

# CHAPTER 37 : Discipline in the Military Sense: A Review on Concepts and Selected Legal Authorities.

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## 1. Introduction

In the civilized world, no society exists without a framework of social organization. Every society has some form of social order, some way of marking and encouraging approved behaviour, deterring disapproved behaviour, and resolving disputes about that behaviour.<sup>567</sup> Social control is the process by which a social order can be established and sustained. Accordingly, law should be identified as a tool of social control and an instrument to maintain social order. According to Bentham and Austin, the law is a result of the sovereign's commands: that applies to people and are backed up by 'threat of force' or 'sanction'.<sup>568</sup> Therefore, according to the Positivist Legal Theory, the law regulates the behaviour of the people by enforcing sanctions and punishments.

Military Law is primarily a mean to enforce discipline and obedience in the military.<sup>569</sup> Discipline generally denotes a negative type of motivation. It usually involves the threat of some physical or

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<sup>567</sup> Green Leslie and Thomas Adams, "Legal Positivism", The Stanford Encyclopedia of Philosophy (Winter 2019 Edition), Edward N. Zalta (ed.), URL = <<https://plato.stanford.edu/archives/win2019/entries/legal-positivism/>> Accessed 2023 March 20.

<sup>568</sup> *ibid.*

<sup>569</sup> Emsley Clive, Chapter 1, '*The Object of Military Law Is to Maintain Discipline*': *Different Laws for Different People, Soldier, Sailor, Beggarman, Thief: Crime and the British Armed Services since 1914* (Oxford, 2013; online edn, Oxford Academic, 23 May 2013).

psychological deprivation if a particular action is not undertaken. Discipline remains a vital element in maintaining motivation.<sup>570</sup>

According to General George Patton, “All human beings have an innate resistance to obedience. Discipline removes this resistance and, by constant repetition, makes obedience habitual and subconscious. [...] Self-respect grows directly from discipline.”<sup>571</sup> Colonel George Washington, in the ‘Letter of Instruction to Captains of the Virginia Regiment (1759)’ stated that, “Discipline is the soul of an army. It makes small numbers formidable; procures success to the weak and esteem to all.”<sup>572</sup> Discipline, therefore, must be understood as an essential element in maintaining the structural function of any military force. Without discipline, a military force is nothing more than a mass of volunteers, incapable of uniting for a collaborative defence or achieving any task in battle. Discipline is the glue which binds soldiers together under the orders of the commanding officers.

## 2. Discipline in the Military sense

Military discipline is defined as a set of attributes which enhance a soldier's individual and collective combat effectiveness. In ‘*The Anatomy of Discipline*’ authored by MAJ. Kevin S. Donohue explains several core functions of military discipline. Those functions are Obedience, Synergism, Attention to Detail, Restraint, Stress Resistance, Courage, Identification, Internalization, Initiative, Respect and Societal Benefit.<sup>573</sup>

Furthermore, in his thesis MAJ. Donahue identifies two main elements of military discipline. The first one is ‘Behaviour’ which consists of externally enforced or learned habitual behavioural responses functions of obedience, synergism, attention to detail, restraint, and stress resistance. The second element is ‘Attitude’ which consists of voluntary, self-sustaining, value-based functions of courage, identification, internalization, and initiative.<sup>574</sup> Accordingly,

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<sup>570</sup>Walendowski, E., *Discipline. In: Combat Motivation of the Polish Forces*, Palgrave Macmillan, London, (1988). [https://doi.org/10.1007/978-1-349-19202-1\\_5](https://doi.org/10.1007/978-1-349-19202-1_5). Accessed 2023 March 20.

<sup>571</sup> *ibid.*

<sup>572</sup> MAJ Kevin S. Donohue, *The Anatomy of Discipline*, School of Advanced Military Studies (1993), 53.

<sup>573</sup> MAJ Kevin S. Donohue, *The Anatomy of Discipline*, School of Advanced Military Studies, United States Army Command and General Staff College, Fort Leavenworth, Kansas, USA, (1993).

<sup>574</sup> *ibid.*, Abstract.

‘Behaviour’ should be understood as the external factor of military discipline and ‘attitude’ should be defined as the internal factor of military discipline.

As ‘obedience’ is a necessary norm in the military, it can be identified as a core function of discipline. Without obedience, a collection of individuals is not a reliable instrument for achieving any goal. The efficiency born of obedience is a desirable characteristic in every type of organized effort, including military efforts.<sup>575</sup>

In Military discipline, ‘synergism’ is one of the main factors in order to achieve military objectives. Synergism means achieving an objective by acting together. This function attempts to address the physical efficiency aspect of cooperation and the practice of working as part of a team.<sup>576</sup>

Attention to detail can be defined as "being thorough in accomplishing a task with concern for all areas involved, no matter how small."<sup>577</sup> Accordingly, ‘attention to detail’ is vital to maintain military discipline because a missed detail in the military can cost lives. Also, ‘restraint’ is another significant function in military discipline. Without restraint, no soldier can act as a well-disciplined military person on the field.

When dealing with the physical tasks of combat, only combat skills are not enough; maintaining the mental well-being of the soldier is also essential. Therefore, the ‘courage of a soldier’ can be identified as an essential component of military discipline. True courage goes beyond mere obedience; it suggests confidence and performance. Field Marshal Montgomery argued that “*Discipline helps men display fortitude in the face of fatigue and discomfort, while at the same time it helps them to control fear.*”<sup>578</sup>

Some authors have stated ‘respect for superiors’ as a key function of military discipline, even to the point of arguing that the primary objective of military training is to teach the soldiers that the officers are

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<sup>575</sup> Stewart Murray, *Discipline: Its Reason and Battle Value* (London: Gale and Polden, Ltd., 1894), 7.

<sup>576</sup> MAJ Kelvin s. Donhue, (n.7), 12.

<sup>577</sup> Lt. Col. Trevor Nitz (437th Airlift Wing Safety chief), *Why attention to detail is so important?* Joint Base Charleston Newsletter, Dec: 01, 2006.

<sup>578</sup> Montgomery, *Cited in Graves*, 32.

"omnipotent."<sup>579</sup>Also, 'respect' should be understood as a separate function of military discipline that closely deals with 'obedience'.<sup>580</sup>

According to the United States Army Doctrine,

"Military discipline is intelligent, willing, and cheerful obedience to the will of the leader. Its basis rests on the voluntary subordination of the individual to the welfare of the group. It is the cementing force which binds the members of the unit; it is the spirit of the military team."<sup>581</sup>

### **3. Military Discipline, Military Ethic & Military Law**

#### **3.1 Military Discipline**

Soldiers are creatures of discipline, and almost every aspect of their professional lives is governed by orders.<sup>582</sup> Therefore, military discipline is a vital part of the soldier's life. The concept of military discipline is a complex, multifunctional amalgam of psychological and physical components. These components, relevant on the modern battlefield, can be categorized into behaviorally based components and attitudinally based components.<sup>583</sup>

According to the 'Basic Field Manual on Military Courtesy and Discipline' published by the War Department of the United States,<sup>584</sup>

"Military discipline is prompt, intelligent, willing, and cheerful obedience to the will of the leader. Its basis is the voluntary subordination of the individual to the welfare of the group. It is the cementing force which binds the members of a unit; which endures after the leader has fallen and every

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<sup>579</sup> Stephen D. Wesbrook *Measures "self-control and respect for authority" in "Morale, Proficiency, and Discipline,"* Journal of Political and Military Sociology (Spring 1980).

<sup>580</sup> MAJ Kelvin s. Donhue, (n.7), 18.

<sup>581</sup> US Army Military Courtesy and Discipline (Washington, DC: US Government Printing Office, 1942), 1.

<sup>582</sup> Military discipline and the law – ICRC, <https://www.icrc.org> (2011). Accessed 2023 March 20.

<sup>583</sup> MAJ Kelvin s. Donhue, (n.7), 42.

<sup>584</sup> US War Department, Basic Field Manual, Military Courtesy and Discipline, Washington, June 15, 1942.

semblance of authority has vanished it is the spirit of the military team.”<sup>585</sup>

The Manual further refers that;

“True military discipline extends deeper than and beyond mere outward sign. While proper dress and smartness of appearance are desirable and conducive to good discipline, they are not alone conclusive proof of true discipline. A more positive indication is the behavior of individuals or units away from the presence or guidance of their superiors.”<sup>586</sup>

### 3.2 Military Ethic

Military ethics are codes of behaviour pertaining to the profession of arms. The military ethic consists of a code of behaviour appropriate for an organization whose primary purpose is to fight if called upon to do so.<sup>587</sup> It is the expression of consideration for others. Ethics are important in civil life to eliminate friction and make personal associations pleasant. In military life ethics are vital.

The military is oriented toward public service. Its specialized knowledge, skills, and practices include a rigorous code that is largely self-made and self-enforced. Although military ethics have historic roots in the just war tradition and philosophical roots in utility, deontology, virtue ethics, and natural law, the profession of arms has established itself as an autonomous arbiter of values.<sup>588</sup> Martin L. Cook and Henrik Syse, assert that military ethics is analogous to medical ethics or legal ethics in the sense that its core function is to assist those professions to think through the moral challenges and dilemmas inherent in their professional activity and, by helping members of the profession better understand the ethical demands upon them, to enable and motivate them to act appropriately in the discharge of their professional obligations.<sup>589</sup>

### 3.3 Military Law

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<sup>585</sup> *ibid*, 1.

<sup>586</sup> *ibid*.

<sup>587</sup> Robert S. Poydasheff, *Military Justice: A Reinforce of Discipline*, International Law Studies, Vol 62, 427.

<sup>588</sup> Patricia Cook, *A Profession Like No Other*, Routledge Handbook of Military Ethics Routledge, 32-33.

<sup>589</sup> Aleksandar Jokić, *What is really military ethics (and what they think it is in the west)?* THEORIA 4BIBLID 0369–2485 : (2017), 36-37.

‘Military Law’ must be distinguished from the ‘Law of War’ (*jus in bello*). The ‘Law of War’ is a set of rules that seek to limit the humanitarian consequences of armed conflicts.<sup>590</sup> Thus, it is also known as ‘International Humanitarian Law.’ The primary purpose of International Humanitarian Law is to restrict the means and methods of warfare that parties to a conflict may employ and, to ensure the protection and humane treatment of persons who are not, or no longer able to participate in direct hostilities.<sup>591</sup> However, ‘Military Law’ does not tend to regulate the conduct of hostilities. It focuses only on regulating the conduct of the military.

Military Law is concerned with many concepts that are not necessarily embraced within the character of military ethic. As discipline must be maintained within the military, so breaches of discipline must be punished.<sup>592</sup> Hence, Military Law mainly focuses on maintaining military discipline within the military by enforcing sanctions and punishments against the indiscipline actions. According to military law, there are two types of offences. The first category is military criminal offences, and second category is breaches of military discipline. Military crimes can be defined as serious violations directed against military capability, combat readiness and discipline and effectiveness.<sup>593</sup> Breach of discipline are typically minor offences that can be dealt with by a military superior or military court in summary proceedings or by disciplinary tribunals.<sup>594</sup>

Furthermore, ‘Manual of Military Law of the United Kingdom’ defines that,

“A man who join the army, whether as an officer or soldier, does not cease to be a citizen. With a few exceptions, his position under the ordinary law of the land remains unaffected. If he commits an offence against the civil law, he can be tried and punished for it by civil courts. In respect of civil courts, duties and liabilities the ordinary law in general also applies to him, although a few privileges are granted to him, and certain

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<sup>590</sup> Nils Melzer, *International Humanitarian Law: A Comprehensive Introduction*, ICRC, (2016), 17.

<sup>591</sup> *ibid*.

<sup>592</sup> Robert S. Poydasheff, (n.21), 428.

<sup>593</sup> Brig. Upali Weerasinghe (Rtd) USP, *Offences under the Army Act, Navy Act and Air Force Act of Sri Lanka*, 1<sup>st</sup> Ed. (2016), 25.

<sup>594</sup> *ibid*, 25-26.

restrictions imposed upon him for the purpose of enabling him the better to fulfil his military duties.”<sup>595</sup>

Accordingly, military personnel are governed and regulated under the general law of the state as well as the military law established to maintain the discipline of the military forces.

## 4. An analysis on two selected Military Justice Systems

### 4.1 India

India has a great tradition of the military. From the *Vedic* era to the modern day, India has maintained this military tradition for centuries. According to, Major General (Rtd:) Dipankar Banerjee, the Indian military has been unique among the armies in the world throughout history.<sup>596</sup>

As one of the great literatures in Indian history, *Mahabharata*, provides much evidence for the *just war theory* which regulates the conduct of the military. When we look at specific rules in warfare found in the *Mahabharata*, we will find that many of them seem to be similar to modern ethics and conducts of the military.<sup>597</sup> According to the *Mahabharata*,

“The aged, the children, women, monks, one who shows he surrenders, must not be kill. [...] One must not kill those who are sleeping, those who are thirsty, those who are wearied, one who is disordered or confused one who has started out for liberation, one who is on the move one who is walking, one who is drinking or eating, or one who is scattered in the mind, or one who has been struck, one who has been weakened. Moreover, a soldier whose armour is broken, one who says "I am yours," one who folds his hands or one who has thrown

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<sup>595</sup> Manual of Military Law, part 1, Vol 1, Chap.1 (1972), 1.

<sup>596</sup> Major General (Rtd:) Dipankar Banerjee, *India: Military Professionalism of a First-World Army*, Military Professionalism in Asia, East-West Center (2001), 20.

<sup>597</sup> Torkel Brekke, *The Ethics of War and the Concept of War in India and Europe*, Numen, 2005, Vol. 52, No. 1, Religion and Violence (2005). 73.

down his weapons may be taken prisoner but may not be killed.”<sup>598</sup>

These historical sources clearly convey the disciplined conduct of a great military tradition from ancient times.

The modern Indian military tradition was established during the British Colonial Period. Accordingly, British India Army had a history of 90 years before India became Independent.<sup>599</sup> Therefore, modern India's military justice system has its roots in English military law. After the 1857 ‘Sepoy Mutiny’, the principal goal of British administration was to install discipline among Indian soldiers.<sup>600</sup>

After the independence, the Army Act (No 46 of 1950), Navy Act (No 62 of 1957), and Air Force Act (No 45 of 1950) were enacted by the parliament of India. All three Acts are nearly identical, with a few differences. The respective legislative provisions that apply to men and women in uniform are outlined in these statutes.

In 2007, the Indian parliament enacted the Armed Forces Tribunal Act to empower the Military Tribunal to solve disputes and complaints arising from the Military. The Armed Forces Tribunal holds the authority to adjudicate appeals against any order, decision, finding or sentence passed by a court-martial or any matter connected therewith or incidental thereto. Also, the tribunal is empowered to grant bail to an accused who is in military custody.<sup>601</sup>

In addition to these statutory and institutional mechanisms, the Indian judiciary has also stepped to uphold military discipline in its capacity. In the *Lt. Col. Prithi Pal Singh Bedi vs. Union of India* case<sup>602</sup> the Indian Supreme Court emphasized that a breach of discipline on the part of military personnel might result in a threat to public order, therefore military discipline plays a vital role to safeguard the national security. In the *Satendra Pal vs Union of India* case<sup>603</sup> the Delhi High Court, decided that a person subject to Army Act is subjected to the military justice system and can be tried by court martial for an act which is an offence under the military law. Accordingly, the judiciary

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<sup>598</sup>Santiparvan 97.3.

<sup>599</sup> Major General (Rtd.) Dipankar Banerjee, (n.30), 20.

<sup>600</sup> Devaansh Singh, *Overview of Indian Military Justice System*, 4 (4) IJLMH Page 2169 - 2176 (2021), 2169.

<sup>601</sup> Act No 55 of 2007.

<sup>602</sup> 1982 AIR 1413.

<sup>603</sup> W.P.(C) No. 4781/2012.



of India recognizes the separate function of the military justice system in order to maintain the military discipline within the military.

Most of the military experts agree that, despite some severe stresses, such as the caste system, the Indian Military professionalism has been sustained as a result of maintaining the Military Discipline.<sup>604</sup> The following statement, made by Brig. (Later Field Marshal) Sir Philip Chetwode in 1932, reflects the Indian Army's commitment to being a disciplined force.

“The Safety, Honour and Welfare of your country come first always and every time. The honour, welfare and comfort of the men you command come next. Your own ease, comfort and safety come last always and every time.”<sup>605</sup>

## 4.2 Sri Lanka

The history of Sri Lanka's military tradition goes back to the 5<sup>th</sup> century BC in the *Anuradhapura* era. The evidence regarding Sri Lanka's ancient military traditions can be gathered by studying literary sources such as the *Mahavamsa*.

The foundations of modern Sri Lankan military traditions were laid by the British rulers in the 19<sup>th</sup> century. After the independence from the British in 1948, the Tri-Services, namely Sri Lanka Army, Sri Lanka Navy and Sri Lanka Air Force were established in order to ensure the national security, unity, sovereignty and territorial integrity of the country.

The Tri-Service Acts, Regulations and Orders provide the procedure to maintain military discipline within the commanding structure of that particular service. These Acts and Regulations constitute a special law conferring a special jurisdiction on courts martial prescribing a special procedure for the trial of the offences under the Tri-Service Acts.<sup>606</sup>

According to Section 34 of the Army Act No 17 of 1949, the person subject to military law means all officers and soldiers of the regular forces, regular reserve, volunteer forces and volunteer reserve in the Sri Lanka Army. Section 22 of the Navy Act No 34 of 1950 stipulates the meaning of persons subject to naval law as all officers and seamen of the regular naval forces, regular naval reserve, volunteer naval forces

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<sup>604</sup>Major General (Rtd:) Dipankar Banerjee, (n.30), 21/24.

<sup>605</sup> *ibid*, 26.

<sup>606</sup> Brig. Upali Weerasinghe, (n.20), 4.

and volunteer naval reserve. Section 34 of the Air Force Act No 41 of 1949 has defined all officers and airmen of the regular air forces, regular air reserve, volunteer air forces and volunteer air reserve as persons subject to air force law.

The Army, Navy and Air Force Acts constitute a special law in force conferring a special jurisdiction on courts-martial and prescribe a special procedure for the trial of the Military, Naval and Air Force offences enumerated in the respective service codes. Service Acts and regulations constitute a separate justice system which specifies offences and procedure for the criminal investigations, custody and detention of suspect or accused persons, trial and punishment of the offenders by courts martial. Apart from the applicability of military law, a soldier as a citizen of the country is also governed under the general civil and criminal law of the land. Therefore, ‘any officers or soldier accused of an offence punishable by a civil court (Criminal Offence) shall be guilty of an offence under Tri-Services Acts.’<sup>607</sup>

As well as the statutory provisions which are enacted regarding tri-forces, the judiciary has also contributed to the development of the legal framework of military discipline in Sri Lanka. Accordingly, the Supreme Court of Sri Lanka has identified in several judgements the importance of maintaining discipline in the military. In *Deshapriya vs. Captain Weerakoon CO SLNS ‘Gemunu’*<sup>608</sup> justice Fernando stated, “In the forces, command is a sacred trust, and discipline is paramount.” According to *Wijesuriya vs. State*<sup>609</sup> judgement, the Court of Criminal Appeal held that under section 100 of the Army Act (Chapter 357) every person subject to Military Law is only bound to obey the lawful commands given personally by his superior officers. Thus, these case law authorities can be identified as legal sources which provide comprehensive guidance to maintain military discipline in the Sri Lankan military.

## 5. Conclusion

Maintaining specific discipline is a necessity for the management of military forces. While the ordinary law of the country governs every aspect of civil society, the military is governed by the rules and regulations stipulated by military law.

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<sup>607</sup> Act No 17 of 1949, Sec: 128.

<sup>608</sup> [2003] 2 Sri LR, 99.

<sup>609</sup> [1973] 77 NLR, 25.

Military discipline as it is often referred to, is defined as the state of order and obedience among personnel in a military organization and is characterized by the men's prompt and willing responsiveness to orders and understanding of compliance to regulation.

The object of military discipline is twofold. First, it is provided for the maintenance of good order among members of the military. Second, it focuses to regulate certain aspects of military administration, mainly in those fields with affects individual rights.<sup>610</sup>

According to General George C. Marshall, the power of an army cannot be measured in mere numbers. It is based on a high state of discipline and training.<sup>611</sup> An army is, moreover, a delicate being kept alive by discipline. Accordingly, Discipline is the strength of armies.

In summary, maintaining military discipline is important for mission success, operational safety, unit cohesion, morale, respect for authority, adherence to laws and ethics, reputation, and personal development. It is a foundational element that contributes to the effectiveness, professionalism, and overall success of military organizations.

Military Discipline is as necessary to the soldier as the air he breathes. Without discipline, no soldier can function on a battlefield. Thus, discipline is clearly necessary for maintaining military efficiency as well. Therefore, as Otto von Bismarck, (1815-1898) (*Former Chancellor and military commander of the German Reich*) stated,

*'An army without discipline is useless in war and dangerous in peace.'*<sup>612</sup>

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<sup>610</sup> Manual of Military Law, Ministry of Defence, London – Part I 1972, Vol. A.

<sup>611</sup> General George C. Marshall, Selected Speeches, and Statements of General of the Army George C. Marshall (1945)

<sup>612</sup> MAJ Kelvin s. Donhue, (n.7), 45.