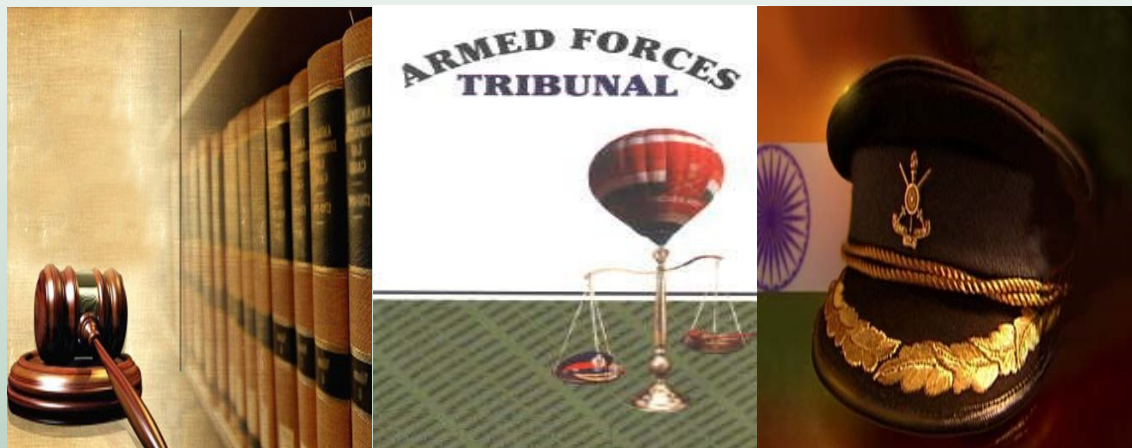




MILITARY LAWS AND PRACTICES (26th July– 1st August, 2015)



Gujarat National Law University

Attalika Avenue, Knowledge Corridor, Koba, Gandhinagar - 382007 (Gujarat), INDIA Website: www.gnlu.ac.in,

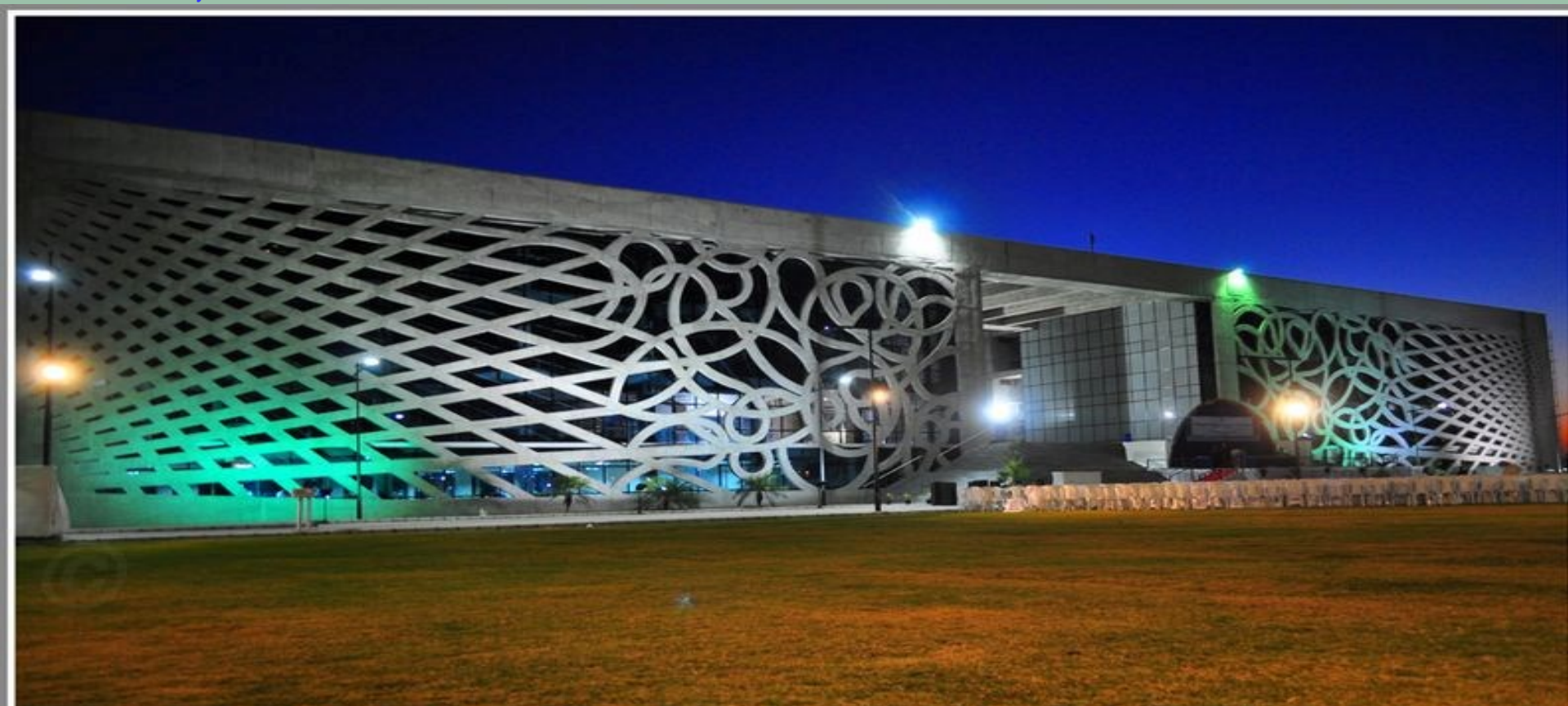
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Introduction

Indian Military Laws have its origin from British Military Laws, primarily because of British Rule in India. Before independence, the Indian Army was largely governed by the provisions of the Indian Army Act 1911, Indian Army Rules 1911 and the Regulations for the Indian Army. But after the commencement of our Constitution, necessity was felt to revise those Rules so as to modify the existing provisions in accordance with the new Constitutional provisions, to make the Act self sufficient by incorporating provisions of other enactments, to bridge the gap between Army and various civil laws relating to punishment and to remove the disparity between similar provisions of law applicable to the Armed forces of India. As a result of this The Army Act, 1950; The Air Force Act, 1950 and The Navy Act, 1957 were enacted. There was no provision for Appeal in these Acts from the orders of Court Martial.

The Hon'ble Supreme Court in *Lt. Col. Prithi Pal Singh Bedi etc vs. Union of India & Others* observed that absence of even one Appeal from the order of Courts Martial is a glaring lacuna in the country regarding the rights of the Armed forces personnel. In the light of this Judgment, The Army Act was amended in 1992 but it could not fully implement those observations. The 169th Law Commission Report stressed on the need for amending provisions of the Army Act (1950), the Air Force Act (1950) and the Navy Act (1957) and as a result, The Armed Forces Tribunal Act, 2007 was passed. Prior to the establishment of the Armed Forces Tribunal, defence personnel had no other option but to approach the High Courts or the Supreme Court by way of writ petitions from the orders of Court Martial. The Armed Forces Tribunal Act 2007 provides for the establishment of Armed Forces Tribunal and its branches thereof and these Armed Forces Tribunals are provided with original as well as appellate jurisdiction. The Tribunal is not bound to follow the Code of Civil Procedure, 1908 but the members must ensure that the principles of natural justice are strictly adhered to.



Military legal system in India was designed and implemented after the Mutiny of 1857 to prevent such situations to occur in the future. The political situation of the country at that time was different and no consideration of Human Rights was given by the British Government. The system might have been the necessity of the times but in the present era of welfare state, the concepts of Human Rights, Fundamental Rights of the Armed forces personnel cannot be neglected. In the present times, there is a need to value Rules of Natural Justice, Human Rights, and International developments in Military Laws in other countries of the world. The present course contains the various facets of human rights and fundamental rights and military justice system in India with comparative study of military justice systems in USA and UK.

Aims:

- To provide knowledge on contemporary and advance issues and practices of the military laws and practices in an intensive manner;
- To discuss, analyse and forecast the state practice of India on military laws and future operational challenges and issues at officers' level;
- To acquire an understanding of the issues and challenges of military laws and practices in major seafaring nations.

Duration:

07 days (6 hours daily) followed by daily group discussion, four lectures, each of 1.5 hours (with 15 minutes break)

Methodology:

The course will consist of Lectures (including video lectures), seminar and documentary. Each candidate will be required to undertake 250 pages additional self-study in advance prior to commencement of the course.

Reference material:

Each candidate will be provided with reading material consisting of essential laws, articles, reports and case-law abstracts.



Syllabus

Module 1	Concept of Justice Notions of justice; Military justice system; History of the Indian military justice system
Module 2	The Indian Constitution and the Armed Forces Fundamental Rights and the Military Legal System, International Laws and Military laws; Constitutional Interpretation of the Military Laws; Cases relating to Article 33; The role of the legislature and the Supreme Court of India



Module 3

Court-Martial: System and Procedure at Trial

Provisions of Courts-Martial in the Indian Army, Air Force and the Navy; Jurisdiction of Courts-Martial as to Offence and punishment, Summary Punishment (Other than by a Court-Martial); Review of Summary Punishment; Important Functionaries of the Court; Pre-Trial Preparation; Arrest; Investigation and Recording of Summary of Evidence; Trial by Court-Martial; Assembly Swearing or Affirmation of Court; Plea in Bar; When Accused Pleads ‘Guilty’; When Accused Pleads ‘Not Guilty’; Defense of the Accused; Finding and Sentence; Conviction/Acquittal Sentence; Confirmation and Revision of Finding and Sentence Promulgation; Appeal/Review of Court-Martial Decisions Pardon, Remission and Suspension.

Module 4

Comparative Practice: The British Military Justice system

Court-martial; Royal Navy; Service Discipline Acts; The Role of Convening Authority; Reform in the Military Justice System; Reforms in 1996 and 2000; The Military Justice System: Specific issues; Court-martial Members; Review and Appeal; Army Legal Services; Further Reforms; The Armed Forces Act 2006; Special Forces Act and Military Laws

Module 5

Comparative Perspective: The US Military Justice System

Administrative Action; Non-judicial Punishment (NJP); Court-Martial; Summary Court-martial; Special Court-martial; General Court-martial (GCM); Convening Authorities; Unlawful Command Influence; Article 32 Investigations; Military Judges; Rights of Accused; Right to a Government-Funded Expert; Appeal

Courts of Criminal Appeals; *De Novo* Review; United States Court of Appeals for the Armed Forces; Review by the Supreme Court; Updating of Military Justice System; Military Commissions; Conviction under Military Commission



Module 6

Critical Appraisal and Analysis

Right to Fair Trial; Pre-Trial Judicial Custody; Provisions relating to Arrest; Rights of the Accused; Legal Aid and the Indian Military Justice System; Respondents' Opinions; Non-Judicial Punishment; Right to Election for Trial by Court-Martial; Statement of Witnesses; Pre-trial Information; Review of Punishment; Right to Appeal; Role of Convening Authority; Unlawful Command Influence; Respondents' Opinions; Judiciary of the Armed Forces; Respondents' Opinion: Military Tribunals; Summary General Court-Martial (SGCM); Summary Court-Martial (SCM); Respondents' Opinion on Summary Courts-martial; Disciplinary Court Under the Navy Act 1957; Multiple Systems of Military Tribunals

Court Members v. Judge Advocate; Cruel, Unjust and Disproportionate Punishment; Disparity in Sentencing: Sentencing Guidelines; Armed Forces Tribunal; Background Appellate Forum in India; The Armed Forces Tribunal Bill; Armed Forces Tribunal Act 2007

Module 7	Future Reforms Common Code for the Armed Forces; Special Military Laws and Human Rights; Previous Attempts; Differences between the Three Services Acts; Need For Unification; Uniformity; Joint Deployment; Future Amendments; Operational Effectiveness; Armed Forces Tribunal; Need for a Common Code; Plea Bargaining; Recommendations
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Batch-size:
30 participants.

Eligibility:
An Indian citizen
An officer on probation or on active duty as a commissioned officer
A college graduate

Faculty:
Faculty will consist of well-experienced serving and retired Army/Navy/Air force officers including Judge-Advocate Generals from India, serving/retired judges, advocates, academicians, scholars from India and abroad.

Facilities:
A state-of-art modern world class fully IT equipped (wi-fi) 50 acres university campus with residential facilities, sports complex, excellent library and online research services, conference halls, 15 minutes away from Ahmedabad airport and governmental departments, 30 minutes away from major defence forces offices based in Gandhinagar.

Fees:
INR 15,000 including registration, lodging & boarding, tuition fee, study material, cultural visits, exams & access of online legal databases like West Law, Manupatra, J-store, Heinonline, Cambridge University Publication E Books, Oxford University Publication E Books, Oxford University Publication E Reference Books, World Bank E-books, and the legal database software of AIR, GLH and GLR.
To promote the participation of students in the Program, special concession in the fee is provided by the University. For students participation fee is 10,000/- including all the above facilities.

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