

THE AIR FORCE ACT, 1953

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THE AIR FORCE ACT, 1953

ACT NO. VI OF 1953

[15th April, 1953]

An Act to consolidate and amend the law relating to the government and discipline of the Bangladesh Air Force. * * *

WHEREAS it is expedient to consolidate and amend the law relating to the government and discipline of the Bangladesh Air Force;

It is hereby enacted as follows:-

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the ¹[* * *] Air Force Act, 1953. Short title and commencement

(2) It shall come into force on such date as the Government may, by notification, appoint in this behalf.

2. The following persons shall be subject to this Act wherever they may be, namely:- Persons subject to this Act

(a) ²[officers, master warrant officers and] warrant officers of the Air Force;

* Throughout this Act, unless otherwise provided the words “Bangladesh”, “Government” and “Taka” were substituted for the words “Pakistan”, “Central Government” and “rupees” respectively by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

^ Throughout this Act, the words “Chief of Air Staff” were substituted for the words “Commander-in-Chief” by section 2 of the Air Force (Amendment) Ordinance, 1976 (Ordinance No. VI of 1976).

♦ Throughout this Act, the words “master warrant officer or warrant officer” were substituted for the words “warrant officer” by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

¹ The word “Pakistan” was omitted by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

² The words and comma “officers, master warrant officer and” were substituted for the words “officers and” by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

- (b) persons enrolled under the ¹[* * *] Air Force Act, 1932, before the date notified in pursuance of sub-section (2) of section 1 and serving in the Air Force on that date, and persons enrolled under this Act;
- (c) persons belonging to the Bangladesh Air Force Reserves in the circumstances prescribed by rules made under section 6 of the ²[Army and Air Force Reserves Act, 1950];
- (d) persons not otherwise subject to Air Force law who on active service, in camp, on the march, or at any frontier post specified by the Government, by notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of, the Air Force;
- ³[(dd) persons not otherwise subject to Air Force law who are accused of-
 - (i) seducing or attempting to seduce any person subject to this Act from his duty or allegiance to Government, or
 - (ii) having committed, in relation to any work of defence, arsenal, naval, military or air force establishment or station, ship or aircraft or otherwise in relation to the naval, military or air force affairs of Bangladesh, an offence under the Official Secrets Act, 1923.]
- (e) to such extent and subject to such conditions as the Government may direct, persons subject to the ⁴[* * *] Army Act, 1952 (Act No. XXXIX of 1952), or the ⁵[* * *] Navy Ordinance, 1961 (Ord. No. XXXV of 1961), when seconded for service with the Air Force.

¹ The word "Indian" was omitted by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

² The words, comma and figures "Army and Air Force Reserves Act, 1950" were substituted for the words, brackets, comma and figures "Pakistan (Army and Air Force) Reserves Act, 1950" by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

³ Clause (dd) was inserted by section 3 of the Defence Services Laws Amendment Ordinance, 1967 (Ordinance No. III of 1967).

⁴ The word "Pakistan" was omitted by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

⁵ The word "Pakistan" was omitted by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

3. Every person subject to this Act under clauses (a) to (c) of section 2 shall remain so subject until duly retired, discharged, released, removed or dismissed from the service and every person subject to this Act under clause (e) of section 2 shall remain so subject during the period of his secondment to the Air Force.

Termination of application of the Act

¹[3A. The Government may by order in writing direct that any person referred to in clause (a), clause (b), clause (c) or clause (d) of section 2 shall, under such conditions as may be specified by regulations, be seconded for service with the Bangladesh Army or the Bangladesh Navy.]

Secondment to Army or Navy

4. In this Act, unless the context otherwise requires,-

Definitions

- (i) "active service", as applied to a person subject to this Act, means the time during which such person-
 - (a) is attached to, or forms part of, a force which is engaged in operations against an enemy, or
 - (b) is engaged in Air Force operations in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or
 - (c) is attached to, or forms part of, a force which is in military occupation of any foreign country;
- (ii) "aircraft" includes aeroplanes, balloons, kite balloons, airships, gliders or other machines for flying;
- (iii) "aircraft material" includes any engines, fittings, guns, gear, instruments or apparatus for use in connection with aircraft, and any of its components and accessories and petrol, oil, and any other substance used for providing motive power for planes;

¹ Section 3A was inserted by section 4 of the Pakistan Air Force (Amendment) Act, 1958 (Act No. VI of 1958).

- (iv) “Air Force” means officers, ¹[master warrant officers, warrant officers] and airmen who by their commission, junior commission, terms of enrolment or otherwise, are liable to render continuously for a term air force service to Bangladesh in every part of the world or any specified part of the world, including persons belonging to the Bangladesh Air Force Reserves when called up for training or exercise or into actual service;
- (v) “Air Force custody” means the arrest or confinement of a person according to the usages of the service and includes military or naval custody;
- (vi) “Air Force law” means the law enacted by this Act and the rules made thereunder and includes the usages of the service;
- (vii) “Air Force reward” includes any gratuity or annuity for long service or good conduct, badge pay or pension, and any other Air Force pecuniary reward;
- (viii) “airman” means any person subject to this Act other than an officer ²[or a master warrant officer or a warrant officer];
- (ix) “air officer” means any officer of the Air Force above the rank of group captain;
- (x) “air signal” means any signal intended for the guidance of aircraft, whether given by flag, ground signal, light, wind indicator or in any manner whatsoever;
- (xi) “civil offence” means an offence which is triable by a criminal court;
- (xii) “civil prison” means any jail or place used for the detention of any criminal prisoner under the Prisons Act, 1894, or under any other law for the time being in force;

¹ The words and comma “master warrant officers, warrant officers” were substituted for the words “Warrant officers” by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

² The words “or a master warrant officer or a warrant officer” were substituted for the words “or a warrant officer” by section 2 of the Air Force (Amendment) Ordinance, 1978 (Ordinance No. XVIII of 1978).

- (xiii) “Chief of Air Staff” means the Officer Chief of Air Staff the Air Force;
 - (xiv) “commanding officer” used in relation to a person subject to this Act, means the officer prescribed as commanding officer for the purpose of all or any of the provisions of this Act, or in the absence of any such prescription, the officer for the time being in command of the unit or detachment to which such person belongs or is attached;
 - (xv) “court-martial” means a court-martial held under this Act;
 - (xvi) “criminal court” means a court of ordinary criminal justice in any part of Bangladesh or established elsewhere by the authority of the Government;
 - (xvii) “enemy” includes all armed mutineers, armed rebels, armed rioters, pirates and any person in arms against whom it is the duty of any person subject to naval, military or Air Force law to act;
 - (xviii) “the Forces” means the regular Army, Navy and Air Force or any part or parts of any one or more of them;
- ¹[* * *]
- (xx) “Judge Advocate General” means a person appointed as such by the Chief of Air Staff to give advice on matters relating to Air Force law and to perform such other duties of a legal character as may arise in connection therewith;
 - ²[(xxa) “master warrant officer” means a person commissioned, gazetted or in pay as a master warrant officer of the Air Force and includes an acting master warrant officer, and a master warrant officer of the Bangladesh Air Force Volunteer Reserve who is for the time being subject to this Act;]

¹ Clause (xix) was omitted by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

² Clause (xxa) was inserted by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

- (xxi) “non-commissioned officer” means a person holding a non-commissioned rank or an acting non-commissioned rank in the Air Force, and includes any person holding a non-commissioned rank or an acting non-commissioned rank in the Bangladesh Air Force Volunteer Reserve when subject to this Act;
- (xxii) “notification” means a notification published in the *official Gazette*;
- (xxiii) “offence” means any act or omission punishable under this Act, and includes a civil offence, as hereinbefore defined;
- (xxiv) “officer” means a person commissioned, gazetted or in the pay as an officer in the Air Force and includes-
- (i) an officer of the Bangladesh Air Force Voluntary Reserve who is for the time being subject to this Act; and
 - (ii) an officer of the Bangladesh Army or the Bangladesh Navy when serving under the prescribed conditions;
- but does not include a junior commissioned officer, ¹[master warrant officer, warrant officer], petty officer or non-commissioned officer;
- (xxv) “prescribed” means prescribed by rules made under this Act;
- (xxvi) “provost-marshal” means a person appointed as such under this Act and includes any of his deputies or assistants or any other person legally exercising authority under him or on his behalf;
- (xxvii) “regulation” includes a regulation made under this Act;
- (xxviii) “service” when qualifying institution, necessaries, books, band, mess, money, goods and other property, means belonging to or connected with the air service or any unit or part of a unit thereof;

¹ The words and comma “master warrant officer, warrant officer” were substituted for the words “warrant officer” by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

- (xxix) “superior officer” when used in relation to a person subject to this Act, includes a warrant officer and a non-commissioned officer, and as regards persons serving under such conditions as may be prescribed, an officer, junior commissioned officer, ¹[master warrant officer, warrant officer], petty officer and non-commissioned officer of the regular Army or the Navy;
- (xxx) “unit” includes-
- (a) any body of officers and airmen or of officers, ²[master warrant officers, warrant officers] and airmen for which a separate authorised establishment exists;
 - (b) any separate body of persons subject to this Act employed on any service and not attached to a unit as aforesaid;
 - (c) any other separate body of persons composed wholly or partly of persons subject to this Act, and specified as a unit by the Government;
- (xxxi) “warrant officer” means a person commissioned, gazetted or in pay as a warrant officer of the Air Force and includes an acting warrant officer, and a warrant officer of the Bangladesh Air Force Volunteer Reserve who is for the time being subject to this Act;
- (xxxii) all words and expressions used herein and defined in the ³[Penal Code] and not hereinbefore defined, shall be deemed to have the meanings respectively assigned to them by that Code.

¹ The words and comma “master warrant officer, warrant officer” were substituted for the words “warrant officer” by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

² The words “master warrant officers, warrant officers” were substituted for the words “warrant officers” by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

³ The words “Penal Code” were substituted for the words “Pakistan Penal Code” by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

CHAPTER II

SPECIAL PROVISIONS FOR THE APPLICATION OF ACT IN CERTAIN CASES

Application of Act to certain forces under the Government

5. (1) The Government may, by notification, apply, with or without modifications, all or any of the provisions of this Act to any force raised and maintained in Bangladesh and suspend the operation of any other enactment for the time being applicable to the said force.

(2) The provisions of this Act so applied shall have effect in respect of persons belonging to the said force as they have effect in respect of persons subject to this Act holding in the Air Force the same or equivalent rank as the aforesaid persons hold for the time being in the said force.

(3) The provisions of this Act so applied shall also have effect in respect of persons who are employed by, or are in the service of, or are followers of, or accompany any portion of the said force as they have effect in respect of persons subject to this Act under clause (d) of section 2.

(4) While any of the provisions of this Act apply to the said force, the Government may, by notification, direct by what authority any jurisdiction, powers or duties incident to the operation of these provisions shall be exercised or performed in respect of the said force.

Special provision as to rank in certain cases

6. (1) The Government may, by notification, direct that any persons or class of persons subject to this Act under clause (d) of section 2, shall be so subject as officers, ¹[master warrant officer,] warrant officers or non-commissioned officers, and may authorise any officer to give a like direction or to cancel such direction.

(2) All persons subject to this Act other than officers, warrant officers and non-commissioned officers, shall, if they are not persons in respect of whom a notification or direction under sub-section (1) is in force, be deemed to be of a rank ²[lower] to that of a non-commissioned officer.

¹ The words and comma “master warrant officer,” were inserted by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

² The word “lower” was substituted for the word “inferior” by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

7. (1) Every person subject to this Act, under clause (d) of section 2 shall for the purposes of this Act, be deemed to be under the commanding officer of the unit, or detachment, if any, to which he is attached, or if he is not so attached, under the command of any officer who may for the time being be named as his commanding officer by the officer commanding the force with which such person may for the time being be serving, or of any other prescribed officer, or if no such officer is named or prescribed, under the command of the said officer commanding the force.

Commanding officers of persons subject to Air Force law under clause (d) of section 2

(2) An officer commanding a force shall not place a person subject to this Act under clause (d) of section 2 under the command of an officer of official rank ¹[lower] to that of such person if there is present at the place where such person is any officer of higher rank under whose command he can be placed.

8. (1) Whenever persons subject to this Act are serving whether within or without Bangladesh under an officer not subject to this Act, the Government may prescribe the officer by whom the powers which, under this Act, may be exercised by officers commanding units, shall, as regards such persons, be exercised.

Officers exercising powers in certain cases

(2) The Government may confer such powers either absolutely or subject to such restrictions, reservations, exceptions and conditions as it may think fit.

9. Any power or jurisdiction given to, and any act or thing to be done by, to, or before any person holding any Air Force appointment may be exercised by, or done by, to, or before any other person for the time being authorised in that behalf according to the custom of the service, or according to rules made under this Act.

Exercise of powers vested in holder of Air Force office

10. Notwithstanding anything contained in clause (i) of section 4, the Government may, by notification, declare that any persons or class of persons subject to this Act, shall, with reference to any area in which they may be serving or with reference to any provision of this Act or of any other law for the time being in force, be deemed to be on active service within the meaning of this Act.

Power to declare persons to be on active service

¹ The word "lower" was substituted for the word "inferior" by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

CHAPTER III

COMMISSIONS AND ENROLMENT

Grant of Commissions	11. The President may grant to such person as he thinks fit a commission as an officer or a junior commission as a ¹ [master warrant officer or a warrant officer] of the Air Force.
Ineligibility of aliens for enrolment	² [12. No person who is not a citizen of Bangladesh shall, except with the consent of the Government signified in writing, be granted a Commission or junior commission or be enrolled in the Air Force.]
Procedure before enrolling officer	13. Upon the appearance before the prescribed enrolling officer of any person desirous of being enrolled, the enrolling officer shall read and explain to him, or cause to be read and explained to him in his presence, the conditions of the service for which he is to be enrolled; and shall put to him the questions set forth in the prescribed form of enrolment, and shall, after having cautioned him that if he makes a false answer to any such question he will be liable to punishment under this Act, record or cause to be recorded his answer to each such question.
Mode of enrolment	14. If, after complying with the provisions of section 13, the enrolling officer is satisfied that the person desirous of being enrolled fully understands the questions put to him and consents to the conditions of service, and if such officer perceives no impediment, he shall sign and shall also cause such person to sign the enrolment paper, and such person shall thereupon be deemed to be enrolled.
Validity of enrolment	15. Every person who has for the space of three months been in receipt of pay as a person enrolled under this Act and been borne on the rolls of any unit shall be deemed to have been duly enrolled and shall not be entitled to claim his discharge on the ground of any irregularity or illegality in his enrolment or on any other ground whatsoever; and if any

¹ The words “master warrant officer or a warrant officer” were substituted for the words “warrant officer” by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

² Section 12 was substituted by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

person in receipt of such pay and borne on the rolls as aforesaid claims his discharge before the expiry of three months from his enrolment, no such irregularity or illegality or other ground shall, until he is discharged in pursuance of his claim, affect his position as an enrolled person under this Act or invalidate any proceedings, act or thing taken or done prior to his discharge.

16. The following persons shall be attested, namely:-

Persons to be attested

- (a) all persons enrolled as combatants;
- (b) all other persons subject to this Act as may be prescribed by the Government.

17. (1) When a person who is to be attested is reported fit for duty, or has completed the prescribed period of probation, an oath or affirmation shall be administered to him in the prescribed form by his commanding officer in front of his unit or such portion thereof as may be present, or by any other prescribed person.

Mode of attestation

(2) The form of oath or affirmation prescribed under this section shall contain a promise that the person to be attested will be faithful to Bangladesh and its Constitution and bear true allegiance to the President of Bangladesh and that he will honestly and faithfully serve in the Air Force and go wherever he is ordered by land, sea or air and that he will obey all commands of any officer set over him, even to the peril of his life.

(3) The fact of an enrolled person having taken the oath or affirmation directed by this section to be taken shall be entered on his enrolment paper, and authenticated by the signature of the officer administering the oath or affirmation.

CHAPTER IV

CONDITIONS OF SERVICE

18. Every person subject to this Act shall hold office during the pleasure of the President.

Tenure of service under the Act

19. Subject to the provisions of this Act and the rules and regulations made thereunder, the Government may dismiss or remove from the service any person subject to this Act.

Termination of service by Government

Dismissal,
removal or
reduction by
Chief of Air
Staff or other
officers

20. (1) The Chief of Air Staff, or any officer, empowered in this behalf under the rules may at any time dismiss or remove from the service any person subject to this Act other than an officer.

(2) The Chief of Air Staff or any officer empowered in this behalf under the rules may reduce to a lower grade, or to a lower rank or to the ranks, any non-commissioned officer.

(3) The Chief of Air Staff or any officer empowered in this behalf under the rules may reduce to a lower class in the ranks any airman other than a non-commissioned officer.

(4) The commanding officer of an acting non-commissioned officer may order him to revert to his substantive rank as a non-commissioned officer, or if he has no substantive rank, to the ranks.

(5) On active service, an officer commanding the air forces in the field may reduce to a lower rank or to the ranks any non-commissioned officer under his command.

(6) The exercise of any powers under this section shall be subject to the other provisions contained in this Act, and the rules and regulations made thereunder.

Retirement,
release or
discharge

21. Any person subject to this Act may be retired, released or discharged from the service by such authority and in such manner as may be prescribed.

Certificate on
termination of
service

22. Every warrant officer, or enrolled person who is dismissed, removed, discharged, retired or released from the service shall be furnished by his commanding officer with a certificate setting forth-

- (a) the authority terminating his service;
- (b) the cause for such termination; and
- (c) the full period of his service in the Air Force.

Discharge or
dismissal when
out of
Bangladesh

23. (1) Any person enrolled under this Act who is entitled under the conditions of his enrolment to be discharged, or whose discharge is ordered by a competent authority, and who,

when he is so entitled or ordered to be discharged, is serving out of Bangladesh, and requests to be sent to Bangladesh, shall, before being discharged, be sent to Bangladesh with all convenient speed.

(2) Any person enrolled under this Act who is dismissed from the service and who, when he is so dismissed, is serving out of Bangladesh, shall be sent to Bangladesh with all convenient speed.

(3) Where any such person as is mentioned in sub-section (2) is sentenced to dismissal combined with any other punishment, such other punishment, or, in the case of a sentence of imprisonment or detention, a portion of such sentence, may be inflicted before he is sent to Bangladesh.

(4) For the purposes of this section, the word “discharge” includes release, and the word “dismissal” includes removal.

24. Subject to the provisions of any law for the time being in force relating to the Air Force or to any branch thereof, the Government may, by notification, make rules restricting in such manner and to such extent as may be specified the right of any person subject of this Act-

Power to modify certain fundamental rights in their application to persons subject to this Act

- (a) to be a member of, or to be associated in any way with, any trade union or labour union, or any class of trade or labour union or any society, institution or association, or any class of societies, institutions or associations;
- (b) to attend or address any meeting or to take part in any demonstration organised by any body of persons for any political or other purposes;
- (c) to communicate with the press or to publish or cause to be published any book, letter or other document.

CHAPTER V

SERVICE PRIVILEGES

25. The pay and allowances of every person subject to this Act due to him as such under any regulation for the time being in force, shall be paid without any deduction other than the deductions authorised by or under this or any other Act, or prescribed by the Government.

Authorised deductions only to be made from pay

Remedy of aggrieved warrant officers and airmen

26. (1) Any Master warrant officer or warrant officer or airman who deems himself wronged by any superior or other officer may, if not attached to a unit or detachment, complain to the officer under whose command or order he is serving; and may, if attached to a unit or detachment, complain to the officer commanding the same.

(2) When the officer complained against is the officer to whom any complaint should, under sub-section (1) be preferred, the aggrieved ¹[master warrant officer or] warrant officer or airman may complain to such officer's next superior officer, and if he thinks himself wronged by such superior officer, he may complain to the Chief of Air Staff.

(3) Every officer receiving any such complaint shall make as complete an investigation into it as may be possible for giving full redress to the complainant; or when necessary, refer the complaint to a superior authority.

(4) Every such complaint shall be preferred in such manner as may from time to time be specified by the proper authority.

(5) The Government may revise any decision by the Chief of Air Staff under sub-section (2), but subject thereto, the decision of the Chief of Air Staff shall be final.

Remedy of aggrieved officers

27. Any officer who deems himself wronged by his commanding officer or any superior officer, and who on due application made to his commanding officer, does not receive the redress to which he considers himself entitled, may complain to the Government in such manner as may from time to time be specified by the proper authority.

Immunity from attachment

28. The arms, clothes, equipment, accoutrement or necessaries of any person subject to this Act shall not be seized, and the pay and allowances of any such person or any part thereof shall not be attached, by direction of any civil or revenue court or any revenue officer, in satisfaction of any decree or order enforceable against him.

¹ The words "master warrant officer or" were inserted by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

29. (1) No person subject to this Act shall so long as he belongs to the Air Force, be liable to be arrested for debt under any process issued by, or by the authority of, any civil or revenue court or revenue officer.

Immunity from arrest for debt

(2) The judge of any such court or the said officer may examine into any complaint made by such person or his superior officer of the arrest of such person contrary to the provisions of this section, and may by warrant under his hand, discharge the person, and award reasonable costs to the complainant, who may recover these costs in like manner as he might have recovered costs awarded to him by a decree against the person obtaining the process.

(3) For the recovery of such costs no court-fee shall be payable by the complainant.

30. (1) No president or member of a court-martial, no judge advocate, no party to any proceeding before a court-martial, or his legal practitioner or agent, and no witness acting in obedience to a summons to attend a court-martial, shall, while proceeding to, attending, or returning from a court-martial, be liable to arrest by civil or revenue process.

Immunity of persons attending courts-martial from arrest

(2) If any such person is arrested under any such process, he may be discharged by order of the court-martial.

31. Every person belonging to the Air Force Reserve shall, when called out for, or engaged in, or returning from training or service, be entitled to all the privileges accorded by sections 28 and 29 to a person subject to this Act.

Privileges of reservists

32. (1) On the presentation to any court by or on behalf of any person subject to this Act of a certificate, from the proper Air Force authority, of leave of absence having been granted to or applied for by him for the purpose of prosecuting or defending any suit or other proceeding in such court, the court shall, on the application of such person, arrange, so far as may be possible, for the hearing and final disposal of such suit or other proceeding within the period of the leave so granted or applied for.

Priority in respect of Air Force personnel's litigation

(2) The certificate from the proper Air Force authority shall state the first and last day of the leave or intended leave, and set forth a description of the case with respect to which the leave was granted or applied for.

(3) No fee shall be payable to the court in respect of the presentation of any such certificate or of any application by or on behalf of any such person for priority for the hearing of his case.

(4) Where the court is unable to arrange for the hearing and final disposal of the suit or other proceeding within the period of such leave or intended leave as aforesaid, it shall record its reasons for its inability to do so, and shall cause a copy thereof to be furnished to such person on his application without any payment whatever by him in respect either of the application for such copy or of the copy itself.

(5) If in any case a question arises as to the proper Air Force authority qualified to grant such certificate as aforesaid, such question shall be at once referred by the court to an officer, commanding an Air Force station or a superior Air Force authority whose decision shall be final.

Saving of rights and privileges under other laws

33. The rights and privileges specified in the preceding sections of this Chapter shall be in addition to any others conferred on persons subject to this Act or on members of the regular Army, Navy and Air Force generally by any other law for the time being in force.

CHAPTER VI

OFFENCES

Offences in relation to the enemy and punishable with death

34. Any person subject to this Act, who commits any of the following offences, that is to say:-

- (a) shamefully abandons or delivers up any garrison, fortress, post, place or guard, committed to his charge, or which it is his duty to defend, or uses any means to compel or induce any commanding officer or other person to commit the said act;

- (b) intentionally uses any means to compel or induce any person subject to Military, Naval or Air Force law to abstain from acting against the enemy, or to discourage such person from acting against the enemy; or
- (c) in the presence of the enemy shamefully casts away his arms, ammunition, tools or equipment or misbehaves in such manner as to show cowardice; or
- (d) treacherously holds correspondence with, or communicates intelligence to, the enemy or any person in arms against Bangladesh; or
- (e) directly or indirectly assists the enemy with money, arms, ammunition, stores or supplies; or
- (f) treacherously or through cowardice sends a flag of truce to the enemy; or
- (g) in time of war or during any Air Force operation, intentionally occasions a false alarm in action, camp or quarters or spreads reports calculated to create alarm or despondency; or
- (h) in time of action leaves his commanding officer or his post, guard, piquet, patrol or party without being regularly relieved or without leave; or
- (i) having been made a prisoner of war, voluntarily serves with or aids the enemy; or
- (j) knowingly harbours or protects an enemy not being a prisoner; or
- (k) being a sentry in time of war or alarm, sleeps upon his post or is intoxicated; or
- (l) knowingly does any act calculated to imperil the success of the Military, Naval or Air Forces of Bangladesh or any forces co-operating therewith or any part of such forces; or
- (m) treacherously or shamefully causes the capture or destruction by the enemy of any aircraft belonging to the Government; or

- (n) treacherously uses any false air signal or alters or interferes with any air signal; or
- (o) when ordered by his superior officer or otherwise under orders to carry out any Air Force operations, treacherously or shamefully fails to use his utmost exertions to carry such orders into effect;

shall, on conviction by court-martial, be liable to suffer death.

Offences in relation to the enemy and not punishable with death

35. Any person subject to this Act who commits any of the following offences, that is to say:-

- (a) is taken prisoner, by want of due precaution, or through disobedience of orders, or wilful neglect of duty, or having been taken prisoner, fails to rejoin his service when able to do so; or
- (b) without due authority holds correspondence with or communicates intelligence to the enemy; or having come by the knowledge of any such correspondence or communication wilfully omits to discover it immediately to his commanding or other superior officer; or
- (c) without due authority sends flag of truce to the enemy; or
- (d) negligently causes the capture or destruction by the enemy of any aircraft belonging to the Government; or
- (e) when ordered by his superior officer, or otherwise under orders to carry out any warlike operations in the air, negligently or through other default fails to use his utmost exertions to carry such orders into effect;

shall, on conviction by court-martial, be liable to suffer long imprisonment.

Offences punishable more severely on active service than at other times

36. Any person subject to this Act who commits any of the following offences, that is to say:-

- (a) forces a safeguard, or forces or uses criminal force to a sentry; or

- (b) breaks into any house or other place in search of plunder; or
- (c) being a sentry sleeps upon his post, or is intoxicated; or
- (d) without orders from his superior officer leaves his guard, piquet, patrol or post ; or
- (e) intentionally or through neglect occasions a false alarm in camp or quarters; or spreads reports calculated to create unnecessary alarm or despondency; or
- (f) makes known the parole, watchword or countersign to any person not entitled to receive it; or knowingly gives a parole, watchword or countersigns different from what he received ; or
- (g) without due authority alters or interferes with any air signal;

shall, on conviction by court-martial,

if he commits any such offence when on active service, be liable to suffer long imprisonment; and

if he commits any such offence when not on active service, be liable to suffer short imprisonment.

37. Any person subject to this Act who commits any of the following offences, that is to say:- Mutiny

- (a) begins, incites, causes, or conspires with any other person to cause, any mutiny in the Military, Naval or Air Forces of Bangladesh or any forces co-operating therewith; or
- (b) joins in any such mutiny; or
- (c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or
- (d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to commit such mutiny or any such conspiracy, does not, without delay, give information thereof to his commanding or other superior officer; or

- (e) endeavours to seduce any person in the Military, Naval or Air Forces of Bangladesh from his duty or allegiance to the Government;

shall, on conviction by court-martial, be liable to suffer death.

Desertion and
aiding desertion

38. (1) Any person subject to this Act who deserts or attempts to desert the service, shall on conviction by court-martial,-

if he commits the offence on active service or when under orders for active service, be liable to suffer long imprisonment; and

if he commits the offence under any other circumstances, be liable to suffer short imprisonment.

(2) Any person subject to this Act,-

who knowingly harbours any such deserter ; or

who being cognisant of any desertion or attempt at desertion of a person subject to this Act, does not forthwith give notice to his own or some other superior officer, or take any steps in his power to cause such person to be apprehended,

shall, on conviction by court-martial, be liable to suffer short imprisonment.

Absence
without leave

39. Any person subject to this Act who commits any of the following offences, that is to say,-

(a) absents himself without leave; or

(b) without sufficient cause overstays leave granted to him;
or

(c) being on leave of absence and having received information from proper authority that any unit or detachment to which he belongs, has been ordered on active service fails, without sufficient cause, to rejoin without delay; or

(d) without sufficient cause fails to appear at the time fixed, at the parade or place appointed for exercise or duty; or

- (e) when on parade, or on the line of march, without sufficient cause, or without leave from his superior officer, quits the parade or line of march; or
- (f) when in camp or elsewhere, is found beyond any limits fixed, or in any place prohibited by any general, local or other order without a pass or written leave from his superior officer; or
- (g) without leave from his superior officer or without due cause, absents himself from any school when duly ordered to attend there;

shall, on conviction by court-martial, be liable to suffer short imprisonment.

40. Any person subject to this Act who commits any of the following offences, that is to say,-

Striking or threatening superior officer

- (a) uses criminal force to, or assaults his superior officer; or
- (b) uses threatening language to such officer; or
- (c) uses insubordinate language to such officer;

shall, on conviction by court-martial,

if such officer is at the time in the execution of his office or, if the offence is committed on active service, be liable to suffer long imprisonment; and

in other cases, be liable to suffer short imprisonment.

41. (1) Any person subject to this Act who disobeys in such manner as to show a wilful defiance of authority any lawful command given personally by his superior officer in the execution of his office whether the same is given orally or in writing or by signal or otherwise shall, on conviction by court-martial, be liable to suffer long imprisonment.

Disobedience to superior officer

(2) Any person subject to this Act, who disobeys any lawful command given by his superior officer shall, on conviction by court-martial,-

if he commits such offence when on active service, be liable to suffer long imprisonment; and

if he commits such offence when not on active service, be liable to suffer short imprisonment.

Insubordination
and obstruction

42. Any person subject to this Act, who commits any of the following offences, that is to say:-

- (a) being concerned in any quarrel, affray or disorder, refuses to obey any officer, though of inferior rank, who orders him into arrest, or uses criminal force to or assaults any such officer; or
- (b) uses criminal force to, or assaults any person, whether subject to this Act or not, in whose custody he is lawfully placed, and whether he is or is not his superior officer; or
- (c) resists an escort whose duty it is to apprehend him or to have him in charge; or
- (d) breaks out of barracks, camp or quarters; or
- (e) neglects to obey any general, local or other order; or
- (f) impedes the provost-marshal or any person lawfully acting on his behalf, or when called upon, refuses to assist in the execution of his duty a provost-marshal or any person lawfully acting on his behalf; or
- (g) uses criminal force to, or assaults any person bringing provisions or supplies to the Forces,

shall, on conviction by court-martial, be liable to suffer short imprisonment.

Fraudulent
enrolment

43. Any person subject to this Act who commits any of the following offences, that is to say:-

- (a) without having obtained a regular discharge from the Air Force or otherwise fulfilled the conditions enabling him to enrol or enter, enrolls himself in, or enters the said force or any part of the Military or Naval Forces of Bangladesh; or
- (b) is concerned in the enrolment in any part of the forces of any person, when he knows or has reason to believe such person to be so circumstanced that by enrolling he commits an offence against this Act;

shall, on conviction by court-martial, be liable to suffer short imprisonment.

44. Any person having become subject to this Act who is discovered to have made at the time of enrolment a wilfully false answer to any question set forth in the prescribed form of enrolment which has been put to him by the enrolling officer before whom he appears for the purpose of being enrolled, shall, on conviction by court-martial, be liable to suffer short imprisonment.

False answers
on enrolment

45. Any officer or ¹[master warrant officer or] warrant officer who behaves in a manner unbecoming his position and the character expected of him shall, on conviction by court-martial, be liable to be dismissed.

Unbecoming
conduct

46. Any person subject to this Act who commits any of the following offences, that is to say,-

Certain forms of
disgraceful
conduct

- (a) is guilty of any disgraceful conduct of a cruel, indecent or unnatural kind; or
- (b) malingers, or feigns, or produces disease or infirmity in himself, or intentionally delays his cure or aggravates his disease or infirmity; or
- (c) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself or that person,

shall, on conviction by court-martial, be liable to suffer short imprisonment.

47. Any officer, ²[master warrant officer,] warrant officer or non-commissioned officer, who uses criminal force to or otherwise ill-treats any person subject to this Act, being his subordinate in rank or position, shall, on conviction by court-martial, be liable to suffer short imprisonment.

Ill-treating a
subordinate

¹ The words "master warrant officer or" were inserted by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

² The words and comma "master warrant officer," were inserted by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

Intoxication

48. (1) Any person subject to this Act who is found in a state of intoxication, whether on duty or not, shall, on conviction by court-martial, if he is an officer, be liable to be dismissed; and if he is not an officer, be liable, subject to the provisions of sub-section (2), to suffer short imprisonment.

(2) When an offence of being intoxicated is committed by a person other than an officer when not on active service, or not on duty, the sentence imposed shall not exceed detention for a period of six months.

Permitting escape of person in custody

49. Any person subject to this Act who commits any of the following offences, that is to say:-

- (a) when in command of a guard, piquet, patrol or post, releases without proper authority, whether wilfully or without reasonable excuse any person committed to his charge or refuses to receive any prisoner or person so committed; or
- (b) wilfully or without reasonable excuse allows to escape any person who is committed to his charge, or whom it is his duty to keep or guard;

shall, on conviction by court-martial, be liable, if he has acted wilfully, to suffer long imprisonment; and if he has not acted wilfully, to suffer short imprisonment.

Irregularity in connection with arrest or confinement

50. Any person subject to this Act, who commits any of the following offences, that is to say-

- (a) unnecessarily detains a person in arrest or confinement without bringing him to trial, or fails to bring his case before the proper authority for investigation; or
- (b) having committed a person to Air Force custody fails without reasonable cause to deliver at the time of such committal, or as soon as practicable, and in any case within forty-eight hours thereafter, to the officer or other person into whose custody the person arrested is committed, an account in writing signed by himself of the offence with which the person so committed is charged,

shall, on conviction by court-martial, be liable to suffer short imprisonment.

51. Any person subject to this Act who, being in lawful custody, escapes or attempts to escape, shall, on conviction by court-martial, be liable to suffer short imprisonment. Escape from custody

52. Any person subject to this Act who commits any of the following offences, that is to say:- Offences in respect of property

- (a) commits theft of any property belonging to the Government, or to any Military, Naval or Air Force mess, band or institution, or to any person subject to Military, Naval or Air Force law; or serving with, or attached to, the Air Force; or
- (b) dishonestly misappropriates or converts to his own use any such property; or
- (c) commits criminal breach of trust in respect of any such property; or
- (d) dishonestly receives or retains any such property in respect of which any of the offences under clauses (a), (b) and (c) has been committed, knowing or having reason to believe the commission of such offence; or
- (e) wilfully destroys or injures any property of the Government entrusted to him; or
- (f) does any other thing with intent to defraud, or to cause wrongful gain to one person or wrongful loss to another person,

shall, on conviction by court-martial, be liable to suffer long imprisonment.

53. Any person subject to this Act who commits any of the following offences, that is to say:- Extortion and corruption

- (a) commits extortion; or
- (b) without proper authority exacts from any person money, provisions or service;

shall, on conviction by court-martial, be liable to suffer short imprisonment.

Making away
with equipment

54. Any person subject to this Act who commits any of the following offences, that is to say:-

- (a) makes away with , or is concerned in making away with, any arms, ammunition, equipment, instruments, tools, clothing or any other thing being the property of the Government issued to him for his use or entrusted to him; or
- (b) loses by neglect anything mentioned in clause (a); or
- (c) sells, pawns, destroys or defaces any medal or decoration granted to him,

shall, on conviction by court-martial, be liable to suffer short imprisonment.

Injury to
property

55. Any person subject to this Act, who commits any of the following offences, that is to say:-

- (a) destroys or injures any property mentioned in clause (a) of section 54, or any property belonging to any Military, Naval or Air Force mess, band or institution, or to any person subject to Military, Naval or Air Force law, or serving with, or attached to, the Air Force; or
- (b) commits any act which causes damage to, or destruction of, any property of the Government by fire; or
- (c) kills, injures, makes away with , ill-treats or loses any animal entrusted to him,

shall, on conviction by court-martial, be liable to suffer short imprisonment.

False accusation

56. Any person subject to this Act, who commits any of the following offences, that is to say:-

- (a) makes a false accusation against any person subject to this Act, knowing or having reason to believe such accusation to be false; or
- (b) in making a complaint under section 26 or section 27 makes any statement affecting the character of any person subject to this Act, knowing or having reason to believe such statement to be false, or knowingly and wilfully suppresses any material facts,

shall, on conviction by court-martial, be liable to suffer short imprisonment.

57. Any person subject to this Act, who commits any of the following offences, that is to say:-

Falsifying
official
document and
false declaration

- (a) in any report, return, list, certificate, book or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy, knowingly makes, or is privy to the making of, any false or fraudulent statement; or
- (b) in any document of the description mentioned in clause (a) knowingly makes, or is privy to the making of, any omission, with intent to defraud; or
- (c) knowingly and with intent to injure any person or knowingly and with intent to defraud, suppresses, defaces, alters or makes away with any document which it is his duty to preserve or produce; or
- (d) where it is his official duty to make a declaration respecting any matter, knowingly makes a false declaration; or
- (e) obtains for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement,

shall, on conviction by court-martial, be liable to suffer short imprisonment.

58. Any person subject to this Act who commits any of the following offences, that is to say:-

Signing in blank
and failure to
report

- (a) when signing any document relating to pay, arms, ammunition, equipment, clothing, supplies or stores, or any property of the Government fraudulently leaves in blank any material part for which his signature is a voucher; or

- (b) refuses or by culpable neglect omits to make or send a report or return which it is his duty to make or send;

shall, on conviction by court-martial, be liable to suffer short imprisonment.

Offences
relating to
courts-martial

59. Any person subject to this Act who commits any of the following offences, that is to say:-

- (a) being duly summoned or ordered to attend as a witness before a court-martial wilfully or without reasonable excuse, makes default in attending; or
- (b) refuses to take an oath or make an affirmation legally required by a court-martial to be taken or made; or
- (c) refuses to produce or deliver any document in his power or control legally required by a court-martial to be produced or delivered by him; or
- (d) refuses when a witness to answer any question which he is by law bound to answer; or
- (e) is guilty of contempt of court-martial by using insulting or threatening language, or by causing any interruption or disturbance in the proceedings of such court,

shall, on conviction by court-martial, be liable to suffer short imprisonment.

False evidence

60. Any person subject to this Act who, having been duly sworn or affirmed before any court-martial, or other authority competent under this Act to administer an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction by court-martial, be liable to suffer short imprisonment.

Unlawful
detention of pay

61. Any officer, ¹[master warrant officer,] warrant officer or non-commissioned officer who, having received the pay of a person subject to this Act unlawfully detains or refuses to pay the same when due, shall, on conviction by court-martial, be liable to suffer short imprisonment.

¹ The words and comma "master warrant officer," were inserted by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

62. Any person subject to this Act who commits any of the following offences, that is to say:-

Offences in relation to aircraft and flying

- (a) wilfully or without reasonable excuse damages, destroys or loses any aircraft or aircraft material belonging to the Government; or
- (b) is guilty of any act or neglect likely to cause such damage, destruction or loss; or
- (c) without lawful authority disposes of any aircraft or aircraft material belonging to the Government; or
- (d) is guilty of any act or neglect in flying, or in the use of any aircraft, or in relation to any aircraft or aircraft material, which causes or is likely to cause loss of life or bodily injury to any person; or
- (e) during a state of war, wilfully and without proper occasion, or negligently, causes the sequestration, by or under the authority of a neutral State, or the destruction in a neutral State, of any aircraft belonging to the Government,

shall, on conviction by court-martial, be liable, if he has acted wilfully, to suffer long imprisonment, and, in any other case, to suffer short imprisonment.

63. Any person subject to this Act who commits any of the following offences, that is to say:-

Other offences relating to aircraft and flying

- (a) signs any certificate in relation to an aircraft or aircraft material belonging to the Government without ensuring the accuracy thereof; or
- (b) being the pilot of an aircraft belonging to the Government, flies it at a height less than such height as may be specified by the Chief of Air Staff, except while taking off or landing, or in such other circumstances as may be specified by the Chief of Air Staff; or
- (c) being the pilot of an aircraft belonging to the Government, flies it so as to cause, or to be likely to cause, unnecessary annoyance to any person,

shall, on conviction by court-martial, be liable to suffer short imprisonment.

Disobedience of
lawful
command of
captain of
aircraft

64. Any person subject to this Act who, whatever his rank, commits any of the following offences, that is to say:-

- (a) while he is in an aircraft disobeys any lawful command given by the captain of the aircraft, whether such captain is subject to this Act or not as respects all matters relating to the flying or handling of the aircraft, or affecting the safety thereof; or
- (b) being the captain of a glider aircraft towed by another aircraft disobeys any lawful command given by the captain of the towing aircraft, whether the latter is subject to this Act or not, as respect all matters aforesaid,

shall, on conviction by court-martial, be liable to suffer long imprisonment.

Violation of
good order and
Air Force
discipline

65. Any person subject to this Act who is guilty of any act or omission which though not specified in this Act, is prejudicial to good order and Air Force discipline shall, on conviction by court-martial, be liable to suffer short imprisonment.

Miscellaneous
offences

66. Any person subject to this Act who commits any of the following offences, that is to say:-

- (a) being in command at any post or on the march and receiving a complaint that any one under his command has beaten or otherwise maltreated or oppressed any person, or has disturbed any fair or market, or committed any riot or trespass, fails to have due reparation made to the injured person or to report the case to the proper authority; or
- (b) by defiling any place of worship, or otherwise, intentionally insults the religion or wounds the religious feelings of any person; or
- (c) attempts to commit suicide, and in such attempt does any act towards the commission of such offence; or
- (d) being below the rank of warrant officer, when off duty, appears, without proper authority, in or about camp or cantonments, or in or about, or when going to or returning from, any town or bazar, carrying a rifle, sword or other offensive weapon; or

- (e) directly or indirectly accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any gratification as a motive or reward for procuring the enrolment of any person, or leave of absence, promotion or any other advantage or indulgence for any person in the service; or
- (f) commits any offence against the property or person of any inhabitant of, or resident in, the country in which he is serving,

shall, on conviction by court-martial, be liable to suffer short imprisonment.

67. Any person subject to this Act who attempts to commit any of the offences specified in sections 34 to 66 inclusive, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence shall, on conviction by court-martial, where no express provision is made by this Act for the punishment of such attempt, be liable, Attempt

if the offence attempted to be committed is punishable with death, to suffer long imprisonment; and

if the offence attempted to be committed is punishable with imprisonment to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence.

68. Any person subject to this Act who abets the commission of any of the offences specified in sections 34 to 66 inclusive, shall, on conviction by court-martial, if the act abetted is committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer the punishment provided for that offence. Abetment of offences that have been committed

69. Any person subject to this Act who abets the commission of any of the offences punishable with death under sections 34 and 37 shall, on conviction by court-martial, if that offence be not committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer long imprisonment. Abetment of offences punishable with death and not committed

Abetment of offences punishable with imprisonment and not committed

70. Any person subject to this Act who abets the commission of any of the offences specified in sections 34 to 66 inclusive, and punishable with imprisonment shall, on conviction by court-martial, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence.

Civil offences

71. (1) Subject to the provisions of section 72, any person subject to this Act who at any place in or beyond Bangladesh commits any civil offence shall be deemed to be guilty of an offence against this Act and, if charged therewith under this section shall be liable to be dealt with under this Act and, on conviction, be punishable as follows, that is to say:-

- (a) if the offence is one which would be punishable under any law in force in Bangladesh with death or with transportation, he shall be liable to suffer any punishment, other than transportation or whipping, assigned for the offence by the aforesaid law and such less punishment as is in this Act mentioned:

Provided that, where transportation is assigned as a punishment for the offence by the law of Bangladesh, he shall be liable to suffer, in lieu of transportation, rigorous imprisonment for a term not exceeding the term of transportation awardable under such law for that offence; rigorous imprisonment for fourteen years being deemed for this purpose the equivalent of transportation for life; and

- (b) in any other case, he shall be liable to suffer any punishment, other than whipping, assigned for the offence by any law in force in Bangladesh, or to suffer short imprisonment or such less punishment as is in this Act mentioned.

(2) The powers of a court-martial or an officer exercising authority under section 82 or section 86 to change and to punish any person under this section shall not be affected by reason of the fact that the civil offence with which such person is charged is also an Air Force offence.

(3) Notwithstanding anything contained in this Act or in any other law for the time being in force, a person who becomes subject to this Act by reason of his being accused of an offence mentioned in clause (d) of sub-section (1) of section 2 shall be liable to be tried or otherwise dealt with under this Act for such offence as if the offence were an offence against this Act and were committed at the time when such person was subject to this Act; and the provisions of this section shall have effect accordingly.

72. A person subject to this Act who commits an offence of murder against a person not subject to Military, Naval or Air Force law, or of culpable homicide not amounting to murder against such a person, or of rape in relation to such a person, shall not be deemed to be guilty of an offence under this Act and shall not be tried by a court-martial, unless he commits any of the said offences:-

Civil offences
not triable by
courts-martial

- (a) while on active service, or
- (b) at any place outside Bangladesh, or
- (c) at a frontier post specified by the Bangladesh Government by notification in this behalf.

CHAPTER VII

PUNISHMENTS

73. Punishments may be inflicted in respect of offences committed by persons subject to this Act and convicted by courts-martial according to the scale following, that is to say:-

Punishments
awardable by
courts-martial

- (a) death;
- (b) long imprisonment, which shall be rigorous and for a term not exceeding fourteen years;
- (c) short imprisonment, which may be rigorous or simple, for a term not exceeding two years;
- (d) detention for a term not exceeding two years in the case of airmen;
- (e) dismissal from service;

- (f) reduction to the ranks or to a lower rank or to a lower grade, in the case of non-commissioned officers;
- (g) forfeiture of seniority of rank, in the case of officers, ¹[master warrant officers,] warrant officers and non-commissioned officers; and forfeiture of all or any part of their service for the purpose of promotion, in the case of any of them whose promotion depends upon length of service;
- (h) forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose;
- (i) severe reprimand or reprimand, in the case of officers, ²[master warrant officers,] warrant officers and non-commissioned officers;
- (j) forfeiture of pay and allowances for a period not exceeding three months for an offence committed on active service;
- (k) forfeiture in the case of a person sentenced to dismissal from the service, of all arrears of pay and allowances and other public money due to him at the time of such dismissal;
- (l) stoppages of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

Alternate
punishments
awardable by
courts-martial

74. Subject to the provisions of this Act, a court-martial, may, on convicting a person subject to this Act of any of the offences specified in sections 34 to 70 inclusive, award either the particular punishment with which the offence is stated in the said sections to be punishable, or, in lieu thereof, any one of the punishments lower in the scale set out in section 73, regard being had to the nature and degree of the offence.

Combination of
punishments

75. A sentence of a court-martial may award, in addition to or without any one other punishment, the punishment specified in clause (e) of section 73 and any one or more of the punishments specified in clauses (f) to (l) of that section.

¹ The words and comma “master warrant officers,” were inserted by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

² The words and comma “master warrant officers,” were inserted by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

- 76.** Whenever an officer or a ¹[master warrant officer or a] warrant officer is sentenced to imprisonment, the Court shall, by its sentence, sentence such officer or warrant officer to be dismissed from the service. Dismissal of officers and warrant officers
- 77.** (1) Where any person subject to this Act and under the rank of warrant officer commits any offence on active service, it shall be lawful for a court-martial to award for that offence any such punishment as is prescribed as a field punishment. Field punishment
- (2) Field punishment shall be of the character of personal restraint or of hard labour but shall not be of a nature to cause injury to life or limb and shall not include flogging.
- 78.** Field punishment shall for the purpose of commutation, be deemed to stand next below dismissal in the scale of punishments specified in section 73. Position of field punishment in scale of punishments
- 79.** A non-commissioned officer sentenced by a court-martial to imprisonment, detention, field punishment or dismissal from the service shall be deemed to be reduced to the ranks. Result of certain punishments in the case of a non-commissioned officer
- 80.** When, on active service, any enrolled person has been sentenced by a court-martial to dismissal or to imprisonment or detention, whether combined with dismissal or not, the prescribed officer may direct that such person may be retained to serve in the ranks and such service, shall be reckoned as part of his term of imprisonment or detention, if any. Retention in the ranks of a person convicted on active service
- 81.** Punishments may also be inflicted in respect of offences committed by persons subject to this Act without the intervention of a court-martial and in the manner stated in sections 82 and 86. Punishments otherwise than by court-martial
- 82.** Subject to the provisions of sections 83 and 84, a commanding officer or such other officer as is, with the consent of the Government, specified by the Chief of Air Staff, may, in the prescribed manner, proceed against a person subject to this Punishment of persons other than officers and warrant officers

¹ The words “master warrant officer or a” were inserted by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

Act otherwise than as an officer or master warrant officer or warrant officer who is charged with an offence under this Act and award such person, to the extent prescribed, one or more of the following punishments, that is to say:-

- (a) detention up to twenty-eight days;
- (b) confinement to the camp up to fourteen days;
- (c) extra guard or duties not exceeding three in number;
- (d) deprivation of acting rank;
- ¹[(dd) relinquishment of substantive rank;]
- (e) forfeiture of badge pay;
- (f) severe reprimand or reprimand;
- (g) fine up to fourteen days' pay in any one month;
- (h) penal deductions under clause (g) of section 91;
- (i) admonition;
- (j) any prescribed field punishment up to twenty-eight days, in the case of a person on active service.

Requirement of sanction in certain cases

83. (1) Subject to the provisions of sub-section (2), the punishments mentioned in section 82 shall not be inflicted in respect of an offence under any of the sections 34, 35 and 36 when committed on active service, or under any of the sections 37, 38, 40, 42(f) and (g), 43, 47, 52, 60, 62, 63, 64, 66(a), (b) and (c) and 71 except with the previous sanction in writing of an officer having power to convene a district court-martial.

(2) The said punishments may be awarded without such sanction in the case of any offence, other than an offence under section 34 or section 71, committed by persons who have not been enrolled as combatants.

¹ Clause (dd) was inserted by section 7 of the Pakistan Air Force (Amendment) Act, 1963 (Act No. VIII of 1963).

84. (1) An award of punishment under section 82 shall not include field punishment in addition to one or more of the punishments specified in clauses (a) and (b) of that section.

Limit of punishments under section 82

(2) In the case of an award of two or more of the punishments specified in clauses (a), (b) and (c) of the said section, the punishment specified in clause (b) or clause (c) shall take effect only at the end of the punishment specified in clause (a).

(3) When punishments specified in the said clauses (a) and (b) are awarded to a person conjointly, or when already undergoing one or both of the said punishments and any other punishment is awarded, the whole extent of the punishments shall not exceed in the aggregate forty-two days.

(4) The punishments specified in clauses (a), (b), (c), (e), (g) and (j) of section 82 shall not be awarded to any person who is of the rank of non-commissioned officer or was, at the time of committing the offence for which he is punished, of such rank.

(5) The punishment specified in clause (f) of the said section shall not be awarded to any person below the rank of a non-commissioned officer.

(6) The punishment specified in clause (dd) of the said section shall not be awarded to any person of the rank of sergeant and flight-sergeant.

85. The Chief of Air Staff may, with the consent of the Government, specify such other punishments as may be awarded under section 82 in addition to or without any of the punishments specified in the said section, and the extent to which such other punishments may be awarded.

Punishments in addition in those specified in section 82

86. An officer having power to convene a general court-martial or such other officer as is, with the consent of the Government, specified by the Chief of Air Staff may, in the prescribed manner, proceed against an officer below the rank of squadron leader or a warrant officer, who is charged with an

Punishment of officers and warrant officers

offence under this Act, and award one or more of the following punishments, that is to say:-

- (a) forfeiture of seniority, or in the case of any of them whose promotion depends upon length of service, forfeiture of service for the purpose of promotion for a period not exceeding twelve months, but subject to the right of the accused previous to the award to elect to be tried by a court-martial;
- (b) severe reprimand or reprimand;
- (c) stoppage of pay and allowances for a period not exceeding three months, or until any proved loss or damage occasioned by the offence of which he is convicted is made good, whichever is less out subject to the right of the accused specified in clause (a);
- (d) forfeiture of pay and allowances for a period not exceeding three months for an offence under clause (e) of section 42 in so far as it consists of neglect to obey flying orders or under section 62 or section 63.

Transmission of proceedings

87. In every case in which punishment has been awarded under section 86, certified true copies of the proceedings shall be forwarded, in the prescribed manner, by the officer awarding the punishment, to a superior Air Force authority as defined in section 89.

Review of proceedings

88. If any punishment awarded under section 82 or 86, appears to a superior Air Force authority as defined in section 89 to be illegal, unjust or excessive, such authority may cancel, vary or remit the punishment and make such other direction as may be appropriate in the circumstances of the case.

Superior Air Force authority

89. For the purposes of sections 87 and 88, a “superior Air Force authority” means-

- (a) in the case of punishments awarded by a commanding officer or an officer specified by the Chief of Air Staff under section 82, any officer superior in command to such officer;
- (b) in the case of punishments awarded by any other authority, the Government, the Chief of Air Staff or other officer specified by the Chief of Air Staff.

CHAPTER VIII

PENAL DEDUCTIONS

90. Subject to the provisions of section 94, the following penal deductions may be made from the pay and allowances of an officer, that is to say:-

Deduction from pay and allowances of officers

- (a) all pay and allowances due to an officer for every day he absents himself without leave, or overstays the period for which leave of absence has been granted to him, unless a satisfactory explanation has been given to his commanding officer and has been approved by the Government;
- (b) all pay and allowances for every day while he is under suspension from duty on a charge for an offence of which he is afterwards convicted by a criminal court or a court-martial or by an officer exercising authority under section 86;
- (c) any sum required to make good the pay of any person subject to this Act which he has unlawfully retained or unlawfully refused to pay;
- (d) any sum required to make good such compensation for any expenses, loss, damage or destruction occasioned by the commission of an offence as may be determined by the court-martial by whom he is convicted of such offence, or by an officer exercising authority under section 86;
- (e) all pay and allowances ordered by a court-martial or an officer exercising authority under section 86 to be forfeited or stopped;
- (f) any sum required to pay a fine awarded by a criminal court or a court-martial exercising jurisdiction under section 71;
- (g) any sum required to make good any loss, damage or destruction of public or service property which, after due investigation, appears to the Government to have been occasioned by the wrongful act or negligence on the part of the officer;

- (h) all pay and allowances forfeited by order of the Government if the officer is found by a board of inquiry constituted by the Chief of Air Staff in this behalf, to have deserted to the enemy, or while in enemy hands, to have served with, or under the orders of, the enemy or in any manner to have aided the enemy, or to have allowed himself to be taken prisoner by the enemy through want of due precaution or through disobedience of orders or wilful neglect of duty, or having been taken prisoner by the enemy, to have failed to rejoin his service when it was possible to do so;
- (i) any sum required by order of the Government, which after due investigation appears to be reasonable, to be paid for the maintenance of his wife or his legitimate or illegitimate child, or towards the cost of any relief given by the said Government to the said wife or child.

Deductions
from pay and
allowances of
warrant officers
and airmen

91. Subject to the provisions of section 94, the following penal deductions may be made from the pay and allowances of a warrant officer or an airman, that is to say:-

- (a) all pay and allowances for every day of absence either on desertion or without leave, or as a prisoner of war, and for every day of transportation or imprisonment awarded by a criminal court, or a court-martial, or of detention, or field punishment awarded by a court-martial or an officer exercising authority under section 82;
- (b) all pay and allowances for every day while he is in custody on a charge for an offence of which he is afterwards convicted by a criminal court or a court-martial, or on a charge of absence without leave for which he is afterwards awarded detention or field punishment by an officer exercising authority under section 82;
- (c) all pay and allowances for every day on which he is in hospital on account of sickness certified by the medical officer attending on him to have been caused by an offence under this Act committed by him;
- (d) for every day on which he is in hospital on account of sickness certified by the medical officer attending on him to have been caused by his own misconduct or imprudence, such sum as may be specified by order of the Chief of Air Staff;

- (e) all pay and allowances ordered by a court-martial or by an officer exercising authority under section 82 or section 86 to be forfeited or stopped;
- (f) all pay and allowances for every day between his being recovered from the enemy and his dismissal from the service in consequence of his conduct when being taken prisoner by, or while in the hands, of the enemy;
- (g) any sum required to make good such compensation for any expenses, loss, damage or destruction caused by him to the Government or to any building or property as may be awarded by his commanding officer;
- (h) any sum required to pay a fine awarded by a criminal court, a court-martial exercising jurisdiction under section 71, or an officer exercising authority under section 82;
- (i) any sum required by order of the Government or any prescribed officer to be paid for the maintenance of his wife or his legitimate or illegitimate child or towards the cost of any relief given by the said Government to the said wife or child.

92. For the purposes of clauses (a) and (b) of section 91-

Computation of
time of absence
or custody

- (a) no person shall be treated as absent or in custody for a day unless the absence or custody, has lasted, whether wholly in one day, or partly in one day and partly in another, for six consecutive hours or upwards;
- (b) any absence or custody for less than a day may be reckoned as absence or custody for a day if such absence or custody prevented the absentee from fulfilling any Air Force duty which was thereby thrown upon some other person;
- (c) absence or custody for twelve consecutive hours or upwards may be reckoned as absence or custody for the whole of each day during any portion of which the person was absent or in custody;
- (d) a period of absence, imprisonment or detention which commences before and ends after midnight may be reckoned as a day.

Pay and allowances during trial

93. In the case of any person subject to this Act who is in custody or under suspension from duty on a charge for an offence, the prescribed officer may direct that the whole or any part of the pay and allowances of such person shall be withheld, pending the result of his trial on the charge against him, in order to give effect to the provisions of clause (b) of sections 90 and 91.

Limit of certain deductions

94. The total deductions from the pay and allowances of a person made under clauses (d) to (g) and clause (i) of section 90, and clauses (e) and (g) to (i) of section 91 shall not, except where he is sentenced to dismissal, exceed in any one month one-half of his pay and allowances for that month.

Deduction from public money due to a person

95. Any sum authorised by this Act to be deducted from the pay and allowances of any person may, without prejudice to any other mode of recovering the same, be deducted from any public money due to him other than a pension.

Pay and allowances of prisoner of war during inquiry into his conduct

96. Where the conduct of any person subject to this Act when being taken prisoner by, or while in the hands of, the enemy, is to be inquired into under this Act or any other law, the Chief of Air Staff or any officer authorised by him may order that the whole or any part of the pay and allowances of such person shall be withheld pending the result of such inquiry.

Remission of deductions

97. Any deduction from pay and allowances authorised by this Act may be remitted in such manner, and to such extent and by such authority, as may from time to time be prescribed.

Provision for dependants of prisoner of war where remission is made

98. In case of all persons subject to this Act, being prisoners of war, whose pay and allowances have been forfeited under clause (h) of section 90 or clause (a) of section 91, but in respect of whom a remission has been made under section 97, it shall be lawful for proper provision to be made by the prescribed authorities out of such pay and allowances for any dependants of such persons, and any such remission shall in that case be deemed to apply only to the balance thereafter remaining of such pay and allowances.

99. It shall be lawful for proper provision to be made by the prescribed authorities for any dependants of any person subject to this Act, who is a prisoner of war or is missing out of his pay and allowances.

Provision for dependants of prisoner of war from his pay and allowances

100. For the purposes of sections 98 and 99, a person shall be deemed to continue to be a prisoner of war until the conclusion of any inquiry into his conduct such as is referred to in section 96, and if he is dismissed from the service in consequence of such conduct, until the date of such dismissal.

Period during which a person is deemed to be a prisoner of war

CHAPTER IX

ARREST AND PROCEEDINGS BEFORE TRIAL

101. (1) Any person subject to this Act who is charged with an offence may be taken into Air Force custody.

Custody of offenders

(2) Any such person may be ordered into Air Force custody by any superior officer.

(3) Any officer may order into Air Force custody any officer, though he may be of a higher rank, engaged in a quarrel, affray or disorder.

102. (1) It shall be the duty of every commanding officer to take care that a person under his command when charged with an offence is not detained in custody for more than forty-eight hours after the committal of such person into custody is reported to him, without the charge being investigated, unless investigation within that period seems to him to be impracticable with due regard to the public service.

Duty of commanding officer in regard to detention

(2) Every case of a person being detained in custody beyond a period of forty-eight hours, and the reason thereof shall be reported by the commanding officer to the Air or other officer to whom application would be made to convene a general or district court-martial for the trial of the person charged.

(3) In reckoning the period of forty-eight hours specified in sub-section (1), Sundays and public holidays shall be excluded.

(4) Subject to the provisions of this Act, the Government may make rules providing for the manner in which and the period for which any person subject to this Act may be taken into and detained in Air Force custody, pending the trial by any competent authority for any offence committed by him.

Interval
between
committal and
trial

103. In every case where any such person as is mentioned in section 101 and as is not on active service remains in such custody for a longer period than eight days, without a court-martial for his trial being ordered to assemble, a special report giving reasons for the delay shall be made by his commanding officer in the manner prescribed; and a similar report shall be forwarded every eight days until a court-martial is assembled or such person is released from custody.

Arrest by civil
authorities

104. Whenever any person subject to this Act, who is accused of any offence under this Act, is within the jurisdiction of any magistrate or police officer, such magistrate or police officer shall aid in the apprehension and delivery to Air Force custody of such person upon receipt of a written application to that effect signed by his commanding officer.

Capture of
deserters

105. (1) Whenever any person subject to this Act, deserts, the commanding officer of the unit or detachment to which he belongs, shall give written information of the desertion to such civil authorities as, in his opinion, may be able to afford assistance towards the capture of the deserter; and such authorities shall there upon take steps for the apprehension of the said deserter in like manner as if he were a person for whose apprehension a warrant had been issued by a magistrate, and shall deliver the deserter, when apprehended, into Air Force custody.

(2) Any police officer may arrest without warrant any person reasonably believed to be subject to this Act, and to be a deserter or to be travelling without authority, and shall bring him without delay before the nearest magistrate, to be dealt with according to law.

Inquiry into
absence without
leave

106. (1) When any person subject to this Act has been absent from his duty without due authority for a period of thirty days, a

board of inquiry shall, as soon as practicable, be assembled, and such board shall on oath or affirmation administered in the prescribed manner, inquire respecting the absence of the person, and the deficiency, if any, in the property of the Government entrusted to his care, or in any arms, ammunition, equipment, instruments, clothing or necessaries, and if satisfied of the fact of such absence without due authority or other sufficient cause the board shall declare such absence and the period thereof, and the said deficiency, if any; and the commanding officer of the unit to which the person belongs shall enter, in the court-martial book of the unit a record of the declaration.

(2) If the person declared absent does not afterwards surrender or is not apprehended, he shall, for the purposes of this Act, be deemed to be a deserter.

¹[**106A.** A board of inquiry may also be assembled in the prescribed manner to inquire into any matter which may be referred to it.]

Inquiry into any other matter

107. (1) Provost-marshals may be appointed by the Chief of Air Staff, or by any prescribed officer.

Provost-marshals

(2) The duties of a provost-marshal are to take charge of persons confined for any offence, to preserve good order and discipline, and to prevent breaches of the same by persons serving in, or attached to the Air Force.

(3) A provost-marshal may at any time arrest and detain for trial any person subject to this Act who commits, or is charged with, an offence, and may also carry into effect any punishment to be inflicted in pursuance of the sentence awarded by a court-martial or an officer exercising authority under section 82 but shall not inflict any punishment on his own authority:

Provided that no officer shall be so arrested or detained otherwise than on the order of another officer.

¹ Section 106A was inserted by section 17 of the Pakistan Air Force (Amendment) Act, 1967 (Act No. VI of 1967).

(4) For the purposes of sub-sections (2) and (3), a “provost-marshal” shall be deemed to include a provost-marshal appointed under the ¹[* * *] Army Act, 1952, or the ²[* * *] Navy Ordinance, 1961, and any person legally exercising authority under him or on his behalf.

CHAPTER X

COURTS-MARTIAL

Different kinds of courts-martial

108. For the purposes of this Act there shall be three kinds of courts-martial, that is to say:-

- (1) general courts-martial;
- (2) district courts-martial; and
- (3) field general courts-martial.

Powers to convene a general court-martial

109. A general court-martial may be convened by the Chief of Air Staff, or by any officer empowered in this behalf by warrant of the Chief of Air Staff.

Power to convene a district court-martial

110. A district court-martial may be convened by any authority having power to convene a general court-martial or by any officer empowered in this behalf by warrant of any such authority.

Limitations of powers of convening authorities

111. A warrant issued under section 109 or section 110 may contain such restrictions, reservations or conditions as the authority issuing it may think fit.

Power to convene a field general court-martial

112. The following authorities shall have the power to convene a field general court-martial, namely:-

- (a) an officer empowered in this behalf by an order of the Government or of the Chief of Air Staff;

¹ The word “Pakistan” was omitted by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

² The word “Pakistan” was omitted by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

- (b) on active service, the officer commanding the forces in the field, or any officer empowered by him in this behalf;
- (c) an officer commanding any detached portion of the Air Force on active service, when, in his opinion, it is not practicable, with due regard to discipline and the exigencies of the service, to try the alleged offender by a general court-martial.

113. A general court-martial shall consist of not less than five officers, each of whom has held a commission for not less than three whole years and of whom not less than four are of a rank not below that of flight-lieutenant.

Composition of
general court-
martial

114. A district court-martial shall consist of not less than three officers, each of whom has held a commission for not less than two whole years.

Composition of
district court-
martial

115. A field general court-martial shall consist of not less than three officers.

Composition of
field general
court-martial

116. (1) If a court-martial after the commencement of a trial is reduced below the minimum number of officers required by this Act, it shall be dissolved.

Dissolution of
court-martial

(2) If on account of the illness of the judge advocate or of the accused before the finding, it is impossible to continue the trial, a court-martial shall be dissolved.

(3) The officer who convened a court-martial may dissolve such court-martial if it appears to him that the exigencies of the service or the necessities of discipline render it impossible or inexpedient to continue the trial.

(4) Where a court-martial is dissolved under this section, the accused may be tried again.

117. A general or field general court-martial shall have power to try any person subject to this Act for any offence punishable therein and to pass any sentence authorised thereby.

Powers of
general and
field general
courts-martial

Powers of district court-martial

118. A district court-martial shall have power to try any person subject to this Act other than an officer or master warrant officer or warrant officer for any offence made punishable therein, and to pass any sentence authorised by this Act other than a sentence of death or imprisonment for a term exceeding two years.

Prohibition of second trial

119. When any person subject to this Act has been acquitted or convicted of an offence by a court-martial or by a criminal court, or has been dealt with under section 82 or section 86, he shall not be liable to be tried again for the same offence by a court-martial or by a criminal Court or be dealt with in respect of it under the said sections.

Period of limitation for trial

120. (1) Except as provided by sub-section (2), no trial by court-martial of any person subject to this Act for any offence shall be commenced after the expiration of a period of three years from the date of such offence.

(2) The provisions of sub-section (1) shall not apply to a trial for an offence of desertion or fraudulent enrolment or for any of the offences mentioned in section 37 or section 52.

(3) In the computation of the period of time mentioned in sub-section (1), any time spent by such person as a prisoner of war, or in any enemy territory, or in evading arrest after the commission of the offence, shall be excluded.

(4) No trial for an offence of desertion (other than desertion on active service) or of fraudulent enrolment shall be commenced if the person in question (not being an officer) has, subsequently to the commission of the offence, served continuously in an exemplary manner for not less than three years with any portion of the Bangladesh regular forces.

Liability of offender who ceases to be subject to the Act

121. (1) Where an offence under this Act had been committed by any person while subject to this Act, and he has ceased to be so subject, he may be taken into and kept in Air Force custody, and tried and punished for such offence as if he had continued to be so subject.

(2) Except as provided by sub-sections (3) and (4) any such person shall not be tried for an offence, unless his trial commences within six months after he has ceased to be subject to this Act.

(3) The provisions of sub-section (2) shall not apply to the trial of any such person for an offence of desertion or fraudulent enrolment or for any of the offences mentioned in section 37.

(4) Nothing contained in sub-section (2) shall affect the jurisdiction of a criminal court to try any offence triable by such court as well as by a court-martial.

(5) When a person subject to this Act is sentenced by a court-martial to imprisonment, this Act shall apply to him during the term of his sentence, though he is dismissed from the Air Force or has otherwise ceased to be subject to this Act, and he may be kept, removed, imprisoned and punished as if he continued to be subject to the Act.

(6) When a person subject to this Act is sentenced by a court-martial to death, this Act shall apply to him till the sentence is carried out.

122. Any person subject to this Act who commits any offence against it may be tried and punished for such offence in any place whatever.

Place of trial

123. When a criminal court and a court-martial have each jurisdiction in respect of a civil offence, it shall be in the discretion of the prescribed Air Force authority to decide before which court the proceedings shall be instituted, and if that authority decides that they shall be instituted before a court-martial, to direct that the accused person shall be detained in Air Force custody.

Order in case of concurrent jurisdiction of criminal court and court-martial

Explanation.- In this section the term “court-martial” shall include an officer exercising authority under section 82 or section 86.

124. (1) When a criminal court having jurisdiction is of opinion that proceedings ought to be instituted before itself in respect of any civil offence, it may, by written notice, require the prescribed Air Force authority at the option of such authority either to deliver over the offender to the nearest magistrate to be proceeded against according to law, or to postpone proceedings pending a reference to the Government.

Power of criminal court to require delivery of offender

(2) In every such case the said authority shall either deliver over the offender in compliance with the requisition or shall forthwith refer the question as to the court before which the proceedings are to be instituted for the determination of the Government, whose order upon such reference shall be final.

125. [*Trial by court-martial no bar to subsequent trial by criminal court.- Omitted by section 20 of the Pakistan Air Force (Amendment) Act, 1967 (Act No. VI of 1967).*]

CHAPTER XI

PROCEDURE OF COURTS-MARTIAL

- President **126.** At every court-martial the senior member shall sit as President.
- Judge Advocate **127.** Every general court-martial shall, and every district or field general court-martial may, be attended by a judge advocate, who shall be either an officer belonging to the department of the Judge Advocate General, or if no such officer is available, a fit person appointed by the convening officer.
- Challenges **128.** (1) At all trials by courts-martial, as soon as the court is assembled, the names of the president and members shall be read over to the accused, who shall thereupon be asked whether he objects to being tried by any officer sitting on the Court.
- (2) If the accused objects to any such officer, his objection, and also the reply thereto of the officer objected to, shall be heard and recorded, and the remaining officers of the court shall, in the absence of the challenged officer, decide on the objection.
- (3) If the objection is allowed by one-half or more of the votes of the officers entitled to vote, the objection shall be allowed, and the member objected to shall retire, and his vacancy may be filled in the prescribed manner by another officer, subject to the same right of the accused to object.
- (4) When no challenge is made, or when challenges have been made and disallowed, or the place of every officer successfully challenged has been filled by another officer to whom no objection is made or allowed, the court shall proceed with the trial.

129. (1) An oath or affirmation in the prescribed form shall be administered in open court to every member of every court-martial and to the judge advocate (if any) before the commencement of the trial.

Oaths of members, judge advocate and witnesses

(2) An oath or affirmation in the prescribed form shall be administered in open court to every officer (if any) in attendance on a court-martial for the purpose of instruction, and also to every shorthand writer or interpreter (if any).

(3) Every person giving evidence before a court-martial shall be examined after being duly sworn or affirmed in the prescribed form:

Provided that where a court-martial is satisfied that a child of tender years is unable to understand the nature of an oath or affirmation, it may dispense with the administration of oath or affirmation.

130. (1) Every decision of a court-martial shall be passed by an absolute majority of votes; and where there is an equality of votes on either the finding or the sentence, the decision shall be in favour of the accused:

Voting by members

Provided that no sentence of death shall be passed without the concurrence, in the case of a general court-martial of at least two-thirds of the members and in the case of a field general court-martial of all the members of the court.

(2) In matters other than a challenge or the finding or sentence, the president shall have a second or casting vote.

131. Subject to the provisions of this Act, the rules of evidence in proceedings before court-martial shall be the same as those which are followed in criminal courts.

General rules as to evidence

132. A court-martial may take judicial notice of any matter within the general, Naval, Military or Air Force knowledge of the members.

Judicial notice

133. (1) The convening officer, the president of the court, the judge advocate, or the commanding officer of the accused person may, by summons under his hand, require the attendance at a time and place to be mentioned in the summons of any person either to give evidence or to produce any document or thing.

Summoning witnesses

(2) In the case of a witness amenable to Air Force, Naval or Military authority, the summons shall be sent to his commanding officer and such officer shall serve it upon him accordingly.

(3) In the case of any other witness, the summons shall be sent to the magistrate within whose jurisdiction he may be or reside, and such magistrate shall give effect to the summons as if the witness were required in the court of such magistrate.

(4) When a witness is required to produce any particular document or other thing in his possession or power the summons shall describe it with reasonable precision.

Documents
exempted from
production

134. (1) Nothing in section 133 shall be deemed to affect the operation of sections 123 and 124 of the Evidence Act, 1872, or to apply to any letter, postcard, telegram or other document in the custody of the postal or telegraph authorities.

(2) If any document in such custody is, in the opinion of any District Magistrate, ¹[High Court Division] or Court of Session, wanted for the purpose of any court-martial, such magistrate or court may require the postal or telegraph authorities, as the case may be, to deliver such document to such person as such magistrate or court may direct.

(3) If any such document is, in the opinion of any other magistrate or of any commissioner of police or district superintendent of police, wanted for any such purpose, he may require the postal or telegraph authorities, as the case may be, to cause search to be made for and to detain such documents pending the orders of any such District Magistrate, ²[High Court Division] or Court of Session.

¹ The words "High Court Division" were substituted for the words "High Court" by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

² The words "High Court Division" were substituted for the words "High Court" by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

135. (1) Whenever, in the course of a trial by a court-martial, it appears to the court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, in the circumstances of the case, would be unreasonable, such court may, if it thinks necessary, issue a commission in the manner specified in Chapter XL of the Code of Criminal Procedure, 1898, according as the witness resides in a place in or outside Bangladesh.

Commission for the examination of witness

(2) The Court may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

(3) Such a commission shall be executed by the magistrate or officer to whom it is issued in the same manner as if it was issued in the trial of a warrant case under the Code of Criminal Procedure, 1898, or of any corresponding law in force at the place where the evidence is recorded; and shall be returned, together with the deposition of the witness examined thereunder, to the Judge Advocate General.

(4) The Judge Advocate General will forward the same to the court-martial who issued it or, if the said court-martial is in the meanwhile dissolved, to another court-martial convened for the trial of the accused in respect of the same charge and any deposition so taken shall be recorded in evidence and shall form part of the proceedings of the court.

Explanation.- In this section, the expression “Judge Advocate General” includes a Deputy Judge Advocate General.

136. [*Examination of a witness on commission.- Omitted by section 3 of the Pakistan Army and Air Force (Amendment) Ordinance, 1964 (Ordinance No. VI of 1964).*]

137. (1) A person charged before a court-martial with desertion may be found guilty of attempting to desert or of being absent without leave.

Conviction of offence not charged

(2) A person charged before a court-martial with attempting to desert may be found guilty of being absent without leave.

(3) A person charged before a court-martial with using criminal force may be found guilty of assault.

(4) A person charged before a court-martial with using threatening language may be found guilty of using insubordinate language.

(5) A person charged before a court-martial with any one of the offences specified in clauses (a), (b), (c) and (d) of section 52 may be found guilty of any other of these offences with which he might have been charged.

(6) A person charged before a court-martial with an offence punishable under section 71 may be found guilty of any other offence of which he might have been found guilty if the provisions of the Code of Criminal Procedure, 1898, were applicable.

(7) A person charged before a court-martial with any other offence under this Act may, on failure of proof of an offence having been committed in circumstances involving a more severe punishment, be found guilty of the same offence as having been committed in circumstances involving a less severe punishment.

(8) A person charged before court-martial with any offence under this Act may be found guilty of having attempted to commit or of abetment of that offence although the attempt or abetment is not separately charged.

Presumption as to signature

138. In any proceeding under this Act, any application, certificate, warrant, reply or other document purporting to be signed by an officer in the ¹[service of the Republic] shall, on production, be presumed to have been duly signed by the person by whom and in the character in which it purports to have been signed, until the contrary is shown.

Enrolment paper

139. (1) Any enrolment paper purporting to be signed by an enrolling officer shall, in proceedings under this Act, be evidence that the person enrolled gave the answers which he is therein represented as having given.

¹ The words "service of the Republic" were substituted for the words "service of the Government" by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

(2) The enrolment of such person may be proved by the production of the original or a copy of his enrolment paper purporting to be certified to be a true copy by the officer having the custody of the enrolment paper.

140. (1) A letter, return or other document with respect to a person,-

Presumption as to certain documents

- (i) having, or not having, at any time served in, or been dismissed or discharged from any part of the armed forces of Bangladesh, or
- (ii) having, or not having, held any rank or appointment in, or been posted or transferred to any part of such forces, or having or not having served in any particular country or place, or
- (iii) being, or not being, authorised to use or wear any Naval, Military or Air Force decoration, medal, medal ribbon, badge, wound stripe or emblem, the use or wearing of which by an unauthorised person is, by any law in force for the time being, an offence,

if purporting to be signed by or on behalf of a Secretary to the Government, or on behalf of the Bangladesh Military, Naval or Air Force Headquarters, or by the commanding officer or the officer or record officer having the custody of the records of any portion of those forces or of any of the ships of Bangladesh Navy to which such person appears to have belonged, or alleges that he belongs or had belonged, shall be evidence of the facts stated in such letter, return or other document.

(2) Any Army, Navy or Air Force list or gazette purporting to be published by authority shall be evidence of the status and rank of the officers or ¹[master warrant officers or warrant officers] therein mentioned, and of any appointment held by them and of the unit or branch of the service to which they belong.

¹ The words “master warrant officers or warrant officers” were substituted for the words “warrant officers” by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

(3) Where a record is made in any service book in pursuance of this Act or of any rules made thereunder or otherwise in pursuance of duty and purports to be signed by the commanding officer or by the officer whose duty it is to make such record, such record shall be evidence of the facts therein stated.

(4) A copy of any record in any service book purporting to be certified to be a true copy by the officer having the custody of such book shall be evidence of such record.

(5) Where any person subject to this Act is being tried on a charge of desertion or of a absence without leave and such person has surrendered himself into the custody of, or has been apprehended by, any officer, or any portion, of the armed forces of Bangladesh, a certificate purporting to be signed by such officer, or by the commanding officer of that portion of the armed forces and stating the fact, date and place of such surrender or apprehension, shall be evidence of the matters so stated.

(6) Where any person subject to this Act is being tried on a charge of desertion or of absence without leave and such person has on arrest or surrender been taken to a police station in Bangladesh, a certificate purporting to be signed by the officer-in-charge of that police station, and stating the fact, date and place of such surrender or apprehension shall be evidence of the matters so stated.

(7) Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to the Government upon any matter or thing duly submitted to him for examination or analysis and report may be used as evidence in any proceeding under this Act.

Reference by
accused to
Government
officer

141. (1) If at any trial, or other proceedings for desertion or absence without leave, overstaying leave, or not re-joining when warned for service, the accused states in his defence any sufficient or reasonable excuse for his unauthorised absence, and refers in support thereof to any officer in the ¹[service of the Republic] or if it appears that any such officer is likely to prove or disprove the said statement in the defence, the court or officer conducting the proceedings shall address such officer and adjourn the court or proceedings until his reply is received.

¹ The words "service of the Republic" were substituted for the words "service of the Government" by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

(2) The written reply of any officer so addressed shall, if signed by him, be received in evidence and have the same effect as if made on oath before the court or officer conducting the proceedings.

(3) If the court-martial is dissolved before receipt of such reply or if it omits to comply with the provisions of this section, the convening officer may, at his discretion, annul the proceedings and order a fresh trial by the same or another court-martial.

142. (1) When any person subject to this Act has been convicted by a court-martial of any offence, such court-martial may inquire into, and receive and record evidence of any previous convictions of such person, either by a court-martial held under this Act or under any other enactment, or by a criminal court, or of any previous award of punishment under section 82 or section 86, and may further inquire into and record the general character of such person, and such other matters as may be prescribed.

Evidence of previous convictions and general character

(2) Evidence received under this section may be either oral or in the shape of entries in, or certified extracts from service records; and it shall not be necessary to give notice before trial to the person tried that evidence as to his previous convictions or character will be received.

143. (1) Whenever, in the course of a trial by a court-martial, it appears to the court that the person charged is by reason of unsoundness of mind incapable of making his defence, or that he committed the act alleged but was by reason of unsoundness of mind incapable of knowing the nature of the act or knowing that it was wrong or contrary to law, the court shall record a finding accordingly.

Lunacy of accused

(2) The president of the court shall forthwith report the case to the confirming officer.

(3) The confirming officer to whom a case is reported under sub-section (2) may, if he does not confirm the finding, take steps to have the accused person tried by the same or another court-martial for the offence with which he was charged.

(4) The confirming officer confirming a finding in any case so reported to him under sub-section (2) shall order the accused person to be kept in custody in the prescribed manner and shall report the case for the orders of the Government.

(5) On receipt of a report under sub-section (4) the Government may order the accused person to be detained in a lunatic asylum or other suitable place of safe custody.

Subsequent
fitness of
lunatic accused
for trial

144. Where any accused person, having been found by reason of unsoundness of mind to be incapable of making his defence, is in custody or under detention under section 143, the officer commanding a unit or detachment within the area of whose command the accused is in custody or is detained, or any other officer prescribed in this behalf, may-

- (a) if such person is in custody under sub-section (4) of section 143, on the report of medical officer that he is capable of making his defence, or
- (b) if such person is detained in a jail under sub-section (5) of section 143, on a certificate of the Inspector General of Prisons; and if such person is detained in a lunatic asylum under the said sub-section, on a certificate of any two or more of the visitors of such asylum that he is capable of making his defence,

take steps to have such person tried by the same or another court-martial for the offence with which he was originally charged, or, if the offence is a civil offence, by a criminal court.

Transmission to
Government of
orders under
section 144

145. A copy of every order made by an officer under section 144 for the trial of the accused shall forthwith be sent to the Government.

Release of
lunatic accused

146. Where any person is in custody under sub-section (4) of section 143, or under detention under sub-section (5) of that section-

- (a) if such person is in custody under the said sub-section (4), on the report of a medical officer, or
- (b) if such person is detained under the said sub-section (5), on a certificate from any of the authorities mentioned in clause (b) of section 144 that, in the judgment of such officer or authority such person may be released without danger of his doing injury to himself or to any other person,

the Government may order that such person be released, or detained in custody, or transferred to a public lunatic asylum if he has not already been sent to such an asylum.

147. Where any relative or friend of any person, who is in custody under sub-section (4) of section 143 or under detention under sub-section (5) of that section, desires that he should be delivered to his care and custody, the Government may, upon application by such relative or friend and on his giving security to the satisfaction of ¹[the Government] that the person delivered shall-

Delivery of lunatic accused to relatives

- (a) be properly taken care of and prevented from doing injury to himself or to any other person; and
- (b) be produced for the inspection of such authority, and at such times and places, as the Government may direct,

order such person to be delivered to such relative or friend.

148. When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before a court-martial during a trial, the court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the trial and, if the property is subject to speedy or natural decay, may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Order for custody and disposal of property pending trial

149. (1) After the conclusion of a trial before a court-martial, the court or the officer confirming the finding or sentence of such court-martial, or any authority superior to such officer, may make such order as it or he thinks fit for the disposal by destruction, confiscation, delivery to any person claiming to be entitled to possession thereof or otherwise of any property or document produced before the court or in its custody, or regarding which any offence appears to have been committed or which has been used for the commission of any offence.

Order for disposal of property regarding which offence is committed

¹ The words "the Government" were substituted for the words "that Government" by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

(2) Where any order has been made under sub-section (1) in respect of property regarding which an offence appears to have been committed, a copy of such order signed and certified by the authority making the same may, whether the trial was held within Bangladesh or not, be sent to a magistrate in any district in which such property for the time being is, and such magistrate shall thereupon cause the order to be carried into effect as if it was an order passed by such magistrate under the provisions of the Code of Criminal Procedure, 1898.

Explanation.- In this section the term “property” includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any person, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange whether immediately or otherwise.

Trial by court-martial to be deemed judicial proceeding, etc.

150. Any trial by a court-martial under the provisions of this Act shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the ¹[Penal Code], and the court-martial shall be deemed to be a court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898.

CHAPTER XII

CONFIRMATION AND REVISION

Finding and sentence not valid unless confirmed

151. No finding or sentence of a general, district or field general court-martial shall be valid except so far as it may be confirmed as provided by this Act.

Power to confirm finding and sentence of general court-martial

152. The findings and sentences of general courts-martial may be confirmed by the Chief of Air Staff or by any officer empowered in this behalf by warrant of the Chief of Air Staff.

¹ The words “Penal Code” were substituted for the words “Pakistan Penal Code” by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

153. The findings and sentences of district courts-martial may be confirmed by any authority having power to convene a general court-martial or by any officer empowered in this behalf by warrant of any such authority.

Power to confirm finding and sentence of district court-martial

154. A warrant issued under section 152 or section 153 may contain such restrictions, reservations or conditions as the authority issuing it may think fit.

Limitation of powers of confirming authority

155. The findings and sentences of a field general court-martial may be confirmed by the convening officer or if he so directs, by an authority superior to him.

Power to confirm finding and sentence of field general court-martial

156. Subject to such restrictions as may be contained in any warrant issued under section 152 or section 153, a confirming authority may, when confirming the sentence of a court-martial, mitigate or remit the punishment thereby awarded, or commute that punishment for any punishment or punishments lower in the scale laid down in section 73:

Power of confirming authority to mitigate, remit or commute sentences

Provided that a sentence of imprisonment shall not be commuted to a sentence of detention for a term exceeding the term of imprisonment awarded by the court.

157. When any person subject to this Act is tried and sentenced by court-martial while on board ship, the finding and sentence so far as not confirmed and executed on board ship may be confirmed and executed in like manner as if such person had been tried at the port of disembarkation.

Confirmation of finding and sentence on board a ship

158. (1) Any finding or sentence of a court-martial may be once revised by order of the confirming authority; and on such revision, the court, if so directed by the confirming authority, may take additional evidence.

Revision of finding and sentence

(2) The court, on revision, shall consist of the same officers as were present when the original decision was passed, unless any of those officers are unavoidably absent.

(3) In case of such unavoidable absence the cause thereof shall be duly recorded in the proceedings, and the court shall

proceed with the revision, provided that, if a general court-martial, it still consists of five officers, or, if a field general or district court-martial, of three officers.

Alteration of finding or sentence in certain cases

159. (1) Where a finding of guilty by a court-martial, which has been confirmed, is found for any reason to be invalid or cannot be supported by the evidence, the authority which would have had power under section 177 to commute the punishment awarded by the sentence, if the finding had been valid, may substitute a new finding and pass a sentence for the offence specified or involved in such finding:

Provided that no such substitution shall be made unless such finding could have been validly made by the court-martial on the charge and unless it appears that the court-martial must have been satisfied of the facts establishing the offence.

(2) Where a sentence passed by a court-martial which has been confirmed, not being a sentence passed in pursuance of a new finding substituted under sub-section (1), is found for any reason to be invalid, the authority referred to in sub-section (1) may pass a valid sentence.

(3) The punishment awarded by a sentence passed under sub-section (1) or sub-section (2) shall not be higher in the scale of punishments than, or in excess of, the punishment awarded by, the sentence for which a new sentence is substituted under this section.

(4) Any finding substituted, or any sentence passed, under this section shall for the purposes of this Act and the rules made thereunder have effect as if it were a finding or sentence of a court-martial.

Remedy against order, finding or sentence of court-martial

160. (1) Any person subject to this Act who considers himself aggrieved by any order passed by a court-martial may present a petition to the officer or authority empowered to confirm any finding or sentence of such court-martial, and the confirming authority may take such steps as may be 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.

(2) Any person subject to this Act who considers himself aggrieved by a finding or sentence of a court-martial which has been confirmed, may present a petition to the Government or the Chief of Air Staff, who may pass such order thereon as it or he thinks fit.

161. The Government or the Chief of Air Staff may annul the proceedings of any court-martial on the ground that they are illegal or unjust.

Annulment of proceedings

162. No court shall question the correctness, legality or propriety of any proceeding or decision of any court-martial, and no remedy shall lie in respect of any such proceeding or decision save as provided in this Act.

Bar of Appeals

CHAPTER XIII

EXECUTION OF SENTENCES

163. In awarding a sentence of death a court-martial shall, in its discretion, direct that the offender shall suffer death by being hanged by the neck until he be dead, or shall suffer death by being shot to death.

Form of sentence of death

164. Whenever any person is sentenced under this Act to imprisonment, or detention, the term of his sentence shall, whether it has been revised or not, be reckoned to commence on the day on which the original proceedings were signed by the president.

Commencement of sentence of imprisonment or detention

165. Whenever any sentence of imprisonment is passed under this Act, or whenever any sentence so passed is commuted to imprisonment, the confirming officer or such officer as may be prescribed in this behalf, may direct either that the sentence shall be carried out by confinement in a civil prison or by confinement in a Military or Air Force prison, and the commanding officer of the person under sentence or such other officer as may be prescribed, shall forward a warrant in the prescribed form to the officer in charge of the prison in which the person under sentence is to be confined, and shall forward him to such prison with the warrant:

Execution of sentence of imprisonment

Provided that in the case of a sentence of imprisonment for a period not exceeding three months, in lieu of a direction that the sentence shall be carried out by confinement in a Civil, Military or Air Force prison, a direction may be made that the sentence shall be carried out by confinement in Air Force custody:

Provided further that on active service a sentence of imprisonment may be carried out by confinement in such place as the officer commanding the forces in the field may from time to time appoint.

Execution of sentence of imprisonment in special cases

166. Whenever, in the opinion of the Chief of Air Staff or an Air or other Officer Commanding a group any sentence or portion of a sentence of imprisonment cannot, for special reasons, conveniently be carried out in accordance with the provisions of section 165, such officer may direct that such sentence or portion of sentence shall be carried out by confinement in any civil prison or other fit place.

Execution of sentence of detention

167. When any sentence of detention is passed under this Act, or when any sentence so passed is commuted to detention, the punishment shall be carried out by detaining the offender in any Military or Air Force detention barracks, detention cells or other Military or Air Force custody, and when the sentence is to be carried out by detention in any Military or Air Force detention barracks, the commanding officer of the person under sentence, or such other officer as may be prescribed, shall forward the person under sentence, together with a warrant in the prescribed form, to the officer in charge of the said detention barracks.

Interim custody of persons under sentence of death, imprisonment or detention

168. (1) When a person is sentenced by court-martial to suffer death and the sentence has been confirmed, the commanding officer of such person, or such officer as may be prescribed may, if he thinks fit, by warrant in the prescribed form, commit the said person for safe custody in a civil prison pending the execution of the sentence, and may similarly, by warrant in the prescribed form direct that the person so committed be re-delivered into Air Force custody, or that he be released or confined in accordance with any order duly made under this Act setting aside or varying the sentence of death.

Any such warrant shall be sufficient authority for the execution of the orders contained therein.

(2) A person sentenced under this Act to imprisonment or detention may, until he reaches the prison or detention barracks in which he is to undergo his sentence, be kept in Air Force custody or in Civil custody, or partly in one description of custody and partly in the other, and may, by order of such officer as may be prescribed, from time to time be transferred from one to the other, as occasion may require.

169. A warrant issued in accordance with the provisions of section 165 or section 167, or an order of the prescribed officer for the transfer of a person undergoing a sentence of imprisonment or detention from one description of custody to another, shall be sufficient authority for the committal to prison, detention barrack or Air Force custody of such person or of his transfer from one description of custody to the other, as the case may be.

Authority for committal and transfer of prisoners

170. A person under sentence of imprisonment or detention may, during his conveyance from place to place, or when on board a ship, aircraft, or other vehicle be subjected to such restraint as is necessary for his safe conduct and removal.

Conveyance of prisoners from place to place

171. Whenever an order is duly made under this Act setting aside or varying any sentence, order or warrant under which any person is confined in a Civil, Military or Air Force prison or detained in a Military or Air Force detention barracks a warrant in accordance with such order shall be forwarded by the prescribed officer to the officer in charge of the prison or detention barracks in which such person is confined.

Communication of certain orders to prison officers

Such warrant shall be sufficient authority for the execution of the orders contained therein.

172. When a sentence of fine is imposed by a court-martial under section 71, whether the trial was held within Bangladesh or not, a copy of such sentence, signed and certified by the confirming officer may be sent to any magistrate in Bangladesh, and such magistrate shall thereupon cause the fine to be recovered in accordance with the provisions of the Code of Criminal Procedure, 1898, for the levy of fines as if it were a sentence of fine imposed by such magistrate.

Execution of sentence of fine

Establishment and regulation of Air Force prisons or detention barracks

173. The Government may set apart any building or part of a building, or any place under its control, as an Air Force prison or detention barracks for the confinement of persons sentenced to imprisonment or detention under this Act.

Power to make rules in respect of prisons and prisoners

174. The Government may make rules providing-

- (a) for the government, management and regulation of Air Force prisons and detention barracks;
- (b) for the appointment, removal and powers of inspectors, visitors, governors and officers thereof;
- (c) for the labour of prisoners undergoing confinement therein, and for enabling such prisoners or persons to earn by special industry and good conduct, a remission of a portion of their sentence;
- (d) for the safe custody of such prisoners or persons and the maintenance of discipline among them and the punishment, by personal correction, restraint or otherwise, of offences committed by them;
- (e) for the application to Air Force prisons or detention barracks of any of the provisions of the Prisons Act, 1894, relating to the duties of officers of prisons and the punishment of persons not being prisoners;
- (f) for the admission into any prison, at proper times and subject to proper restrictions, of persons with whom prisoners may desire to communicate, and for the consultation by prisoners under trial with their legal advisers without the presence as far as possible of any third party within hearing distance.

Restriction of rule-making power in respect of corporal punishment

175. Rules made under section 174 shall not authorise corporal punishment to be inflicted for any offence, nor render the imprisonment more severe than it is under any law for the time being in force relating to Civil prisons in Bangladesh.

Informality or error in the order or warrants

176. Whenever a person is sentenced to imprisonment or detention under this Act, and is undergoing the sentence in any place or manner in which he might be confined under a lawful order or warrant in pursuance of this Act, the confinement of such person shall not be deemed to be illegal only by reason of any informality or error in or as respects the order, warrant or

other document, or the authority by which, or in pursuance whereof such person was brought into or is confined in any such place, and any such order, warrant or document may be amended accordingly.

CHAPTER XIV

PARDONS, REMISSIONS AND SUSPENSION

177. When any person subject to this Act has been convicted by a court-martial of any offence, the Government, the Chief of Air Staff, or any officer not below the rank of Group Captain empowered in this behalf by the Chief of Air Staff may:-

Pardon and remission

- (i) either without conditions or upon any conditions which the person sentenced accepts, pardon the person, or remit the whole or any part of the punishment awarded, or
- (ii) mitigate the punishment awarded, or commute such punishment for any less punishment or punishments mentioned in this Act:

Provided that a sentence of imprisonment shall not be commuted for a sentence of detention for a term exceeding the term of imprisonment awarded by the court.

178. If any condition on which a person has been pardoned or a punishment has been remitted is, in the opinion of the authority which granted the pardon or remitted the punishment, not fulfilled, such authority may cancel the pardon or remission, and thereupon the sentence of the court shall be carried into effect as if such pardon had not been granted or such punishment had not been remitted:

Cancellation of conditional pardon or remission

Provided that in the case of a person sentenced to imprisonment or detention such person shall undergo only the unexpired portion of his sentence.

179. When under the provisions of section 79, a non-commissioned officer is deemed to be reduced to the ranks, such reduction shall, for the purposes of section 177 be treated as a punishment awarded by a sentence of a court-martial.

Reduction of non-commissioned officer

Suspension of sentence of imprisonment or detention

180. (1) Where a person subject to this Act has been sentenced by a court-martial to imprisonment or detention, the Government, or the Chief of Air Staff, or any officer empowered to convene a general or field general court-martial may suspend the sentence whether or not the offender has already been committed, to prison or custody.

(2) The authority or officer specified in sub-section (1) may in the case of an offender so sentenced direct that, until the orders of such authority or officer have been obtained, the offender shall not be committed to prison or custody.

(3) The powers conferred by sub-sections (1) and (2) may be exercised in the case of any such sentence which has been confirmed, mitigated or commuted.

Orders pending suspension

181. A confirming officer may, when confirming any sentence referred to in section 180, direct that the offender be not committed to prison or to custody until the orders of the authority or officer specified in section 180 have been obtained.

Release on suspension

182. When a sentence is suspended under section 180, the offender shall, whether he has been committed to prison or to custody or not, be released forthwith.

Computation of period of suspension

183. Any period during which the sentence is under suspension shall be reckoned as part of the term of such sentence.

Order after suspension

184. The authority or officer specified in section 180 may, at any time whilst a sentence is suspended, order-

- (a) that the offender be committed to undergo the unexpired portion of the sentence; or
- (b) that the sentence be remitted.

Reconsideration of case after suspension

185. (1) Where a sentence has been suspended, the case may at any time, and shall, at intervals of not more than four months, be reconsidered by the authority or officer specified in section 180, or by any Air or other officer not below the rank of squadron leader duly authorised by the authority or officer specified in section 180.

(2) Where on such reconsideration by the officer so authorised it appears to him that the conduct of the offender since his conviction has been such as to justify a remission of the sentence, he shall refer the matter to the authority or officer specified in section 180.

186. Where an offender, while a sentence on him is suspended under this Act, is sentenced for any other offence, then-

Fresh sentence
after suspension

- (a) if the further sentence is also suspended under this Act, the two sentences shall run concurrently;
- (b) if the further sentence is for a period of three months or more and is not suspended under this Act, the offender shall also be committed to prison or Air Force custody for the unexpired portion of the previous sentence, but both sentences shall run concurrently; and
- (c) if the further sentence is for a period of less than three months and is not suspended under this Act, the offender shall be so committed on that sentence only, and the previous sentence shall, subject to any order which may be passed under section 184 or section 185, continue to be suspended.

187. The powers conferred by sections 180 and 184 shall be in addition to and not in derogation of, the power of mitigation, remission and commutation.

Scope of power
of suspension

188. (1) Where in addition to any other sentence the punishment of dismissal has been awarded by a court-martial, and such other sentence is suspended under section 180, then, such dismissal shall not take effect until so ordered by the authority or officer specified in section 180.

Effect of
suspension and
remission on
dismissal

(2) If such other sentence is remitted under section 184, the punishment of dismissal shall also be remitted.

CHAPTER XV

PROPERTY OF DECEASED PERSONS, DESERTERS AND LUNATICS

Property of
deceased
persons and
deserters (other
than officers
and warrant
officers)

189. The following provisions are enacted respecting the disposal of the property of every person subject to this Act, other than an officer or ¹[master warrant officer or] warrant officer, who dies or deserts:-

- (1) The commanding officer of the unit or station to which the deceased person or deserter belonged or was attached shall secure all the movable property belonging to the deceased or deserter that is in camp or quarters, and cause an inventory thereof to be made, and draw any pay and allowances due to such person.
- (2) In the case of a deceased person who has left in a bank (including any post office savings bank, co-operative bank or society or any other institution receiving deposits in money, however named) a deposit not exceeding one thousand Taka, the commanding officer may, if he thinks fit, require the agent, manager or other proper officer of such bank or other institution to pay the deposit to him forthwith; notwithstanding anything in any rules of the bank or the other institution and when any money has been paid by such bank or other institution in compliance with such requisition, no person shall have any claim against the bank or the other institution in respect of such money.
- (3) In the case of a deceased person whose representative, widow or next of kin is on the spot and has given security for the payment of the service or other debts in camp or quarters, if any, of the deceased, the commanding officer shall deliver over any property, received under clause (1) and (2) to that representative, widow or next of kin, as the case may be, and shall not further interfere in relation to the property of the deceased.
- (4) In the case of a deceased person whose estate is not dealt with under clause (3), and in the case of any deserter, the commanding officer shall cause the movable property to

¹ The words “master warrant officer or” were inserted by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

be sold by public auction, and may convert into money any cash certificates (including post office cash certificates, defence savings certificates and national savings certificates) and shall pay the service and other debts in camp or quarters, if any, and, in the case of a deceased person, the expenses of his funeral ceremonies, from the proceeds of the sale or conversion and from any pay and allowances drawn under clause (1) and from the amount of the deposit, if any, received under clause (2).

- (5) The surplus, if any, shall, in the case of a deceased person, be paid to his representative, widow or next of kin, if any, or, in the event of no claim to such surplus being established within twelve months after the death, then the same shall be remitted to the prescribed person:

Provided that such remission shall not bar the claim of any person to such surplus or any part thereof.

- (6) In the case of a deserter, the surplus, if any, shall be forthwith remitted to the prescribed person and shall, on the expiry of three years from the date of his desertion, be forfeited to the State, unless the deserter shall in the meantime have surrendered or been apprehended.
- (7) The decision of the commanding officer as to what are the service and other debts in camp or quarters of a deceased person or a deserter and as to the amount payable therefore shall be final.

190. Property deliverable and money payable to the representative, widow or next of kin, of a deceased person under section 189 may, if the total value or amount thereof does not exceed one thousand Taka, and if the prescribed person thinks fit, be delivered or paid to any person appearing to him to be entitled to receive it or to administer the estate of the deceased, without requiring the production of any probate, letters of administration, certificate or other such conclusive evidence of title; and such delivery or payment shall be a full discharge to those ordering or making the same and to the Government from all further liability in respect of the property or money; but nothing in this section shall affect the rights of any executor or administrator or other representative, or of any creditor of a deceased person against any person to whom such delivery or payment has been made.

Disposal of certain property without production of probate, etc. (other than officers and warrant officers)

Application of sections 189 and 190 to lunatics, etc.

191. The provisions of sections 189 and 190 shall, so far as they can be made applicable, apply in the case of a person subject to this Act (not being an officer or master warrant officer or warrant officer) who notwithstanding anything contained in the Lunacy Act, 1912, is ascertained in the prescribed manner to be insane, or, who being on active service, is officially reported missing, as if he had died on the day on which his insanity is so ascertained, or, as the case may be, on the day on which he is officially reported missing:

Provided that in the case of a person so reported missing, no action shall be taken under clauses (2) to (5) of section 189 until such time as he is officially presumed to be dead.

Property of officers and warrant officers who die or desert

192. The provisions of sections 193 to 198 shall apply to the disposal of the property of the officers ¹[, master warrant officers and warrant officers] of the Air Force who die or desert.

Powers of Committee of Adjustment

193. (1) On the death or desertion of an officer or master warrant officer or warrant officer, a Committee of Adjustment appointed in this behalf in the manner prescribed (hereinafter referred to as the Committee) shall, as soon as may be, subject to the rules made in this behalf under this Act-

- (a) secure all the movable property belonging to the deceased or deserter that is in camp or quarters and cause an inventory thereof to be made, and ascertain and draw the pay and allowances, if any, due to him; and
- (b) ascertain the amount, and provide for the payment, of the service and other debts in camp or quarters, if any, of the deceased or deserter.

(2) In the case of a deceased officer or master warrant officer or warrant officer whose representative, widow or next of kin has given security to the satisfaction of the Committee for the payment of the service and other debts in camp or quarters, if any, of the deceased, the Committee shall deliver

¹ The comma and words “, master warrant officers and warrant officers” were substituted for the words “and warrant officers” by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

any property received by it under sub-section (1) to that representative, widow or next of kin, as the case may be, and shall not further interfere in relation to the property of the deceased.

(3) In the case of a deceased officer or master warrant officer or warrant officer, the Committee, save as may be prescribed shall, if it appears to it necessary for the payment of service and other debts in camp or quarters and the expenses, if any, incurred by the Committee, and may, in any other case, collect all moneys left by the deceased in any bank (including any post office savings bank, co-operative bank or society or any other institution receiving deposits in money, however named) and for that purpose may require the agent, manager or other proper officer of such bank, society or other institution to pay the moneys to the Committee forthwith, and such agent, manager or other officer shall comply with the requisition notwithstanding anything in any rules of the bank or other institution; and when any money has been paid by a bank or other institution in compliance with the requisition under this sub-section, no person shall have a claim against the bank or other institution in respect of such money.

(4) In the case of a deceased officer or master warrant officer or warrant officer whose estate has not been dealt with under sub-section (2) and in the case of a deserter the Committee, subject to any rules made in this behalf under this Act, shall, for the purpose of paying the service and other debts in camp or quarters, and may, in any other case, sell or convert into money the movable property of the deceased or deserter.

(5) The Committee shall, out of the moneys referred to in sub-sections (3) and (4), pay the service and other debts in camp or quarters, if any, of the deceased or deserter and in the case of a deceased, also the expenses of his last illness and funeral.

(6) In the case of a deceased officer or master warrant officer or warrant officer, the surplus, if any, shall be remitted to the prescribed person.

(7) In the case of an officer or master warrant officer or warrant officer who is a deserter, the surplus, if any, shall be forthwith remitted to the prescribed person and shall, on the expiry of three years from the date of this desertion, be forfeited to the State unless the deserter shall in the meantime have surrendered or been apprehended:

Provided that the prescribed person may pay the whole or such part of the surplus as he may deem proper to the wife or children or other dependants of the officer or master warrant officer or warrant officer.

(8) If in any case a doubt or difference arises as to what are the service and other debts in camp or quarters of a deceased officer or deserter or as to the amount payable therefore, the decision of the prescribed person shall be final and shall be binding on all persons for all purposes.

(9) For the purposes of the exercise of its duties under this section, the Committee shall, to the exclusion of all authorities and persons whomsoever, have the same rights and powers as if it had taken out representation to the deceased, and any receipt given by the Committee shall have effect accordingly.

Disposal of surplus by the prescribed person

194. On receipt of the surplus referred to in sub-section (6) of section 193 the prescribed person shall proceed as follows:-

- (1) If he knows of a representative, widow or next of kin of the deceased, he shall pay the surplus to that representative, widow or next of kin.
- (2) If he does not know of any such representative, widow or next of kin, he shall publish every year a notice in the prescribed form and manner for six consecutive years. If no claim to the surplus is made by a representative, widow or next of kin of the deceased within six months after the publication of last of such notices, the prescribed person shall deposit the surplus together with any income or accumulation of income accrued therefrom to the credit of the Government:

Provided that such deposit shall not bar the claim of any person to such surplus or any part thereof.

195. Property deliverable and money payable to the representative, widow or next of kin of a deceased officer or master warrant officer or warrant officer under section 193 or section 194 may, if the total amount or value thereof does not exceed five thousand Taka, and, if the prescribed person thinks fit, be delivered or paid to any person appearing to him to be entitled to receive it or to administer the estate of the deceased, without requiring the production of any probate, letters of administration, succession certificate or other such conclusive evidence of title.

Disposal of certain property without production of probate, etc. (of officers and warrant officers)

196. Any payment of money or delivery, application, sale or other disposition of any property or money made, or purported to be made by the Committee or the prescribed person in good faith in pursuance of section 193, section 194 or section 195 shall be valid and shall be a full discharge to the Committee or the prescribed person, as the case may be, and to the Government from all further liability in respect of that money or property; but nothing herein contained shall affect the right of any executor or administrator or other representative, or of any creditor of the deceased officer or master warrant officer or warrant officer against any person to whom such payment or delivery has been made.

Discharge of Committee, prescribed person and the Government

197. Any property coming under section 193 into the hands of the Committee or the prescribed person shall not, by reason of so coming, be deemed to be assets or effects at the place in which that Committee or the prescribed person is stationed and it shall not be necessary by reason thereof that representation be taken out in respect of that property for that place.

Property in the hands of the Committee or the prescribed person not to be assets at the place where the Committee or the prescribed person is stationed

198. After the Committee has deposited with the prescribed person the surplus of the property of any deceased officer or master warrant officer or warrant officer under sub-section (6) of section 193, any representative of the deceased shall, as regards any property of the deceased not collected by the Committee and not forming part of the aforesaid surplus, have the same rights and duties as if section 193 had not been enacted.

Saving of rights of representative

Application of sections 193 to 198 to lunatics, etc.

199. The provisions of sections 193 to 198 shall, so far as they can be made applicable, apply in the case of an officer or master warrant officer or warrant officer who, notwithstanding anything contained in the Lunacy Act, 1912, is ascertained in the prescribed manner to be insane, or, who, being on active service, is officially reported missing, as if he had died on the day on which his insanity is so ascertained or, as the case may be, on the day on which he is officially reported missing:

Provided that in the case of an officer or master warrant officer or warrant officer so reported missing no action shall be taken under sub-sections (2) to (5) of section 193 until such time as he is officially presumed to be dead.

Appointment of Standing Committee of Adjustment when officers die or desert while on active service

200. When an officer or master warrant officer or warrant officer dies or deserts while on active service, the references in the foregoing provisions of this Chapter to the Committee shall be construed as references to the Standing Committee of Adjustment, if any, appointed in this behalf in the manner prescribed.

Interpretations

201. For the purposes of this Chapter-

- (1) a person shall be deemed to be a deserter if he without authority has been absent from duty for a period of thirty days and has not subsequently surrendered or been apprehended;
- (2) the expression "service and other debts in camp or quarters" includes money due as Air Force debts, namely, sums due in respect of, or any advance in respect of-
 - (a) quarters;
 - (b) mess, band, and other service accounts;
 - (c) Air Force clothing, appointments and equipments, not exceeding a sum equal to three months' pay of the deceased, and having become due within eighteen months before his death;

- (3) “representation” includes probate and letters of administration with or without the will annexed, and a succession certificate, constituting a person the executor or administrator of the estate of a deceased person or authorising him to receive or realise the assets of a deceased person;
- (4) “representative” means any person who has taken out representation.

CHAPTER XVI

RULES

202. (1) The Government may make rules for the purpose of carrying into effect the provisions of this Act. Power to make rules

(2) Without prejudice to the generality of the power conferred by sub-section (1), such rules may provide for:-

- (a) the retirement, release, discharge, removal or dismissal from the service of persons subject to this Act;
- (b) the specification of punishments which may be awarded as field punishments under sections 77 and 82;
- (c) the assembly and procedure of boards of inquiry, the recording of summaries of evidence and the administration of oaths and affirmations at such proceedings;
- (d) the convening and constitution of courts-martial;
- (e) the adjournment, dissolution and sittings of courts-martial;
- (f) the procedure to be observed in trials by courts-martial and the appearance of legal practitioners thereat;
- (g) the confirmation, revision and annulment of, and petitions against, the findings and sentences of courts-martial;
- (h) the carrying into effect of sentences of courts-martial;
- (i) the forms of orders to be made under the provisions of this Act relating to courts-martial and sentences of death, imprisonment or detention;

- (j) the constitution of authorities to decide for what persons, to what amounts and in what manner provision should be made for dependants under section 99 and the due carrying out of such decisions;
- (k) the relative rank of, and powers of command to be exercised by, officers, junior commissioned officers, warrant officers, petty officers and non-commissioned officers of the Bangladesh Army, Navy and the Air Force, when acting together;
- (l) deductions on account of public and service debts from the pay and allowances of persons subject to this Act; and
- (m) any other matter directed by this Act to be prescribed.

(3) All rules made under this Act shall be published in the *official Gazette* and, on such publication, shall have effect as if enacted in this Act.

Power to make regulations

203. The Government may make regulations for all or any of the purposes of this Act, other than those specified in section 202.

204. [*Repeal.- Omitted by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).*]

CHAPTER XVII

TRANSITORY PROVISIONS

205. [*Definitions.- Omitted by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).*]

206. [*Powers of British Officers.- Omitted by section 6 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).*]
