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THE AIR FORCE ACT, 1950

ACT NO. 45 OF 1950[1]

[18*th May*, 1950.]

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

BE it enacted by Parliament as follows:—

CHAPTER I

PRELIMINARY

1. Short title and commencement.—(*1*) This Act may be called the Air Force Act, 1950.

(*2*) It shall come into force on such date[2] as the Central Government may by notification in the Official Gazette, appoint in this behalf.

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

(*a*) officers and warrant officers of the Air Force;

(*b*) persons enrolled under this Act;

[3][(*c*) persons belonging to the Regular Air Force Reserve or the Air Defence Reserve or the Auxiliary Air Force, in the circumstances specified in section 26 of the Reserve and Auxiliary Air Forces Act, 1952 (62 of 1952);]

(*d*) persons not otherwise subject to air force law, who, on active service, in camp, on the march, or at any frontier post specified by the Central Government by notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of the Air Force.

3. Termination of application of the Act.—Every person subject to this Act under clauses (*a*) to (*c*) of section 2 shall remain so subject until duly retired, discharged, released, removed, dismissed or cashiered from the service.

4. Definitions.—In this Act, unless the context otherwise requires.—

(*i*) "active service", as applied to a person subject to this Act, means the time during which such person—

(*a*) is attached to, or forms part of a force which is engaged in operations against an enemy, or

(*b*) is engaged in air force operations in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or

(*c*) is attached to, or forms part of, a force which is in military occupation of any foreign country;

1. The Act has been extdended to Goa, Daman and Diu by Regulation 12 of and Schedule, Dadra and Nagar Haveli by Regulation 6 of 1963, s. 2 and the First Schedule Pondicherry by Regulation 7 of 1963, s. 3 and First Schedule.
2. 22nd July, 1950, *vide* Notification No. S.R.O. 124, dated 22nd July, see Gazette of India, 1950, Part II, sec. 4.
3. Subs. by Act 62 of 1952, s. 35, for clause (*c*) (w.e.f. 15-8-1955).

(*ii*) “aircraft” includes aeroplanes, balloons, lite balloons, airships, gliders or other machines for flying;

(*iii*) “aircraft material” includes any engines, fittings, guns, gear, instruments or apparatus for use in connection with aircraft, and any of its components and accessories and petrol oil, and any other substance used for providing motive power for planes;

(*iv*) “Air Force” means officers and airmen who by their commission, warrant, terms of enrolment or otherwise, are liable to render continuously for a term air force service to the Union in every part of the world or any specified part of the world, including persons belonging to[1][any Air Force Reserve or the Auxiliary Air Force], when called out on permanent service;

(*v*) “Air force custody” means the arrest or confinement of a person according to the usages of the service and includes military or naval custody;

(*vi*) “Air Force law” means the law enacted by this Act and the rules made thereunder and includes the usages of the service;

(*vii*) “Air Force reward” includes any gratuity or annuity for long service or good conduct, badge pay or pension, and any other Air Force pecuniary reward;

(*viii*) “airman” means any person subject to this Act other than an officer;

(*ix*) “air officer” means any officer of the Air Force above the rank of group captain;

(*x*) “air signal” means any signal intended for the guidance of aircraft, whether given by flag, ground signal, light, wind indicator or in any manner whatsoever;

(*xi*) “Chief Legal Adviser” means a person appointed as such by[2] [the Chief of the Air staff] to give advice on matters relating to air force law and to perform such other duties of a legal character as may arise in connection therewith;

(*xii*) “civil offence” means an offence which is triable by a criminal court;

(*xiii*) “civil prison” means any jail or place used for the detention of any criminal prisoner under the Prisons Act, 1894 (9 of 1894), or under any other law for the time being in force;

[3][(*xiv*) “Chief of the Air Staff” means the officer commanding the Air Force;]

(*xv*) “commanding officer” used in relation to a person subject to this Act, means the officer for the time being in command of the unit or detachment to which such person belongs or is attached;

(*xvi*) “court-martial” means a court-martial held under this Act;

(*xvii*) “criminal court” means a court of ordinary criminal justice in any part of India,[4]* * * * *;

(*xviii*) “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 air force law to act;

(*xix*) “the Forces” means the regular Army, Navy and Air Force or any part of any one or more of them;

1. Subs by Act 62 of 1952, s. 35, for “the Indian Air Force Volunteer Reserve” (w.e.f. 15-8-1955).
2. Subs by Act 19 of 1955, s. 2 and the Schedule, for “Commander-in-Chief” (w.e.f. 15-8-1955).
3. Subs by s. 2 and the Schedule, *ibid.*, for clause (*xiv*) (w.e.f. 15-8-1955).
4. The words “other than the State of Jammu and Kashmir” omitted by Act 13 of 1975, s. 2 (w.e.f. 25-1-1975).

(*xx*) "non-commissioned officer" means a person holding a non-commissioned rank or an acting non-commissioned rank in the Air Force, and includes any person holding a non-commissioned rank or an acting non-commissioned rank in [1][any Air Force Reserve or the Auxiliary Air Force] when subject to this Act;

(*xxi*) "notification" means a notification published in the Official Gazette;

(*xxii*) "offence" means any act or omission punishable under this Act, and includes a civil offence, as hereinbefore defined;

(*xxiii*) "officer" means a person commissioned, gazetted or in pay as an officer in the Air Force, and includes—

(*a*) an officer of[1][any Air Force Reserve or the Auxiliary Air Force] who is for the time being subject to this Act;

(*b*) in relation to a person subject to this Act when serving under such conditions as may be prescribed, an officer of the regular Army or the Navy,

but does not include a junior commissioned officer, warrant officer, petty officer or non-commissioned officer;

(*xxiv*) "prescribed" means prescribed by rules made under this Act;

(*xxv*) "provost-marshal" means a person appointed as such under section 108 and includes any of his deputies or assistants or any other person legally exercising authority under him or on his behalf;

(*xxvi*) "regulation" includes a regulation made under this Act;

(*xxvii*) "superior officer", when used in relation to a person subject to this Act, includes a warrant officer and a non-commissioned officer, and as regards persons serving under such conditions as may be prescribed, an officer, junior commissioned officer, warrant officer, petty officer and non-commissioned officer of the regular Army or the Navy;

(*xxviii*) "unit" includes—

(*a*) anybody of officers and airmen for which a separate authorised establishment exists;

(*b*) any separate body of persons subject to this Act employed on any service and not attached to a unit as aforesaid;

(*c*) any other separate body of persons composed wholly or partly of persons subject to this Act, and specified as a unit by the Central Government;

(*xxix*) "warrant officer" means a person appointed, gazetted or in pay as a warrant officer of the Air Force and includes an acting warrant officer, a master warrant officer, and a warrant officer of[1][any Air Force Reserve or the Auxiliary Air Force] who is for the time being subject to this Act;

(*xxx*) [2][all words (except the word "India")] and expressions used herein and defined in the Indian Penal Code (45 of 1860) and not hereinbefore defined shall be deemed to have the meanings respectively assigned to them by that Code.

1. Subs. by Act 62 of 1952, s. 35, for "Indian Air Force Volunteer Reserve" (w.e.f. 15-8-1955).
2. Subs by Act 13 of 1975, s. 2, for "all words" (w.e.f. 25-1-1975).

CHAPTER II

SPECIAL PROVISIONS FOR THE APPLICATION OF ACT IN CERTAIN CASES

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

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

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

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

6. Special provision as to rank in certain cases.—(*1*) The Central Government may, by notification, direct that any person or class of persons subject to this Act under clause (*d*) of section 2, shall be so subject as officers, warrant officers or non-commissioned officers, and may authorise any officer to give a like direction and to cancel such direction.

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

7. Commanding officer of person subject to air force law under clause (d) of section 2.—(*1*) Every person subject to this Act, under clause (*d*) of section 2, shall, for the purposes of this Act, be deemed to be under the commanding officer of the unit, or detachment, if any, to which he is attached, 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 for the time being be serving, or of any other prescribed officer, or, if no such officer is named or prescribed, under the command of the said officer commanding the force.

(*2*) An officer commanding a force shall not place a person subject to this Act under clause (*d*) of section 2 under the command of an officer of official rank 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.

8. Officer exercising powers in certain cases.—(*1*) Whenever persons subject to this Act are serving under an officer commanding any air force formation not in this section specifically named, and being, in the opinion of the Central Government, not less than a squadron, the said Government may prescribe the officer by whom the powers which, under this Act, may be exercised by air officers in charge of commands, and officers commanding groups, wings and squadrons shall, as regards such persons, be exercised.

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

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

CHAPTER III

COMMISSION, APPOINTMENT AND ENROLMENT

10. Commission and appointment.—The President may grant, to such person as he thinks fit a commission as an officer or appoint any person as a warrant officer of the Air Force.

11. Ineligibility of aliens for enrolment.—No person who is not a citizen of India shall, except with the consent of the Central Government signified in writing, be enrolled in the Air Force:

Provided that nothing contained in this section shall bar the enrolment of the subjects of Nepal in the Air Force.

12. Ineligibility of females for enrolment or employment.—No female shall be eligible for enrolment or employment in the Air Force, except in such corps, department, branch or other body forming part of, or attached to any portion of, the Air Force as the Central Government may, by notification, specify in this behalf:

Provided that nothing contained in this section shall affect the provisions of any law for the time being in force providing for the raising and maintenance of any service auxiliary to the Air Force or any branch thereof in which females are eligible for enrolment or employment.

13. Procedure before enrolling officer.—Upon the appearance before the prescribed enrolling officer of any person desirous of being enrolled, the enrolling officer shall read and explain to him, or cause to be read and explained to him, in his presence, the conditions of the service for which he is to be enrolled; and shall put to him the questions set forth in the prescribed form of enrolment, and shall, after having cautioned him that if he makes a false answer to any such question he will be liable to punishment under this Act, record or cause to be recorded his answer to each such question.

14. Mode of enrolment.—If, after complying with the provisions of section 13, the enrolling officer is satisfied that the person desirous of being enrolled fully understands the questions put to him and consents to the conditions of service, and if such officer perceives no impediment, he shall sign and shall also cause such person to sign the enrolment paper, and such person shall thereupon be deemed to be enrolled.

15. Validity of enrolment.—Every person who has for the space of three months been in receipt of pay as a person enrolled under this Act and been borne on the rolls of any unit shall be deemed to have been duly enrolled, and shall not be entitled to claim his discharge on the ground of any irregularity or illegality in his enrolment or on any other ground whatsoever; and if any person, in receipt of such pay and borne on the rolls as aforesaid, claims his discharge before the expiry of three months from his enrolment, no such irregularity or illegality or other ground shall, until he is discharged in pursuance of his claim, affect his position as an enrolled person under this Act or invalidate any proceedings, act or thing taken or done prior to his discharge.

16. Persons to be attested.—The following persons shall be attested, namely:—

(*a*) all persons enrolled as combatants;

(*b*) all persons selected to hold a non-commissioned or acting non-commissioned rank; and

(*c*) all other persons subject to this Act as may be prescribed by the Central Government.

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

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

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

CHAPTER IV

CONDITIONS OF SERVICE

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

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

20. Dismissal, removal or reduction by Chief of the Air Staff and other officers.—(*1*) [1][The Chief of the Air Staff] may dismiss or remove from the service any person subject to this Act other than an officer.

(*2*) [1][The Chief of the Air Staff] may reduce to a lower grade or rank or the ranks, any warrant officer or any non-commissioned officer.

(*3*) An officer having power not less than an air officer in charge of a command or equivalent commander or any prescribed officer may dismiss or remove from the service any person serving under his command other than an officer or a warrant officer.

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

(*5*) [1][The Chief of the Air Staff] or an officer specified in sub-section (*3*) may reduce to a lower class in the ranks any airman other than a warrant officer or non-commissioned officer.

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

1. Subs. by Act 19 of 1955, s. 2 and the Schedule, for "the Commander-in-Chief"(w.e.f. 7-5-1955)

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

21. Power to modify certain fundamental rights in their application to persons subject to this Act.—Subject to the provisions of any law for the time being in force relating to the Air Force or to any branch thereof, the Central Government may, by notification, make rules a restricting in such manner and to such extent as may be specified the right of any person subject to this Act—

(*a*) to be a member of, or to be associated in any way with, any trade union or labour union, or any class of trade or labour 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.

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

23. Certificate on termination of service.—Every warrant officer, or enrolled person who is dismissed, removed, discharged, retired or released from the service shall be furnished by his commanding officer with a certificate, in the language which is the mother tongue of such person and also in the English language setting forth—

(*a*) the authority terminating his service;

(*b*) the cause for such termination; and

(*c*) the full period of his service in the Air Force.

24. Discharge or dismissal when out of India.—(*1*) Any person enrolled under this Act who is entitled under the conditions of his enrolment to be discharged, or whose discharge is ordered by competent authority, and who, when he is so entitled or ordered to be discharged, is serving out of India, and requests to be sent to India, shall, before being discharged, be sent to India with all convenient speed.

(*2*) Any person enrolled under this Act who is dismissed from the service and who, when he is so dismissed, is serving out of India, shall be sent to India 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 transportation, imprisonment or detention, a portion of such sentence may be inflicted before he is sent to India.

(*4*) for the purposes of this section, the word, "discharge" shall include release, and the word "dismissal" shall include removal.

CHAPTER V

SERVICE PRIVILEGES

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

26. Remedy of aggrieved airmen.—(*1*) Any airman who deems himself wronged by any superior or other officer may, if not attached to a unit or detachment, complain to the officer under whose command or orders he is serving; and may, if attached to a unit or detachment, complain to the officer commanding the same.

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

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

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

(*5*) The Central Government may revise any decision by a [1][the Chief of the Air staff] under sub section (*2*), but subject thereto, the decision of [1][the Chief of the Air Staff] shall be final.

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

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

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

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

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

30. Immunity of persons attending courts-martial from arrest.—(*1*) No presiding officer 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 under civil or revenue process.

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1. Subs. by act 19 of 1955, s. 2 and the Schedule, for “the Commander-in-Chief” (w.e.f. 7-5-1955).

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

31. Privileges of reservists.—Every person belonging to [1][any Air Force Reserve or the Auxiliary Air Force] shall, when called out for, or engaged in, or returning from, training or service, be entitled to all the privileges accorded by sections 28 and 29 to a person subject to this Act.

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

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

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

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

(*5*) If in any case a question arises as to the proper air force authority qualified to grant such certificate as aforesaid. Such question shall be at once referred by the court to an officer having power not less than a group commander or equivalent commander whose decision shall be final.

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

CHAPTER VI

OFFENCES

34. Offences in relation to the enemy and punishable with death.—Any person subject to this Act who commits any of the following offences, that is to say,—

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

1. Subs. by the Act 62 of 1952, s. 35, for “the Air Force Reserve” (w.e.f. 15-8-1955).

(*b*) intentionally uses any means to compel or induce any person subject to military, naval or air force law to abstain from acting against the enemy, or to discourage such person from acting against the enemy; or

(*c*) in the presence of the enemy, shamefully casts away his arms, ammunition, tools or equipment or misbehaves in such manner as to show cowardice; or

(*d*) treacherously holds correspondence with, or communicates intelligence to, the enemy or any person in arms against the Union; or

(*e*) directly or indirectly assists the enemy with money, arms, ammunition, stores or supplies; or

(*f*) treacherously or through cowardice sends a flag of truce to the enemy; or

(*g*) in time of war or during any air force operation, intentionally occasions a false alarm in action, camp or quarters or spreads reports calculated to create alarm or despondency; or

(*h*) in time of action leaves his commanding officer or his post, guard, piquet, patrol or party without being regularly relieved or without leave; or

(*i*) having been made a prisoner of war, voluntarily serves with or aids the enemy; or

(*j*) knowingly harbours or protects an enemy not being a prisoner; or

(*k*) being a sentry in time of war or alarm, sleeps upon his post or is intoxicated; or

(*l*) knowingly does any act calculated to imperil the success of the military, naval or air forces of India or any forces co-operating therewith or any part of such forces; or

(*m*) treacherously or shamefully causes the capture or destruction by the enemy of any aircraft belonging to the forces; or

(*n*) treacherously uses any false air signal or alters or interferes with any air signal; or

(*o*) when ordered by his superior officer or otherwise under orders to carry out any air force operations, treacherously or shamefully fails to use his utmost exertions to carry such orders into effect,

shall, on conviction by court-martial, be liable to suffer death or such less punishment as is in this Act mentioned.

35. Offences in relation to the enemy and not punishable with death.—Any person subject to this Act who commits any of the following offences, that is to say,—

(*a*) is taken prisoner, by want of due precaution, or through disobedience of orders, or wilful neglect of duty, or having been taken prisoner, fails to rejoin his service when able to do so; or

(*b*) without due authority holds correspondence with or communicates intelligence to the enemy; or having come by the knowledge of any such correspondence or communication wilfully omits to discover it immediately to his commanding or other superior officer; or

(*c*) without due authority sends a flag of truce to the enemy; or

(*d*) negligently causes the capture or destruction by the enemy of any aircraft belonging to the Government; or

(*e*) when ordered by his superior officer, or otherwise under orders to carry out any warlike operations in the air, negligently or through other default fails to use his utmost exertions to carry such orders into effect;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

36. Offences punishable more severely on active service than at other times.—Any person subject to this Act who commits any of the following offences, that is to say,—

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

(b) breaks into any house or other place in search of plunder; or

(c) being a sentry sleeps upon his post, or is intoxicated; or

(d) without orders from his superior officer leaves his guard, piquet, patrol or post; or

(e) intentionally or through neglect occasions a false alarm in camp or quarters; or spreads reports calculated to create unnecessary alarm or despondency; or

(f) makes known the parole, watchword or countersign to any person not entitled to receive it; or knowingly gives a parole, watchword or countersign different from what he received; or

(g) without due authority alters or interferes with any air signal;

shall, on conviction by court-martial,

if he commits any such offence when on active service, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

if he commits any such offence when not on active service, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

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

(*a*) begins, incites, causes, or conspires, with any other persons to cause, any mutiny in the military, naval or air forces of India or any forces co-operating therewith; or

(*b*) joins in any such mutiny; or

(*c*) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or

(*d*) knowing or having reason to believe in the existence of any such mutiny, or of any intention to commit such mutiny or any such conspiracy, does not, without delay, give information thereof to his commanding or other superior officer; or

(*e*) endeavours to seduce any person in the military, naval or air forces of India from his duty or allegiance to the Union,

shall, on conviction by court-martial, be liable to suffer death or such less punishment as is in this Act mentioned.

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

if he commits the offence on active service or when under orders for active service, be liable to suffer death or such less punishment as is in this Act mentioned; and

if he commits the offence under any other circumstances, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

(*2*) Any person subject to this Act who knowingly harbours any such deserter shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

(*3*) Any person subject to this Act who, being cognizant of any desertion or attempt at desertion of a person subject to this Act, does not forthwith give notice to his own or some other superior officer, or take any steps in his power to cause such person to be apprehended, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

39. Absence without leave.—Any person subject to this Act who commits any of the following offences, that is to say,—

(*a*) absents himself without leave; or

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

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

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

(*e*) when on parade, or on the line of march, without sufficient cause or without leave from his superior officer, quits the parade or line of march; or

(*f*) when in camp or elsewhere, is found beyond any limits fixed, or in any place prohibited, by any general, local or other order, without a pass or written leave from his superior officer; or

(*g*) without leave from his superior officer or without due cause, absents himself from any school when duly ordered to attend there,

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.

40. Striking or threatening superior officer.—Any person subject to this Act who commits any of the following offences, that is to say,—

(*a*) uses criminal force to, or assaults his superior officer; or

(*b*) uses threatening language to such officer; or

(*c*) uses insubordinate language to such officer,

shall, or, conviction by court-martial,

if such officer is at the time in the execution of his office or, if the offence is committed on active service, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

in other cases, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned:

Provided that in the case of an offence specified in clause (*c*), the imprisonment shall not exceed five years.

41. Disobedience to superior officer.—(*1*) Any person subject to this Act who disobeys in such manner as to show a wilful defiance of authority any lawful command given personally by his superior officer in the execution of his office whether the same is given orally or in writing or by signal or otherwise shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

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

if he commits such offence when on active service, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned; and

if he commits such offence when not on active service, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

42. Insubordination and obstruction.—Any person subject to this Act who commits any of the following offences, that is to say,—

(*a*) being concerned in any quarrel, affray or disorder, refuses to obey any officer, though of inferior rank, who orders him into arrest, or uses criminal force to or assaults any such officer; or

(*b*) uses criminal force to, or assaults any person, whether subject to this Act or not, in whose custody he is lawfully placed, and whether he is or is not this superior officer; or

(*c*) resists an escort whose duty it is to apprehend him or to have him in charge; or

(*d*) breaks out of barracks, camp or quarters; or

(*e*) neglects to obey any general, local or other order; or

(*f*) impedes the provost-marshal or any person lawfully acting on his behalf or, when called upon, refuses to assist in the execution of his duty a provost-marshal or any person lawfully acting on his behalf; or

(*g*) uses criminal force to or assaults any person bringing provisions or supplies to the Forces,

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend, in the case of the offences specified in clauses(*d*) and (*e*) to two years, and in the case of the offences specified in the other clauses to ten years or such less punishment as is in this Act mentioned.

43. Fraudulent enrolment.—Any person subject to this Act who commits any of the following offences, that is to say,—

(*a*) without having obtained a regular discharge from the Air Force or otherwise fulfilled the conditions enabling him to enroll or enter, enrolls himself in, or enters the said force or any part of the military or the naval forces of India; or

(*b*) is concerned in the enrolment in any part of the Forces, of any person when he knows or has reason to believe such person to be so circumstanced that by enrolling he commits an offence against this Act,

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

44. False answers on enrolment.—Any person having become subject to this Act who is discovered to have made at the time of enrolment a wilfully false answer to any question set forth in the prescribed form of enrolment which has been put to him by the enrolling officer before whom he appears for the purpose of being enrolled, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

45. Unbecoming conduct.—Any officer or warrant officer who behaves in a manner unbecoming his position and the character expected of him shall, on conviction by court-martial, if he is an officer, be liable to be cashiered or to suffer such less punishment as is in this Act mentioned; and if he is a warrant officer, be liable to be dismissed or to suffer such less punishment as is in this Act mentioned.

46. Certain forms of disgraceful conduct.—Any person subject to this Act who commits any of the following offences, that is to say,—

(*a*) is guilty of any disgraceful conduct of a cruel, indecent or unnatural kind; or

(*b*) malingers, or feigns, or produces disease or infirmity in himself, or intentionally delays his cure or aggravates his disease or infirmity; or

(*c*) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself or that person,

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

47. Ill-treating a subordinate.—Any officer, warrant officer or non-commissioned officer, who uses criminal force to or otherwise ill-treats any person subject to this Act, being his subordinate in rank or position, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

48. Intoxication.—(*1*) Any person subject to this Act who is found in a state of intoxication, whether on duty or not, shall, on conviction by court-martial, if he is an officer, be liable to be cashiered or to suffer such less punishment as is in this Act mentioned; and if he is not an officer, be liable, subject to the provisions of sub-section (*2*), to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

(*2*) Where an offence of being intoxicated is committed by a person other than an officer when not on active service or not on duty, the period of imprisonment awarded shall not exceed six months.

49. Permitting escape of person in custody.—Any person subject to this Act who commits any of the following offences, that is to say,—

(*a*) when in command of a guard, piquet, patrol or post, releases without proper authority, whether wilfully or without reasonable excuse, any person committed to his charge or refuses to receive any prisoner or person so committed ; or

(*b*) wilfully or without reasonable excuse allows to escape any person who is committed to his charge or whom it is his duty to keep on guard;

shall, on conviction by court-martial, be liable, if he has acted, willfully, to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and if he has not acted willfully, to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

50. Irregularity in connection with arrest or confinement.—Any person subject to this Act who commits any of the following offences, that is to say,—

(*a*) unnecessarily detains a person in arrest or confinement without bringing him to trial, or fails to bring his case before the proper authority for investigation; or

(*b*) having committed a person to air force custody fails without reasonable cause to deliver at the time of such committal, or as soon as practicable, and in any case within forty-eight hours thereafter, to the officer or other person into whose custody the person arrested is committed, an account in writing signed by himself of the offence with which the person so committed is charged;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

51. Escape from custody.—Any person subject to this Act who, being in lawful custody, escapes or attempts to escape, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

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

(*a*) commits theft of any property belonging to the Government, or to any military, naval or air force mess, band or institution, or to any person subject to military, naval or air force law; or

(*b*) dishonestly misappropriates or converts to his own use any such property; or

(*c*) commits criminal breach of trust in respect of any such property; or

(*d*) dishonestly receives or retains any such property in respect of which any of the offences under clauses (*a*), (*b*) and (*c*) has been committed, knowing or having reason to believe the commission of such offence; or

(*e*) wilfully destroys or injures any property of the Government entrusted to him; or

(*f*) does any other thing with intent to defraud, or to cause wrongful gain to one person or wrongful loss to another person;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

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

(*a*) commits extortion; or

(*b*) without proper authority extracts from any person money, provisions or services;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

54. Making away with equipment.—Any person subject to this Act who commits any of the following offences, that is to say,—

(*a*) makes away with, or is concerned in making away with, any arms, ammunition, equipment, instruments, tools, clothing or any other thing being the property of the Government issued to him for his use or entrusted to him; or

(*b*) loses by neglect anything mentioned in clause (*a*); or

(*c*) sells, pawns, destroys or defaces any medal or decoration granted to him;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend, in the case of the offences specified in clause (*a*) to ten years, and in the case of the offences specified in the other clauses to five years, or such less punishment as is in this Act mentioned.

55. Injury to property.—Any person subject to this Act who commits any of the following offences, that is to say,—

(*a*) destroys or injures any property mentioned in clause (*a*) of section 54, or any property belonging to any military, naval or air force mess, band or institution, or to any person subject to military, naval or air force law, or serving with, or attached to the Air Force, or;

(*b*) commits any act which causes damage to, or destruction of, any property of the Government by fire; or

(*c*) kills, injures, makes away with, ill-treats or loses any animal entrusted to him;

shall, on conviction by court-martial, be liable, if he has acted willfully, to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and if he has acted without reasonable excuse to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

56. False accusation.—Any person subject to this Act who commits any of the following offences, that is to say,—

(*a*) makes a false accusation against any person subject to this Act, knowing or having reason to believe such accusation to be false; or

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

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

57. Falsifying official documents and false declaration.—Any person subject to this Act who commits any of the following offences, that is to say,—

(*a*) in any report, return, list, certificate, book or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy, knowingly makes, or is privy to the making of, any false or fraudulent statement; or

(*b*) in any document of the description mentioned in clause (*a*) knowingly makes, or is privy to the making of, any omission, with intent to defraud; or

(*c*) knowingly and with intent to injure any person, or knowingly and with intent to defraud, suppresses, defaces, alters or makes away with any document which it is his duty to preserve or produce; or

(*d*) where it is his official duty to make a declaration respecting any matter, knowingly makes a false declaration; or

(*e*) obtains for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

58. Signing in blank and failure to report.—Any person subject to this Act who commits any of the following offences, that is to say,—

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

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

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

59. Offences relating to courts-martial.—Any person subject to this Act who commits any of the following offences, that is to say,—

(*a*) being duly summoned or ordered to attend as a witness before a court- martial, wilfully or without reasonable excuse, makes default in attending; or

(*b*) refuses to take an oath or make an affirmation legally required by a court-martial to be taken or made; or

(*c*) refuses to produce or deliver any document in his power or control legally required by a court-martial to be produced or delivered by him; or

(*d*) refuses when a witness to answer any question which he is by law bound to answer; or

(*e*) is guilty of contempt of court-martial by using insulting or threatening language, or by causing any interruption or disturbance in the proceedings of such court;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.

60. False evidence.—Any person subject to this Act who, having been duly sworn or affirmed before any court-martial or other court competent under this Act to administer an oath or affirmation, makes any

statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

61. Unlawful detention of pay.—Any officer, warrant officer or non-commissioned officer who, having received the pay of a person subject to this Act unlawfully detains or refuses to pay the same when due, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

62. Offences in relation to aircraft and flying.—Any person subject to this Act who commits any of the following offences, that is to say,—

(*a*) wilfully or without reasonable excuse damages, destroys or loses any aircraft or aircraft material belonging to the Government; or

(*b*) is guilty of any act or neglect likely to cause such damage, destruction or loss; or

(*c*) without lawful authority disposes of any aircraft or aircraft material belonging to the Government; or

(*d*) is guilty of any act or neglect in flying, or in the use of any aircraft, or in relation to any aircraft or aircraft material, which causes or is likely to cause loss of life or bodily injury to any person; or

(*e*) during a state of war, wilfully and without proper occasion, or negligently, causes the sequestration, by or under the authority of a neutral State, or the destruction in a neutral State, of any aircraft belonging to the Government;

shall, on conviction by court-martial, be liable, if he has acted wilfully, to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned, and, in any other case, to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

63. Other offences relating to aircraft and flying.—Any person subject to this Act who commits any of the following offences, that is to say,—

(*a*) signs any certificate in relation to an aircraft material belonging to the Government without ensuring the accuracy thereof; or

(*b*) being the pilot of an aircraft belonging to the Government, flies it at a height less than such height as may be specified by [1][the Chief of the Air Staff], except while taking off or landing, or in such other circumstances as may be specified by [1][the Chief of the Air Staff); or

(*c*) being the pilot of an aircraft belonging to the Government, flies it so as to cause, or to be likely to cause, unnecessary annoyance to any person;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

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1. Subs. by Act 19 of 1955, s. 2 and the Schedule, for "the Commander-in-Chief", (w.e.f. 7-5-1955).

64. Disobedience of lawful command of captain of aircraft.—Any person subject to this Act who, whatever his rank, commits any of the following offences, that is to say,—

(*a*) while he is in an aircraft disobeys any lawful command given by the captain of the aircraft, whether such captain is subject to this Act or not, as respects all matters relating to the flying or handling of the aircraft, or affecting the safety thereof; or

(*b*) being the captain of a glider aircraft towed by another aircraft disobeys any lawful command given by the captain of the towing aircraft, whether the latter is subject to this Act or not, as respects all matters aforesaid;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

65. Violation of good order and air force discipline.—Any person subject to this Act who is guilty of any act or omission which though not specified in this Act, is prejudicial to good order and air force discipline shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

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

(*a*) being in command at any post or on the march, and receiving a complaint that any one under this command has beaten or otherwise maltreated or oppressed any person, or has disturbed any fair or market, or committed any riot or trespass, fails to have due reparation made to the injured person or to report the case to the proper authority; or

(*b*) by defiling any place of worship, or otherwise, intentionally insults the religion or wounds the religious feelings of any person; or

(*c*) attempts to commit suicide, and in such attempt does any act towards the commission of such offence; or

(*d*) being below the rank of warrant officer, when off duty, appears, without proper authority, in or about camp or cantonments, or in or about, or when going to or returning from, any town or bazar, carrying a rifle, sword or other offensive weapon; or

(*e*) directly or indirectly accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any gratification as a motive or reward for procuring the enrolment of any person, or leave of absence, promotion or any other advantage or indulgence for any person in the service; or

(*f*) commits any offence against the property or person of any inhabitant of, or resident in, the country in which he is serving;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

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

if the offence attempted to be committed is punishable with death, to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

if the offence attempted to be committed is punishable with imprisonment, to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

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

69. Abetment of offences punishable with death and not committed.—Any person subject to this Act who abets the commission of any of the offences punishable with death under sections 34, 37 and sub-section (*1*) of section 38 shall, on conviction by court-martial, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

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

71. Civil offences.—Subject to the provisions of section 72, any person subject to this Act who at any place in or beyond India commits any civil offence shall be deemed to be guilty of an offence against this Act and, if charged therewith under this section shall be liable to be tried by a court-martial and, on conviction, be punishable as follows, that is to say,—

(*a*) if the offence is one which would be punishable under any law in force in India with death or with transportation, he shall be liable to suffer any punishment, other than whipping, assigned for the offence, by the aforesaid law and such less punishment as is in this Act mentioned; 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 India, or imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

72. Civil offences not triable by court-martial.—A person subject to this Act who commits an offence of murder against a person not subject to military, naval or air force law, or of culpable homicide not amounting to murder against such a person or of rape in relation to such a person, shall not be deemed to be guilty of an offence against this Act and shall not be tried by a court-martial, unless he commits any of the said offences—

(*a*) while on active service, or

(*b*) at any place outside India, or

(*c*) at a frontier post specified by the said Government by notification in this behalf.

[1]* * * * *

CHAPTER VII

PUNISHMENTS

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

(*a*) death;

(*b*) transportation for life or for any period not less than seven years, in respect of civil offences;

(*c*) imprisonment, either rigorous or simple, for any period not exceeding fourteen years;

(*d*) detention for a term not exceeding two years in the case of airmen;

(*e*) cashiering, in the case of officers;

(*f*) dismissal from service;

(*g*) reduction to the ranks or to a lower rank or classification, in the case of warrant officers and non-commissioned officers:

Provided that a warrant officer reduced to the ranks shall not be required to serve in the ranks as an airman;

(*h*) forfeiture of seniority of rank, in the case of officers, warrant officers and non-commissioned officers; and forfeiture of all or any part of their service for the purpose of promotion, in the case of any of them whose promotion depends upon length of service;

(*i*) forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose;

(*j*) severe reprimand or reprimand, in the case of officers, warrant officers and non-commissioned officers;

(*k*) forfeiture of pay and allowances for a period not exceeding three months for an offence committed on active service;

(*l*) forfeiture, in the case of a person sentenced to cashiering or dismissal from the service of all arrears of pay and allowances and other public money due to him at the time of such cashiering or dismissal;

(*m*) stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

74. Alternative punishments awardable by court-martial.—Subject to the provisions of this Act, a court-martial may, on convicting a person subject to this Act of any of the offences specified in sections 34 to 70 inclusive, award either the particular punishment with which the offence is stated in the said

1. The *Explanation* omitted by Act 13 of 1975, s. 2 (w.e.f. 25-1-1975).

sections to be punishable, or, in lieu thereof, any one of the punishments lower in the scale set out in section 73, regard being had to the nature and degree of the offence.

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

76. Cashiering of officers.—An officer shall be sentenced to be cashiered before he is awarded any of the punishments specified in clauses (*a*) to (*c*) of section 73.

77. Field punishment.—(*1*) Where any person subject to this Act and under the rank of warrant officer commits any offence on active service, shall be lawful for a court-martial to award for that offence any such punishment as is prescribed as a field punishment.

(*2*) Field punishment shall be of the character of personal restraint or of hard labour but shall not be of a nature to cause injury to life or limb and shall not include flogging.

78. Position of field punishment in scale of punishments.—Field punishment shall for the purpose of commutation be deemed to stand next below dismissal in the scale of punishments specified in section 73.

79. Result of certain punishments in the case of a warrant officer or non-commissioned officer.—A warrant officer or a non-commissioned officer sentenced by a court-martial to transportation, imprisonment, detention, field punishment or dismissal from the service shall be deemed to be reduced to the ranks.

80. Retention in the ranks of a person convicted on active service.—When, on active service, any enrolled person has been sentenced by a court-martial to dismissal, or to transportation, imprisonment or detention, whether combined with dismissal or not, the prescribed officer may direct that such person may be retained to serve in the ranks and such service shall be reckoned as part of his term of transportation, imprisonment or detention, if any.

81. Punishments otherwise than by court-martial.—Punishments may, also be inflicted in respect of offences committed by persons, subject to this Act without the intervention of a court-martial and in the manner stated in sections 82 and 86.

82. Punishment of persons other than officers and warrant officers.—Subject to the provisions of section 84, a commanding officer or such other officer as is, with the consent of the Central Government, specified by [1][the Chief of the Air Staff], may, in the prescribed manner, proceed against a person subject to this Act otherwise than as an officer or warrant officer who is charged with an offence under this Act and award such person, to the extent prescribed, one or more of the following punishments, that is to say,—

(*a*) detention up to twenty-eight days;

(*b*) confinement to the camp up to fourteen days;

(*c*) extra guards or duties not exceeding three in number:

(*d*) deprivation of acting rank;

1. Subs by Act 19 of 1955, s. 2 and the Schedule, for "the Commander-in Chief" (w.e.f. 7-5-1955).

(*e*) forfeiture of badge pay;

(*f*) severe reprimand or reprimand;

(*g*) fine up to fourteen days' pay in any one month;

(*h*) penal deductions under clause

(*g*) of section 92;

(*i*) admonition;

(*j*) any prescribed field punishment up to twenty-eight days, in the case of a person on active service.

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

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

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

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

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

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

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

85. Punishments in addition to those specified In section 82.—[1][The Chief of the Air Staff] may, with the consent of the Central Government, specify such other punishments as may be awarded under section 82 in addition to or without any of the punishments specified in the said section, and the extent to which such other punishments may be awarded.

86. Punishment of officers and warrant officers.—An officer having power to convene a general court-martial or such other officer as is, with the consent of the Central Government, specified by [1][the Chief of the Air Staff] may, in the prescribed, manner proceed against an officer below the rank of squadron leader or warrant officer, who is charged with an offence under this Act, and award one or more of the following punishments, that is to say,—

1. Subs. by Act 19 of 1955, s. 2 and the Schedule, for “the Commander-in-Chief”(w.e.f. 7-5-1955).

(*a*) forfeiture of seniority, or in the case of any of them whose promotion depends upon length of service, forfeiture of service for the purpose of promotion for a period not exceeding twelve months, but subject to the right of the accused previous to the award to elect to be tried by a court-martial;

(*b*) severe reprimand or reprimand;

(*c*) stoppage of pay and allowance until any proved loss or damage occasioned by the offence of which he is convicted is made good but subject to the right of the accused specified in clause (*a*);

(*d*) forfeiture of pay and allowances for a period not exceeding three months for an offence under clause (*e*) of section 42 in so far as it consists of neglect to obey flying orders or under section 62 or section 63.

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

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

89. Superior air force authority.—For the purposes of sections 87 and 88, a "superior air force authority" means—

(*a*) in the case of punishments awarded by a commanding officer, any officer superior in command to such commanding officer;

(*b*) in the case of punishments awarded by any other authority, the Central Government, [1][the Chief of the Air Staff] or other officer specified by [1][the Chief of the Air Staff].

90. Collective fines.—(*1*) Whenever any weapon or part of a weapon forming part of the equipment of a unit or detachment is lost or stolen, the officer commanding such unit or detachment may, after obtaining the report of a Court of inquiry, impose a collective fine upon the warrant officers, non-commissioned officers and men of such unit, or upon so many of them as, in his judgment, should be held responsible for such loss, or theft.

(*2*) Such fine shall be assessed as a percentage on the pay of the individuals on whom it falls.

CHAPTER VIII

PENAL DEDUCTIONS

91. Deductions from pay and allowances of officers.—The following penal deductions may be made from the pay and allowances of an officer, that is to say,—

(*a*) all pay and allowances due to an officer for every day he absents himself without leave, unless a satisfactory explanation has been given to his commanding officer and has been approved by the Central Government;

(*b*) all pay and allowances for everyday while he is in custody or under suspension from duty on a charge for an offence of which he is afterwards convicted by a criminal court or a court-martial or by an officer exercising authority under section 86;

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1. Subs. by Act 19 of 1955, s. 2 and the Schedule, for "the Commander-in-Chief" (w.e.f. 7-5-1955).

(*c*) any sum required to make good the pay of any person subject to this Act which he has unlawfully retained or unlawfully refused to pay;

(*d*) any sum required to make good such compensation for any expenses, loss, damage or destruction occasioned by the commission of an offence as may be determined by the court-martial by whom he is convicted of such offence, or by an officer exercising authority under section 86;

(*e*) all pay and allowances ordered by a court-martial or an officer exercising authority under section 86 to be forfeited or stopped;

(*f*) any sum required to pay a fine awarded by a criminal court or a court-martial exercising jurisdiction under section 71;

(*g*) any sum required to make good any loss, damage or destruction of public or service property which, after due investigation, appears to the Central Government to have been occasioned by the wrongful act or negligence on the part of the officer;

(*h*) all pay and allowances forfeited by order of the Central Government if the officer is found by a court of inquiry constituted by [1][the Chief of the Air Staff] in this behalf, to have deserted to the enemy, or while in enemy hands, to have served with, or under the orders of, the enemy or in any manner to have aided the enemy, or to have allowed himself to be taken prisoner by the enemy through want of due precaution or through disobedience of orders or wilful neglect of duty, or having been taken prisoner by the enemy to have failed to rejoin his service when it was possible to do so;

(*i*) any sum required by order of the Central Government to be paid for the maintenance of his wife or his legitimate or illegitimate child or towards the costs of any relief given by the said Government to the said wife or child.

92. Deductions from pay and allowances of airmen.—Subject to the provisions of section 95, the following penal deductions may be made from the pay and allowances of an airman, that is to say,—

(*a*) all pay and allowances for every day of absence either on desertion or without leave, or as a prisoner of war, and for every day of transportation or imprisonment awarded by a criminal court, or a court-martial, or of detention, or field punishment awarded by a court-martial or an officer exercising authority under section 82;

(*b*) all pay and allowances for every day while he is in custody on a charge for an offence of which he is afterwards convicted by a criminal court or a court-martial, or on a charge of absence without leave for which he is afterwards awarded detention or field punishment by an officer exercising authority under section 82;

(*c*) all pay and allowances for every day on which he is in hospital on account of sickness certified by the medical officer attending on him to have been caused by an offence under this Act committed by him;

(*d*) for every day on which he is in hospital on account of sickness certified by the medical officer attending on him to have been caused by his own misconduct or imprudence, such sum as may be

1. Subs. by Act 19 of 1955, s. 2 and the Schedule, for "the Commander-in-Chief" (w.e.f. 7-5-1955).

specified by order of the Central Government or by such officer as may be specified by that Government;

(*e*) all pay and allowances ordered by a court-martial or by an officer exercising authority under section 82 or section 86 to be forfeited or stopped;

(*f*) all pay and allowances for every day between his being recovered from the enemy and his dismissal from the service in consequence of his conduct when being taken prisoner by, or while in the hands of, the enemy;

(*g*) any sum required to make good such compensation for any expenses, loss, damage or destruction caused by him to the Central Government or to any building or property as may be awarded by his commanding officer;

(*h*) any sum require to pay a fine awarded by a criminal court, a court-martial exercising jurisdiction under section 71, or an officer exercising authority under section 82 or section 90.

(*i*) any sum required by order of the Central Government or any prescribed officer to be paid for the maintenance of his wife or his legitimate or illegitimate child or towards the cost of any relief given by the said Government to the said wife or child.

93. Computation of time of absence of custody.—For the purposes of clauses (*a*) and (*b*) of section 92—

(*a*) no person shall be treated as absent or in custody for a day unless the absence or custody has lasted, whether wholly in one day, or partly in one day and partly in another, for six consecutive hours or upwards;

(*b*) any absence or custody for less than a day may be reckoned as absence or custody for a day if such absence or custody prevented the absence from fulfilling any air force duty which was thereby thrown upon some other person;

(*c*) absence or custody for twelve consecutive hours or upwards may be reckoned as absence or custody for the whole of each day during any portion of which the person was absent or in custody;

(*d*) a period of absence, or imprisonment, which commences before and ends after midnight may be reckoned as a day.

94. Pay and allowances during trial.—In the case of any person subject to this Act who is in custody or under suspension from duty on a charge for an offence, the prescribed officer may direct that the whole or any part of the pay and allowances of such person shall be withheld, pending the result of his trial in the charge against him, in order to give effect to the provisions of clause (*b*) of sections 91 and 92.

95. Limit of certain deductions.—The total deductions from the pay and allowances of a person made under clauses (*e*) and (*g*) to (*i*) of section 92 shall not, except where he is sentenced to dismissal, exceed in any one month one-half of his pay and allowances for that month.

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

97. Pay and allowances of prisoner of war during inquiry into his conduct.—Where the conduct of any person subject to this Act when being taken prisoner by, or while in the hands of the enemy, is to be inquired into under this Act or any other law, [1][the Chief of the Air Staff] or any officer authorised by him may order that the whole or any part of the pay and allowances of such person shall be withheld pending the result of such inquiry.

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

99. Provision for dependants of prisoner of war from remitted deductions.—In the case of all persons subject to this Act, being prisoners of war, whose pay and allowances have been forfeited under clause (*h*) of section 91 or clause (*a*) of section 92, but in respect of whom a remission has been made under section 98, it shall be lawful for proper provision to be made by the prescribed authorities out of such pay and allowances for any dependants of such persons, and any such remission shall in that case be deemed to apply only to the balance thereafter remaining of such pay and allowances.'

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

101. Period during which a person is deemed to be a prisoner of war.—For the purposes of sections 99 and 100, a person shall be deemed to continue to be a prisoner of war until the conclusion of any inquiry into has conduct such as is referred to in section 97, and if he is cashiered or dismissed from the service in consequence of such conduct, until the date of such cashiering or dismissal.

CHAPTER IX

ARREST AND PROCEEDINGS BEFORE TRIAL

102. Custody of offenders.—(*1*) Any person subject to this Act who is charged with an offence may be taken into air force custody.

(*2*) Any such person may be ordered into air force custody by any superior officer.

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

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

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

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1. Subs. by Act 19 of 1955, s. 2 and the Schedule, for "the Commander-in-Chief" (w.e.f. 7-5-1955).

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

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

104. Interval between committal and court-martial.—In every case where any such person as is mentioned in section 102 and as is not on active service remains in such custody for a longer period than eight days, without a court-martial for his trial being ordered to assemble, a special report giving reasons for the delay shall be made by his commanding officer in the manner prescribed; and similar report shall be forwarded every eight days until a court-martial is assembled or such person is released from custody.

105. Arrest by civil authorities.—Wherever any person subject to this Act, who is accused of any offence under this Act, is within the jurisdiction of any magistrate or police officer, such magistrate or police officer shall aid in the apprehension and delivery to air force custody of such person upon receipt of a written application to that effect signed by his commanding officer.

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

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

107. Inquiry into absence without leave.—(*1*) When any person subject to this Act has been absent from his duty without due authority for a period of thirty days, a Court of inquiry shall, as soon as practicable, be assembled, and such Court shall, on oath or affirmation administered. In the prescribed manner, inquire respecting the absence of the person, and the deficiency, if any, in the property of the Government entrusted to his care, or in any arms, ammunition, equipment, instruments, clothing or necessaries, and if satisfied of the fact of such absence without due authority, or other sufficient cause, the Court shall declare such absence and the period thereof, and the said deficiency, if any; and the commanding officer of the unit to which the person belongs shall enter in the court-martial book of the unit a record of declaration.

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

108. Provost-marshals.—(*1*) Provost-marshals may be appointed by [1][the Chief of the Air Staff], or by any prescribed officer.

1. Subs. by Act 19 of 1955, s. 2 and the Schedule, for "the Commander-in-Chief", (w.e.f. 7-5-1955)

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

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

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

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

CHAPTER X

COURTS-MARTIAL

109. Different kinds of courts-martial.—For purposes of this Act there shall be three kinds of courts-martial, that is to say,—

(*a*) general courts-martial.

(*b*) district courts-martial.

(*c*) summary general courts-martial.

110. Power to convene a general court-martial.—A general court-martial may be convened by the Central Government or [1][the Chief of the Air Staff] or by any officer empowered in this behalf by warrant of[1][the Chief of the Air Staff].

111. Power to convene a district court-martial.—A district court-martial may be convened by an officer having power to convene a general court-martial, or by any officer empowered in this behalf by warrant of any such officer.

112. Contents of warrants issued under sections 110 and 111.—A warrant issued under section 110 or section 111 may contain such restrictions, reservations or conditions as the officer issuing it may think fit.

113. Power to convene a summary general court-martial.—The following authorities shall have the power to convene a summary general court-martial, namely:—

(*a*) an officer empowered in this behalf by an order of the Central Government or of [1][the Chief of the Air Staff];

(*b*) on active service, the officer commanding the forces in the field, or any officer empowered by him in this behalf;

1. Subs. by Act 19 of 1955, s. 2 and the Schedule, for "the Commander-in-Chief", (w.e.f. 7-5-1955)

(*c*) an officer commanding any detached portion of the Air Force on active service when, in his opinion, it is not practicable with due regard to discipline and the exigencies of the service, that an offence should be tried by a general court-martial.

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

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

116. Composition of summary general court-martial.—A summary general court-martial shall consist of not less than three officers.

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

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

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

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

118. Powers of general and summary general courts-martial. —A general or summary general court- martial shall have power to try any person subject to this Act for any offence punishable there in and to pass any sentence authorised thereby.

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

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

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

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

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

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

122. Liability of offender who ceases to be subject to Act.—(*1*) Where an offence under this Act had been committed by any person while subject to this Act and he has ceased to be so subject, he may be taken into and kept in air force custody, and tried and punished for such offence as if he continued to be so subject.

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

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

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

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

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

123. Place of trial.—Any person subject to this Act who commits any offence against it may be tried and punished for such offence in any place whatever.

124. Choice between criminal court and court-martial.—When a criminal court and a court-martial have each jurisdiction in respect of an offence, it shall be in the discretion of[1][the Chief of the Air Staff], the officer commanding any group, wing or station in which the accused prisoner is serving of such other officer as may be prescribed to decide before which court the proceedings shall be instituted, and, if that officer decides that they should be instituted before a court-martial, to direct that the accused person shall be detained in Air force custody.

125. Power of criminal court to require delivery of offender.—(*1*) When a criminal court having jurisdiction is of opinion that proceedings shall be instituted before itself in respect of any alleged offence, it may, by written notice, require the officer referred to in section 124 at his option, either to deliver over the offender to the nearest Magistrate to be proceeded, against according to law, or to postpone proceedings pending a reference to the Central Government.

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

1. Subs. by Act 19 of 1955, s. 2 and the Schedule, for "the Commander-in-Chief", (w.e.f. 7-5-1955)

126. Successive trials by a criminal, court and a court-martial.—(*1*) A person convicted or acquitted by a court-martial may, with the previous sanction of the Central Government, be tried again by a criminal court for the same offence, or on the same facts.

(*2*) If a person sentenced by a court-martial under this Act or punished under section 82 or section 86 is afterwards tried and convicted by a criminal court for the same offence or on the same facts, that court shall in awarding punishment have regard to the punishment he may already have undergone for the said offence.

CHAPTER XI

PROCEDURE OF COURTS-MATRIAL

127. Presiding Officer.—At every general, district or summary general court-martial the senior member shall be the presiding officer.

128. Judge Advocate.—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 Chief Legal Adviser or if no such officer is available, an officer approved by the Chief Legal Adviser or any of his deputies.

129. Challenges.—(*1*) At all, trials by general, district or summary general courts-martial, as soon as the court is assembled, the names of the presiding officer and members shall be read over to the accused who shall thereupon be asked whether he objects to being tried by any officer sitting on the court.

(*2*) If the accused objects to any such officer, his objection and also the reply thereto of the officer objected to, shall be heard and recorded, and the remaining officers of the court shall, in the absence of the challenged officer decide on the objection.

(*3*) If the objection is allowed by one-half or more of the votes of the officers entitled to vote, the objection shall be allowed and the member objected to shall retire, and his vacancy may be filled in the prescribed manner by another officer, subject to the same right of the accused to object.

(*4*) When no challenge is made, or when challenge has been made and disallowed or the place of every officer successfully challenged has been filled by another officer to whom no objection is made or allowed, the court shall proceed with the trial.

130. Oaths of member, Judge advocate and witness.—(*1*) An oath or affirmation in the prescribed manner shall be administered to every member of every court-martial and to the Judge advocate before the commencement of the trial.

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

(*3*) The provisions of sub-section (*2*) shall not apply where the witness is a child under twelve years of age and the court-martial is of opinion that though the witness understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation.

131. Voting by members.—(*1*) Subject to the provisions of sub-sections (*2*) and (*3*), 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.

(*2*) No sentence of death shall be passed by a general court-martial without the concurrence of at least two-thirds of the members of the court.

(*3*) No sentence of death shall be passed by a summary general court-martial without the concurrence of all the members.

(*4*) In matters other than a challenge or the finding or sentence, the presiding officer shall have a casting vote.

132. General rule as to evidence.—The Indian Evidence Act, 1872 (1 of 1872), shall subject to the provisions of this Act, apply to all proceedings before a court-martial.

133. Judicial notice.—A court-martial may take judicial notice of any matter within the general air force knowledge of the members.

134. Summoning witnesses.—(*1*) The convening officer, the presiding officer of a court-martial 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 other thing.

(*2*) In the case of a witness amenable to air force authority, the summons shall be sent to his commanding officer and such officer shall serve it upon him accordingly.

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

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

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

(*2*) If any document in such custody is, in the opinion of any district magistrate, chief presidency magistrate, High Court or court of session, wanted for the purpose of any court-martial such magistrate or court may require the postal or telegraph authorities, as the case may be, to deliver such document to such person as such magistrate or court may direct.

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

136. Commissions for examination of witnesses.—(1) Whenever, in the course of a trial by 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 address the Chief Legal Adviser in order that a commission to take the evidence of such witness may be issued.

(*2*) The Chief Legal Adviser may then, if he thinks necessary, issue a commission to any district magistrate of the first class, within the local limits of whose jurisdiction such witness resides to take the evidence of such witness.

(*3*) The Magistrate or officer to whom the commission is issued, or, if he is the district magistrate, he or such magistrate of the first-class as he appoints, in this behalf, shall proceed to the place where the witness is or shall summon the witness before him and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant-cases under the Code of Criminal Procedure, 1898 (5 of 1898), or any corresponding law in force in [1][the State of Jammu and Kashmir],

(*4*) When the witness resides in a tribal area or in any place outside India the commission may be issued in the manner specified in Chapter XL of the Code of Criminal Procedure, 1898 (5 of 1898), or of any corresponding law in force in [1][the State of Jammu and Kashmir].

(*5*) In this and the next succeeding section, the expression "Chief Legal Adviser" includes a Deputy Chief Legal Adviser.

137. Examination of a witness on commission.—(*1*) The prosecutor and the accused person in any case in which a commission is issued under section 136 may respectively forward any interrogatories in writing which the court may think relevant to the issue, and the Magistrate or officer executing the commission shall examine the witness upon such interrogatories.

(*2*) The prosecutor and the accused person may appear before such magistrate or officer by counsel or except in the case of an accused person in custody, in person, and may examine, cross-examine and re-examine, as the case may be, the said witness.

(*3*) After a commission issued under section 136 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder to the Chief Legal Adviser.

(*4*) On receipt of a commission and deposition returned under sub-section (*3*) the Chief Legal Adviser shall forward the same to the court at whose instance the commission was issued or, if such court has been dissolved, to any other court convened for the trial of the accused person, and the commission, the return thereto and the deposition shall be open to inspection by the prosecutor and the accused person, and may, subject to all just exceptions, be read in evidence in the case by either the prosecutor or the accused, and shall form part of the proceedings of the court.

(*5*) In every case in which a commission is issued under section 136 the trial may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

138. Conviction of offence not charged.—(*1*) A person charged before a court-martial with desertion may be found guilty of attempting to desert or of being absent without leave.

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

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

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

1. Subs by A.O. (No. 3), 1956, for "a Part B State" (w.e.f. 7-5-1955).

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

(*6*) A person charged before a court-martial with an offence punishable under section 71 may be found guilty of any other offence of which he might have been found guilty if the provisions of the Code of Criminal Procedure, 1898 (5 of 1898), were applicable.

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

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

139. Presumption as to signature.—In any proceeding under this Act, any application, certificate, warrant, reply or other document purporting to be signed by an officer in the service of the Government 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.

140. Enrolment paper.—(*1*) Any enrolment paper purporting to be signed by an enrolling officer shall, in proceedings under this Act, be evidence of the person enrolled having given the answers to questions which he is therein represented as having given.

(*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.

141. Presumption as to certain documents.—(*1*) A letter, return or other document respecting the service of any person in, or the cashiering, dismissal or discharge of any person from, any portion of the Air Force, or respecting the circumstance of any person not having served in, or belonged to, any portion of the Forces, if purporting to be signed by or on behalf of the Central Government or [1][the Chief of the Air Staff], or by any prescribed officer, shall be evidence of the facts stated in such letter, return or other document.

(*2*) An Army, Navy or Air Force List or Gazette purporting to be published by authority shall be evidence of the status and rank of the officers or warrant officers therein mentioned, and of any appointment held by them and of the unit or branch of the services to which they belong.

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

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

1. Subs. by Act 19 of 1955, s. 2 and the Schedule, for the "Commander-in Chief" (w.e.f. 7-5-1955).

(*5*) Where any person subject to this Act is being tried on a charge of desertion or of absence without leave, and such person has surrendered himself into the custody of any officer or other person subject to this Act, or any portion of the Air Force, or has been apprehended by such officer or person, a certificate purporting to be signed by such officer, or by the commanding officer of that portion of the Air Force, or by the commanding officer of the unit, or detachment to which such person belongs, as the case may be, and stating the fact, date and place of such surrender or apprehension, and the manner in which he was dressed, shall be evidence of the matters so stated.

(*6*) Where any person subject to this Act is being tried on a charge of desertion or of absence without leave, and such person has surrendered himself into the custody of or has been apprehended by, a police officer nor below the rank of an officer-in-charge of a police station, a certificate purporting to be signed by such police officer and stating the fact, date and place if such surrender or apprehension and the manner in which he was dressed 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 Government upon any matter or thing duly submitted to him for examination or analysis and report may be used as evidence in any proceeding under this Act.

142. Reference by accused to Government officer.—(*1*) If at any trial for desertion or absence without leave, overstaying leave or not rejoining when warned for service, the person tried 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 Government, or if it appears that any such officer is likely to prove or disprove the said statement in the defence, the court shall address such officer and adjourn the proceedings until his reply is received.

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

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

143. Evidence of previous convictions and general character.—(*1*) When any person subject to this Act has been convicted by a court-martial of any offence, such court-martial may inquire into and receive and record evidence of any previous convictions of such person, either by a court-martial or by a criminal court or any previous award of punishment under section 82 or section 86 and may further enquire 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, court-martial books or other official 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.

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

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

(*3*) The confirming officer to whom the 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*) A 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 Central Government.

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

145. Subsequent fitness of lunatic accused for trial.—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 144, the officer commanding a unit or detachment within the area of whose command the accused is in custody or is detained, or any other officer prescribed in this behalf, may. —

(*a*) If such person is in custody under sub-section (*4*) of section 144, on the report of a 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 144, 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.

146. Transmission to Central Government of orders under section 145.—A copy of every order made by an officer under section 145 for the trial of the accused shall forthwith be sent to the Central Government.

147. Release of lunatic accused.—Where any person is in custody under sub-section (*4*) of section 144 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 145 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 Central 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.

148. Delivery of lunatic accused to relatives.—Where any relative or friend of any person who is in custody under sub-section (*4*) of section 144 or under detention under sub-section (*5*) of that section desires that he should be delivered to his care and custody, the Central Government may upon application by such relative or friend and on his giving security to the satisfaction of that Government that the person delivered shall be properly taken care of and prevented from doing injury to himself or any other person, and be produced for the inspection of such officer, and at such times and places, as the Central Government may direct, order such person to be delivered to such relative or friend.

149. Order for custody and disposal of property pending trial.—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.

150. Order for disposal of property regarding which offence is committed.—(*1*) After the conclusion of a trial before any 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.

(*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 India or not, be sent to a magistrate within whose jurisdiction such property for the time being is situated, and such Magistrate shall thereupon cause the order to be carried into effect as if it were an order passed by him under the provisions of the Code of Criminal Procedure, 1898 (5 of 1898), or any corresponding law in force in [1][the State of Jammu and Kashmir].

(*3*) 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.

151. Powers of court-martial when certain offences are committed by persons not subject to this Act.—Any trial by a court-martial under the provisions of this Act shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860), and the court-martial shall be deemed to be a Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898 (5 of 1898).

CHAPTER XII

CONFIRMATION AND REVISION

152. Finding and sentence not valid, unless confirmed.—No finding or sentence of a general, district or summary general court-martial shall be valid except so far as it may be confirmed as provided by this Act.

153. Power to confirm finding and sentence of general court-martial.—The findings and sentences of general courts-martial may be confirmed by the Central Government, or by any officer empowered in this behalf by warrant of the Central Government.

1.Subs. by A.O.(No.3), 1956, for "a Part B State" (w.e.f. 7-5-1955).

154. Power to confirm finding and sentence of district court-martial.—The findings and sentences of district court-martial may be confirmed by any officer having power to convene a general court-martial or by any officer empowered in this behalf by warrant of such officer.

155. Limitation of powers of confirming authority.—A warrant issued under section 153 or section 154 may contain such restrictions, reservations or conditions as the authority issuing it may think fit.

156. Power to confirm finding and sentence of summary general courts-martial.—The findings and sentences of summary general courts-martial may be confirmed by the convening officer or if he so directs, by an authority superior to him.

157. Power of confirming authority to mitigate, remit or commute sentences.—(*1*) Subject to such restrictions, reservations or conditions as may be contained in any warrant issued under section 153 or section 154 and to the provisions of sub-sections (*2*) and (*3*), a confirming authority may, when confirming the sentence of a court-martial, mitigate or remit the punishment thereby awarded, or commute that punishment for any punishment or punishments lower in the scale laid down in section 73.

(*2*) A sentence of transportation shall not be commuted for a sentence of imprisonment or detention for a term exceeding the term of transportation awarded by the court.

(*3*) 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.

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

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

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

(*3*) In case of such unavoidable absence the cause thereof shall be duly certified in the proceedings, and the court shall proceed with the revision, provided that, if a general court-martial, it still consists of five officers, or, if a summary general or district court- martial, of three officers.

160. Alteration of finding or sentence in certain cases.—(*1*) Where a finding of guilty by a court-martial, which has been confirmed, is found for any reason to be invalid or cannot be supported by the evidence, the authority which would have had power under section 177 to commute the punishment

awarded by the sentence, if the finding had been valid, may substitute a new finding and pass a sentence for the offence specified or involved in such finding:

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

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

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

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

161. Remedy against order, finding or sentence of court-martial.—(*1*) Any person subject to this Act who considers himself aggrieved by any order passed by a court-martial may present a petition to the officer or authority empowered to confirm any finding or sentence of such court-martial, and the confirming authority may take such steps as may be considered necessary to satisfy itself as to the correctness, legality or propriety of the order passed or as to the regularity of any proceeding to which the order relates.

(*2*) Any person subject to this Act who considers himself aggrieved by a finding or sentence of a court-martial which has been confirmed, may present a petition to the Central Government, [1][the Chief of the Air Staff] or any prescribed officer superior in command to the one who confirmed such finding or sentence, and the Central Government, [1][the Chief of the Air Staff] or other officer, as the case may be, may pass such order thereon as it or he thinks fit.

162. Annulment of proceedings. —The Central Government, [1][the Chief of the Air Staff] or any prescribed officer may annul the proceedings of any court-martial on the ground that they are illegal or unjust.

1. Subs. by Act 19 of 1955, s. 2 and the Schedule, for “the Commander-in-Chief” (w.e.f. 7-5-1955).

CHAPTER XIII

EXECUTION OF SENTENCES

163. Form of sentence of death.—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.

164. Commencement of sentence of transportation or imprisonment.—Whenever any person is sentenced by a court-martial under this Act to transportation, imprisonment or detention the term of his sentence shall, whether it has been revised or not, be reckoned to commence on the day on which the original proceedings were signed by the presiding officer.

165. Execution of sentence of transportation.—Whenever any sentence of transportation is passed under this Act or whenever any sentence of death be commuted to transportation, 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 civil prison in which such person is to be confined and shall arrange for his dispatch to such prison with the warrant.

166. Execution of sentence of imprisonment.—(*1*) Whenever any sentence of imprisonment is passed under this Act or whenever any sentence of death or transportation is commuted to imprisonment, the confirming officer or such other officer as may be prescribed, shall, save as otherwise provided in sub-sections (*3*) and (*4*), direct either that the sentence shall be carried out by confinement in a military or air force prison or that it shall be carried out by confinement in a civil prison.

(*2*) When a direction has been made under sub-section (*1*) 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 such person is to be confined and shall arrange for his dispatch to such prison with the warrant.

(*3*) In the case of a sentence of imprisonment for a period not exceeding three months, the officers referred to in sub-section (*1*) may direct that the sentence shall be carried out by confinement in air force custody instead of in a civil or military or air force prison.

(*4*) On active service, a sentence of imprisonment may be carried out by confinement in such place as the officer commanding the forces in the field may from time to time, appoint.

167. Temporary custody of offender.—Where a sentence of transportation or imprisonment is directed to be undergone in a civil prison, the offender may be kept in military or air force custody or in any other fit place, till such time as it is possible to send him to a civil prison.

168. Execution of sentence of imprisonment in special cases.— Whenever, in the opinion of an air or other officer commanding a group, any sentence or portion of a sentence of imprisonment cannot for special reasons, conveniently be carried out in a military or air force prison or in air force custody in accordance with the provisions of section 166 such officer may direct that such sentence or portion of sentence shall be carried out by confinement in any civil prison or other fit place.

169. Conveyance of prisoner from place to place.—A person under sentence of transportation or imprisonment may, during his conveyance from place to place, or when on board a ship, aircraft, or otherwise, be subjected to such restraint as is necessary for his safe conduct and removal.

170. Execution of sentence of detention.—Whenever any sentence of detention is passed under this Act, or whenever any sentence of death, transportation or imprisonment is commuted to detention, the sentence shall be carried out by detaining the offender in any military or air force detention barracks, detention cells or other military or air force custody; and when the sentence is to be carried out by detention in any military or air force detention barracks, the commanding officer of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer-in-charge of the detention barracks in which the person under sentence is to be detained and shall forward the person under sentence to such detention barracks with the warrant.

171. Communication of certain orders to prison officers.—Whenever an order if duly made under this Act setting aside or varying any sentence, order or warrant under which any person is confined in a civil, military or air force prison or detained in a military or air force detention barracks, a warrant in accordance with such order shall be forwarded by the officer making the order, or his staff officer, or such other person as may be prescribed, to the officer in charge of the prison or detention barracks in which such person is confined.

172. Execution of sentence of fine.—When a sentence of fine is imposed by a court-martial under section 71 whether the trial was held within India or not, a copy of such sentence, signed and certified by the confirming officer may be sent to any magistrate in India, and such magistrate shall thereupon cause the fine to be recovered in accordance with the provisions of the Code of Criminal Procedure, 1898 (5 of 1898), or any corresponding law in force in [1][the State of Jammu and Kashmir], for the levy of fines as if were a sentence of fine imposed by such Magistrate.

173. Establishment and regulation of air force prisons.—The Central Government may set apart any building or part of a building, or any place under its control, as an air force prison or detention barracks for the confinement of persons sentenced to imprisonment or detention under this Act.

174. Informality or error in the order or warrants.—Whenever a person is sentenced to transportation, imprisonment or detention under this Act, and is undergoing the sentence in any place or manner in which he might be confined under a lawful order or warrant in pursuance of this Act, the confinement of such person shall not be deemed to be illegal only by reason of any informality or error in or as respects the order, warrant or other document, or the authority by which, or in pursuance whereof such person was brought into or is confined in any such place, and any such order, warrant or document may be amended accordingly.

1. Subs by the A.O.(No. 3), 1956, for "a Part B State" (w.e.f. 7-5-1955)

175. Power to make rules in respect of prisons and prisoners.—The Central Government may make rules providing.—(*a*) for the government, management and regulation of air force prisons and detention barracks;

(*b*) for the appointment, removal and power of inspectors, visitors, governors and officers thereof;

(*c*) for the labour of prisoners undergoing confinement therein, and for enabling such prisoners or, persons to earn by special industry and good conduct; a remission of a portion of their sentence;

(*d*) for the safe custody of such prisoners or persons and the maintenance of discipline among them and the punishment, by personal correction, restraint or otherwise, of offences committed by them;

(*e*) for the application to air force prisons or detention barracks of any of the provisions of the Prisons Act, 1894 (9 of 1894), relating to the duties of officers of prisons and the punishment of persons not being prisoners;

(*f*) for the admission into any prison, at proper times and subject, to proper restrictions, of person's 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.

176. Restriction of rule-making power in respect to corporal punishment.—Rules made under section 175 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 India.

CHAPTER XIV

PARDONS REMISSIONS AND SUSPENSIONS

177. Pardon and remission.—When any person subject to this Act has been convicted by a court-martial of any offence, the Central Government, [1][the Chief of the Air Staff], an air or other officer commanding a group or the prescribed officer, may—

(*a*) either with or without conditions which the person sentenced accepts, pardon the person or remit the whole or any part of the punishment awarded; or

(*b*) mitigate the punishment awarded; or

(*c*) commute such punishment for any less punishment or punishments mentioned in this Act:

Provided that a sentence of transportation shall not be commuted for a sentence of imprisonment for a term exceeding the term of transportation awarded by the court; and a sentence of imprisonment shall not be commuted for a sentence of detention for a term exceeding the term of imprisonment so awarded;

(*d*) either with or without conditions which the person sentenced accepts, release the person on parole.

1. Subs. by Act 19 of 1955, s. 2 and the Schedule, for “the Commander-in-Chief” (w.e.f. 7-5-1955).

178. Cancellation of conditional pardon, release on parole or remission.—(*1*) If any condition on which a person has been pardoned or released on parole or a punishment has been remitted is, in the opinion of the authority which granted the pardon, release or remission, not fulfilled, such authority may cancel the pardon, release or remission, and thereupon the sentence of, the court shall be carried into effect as if such pardon, release or remission had not been granted.

(*2*) A person whose sentence of transportation, imprisonment or detention is carried into effect under the provisions of sub-section (*1*) shall undergo only the unexpired portion of his sentence.

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

180. Suspension of sentence of transportation, imprisonment or detention.—(*1*) Where a person subject to this Act is sentenced by a court-martial to transportation, imprisonment or detention, the Central Government, [1][the Chief of the Air Staff] or any officer empowered to convene a general or a summary general court-martial may suspend the sentence whether or not the offender has already been committed to prison or to air force custody.

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

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

182. Release on suspension.—Where a sentence is suspended under section 180, the offender shall forthwith be released from custody.

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

184. Order after suspension.—The authority or officer specified in section 180, at any time while 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.

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

1. Subs. by Act 19 of 1955, s. 2 and the Schedule "the Commander-in-Chief" (w.e.f. 7-5-1955)

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

186. Fresh sentence after suspension.—Where an offender, while a sentence on him is suspended under this Act, is sentenced for any other offence, them—

(*a*) if the further sentence is also suspended under this Act, the two sentences shall run concurrently;

(*b*) if the further sentence is for a period of three months or more and is not suspended under this Act, the offender shall also be committed to prison or air force custody for the unexpired portion of the previous sentence, but both sentences shall run concurrently; and

(*c*) if the further sentence is for a period of less than three months and is not suspended under this Act, the offender shall be so committed on that sentence only, and the previous sentence shall, subject to any order which may be passed under section 184 or section 185, continue to be suspended.

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

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

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

CHAPTER XV

RULES

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

(*2*) Without prejudice to the generality of the power conferred by sub-section (*1*), the rules made thereunder may provide for—

(*a*) the removal, retirement, release or discharge from the service of persons subject to this Act;

(*b*) the amount and incidence of fines to be imposed under section 90;

(*c*) the specification of the punishment which may be awarded as field punishments under sections 77 and 82;

(*d*) the assembly and procedure of courts of inquiry, the recording of summaries of evidence and the administration of oaths or affirmations by such courts;

(*e*) the convening and constituting of court-martial and the appointment of prosecutors at trials by court-martial;

(*f*) the adjournment, dissolution and sitting of court-martial;

(*g*) the procedure to be observed in trials by court-martial and the appearance of legal practitioners thereat;

(*h*) the confirmation, revision and annulment of, and petitions against the findings and sentences of court-martial:

(*i*) the carrying into effect of sentences of court-martial;

(*j*) the forms of orders to be made under the provisions of this Act relating to court-martial, transportation, imprisonment and detention;

(*k*) the constitution of authorities, to decide for what persons, to what amounts and in what manner, provision should be made for dependents under section 100 and the due carrying out of such decisions;

(*l*) the relative rank of the officers, junior commissioned officers, warrant officers, petty officers and non-commissioned officers of the regular Army, Navy and Air Force when acting together;

(*m*) any other matter directed by this Act to be prescribed.

190. Power to make regulations.—The Central Government may make regulations for all or any of the purposes of this Act other than those specified in section 189.

191. Publication of rules and regulations in Gazette.—All rules and regulations made under this Act shall be published in the Official Gazette and, on such publication, shall have effect as if enacted in this Act.

[1]**[191A. Laying of rules and regulations before Parliament**.—Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.]

192. [*Repeal.*][*Rep. by the Repealing and Amending Act*, 1957 (36 *of* 1957), *s.* 2 *and the First Schedule* (*w.e.f.*17-9-1957).

CHAPTER XVI

TRANSITORY PROVISIONS

193. Definition of "British officer.—(*1*) In this Chapter "British officer" means a person of non-Indian domicile holding a commission in His Majesty's Air Force and serving in the Air Force.

(*2*) The expression "superior officer" in this Act shall be deemed to include a British officer.

194. Powers of British officer.—A British officer shall have all the powers conferred by this Act on an officer of corresponding rank or holding a corresponding appointment.

1. Ins by Act 4 of 1986, s. 2 and the Schedule (w.e.f. 15-5-1986).