



## Military Legal System in China

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### Introduction

Every nation state in the world has an army, but it is extremely rare for a political party to have one. The People's Liberation Army (PLA) is an exception as it owes allegiance to the Communist Party of China (CPC). This exclusive arrangement was formalised in December 1929 when Mao Zedong, while addressing the men of the Fourth Army, said that the role of the army was to chiefly serve the political ends. Eighty-five years later on 31 October 2014, President Xi Jinping reiterated that the PLA remains the Party's army, and must maintain absolute loyalty to political masters; the military should uphold Party spirit and principles.<sup>1</sup> The PLA is one of the least understood and inaccessible organisations.<sup>2</sup> It maintains a subordinate status in relation to the CPC but serves as the Party's ultimate instrument of coercive control. In the last two decades or so, the PLA has undergone several major reorganisations, involving administrative, legal and operational structures.

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### Military Service

The People's Republic of China (PRC) practices a service system which combines conscripts and volunteers for its armed forces.<sup>3</sup> The Chinese military services are composed of the Army, Navy, Air Force, Rocket Force, Strategic Support Force, Armed Police Force, and Reserve Force.<sup>4</sup> The PLA Army (PLAA) is the world's largest standing ground force. The PLA Navy (PLAN)

comprises of submarines, surface ships, aviation, and coastal defence forces.<sup>5</sup> The PLA Air Force (PLAAF) comprises aviation, airborne, ground-to-air missile, radar, ECM, and communication forces. The PLA Rocket Force (PLARF) comprises nuclear missile, conventional missile and support forces, and subordinate missile bases. The PLA Strategic Support Force (PLASSF) is a new type of combat force for safeguarding national security and comprises supporting forces for battlefield environment, information, communication, information security, and new technology testing.<sup>6</sup> In addition, the Reserve Force is an armed organisation composed of the people not released from their regular work. The People's Armed Police Force (PAP), the paramilitary force, shoulders responsibilities in safeguarding national security, social stability and public well-being. The PAP, which was earlier under civilian authority, has now been embedded into the military command structure.<sup>7</sup> Chinese women comprise about 4.5 percent of total military personnel in the PLA. Women soldiers are not assigned any combatant role.<sup>8</sup> The PLA has reduced its personnel from 8.32 million in 1990 to 3.045 in 2020 as shown in Table 1 below.<sup>9</sup>

Force	Year 1990	Year 2000	Year 2010	Year 2020
PLA Army	2.3	1.70	1.6	0.965
PLA Navy	0.26	0.22	0.25	0.260
PLA Air Force	0.47	0.47	0.40	0.395
Strategic Force/ Coast Guard	0.09	0.10	0.10	0.145
Strategic Missile Force	-	-	-	0.120
Reserve	4.0	0.55	0.51	0.510
Paramilitary	1.2	1.10	0.66	0.500
Others	-	-	-	0.150
Total Number	8.32	4.49	3.45	3.045

**Table 1: Strength of PLA Personnel (in millions)**

## Sources of Military Law

The Constitution of the PRC is the fundamental law of the country and general charter of the state administration and national security.<sup>10</sup> Article 5 of the Constitution states that, “All state organs, the armed forces, all political parties and public organisations and all enterprises and institutions must abide by the Constitution and other laws. No organization or individual is privileged to be beyond the Constitution or other laws.” Article 55 of the Constitution dictates that it is the sacred duty of every citizen of the PRC to defend the motherland and resist aggression, to perform military service and join the militia in accordance with the law. The National Defence Law of PRC is made and enacted by the highest organ of the power and passed by the standing committee of the National People’s Congress (NPC) and issued in the form of Presidential Order.<sup>11</sup> The position and efficacy of National Defence Law ranks only second to the Constitution and is higher than all military laws. Article 23 of the National Defence Law dictates that armed forces of the PRC must observe the Constitution and other laws. It is the direct basis of all military laws and regulations and therefore can be considered as the ‘framework law’ of military legal system.<sup>12</sup>

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The primary authority for governing the armed forces is the Military Service Law of the PRC. It plays the most significant role for the military and subjects members of the armed forces to the jurisdiction of both civilian and criminal law, as well as to disciplinary regulations promulgated by the Standing Committee of the NPC and the CMC.<sup>13</sup> Articles 7 and 8 of the Military Service Law provide:

Article 7: Military personnel and reserve personnel must abide by the Constitution and laws, fulfill their obligations as citizens, and enjoy the rights of citizens at the same time; rights and obligations arising from military service shall be stipulated by this law and other relevant laws and regulations.

Article 8: Soldiers must abide by the military’s orders and regulations, be loyal to their duties, and fight for the defence of the motherland at any time.

Military discipline is administered under the delegated authority of Articles 7 and 8 for less serious offences but more serious violations are punished under the Criminal Law of the PRC. For instance, Article 61 of the Military Service Law states that the State functionaries and soldiers who commit one of the following acts in military service shall be punished according to law: (i)

Corruption and bribery; (ii) Abuse of power or neglect of duty; (iii) Engaging in malpractices for personal gains, and picking up unqualified soldiers; and (iv) Divulging or illegally providing military service personal information to others. Article 62 specifies that anyone who violates the provisions of Military Service Law and commits a crime shall be investigated for criminal act in accordance with the law.

In addition to the Military Service Law, the NPC and the Standing Committee have passed dozens of other administrative regulations. Further, the State Council and the CMC have jointly issued more than 40 administrative regulations governing the military. Most of these regulations are not in public domain. According to a commentator, certain provisions in these regulations are unclear and have hindered the prosecution of corrupt military officials.<sup>14</sup>

## Military Crimes vs Military Discipline

Military law in China makes a distinction between 'military crimes' and 'violations of military discipline'. Military crimes, directly or indirectly, constitute a grave violation of the state's military interest and national defence interests. Most military crimes are essentially related to wartime functions and committed by military personnel. Because of the serious harms which a military crime may cause, they bear heavy criminal responsibility on the whole and face severe criminal penalties.<sup>15</sup> In contrast 'violations of military discipline' or 'military duty crimes' are those violations/ crimes where the misconduct relates to an act of indiscipline but does not reach the severity of a military crime. The examples could be fighting and defamation, absenting from duty, framing others, molesting and insulting women, corruption, bribe-taking etc. Those who violate the discipline of the army or the rules of military operation which does not reach the degree of constituting a crime are criticised, educated and punished by military discipline. For example, the criminal law stipulates that creating a disturbance with the weaponry leading to serious

incident would constitute a crime. The violation of the rules which do not lead to serious incident does not constitute a crime and shall be punished by military discipline. However, in wartime, a number of violations of 'military discipline' may constitute 'military crime' such as intentionally damaging property of innocent civilians, abusing prisoners, refusing to execute or disobeying orders of superiors, damaging military equipment, etc.

## Criminal Law of PRC

On 14 March 1997, the Criminal Law of the PRC was revised and crime of violation of duty by military personnel was included as a chapter in it. The Provisional Regulations of the PRC on

Punishing Servicemen for Violating their Functions and Duties, existing since 1981, was abolished. Chapter X of the Criminal Law of China exclusively deals with the 'Crimes of Servicemen's Transgression of Duties', contained in Articles 420-451. According to Article 450, the Chapter X applies to officers, civilian cadre, soldiers in active service and cadets with military status of the PLA, police officers, civilian staff and soldiers in

active service and cadets with military status of the People's Armed Police, reservists, and other persons performing military tasks. Chapter X discloses more than 30 kinds of crimes which can be divided into five broad categories:

**Crimes of Endangering the Interest of State in Wartime<sup>16</sup>:** These crimes include disobedience during wartime, making false reports, surrendering, desertion, obstructing a commander etc. Anyone convicted of these offences shall be sentenced to fixed-term imprisonment of 3-10 years; if heavy losses are caused to a battle or campaign, sentence could be fixed-term imprisonment of not less than 10 years, life imprisonment or death.

**Crimes in Violation of Military Discipline:** These crimes include desertion and dereliction of duty, causing hindrance to duty, instigation defection from the country, leaving post without permission,

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releasing a prisoner of war without authority etc. Individuals convicted of these offences shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the consequences are especially serious, shall be sentence to fixed-term imprisonment of not less than three years but not more than 5-10 years.

**Crime of Endangering Military Secrets:** It includes illegally obtaining military secrets; stealing, spying, and selling military secrets to agencies outside China; leaking military secrets etc. A person accused of supplying military secrets outside the territory of China shall be sentenced to fixed-term imprisonment of not less than 10 years, life imprisonment or death. In other cases, maximum punishment shall be sentenced to fixed-term imprisonment of not less than 10 years.

**The Crime of Endangering the Material Base of the Army's Fighting Capacity:** Crimes in this category includes violating the regulations on the use of weapons and equipment; their unauthorised alteration, stealing, illegal sale or transfers, abandoning, failing to report loss etc. An individual accused of these offences shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not more than 5-10 years.

**Crimes relating to Infringing on the Interest of the Subordinates, Wounded Soldiers, Civilian and Prisoners:** Crimes are maltreating subordinates; abandoning the wounded and sick servicemen; refusing to provide medical treatment to wounded and sick; cruelty to civilians or plunders of money or property; and ill-treating a prisoner of war. Individuals accused of these offences shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if he causes death of the victim, he shall be sentenced to fixed-term imprisonment of not less than 5-10 years.

In addition to the military crimes under the Criminal Law, there are 29 kinds of violations of military discipline against which disciplinary measures can be taken. These are prescribed in the PLA Discipline Regulations.<sup>17</sup>

In major cases involving serious crimes or grave breaches of discipline, the soldier may undergo judicial punishment by a military court under the provisions of the Criminal Law. For cases of lesser gravity, commanders, commissars, and party committees will collectively administer non-judicial punishment under the PLA Discipline Regulations.<sup>18</sup>

## Military Court System

China's Constitution establishes a unitary national court system. The Supreme People's Court (SPC) is the highest judicial organ in mainland China and the court of final appeal.<sup>19</sup> The special courts under the SPC include military courts, railway courts, and intellectual property courts, among others.<sup>20</sup> The military court is responsible for hearing criminal cases involving service personnel. The military courts are standing courts organised under Organic Law of the People's Court and the Organic Law of the People's procuratorates (prosecutor). They hold jurisdiction over both criminal and certain civil cases. Military courts and procuracies are organised on three levels.

**The Military Court of the PLA** (as a branch of the General Political Department);<sup>21</sup>

**The Military Courts in Headquarters of Commands, Services and Arms** (as a branch of the political department of the corps);<sup>22</sup> and

**The Military Courts of Army Garrisons, Groups and Arms** (as a branch of the political department of the corps).<sup>23</sup>

The Chinese military courts work under the 'dual leadership' of both the SPC and the political department of the military. SPC provides leadership to law. A military court consists of a president, vice president, two tribunals each with a presiding judge and a vice presiding judge, judges and clerks. Each of the military courts of commands, branches of the armed services and army groups consists of a president, judges and their assistants. In all military courts (similar to other Chinese courts), a trial committee is set up charged with such tasks as

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discussing major or difficult cases and other work related to the trials. The committee is chaired by the court president. Military trials are open only to persons who belong to the armed forces.

In PLA, the organs enjoying military judicial powers are security departments, military procuratorate and military courts. These three bodies follow the principles of coordination and distribution of responsibilities, mutual support and mutual restrictions. The security department is responsible for the investigation and preliminary hearing of criminal cases. The military procuratorate is responsible for arrest, investigation and public prosecution. The military court is responsible for the judicial actions and pronouncement of judgments. The military judicial organs are expected to exercise their powers independently as authorised under the law and are not interfered in their action by the administrative organs or individuals.<sup>24</sup> The purposes of punishment are to enforce strict discipline, to educate offenders and army units, to strengthen centralisation and unification, and to consolidate and enhance the combat effectiveness of army units.

## Legal Aid

The accused has the right to defence under Article 125 of the Constitution. Article 33 of the Criminal Procedure Law provides, “In addition to exercising the right to defend himself, a criminal suspect or defendant may engage one or two persons as his defenders”.<sup>25</sup> The Standing Committee of the NPC has promulgated the Legal Aid Law which is effective since 01 January 2022. The Legal Aid Law lays out two situations, in criminal cases, under which the legal aid must be provided when applied: (i) on application, and (ii) on mandatory basis. By making an application, the suspect/defendant can apply for legal aid but the state does not necessarily have to provide the same. If a criminal suspect or defendant in a criminal case has not entrusted an attorney for defence due to financial difficulties or other reasons, he or his close relatives may apply for legal aid with legal aid agencies.<sup>26</sup>

## Punishments by Military Courts

Under the Criminal Law of the PRC, punishments are divided into principal punishments and supplementary punishments. The principal punishments are: (i) probation; (ii) limited incarceration; (iii) fixed-term imprisonment; (iv) life imprisonment; and (v) death penalty.<sup>27</sup> The supplementary punishments are: (i) fine; (ii) deprivation of political rights and; (iii) confiscation of property. Supplementary punishments may be imposed independently. Also, soldiers may be discharged and transferred to the civilian courts for trial.<sup>28</sup> A foreigner who commits a crime may also be deported.<sup>29</sup>

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The Chinese criminal justice system, which includes military courts also, has long been considered undeveloped due to violations of basic human rights.<sup>30</sup> Despite recent changes to China’s Criminal Procedure Law and Criminal Law, China fails to comply with the standard of the right to a fair trial.

In China, the judicial system by its very nature lacks independence and impartiality. The judiciary does not possess authority to act contrary to the interests of the other arms of the state.<sup>31</sup> The party-state exercises enormous ideological control and personnel influence on the judiciary, putting it under the rigorous control of Communist Party of China. As the judicial supervision body, the Supreme People’s Procuratorate and its subordinate branches, at various levels, possess the formidable power to challenge the judicial rulings and decisions of the court in the form of protest.<sup>32</sup> In a society where inter-personal relationships are highly appreciated, a judge is often connected to many individuals who may have connections to a defendant appearing before that judge. The military judiciary cannot be immune to such interference from the other organs of the state.<sup>33</sup>

The Criminal Law is silent on the presumption of innocence and the burden of proof. The Chinese socialist legal system follows the principle of ‘deciding a case according to facts’ and presumptions and procedural rules have no place. A suspect has no right to remain silent. Article 120 of the

Criminal Procedure Law of PRC, which is also applicable in a trial by military courts, states that a suspect has the duty to answer questions truthfully when asked by investigator but may refuse to answer questions that are irrelevant to the case. It is routine practice for the security departments of the PLA, which act as investigating agencies, to administer physical punishment on suspects to obtain confessions.<sup>34</sup> In the rigorous pursuit of truth, the rules protecting the rights of the accused are generally disregarded.

## Non-judicial Punishments

Non-judicial punishments for soldiers include: disciplinary warning; serious disciplinary warning; recording of a demerit; recording of a serious demerit; demotion to a lower post grade or military rank; dismissal from post; striking of name from the roll and; disciplinary discharge from military service. Among the above punishments, a disciplinary warning is the lightest punishment and in succession, a disciplinary discharge is the most severe punishment. Demotion to a lower post grade does not apply to a deputy squad leader and demotion in military rank does not apply to a private or a junior sergeant. A senior sergeant, or sergeant class III, who is demoted in military rank is at the same time reduced in the grade of non-commissioned officer. Usually demotion to a lower post grade or military rank is to be by one post grade or one military rank; and striking of name from the roll does not apply to a non-commissioned officer.

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The officers, civilian cadres and non-commissioned officers (NCOs) who, in a given year are awarded punishment above the level of recording of a demerit, or without permission leave their work station for more than eight days, or who, after an order of appointment is announced, without the approval of the organisation fail to report to the post; their specialised technical salary, military rank/civilian cadre level salary, or NCO rank salary is suspended for one year starting from January 1st of the following year. Personnel who have been given a disciplinary discharge from military service shall be deprived of military rank and of any awards obtained while serving and their former post and grade shall be revoked, and they shall not enjoy the preferential treatment given to former active duty military personnel by the state.

## Disciplining of Soldiers

This is a unique provision under the Chinese military law. In China, there are strict differentiations between the measures adopted in accordance with military discipline and those pursuant to military law. Article 2 of the 'Provisional Regulations of the PRC on Punishing

Servicemen Who Commit Offenses Against Their Duties' states: 'Any act of an active duty PLA serviceman that infringes on his duties and endangers the State's military interests and is punishable by law is considered a serviceman's offence against his duties.'<sup>35</sup> For example, in China, disrespect toward a superior commissioned

officer is not an offence under the Chinese concept of military law, and is, thus, not subject to either judicial or non-judicial punishment. Rather, this is a breach of military discipline, regulated by discipline and not by law. Disrespect would become an offence in a case where the accused not only was disrespectful toward the superior commissioned officer but also resorted to violence or threat to obstruct the superior in the performance of his duty. This would never be disposed of by non-judicial means under China's military law; it would be punished by the military court.

Thus, cases involving minor violations of the military law, where not too much harm has been caused, might not be considered criminal offence but, instead, be dealt with in accordance with military discipline. The PLA commander or political officer confronted with a violation of military discipline must first decide whether the offending soldier should, under the circumstances, be given disciplinary punishment or the less severe informal punishment of 'education and criticism'. Informal penalty may be carried out privately or in the presence of the offender's fellow soldiers at a company-level criticism meeting presided over by the deputy commander or political officer. The offender is expected to confess his wrong, make an oral or written self-criticism, and promise to reform. In China, most of the cases of servicemen are dealt with by disciplinary punishment or by education and criticism handled by both commanders and political commissars.<sup>36</sup>

## Jurisdiction over Civilians and Military Retirees

Under certain exceptional circumstances like national emergency or during war, non-military personnel will be prosecuted for certain crimes under the military legal system. In accordance with Military Service Law and Military Installation Law, in wartime or other national emergencies, non-military as well as personnel of reserve force,

who seriously break specific obligations, or harm the state or the military interest, may be prosecuted for military crimes. In addition, while under the martial law the scope of military jurisdiction is expanded which provides an enhanced protection to the interest of the state.<sup>37</sup>

## Jurisdiction of Military Courts in Civil Cases

The Supreme People's Court in 2012 issued a regulation, "Provisions on Several Issues Concerning the Jurisdiction of Military Courts in Civil Cases" under which Chinese military courts also have civil jurisdiction.<sup>38</sup> The PLA Military Court has jurisdiction over civil cases with an amount in dispute of RMB 100 million or more<sup>39</sup>;

and Regional Military Courts have jurisdiction over civil cases with an amount in dispute of RMB 20 million to 100 million. The rationale for giving military courts civil jurisdiction is to enable certain types of civil disputes to be resolved more effectively, because the local courts have encountered difficulties in dealing with them.<sup>40</sup> The PLA Military Court has issued regulations further specifying the jurisdiction of various levels of military court, but these have not been made public.<sup>41</sup>

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## Military Lawyers

In China, the CMC has formally established military lawyers in the political organs of the three levels of corps, division and brigade of the whole army. Military lawyers could be full-time, part-time or may be specially-invited under a work permit. These lawyers perform their duties under the organisational leadership of the legal consulting office of their units while their professional works are guided by the judicial administration department at the higher level. They mainly serve as legal consultants to the units and heads of units of the military at regiment level or above and give

advice on legal issues involved in the leadership decision and administrative management; handle various litigation businesses of military; carry out legal publicity and education for the army. Military lawyers are entitled to the same rights as well perform same duties as practising lawyers in the civil society.<sup>42</sup>

## Future Challenges

The Chinese PLA, being one of the largest armed forces, is facing a large number of issues while instilling discipline amongst its cadre. One of the major problems is the corruption amongst the senior officer corps. President Xi Jinping has taken up a campaign to root out offenders, resulting in more than 4,000 anti-graft investigations and sacking of hundreds of officers within two years.<sup>43</sup> The vast majority of generals caught in the anti-corruption campaign are from the General Political Department (GPD), the General Logistics Department (GLD) and military regions' logistics departments which control the selection of army officers and the enormous budgets that fund infrastructure and supplies. Payments have become an indispensable element for PLA officers seeking promotion.<sup>44</sup> The most high-profile targets included Xu Caihou and Guo Boxiong, both served as CMC vice chairmen and were implicated in the corruption of the PLA promotion system. Unfortunately, the structure of the PRC military

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impedes reporting of such crimes and adversely impacts military discipline.<sup>45</sup>

Though the recent reforms in China have been successful in establishing judicial independence<sup>46</sup>, but the same cannot be said for the military justice system.<sup>47</sup> Chinese military legal system creates distinction between 'discipline' and 'punishment'. It gives considerable importance to indoctrination and political education.<sup>48</sup> The military courts are also financially dependent on the political departments of each service; thus affecting their independent functioning. There is lack of transparency and openness not only in the military court cases but also in personnel system. In the current system, command leadership can interfere in the military court trials.<sup>49</sup> According to Professor Zhang Jiantian, former CMC Legislative Affairs Commission official (and former military judge), the 2008 judicial reforms approved by the Communist Party Central Committee, which included military judicial reforms, were not

effectively implemented. The existing military legal system violates Article 4 of the Organic Law of the People's Courts of the PRC (2018) which states, "The people's courts shall independently exercise the judicial power according to the law, and shall not be subject to interference by any administrative organ, social organisation or individual".<sup>50</sup>

## End Notes

- 1 Jinping Xi. *Strengthen and Improve the Political Work of the Military: The Governance of China II*. Beijing: Foreign Language Press China, 2014, 435-440.
- 2 Documents concerning the Chinese military, including its regulations are generally classified and relatively very few are accessible to a researcher. Their English translations, in case available at different sources also vary. The possibility of a few omissions in this article cannot be ruled out mainly due to the shortage of information in the public domain.
- 3 The PLA Army relies on a 2-year conscription period along with a mix of volunteers; however, the ratio of conscripts to volunteers is unclear and varies from year to year. *China Military Power: Modernizing a Force to Fight and Win*. US Army: Defence Intelligence Agency, 2019, p. 61; Clay, Marcus and Dennis J. Blasko. "People Win Wars: The PLA Enlisted Forces and Other Related Matters." *Texas National Security Review* (July 2020). Available at: <https://warontherocks.com/2020/07/people-win-wars-the-pla-enlisted-force-and-other-related-matters/>.
- 4 Ibid.
- 5 *China's Military: The People's Liberation Army (PLA)*, Congressional Research Service, R46808 (June 2021), pp. 54.



- 6 Costello John and Joe McReynolds. *China's Strategic Support Force: A Force for a New Era*, Centre for the Study of Chinese Military Affairs, Institute for National Strategic Studies, Washington DC: National Defence University Press, October 2018, pp. 69.
- 7 Wuthnow Joel, *China's Other Army: The People's Armed Police in an Era of Reform*, *China Strategic Perspective*, Centre for the Study of Chinese Military Affairs, Institute for National Strategic Studies, Washington DC: National Defence University, 2019, pp. 57.
- 8 Li Xiaolin, Chinese Women Soldiers: A History of 5,000 Years, *Social Education*, Vol. 58(2), 1994, pp. 67-71.
- 9 Military Balance: 1985-2015, in Cordesman AH, Colley S, (ed.), 2015, *Chinese Strategy and Military Modernization in 2015*: International Institute for Strategic Studies, Washington DC, p. 167; *The Military Balance*: 2021, International Institute for Strategic Studies, London: Routledge, p. 249.
- 10 The first Constitution of the People's Republic of China was declared in 1954. It has been amended five times; last updating on 11 March 2018.
- 11 The Constitution of the People's Republic of China provides, "The National People's Congress of the People's Republic of China is the highest organ of state power. Its permanent body is the Standing Committee of the National People's Congress (Article 57). The National People's Congress and its Standing Committee exercise the legislative power of the state (Article 58)." The PRC National People's Congress has been called a "rubber stamp" legislature and its work plans reflect a CCP-approved legislative agenda. What makes a rubber stamp? *The Economist*, 5 March 2012. Available at: <https://www.economist.com/analects/2012/03/05/what-makes-a-rubber-stamp>.
- 12 The main contents of National Defence Law include: functions and powers of state authorities; the leadership of the state over national defence; its applicability to military activities, i.e. the armed forces, armed police, border defence, coastal defence, air defence, etc; national defence and scientific research; national defence education; the rights of citizen's organization; obligations, rights and interest of service personnel; and foreign military relations. It is the fundamental basis of national defence and the functioning of the armed forces. Zhou Jian. *Fundamentals of Military Law: A Chinese Perspective*, Beijing: Law Press China, 2019, p. 346.
- 13 Military Service Law of the People's Republic of China has been revised and is effective since 1 October 2021. It contains 10 chapters and deals with the registration for military service; enlistment in the PLA; terms and conditions for active and reserve service of enlisted members and commissioned officers; enrolment of cadets from the military academies; mobilization of troops in wartime; service benefits, pensions, and preferential treatment to serving members; placement of veterans; and legal liabilities or punishments.
- 14 Au Thomas H. "Combating Military Corruption in China, *Southern Illinois University Law Journal*." 43 (2019): 301-332.
- 15 Zhou Jian, *Fundamentals of Military Law: A Chinese Perspective*, Beijing: Law Press China, 2019, p. 222.
- 16 Article 451 of the Criminal Law of PRC provides that the term "wartime" as mentioned in the chapter refers to the time after the state has declared the state of war, troops have been assigned with combat missions, or when the country is suddenly attacked by enemy. The time when the armed forces execute martial-law tasks or cope with emergencies of violence shall be regarded as wartime.
- 17 The Supreme People's Court (SPC) exercises jurisdiction to review all decisions imposing the death penalty. All death penalties, except for those that should be adjudicated by the SPC according to law, must be reported to the SPC for examination and approval.
- 18 Rodearmel David C. "Military Law in Communist China: Development, Structure, and Function." *Military Law Review* 119 (Winter 1988): 1-98.
- 19 Articles through 123 to 128 in the China's Constitution determine the constitutional status of the courts.
- 20 Article 12 of the Organic Law of the People's Courts of the PRC (2018) provides that the people's courts are divided into three: (i) the Supreme People's Court; (ii) the local people's courts at all levels; and (iii) the special people's courts. According to Article 15, Special people's courts include military courts, maritime courts, intellectual property courts, and financial courts, among others. The setup, organization, functions and powers, and appointment and dismissal of judges of special people's courts shall be prescribed by the Standing Committee of the National People's Congress.
- 21 The Military Court of the PLA is the highest military judicial organ. The rank of the chief justice or president of the Military Court of the PLA corresponds to the Vice President of the Supreme People's Court, and that of the Chief Procurator corresponds to the Deputy Chief of the Supreme People's Procuratorate. The Courts also has vice dean, presiding judges, deputy chief judge, judicial officer, court clerks and secretaries. The Military Court of PLA handles the following cases: cases of first instance that involve a crime committed by persons of posts higher than division leadership; criminal cases concerning foreign interests; cases authorized or assigned by the Supreme People's Court to its jurisdiction and other criminal cases of first instance that it considers should itself try; cases of second instance, judicial review of death sentence and retrial.

- 22 The military courts of higher military areas and of services and arms handle the following cases: cases of first instance that involve a crime committed by persons of vice-commander post at division level or of commanding position at the regimental level; capital cases of first instance and cases authorized or assigned by higher level military courts to their jurisdictions; cases of appeal and of protests.
- 23 These military courts handle the following cases: cases of first instance that involve a crime committed by persons of below battalion level who may be given a sentence of less than life imprisonment; cases of first instance that are authorized or assigned by military courts of higher levels to their jurisdictions.
- 24 Zhou Jian. *Fundamentals of Military Law: A Chinese Perspective*, Beijing: Law Press China, 2019, p.102.
- 25 The following persons may be authorized as defenders: (i) Lawyers; (ii) Persons recommended by a public organization or by the entity for which the criminal suspect or defendant works; and (iii) Guardians or relatives and friends of the criminal suspect or defendant. A person who is currently serving a criminal sentence of have had his physical liberty limited or denied, may not serve as defender. A person who has been expelled from public office or whose lawyer's or notary's practice certificate has been revoked shall not serve as a defender, unless he is the guardian or a near relative of the criminal suspect: Article 33, the Criminal Procedure Law, 2018.
- 26 Article 24, the Legal Aid Law of the People's Republic of China.
- 27 Articles 48-49 of the Criminal Law of the People's Republic of China, 2020, provide that the death penalty shall be awarded to criminals who have committed extremely serious crimes. If the immediate execution of a criminal punishable by death is not deemed necessary, a two-year suspension of execution may be pronounced simultaneously with the imposition of the death sentence. Except for judgments made by the Supreme People's Court according to law, all sentences of death shall be submitted to the Supreme People's Court for approval. The death penalty shall not be imposed on persons (i) who are pregnant, (ii) below the age of 18 years; or (iii) above 75 years, unless he is guilty of causing the death of a person by extremely cruel means.
- 28 Susan Finder, How do China's military courts deal with rape? Available at: <https://globalmjreform.blogspot.com/2016/02/how-do-chinas-military-courts-deal-with.html>.
- 29 Article 32 to 36, the Criminal Law of the People's Republic of China, 2020.
- 30 The Lawyers Committee for Human Rights in its report of 1993, "Criminal Justice with Chinese Characteristics: China's Criminal Process and Violations of Human Rights," brought out many respects in which the system fails to meet international standards regarding the treatment of suspected criminal and the rights to a fair trial. It reported that while many human rights abuses in the criminal process are due to manipulation or circumvention of Chinese law, many others can be traced to the provisions of the Criminal Law itself.
- 31 In China, the term "judiciary" in a broad sense includes the courts, the procuratorates, as well as the Ministry of Justice in its capacity of criminal corrections. Wang Tao, China's Pilot Judicial Structure Reform in Shanghai 2014-2015: Its context, implementation and implications, *Willamette Journal of International Law and Dispute Resolution*, Vol. 24, No. 1, 2016, pp. 53-84.
- 32 Wang Tao, China's Pilot Judicial Structure Reform in Shanghai 2014-2015: Its context, implementation and implications, *Willamette Journal of International Law and Dispute Resolution*, Vol. 24, No. 1, 2016, pp. 53-84.
- 33 The Chinese courts handle large number of cases every year. Only a small fraction of them are political or politically sensitive. However, routine cases are not necessarily free from interference; but the risk, nature, source, and impact of interference are different. In general, interference may come from: (i) party organs: the party committee; political-legal committee; organizational department; and disciplinary committee; (ii) the judiciary which includes the president of the court, head of division or other senior judges, the adjudicative committee, or higher level courts; (iii) people's congresses and the procuracy; (iv) senior military officials; (v) local government and administrative entities; (vi) the media and academics; (vii) social acquaintances; and (viii) parties, their lawyers, and hired consultants and experts with an interest in the case.
- 34 Under Article 308 of the Criminal Procedure Law, the security departments of the Army exercise the power of investigation with respect to crimes in the Army. In China, torture by the investigating agencies, is at the root of many wrongful convictions, imprisonment, and executions, of innocent people. In almost all cases of wrongful conviction, police torture plays a central role in the crafting of a case designed to achieve a conviction. Hsieh Kuo-Hsing, The Exclusionary Rule of Evidence in the United Kingdom, United States and China, Unpublished Ph D Thesis, School of Law, The University of Edinburgh, 2011.
- 35 Available at: <https://globalmjreform.blogspot.com/2017/11/military-law-and-discipline-at-danwei.html>.
- 36 Sun, General Zhang Chi. "Chinese Military Law: A Brief Commentary on Captain Rodearmel's Article." *Military Law Review* 129 (Summer 1990): 30-40.
- 37 Zhou Jian, *Fundamentals of Military Law: A Chinese Perspective*, Beijing: Law Press China, 2019, 261.
- 38 The Civil Cases Jurisdiction Provisions stipulate: (a) Certain civil cases must be exclusively heard in the military courts (including cases in which both parties are military personnel or military entities): (b) Parties have the choice whether or not to file a civil suit in the military courts under certain circumstances: (i) Tort cases in which military personnel or entities are tortfeasors; (ii) family disputes in which one party is in the military; (iii) Tort cases that occurred within a military facility; or (iv) military real property disputes with a military in-

- dividual or entity as party. The military courts have heard over 2500 civil cases in the last eight years, and most of which have been settled.
- 39 Chinese money comes by two names: the Yuan (CNY) and the People's Ren-Min-Bi (RMB). The distinction is subtle: while RMB is the official currency of China where it acts as a medium of exchange, the Yuan is the unit of account of the country's economic and financial system.
- 40 Difficulties range from serving military personnel or military entities, freezing military assets, obtaining evidence held by military entities, having military personnel attend hearings in the civilian courts, and enforcing judgments against military entities. Parties have the choice whether or not to file a civil suit in the military courts under certain circumstances: (i) tort cases in which military personnel or entities are tortfeasors; (ii) family disputes in which one party is in the military; (iii) tort cases that occurred within a military facility; or (iv) military real property disputes with a military individual or entity as party.
- 41 Susan Finder, Two Beijing courts cooperate on military-related cases, available at: <https://globalmjreform.blogspot.com/2018/08/two-beijing-courts-cooperate-on.html>; Military related disputes in the Chinese courts, available at: <https://globalmjreform.blogspot.com/2017/03/military-related-disputes-in-chinese.html>.
- 42 Article 57 of the Law of the People's Republic of China on Lawyers (effective 1 June 2008), provides, "The provisions of this Law shall be applicable to lawyers of the military who provide legal services to the military, with respect to their obtaining of the qualification as a lawyer, and their rights, obligations and code of conduct. Specific measures for administration of military lawyers shall be formulated separately by the State Council and the Central Military Commission."
- 43 In January 2012, General Logistics Department Deputy Director Gu Junshan was arrested on charges of profiting from the illegal sale of military property. His home village was raided in January 2013. He was found to have 60 houses, 400 kgs of gold jewelry and expensive art works amounting to a staggering over USD 98 million. A military court in August 2015 awarded him a suspended death sentence. He was also stripped of his rank of lieutenant general, had all his personal assets confiscated and has been deprived of his political rights for life. "China gives ex-general suspended death sentence." *The Hindu*, 10 August 2015.
- 44 Wang Peng, "Military Corruption in China: The Role of guanxi in the Buying and Selling of Military Positions." *The China Quarterly* 228 (2016): 1-24.
- 45 Au Thomas H. "Combating Military Corruption in China." *Southern Illinois University Law Journal*, 43 (2019): 301-332.
- 46 Aarli Ragna, "China", in Aarli Ragna and Anne Sanders (ed), *Courts in Evolving Societies: Sino-European Dialogue between Judges and Academics*, (Brill Nijhoff, 2021), pp. 21-32.
- 47 Fang Wenqiong and Deng Pan, "A Comparative Study on the Arrangement of Military Judicial Power, 2nd International Conference on Humanities Science, Management and Education Technology", (2017): 5.
- 48 PLA has emphasized the concept of indoctrination and political education of service members much more than that of punishments, either disciplinary or penal. The Chinese proverb 'learn from past mistakes to avoid future ones, and cure the illness to save the patient' is well known and accepted by each level of commanders and judges. Sun, General Zhang Chi. "Chinese Military Law: A Brief Commentary on Captain Rodearmel's Article." *Military Law Review* 129 (Summer 1990): 30-40.
- 49 The Chinese military courts are under "dual leadership"--by law, they are under the leadership of the Supreme People's Court, but their personnel headcount and finances are under the military, in particular the political department. The Political Work Regulations specifically provide that the political department supervises the military courts and military procuratorate. Under current legislation, military judges and prosecutors are appointed and removed just as any military official. Although military judges and prosecutors may be well intentioned, when they are dealing with cases they inevitably consider their own self-interest because they are dependent on others in being appointed or removed from office, and for any perks (i.e. housing) that they enjoy. Given the status of military judicial officials, it is difficult for them to be independent in handling cases. Susan Finder, Further Thoughts from the Experts on China's Military Courts, 17 April 2016, available at: <http://globalmjreform.blogspot.com/2016/04/further-thoughts-from-experts-on-chinas.html>.
- 50 Organic Law of the People's Courts of the People's Republic of China. [http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/13/content\\_1384078.htm](http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/13/content_1384078.htm)

#### About the Author



**Wing Commander Umesh Chandra Jha (Retd)** has extensive field and academic experience in international law, human rights law and military law. He was awarded PhD in Law and Governance by Jawaharlal Nehru University in 2007. His work comprises 29 books and over 125 articles published in various journals and newspapers.

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