

THE NAVY ORDINANCE, 1961

CONTENTS

CHAPTER I

PRELIMINARY

SECTIONS

1. Short title and commencement
2. Persons subject to this Ordinance
3. Secondment to Army or Air Force
4. Definitions

CHAPTER II

**SPECIAL PROVISIONS FOR THE APPLICATION OF THIS
ORDINANCE IN CERTAIN CASES**

5. Application of this Ordinance to certain forces under the Government
6. Special provision as to rank and command in certain cases
7. Officers exercising powers in certain cases
8. Exercise of powers vested in holder of naval office
9. Power to declare persons to be on active service

CHAPTER III

APPOINTMENT, COMMISSION AND ENROLMENT

10. Eligibility for employment
11. Appointment and commission
12. Enrolment and Junior Commission
13. Validity of Enrolment
14. Attestation

CHAPTER IV

CONDITIONS OF SERVICE

15. Tenure of service
16. Liability for service
17. Termination of service
18. Release on expiry of period of engagement

SECTIONS

19. Discharge or dismissal when out of Bangladesh
20. Certificate on termination of service
21. Power to modify certain fundamental rights in their application to persons subject to this Ordinance

CHAPTER V

SERVICE PRIVILEGES

22. Authorised deductions only to be made from pay
23. Remedy of aggrieved persons
24. Immunity from attachment
25. Immunity from arrest for debt
26. Immunity of persons attending courts-martial from arrest
27. Priority in respect of naval personnel's litigation
28. Saving of rights and privileges under other laws

CHAPTER VI

OFFENCES

(i) Misconduct in Action and Assistance to Enemy

29. Misconduct in action by persons in command
30. Misconduct in action by other officers and men
31. Obstruction of operations
32. Corresponding with, supplying or serving with the enemy

(ii) Neglect of Duty

33. Sleeping on watch or abandoning post
34. Neglect of duty

(iii) Mutiny

35. Definition of "Mutiny"
36. Offences of mutiny
37. Failure to suppress mutiny
38. Attempt to stir up disturbance

(iv) Insubordination

39. Using criminal force to superior officer
40. Disobedience

SECTIONS

41. Insubordinate behaviour
42. Violation of this Ordinance, rules, regulations and orders
43. Fighting and quarrelling
44. Obstruction of provost officers

(v) Desertion and Absence without Leave

45. Definition of desertion
46. Desertion
47. Absence without leave
48. Failure to report deserters and absentees

(vi) Navigation and Flying Offences

49. Loss or hazarding of ship or aircraft
50. Dangerous flying
51. Low flying
52. Annoyance by flying

(vii) Prize Offences

53. Prize offences by commanding officers
54. Other prize offences

(viii) Other Offences in respect of Ships and Aircraft

55. Inaccurate certification
56. Improper carriage of goods

(ix) Malingering and Intoxication

57. Malingering
58. Definition of intoxication
59. Offences of intoxication

(x) Offences in respect of Naval Custody

60. Irregularity in connection with custody
61. Escape from custody
62. Permitting escape of person in custody

(xi) Offences relating to Property

63. Theft and dishonest misappropriation, etc.

SECTIONS

- 64. Making away with equipment, etc.
- 65. Loss and waste of Government and service property

(xii) Miscellaneous Offences

- 66. Unauthorised disclosure of information
- 67. Falsification of documents
- 68. Signing in blank and failure to report
- 69. False answers on enrolment
- 70. Unbecoming conduct by officers
- 71. Disgraceful conduct
- 72. False accusation
- 73. Offences in relation to courts-martial
- 74. False evidence
- 75. Conduct to the prejudice of naval discipline

(xiii) Attempts and Abetments

- 76. Attempts to commit naval offence
- 77. Abetment of offences

(xiv) Civil Offences

- 78. Civil offences triable by naval tribunal
- 79. Civil offences triable by naval tribunal under special circumstances

CHAPTER VII

PUNISHMENTS

- 80. Scale of punishments
- 81. Provision as to award of punishment

CHAPTER VIII

PENAL DEDUCTIONS

- 82. Deductions from pay and allowances of officers and sailors
- 83. Limit of certain deductions

SECTIONS

- 84. Pay and allowances during trial
- 85. Deduction from money due to a person
- 86. Pay and allowances of prisoner of war during inquiry into his conduct
- 87. Remission of deductions
- 88. Provision for dependants of prisoner of war from his pay and allowances

CHAPTER IX

ARREST AND PROCEEDINGS BEFORE TRIAL

- 89. Duty to bring offenders to justice and powers of arrest
- 90. Provision for avoiding delay after arrest
- 91. Duty to receive or keep in custody
- 92. Procedure before trial
- 93. Arrest under warrants of naval authorities
- 94. Provost-Marshals

CHAPTER XAUTHORITIES HAVING POWER TO
AWARD PUNISHMENT

- 95. Naval tribunal
- 96. General court-martial
- 97. District court-martial
- 98. Summary general court-martial
- 99. Composition of courts-martial
- 100. Judge Advocate
- 101. Quorum and dissolution of courts-martial
- 102. Powers of commanding officers in respect of summary trial
- 103. Powers of other authorities in respect of summary trial
- 104. Place of trial
- 105. Period of limitation for trial
- 106. Liability of offender who ceases to be subject to this Ordinance
- 107. Concurrent jurisdiction of naval tribunal and criminal Court
- 108. Prohibition of second trial

CHAPTER XI

PROCEDURE OF COURTS-MARTIAL

SECTIONS

109. Objections
110. Administration of oath
111. Voting by members
112. Power to convict of mitigated offence
113. Power to convict of alternative offence
114. General rules as to evidence
115. Judicial notice
116. Summoning of witnesses
117. Commission for the examination of witnesses
118. Presumption as to signature
119. Enrolment paper
120. Presumption as to certain documents
121. Reference by accused to Government officer
122. Evidence of previous convictions and general character
123. Lunacy of accused
124. Subsequent fitness of lunatic accused for trial
125. Transmission to Government of orders under section 124
126. Release of lunatic accused
127. Delivery of lunatic accused to relatives
128. Order for custody and disposal of property pending trial
129. Order for disposal of property regarding which offence is committed

CHAPTER XII

CONFIRMATION, REVISION AND REVIEW

130. Confirmation of finding and sentence
131. Power of confirming authority
132. Power of confirming authority to mitigate, remit or commute sentences
133. Power of confirming authority to return the finding and sentence to the Court for revision
134. Remedy against an order of court-martial before confirmation of finding or sentence

SECTIONS

135. Review by the Government or the Chief of Naval Staff of finding and sentence
136. Remedy of aggrieved persons, on being convicted by a court-martial
137. Power to quash or alter findings
138. Power to remit or alter sentences
139. Saving of functions of Judge Advocate-General
140. Bar of Appeals

CHAPTER XIII

EXECUTION OF SENTENCES

141. Form of sentence of death
142. Commencement of sentence of imprisonment or detention
143. Execution of sentence of imprisonment
144. Execution of sentence of detention
145. Interim custody of persons under sentence of death, imprisonment or detention
146. Authority for committal and transfer of prisoners
147. Conveying of prisoners from place to place
148. Communication of certain orders to prison officers
149. Establishment and regulation of naval prisons or detention barracks
150. Power to make rules in respect of prisons and prisoners
151. Restriction of rule-making power in respect of corporal punishment
152. Procedural defect or error in the order or warrant

CHAPTER XIV

PARDONS, REMISSIONS AND SUSPENSION

153. Pardon and remission
154. Cancellation of conditional pardon or remission
155. Suspension of sentence of imprisonment or detention
156. Orders pending suspension
157. Release on suspension
158. Computation of period of suspension
159. Order after suspension
160. Reconsideration of case after suspension

SECTIONS

- 161. Fresh sentence after suspension
- 162. Scope of power of suspension
- 163. Effect of suspension and remission on dismissal

CHAPTER XV

PROPERTY OF DECEASED PERSONS, DESERTERS AND
LUNATICS

- 164. Property of deceased persons and deserters (other than officers)
- 165. Disposal of certain property without production of probate, etc. (other than officers)
- 166. Application of sections 164 and 165 to lunatics, etc.
- 167. Property of officers who die or desert
- 168. Powers of Committee of Adjustment
- 169. Disposal of surplus by the prescribed person
- 170. Disposal of certain property without production of probate, etc.
- 171. Discharge of Committee, prescribed person and the Government
- 172. 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
- 173. Saving of rights of representative
- 174. Application of sections 168 to 173 to lunatics, etc.
- 175. Appointment of Standing Committee of Adjustment when officers die or desert while on active service
- 176. Interpretations

CHAPTER XVI

RULES

- 177. Power to make rules
- 178. Power to make regulations
- 179. *[Repealed]*

CHAPTER XVII

TRANSITORY PROVISIONS

- 180. *[Omitted]*
- 181. *[Omitted]*

THE SCHEDULE *[Repealed]*

THE NAVY ORDINANCE, 1961

ORDINANCE NO. XXXV OF 1961

[8th September, 1961]

An Ordinance to consolidate and amend the law relating to the government and discipline of the Bangladesh Navy.* *

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

NOW, THEREFORE, in pursuance of the Proclamation of the seventh day of October, 1958, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:-

CHAPTER I

PRELIMINARY

Short title and commencement

1. (1) This Ordinance may be called the ¹[* * *] Navy Ordinance, 1961.

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

Persons subject to this Ordinance

2. (1) The following persons shall be subject to this Ordinance, wherever they may be, namely:-

(a) officers on the active list of officers of the Bangladesh Navy, and ²[sailors] of the Bangladesh Navy;

* Throughout this Ordinance, the words “Bangladesh”, “Government”, “taka” and “sailor” were substituted for the words “Pakistan”, “Central Government”, “rupees” and “rating” respectively by section 2 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

^ Throughout this Ordinance, the words “Chief of Naval Staff” were substituted for the words “Commander-in-Chief” by section 2 of the Navy (Amendment) Ordinance, 1976 (Ordinance No. VII of 1976).

¹ The word “Pakistan” was omitted by section 3 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

² The word “sailors” was substituted for the word “ratings” by section 2 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

- (b) officers on the retired or emergency lists of officers of the Bangladesh Navy, when ordered on any duty or service for which as such officers they are so liable;
- (c) persons belonging to any of the Bangladesh Naval Reserve Forces when called up for training, exercise or service (including active service) in pursuance of regulations;
- (d) persons belonging to any auxiliary force raised in Bangladesh to which this Ordinance is applied to such extent and subject to such conditions as may be prescribed.

(2) The following persons, not otherwise subject to this Ordinance shall be so subject to such extent and under such conditions as the Government may direct:-

- (a) persons subject to the ¹[Army Act], 1952 or the ²[Air Force Act], 1953-
 - (i) when seconded for service with the Bangladesh Navy;
or
 - (ii) when embarked for passage on board any of the naval ships;
- (b) persons, other than those mentioned in the last preceding clause, when embarked as passengers on board any of the naval ships;
- (c) persons who are employed by, or are in the service of, or are followers of, or accompany any body or member of the naval force on active service.

(3) Persons not otherwise subject to this Ordinance, shall be so subject if they are accused of-

- (i) seducing or attempting to seduce any person subject to this Ordinance from his duty or allegiance to Government, or

¹ The words "Army Act" were substituted for the words "Pakistan Army Act" by section 2 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

² The words "Air Force Act" were substituted for the words "Pakistan Air Force Act" by section 2 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

- (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.

Secondment to
Army or Air
Force

3. Persons subject to this Ordinance, when seconded for service with the Bangladesh Army or the Bangladesh Air Force, shall be subject to the ¹[Army Act], 1952, or as the case may be, the ²[Air Force Act], 1953, to such extent and under such conditions as the Government may direct.

Definitions

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

- (i) “active service” as applied to a person subject to this Ordinance, 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,
 - (b) is engaged in naval operations in, or is on his way 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) “armed forces” means the Bangladesh Army, the Bangladesh Navy and the Bangladesh Air Force and includes their reserves when called up for training, exercise or service;
- (iii) “civil offence” means an offence which is triable by a criminal Court;
- (iv) “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 “Army Act” were substituted for the words “Pakistan Army Act” by section 2 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

² The words “Air Force Act” were substituted for the words “Pakistan Air Force Act” by section 2 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

- (v) “Chief of Naval Staff” means the flag officer appointed by the President as the Chief of Naval Staff, Bangladesh Navy, or in his absence on leave or otherwise the officer appointed by the Government to officiate as such, or, in the absence of such officiating appointment, the officer on whom the command may devolve in accordance with the regulations made by the Government;
 - (vi) “commanding officer” means the officer appointed in command of a naval ship, vessel or establishment or the officer on whom such command may devolve in accordance with the regulations made by the Government, or, the officer, specified by the Government as the commanding officer for the purpose of all or any of the provisions of this Ordinance;
 - (vii) “court-martial” means a court-martial held under this Ordinance;
 - (viii) “criminal Court” means a Court of ordinary criminal justice in any part of Bangladesh or established elsewhere by the authority of the Government;
 - (ix) “desertion” has the meaning assigned to it by section 45 and “desert” and its cognate expressions shall be construed accordingly;
 - (x) “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 military, naval or air force law to act;
 - (xi) “flag officer” means an officer of the rank of Admiral of the Fleet, Admiral, Vice-Admiral or Rear-Admiral;
- ¹[* * *]
- (xiii) “intoxication” has the meaning assigned to it by section 58;
 - (xiv) “Judge Advocate General” means a person appointed as such to give advice on matters relating to naval law and to perform such other duties of a legal character as may arise in connection therewith;

¹ Clause (xii) was omitted by section 4 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

- (xv) “long imprisonment” means rigorous imprisonment for a term exceeding two years but not exceeding fourteen years;
- (xvi) “mutiny” has the meaning assigned to it by section 36;
- (xvii) “naval custody” means the arrest or confinement of a person in the prescribed manner or in accordance with the usages and customs of the naval service and includes military or air force custody;
- (xviii) “naval establishment” means an establishment belonging to or under the control of the navy, whether within or without Bangladesh;
- (xix) “naval law” means the law contained in this Ordinance and the rules and regulations and includes the usages and customs of the navy;
- (xx) “naval reserve forces” means the Bangladesh Naval Reserve Forces and includes the Bangladesh Naval Fleet Reserve, the Bangladesh Naval Volunteer Reserve, the Bangladesh Naval Reserve and the Bangladesh Women Naval Reserve;
- (xxi) “naval reward” includes any gratuity or annuity for long service or good conduct or pension and any other naval pecuniary reward;
- (xxii) “naval ship” means a ship commissioned for service in the Bangladesh Navy and flying the Naval Ensign;
- (xxiii) “naval vessel” means a ship or vessel, other than a naval ship, engaged in the naval service of Bangladesh;
- (xxiv) “navy” means the regular naval forces of Bangladesh and includes the Bangladesh Naval Reserves Forces, when called up for training, exercise or into actual service;
- (xxv) “notification” means a notification published in the *official Gazette*;
- (xxvi) “offence” means any act or omission punishable under this Ordinance and includes a civil offence;

- (xxvii) “officer” means a person holding a commission not being a Junior Commission in the Navy, and includes a subordinate officer, and when serving under prescribed conditions, an officer of the Bangladesh Army or the Bangladesh Air Force;
- (xxviii) “prescribed” means prescribed by rules made under this Ordinance;
- (xxix) “provost-marshal” means a person appointed as such under this Ordinance and includes any of his deputies or assistants or any other person legally exercising authority under him or on his behalf;
- (xxx) “sailor” means a person enrolled under this Ordinance of or below the rank of ¹[master chief petty officer];
- (xxxii) “regulations” means regulations made under this Ordinance;
- (xxxiii) “rules” means rules made under this Ordinance;
- (xxxiiii) “service” when qualifying institution, necessaries, books, band, mess, money, goods or other property, means belonging to or connected with the army, the navy or the air force or any part thereof;
- (xxxv) “service law” means this Ordinance, the ²[Army Act], 1952, the ³[Air Force Act], 1953, and the rules and regulations made thereunder;
- (xxxvi) “short imprisonment” means simple or rigorous imprisonment for a term not exceeding two years;
- (xxxvii) “subordinate officer” means a person appointed as an acting sub-lieutenant, a midshipman or a cadet in any branch of the navy;

¹ The words “master chief petty officer” were substituted for the words “chief petty officer” by section 4 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

² The words “Army Act” were substituted for the words “Pakistan Army Act” by section 2 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

³ The words “Air Force Act” were substituted for the words “Pakistan Air Force Act” by section 2 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

(xxxvii) “superior officer” when used in relation to a person subject to this Ordinance, means an officer or a sailor not below the ¹[rank] of petty officer who is of rank ²[* * *] higher than that person, or is senior to that person in the same rank ³[* * *], and as regards persons serving under such conditions as the Government may direct, an officer, junior commissioned officer, warrant officer or non-commissioned officer of the Bangladesh Army or the Bangladesh Air Force;

(xxxviii) all words and expressions used herein and defined in the ⁴[Penal Code], and not hereinbefore defined, shall have the meanings respectively assigned to them in that Code.

CHAPTER II

SPECIAL PROVISIONS FOR THE APPLICATION OF THIS ORDINANCE IN CERTAIN CASES

Application of this Ordinance to certain forces under the Government

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

Special provision as to rank and command in certain cases

6. Any person or class of persons subject to this Ordinance under clause (c) of sub-section (2) of section 2-

(1) shall be so subject as officers, ⁵[master chief petty officers, chief petty officers] or petty officers as the Government or any officer authorised by it in that behalf may direct;

¹ The word “rank” was substituted for the word “rate” by section 2 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

² The words “ or rate” were omitted by section 4 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

³ The words “ or rate” were omitted by section 4 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

⁴ The words “Penal Code” were substituted for the words “Pakistan Penal Code” by section 2 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

⁵ The words and comma “master chief petty officers, chief petty officers” were substituted for the words “chief petty officers” by section 5 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

- (2) in respect of whom no direction under clause (1) is in force, shall be deemed to be of a ¹[rank] ²[lower] to that of a petty officer;
- (3) shall be deemed to be under the commanding officer of the naval ship, naval vessel or naval establishment, if any, to which he is attached, and 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 be serving, or of any other prescribed officer, and if no such officer is named or prescribed, under the command of the said officer commanding the force;
- (4) shall not be placed under the command of an officer of official rank inferior 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.

7. (1) Whenever persons subject to this Ordinance are serving whether within or without Bangladesh, under an officer not subject to this Ordinance, the Government may prescribe the officer by whom the powers which, under this Ordinance, may be exercised by a commanding officer, 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.

8. Any power or jurisdiction given to, and any act or thing to be done by, to, or before any person holding any naval appointment may be exercised by, or done by, to, or before any other person for the time being authorised in that behalf according to rules or customs of the navy.

Exercise of powers vested in holder of naval office

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

Power to declare persons to be on active service

¹ The word "rank" was substituted for the word "rate" by section 2 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

² The word "lower" was substituted for the word "inferior" by section 5 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

CHAPTER III

APPOINTMENT, COMMISSION AND ENROLMENT

Eligibility for
employment

10. No person who is not a citizen of Bangladesh shall except with the consent of the Government signified in writing, be eligible for appointment or enrolment in the Bangladesh Navy.

Appointment
and commission

11. (1) Officers other than subordinate officers shall be appointed by commission by the President.

(2) Subordinate officers shall be appointed in such manner and shall hold such rank as may be specified in the regulations.

Enrolment and
Junior
Commission

12. (1) The terms and conditions of service of ¹[sailors], and the manner and procedure of their enrolment shall be such as may be specified in the regulations.

(2) No person shall be enrolled as a sailor in the Bangladesh Navy for an initial period of engagement exceeding such period as may be prescribed.

(3) Notwithstanding anything contained in any other law for the time being in force,-

(a) the enrolment of any person under this Ordinance shall be binding on him both during his minority and after he attains majority;

(b) neither the parent or guardian of a minor duly enrolled under this Ordinance nor any other person shall be entitled to claim custody of the said minor as against the Government or any of its officers or other persons set over him.

(4) and (5) [*Omitted by section 6 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).*]

¹ The word "sailors" was substituted for the word "ratings" by section 2 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

13. Every person who has for the space of three months been in receipt of pay as a person enrolled under this Ordinance and been borne on the books of any naval ship or naval establishment 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 person in receipt of such pay and borne on the books 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 Ordinance or invalidate any proceedings, act or thing taken or done prior to his discharge.

Validity of Enrolment

14. Every sailor shall, on completion of prescribed period after enrolment, make and subscribe before his commanding officer or any prescribed officer, an oath or affirmation in the prescribed form.

Attestation

CHAPTER IV

CONDITIONS OF SERVICE

15. Every officer and sailor shall hold office during the pleasure of the President.

Tenure of service

16. Every officer and sailor shall be liable to serve in the navy until his services have been duly terminated by the competent authority in accordance with this Ordinance and the rules and regulations made thereunder.

Liability for service

17. (1) The Government may dismiss, remove, discharge or release any officer from the service or compel him to resign or retire from the service.

Termination of service

(2) Any officer may be permitted, subject to the exigencies of the service, by the Government to voluntarily resign his commission or retire from the service.

(3) The Government, the Chief of Naval Staff, or any prescribed officer may dismiss, discharge or release any subordinate officer or sailor from the service.

Release on
expiry of period
of engagement

18. A sailor shall be entitled to be released at the expiration of the term of service for which he is engaged unless-

(a) such expiration occurs,—

(i) when war is imminent or existing, or

(ii) when the strength of the branch of service to which he belongs is five per cent below its strength,

in which case he shall be liable to continue to serve for such further period as may be required by the Chief of Naval Staff; or

(b) he is re-engaged in accordance with the regulations.

Discharge or
dismissal when
out of
Bangladesh

19. (1) Any person enrolled under this Ordinance 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 Ordinance 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 purposes of this section, the word “discharge” includes release and the word “dismissal” includes removal.

Certificate on
termination of
service

20. Every sailor who is dismissed, discharged, or released from the service shall be furnished by the prescribed officer with a certificate setting forth-

(a) the authority terminating the service;

(b) the cause for such termination; and

(c) the full period of his service in the navy.

21. Subject to the provisions of any law for the time being in force relating to the navy 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 to this Ordinance-

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

- (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 unions 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

22. The pay and allowances of every officer and sailor 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 enactment or prescribed by the Government.

Authorised deductions only to be made from pay

23. If an officer or sailor thinks that he has suffered any personal oppression, injustice or other ill-treatment at the hands of any superior officer, he may make a complaint in accordance with the rules made under this Ordinance.

Remedy of aggrieved persons

24. The arms, clothes, equipment, accoutrement or necessaries of any officer or sailor shall not be seized, and their pay and allowances, or any part thereof, shall not be attached under any process or direction of any civil or revenue Court or any public servant, in satisfaction of any decree or order enforceable against him.

Immunity from attachment

25. (1) No officer or sailor shall, so long as he is subject to this Ordinance, be liable to be arrested for debt under any process issued by, or by the authority of, any civil or revenue Court or any public servant.

Immunity from arrest for debt

(2) The judge of any such Court or the said officer shall 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 if satisfied that the arrest was made in contravention of preceding sub-section shall by warrant under his hand, discharge the person arrested, and may 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 making of such complaint and for the recovery of such costs, no Court-fee shall be payable by the complainant.

Immunity of
persons
attending
courts-martial
from arrest

26. (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.

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

Priority in
respect of naval
personnel's
litigation

27. (1) On the presentation to any Court, by or on behalf of any officer or sailor, of a certificate, from the proper naval 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.

(2) The certificate from the proper naval 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 and shall be duly signed and authenticated by such authority.

(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, and every such certificate duly signed or authenticated as aforesaid shall be conclusive evidence of the correctness of the contents thereof.

(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) Every criminal Court before which a case is pending against any officer or sailor shall, so far as may be possible, arrange for the early hearing and final disposal of such case.

(6) If in any case a question arises as to the proper naval authority qualified to grant such certificate as aforesaid, such question shall be at once referred by the Court to an officer, commanding a naval ship or establishment, or to a superior naval authority, whose decision shall be final.

28. 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 Ordinance or on members of the regular Army, Navy and Air Force generally by any other law for the time being in force.

Saving of rights and privileges under other laws

CHAPTER VI

OFFENCES

(i) Misconduct in Action and Assistance to Enemy

29. Every flag officer, captain or other person subject to this Ordinance who, being in command of any of the naval ships, naval vessels or naval establishments-

Misconduct in action by persons in command

- (a) fails to use his utmost exertions to bring into action any such ship, vessel or establishment which it is his duty to bring into action;
- (b) surrenders any such ship, vessel or establishment to the enemy when it is capable of being successfully defended or destroyed.
- (c) fails to pursue any enemy whom it is his duty to pursue, or to assist to the utmost of his ability any friend whom it is his duty to assist ; or

- (d) in the case of any action by or against the enemy, improperly withdraws from the action or from his station, or fails in his own person and according to his rank to encourage the persons under his command to fight courageously;

shall be liable, if the offence is committed with intent to assist the enemy, to suffer death ; and in any other case to suffer long imprisonment.

Misconduct in action by other officers and men

30. Every person subject to this Ordinance who, not being in command of any of the naval ships, naval vessels or naval establishments, fails when ordered to prepare for action by or against the enemy, or during any such action, to use his utmost exertions to carry the lawful orders of his superior officers into execution shall be liable, if the offence is committed with intent to assist the enemy, to suffer death, and in any other case, to suffer long imprisonment.

Obstruction of operations

31. Every person subject to this Ordinance who wilfully delays or discourages upon any pretext whatsoever, any action or service which has been commanded on the part of any of the Bangladesh forces or of any forces co-operating therewith, be liable, if the offence is committed with intent to assist the enemy, to suffer death, and in any other case, to suffer long imprisonment.

Corresponding with, supplying or serving with the enemy

32. Every person subject to this Ordinance who-

- (a) communicates with or gives intelligence to the enemy;
- (b) fails to make known to the proper authorities any information received by him from the enemy;
- (c) furnishes the enemy with supplies of any description; or
- (d) having been made a prisoner of war, serves with or aids the enemy in the prosecution of hostilities or of measures calculated to influence morale, or in any other manner whatsoever, not authorised by international usage;

shall be liable, if the offence is committed with intent to assist the enemy, to suffer death, and in any other case, to suffer long imprisonment.

(ii) Neglect of Duty

33. (1) Every person subject to this Ordinance who, being in the presence or vicinity of the enemy or under orders to be prepared for action by or against the enemy, abandons his post improperly or sleeps upon his watch, shall be liable to suffer long imprisonment.

Sleeping on watch or abandoning post

(2) Every person subject to this Ordinance who, not being in the presence or vicinity of the enemy or under such orders as aforesaid, abandons his post improperly or sleeps upon his watch, shall be liable to suffer short imprisonment.

34. Every person subject to this Ordinance who neglects to perform or negligently performs any duty imposed on him shall be liable to be dismissed from the service.

Neglect of duty

(iii) Mutiny

35. In this Ordinance, mutiny means a combination between two or more persons subject to service law, or between persons two at least of whom are subject to service law—

Definition of “Mutiny”

- (a) to overthrow or resist lawful authority in the armed forces of Bangladesh or any forces co-operating therewith or in any part of any of the said forces;
- (b) to disobey such authority in such circumstances as to make the disobedience subversive of discipline, or with the object of avoiding any duty or service, or in connection with operations against the enemy ; or
- (c) to impede the performance of any duty or service in the armed forces of Bangladesh or in any forces co-operating therewith, or in any part of any of the said forces.

36. (1) Every person subject to this Ordinance who-

Offences of mutiny

- (a) takes part in a mutiny involving the use of criminal force or the threat of the use of criminal force or having as its object or one of its objects the refusal or avoidance of any duty or service against or in connection with operations against, the enemy, or the impeding of the performance of any such duty or service, or
- (b) incites any person subject to service law to take part in such a mutiny, whether actual or intended,

shall be liable to suffer death.

(2) Every person subject to this Ordinance who takes part in a mutiny not described in the foregoing sub-section, or incites any person subject to service law to take part in such a mutiny, whether actual or intended, shall be liable to suffer long imprisonment.

(3) Every person subject to this Ordinance who endeavours to seduce any person subject to service law from his duty or allegiance to the Government, shall be liable to suffer long imprisonment.

Failure to suppress mutiny

37. Every person subject to this Ordinance who, knowing or having reason to believe that a mutiny is taking place or is intended,-

- (a) fails to use his utmost endeavours to suppress or prevent it; or
- (b) fails to report without delay that the mutiny is taking place or is intended, shall,-
 - (i) if his offence was committed with intent to assist the enemy, be liable to suffer death; and
 - (ii) in any other case, be liable to suffer long imprisonment.

Attempt to stir up disturbance

38. Every person subject to this Ordinance who attempts to stir up any disturbance in a naval ship, naval vessel or naval establishment on the ground of unwholesomeness of food or upon any other ground, shall be liable to suffer long imprisonment.

(iv) Insubordination

Using criminal force to superior officer

39. Every person subject to this Ordinance who uses criminal force to, commits an assault on, his superior officer, whether or not that officer is exercising authority as such, shall be liable to suffer long imprisonment.

Disobedience

40. Every person subject to this Ordinance who wilfully disobeys any lawful command of his superior officer (by whatever means communicated to him), shall be liable to suffer long imprisonment.

41. Every person subject to this Ordinance who uses threatening or insulting language to, or behaves with contempt to, his superior officer, shall, 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 any other case to suffer short imprisonment.

Insubordinate
behaviour

42. Every person subject to this Ordinance who, neglects to obey or contravenes any provision of this Ordinance or any rule or regulation made under this Ordinance or any general or local order, shall, unless other punishment is provided in this Ordinance for such neglect or contravention, be liable to suffer short imprisonment.

Violation of this
Ordinance,
rules,
regulations and
orders

43. Every person subject to this Ordinance who-

Fighting and
quarrelling

- (a) fights or quarrels with any other person, whether subject to this Ordinance or not;
- (b) uses threatening, abusive, insulting or provocative words or behaviour likely to cause disturbance;
- (c) being concerned in any quarrel, affray or disorder, refuses to obey any officer, who orders him into arrest, or uses criminal force to or assaults any such officer;
- (d) uses criminal force to or assaults any person, whether subject to this Ordinance or not, in whose custody he is lawfully placed, and whether he is or is not his superior officer; or
- (e) resists any escort whose duty it is to apprehend him or to have him in charge,

shall be liable to suffer short imprisonment.

44. Every person subject to this Ordinance, who, wilfully obstructs or wilfully refuses, when called on to assist, any provost officer or any person (whether subject to this Ordinance or not) legally exercising authority under or on behalf of a provost officer, shall be liable to suffer short imprisonment.

Obstruction of
provost officers

Explanation.-For the purposes of this section, a “provost officer” shall be deemed to include a provost-marshal appointed under this Ordinance or under the ¹[Army Act], 1952, or the ²[Air Force Act], 1953, and any person legally exercising authority under him or on his behalf.

(v) *Desertion and Absence without Leave*

Definition of
desertion

45. A person is guilty of desertion within the meaning of this Ordinance if he leaves or fails to attend at his ship or place of duty with the intention of remaining permanently absent from duty without proper authority or if, having left or failed to attend at his ship or place of duty in any circumstances, he does any act with the like intention.

Desertion

46. (1) Every person subject to this Ordinance who deserts shall-

- (a) if he commits the offence on active service or when under orders for active service, be liable to suffer long imprisonment; and
- (b) if he commits the offence under any other circumstances, be liable to suffer short imprisonment.

(2) A person convicted of desertion shall, except so far as the naval tribunal by which he is tried or the Chief of Naval Staff may otherwise direct, forfeit all pay, bounty, salvage and allowances earned by him, all annuities, pensions and gratuities granted to him, and all clothes and effects left by him on board his ship or at his place of duty.

(3) Every person subject to this Ordinance who incites any other person subject to service law to desert, or knowingly harbours any such deserter, shall be liable to suffer short imprisonment.

¹ The words “Army Act” were substituted for the words “Pakistan Army Act” by section 2 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

² The words “Air Force Act” were substituted for the words “Pakistan Air Force Act” by section 2 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

47. Every person subject to this Ordinance who, without being guilty of desertion,- Absence without leave

- (a) absents himself without leave;
- (b) improperly leaves his ship or place of duty; or
- (c) incites any other person subject to service law to absent himself without leave or improperly to leave his ship or place of duty,

shall be liable to suffer short imprisonment.

48. Every person subject to this Ordinance, who knowing that any other person subject to service law has deserted, absented himself without leave, or improperly left his ship or place of duty, or is attempting to desert, to absent himself without leave or improperly to leave his ship or place of duty,- Failure to report deserters and absentees

- (a) fails to report the fact without delay; or
- (b) fails to take any steps within his power to cause that person to be apprehended,

shall be liable to suffer short imprisonment.

(vi) Navigation and Flying Offences

49. Every person subject to this Ordinance who, either wilfully or by negligence- Loss or hazarding of ship or aircraft

- (a) causes or allows to be lost, stranded or hazarded any of the naval ships or vessels; or
- (b) causes or allows to be lost or hazarded any of Government's aircraft,

shall be liable, if he acts wilfully or with wilful neglect, to suffer long imprisonment, and in any other case to short imprisonment.

50. Every person subject to this Ordinance who 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, shall be liable— Dangerous flying

- (a) if he acts wilfully or with wilful neglect, to suffer long imprisonment; and

(b) in any other case to suffer short imprisonment.

Low flying

51. Every person subject to this Ordinance who, being the pilot of one of the Government's aircraft, flies it at a height less than such height as may be provided by any regulations issued under the authority of the Government, except-

(a) while taking off or alighting; or

(b) in such other circumstances as may be so provided,

shall be liable to suffer short imprisonment.

Annoyance by flying

52. Every person subject to this Ordinance who, being the pilot of one of the Government's aircraft, flies it so as to cause, or to be likely to cause, unnecessary annoyance to any person shall be liable to be dismissed from the service.

(vii) Prize Offences

Prize offences by commanding officers

53. Every person subject to this Ordinance who being in command of any of the naval ships, naval vessels or aircraft,-

(a) having taken any ship, vessel or aircraft as prize, fails to send to ¹[the ²[High Court Division]] or to some other prize Court having jurisdiction in the case, all the ship papers or aircraft papers, as the case may be, found on board;

(b) unlawfully makes any agreement for ransoming of any ship, vessel, aircraft or goods taken as prize; or

(c) in pursuance of any such agreement as aforesaid, or otherwise by collusion, restores or abandons any ship, vessels, aircraft or goods taken as prize;

shall be liable to suffer long imprisonment.

¹ The words "the High Court" was substituted for the words "a High Court" by section 7 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

² The words "High Court Division" were substituted for the words "High Court" by section 7 of the Defence Services Laws Amendment Ordinance, 1978 (Ordinance No. XVIII of 1978).

54. Every person subject to this Ordinance who-

Other prize offences

- (a) strikes or otherwise ill-treats any person who is on board a ship, vessel or aircraft when taken as prize, or unlawfully takes from any such person anything in his possession;
- (b) removes out of any ship, vessel or aircraft taken as prize (otherwise than as safe keeping or for necessary use and service of any of the forces) any goods not previously adjudged by a prize Court to be lawful prize; or
- (c) breaks bulk on board any ship, vessel or aircraft taken as prize, or detained in exercise of any belligerent right or under any enactment, with intent to commit breach of trust or dishonestly misappropriates anything therein,

shall be liable to suffer long imprisonment.

(viii) Other Offences in respect of Ships and Aircraft

55. Every person subject to this Ordinance who makes or signs, without having ensured its accuracy, a certificate relating to any matter affecting the seagoing or fighting efficiency of any of the naval ships or naval vessels, or any certificate relating to any of the Government's aircrafts or aircraft material, shall be liable to suffer short imprisonment.

Inaccurate certification

56. Every person subject to this Ordinance who, being in command of any of the naval ships, naval vessels or aircraft without lawful authority-

Improper carriage of goods

- (a) receives or permits to be received on board the ship, vessel or aircraft any goods or merchandise intended for disposal or delivery by way of trade or business (whether on his own account or on account of any other person), not being merchandise received in the course of salvage; or
- (b) agrees to convey any goods or merchandise on board the ship, vessel or aircraft in consideration of the payment of freight, or demands or receives any payment in respect of such carriage,

shall be liable to be dismissed from the service.

(ix) Malingering and Intoxication

Malingering

57. Every person subject to this Ordinance who-

- (a) falsely pretends to be suffering from sickness or disability,
- (b) injures himself with intent thereby to render himself unfit for service, or causes himself to be injured by any person with that intent, or
- (c) with intent to render or keep himself unfit for service, does or fails to do anything (whether at the time of the act or omission he is in hospital or not) whereby he produces, or prolongs or aggravates, any sickness or disability,

shall be liable to suffer short imprisonment.

Explanation.- In this section the expression “unfit” includes temporarily unfit.

Definition of intoxication

58. A person is in a state of intoxication within the meaning of this Ordinance if owing to the influence of alcohol or any drug, whether alone or in combination with any other circumstances, he is unfit to be entrusted with his duty or with any duty which he might be called upon to perform, or behaves in a disorderly manner or in a manner likely to bring discredit on the service.

Offences of intoxication

59. (1) Every person subject to this Ordinance, who is found in a state of intoxication-

- (a) if the offence is committed while on active service or under orders of active service or on duty, shall be liable to suffer short imprisonment; and
- (b) if the offence is committed under any other circumstances,
 - (i) if he is an officer, shall be liable to be dismissed from service; and
 - (ii) if he is a sailor, shall be liable to suffer detention.

(x) Offences in respect of Naval Custody

60. Every person subject to this Ordinance who,-

- (a) unnecessarily detains a person in custody without bringing him to trial, or fails to bring his case before the proper authority for investigation; or
- (b) having committed a person to naval 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,

Irregularity in connection with custody

shall be liable to suffer short imprisonment.

61. Every person subject to this Ordinance, who, being in lawful custody, escapes or attempts to escape, shall be liable to suffer short imprisonment.

Escape from custody

62. Every person subject to this Ordinance who,-

- (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,

Permitting escape of person in custody

shall be liable, if he has acted wilfully, to suffer long imprisonment, and if he has not acted wilfully, to suffer short imprisonment.

(xi) Offences relating to Property

63. Every person subject to this Ordinance who commits any of the following offences, that is to say-

- (a) commits theft of any property belonging to the Government, or to any service mess, band or institution or to any person subject to service law, or serving with or attached to the navy;

Theft and dishonest misappropriation, etc.

- (b) dishonestly misappropriates or converts to his own use any such property;
- (c) commits criminal breach of trust in respect of any such property;
- (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;
- (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 be liable to suffer long imprisonment.

Making away with equipment, etc.

64. Every person subject to this Ordinance who makes away with (whether by pawning, selling, destroying or in any other way) or loses or by negligence damages or allows to be damaged-

- (a) any clothing, arms, ammunition or other equipment issued to him for his use for naval purposes; or
- (b) any military, naval or air force decoration granted to him,

shall be liable to suffer short imprisonment.

Explanation- It shall be a defence for a person charged under this section with losing any property that he took reasonable steps for its care and preservation.

Loss and waste of Government and service property

65. Every person subject to this Ordinance who,-

- (a) loses any Government or service property of which he has the charge or which has been entrusted to his care, or which forms part of property of which he has the charge or which has been entrusted to his care;

(b) by negligence destroys or damages any Government or service property or allows any such property to be destroyed or damaged; or

(c) wastefully expends any such property,

shall be liable to suffer short imprisonment.

Explanation.- It shall be a defence for a person charged under this section with losing any property that he took reasonable steps for its care and preservation.

(xii) Miscellaneous Offences

66. Every person subject to this Ordinance who without lawful authority wilfully discloses or purports to disclose whether orally, in writing, by signal or by any other means whatsoever, any information which has been entrusted in confidence to him or to which he has access owing to his position shall be liable to suffer short imprisonment.

Unauthorised disclosure of information

67. Every person subject to this Ordinance who,-

Falsification of documents

(a) makes or signs any muster, record or other official document which is to his knowledge false in a material particular;

(b) alters any such document so that it is to his knowledge false in a material particular; or

(c) connives at the commission by another person subject to this Ordinance of an offence against this section (whether or not he knows the nature of the document in relation to which that offence is committed),

shall be liable to suffer short imprisonment.

68. Every person subject to this Ordinance who,-

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 be liable to suffer short imprisonment.

False answers
on enrolment

69. Every person having become subject to this Ordinance by enrolment who is discovered to have made at the time of his enrolment a wilfully false answer to any question set forth in the prescribed form of enrolment, shall be liable to suffer short imprisonment.

Unbecoming
conduct by
officers

70. Every officer subject to this Ordinance who behaves in a manner unbecoming his position and the character expected of him, shall be liable to be dismissed from the service.

Disgraceful
conduct

71. Every person subject to this Ordinance who is guilty of any disgraceful conduct of a cruel, indecent or unnatural kind, shall be liable to suffer short imprisonment.

False accusation

72. Every person subject to this Ordinance who,-

- (a) makes a false accusation against any person subject to this Ordinance knowing or having reason to believe such accusation to be false; or
- (b) in making a complaint under section 23 makes any statement affecting the character of any person subject to this Ordinance, knowing or having reason to believe such statement to be false; or knowingly and wilfully suppresses any material facts,

shall be liable to suffer short imprisonment.

Offences in
relation to
courts-martial

73. (1) Every person subject to this Ordinance who,-

- (a) having been duly summoned or ordered to attend before a court-martial, fails to comply with the summons or order;
- (b) refuses to take an oath or make an affirmation when duly required by a court-martial to do so;
- (c) refuses to produce any document in his custody or under his control which a court-martial has lawfully required him to produce;

- (d) when a witness, refuses to answer any question which a court-martial has lawfully required him to answer;
- (e) wilfully insults any person, being a member of a court-martial or a witness or any other person whose duty it is to attend on or before the court, while that person is acting as a member thereof or is so attending, or while that person is going to or returning from the proceedings of the court; or
- (f) wilfully interrupts the proceedings of a court-martial, or otherwise misbehaves before the court,

shall be liable to suffer short imprisonment.

(2) Where an offence against sub-section (1) is committed in relation to a court-martial and the court is of opinion that it is expedient that the offender should be dealt with summarily by the court instead of being brought to trial before another court-martial, the court may by order under the hand of its president sentence him to imprisonment or (except in the case of an officer) detention, for a term not exceeding twenty-one days.

74. Every person subject to this Ordinance who, having been lawfully sworn or affirmed as a witness or as an interpreter in proceedings before a court-martial or before any board or person having power by virtue of this Ordinance to administer an oath or affirmation, makes a statement material in those proceedings which he knows to be false or does not believe to be true, shall be liable to suffer long imprisonment.

False evidence

75. Every person subject to this Ordinance who is guilty of any act, disorder or neglect to the prejudice of good order and naval discipline not described in the foregoing provisions of this Ordinance, shall be liable to suffer short imprisonment.

Conduct to the prejudice of naval discipline

(xiii) Attempts and Abetments

76. Every person subject to this Ordinance who attempts to commit any of the offences specified in the foregoing provisions of this Ordinance, or to cause such an offence to be committed, and in such attempt does any act towards the

Attempts to commit naval offence

commission of the offence shall, where no express provision is made by this Ordinance for the punishment of such attempt be liable,-

- (a) if the offence attempted to be committed is punishable with death, to suffer long imprisonment;
- (b) 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; and
- (c) if the offence attempted to be committed is punishable with dismissal from the service, to suffer any punishment lower than dismissal in the scale of punishments provided in section 80.

Abetment of offences

77. Every person subject to this Ordinance who abets the commission of any of the offences specified in the foregoing provisions of this Ordinance shall, whether the act abetted is committed or not in consequence of the abetment and where no express provision is made by this Ordinance for the punishment of such abetment, be liable to suffer the punishment provided for that offence.

(xiv) Civil Offences

Civil offences triable by naval tribunal

78. (1) Subject to the provisions of section 79 every person subject to this Ordinance who at any place in or beyond Bangladesh commits any civil offence shall be deemed to be guilty of an offence against this Ordinance and, if charged therewith under this section, shall be liable to be tried by a naval tribunal, and, on conviction, be punishable as follows, that is to say,-

- (a) if the offence is one which would be punishable under the 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 Ordinance 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 Ordinance mentioned.

(2) A person subject to this Ordinance may be charged with an offence under this section notwithstanding that he could on the same facts be charged with an offence under any other section of this Ordinance.

(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.

79. A person subject to this Ordinance who commits an offence of murder against a person not subject to service law, or of culpable homicide not amounting to murder against such a person, or of rape in relation to such a person, shall be deemed to be guilty of an offence under this Ordinance and shall be tried by a naval tribunal, provided he commits any of the said offences,-

Civil offences triable by naval tribunal under special circumstances

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

CHAPTER VII

PUNISHMENTS

80. (1) Subject to the provisions of this and the next following section, the following are the punishments which may be awarded to persons convicted of offences under this

Scale of punishments

Ordinance that is to say:-

- (a) death,
- (b) long imprisonment,
- (c) short imprisonment,
- (d) dismissal from the service,
- (e) detention,
- (f) forfeiture of seniority in rank in the case of officers,
- (g) forfeiture of time for promotion in case of subordinate officers,
- (h) ¹[disranking],
- ²[(hh) fine,]
- (i) Penal deductions,
- (j) severe reprimand or reprimand,
- (k) such minor punishments as may be prescribed.

(2) In its application to a convicted person who is an officer, sub-section (1) shall have effect as if clauses (e), (h) and (k) thereof were omitted; and in its application to a convicted person who is a sailor that sub-section shall have effect as if clauses (f), (g) and (j) thereof were omitted.

Provision as to
award of
punishment

81. (1) A sentence of imprisonment shall involve,-

- (a) in all cases, stoppage of pay during the term of imprisonment;
- (b) in the case of an officer, dismissal from the service;
- (c) in the case of a sailor, ³[disranking] and deprivation of good conduct badges and may be accompanied by a sentence of dismissal from the service.

¹ The word “disranking” was substituted for the word “disrating” by section 2 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

² Clause (hh) was inserted by section 2 of the Navy (Amendment) Ordinance, 1986 (Ordinance No. XL of 1986).

³ The word “disranking” was substituted for the word “disrating” by section 2 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

(2) The sentence of dismissal from the service may be accompanied by a sentence of forfeiture of all or any part of the pay, bounty, salvage and allowances earned by, and of all annuities and medals, granted to the offender:

Provided that the forfeiture shall not apply, except in the case of deserters, to moneys which should have been paid on the last pay day preceding conviction.

(3) The punishment of dismissal from the service shall in the case of persons who hold any lien on appointments in the army or air force or civil service, involve dismissal from such army, air force or civil service.

(4) Detention may be awarded for any term not exceeding six months; and a sentence of detention shall in all cases involve stoppage of pay during the term of detention, and ¹[disranking].

(5) The punishment of forfeiture of seniority shall be imposed in the substantive rank held at the date of the sentence, and shall involve a corresponding forfeiture of seniority in every higher acting rank subject always to the condition that forfeiture of seniority in any rank shall in no case exceed the seniority in that rank at the date of the sentence.

(6) The punishment of forfeiture of seniority shall involve the loss of the benefit of service included in the seniority forfeited for the purposes of pension, gratuity, promotion and such other purposes, as may be prescribed, provided that such pension, gratuity and promotion and other purposes depend upon such service.

(7) The punishment of forfeiture of time for promotion shall delay the promotion by the time specified.

¹ The word “disranking” was substituted for the word “disrating” by section 2 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

(8) A sentence of ¹[disranking] may reduce the offender to any ²[rank] not lower than that prescribed, in relation to persons of the class to which he belongs, and references in sub-sections (1) and (4) to ³[disranking] are references to reduction to the ⁴[rank] so prescribed.

(9) Penal deductions mean deductions as specified hereinafter in this Ordinance and may accompany a sentence of imprisonment.

(10) Subject to the provisions of this Ordinance a naval tribunal may, on conviction, award either the punishment specified by this Ordinance as the penalty for an offence, or in lieu thereof, any one or more of the punishments inferior in degree to the specified punishment, according to the scale of punishments laid down in sub-section (1) of section 80.

CHAPTER VIII

PENAL DEDUCTIONS

Deductions from pay and allowances of officers and ⁵[sailors]

82. Subject to the provisions of this Chapter following deductions may be made from the pay and allowances of an officer or sailor without recourse to trial by a naval tribunal, namely:-

- (a) all pay and allowances for every day of absence without leave unless a satisfactory explanation is given to the commanding officer and approved, in case of officers, by the Chief of Naval Staff;
- (b) all pay and allowances, for every day while he is in civil or naval custody or under suspension from duty on a

¹ The word "disranking" was substituted for the word "disrating" by section 2 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

² The word "rank" was substituted for the word "rate" by section 2 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

³ The word "disranking" was substituted for the word "disrating" by section 2 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

⁴ The word "rank" was substituted for the word "rate" by section 2 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

⁵ The word "sailors" was substituted for the word "ratings" by section 2 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

charge for an offence of which he is afterwards convicted by a naval tribunal or a criminal Court and sentenced to imprisonment;

- (c) all pay and allowances for every day while he is in hospital on account of sickness certified by the prescribed medical officer to have been caused by an act amounting to an offence punishable under this Ordinance:

Provided that such certificate is accepted by the Chief of Naval Staff or, in case of a sailor, by the prescribed officer;

- (d) any sum required to make good any loss, damage or destruction of Government or service property which after due investigation appears to the Chief of Naval Staff or the prescribed officer to have been occasioned by the wrongful act or negligence on the part of the officer or sailor as the case may be:

Provided that the total deductions made under this clause shall not in any case exceed his pay and allowances for three months;

- (e) any sum which after due investigation appears to the prescribed officer to be due to a service mess or canteen; and
- (f) any sum which a criminal Court or the Government orders him to pay for the maintenance of his wife or legitimate or illegitimate children.

83. Except when the deductions are made under clauses (a) and (b) of the last preceding section, the total deductions from the pay and allowances of an officer or sailor shall not exceed in any one month one-half of his pay and allowances for that month.

Limit of certain deductions

84. In the case of any person subject to this Ordinance who is in naval or civil custody on a charge for an offence, the proscribed 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:

Pay and allowances during trial

Provided that no part of the pay and allowances shall be withheld in the absence of any such direction.

Deduction from money due to a person

85. Any sum authorised by this Ordinance 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 money due to him from Government other than a pension.

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

86. Where the conduct of any person subject to this Ordinance when being taken prisoner by, or while in the hands of, the enemy, is to be inquired into under this Ordinance or any other law, the Chief of Naval 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

87. (1) Any deductions from the pay and allowances authorised by or under this Ordinance may be remitted by the Chief of Naval Staff, in his discretion.

(2) Such deductions may also be remitted in such manner and to such extent and by such authority as may be prescribed.

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

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

(2) For the purpose of this section, 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 86, and if he is dismissed from the service in consequence of such conduct, until the date of such dismissal.

CHAPTER IX

ARREST AND PROCEEDINGS BEFORE TRIAL

Duty to bring offenders to justice and powers of arrest

89. (1) It shall be the duty of every person subject to this Ordinance who knows or has reasonable grounds for suspecting that another person subject thereto is committing or has committed an offence under this Ordinance to take all reasonable steps within his power to cause that person to be brought to justice.

(2) The following persons shall have power to arrest a person subject to this Ordinance who is found committing or is alleged to have committed or is reasonably suspected of having committed any such offence as aforesaid, that is to say:-

- (a) in case of an officer, an officer subject to this Ordinance who is his superior officer, or, if the person to be arrested is engaged in a quarrel, affray or disorder, any officer subject to this Ordinance;
- (b) in the case of a sailor, an officer subject to this Ordinance, ¹[master chief petty officer, chief petty officer], petty officer or a leading sailor subject to this Ordinance who is of superior ²[rank] or senior to him in the same ³[rank], and any sailor exercising the authority as a member of the regulating staff or as a member of the staff of the officer of the watch;
- (c) in any case, a provost officer or any officer or person legally exercising authority under or on behalf of a provost officer:

Provided that an officer shall not be arrested by virtue of clause (c) except on the order of another officer.

(3) Any power of arrest under this section may be exercised either personally or by ordering into arrest the person to be arrested or by giving orders for that person's arrest.

90. (1) Where any person subject to this Ordinance is placed under arrest, it shall be the duty of his commanding officer to ensure that as soon as may be either the proceedings are taken for his trial or he is released from arrest.

Provision for
avoiding delay
after arrest

(2) Every person subject to this Ordinance who has been taken into naval custody and kept under close arrest shall be produced before his commanding officer within a period of 48

¹ The words and comma "master chief petty officer, chief petty officer" were substituted for the words "chief petty officer" by section 8 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

² The word "rank" was substituted for the word "rate" by section 2 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

³ The word "rank" was substituted for the word "rate" by section 2 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

hours of such arrest, excluding the time necessary for the journey from the place of arrest to the commanding officer, and no such person shall be detained in custody beyond the said period without authority of the commanding officer.

(3) Whenever any person subject to this Ordinance having been taken into naval custody, remains, under close arrest for a period longer than eight days without being tried summarily or a Court for his trial being ordered to assemble, a special report on the necessity for further delay shall be made by his commanding officer to the Chief of Naval Staff and a similar report shall be so made every eight days until the person under arrest is released from arrest or tried summarily or such a Court is ordered to assemble.

Duty to receive
or keep in
custody

91. (1) The commanding officer shall be responsible for the safe custody of every person who is in naval custody on board his ship or in his establishment.

(2) The officer or sailor in charge of a guard, or a provost marshal shall receive and keep any person who is duly committed to his custody.

Procedure
before trial

92. Subject to the provisions of this Ordinance the procedure before trial and the manner of investigation shall be as prescribed.

Arrest under
warrants of
naval authorities

93. (1) A warrant for the arrest of a person suspected of any offence under this Ordinance may be issued in the prescribed form by the Chief of Naval Staff, his commanding officer or any other officer empowered by the Chief of Naval Staff in this behalf, and it shall be executed as if it has been issued by a Magistrate of competent jurisdiction.

(2) Every person, to whom such a warrant is issued, shall take steps to execute the warrant and arrest the offender and shall, as soon as may be, arrest the person and deliver him into naval custody.

(3) A person authorised to arrest an offender may use such force as may be necessary for the purpose of affecting such arrest.

94. (1) Provost-marshals may be appointed by the Chief of Naval 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 Navy.

(3) A provost-marshal may at any time arrest and detain for trial any person subject to this Ordinance 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 naval tribunal 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.

Explanation.- 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[Air Force Act], 1953, and any person legally exercising authority under him or on his behalf.

CHAPTER X

AUTHORITIES HAVING POWER TO AWARD PUNISHMENT

95. (1) An offence triable under this Ordinance shall be tried by a naval tribunal, namely:- Naval tribunal

- (a) general court-martial,
- (b) district court-martial,
- (c) summary general court-martial,
- (d) commanding officer, or such other officer or authority exercising powers of summary trial and punishment as may be prescribed.

¹ The words “Army Act” were substituted for the words “Pakistan Army Act” by section 2 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

² The words “Air Force Act” were substituted for the words “Pakistan Air Force Act” by section 2 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

(2) A trial by a naval tribunal under the provisions of this Ordinance shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the ¹[Penal Code], and the naval tribunal shall be deemed to be a Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898.

General court-martial

96. (1) A general court-martial may be convened by the Chief of Naval Staff or any prescribed officer empowered in this behalf and to such extent as may be specified in the warrant issued under the hand of the Chief of Naval Staff.

(2) A general court-martial shall have an officer not below the substantive rank of Commander as president and shall have power to try any person subject to this Ordinance for any offence punishable therein and to pass any sentence authorised thereby.

District court-martial

97. (1) A district court-martial may be convened by any authority having power to convene a general court-martial or any prescribed officer empowered in this behalf and to such extent as may be specified in the warrant issued under the hand of the Chief of Naval Staff.

(2) A district court-martial shall have an officer not below the substantive rank of lieutenant Commander as president and shall have power to try any person subject to this Ordinance, who is of the rank of lieutenant or below or a sailor, and to pass any sentence authorised by this Ordinance not exceeding,-

- (a) in the case of an officer, forfeiture of seniority in rank or forfeiture of time for promotion for a period of one year; and
- (b) in the case of a sailor, short imprisonment.

Summary general court-martial

98. (1) A summary general court-martial may be convened-

- (a) by any authority having power to convene a general court-martial or any prescribed officer empowered in

¹ The words "Penal Code" were substituted for the words "Pakistan Penal Code" by section 2 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

this behalf and to such extent as may be specified in the warrant issued under the hand of the Chief of Naval Staff.

- (b) on active service, by an officer commanding a flotilla or squadron not below the substantive rank of Commander, if in the opinion in writing of such officer commanding which opinion shall be final, it is not practicable, having regard to discipline and the exigencies of the service, to try the alleged offender by a general or district court-martial.

(2) A summary general court-martial shall have an officer not below the substantive rank of a lieutenant Commander as president and shall have power to try any person subject to this Ordinance for any offence punishable therein and to pass any sentence authorised thereby.

99. (1) A court-martial shall consist of such number of officers of any branch of the Bangladesh Navy, who have held commissions for a period of not less than three years and who are of or above the rank of lieutenant as the authority ordering the court-martial may fix, subject to the following limits, namely:-

Composition of courts-martial

- (a) a general court-martial shall consist of not less than five and not more than nine such officers;
- (b) a district court-martial shall consist of not less than three and not more than seven such officers; and
- (c) a summary general court-martial shall consist of not less than three and not more than five such officers.

(2) The president and other members of a court-martial, and such spare members as the authority ordering the court-martial considers appropriate for the purpose of filling vacancies, shall be nominated by that authority.

(3) The officer who orders a court-martial shall not be a member of the court-martial; and no court-martial shall consist of officers all of whom belong to the same ship or naval establishment.

(4) A court-martial for the trial of an officer shall not include more than one member, who is below the rank of such officer.

Judge Advocate

100. (1) Every general court-martial shall, and every district or summary 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.

(2) No general court-martial, and no district or summary general court-martial to which a judge advocate has been appointed shall proceed with the trial in the absence of the judge advocate.

Quorum and
dissolution of
courts-martial

101. (1) If at any time after a court-martial has been sworn and before the president has signed the finding and sentence, if any, the president or the judge advocate dies or is otherwise unable to attend, the court shall be dissolved.

(2) The proceedings of a court-martial shall be valid notwithstanding the absence of one or more of the members other than the president, so long as the number of members present throughout the proceedings is not reduced below the minimum required by this Ordinance to constitute the court; otherwise the court shall be dissolved.

(3) Where any member is absent the court shall be adjourned, unless it is allowed to proceed without such member by the convening authority, in which case such member shall not at any subsequent stage sit on that court.

(4) 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.

(5) Where a court-martial is dissolved under this section the accused may be tried by a court-martial constituted afresh.

Powers of
commanding
officers in
respect of
summary trial

102. (1) Subject to the provisions of this section, a sailor may be summarily tried by the officer in command of the naval ship or naval establishment to which the offender belongs either at the time of the commission of the offence or at the time of the trial, and may be awarded such punishment as may be prescribed.

(2) This section applies to every offence under this Ordinance other than an offence punishable with death.

(3) A commanding officer shall not have power under this section to award a sentence of imprisonment or detention for any term exceeding three months.

(4) The power conferred by sub-section (1) on the officer in command of a ship or establishment may, subject to rules be exercised,-

- (a) in respect of persons on board a single tender or boat which is absent from the ship or establishment on detached service, by the officer in command of that tender or boat;
- (b) in respect of persons on board any one of two or more tenders or boats which are absent as aforesaid on detached service in company or acting together, by the officer in immediate command of those tenders or boats;
- (c) in respect of other persons absent from the ship or establishment on detached service either on shore or elsewhere, by the officer in immediate command of those persons; and
- (d) in respect of ¹[sailors] attached to or serving with any body of the regular army or the air force under prescribed conditions, by the commanding officer of any such body.

(5) The power conferred on any officer by sub-section (1) or sub-section (4) may be delegated by that officer to any other officer to such extent and subject to such conditions as may be prescribed.

103. The Chief of Naval Staff or any prescribed officer empowered by him in this behalf may in the prescribed manner and to such extent as may be specified by the Chief of Naval Staff, summarily try an officer of the rank of lieutenant or below charged with an offence under this Ordinance and award any punishment authorised by this Ordinance not exceeding forfeiture of seniority in rank or forfeiture of time for promotion for a period of six months.

Powers of other authorities in respect of summary trial

¹ The word "sailors" was substituted for the word "ratings" by section 2 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

Place of trial

104. Any person subject to this Ordinance and charged with an offence under this Ordinance may be tried and punished at any place whatsoever.

Period of limitation for trial

105. (1) Save as provided in sub-section (2), no trial by naval tribunal of any person subject to this Ordinance for any offence shall be commenced after the expiration of a period of three years from the date of the commission 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 relating to mutiny.

(3) In computing 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 alleged commission of the offence, shall be excluded.

(4) Notwithstanding anything contained in sub-section (2), no trial for an offence of desertion (other than desertion on active service) or of fraudulent enrolment shall be commenced, if the person concerned (not being an officer) has, subsequently to the alleged commission of the offence, served continuously in an exemplary manner for not less than three years with any portion of the armed forces.

Liability of offender who ceases to be subject to this Ordinance

106. (1) Subject to the provisions of this section, a person who has ceased to be subject to this Ordinance may be tried under this Ordinance for any offence committed while subject to this Ordinance and may for that purpose be arrested and kept in naval custody as if he had not ceased to be subject thereto.

(2) Save as provided in sub-section (3), no such person as aforesaid shall be tried for an offence, unless his trial commences within six months of his ceasing to be subject to this Ordinance.

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

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

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

(6) When a person subject to this Ordinance is sentenced by a naval tribunal to death, this Ordinance shall apply to him till the sentence is carried out.

107. (1) When a criminal Court and naval tribunal both have jurisdiction in respect of a civil offence, it shall be in the discretion of the prescribed naval authority to decide whether the proceedings shall be instituted before the Court or tribunal and if that authority decides that they shall be instituted before a naval tribunal, to direct that the accused person shall be detained in naval custody.

Concurrent jurisdiction of naval tribunal and criminal Court

(2) Where it is decided to institute the proceedings before a naval tribunal under sub-section (1) but the criminal Court is of the opinion that proceedings ought to be instituted before itself, it may by written notice require the prescribed naval authority to postpone the proceedings pending the determination of the matter by the Government, and thereupon the proceedings shall be so postponed.

(3) On receiving a notice under sub-section (2), the said authority shall, unless upon reconsideration it agrees that the proceedings shall be instituted before the criminal Court, forthwith refer the matter to the Government whose decision thereupon shall be final.

108. (1) Where a person subject to this Ordinance is acquitted or convicted of an offence on trial by a naval tribunal, a criminal Court or a naval tribunal shall be debarred from trying him subsequently for the same offence.

Prohibition of second trial

(2) Where a person subject to this Ordinance is acquitted or convicted of any offence on trial by a criminal Court, he shall not subsequently be tried under this Ordinance for the same offence; and no person so convicted shall, by reason of such conviction, be subjected to any loss or forfeiture of seniority or

of ¹[rank], of privilege in respect of leave, or of pay or service (other than pay and service in respect of time spent in civil custody pending trial, or while attending his trial, or while serving any sentence of imprisonment, awarded by the criminal Court):

Provided that nothing in this sub-section shall affect the power to discharge any person from the naval service as a person whose services are no longer required.

CHAPTER XI

PROCEDURE OF COURTS-MARTIAL

Objections

109. (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 in the presence of 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 appointed as members of the court shall, in the absence of the challenged officer, decide on the objection.

(3) If objection is made in respect of the president, and allowed by one-half or more of the officers entitled to vote, the court shall adjourn until a new president is appointed by the convening authority.

(4) If the objection is made in respect of any member of the court other than the president and allowed as specified above, the member objected to shall retire, and his vacancy shall be filled by the first officer nominated as a spare member, under sub-section (2) of section 99 who is qualified to be and is not already a member of the court.

(5) When no objection is made, or objection made has been disallowed, or the place of every officer successfully objected to has been filled by another officer to whom no objection is made, or objection made is disallowed, the court shall proceed with the trial.

¹ The word "rank" was substituted for the word "rate" by section 2 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

110. (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.

Administration of oath

(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.

111. (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 summary general court-martial of all the members of the court.

(2) In matters other than an objection under section 109 or a finding or a sentence, the president shall have a second or casting vote.

112. Where higher punishment for any offence under this Ordinance depends upon the intent with which or the circumstances in which the offender acts, and any person is charged with committing that offence with such intent or in such circumstances, he may be found guilty of committing that offence without such intent or circumstances and awarded lower punishment.

Power to convict of mitigated offence

113. (1) Where a person is charged with an offence under any provision of this Ordinance other than sections 78 and 79 but the offence is not proved, he may be found guilty of-

Power to convict of alternative offence

(a) an attempt or abetment to commit the offence charged; or

(b) an offence of the same class as the offence charged and not involving greater punishment.

(2) Where a person is charged with a civil offence under sections 78 and 79 but that offence is not proved, he may be found guilty and convicted of any other civil offence of which he could be found guilty and convicted by a criminal Court in a trial for the same offence as he is charged with.

General rules as to evidence

114. Subject to the provisions of this Ordinance, the rules of evidence generally followed in criminal Courts shall apply to proceedings before a court-martial.

Judicial notice

115. A court-martial shall take judicial notice of any matter generally within the knowledge of its members as officers of the navy.

Summoning of witnesses

116. (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.

(2) In the case of a witness subject to service law 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 may be served in such manner as may be prescribed or may be sent to the magistrate within whose jurisdiction he may be or resides and such magistrate shall cause service of the summons as if the witness were required to appear or produce the document or thing in his own Court.

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

Commission for the examination of witnesses

117. (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.

(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.

118. In any proceeding under this Ordinance, any application, certificate, warrant, reply or other document purporting to be signed by an officer in the service of the ¹[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.

Presumption as to signature

119. (1) Any enrolment paper purporting to be signed by an enrolling officer shall, in any proceedings under this Ordinance, be evidence that the person enrolled gave the answer which he is therein represented to have given.

Enrolment paper

¹ The word "Republic" was substituted for the word "Government" by section 9 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

(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.

Presumption as to certain documents

120. (1) Where any letter, return or other document with respect to a person,-

- (i) having, or not having, at any time served in, or been dismissed or discharged from any part of the armed forces of Bangladesh;
- (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 military, naval 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 for the time being in force an offence,

purports to have been signed by or on behalf of a Secretary to the Government, or by an officer of any of the headquarters of the armed forces or by the commanding officer or the officer having the custody of the records of any portion of those forces or of any ship or establishment of the Bangladesh Navy to which such person appears or alleges to belong or to have 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 have been published by the competent authority shall be evidence of the status, rank and appointment of the officer or warrant officer and also of the unit or branch of the service to which he belongs according as it is shown in the list or gazette.

(3) Where a record made in any service book in pursuance of this Ordinance or of any rules made thereunder or otherwise in pursuance of duty purports to have been 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 have been certified as 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 Ordinance is being tried on a charge of desertion or of 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 Ordinance 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 have been 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 Ordinance.

(8) If it is proved that a person charged with an offence under this Ordinance has absconded and that there is no immediate prospect of arresting him, the commanding officer or other prescribed person may, in his absence, examine any persons who might appear to him to be acquainted with the case and record their depositions on oath and any such deposition may on the arrest of such person be used in evidence against him in any proceeding under this Ordinance, if the deponent is dead or incapable of giving evidence, or his attendance cannot be procured without an amount of delay, expense or inconvenience which under the circumstances of the case would be unreasonable.

Reference by
accused to
Government
officer

121. (1) If at any trial, or other proceedings for desertion or absence without leave, 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 service of the ¹[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.

(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.

Evidence of
previous
convictions and
general
character

122. (1) When any person subject to this Ordinance has been convicted by a court-martial of any offence, such court-martial may inquire into, and receive and record evidence of any previous conviction of such person, either by a court-martial held under this Ordinance or under any other enactment, or by a criminal Court, or of any previous award of punishment under sections 102 and 103 (to such extent as may be prescribed), and may further inquire into and record the general character of such person, and such other matters as may be prescribed.

(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.

Lunacy of
accused

123. (1) Whenever, in the course of a trial by a court-martial, it appears to the court that the person charged is by reason or 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.

¹ The word "Republic" was substituted for the word "Government" by section 10 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

(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.

124. 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 123, the officer commanding the ship or naval establishment within the area of whose command the accused is in custody or is detained, or any other officer prescribed in this behalf, may-

Subsequent
fitness of
lunatic accused
for trial

- (a) if such person is in custody under sub-section (4) of section 123, 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 123, 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.

125. A copy of every order made by an officer under section 124 for the trial of the accused person shall forthwith be sent to the Government.

Transmission to
Government of
orders under
section 124

Release of
lunatic accused

126. Where any person is in custody under sub-section (4) of section 123, 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 124,

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.

Delivery of
lunatic accused
to relatives

127. Where any relative or friend of any person, who is in custody under sub-section (4) of section 123 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-

- (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.

Order for
custody and
disposal of
property
pending trial

128. 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.

¹ The words "the Government" were substituted for the words "that Government" by section 11 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

129. (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

(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.

CHAPTER XII

CONFIRMATION, REVISION AND REVIEW

130. (1) At the conclusion of a trial by court-martial, the finding and the sentence, if any, of the court shall be signed by the president and the judge-advocate, if any, but they shall not be promulgated until they have been confirmed.

Confirmation of finding and sentence

(2) The President of the court shall forward the proceedings of the court to the convening authority, who may confirm the same or transmit them for confirmation to a superior authority, if so directed by the warrant empowering him to convene the court.

(3) No finding or sentence of a court-martial shall be valid unless and except to the extent to which it is confirmed in accordance with the provisions of this Ordinance and the rules.

Power of confirming authority

131. The confirming authority may order that the finding and the sentence of the court-

- (a) be confirmed-
 - (i) as passed by the court, or
 - (ii) subject to such mitigation, remission or commutation of the sentence as specified hereinafter;
- (b) be returned to the court once for revision, as specified hereinafter, prior to their being confirmed; or
- (c) be not confirmed.

Power of confirming authority to mitigate, remit or commute sentences

132. 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 as laid down in this Ordinance:

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.

Power of confirming authority to return the finding and sentence to the court for revision

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

(2) Except for the unavoidable absence of any of its members, the court, sitting in revision, shall consist of the same members as were present at the time of arriving at the finding or passing the sentence.

(3) In the case of unavoidable absence of any of its members the cause whereof shall be duly recorded in the proceedings, the court shall proceed with the revision, unless

the president himself is absent or the number of members present is less than the minimum required to constitute the court under section 99 in which case the court shall be dissolved and the accused may be tried by court-martial constituted afresh.

134. (1) Any person subject to this Ordinance who considers himself aggrieved by any order passed by a court-martial may at the conclusion of the trial and before confirmation of the finding of the sentence, present a petition to the confirming authority.

Remedy against an order of court-martial before confirmation of finding or sentence

(2) Before confirming any finding or sentence of a court-martial, the confirming authority shall take such steps as it considers necessary to satisfy itself of the correctness, legality and propriety of the order passed and of the regularity of the proceedings in which it was passed.

135. Any finding of guilty and any sentence awarded by a court-martial in respect of such a finding may be reviewed by the Government or the Chief of Naval Staff at any time.

Review by the Government or the Chief of Naval Staff of finding and sentence

136. Without prejudice to the provisions of the foregoing section, a person convicted under this Ordinance by a court-martial may at any time present a petition against the finding or the sentence or both to the Government or the Chief of Naval Staff who may thereupon review the finding or the sentence or both.

Remedy of aggrieved persons, on being convicted by a court-martial

137. (1) On review of a finding of a court-martial, the Government or the Chief of Naval Staff may-

Power to quash or alter findings

- (a) in any case, quash the finding;
- (b) where some other finding of guilty could lawfully have been made by the court before which the trial took place, and it appears to the Government or the Chief of Naval Staff that that court must have been satisfied of facts necessary to justify that other finding, substitute that other finding.

(2) Where a finding is quashed under sub-section (1), then-

- (a) if the sentence passed in respect of that finding relates to that finding only, the sentence shall be quashed;
- (b) if the sentence relates to that and any other finding or findings, the Government or the Chief of Naval Staff may substitute such sentence as is authorised by this Ordinance in respect of the other finding or findings.

(3) Where a finding is substituted under sub-section (1) the sentence may be substituted by any other sentence provided by this Ordinance in respect of the substituted finding.

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

(5) Any finding or sentence substituted under the preceding sub-sections shall for all purposes be deemed to be the finding or sentence of the court before which the trial took place.

Power to remit
or alter
sentences

138. (1) On the review of a sentence awarded by a court-martial, the Government or the Chief of Naval Staff may, subject to the provisions of this section,-

- (a) annul the sentence;
- (b) remit the sentence in whole or in part;
- (c) commute the sentence for any other sentence provided by this Ordinance ; or
- (d) if the sentence is for any reason invalid, substitute such other sentence as could be awarded under this Ordinance in respect of the relevant finding or findings.

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

(3) Any sentence effective after remission, commutation or substitution under sub-section (1), shall for all purposes be deemed to be the sentence of the court before which the trial took place.

139. Nothing in this Chapter shall affect the powers and functions of the Judge Advocate-General in relation to the naval tribunals including his functions of considering and reporting on the proceedings of such tribunals.

Saving of functions of Judge Advocate-General

140. No Court shall question the correctness, legality or propriety of any proceeding, order, finding or sentence of any naval tribunal, and no appeal, revision or other remedy shall lie in respect of any such proceeding, order, finding or sentence save in accordance with the provisions of this Ordinance.

Bar of Appeals

CHAPTER XIII

EXECUTION OF SENTENCES

141. 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-

142. The term of a sentence of imprisonment or detention under this Ordinance, whether the sentence has been revised or not, shall be reckoned as commencing on the day on which the sentence is signed by the president of the court-martial or the officer trying the case.

Commencement of sentence of imprisonment or detention-

143. The officer who confirms the sentence or such other officer as may be prescribed, may direct that the sentence of imprisonment in any particular case shall be carried out by confinement in a civil prison or by confinement in a military, naval 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 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, the sentence may be directed to be carried out by confinement in naval custody instead of a prison:

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

Execution of
sentence of
detention

144. A sentence of detention under this Ordinance shall be carried out by detaining the offender in any military, naval or air force detention barracks, detention cells or other military, naval or air force detention barracks, and when the sentence is to be carried out by detention in any military, naval 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

145. (1) When a person is sentenced by a 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 to 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 to naval custody, or that he be released or confined in accordance with any order duly made under this Ordinance setting aside or varying the sentence of death.

(2) Any such warrant as aforesaid shall be sufficient authority for the execution of the orders contained therein.

(3) A person sentenced under this Ordinance to imprisonment or detention may, until he reaches the prison or detention barracks in which he is to undergo his sentence, be kept in naval 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.

146. A warrant issued in accordance with the provisions of section 143 or section 144, 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 committing the person concerned to prison, detention barrack or naval custody or, as the case may be, for transferring him from one description of custody to the other.

Authority for committal and transfer of prisoners

147. A person under sentence of imprisonment or detention may, while he is being conveyed from one place to another, or when on board a ship, aircraft, or other vehicle be subjected to such restraint as is necessary for his safe conduct and removal.

Conveying of prisoners from place to place

148. (1) Whenever an order is duly made under this Ordinance setting aside or varying any sentence, order or warrant under which any person is confined in a civil, military, naval or air force prison or detained in a military, naval 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

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

149. The Government may set apart any building or part of a building, or any place under its control, as a naval prison or detention barracks for the confinement of persons sentenced to imprisonment or detention under this Ordinance.

Establishment and regulation of naval prisons or detention barracks

150. The Government may make rules providing-

Power to make rules in respect of prisons and prisoners

- (a) for the government, management and regulation of naval 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 to earn by special industry and good conduct, a remission of a portion of their sentence;

- (d) for the safe custody of such prisoners 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 naval prisons or detention barracks of any of the provisions of the Prisons Act, 1894, relating to the duties of officers of prisons;
- (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

151. Rules made under section 150 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.

Procedural defect or error in the order or warrant

152. Confinement of a person undergoing a sentence of imprisonment or detention under this Ordinance in any place or manner in which he might be confined under a lawful order or warrant under this Ordinance, shall not be deemed to be illegal only by reason of any procedural defect 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 for rectifying such defect or error.

CHAPTER XIV

PARDONS, REMISSIONS AND SUSPENSION

Pardon and remission

153. When any person subject to this Ordinance has been convicted by a naval tribunal of any offence, the Government, the Chief of Naval Staff, or any officer not below the rank of captain empowered in this behalf by the Chief of Naval Staff may,

- (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 Ordinance:

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.

154. 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 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.

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

Suspension of sentence of imprisonment or detention

(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.

156. A confirming officer or an officer exercising powers of summary trial may, when a person has been sentenced to imprisonment or detention, direct that the offender be not committed to prison or to custody until the orders of the authority or officer specified in section 155 have been obtained.

Orders pending suspension

Release on suspension

157. When a sentence is suspended under section 155, the offender shall, whether he has been committed to prison or to custody or not, be released forthwith.

Computation of period of suspension

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

Order after suspension

159. The authority or officer specified in section 155 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

160. (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 155, or by an officer not below the rank of lieutenant Commander duly authorised by the authority or officer specified in section 155.

(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 155.

Fresh sentence after suspension

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

- (a) if the further sentence is also suspended under this Ordinance, 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 Ordinance, the offender shall also be committed to prison or naval 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 Ordinance 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 159 or section 160, continue to be suspended.

162. The powers conferred by sections 155 and 159 shall be in addition to, and not in derogation of, the power of mitigation, remission and commutation.

Scope of power of suspension

163. (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 155, then, such dismissal shall not take effect until so ordered by the authority or officer specified in that section.

Effect of suspension and remission on dismissal

(2) If such other sentence is remitted under section 159, the punishment of dismissal shall also be remitted.

CHAPTER XV

PROPERTY OF DECEASED PERSONS, DESERTERS AND LUNATICS

164. The following provisions shall apply to the disposal of the property of every person subject to this Ordinance, other than an officer, who dies or deserts, namely:-

Property of deceased persons and deserters (other than officers)

(1) The commanding officer of the ship or naval establishment, to which the deceased person or deserter belonged, shall secure all the movable property belonging to the deceased or deserter that is in ship or naval establishment 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 saving bank, co-operative bank or society or any other institution receiving deposits in money, howsoever 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 ship or naval establishment, if any of the deceased, the commanding officer may if he thinks fit deliver over any property, received under clauses (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 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 ship or naval establishment, if any, 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 Government, 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 ship or naval establishment of a deceased person or a deserter and as to the amount payable therefore shall be final.

165. Property deliverable and money payable to the representative, widow or next of kin, of a deceased person under section 164 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)

166. The provisions of sections 164 and 165 shall, so far as they can be made applicable, apply in the case of a person subject to this Ordinance (not being an 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:

Application of sections 164 and 165 to lunatics, etc.

Provided that in the case of a person so reported missing, no action shall be taken under clauses (2) to (5) of section 164 until such time as he is officially presumed to be dead.

167. The provisions of sections 168 to 173 shall apply to the disposal of the property of officers subject to this Ordinance who die or desert.

Property of officers who die or desert

168. (1) On the death or desertion of an officer, a Committee of Adjustment appointed in this behalf in the manner prescribed (hereinafter referred to as the Committee)

Powers of Committee of Adjustment

shall, as soon as may be, subject to rules-

- (a) secure all the movable property belonging to the deceased or deserter that is in ship or naval establishment 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 ship or naval establishment, if any, of the deceased or deserter.

(2) In the case of a deceased 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 ship or naval establishment, if any, of the deceased, the Committee shall deliver 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 the Committee, save as may be prescribed shall, if it appears to it necessary for the payment of service and other debts in ship or naval establishment 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 whose estate has not been dealt with under sub-section (2) and in the case of a deserter the Committee, subject to rules, shall, for the purpose of paying the service and other debts in ship or naval establishment, 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 ship or naval establishment, if any, of the deceased or deserter and in the case of a deceased, also the expenses of his last illness.

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

(7) In the case of an 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 his desertion, be forfeited to Government unless the deserter shall in the mean time 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 dependents of the officer.

(8) If in any case a doubt or difference arises as to what are the service and other debts in ship or naval establishment 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.

169. On receipt of the surplus referred to in sub-section (6) of section 168 the prescribed person shall proceed as follows:-

Disposal of surplus by the prescribed person

(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 and 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 the 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.

Disposal of certain property without production of probate, etc.

170. Property deliverable and money payable to the representative, widow or next of kin of a deceased officer under section 168 or section 169 may, if the total amount of 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.

Discharge of Committee, prescribed person and the Government

171. 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 168, section 169 or section 170 shall be valid and shall be a full discharge to the Committee or the prescribed person, as the case may be, and to Government from all further liability in respect of that money or property; but nothing herein contained shall affect the right of any executor or administration or other representative, or of any creditor of the deceased officer against any person to whom such payment or delivery has been made.

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

172. Any property coming under section 168 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.

Saving of rights of representative

173. After the Committee has deposited with the prescribed person the surplus of the property of any deceased officer under sub-section (6) of section 168, 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 168 had not been enacted.

174. The provisions of sections 168 to 173 shall, so far as they can be made applicable, apply in the case of an 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:

Application of sections 168 to 173 to lunatics, etc.

Provided that in the case of an officer so reported missing no action shall be taken under sub-sections (2) to (5) of section 168 until such time as he is officially presumed to be dead.

175. When an 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.

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

176. For the purposes of this Chapter-

Interpretations

- (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 ship or naval establishment" includes money due as naval debts, namely, sums due in respect of, or any advance in respect of-
 - (a) quarters;
 - (b) mess, band, and other service accounts; and
 - (c) naval 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 realize the assets of a deceased person;
- (4) "representative" means any person who has taken out representation.

CHAPTER XVI

RULES

Power to make rules

177. (1) The Government may make rules for the purpose of carrying into effect the provisions of this Ordinance.

(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 Ordinance;
- (b) the procedure to be observed during investigation, arrest, custody and summary trial, and powers of punishment of commanding officers and other authorities at such trials and delegation of such powers;
- (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 appearing 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 Ordinance 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 dependents of prisoners of war or missing persons under section 88 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, the Bangladesh Navy and the Bangladesh Air Force, when acting together;
- (l) deductions on account of public and service debts from the pay and allowances of persons subject to this Ordinance; and
- (m) any other matter directed by this Ordinance to be prescribed.

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

178. (1) The Government may make regulations for the governance, command, discipline, recruitment, conditions of service and regulation of the naval forces and generally for all or any of the purposes of this Ordinance, other than those specified in section 177.

Power to make regulations

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

- (a) the rank, precedence, powers of command and authority of officers and ¹[sailors];
- (b) the terms and conditions of service, the pay, pensions, allowances and other benefits of officers and ²[sailors];

¹ The word "sailors" was substituted for the word "ratings" by section 2 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

² The word "sailors" was substituted for the word "ratings" by section 2 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).

- (c) the ceremonials to be observed and the marks of respect to be paid in the service; and
- (d) any other matter which is directed by this Ordinance or the rules, to be specified by regulations.

179. Repeals.- [*Sub-section (1) was repealed by section 2 and the 1st Schedule of the Repealing and Amending Ordinance, 1965 (Ordinance No. X of 1965).*]

(2) [*Omitted by section 12 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLIII of 1977).*]

CHAPTER XVII

TRANSITORY PROVISIONS

180. [Definition.- *Omitted by section 13 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLVIII of 1977).*]

181. [Powers of British officers.- *Omitted by section 13 of the Navy (Amendment) Ordinance, 1977 (Ordinance No. XLVIII of 1977).*]

[THE SCHEDULE]

Repealed by section 2 and the 1st Schedule of the Repealing and Amending Ordinance, 1965 (Ordinance No. X of 1965).
