	Execution of Sentence in SFC	350
9.13	Review of Proceedings By An Officer Not Below The Rank Of ADIG.....	352
9.14	Alteration/Substitution of Finding and Sentence.....	352
9.15	Remedy Against Order, Finding or Sentence of Force Court (Sec 131); Rule 168	353
9.16	Annulment, Pardon, Remission and Suspension of Sentence ...	353
9.17	Rights of The Accused in SFC	353
9.18	Do's and Don'ts in SFC Trial	360
9.19	Suggested seating arrangement in SFC	364
10.	Jurisdiction between Criminal & ITBPF Courts	365
10.1	Jurisdiction between Criminal & Force Courts	365
10.2	Authority Competent to Decide The Court to Try An Accused. .	368
10.3	Offences to be Tried/Not to be Tried by Force Courts.....	369
10.4	Offender Who May be Tried by Force Court	372
10.5	Offender Who May Not be Tried by Force Court	374
10.6	Claiming Offender from Criminal Court	375
10.7	Guidelines for Taking Over Case from Criminal Court	375
11.	Responsibilities & Duties of Prosecutor	379
11.1	Appointment	379
11.2	Responsibilities of Prosecutor.....	379
11.3	Duties before Trial.....	381
11.4	Duties during Trial	382

12. Responsibilities & Duties of Defending Officer	389
12.1 Appointment	389
12.2 Responsibilities of Defending Officer	390
12.3 Duties before Trial	392
12.4 Duties during Trial	393
13. Evidence Act 1872 & Applicability to ITBPF	399
13.1 Relevance of Evidence	400
13.1.1 Evidence means:	400
13.1.2 Evidence includes	400
13.1.3 Evidence on 'Facts in issue' and 'Relevant facts' (Sec 5 IEA)	400
13.2 Principles Underlying Law of Evidence	402
13.3 Provisions of Indian Evidence Act	402
13.4 Applicability of IEA to Force Courts	402
13.5 Classification of Provisions of IEA	403
13.6 Definitions: Indian Evidence Act	404
14. Court of Inquiry (Rule 171 to 177 & Sec 74)	421
14.1 CoI – when to be Held (Rule 175; Sec 60, 65 & 74)	422
14.2 CoI – When Mandatory (Rule 175 (2) (a) to (e); Sec 60, 65 & 74)	423
14.3 Convening Order of CoI (Rule 172)	425
14.4 Composition of CoI (Rule 171)	425
14.5 Procedure of CoI (Rule 174)	426
14.5.1 Proceedings of CoI	426
14.5.2 Statement of witnesses	426
14.5.3 Validity of documents/evidence	428
14.5.4 Compliance with Rule 174 (8)	429
14.5.5 Protection to witness against charging him subsequently	431
14.5.6 Action on receipt of CoI proceedings (Rule 176)	431
14.5.7 Copy of CoI to the blameworthy person (Rule 177)	432
14.6 Provisions in the Case of POW	432
14.7 Guidelines for Proper Conduct of CoI	433
14.8 Guide to minor staff work in CoI	438
15. Record of Evidence (Rule 50)	439
15.1 Importance of Record of Evidence	439
15.2 Authority Competent to Order RoE	440
15.3 Recording of Statements of Witnesses	441

15.4	Cross-Examination of Prosecution Witnesses by The Accused ..	442
15.5	Statement of the Accused	443
15.6	Defence by the Accused	444
15.7	Documents Admissible as Evidence in RoE	444
15.8	Submission of RoE by Recording Officer	445
15.9	Action on Submission of RoE (Rule 53 (2))	445
15.10	Relevance of RoE in Legal Proceedings	447
16.	Abstract of Evidence	449
16.1	Points to be Taken Care of in AoE	449
16.2	Documents Admissible as Evidence in AoE	451
16.3	Action on Submission of AoE (Rule 53 (2))	452
16.4	Relevance of AoE in Legal Proceedings	453
17.	Internal Security & ITBPF	455
17.1	Powers of Members of the Force Under CrPC 1973	456
17.1.1	Powers of Force personnel in maintenance of law & order	456
17.1.2	Distinction between 'Public Order' & 'Law and Order':	456
17.2	Offences in relation to Unlawful Assembly (Sec 141 - 160 IPC) ...	456
17.2.1	Unlawful Assembly (Sec 141 IPC)	456
17.2.2	Dispersal of Unlawful Assembly (Sec 129, 130 & 131 CrPC)	457
17.3	Powers Under Armed Forces Special Powers Act	458
17.4	Powers Under Arms Act 1959	460
17.5	Protection of Force Personnel Against Arrest, Harassment & Prosecution by State Govt.	460
17.5.1	Protection Under Criminal Procedure Code (CrPC):	460
17.5.2	Protection under Indian Penal Code (IPC):	461
17.6	Right of Private Defence (Sec 96 to 106 IPC)	461
17.6.1	Extent of right of private defence of person & property.	462
17.6.2	Limiting factors	465
17.7	Concept of and Guidelines for 'Minimum Force'	468
17.7.1	Basic concept of 'Minimum Force' (Sec 130 (3) CrPC)	468
17.7.2	Guidelines for use of Minimum Force	469
17.8	Control of the Force during IS Duty	469
18.	Law Enforcement, Human Rights & ITBPF	471
18.1	Relationship between Law and Crime	472
18.2	Policing in the Country	472

18.3	Universal Declaration of Human Rights (UDHR)	473
18.4	Adoption of Universal Code for Law Enforcing Agencies by UN	473
18.5	UN Code of Conduct for Law Enforcing Agencies	474
18.6	Additional Important Principles and Prerequisites	478
18.7	Conduct of police and Law Enforcement Agencies	479
18.8	Ten Standards of Basic Human Rights for Good Conduct by Law Enforcement Officials	480
18.9	Violations of Rights and Omissions of Duties by Police & Armed Forces during Law Enforcement	481
18.10	Guidelines for Armed Forces for Better Human Rights Compliance & Minimise Human Rights Violations	482
18.11	Guidelines for Interrogation of Arrestees	484
18.12	Natural justice	486
19.	FIR & Seizure Memo	489
19.1	Definitions: Indian Penal Code	489
19.2	First Information Report (FIR) (Sec 154 CrPC)	490
19.2.1	Definition – First Information Report	490
19.2.2	Two kinds of FIR	491
19.2.3	Information of cognizable offences (Sec 154 CrPC)	491
19.2.4	Essential contents of FIR	493
19.2.5	“Police officers investigating cognizable offences (Sec 156 CrPC)	493
19.2.6	Salient points about FIR	494
19.2.7	Objectives of FIR	495
19.2.8	Importance of information received first in the police station	496
19.2.9	Delay in giving report/information to the police and its effect	497
19.2.10	Evidentiary value of First Information Report	499
19.2.11	Information of an incident to police station filed by an accused	499
19.2.12	Investigation of non-cognizable offences (Sec 155)	499
19.2.13	Remedy to Refusal to Record Information by Police Officer	500
19.2.14	When police officer need not investigate on a report	500
19.2.15	Preliminary inquiry	500
19.2.16	General Diary (GD) (Sec 44 Police Act 1861)	502
19.2.17	False FIR	503

19.3	Seizure Memo (Sec 100 CrPC)	503
19.3.1	Points to be kept in mind while preparing Seizure Memo.....	503
20.	Powers Conferred Under Central & State Acts	507
20.1	Conferring powers or duties under Central or State Acts	507
20.2	Powers under Criminal Procedure Code 1973	508
20.3	Powers under Customs Act 1962	512
20.4	Powers under Narcotic Drugs and Psychotropic Substances Act 1985	513
20.5	Powers under Passport Act 1920 (Entry into India)	514
20.6	Powers under Passport Act 1967 (Dep. from India)	514
20.7	Powers under Arms Act 1959	514
20.8	Right of Private Defence under IPC 1860	515
20.8.1	Right of private defence available (Sec 96 to 106 IPC)...	515
20.8.2	Right of private defence of body & property of self & anyone else (Sec 97 IPC).....	516
20.8.3	Right of private defence against the act of a person of unsound mind, immaturity of understanding, intoxication, or by reason of any misconception (Sec 98 IPC).....	516
20.8.4	No right of private defence against acts of public servants (Sec 99 IPC).....	517
20.8.5	Right of private defence against deadly assault when there is risk of harm to innocent person (Sec 106 IPC) ..	517
20.9	Limitations of Self-Defence	517
21.	Powers of Commanding Officer	521
21.1	Tasks of the Force	521
21.2	Duties of Commandant	522
21.3	Administrative Powers and Responsibilities	522
21.4	Disciplinary Powers	528
22.	Service Conditions and Privileges	541
23.	Deductions from Pay and Allowances	551
23.1	Deductions under Sec 51 on Conviction by Force Courts or under Sec 56 & 58 by Summary Trial	551
23.1.1	On conviction by Force Courts (Sec 51).....	551
23.1.2	Summary Trial by Commanding Officer (Sec 56 (1) & (2).....	551

23.1.3	Summary Trial by Dy. Commandant/Asst. Commandant (Sec 56 (3)	552
23.1.4	Summary Trial by an officer not below the rank of IG (Sec 58 (1)	552
23.1.5	Summary Trial by an Officer not below the Rank ADIG or of Commandant (Sec 58 (2) & (3)	552
23.2	Punitive Deductions through Administrative Process after Court of Inquiry under Sec 60.	552
23.3	Deductions through Administrative Process under Sections 61 to 68	552
23.3.1	Deductions from pay and allowances of officers (Sec 61 (1)	552
23.3.2	Deductions from the pay and allowances of persons other than officers (Sec 61 (2)	553
23.3.3	Computation of time of absence or custody (Sec 61 (3)	554
23.3.4	Withholding pay & allowances of person in custody/suspension (Sec 62)	555
23.3.5	Limit of certain deductions (Sec 63)	555
23.3.6	Deductions from public money due to a person (Sec 64)	555
23.3.7	Pay & allowances of prisoner of war during the inquiry into his conduct (Sec 65)	555
23.3.8	Remission of deductions (Sec 66)	555
23.3.9	Provision for dependents of prisoner of war from remitted deductions (Sec 67 (1)	555
23.3.10	Provision for dependents of prisoner of war/person missing from his pay & allowance (Sec 67 (2)	556
23.3.11	Period during which a person is deemed to be a prisoner of war (Sec 68)	556
23.3.12	Authorised deductions (Rule 185)	556
	Annexures in Detail.	557
	Abbreviations	621

Annexures

SI No.	Annex No.	Topic	Chapter & Para
1	A – 1	Request by the accused under arrest	3.6 (d)
2	A – 2	8 th day delay report	3.6 (i)
3	B – 1	Suspension order	4.2 (a)
4	B – 2	Order for removal of suspension	4.4 (iii) (c)
5	C – 1	Notice for termination from service on account of misconduct	5.5.1 (b) (vi)
6	C – 2	Order of termination from service	5.5.1 (b) (vi)
7	D – 1	Show Cause Notice for termination of service on account of unsuitability	5.5.2 (iii)
8	D – 2	Order for termination of service on account of unsuitability	5.5.2 (iii)
9	D – 3	Communication of Medical board findings	5.5.6 (a) (ii)
10	E	Offence report	6.3
11	F	Charge Sheet	6.5
12	G	Application for convening a Force Court (FC)	7.7.2 (16)
13	H	Substance of Evidence	7.7.7 (ii)
14	I	Proceedings of the Summary Trial of officers of and below the rank of Commandant and SOs – Form I	7.7.7 (ix)
15	J	Proceedings of the Summary Trial of officers of and below the rank of Commandant and SOs – Form II	7.7.7 (ix)
16	K	Undertaking to dispense with witnesses	7.7.7 (x)
17	L – 1	Warrant for committing a Prisoner sentenced to Life Imprisonment to Civil Prison (Form 'A')	8.15.1 (vi)
18	L – 2	Warrant for committing a prisoner sentenced to Imprisonment to Civil Prison (Form 'B')	8.15.1 (vi)
19	M	Summons to witness in Force Court	8.28 (i)
20	N	Promulgation of Finding & Sentence of FC	8.35 (xi)
21	O – 1	Warrant for the execution of sentence of death (Form 'A')	8.39 (iv) (a)

Continued...

22	O - 2	Warrant for the execution of sentence of death (Form 'B')	8.39 (iv) (a)
23	O - 3	Warrant for the execution of sentence of death (Form 'C')	8.39 (iv) (b)
24	P - 1	General Force Court (GFC) – Composition & Powers	8.44
25	P - 2	Petty Force Court (PFC) – Composition & Powers	8.44
26	P - 3	Summary Force Court (SFC) – Composition & Powers	8.44
27	Q - 1	Convening order – SFC	9.1 (vii)
28	Q - 2	SFC trial Proceedings - Performa	9.4 (1)
29	Q - 3	Record of previous convictions by Summary Trial and general character of the accused	9.9 (v)
30	Q - 4	Statement of convictions by Force Courts & Criminal Courts	9.9 (v)
31	R	Claiming of a case from the Magistrate for trial by Force Court	10.2 (4)
32	S	Inquest Report of unnatural death	14.2 (2) (a)
33	T	Convening Order – Court of Inquiry	14.3 (3)
34	U	Summons to witness in CoI	14.5.2 (8)
35	V	Final order of CoI	14.5.6 (1)
36	W	Court of Inquiry Proceedings (Performa)	14.8 (10)
37	X - 1	Summons to witness in Record of Evidence (RoE)	15.3 (iii)
38	X - 2	Proceedings of RoE (Performa)	15.8 (3)
39	X - 3	Proceedings of AoE (Performa)	16.1 (12)
40	Y	Information of an incident to police	19.2.3 (v)
41	Z	Seizure memo	19.3.1 (xx)

Preface

After publishing my two books, I took upon myself to delve deep into the intricacies of law concerning Indo-Tibetan Border Police Force and threw myself wholeheartedly into this venture. I found the itinerary quite challenging. For preparing this book, I had taken the help of various law-books and sought support from the law officers of the Indo-Tibetan Border Police Force. It took almost one year for the book to take this shape.

While preparing this book, I have primarily kept in mind the practical and daily requirements of ITBPF officers in the field. Efforts have been put in to make the book simple and extremely user-friendly even to persons with minimum legal knowledge. This book is an exclusive exposure and inclusive insight into the intricacies of ITBPF Act and Rules and is unique for the following factors:

- Simplified language and straight-jacket presentation
- Topic-wise consolidated presentation. Notes have been provided wherever required to enable the reader to understand the law.
- References to corresponding law provided in every paragraph.
- Sufficient case-laws added to have an insight into the minds of the judiciary.
- Chapters on Duties & Responsibilities of Prosecutor and Defending Officer, Indian Evidence Act, Internal Security, Law Enforcement and Human Rights, FIR & Seizure Memo etc.
- Essential formats from ITBPF Rules have been incorporated in the book. A few additional formats have been included for the convenience of users.

A bird's eye-view of '**ITBPF History**' has been added to enlighten the users of the book about the rich and exciting role this elite Force is exhibiting in the larger perspective of border management along Indo – China border. Some photographs added for posterity and visual pleasure.

No amount of thanks by words would compensate the wholehearted support and encouragement in this venture by my beloved wife Sally and children Ashish and Asha. I cannot leave this page without remembering my late grandfather Mr. W C Mani, who sowed the seeds of writing in my psyche, my late father Mr. A I Joseph for his parental guidance and my late younger brother who was a genius in every sense.

I expect that this book about ITBPF Law will satisfy the essential legal expectations of ITBPF General Duty Officers and legal fraternity alike. Opinions, explanations, expressions, views and suggestions in the book are of the author. Inference may be drawn in conjunction with the relevant law. Although extreme care has been taken to avoid errors while quoting references and Case Law, few errors may have crept in. I will be grateful to the users of this book for their valuable opinion, constructive criticism and suggestions for further improvement.

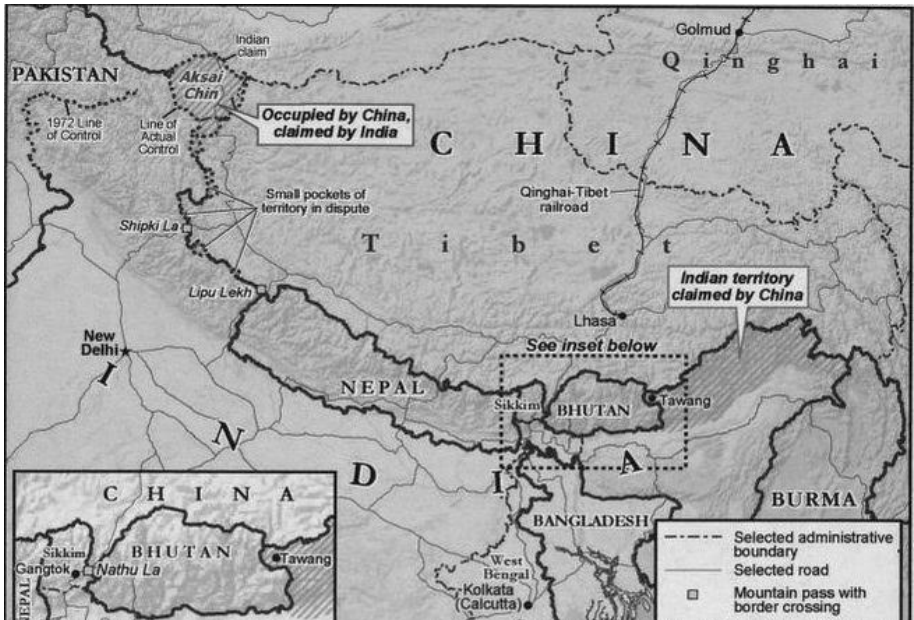
While dealing with offences under ITBPF Law, it will be worthwhile to remember the dictum:

'Justice hurried means justice buried and should not be at the cost of the delinquent who is an illiterate man.'

Kottayam, KERALA.
January 2021

(BABU JOSEPH)

India's Border on the North and North East



ITBPF – History in Brief

**‘History is simply a piece of paper covered with print;
The main thing is still to make history, not to write it.’**

Otto von Bismarck-Schoenhausen

Prologue

They stand vigil day and night guarding approximately 3488 kilometres of India’s geographical land limits in the north from intruders, terrorists and spies, ensuring security and preserving territorial sanctity of the Motherland, instilling confidence among millions of border population during the periods of peace and ‘no war-no peace’. From the background of an intelligence-gathering and motivational organisation on the Indo-Tibetan border, **Indo-Tibetan Border Police (ITBP)**, was transformed into a ‘Border Guarding Force’ under the constitutional umbrella of ‘Armed Force of the Union’ with its name changed to **‘Indo-Tibetan Border Police Force (ITBPF) w.e.f. 1992**. With the passage of time and change in situations and circumstances since its earlier ‘avatar’ ITBP, its charter of duties has been extended beyond what was once formally defined and is far more complex and daunting today both in times of peace and war. Whatever and wherever the challenges, this brave Force stand firm facing every eventuality with undeterred determination and indomitable courage.

Even today, not many understand the role and responsibility of this elite Force or realise the extent of their behind the scene contribution and sacrifice in protecting the remotest and intractable land boundaries of the country where no man or beast can survive without boundless courage and firm determination and where blazing blizzards and sandstorms form part of the daily weather report, from the evil designs of our unfriendly neighbours and in keeping the integrity and unity of the Nation in the hinterland from internal security challenges from anti-national and divisive elements from within and outside. With inbuilt resourcefulness and unflinching determination, ITBPF has learnt to survive and surmount the harshness of the snow, sand, marsh and jungle. Its motto is **‘Shaurya, Dridhatha, Karma Nishta** (Valour, Determination, Devotion to Duty) For it is here where they have to live for all the times to come as the **‘eyes and ears of the Nation.’**

The Beginning

Indo-Tibetan Border Police – now **Indo-Tibetan Border Police Force** was originally conceived under CRPF Act on 24th October 1962 in the wake of Indo-Chinese conflict in 1962 for reorganising the frontier intelligence and security setup along the Indo-Tibetan border with the understanding that the borders of the country could not be protected with the force of rifles alone and required the

backing and resolute will of a committed border population to ensure its security for which it needed an in-depth understanding and familiarity of the terrain as well as the culture and ethos of the border population resulting in the creation of a unique, unconventional yet specialized organization, which would function in the far-flung, vulnerable, strategic, climatically and topographically difficult border areas and motivate the border population across several states towards the cause of protecting our national sovereignty and collecting valuable intelligence as the end-result. This unique Force 'Indo-Tibetan Border Police conceived in October 1962 with Shri Balbir Singh as the first Inspector General w.e.f. 02/02/1963 started functioning in the Indo-Tibetan border with just four Battalions. Since 1963, ITBP inculcated a sense of national belonging in the border population, security and vigilance through Village Level Training Programmes and refresher courses in civil defence, use of small arms and self-defence to enable villagers to defend their villages and to participate in 'stay behind role' if the situation so warranted. Trained volunteers became the eyes and ears of ITBPF on the border and could be drawn on whenever required. Later, in the year 2004, the jurisdiction of ITBPF was extended to the whole of Indo-China border in the North, pursuant to GoM recommendation on 'One Border One Force' and took over Sikkim and Arunachal Pradesh from Assam Rifles, thus covering about 3488 kilometres of India's international borders from Karakoram Pass in Ladakh to Jachep La in Arunachal Pradesh and occupying Border Out Posts at altitudes ranging from 9000' to 18700' in the Western, Middle and Eastern sectors of Indo-China border. ITBPF is a specialised mountain force well-versed in mountaineering and skiing. With the transition of ITBP to ITBPF, additional tasks in border guarding, counter-insurgency, internal security, disaster response and VIP protection were entrusted from time to time. At present Rashtrapati Bhawan, Upa Rashtrapathi Bhawan, Tihar Jail in New Delhi and other several important institutions in Ladakh, Punjab and Uttarakhand are guarded by the smart troops of ITBPF as a recognition of their dedication and valour. Through multifarious action-fronts, this Force endeared itself as people's Force by focusing on the organisational objective while remaining self-contented and on a low profile sanctifying the phrase 'Your work is your reward.'



Shri Rajiv Gandhi, Prime Minister of India presented Colour to ITBP on June 20, 1987.

Transformation of 'ITBP' to 'ITBPF'

After the Kargil Operations 1999, report of K. Subramanayam Committee was considered by a Group of Ministers for the relocation of all Central Para-military Forces to achieve optimum operational efficiency by assigning one border for each Force. Indo-Tibetan Border Police now Indo-Tibetan Border Police Force was assigned the whole of Indo-China international border from Ladakh to Arunachal Pradesh under the administrative control of MHA. ITBPF is now spread across the Union territories of Jammu & Kashmir and Ladakh and States of Himachal Pradesh, Uttarakhand, Sikkim and Arunachal Pradesh.

Parliament passed ITBPF Act 1992 (35 of 1992) and it came into force on **1st September, 1992** and subsequently ITBPF Rules 1994 on **30th May, 1994**.

Role & tasks of ITBPF

1. Safeguard the security and maintain a vigil on the northern borders, and promotion of a sense of security among the border populace.
2. Prevention and detection of border violations, trans-border smuggling and crimes, illegal immigration and activity,
3. Security to sensitive installations, banks and protected persons
4. Restore and preserve order in any area in the event of a disturbance.

Performance of Duties during Peace/No Peace-No War situation

With an enduring tradition and distinct and varied individual culture behind him, every member of ITBPF understands that India and its mainland are only as safe as the borderlands are secure. Today, as never before, the integrity of the country is being threatened on several fronts. The borders with China spread along with the Union Territories of Jammu & Kashmir and Ladakh and states of Himachal Pradesh, Uttarakhand, Sikkim and Arunachal Pradesh are secured in the hands of ITBPF and this elite Force is also repeatedly utilised to quell the troubled hinterland. ITBPF's day and night presence reassure the civilians and the local authorities of their security and safety. The Force has intensified its activities, augmented its units, fortified vulnerable border segments and improved round-the-clock vigilance all along the varied, difficult and inhospitable borders with the help of modern technological devices. ITBPF functions by establishing Border Out Posts (BOPs) at administratively, tactically and functionally appropriate places along the fringes of land border.

Performance of Duties during War

In times of war, ITBPF's intimate knowledge of the border, its problems and people becomes an invaluable asset and provides a blueprint of information for the Army. As an extension to the Army's main line of defence, ITBPF functions under the operational control of Army and is entrusted with diverse duties ranging from special tasks, protection of vital installations to guarding prisoners and maintaining law and order in captured territory.

Training in ITBPF

From the beginning, ITBPF pursued a motto of self-reliance in training its cadres resulting in intensive training of every recruit/trainee before he is absorbed into the Force. ITBPF has seventeen Training Centres in all. ITBPF's highly reputed training institutions, ITBPF Academy established in 1978 at Dehradun (UP), Mountaineering & Skiing Institute established in 1973 at Aulli, Basic Training Centre at Bhanu (Panchkula, Haryana), RTC Shivgangai, Animal Training School at Lohitpur (Arunachal Pradesh), Counter Insurgency and Jungle Warfare School at Belagavi (Karnataka) and other institutions located in different serene and sprawling campuses are best-suited for outdoor exercises and manoeuvres and are fully self-sufficient with State of the art training facilities, hostels and hospitals. In these institutions, officers and men are trained to be rough and tough, resilient and resourceful.

ITBPF and Border Population

India has no regular/contiguous natural features/barriers demarcating its borders with any of the bordering countries, be it Pakistan, China, Nepal, Bhutan, Myanmar or Bangladesh. However, mighty Himalayas towers between India and China as a natural equaliser. The boundary line passes through fields, villages, creeks, ravines, desert, mountains and rivers creating peculiar problems to the border guarding forces. Many of the border areas being remote and intractable, there is little and sometimes no contact with the hinterland and in some places ITBPF is the only link with the Government. Initially, the border-folk stayed aloof, suspicious of the activities of ITBPF who, they felt had suddenly intruded into their insulated and private world. It was no easy task for ITBPF to alleviate their fears and gain their trust and support. From the very beginning, ITBPF concentrated its energies and efforts to extend a hand of friendship and to integrate their work and lives within the norms and customs of the border inhabitants. Understanding the border population and communicating with them at their level with sincerity, honesty and impartiality at all times and under any circumstance is a lesson every ITBPF '**Himveer**' has to learn. Endeavour has always been to build an efficient force with a humane face – an ability to deal with human lives and treat men, women and children of all areas and their customs with compassion, empathy, respect and dignity. During natural disasters, ITBPF rushes to their help carrying food, clothing, medical supplies and other relief materials bringing succour to the affected population. Time and again, the Force has saved lives and property, helped evacuate thousands of stranded people, provided food, clothes, temporary shelter and all other possible assistance to the suffering population.

It is a matter of great pride for the Force that ITBPF '**Himveers**' have always won the hearts and accolades of the border-folk with their exemplary behaviour and conduct. Now, every borderman is an integral part of the village he patronises, sharing their sorrows and joys, trials, tribulations and celebrations as one of them

and to whom they turn for help of every kind at any time. With time and experience, every individual in ITBPF has come a long way in understanding the needs and problems of the villagers. Today, these simple people acknowledge the Force not merely as the guardians of the border but consider them the guardians of their life and as one among them. Border villages have been adopted by ITBPF units for special assistance where the scope is not limited to improve their living conditions and to enhance the quality of their lives by simple and diverse humanitarian acts, repairing roads and school buildings, organising school classes and job oriented training for the village unemployed, providing medical aid, extending a caring hand during natural calamities etc. Other tasks vary from providing raw material for rural handicrafts to providing drinking water through progressive water supply systems. This genuine concern for the welfare of the border communities has yielded rich dividends for ITBPF. The complete co-operation of the village is responsible, in no small measure, for ITBPF's success in the effective policing of the borders, stemming infiltration, controlling smuggling and other trans-border crimes. Village Resistance Groups/Village Voluntary Groups, organized and trained by ITBPF carry out watch and ward duties in villages and promptly report about suspicious movements to the Out Posts. In the final analysis, the favourable attitude of the border-folk towards the Force is the cornerstone of its success.

ITBPF is at the forefront of the movement for the preservation of the Himalayan environment & ecology. It has taken up in a big way the task of greening the Himalayan regions, especially in the inner Himalayas. Being the only human presence in the forward areas, it has taken on itself the task of maintaining the delicate balance of flora and fauna.

Expansion of ITBPF

Indo-Tibetan Border Police Force was conceived and initially deployed in 1962 where India shared land-borders with Chinese Tibet in the State of UP with just 04 Battalions. Now, with its role changed as a 'Border Guarding Force', under the premise of 'One Force, One Border' guards 3488 kilometres of the Indo-China border from the Karakoram pass in Kashmir to Jechap La in Arunachal Pradesh along Himalayan Mountains. Against the scheme of recruiting locals for the tasks allotted to the earlier incarnation Special Service Bureau, its present incarnation Indo-Tibetan Border Police Force has acquired a pan India conglomeration.

Rededication

Over the years starting from its inception, the Force has evolved a proud and rich tradition of competence, valour and camaraderie. The very name of 'ITBP' instils a sense of security in the minds of our countrymen who live along India's land borders with China and among general public whenever and wherever it is deployed for internal security duties/counter-insurgency operations/rescue &

relief operations. This confidence is the outcome of the untiring toil and constant vigil the brave **HIMVEERS** have put in by working round the clock tirelessly and without any respite in the border and other challenging situations.

Each battalion and unit of the ITBPF is a miniature India in which men from all parts of the country work together in pursuit of the common objective of safeguarding and securing the assigned land borders of the Nation. The **Himveers**, who are deployed over 3488 KMs of the Indo-Chinese borders have continued to brave all odds and performed duties in fast-changing and hostile environments despite severe strain.

In its journey since its foundation, ITBPF has emerged as a well-knit and versatile Force. Besides guarding the borders in the inaccessible and snowy terrain of the Himalayas, the Force has been deployed in various parts of the country in the highly sensitive and difficult task of maintaining internal security and law and order, election duties and relief operations during natural calamities bringing succour to the hapless and helpless civilians and the Force have acquitted every task not only with vigour, valour, efficiency, élan, drive and dedication but also with compassion and consideration for the common man.

The ITBPF will remain in the service of the Nation in all situations, day-in and day-out securing the international borders with China, checking any misadventure by forces of the not-so-friendly northern neighbour, checking the cross-border movement of terrorists and criminals and maintaining the nation's unity and integrity while deployed on Internal Security duties. During war or no-war no-peace situation, ITBPF, as the first line of defence will remain adequately prepared to bear the first brunt of the attack and to ensure that no enemy crosses the borderline unchecked and unchallenged. Responsibility of policing highly volatile borderline for more than five decades has helped ITBPF to garner an unfathomable reservoir of unique skill and unmatched experience. Recognized as one of the finest border guarding forces of the day, it has redefined its scope of duties and can tackle the most critical issues of national concern with firmness and ingenuity.

“We make a living by what we get, we make a life by what we give.”

– Sir Winston Churchill

ITBPF Act and Rules

General Appraisal

The Beginning

Indo-Tibetan Border Police Force, an **Armed Force of the Union of India** under Item II of List I, Schedule VII of the Constitution of India and reincarnated form of ITBP was born in 1992 as a border guarding force to be deployed along India-China border. Indo-Tibetan Border Police (ITBP), its earlier incarnation was raised on 24 October 1962 immediately after the 1962 India-China war as an intelligence-gathering and motivational Force to be located on the borders with Chinese Tibet. In view of the purported duties of ITBPF being connected with the defence of the country, Government of India felt the necessity of a stringent law to regulate the conduct of its members and to ensure the highest level of discipline among them and the Parliament in its wisdom and in the exercise of powers under Article 33 of the Constitution enacted **Indo-Tibetan Border Police Force Act in 1992** and was promulgated in the Gazette of India and came into effect on **01 September 1992**. In exercise of the powers conferred under Sec 156 of the ITBPF Act 1992, the Central Government codified **ITBPF Rules 1994** which came into force on **30 May 1994**.

Both these enactments constitute ITBPF Law. Certain rules applicable to the Central Civil Service (CCS) pertaining to pay, leave, medical facilities, retirement and pension are still applicable to all CAPFs. These rules also come under the larger umbrella of ITBPF law.

Case Law:

‘The Parliament, in its wisdom in exercise of its powers under Article 33 has enacted the law (*Army Act*) and the officers are to be guided by factors like exigencies of service, maintenance of discipline in the Army, speedier trial, the nature of the offence and the person against whom the offence is committed.’

(AIR 1991 SC 1617 – Major GS Sondhi v/s UOI)

Preamble to the ITBPF Act 1992

‘An Act to provide for the constitution and regulation of an Armed Force of the Union for ensuring the security of the borders of India and for matters connected therewith.’

Constitution of the Force

‘There shall be an Armed Force of the Union called the Indo-Tibetan Border Police Force for ensuring the security of the borders of India and performing such other duties as may be entrusted to it by the Central Government.’ (Sec 4 (1))

Subject to the provisions of this Act the Force shall be constituted in such manner as may be prescribed and the conditions of service of the members of the Force shall be such as may be prescribed. (Sec 4 (2))

1.1 Special Features of ITBPF Act and Rules

1.1.1 ITBPF - An Armed Force of Union of India. (Preamble & Sec 4 (1))

Case Law:

‘The BSF is an Armed Force of Union of India constituted under Item 2 of List I of Schedule VII of the Constitution of India and is primarily connected with defence of the country.’ (AIR 1991 SC 564 – UOI v/s Ex – Ct Amrik Singh)

Similar situation remains with ITBPF.

ITBPF – Central Para Military Force

In exercise of the powers conferred by Sec 19 (1), Sec 22 (2) & Sec 23 of the Arms Act 1959, ITBPF has been declared a **Central Para Military Force** vide **GSR 905 (E) & 904 (E) of 11/11/2010**.

1.1.2 ITBPF Act 1992 - A Special Law under Sec 5 CrPC

ITBPF Act is a Special law. As per Sec 5 CrPC, Special Law will override the general law.

Sec 5 CrPC: ‘Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed by any other law for the time being in force.’

Case Law:

a) ‘BSF Act envisages that it is an Armed Force of the Union of India for ensuring security of borders of India and matters connected therewith. BSF Act is a Special law. It is applicable in the State of J&K.’

(WP 44/76 J&K (S) 1977 – Ex Ct Tirath Ram v/s UOI)

b) ‘BSF Act is a special law. As per Sec 5 CrPC, special law overrides general law. The said Section does not prohibit applicability of Cr PC 1973 when special law does not contain such provision like Sec 428 CrPC.’

(CriLJ 1985 (563) (Cal) – Anand Singh Bisht v/s UOI)

- c) 'The Indian Army Act constitutes a special law in force conferring a special jurisdiction on the Court Martial prescribing a special procedure for the trial of the offences under the Act. The Act & Rules constitute a self-contained Code specifying offences and the procedure for detention, custody and trial of the offenders by the Court Martial. The procedural safeguards contemplated in the Act must be considered in the context of and corresponding to the plenitude of the Summary jurisdiction of the Court Martial and the severity of the consequences that visit the person subject to that jurisdiction. The procedural safeguards should be commensurate with the sweep of the powers. The wider the power, the greater the need for the restraint in its exercise and correspondingly, more liberal the construction of the procedural safeguards envisaged by the statute. The oft-quoted words of Frankfurter, J. in *Vitarelli v. Seaton*, 359 US 535 are again worth re-calling; '...If dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so, he that takes the procedural sword shall perish with that sword.' 'The history of liberty' said the same learned Judge 'has largely been the history of observance of procedural safeguards.' (318 US 332). Non-compliance with the mandate of Sec 130 (*Opportunity to challenge constitution of Court*) is an infirmity which goes to the root of jurisdiction and without more vitiates the proceedings*. *Prithpal Singh Bedi v/s UOI* (AIR 1982 SC 1413) relied on.'

(AIR 1987 SC 2386 – *Ranjit Thakur v/s UOI*)

(*Apex Court amended this ruling on 10-8-88 as far as SCM in Army is concerned. Same applicable to Summary Force Court (SFC) in ITBPF.)

- d) 'The relevant Chapters of the Army Act, the Navy Act and the Air Force Act embody a completely self-contained comprehensive code specifying the various offences under those Acts and prescribing the procedure for detention and custody of offenders, investigation and trial of the offenders by Court Martial, the punishments to be awarded for the various offences, confirmation & revision of sentences imposed by Court Martial, the execution of such sentences and the grant of pardons, remissions and suspensions in respect of such sentences. These enactments, therefore, constitute a special law in force conferring special jurisdiction and powers on Courts Martial & prescribing a special form of procedure for the trial of the offences under those Acts. The effect of Sec 5 of CrPC is to render the provisions of the Code inapplicable in respect of all matters covered by such special law.

(AIR 1987 SC 1646 – *Ajmer Singh v/s UOI*)

1.1.3 Protection under Art 311 of the Constitution not available to Force members

Constitutional protection available to civilian employees in the matter of dismissal, removal, reduction in rank/post is not available to Force personnel as it is not a civil service, but an Armed Force of the Union of India, placed under Ministry of Home Affairs and is connected with the defence of the country.

Article. 311 Constitution of India:

‘Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a state.-

- 1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a state or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.
- 2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply:

- a. Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; **or**
 - b. Where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; **or**
 - c. Where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the state it is not expedient to hold such inquiry
- 3) If in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.’

Case Law:

- a) ‘The BSF is a part of the Armed Force of the UOI; therefore its members were not civil servants and cannot invoke Art 311 of the Constitution of India.’

(CW 3 SLR 686 (P&H) 1981 – SI Bhagat Ram v/s UOI)

- b) 'Art 311 of the Constitution does not apply to the members of the BSF as the BSF is an Armed Force of the Union and not a civil service. Provisions of Art 311 of the Constitution are applicable to members of civil services. Sec 4 of BSF Act expressly states, 'There shall be an Armed Force of the Union.' BSF is considered to be an Armed Force of the Union and not a civil service. Art 311 has, therefore, no application.'
(CW 642/74 (P&H) 1976 – Waryam Singh v/s UOI)
- c) 'Art 311 of the Constitution is not applicable to the members of the BSF like Army personnel who are subject to Army Act 1950. BSF Rule 27 is not, therefore, can be said to be *ultra vires* to Art 311 of the Constitution.'
(CW 3792/72 (P&H) 1990 – SI Sansar Chand Sharma v/s UOI)
- d) 'Art 311 of the Constitution is not applicable to members of the BSF as the same is applicable to civil service. Art 311 envisages a reasonable opportunity of being heard where-as under BSF Rule 27 opportunity of show cause has been prescribed.'
(WP 4260/76 (P&H) 1981 – SI Gurdip Singh v/s UOI)
- e) 'To insist that the Confirming Authority should give a hearing to the petitioner before it confirmed the sentence passed by the Court Martial is a contention which cannot be accepted. To accept this contention would mean that all the procedure laid down by the CrPC should be adopted in respect of the Court Martial, a contention which cannot be accepted in the face of the very clear indications in the Constitution that provisions which are applicable to all the civil cases are not applicable to cases of Armed Force personnel. It is not a requirement of the principle of natural justice.'
(AIR 1973 SC 258 – Harish Uppal v/s UOI)
- f) 'The fact of holding an inquiry is not always conclusive. What is decisive is whether the order is really by way of punishment. If the facts and circumstances of the case indicate that the substance of the order is that the termination is by way of punishment, then a probationer is entitled to the protection of Art 311. The substance of the order and not the form would be decisive. The order of termination of the services of the appellant was clearly by way of punishment in the facts and circumstances of the case. The High Court denied him protection under Art 311. The order of termination was illegal and liable to be set aside. After all, between unsuitability and misconduct thin partitions do their bounds divide.'
(AIR 1974 SC 2192 – Shamsher Singh v/s State of Punjab)

1.1.4 Restrictions on Constitutional Rights applicable to ITBPF personnel

Sec 13 (1)	No person subject to this Act shall, without the previous sanction in writing of the Central Government or of the Prescribed Authority to be a member of or associated with trade/labour unions or political organisations, society, institution or association not recognised as part of the Force or is not of purely social, recreational or religious nature or to communicate with the press or publish book or letter except in connection with the discharge of his duties or of purely literary, artistic or scientific nature except with prior written permission of Central Govt or Prescribed Authority.
Sec 13 (2)	No person subject to this Act shall participate in or address any meeting or take part in any demonstration organised for political or other purposes as may be prescribed.

Rights so abrogated or restricted under **Sec 13 (1)** can be restored to a limited extent with the written permission of Central Govt or Prescribed Authority.

PREScribed AUTHORITY under Sec 13 (1)

Central Govt – In respect of Officers

Director General – In respect of all persons subject to the Act except Officers
(Rule 179)

Prescribed (Sec 2 (1) (t))	Means prescribed by rules made under this Act;
----------------------------	--

Explanation: If any question arises as to whether any society, institution, association or organisation is of a purely social, recreational or religious nature under **Sec 13 (1) (b)**, the decision of the Central Government thereon shall be final.

Article 33 of the Constitution:

Parliament may by law determine to what extent any of the rights conferred by this part shall, in their application to the members of the Armed Forces or the Forces charged with the maintenance of public order, be restricted or abrogated so as to ensure the proper discharge of their duties and maintenance of discipline among them'

Case Law:

a) 'Fundamental rights guaranteed to a citizen under Art. 21 of the Constitution of India is not *ipso facto* available to members of BSF'

(WP No 417/1978 J&K (J) – Arun Kumar v/s UOI)

b) 'Any provision in the Army Act does not become void because it affects fundamental rights under Part III of the Constitution of India. Art 33 of the Constitution has made requisite modification to affect the respective fundamental rights. Sec 125 does not infringe Art 14 of the Constitution.'

(AIR 1965 SC 247 – Ram Sarup v/s UOI & Anr)

- c) 'A plain reading thus would reveal that the extent of restrictions necessary to be imposed on any of the fundamental rights in their application to the Armed Forces and the Forces charged with the maintenance of public order for the purpose of ensuring proper discharge of their duties and maintenance of discipline among them would necessarily depend upon the prevailing situation at a given point of time and it would be inadvisable to encase it in a rigid statutory formula. The Constitution makers were obviously anxious that no more restrictions should be placed than are absolutely necessary for ensuring proper discharge of duties and the maintenance of discipline amongst the Armed Force Personnel and therefore Art. 33 empowered the Parliament to restrict or abridge within permissible extent, the rights conferred under Part III of the Constitution in so far as the Armed Force personnel are concerned. In this context reference may be made to the decision of the Supreme Court in *R Viswan & Ors v/s UOI* (AIR 1983 SC 658) as also a judgment of the Calcutta HC in the case of *Lt. Col. Amal Sankar Bhaduri v/s. UOI & Ors.* (1987 CLT 1) of which one of us (*U.C. Banerjee, J*) was a party.'
- (2003 SCC (Cri) 1069 – UOI v/s L/Dfr Balam Singh)**
- d) 'Art 33 of the Constitution which confers power on Parliament to determine to what extent any of the rights conferred by Part II shall in their application to the members of Armed Forces be restricted or abrogated does not obligate that Parliament must specifically adumbrate each fundamental right and specify in the law the degree of restriction or total abrogation of each right. That would be reading into Art. 33, a requirement which it does not enjoin. The power to legislate in respect of any item must be referable to any entry in the relevant legislative list. The law has to be enacted by Parliament subject to the requirement of Part III read with Art. 33 which itself forms part of Part III. Therefore if any provision of the Army Act is in conflict with fundamental rights, it shall have to be read subject to Art. 33 as being enacted with a view to either restricting or abrogating the fundamental rights to the extent of inconsistency or repugnancy between Part III and the Army Act. *Ram Sarup v. UOI & Anr* [1964] 5 SCR 931: referred to. It is one of the cardinal features of our Constitution that a person, by enlisting or entering Armed Forces does not cease to be a citizen so as to wholly deprive him of his rights under the Constitution. More so when this Court held in *Sunil Batra v. Delhi Administration* (1979) 1SCR 392 at p.495: (AIR 1978 SC 1675 at p. 1727) that even prisoners deprived of personal liberty are not wholly denuded of their fundamental rights. In the larger interest of national security and military discipline, Parliament in its wisdom may restrict or abridge such rights in their application to the Armed Forces but this process should not be carried so far as to create a class of citizen not entitled to the benefits of liberal spirit of the Constitution. Persons subject to Army Act are citizens of this ancient

land having feeling of belonging to the civilized community governed by the liberty-oriented Constitution.’

(AIR 1982 SC 1413 – Lt Col Prithipal Singh Bedi v/s UOI)

- e) ‘Despite lapse of about two decades neither the Parliament nor the Central Govt appears to have realised their constitutional obligations, as were expected by this Court, except amending Rule 62 providing that after recording the finding in each charge the Court shall give brief reasons in support thereof. The Judge-Advocate has been obliged to record or caused to be recorded brief reasons in the proceedings. Even today the law relating to Armed Forces remains static which requires to be changed keeping in view the observations made by this Court in Prithi Pal Singh Bedi’s case, the constitutional mandate and the changes effected by other democratic countries. The time has come to allay the apprehension of all concerned that the system of trial by Court Martial was not the arch-type of summary and arbitrary proceedings. In the absence of effective steps taken by the Parliament and the Central Govt, it is the constitutional obligation of the courts in the country to protect and safeguard the Constitutional rights of all citizens including the persons enrolled in the Armed Forces to the extent permissible under law by not forgetting the paramount need of maintaining the discipline in the Armed Forces of the country. The Court Martials under the Act are not courts in the strict sense of the term as understood in relation to implementation of the civil laws. The proceedings before Court Martial are more administrative in nature and of the executive type. Such courts under the Act, deal with two types of offences, namely, (1) such acts and omissions which are peculiar to the Armed Forces regarding which no punishment is provided under the ordinary law of the land and (2) a class of offences punishable under the Indian Penal Code or any other legislation passed by the Parliament.’

(SLP (C) 7347/1999 (SC 2000) – UOI v/s Charanjit Singh Gill)

- f) ‘The functions and duties of GREF are integrally connected with the operational plans and requirements of the Armed Forces. There can be no doubt that without the efficient and disciplined operational role of GREF, the military operations in border areas during peace as also in times of war will be seriously hampered and a highly disciplined and efficient GREF is absolutely essential for supporting the operational plans and meeting the operational requirements of the Armed Forces. The members of the GREF answer the description of “members of the Armed Forces” within the meaning of Art. 33 and consequently the application of Sec. 21 of the Army Act to the members of GREF is protected by that Article and the fundamental rights of the members of GREF must be held to be validly restricted by Sec. 21 read with Rules 19 to 21 of Army Rules. The petitioners were therefore liable to be charged under Sec. 63 of the Army Act for the alleged violations of Rules

19 to 21 and their convictions and subsequent dismissals must be held to be valid. Section 21 of the Army Act empowers the Central Government to make rules restricting “to such extent and in such manner as may be necessary” three categories of rights of any person subject to the Army Act. These rights are part of the fundamental rights under cls. (a), (b) and (c) of Art. 19(1) and under the constitutional scheme, they cannot be restricted by executive action unsupported by law. But Sec 21 is saved by Art. 33 which carves out an exception in so far as the applicability of fundamental rights to members of the Armed Forces and the Forces charged with the maintenance of public order is concerned. On a plain grammatical construction of its language, Art. 33 does not require that Parliament itself must by law restrict or abrogate any of the fundamental rights in order to attract the applicability of that Article. What it says is only this and no more, namely that Parliament may by law determine the permissible extent to which any of the fundamental rights may be restricted or abrogated in their application to the members of the Armed Forces and the Forces charged with the maintenance of public order. Parliament itself can by enacting a law restrict or abrogate any of the fundamental rights in their application to the members of these Forces as in fact, it has done by enacting the Army Act. But having regard to the varying requirement of army discipline and the need for flexibility in this sensitive area it would be inexpedient to insist that Parliament itself should determine what particular restrictions should be imposed and on which fundamental rights in the interest of proper discharge of duties by the members of these Forces and maintenance of discipline among them. The extent of such restrictions would necessarily depend upon the prevailing situation at a given point of time and it would be inadvisable to encase it in a rigid statutory formula. The Constitution makers were obviously anxious that no more restrictions should be placed on the fundamental rights of the members of these Forces than are absolutely necessary for ensuring proper discharge of their duties and the maintenance of discipline among them. They, therefore, decided to introduce a certain amount of flexibility in the imposition of such restrictions and by Art. 33, empowered Parliament to determine the permissible extent to which any of the fundamental rights in their application to the members of these Forces may be restricted or abrogated so that, within such permissible extent determined by Parliament, any appropriate authority authorised by Parliament may restrict or abrogate any such fundamental right. Parliament was therefore within its powers under Art 33 to enact S.21. The extent to which restrictions may be imposed on the fundamental rights under cls. (a), (b) & (c) of Art. 19 (1) is clearly indicated in cls. (a), (b) & (c) of S. 21 and the Central Govt is authorised to impose restrictions on these fundamental rights only to the extent of the

rights set out in cls. (a), (b) & (c) of S. 21 and no more. The guidelines for determining as to which restrictions should be considered necessary by the Central Govt within the permissible extent determined by Parliament is provided in Art. 33 itself, namely, that the restrictions should be such as are necessary for ensuring the proper discharge of their duties by the members of the Armed Forces and the maintenance of discipline among them. The Central Govt has to keep this guideline before it in exercising the power of imposing restrictions under Sec. 21. Once the Central Govt has imposed restrictions in exercise of this power, the Court will not ordinarily interfere with the decision of the Central Govt that such restrictions are necessary because that is a matter left by Parliament exclusively to the Central Govt which is best in a position to know what the situation demands. Sec 21 must, in the circumstances, be held to be constitutionally valid as being within the power conferred under Art. 33. *Ram Swarup v UOI* [1964] 5 SCR 931, referred to. In any event, the provisions of the Army Act & Army Rules as applied to the members of GREF are protected by Art 33 against invalidation on the ground of violation of Art 14.

(AIR 1983 SC 658 – R Viswan & Ors v/s UOI)

1.1.5 Members of the Force not absolved of their obligations under the civil law

Being Indian citizens, members of the Force are governed by Civil laws also.

(Sec 49, 50)

1.1.6 Special offences and special provisions

Some offences that are of insignificant nature in civil services such as being absent without leave, insubordination, intoxication and **special offences** like mutiny, desertion, offences in respect of enemy etc. and special provisions such as Special Courts, Summary Trial of offenders provided in the Act for maintenance of discipline and speedy dispensation of justice.

1.1.7 Special Courts known as Force Courts

Special courts known as **Force Courts** (FCs) are provided for speedy trial of offences codified in the ITBPF Act. Special Courts remain to a significant degree a specialised part of the overall penal mechanism by which Force discipline is maintained.

(Sec 76)

Trial by a Force Court under the provisions of ITBPF Act shall be deemed to be a **judicial proceeding** (Sec 2 (i) CrPC 1973) within the meaning of Sec 193 & 228 of IPC and the **Force Court** shall be deemed to be a **Court** within the meaning of Sec 345 and 346 CrPC 1973.

(Sec 118)

Force Courts in Sec 76 of ITBPF Act are **Court Martial** within the ambit of Sec 475 CrPC 1973.

Definitions: Criminal Procedure Code (CrPC)

Judicial Proceedings (Sec 2 (i) CrPC)	Includes any proceeding in the course of which evidence is or may be legally taken on oath.
Court Martial (Sec 475 Cr PC)	Includes any tribunal with the powers similar to those of a Court Martial and constituted under the relevant law applicable to the concerned Armed Force of the Union.

Necessity of Special Courts has been recognised & accepted by the Hon'ble Supreme Court.

Case Law:

- a) 'The indication of the circumstances in which it would be better exercise of discretion to have a trial by Court Martial is an index as to what considerations should guide the decision of the officer concerned about the trial being by a Court Martial or by an ordinary court. Such considerations can be based on maintenance of discipline in the Army, the persons against whom the offences are committed and the nature of the offence.'

(AIR 1965 SC 247 – Ram Sarup v/s UOI)

Hon'ble Supreme Court has adversely commented about the absence of appeal court with power for judicial review of cases decided by special courts.

- b) 'A hierarchy of Courts with appellate powers each having its own power of judicial review has of course been found to be counter-productive but the converse is equally distressing in that there is not even a single judicial review. With the expanding horizons of fair play in action even in administrative decision, 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 by a body composed of non-military personnel or civil personnel.'

(AIR 1982 SC 1413 - Lt. Col Pritpal Singh Bedi v/s UOI)

Though ITBPF law does not provide for appellate courts, it provides for 'Petitions' to executive authority.

1.1.8 Law of evidence applicable in trials by Special Courts (Sec 99; IEA Sec 1 (Extent)

Evidence Act is applicable and **Criminal Procedure Code (CrPC)** is not applicable in trials by Special Courts.

Case Law:

- a) 'The Court Martial discharge judicial functions and to a great extent, is a court where provisions of Evidence Act are applicable. A Court Martial has also the same responsibility as any court to protect the rights of the accused

charged before it and to follow the procedural safeguards. Proceedings of a Court Martial are not to be compared with proceedings in a Criminal Court under the Code of Criminal Procedure where adjournments have become a matter of routine though that is also against the provisions of law.

(AIR 1998 SC 577 – UOI v/s Major A Hussain)

- b) ‘A perusal of the above-mentioned provisions (*Army Act Sec 128 to 158 – Procedure of Court Martial; Sec 153 to 165 – Confirmation and revision of sentence; Army Rules 22, 23, 25, 28, 33, 37, 40, 41, 64 to 68, 70, 71, 95 to 97, 134 to 143 & 177 to 183 – Court of Inquiry*) goes to show that they deal with the offences against military law which are triable by tribunals called Court Martial. But the trial before them is in the nature of regular trial before a criminal court in as much as Courts Martial are bound to follow the provisions of the general law of evidence contained in the Evidence Act, subject to certain modifications. However, the provisions of CrPC as such are not applicable.’

(AIR 1991 SC 1617 – Major GS Sondhi v/s UOI)

- c) ‘The effect of Sec 5 of CrPC is to render the provisions of the Code inapplicable in respect of all matters covered by such Special law. In as much as Sec 176 of the Act (*Army Act*) specifically deals with the topic of the date of commencement of the sentence of imprisonment, there is absolutely no scope for revoking Sec 428 of the CrPC in respect of prisoners convicted by Courts Martial under the Act.’

(AIR 1987 SC 1646 – Ajmer Singh v/s UOI)

1.1.9 Remedy against finding or sentence of Force Courts (FCs)

There is no appellate court in ITBPF and no appellate jurisdiction by civil courts. Remedy against the finding, order or sentence of Force Court (FC) is provided by way of petitions to executive authorities.

- 1) **Petitions in the case of Petty Force Court (PFC) and General Force Court (GFC):** A person subject to the Act who has been tried by a PFC or GFC shall be allowed to put in one petition before confirmation, to the Confirming Authority and another petition after confirmation to any officer or authority mentioned in Sec 131.

(Rule 168 (1))

- a) **Petition before confirmation of finding & sentence:** Any person subject to this Act who considers himself aggrieved by any order passed by any PFC or GFC may present a petition to the officer or authority empowered to confirm any finding or sentence of such FC and the Confirming Authority may take such steps as considered necessary to satisfy itself as to the correctness, legality or propriety of the order passed or as to the regularity of any proceeding to which the order relates. (Sec 131 (1))
- b) **Petition after confirmation of finding & sentence:** Any person subject to this Act who considers himself aggrieved by an order passed by any PFC or GFC may present a petition to the Central Govt, DG or any

Prescribed Officer superior in command to the one who confirmed such finding or sentence and such authority may pass such order thereon as he thinks fit. **(Sec 131 (2))**

- 2) **Petition in the case of Summary Force Court (SFC):** In the case of an SFC he shall be allowed to put in only one petition to any of the officers mentioned in Sec 131. **(Rule 168 (2))**
- 3) **Annulment of proceedings:** Central Government, DG, or any Prescribed Officer may annul the proceedings of any FC on the ground that they are illegal or unjust. **(Sec 132; Rule 184)**
- 4) **Period of limitation (Rule 169):**
 - a) A petition, before confirmation, shall be submitted, within two weeks of the conclusion of the trial.
 - b) A petition after confirmation shall be submitted within three months of the date on which the sentence was promulgated.
Provided that the time taken by such person to obtain a copy of the proceedings shall be excluded in computing period of three months.
- 5) **Mode of submitting petitions (Rule 170):**
 - i) (a) A petition by a person who is still a member of the Force shall be submitted through his Commanding Officer.
 - (b) A petition by a person who has ceased to be a member of the Force may be submitted to the Commanding Officer of the unit in which the trial was held.
 - ii) An officer to whom a petition is submitted or to whom a petition has been forwarded shall forward it to the next superior within a period of one week.
Provided that an officer may not forward a petition if he is competent to give the redress asked for and decide to do so.
 - iii) An officer receiving a petition shall send it to the Judge Attorney General or to the officer approved by him for advice.

Case Law:

‘Admittedly, there is an alternative and effective remedy available to the petitioner by way of filing of an appeal before the Competent Authority which the petitioner has not availed and filed the present writ petition straightway. In my considered opinion, there are certain disputed facts, which cannot be decided in this Writ Petition. Therefore, the petitioner is directed to approach the appellate authority and file an appeal as per law. However, the appeal filed by the petitioner shall be entertained by the authorities without raising any objection as to the question of limitation and consider it and pass appropriate orders as per law within a period of three months from the date of filing of appeal by the petitioner.’

(WP 3221/2001(AP) 2004 – T Ramachandra Rao v/s 191 BN BSF)

1.1.10 Appeal to the executive authority against termination of service (Rule 28)

- 1) Any person subject to the Act, who is aggrieved by any order of termination of his service passed under Chapter IV of the Rules may present an appeal within ninety days from the date of order of termination to any of the authority, higher than the one who passed the termination order. Such Authority may pass orders on the petition as deemed fit.

Petition to be submitted in the case of:

Officers	To the Central Govt
SOs & Enrolled Persons	To any authority higher than the one who passed the termination order

(Rule 28 (1) & (2))

- 2) **Passing of orders relating to absence from duty:** When an order of termination of service by way of dismissal, removal or compulsory retirement is set aside by appellate authority, such officer or authority shall pass such orders as necessary in respect of the period of absence from duty of the person whose dismissal, removal or compulsory retirement from service was set aside.

(Rule 28 (3))

1.1.11 Special Courts not subject to the superintendence of the High Court

Article 227 (4) Constitution of India: ‘Nothing in this Article shall be deemed to confer on a High Court, powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.’

Case Law:

‘Though Court Martial proceedings are subject to judicial review by the High Court under Art 226 of the Constitution, the Court Martial is not subject to the superintendence of the High Court under Art 227 of the Constitution. If a Court Martial has been properly convened and there is no challenge to its composition and the proceedings are in accordance with the procedure prescribed, the High Court or for that matter any court must stay its hands.’

(AIR 1998 SC 577 – UOI v/s Major A Hussain)

1.1.12 High Court/Supreme Court has no appellate jurisdiction on Special Courts

Article 136 Constitution of India: Special leave to appeal in the Supreme Court

- 1) ‘Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

- 2) Nothing in cl. (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.’

Case Law:

- a) ‘Provisions of Sec 117 (2) of the Act provide a specific remedy to the person convicted. The High Court has no jurisdiction to entertain an appeal against the order of conviction passed by the SFC and confirmed by Competent Authority,’ (1979 CalWN 458 (DB) – **Raje Singh Negi v/s UOI**)
- b) ‘The Division Bench said that the learned single Judge minutely examined the record of the Court Martial proceedings and after that came to the conclusion that the respondent was denied reasonable opportunity to defend himself. We think this was a fundamental mistake committed by the High Court. It was not necessary for the High Court to minutely examine the record of the General Court Martial as if it was sitting in appeal. We find that on merit, the High Court has not said that there was no case against the respondent to hold him guilty of the offence charged. Though Court Martial proceedings are subject to judicial review by the High Court under Art. 226 of the Constitution, the Court Martial is not subject to the superintendence of the High Court under Art. 227 of the Constitution. If a Court Martial has been properly convened and there is no challenge to its composition and the proceedings are in accordance with the procedure prescribed, the High Court or for that matter any court must stay its hands.’ (AIR 1998 SC 577 – **UOI v/s Major A Hussain**)
- c) ‘This is a well-settled law that High Court in writ jurisdiction does not sit as a Court of appeal on the findings arrived by GSFC.’ (WP 232/77 J&K (J) 1978 – **Ct Bishan Singh v/s UOI**)
- d) ‘Absence of even one appeal with power to review evidence, legal formulation, conclusion and adequacy or otherwise of punishment is a glaring lacuna in a country where a counterpart civilian convict can prefer appeal after appeal to hierarchy of Courts. Submission that full review of finding and/or sentence in confirmation proceedings under Sec 153 (*Army Act*) is provided for is poor solace. A hierarchy of Courts with appellate powers each having its own power of judicial review has of course been found to be counter-productive but the converse is equally distressing in that there is not even a single judicial review. With the expanding horizons of fair play in action even in administrative decision, the universal declaration of human rights and retributive justice being relegated to the uncivilised days, a time has come when a step is required to be taken for at least one review and it must truly be by a body composed of non-military personnel or civil personnel. 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 order. And it must be realized that an appeal from Ceaser to Ceaser's wife – confirmation proceedings under Sec 153 has been condemned as injudicious and merely a lip-sympathy to form.' (AIR 1982 SC 1413 - Lt Col Pritpal Singh Bedi v/s UOI)

1.1.13 Writ jurisdiction by Supreme Court & High Courts

Special Court proceedings/Administrative actions of ITBPF authorities are subject to **judicial review** by Supreme Court and High Court under writ jurisdiction.

Article 32 Constitution of India: Right to constitutional remedies by Supreme Court

Remedies for enforcement of rights conferred by this part:

- 1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
- 2) The Supreme Court shall have the power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

Article 226: Power of High Courts to issue writs

- 1) 'Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.
- 2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.'

Case Law:

- a) 11. In the case of 2008 (10) SCALE 227, the Supreme Court held as follows: 'The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the Writ Court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material

facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.”

12. In the facts of the present case, the petitioner who had tendered his resignation so as to take care of his family and personal needs, in fact, took admission in a PG Diploma course at Vydehi Institute of Medical Sciences, Bangalore on 31st May, 2009 and the said course was for a period of three years. The petitioner was employed as an Assistant Commandant which was a group ‘A’ post and his resignation was, in fact, a ploy to clandestinely undergo the said PG Diploma course and he had suppressed this fact from the respondents and has not bothered to disclose the same even in the present petition. It is unfortunate that the process of this Court is being used with malafides and dishonesty to achieve a purely selfish gain by the petitioner. The Courts are to be vigilant against all efforts to overshadow the ethos of justice and fair play. The jurisdiction of this Court, being extraordinary, is normally exercised keeping in view the principles of equity. To promote honesty and fair play is one of the ends of equity. This Court is not only a Court of law but also a Court of Equity. Therefore, looking into the act of the petitioner, we are of the view that the present petition is a gross abuse of the process of law and the same deserves to be dismissed, with costs of Rs.10,000/-, which shall be deposited in the Delhi High Court Staff Welfare Fund within four weeks of this order.

(WP (C) 4751/2014 (HC of Delhi – 01/12/2014) – Sujjan Singh v/s UOI and DG SSB)

- b) ‘20. However, it is well known that except the cases where the punishment is shockingly disproportionate, the Superior Courts would not ordinarily interfere with the quantum of punishment.

21. In, *The Managing Director State Bank of Hyderabad & Anr. v. P. Kata Rao* [2008 (6) SCALE 575], this Court held:

‘18. There cannot be any doubt whatsoever that the jurisdiction of superior courts in interfering with a finding of fact arrived at by the Enquiry Officer is limited. The High Court, it is trite, would also ordinarily not interfere with the quantum of punishment...’

(Cri. Appeal No. 2061/2008 (Arising out of SLP (Cri) No. 5439/2006) (SC) – Ex Ct Ramvir Singh v/s UOI & Ors)

- c) ‘Writ Court under Art 226 can interfere when inferior tribunal or authority has acted on in-admissible evidence or has drawn wrong conclusion. However, inadequacy or insufficiency of evidence is no ground to interfere. Similarly, no interference is called for when superior court holds different view than the view held by inferior tribunal.’

(WP 44/1976 J&K (S) – Ex Ct Tirath Ram v/UOI)

- d) ‘High Court in writ jurisdiction cannot reappraise the evidence of SFC. Even if the SFC erroneously appreciated the evidence, the Writ Court cannot interfere

with the decision of said Court. However, if the decision of SFC is based on no evidence, the High Court in its writ jurisdiction would readily interfere.’

(WP 864/1981 (J&K (J) 1985 – **Ajay Kumar v/s UOI**)

- e) ‘Writ Court cannot say whether trial court has correctly appreciated evidence as per law. The High Court in its writ jurisdiction cannot be converted into Court of fact. High Court in writ jurisdiction cannot adjudicate as to why other personnel who were blamed by CoI along with petitioner have not been proceeded with or tried. If BSF Rule 45 was complied with, the Commandant could have dismissed the charge. Violation of procedural law such as Rules 45, 46 and 48 shall render GSFC as nullity and *non-est*.’

(WP 148/1981 J&K(S) 1986 – **SI Shri Ram v/s UOI**)

- f) ‘High Court in writ jurisdiction cannot go into facts of the case.’

(WP 14/83 (Del) 1988 – **Kala Singh v/s UOI**)

- g) ‘High Court can interfere with the findings and sentence of Court Martial under Art. 226 on following grounds:

Where the Court Martial has acted without or in excess of its jurisdiction or failed to exercise it;

Where the order of Court Martial is erroneous on face of the record; where there has been violation of principles of natural justice.

The High Court cannot interfere with the findings of fact even if erroneous.’

(1987 CriLJ (SC) 504 – **Guru Villa Vama Rao v/s UOI**)

- h) ‘As seen above, the Division Bench notes that the charges against the Respondent are proved and that the charges are of serious nature. Once the Court came to the conclusion that the charges were proved and that the charges were of serious nature, it was not the function of the Court to interfere with the quantum of punishment. The Division Bench was wrong in holding that factors viz.

- a) the person is coming from which place,
- b) his family background and
- c) his service record etc. were to be kept in mind.

In our view the Division Bench was also wrong in holding that if a poor person pleads guilty to the misconduct, then extreme penalty of dismissal is uncalled for. In our view, a Court must not lightly interfere with sentences passed after a properly conducted enquiry where the guilt is proved. Reduction of sentence, particularly in military, paramilitary or police services can have a demoralising effect and would be a retrograde step so far as discipline of these services is concerned. In this case the charges being of a serious nature the penalty was commensurate with the charges. Further, the Division Bench has itself noted that this was the third time the Respondent was punished.’

(AIR 2002 SC 2102 – **UOI v/s Narain Singh**)