

16

MILITARY OBEDIENCE AND THE LAW

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TABLE OF CONTENTS

	Page
Preface	ii
Abstract	iii
List of Statutes	iv
List of Cases	v
List of Abbreviations	vi
Chapter I	1
INTRODUCTION	
Chapter II	4
MILITARY LAW AND DISCIPLINE	
Military Law	
Military Discipline	
Chapter III	10
OBEDIENCE TO ORDERS	
Nature of Orders	
Military Organization	
Legal Duty to Obey	
Position under the Army Act 1955	
Position under the Armed Forces Act 1972	
Chapter IV	22
THE DEFENCE OF SUPERIOR ORDERS	
General Situation	
Cases	
Comments by Writers	
Chapter V	30
THE DEFENCE OF SUPERIOR ORDERS IN INTERNATIONAL LAW	
Chapter VI	33
CONCLUSION AND RECOMMENDATION	
Bibliography	35

ABSTRACT

The paper in the opening chapter discusses the reasons for the requirement of a separate system of military justice; the importance of discipline and obedience to orders in the Armed Forces.

The standard of discipline in the Armed Forces determine its efficiency. Claim to justice must yield before claim of military efficiency. Obedience to orders is the cardinal principle of military organisation. Disobedience is at one's own risk unless one is sure that the person issuing the order is unauthorised to give or the order goes beyond the bound of military service purpose. The guidelines as to what is lawful or unlawful order is inadequately provided in the Armed Forces Act.1972.

Compliance to superior orders does not provide a defence per se. This situation places a subordinate in a dilemma especially when the order is not manifestly illegal. It is submitted that a soldier should be protected when complying to orders under such circumstances.

The dilemma of the soldier has not been fully taken into consideration. With increased sophistication, the determination of what is and what is not of a military interest has become less clear. Circumstances alter cases and it is possible for the same command to be in one instance lawful and in another instance unlawful. The Generals give the orders. The soldiers obey the orders; the Generals are expected to carry the responsibilities.

CHAPTER I

INTRODUCTION

A. GENERAL

The Armed Forces of most countries are administered by codes of military law. Whilst being subjected to the ordinary laws of the land, the members are concurrently subjected to the administration of military justice separate from the civil judiciary. The primary reason lies in the necessity of independent self-sufficiency of the armed forces to move freely within its own country and to project its operation beyond the territorial limits of the state where the jurisdiction of the civil judiciary ceases to function¹.

A separate system of military justice is further necessitated by the highly specialised nature of justice in any army. By reasons of the requirements of command, an army as a community is fundamentally different from the organization of a civil community. In an army, individual exists for the benefit of the organised fighting group. In order to serve effectively, individual well-being becomes secondary to group efficiency. The military is characterised by the organised use of violence, on behalf of the nation, in order to safeguard and preserve its existence and independence. Under such circumstances a soldier's dedication to duty is a primary requirement².

The administration of the Army is linked by a chain of command. Discipline is the responsibility of military commander at every level of command. This chain of command exercises its function in the employment of resources through the military hierarchy. The hierarchial system of the army, so essential to its discipline cannot be appreciated unless a person joins the service, is transformed into a disciplined soldier, live in and accept the system as a way of life.

A soldier in the army surrenders his liberty to a large extent and subjects himself to the rigid requirement of military law and discipline. Obedience to orders is his primary function. Military disobedience is amongst the worst military crimes. In the military organization many persons of different skills have to co-operate to attain the military aims and objectives. These tasks are distributed through a complex pattern of orders properly communicated and co-ordinated; the success of which is interdependent. It is pertinent to the commander that his orders will be complied with and that he can claim obedience without which neither he nor the organization could function.

The situation described above give rise to a number of questions. Must a soldier obey all orders given to him? When can he refuse to obey? What if his compliance to orders result in commission of an unlawful act?

In order to answer these questions, it is proposed to study the military law of the Malaysian Army. Firstly, a general understanding of what is meant by the term military law and discipline. On the issue of military obedience, provisions of the British Army Act 1955 (upon which the Malaysian Armed Forces Act 1972 (Act 77) was based on) will be taken into consideration as they are in *pari materiae* with the Armed Forces Act 1972.