

MANUAL OF BANGLADESH NAVAL LAW

PART I

CHAPTER I

INTRODUCTORY

1. Object of the Manual.-The main object of this Manual is to provide officers in general with it readily available means of acquiring such legal knowledge as they need for performance of their duties. It is also intended to be of use to officers and other persons with legal qualifications who are called upon to assist in the administration of naval law.

It is desirable that every officer should have a working knowledge of this Manual, for during his career he may often have to undertake duties involving a knowledge of it. He may have to act as a Commanding Officer of a ship or establishment, an Executive Officer, a First Lieutenant, an Officer of the Watch, an officer of the Day or an Officer-in-Charge of a Training School; he may be detailed to prepare a summary of evidence or conduct a board of inquiry; he may be ordered to prosecute or defend at a court-martial or he may be appointed as president or member. For any of these duties an officer should know his way about the Manual, and if he can acquire an idea of its lay-out he should have little difficulty in referring speedily to any particular subject as the occasion requires.

2. Legal Position of officers and sailors. - By the law of Bangladesh a man who joins the Navy, whether as an officer or as a sailor, does not cease to be a citizen. With a few exceptions, his position under the ordinary law of the land remains unaffected. If he commits an offence against the criminal law, he can be tried and punished for it as if he were a civilian. He can also be tried by court-martial for committing a civil offence under N.O. section 78; Similarly, in respect of civil rights, duties and liabilities; the ordinary law in general applies to him, although a few privileges are granted to him, and a few restrictions imposed upon him, for the purpose of enabling him the better to fulfill his naval engagement.

3. Nature of Naval Law. - Whilst, however, remaining subject (with the above qualifications) to the ordinary law of Bangladesh, he has become subject also to an entirely distinct code known as "naval law", which governs the member of the Navy and regulates their

conduct at all times and in all places, in peace and in war. Naval law is contained in the Navy Ordinance, 1961 and certain other enactments applied to the Navy, supplemented by the Navy Rules, by the Navy Regulations and by the Navy Instructions and Fleet Orders. The object of this naval legal code is two fold :-

(a) to provide for the maintenance of discipline among the seamen and other persons forming part of or following, the forces (acts and omissions which in civil life may be mere breaches of contract, *e.g.*, desertion or disobedience of orders, must, if committed by seamen, even in time of peace, be made punishable offences, whilst in war every act or omission which is likely to impair a man's fighting efficiency must be prevented) :
and

(b) to provide for administrative matters, such as terms of service, retirement, enrolment and discharge.

The term "naval law" may, therefore, be used properly as including provisions of both the above classes, but in practice it is more often used with reference to the disciplinary provisions alone.

4. Arrangement of the Manual. - The Manual is divided into the following five Parts :-

Part I of Manual consists of nine chapters. After the present chapter which contains the scheme of the Manual, Chapter 2 gives a general outline of the Navy Ordinance, 1961.

Chapter 3 deals with arrest, delays, investigation of offences, summaries of evidence, charge-sheets and charges and summary punishments of officers and sailors.

Chapter 4 explains the difference between general, district and summary general court-martial. It also deals with confirmation and revision and the remedies open to a person against the orders, findings and sentences passed by a court-martial.

Chapter 5 summarises the law of evidence applicable to court-martial trials.

Chapter 6 deals with offences which are punishable by the ordinary law of the country (called "civil" offences as opposed to "service" offences) but which are also made offences against naval law by section 78 of the Ordinance.

Chapter 7 provides a Memoranda for the guidance of officers concerned with court-martial.

Chapter 8 summarises various service privileges conferred by law upon persons subject to the Ordinance.

Chapter 9 deals with the duties in aid of civil power and "martial law".

Part II gives the text of the Navy Ordinance 1961 (referred to as "the ordinance") and *Part III*-the Navy Rules, 1961 (referred to as "the Rules"). For the purpose of detailed explanation, notes have been added to various sections of the Ordinance, and the rules, Sections 29 to 79 deal with offences which are made punishable under the Ordinance, Specimen charges under each of these sections have been included in the notes to facilitate the work of those who may be called upon to draft charges under the Ordinance. The appendices at the end give various Forms and Warrants used in connection with court-martial and other disciplinary matters.

Part IV of the Manual gives the text of various statutes which have frequently to be referred to, but which are not easily available to naval officers. It has also been considered desirable to include in this part the provisions of the (British) Visiting Forces Act, 1952 and certain extracts from the Visiting Forces (application of Law) Order, 1954, as acquaintance with some of the exemptions, immunities and privileges granted by the Government to the members of a visiting force" is likely to be of assistance to the members of the Bangladesh armed forces visiting the United Kingdom. [The Armed Forces (Commissioned Officers) Oaths Warrant, 1983 has been included in this part of the Manual.]

Part V of the Manual contains various notifications issued by the Government as required by the provisions of the Ordinance as well as orders of the CNS.

CHAPTER II

OUTLINE OF THE NAVY ORDINANCE, 1961

(i) Object and reasons of the Ordinance

1. After creation of, Pakistan on the 14th August, 1947, the then Pakistan Navy was governed up-to the 28th February, 1962 by the Pakistan Navy (Discipline) Act, 1934 (XXXIV of 1934), which with certain exception of certain modifications and adaption was a vertiation copy of its British Prototype of 1866 and was found to be unsuited to the requirements of the then Pakistan Navy, it was, therefore, considered necessary and convenient to draw up an entirely new and comprehensive enactment for the government and discipline of the then Pakistan Navy.

2, The Pakistan Navy ordinance, 1961 was accordingly made and promulgated as Ordinance No.XXXV of 1961 in the then Gazette of Pakistan (Extra Ordinary), dated 8th September 1961. The Pakistan Navy Rules, 1961 were- issued on the 28th December, 1961. Both the Ordinance and Rules were made applicable to the Navy with effect from the 1st day of March, 1962. After emergence of Bangladesh as Sovereign and independent state in the territory previously comprised of East Pakistan, these were applied to the Bangladesh Navy as 'existing Law' and have been 'adapted to Bangladesh with suitable textual amendments here and there as required. The salient feature of the present code of Naval law are as follows :

- (i) it generally follows the pattern of the Army Act, 1952 and the Air Force Act, 1953 and also takes into consideration the latest enactments governing the other Navies;
- (ii) the anomaly of naval trials being covered by the English

Law of Evidence has been removed;

- (iii) detailed and clear provisions, concerning court-martial I have been given. A separate chapter, concerning pardon and remissions is included. Summary disposal of contempt of court-martial is provided *for*;
- (iv) separate chapters on miscellaneous matters, like Service conditions, privileges, and disposal of property, have been included to make the Ordinance comprehensive;
- (v) list of definitions of the terms, used in the Ordinance, has been expanded in order to eliminate doubts; and sections and chapters have been re-arranged in a logical manner.

(ii) Application of the Ordinance

3. *Chapter I* describes the persons who are subject to the Ordinance and provides definitions of terms used in the Ordinance.

4. *Section 2* gives various categories of persons who are subject to the Ordinance. These persons remain so subject "wherever they may be". and are liable to serve in the navy until their services have been "duly terminated by the competent authority in accordance with this Ordinance and the rules and regulations made there-under", (section 16).

Sub-section 2 of this section describes persons who are "not otherwise subject to this Ordinance", but who become so subject "to such extent and under such conditions as the Government may direct". These include persons subject to military or air force Jaw when seconded for service with the Navy, or when embarked *for* passage on board any of the naval ships. Clauses (b), (c) and (d) give the circumstances in which civilians become subject to the Ordinance and thereby liable to be tried and punished by naval tribunals.

5. *Section 3* makes naval personnel subject to the military or *air* force law when seconded for service with Army or the Air Force, as the case may be, "to such extent and under such conditions as the Government may direct".

(iii) Definitions

6. *Section 4* gives the definitions of various terms employed in the Ordinance. All these definitions must be understood as being subject to the reservations in the opening clause of that section, *i.e.*, these definitions will apply "unless the context otherwise requires."

An instance of this may be found in section 121 of the Ordinance. "Officer" in this section cannot be used in the restricted sense indicated in definition (xxvii), as such a meaning would be repugnant to the context, and must, therefore, be taken in its wider meaning of "officials".

7. It will be noticed that in some cases terms are defined in section 4 as "meaning" such and such, and in others as "including"

some other persons or things. In the former case the term defined is used as a synonym for a longer or more cumbersome expression, but the legal effect of the enactment would not be altered if the longer expressions were used throughout instead of the shorter. The effect of those definitions, or parts of definitions, which declare that a term "includes" something else is somewhat different. Here the result is that wherever the law, as it stands, applies to the class of persons or things indicated by the first term, it will also apply to the class or classes who are "included", though the natural meaning of the English language might not indicate that it did apply to the latter. For example, *see* definitions of the terms "enemy" and "naval reward" in clauses (x) and (xxi) respectively.

¹ *See* Notification in part V or the Manual.

8. Attention is invited to clause (xxxviii) of section 4, which states that all words and expressions as are used in the Ordinance and have not been defined in section 4 but are defined in the Penal Code, shall be deemed to have the meanings respectively assigned to them by that Code. For definition of such words and expressions *see* Chapter II of the Penal Code.

9. *Chapter II* of the Ordinance makes special provisions for the application of the Navy Ordinance in certain cases.

10. *Section 5* enables the provisions of the Ordinance to be applied to any other force that the Government may raise and maintain in Bangladesh, but which does not form part of the regular navy. A force to which the Ordinance is thus applied does not thereby become part of the regular navy, nor subject to its tribunals. It merely adopts, as its code, a similar code to the one which governs the Bangladesh Navy.

11. *Section 6* of the Ordinance enables the Government to direct by notification that persons subject to the Ordinance under clause (c) of sub-section (2) of section 2 shall be so subject as officers, Master Chief Petty Officers; Senior Chief Petty Officers; Chief Petty Officers or Petty Officers. The effect of such a notification is that those who rank as Officers, Master Chief Petty Officers, Senior Chief Petty Officers, Chief Petty Officers and Petty Officers must, in their relation to naval law, be treated in the same way as those who hold corresponding ranks in the Bangladesh Navy, for instance, a civil official who ranks as an officer of the status of a Lieut. Commander or above can be tried by no naval tribunal inferior to a general or a summary general court-martial. The status conferred is a personal one and does not give any command over others.

12. Sub-section (3) describes the officer, who may exercise the power-of "commanding officer" in respect of persons who become subject to the Ordinance under clause (c) of sub-section (2) of section 2.

13. *Section 7* provides for the discipline and administration of naval personnel, who might be serving, whether within or without Bangladesh, under an officer who is not subject to this Ordinance. The section empowers the Government to prescribe the officer who, in respect of such personnel, may exercise the powers of a commanding officer.

14. *Section 8* of the Ordinance is designed to prevent any legal

difficulties arising from the usage of the service relating to the delegation of authority by one officer to another. For instance, a report which is directed by this Ordinance to be made to an officer having power to convene or confirm court-martial may be addressed to the staff officer or other person to whom such reports are usually addressed. Similarly, this section would allow orders of a flag or other Officer to be signed by the staff officer in so far as they are authorized

by the Fleet Orders or the customs of the service.

15. It must, however, be remembered that the section is not intended to override the well-known principle of law: "*delegatus non potest delegare*". An officer to whom a particular power has been delegated by a higher authority cannot in his turn re-delegate it to another person. The confirmation of court-martial, and warrants or other documents relating to imprisonment or detention or the infliction of any other punishment must be signed by the officer himself. So, too, must an order convening a court-martial.

16. *Section 9* of the Ordinance empowers the Government to declare, by notification, that any person or class of persons subject to the Ordinance shall, with reference to any area in which they may be serving or with reference to any provision of the Ordinance or of any other law for the time being in force, be deemed to be on active service within the meaning of this Ordinance. Such a declaration may be made notwithstanding the fact that the circumstances mentioned in the

definition of the term 'active service' in clause (i) of section 4 are not applicable. On such a declaration being made, civilians who are employed by, or are in service *or*, or are followers of, or accompany such persons who are so declared to be on active service, shall also become subject to naval law under section 2(2)(c) of the Ordinance.

17. *Chapter III* of the Ordinance deals with employment in the Bangladesh Navy.

(iv) Appointment, Commission and Enrolment

18. *Section 10* lays down a restriction that no person who is not a citizen of Bangladesh shall, except with the consent of the Government signified in writing, be eligible for appointment or enrolment in the Bangladesh Navy.

19. *Section 11* lays down that officers (other than subordinate officers) shall be appointed by Commission by the President; whereas subordinate officers shall be appointed in such manner and shall hold such rank as may be specified in the regulations.

(v) Enrolment and Attestation

20. *Sections 12 to 14*.-Everyone who is permanently subject to Naval Law as a sailor is subject to that law by virtue of his "enrolment". This Process and the subsequent attestation of enrolled persons are described in sections 12 to 14 of the Ordinance and in rules 6 to 8.

21. The principle underlying these provisions is that no person should be permanently subjected to an exceptional and severe code, like that contained in the Navy Ordinance, without a definite act on

his part, such act being susceptible of easy proof. "Enrolment" is, therefore, made a definite act recorded in a formal document, the enrolment paper, which, by section 119 of the Ordinance, is itself made legal evidence of the fact stated in it, and which shows clearly all the conditions of the bargain which the enrolled person has made with the State.

22. The term "attestation" is applied to the administration to the enrolled person of the oath or affirmation of all allegiance and fidelity. It forms no part of the process of enrolment, but this oath or affirmation must not be delayed for more than three months after it has become due. The ceremony takes place when the candidate has completed the prescribed period of probation.

23. As to the form of oath or affirmation to be taken on attestation, *see* Fir-5t. Appendix to the Rules in part III of this Manual while the prescribed form of enrolment will be found in the Eighth Appendix to the Rules.

(VI) Conditions of Service

24. *Chapter IV--Sections 15 and 16.*-Every officer and sailor holds office during the Pleasure of the President, and is liable to serve in the Navy until his services have been duly terminated in accordance with this Ordinance and the rules and regulations made there-under.

25. *Section 17* empowers the Government to terminate the services of an officer; while the services of a subordinate officer or a sailor may be terminated by the Government, the Chief of Naval Staff, or any "prescribed" officer.

26. *Section 18.*-Under section 18 a sailor is entitled to obtain his release from the service at the expiration of the term of his engagement, unless such expiration occurs :-

When war is imminent, or existing, or

(b) When the strength of the branch of service to which he belongs is 5 per cent below its strength.

In either of these events it rests with the Chief of Naval Staff to decide for what further period the sailor may be required to continue to serve. A sailor would, of course, be liable to continue to serve if he is re-engaged in accordance with the regulations;

27. *Section 19* deals with the discharge and dismissal of sailors who are serving out of Bangladesh. Every sailor who is dismissed, discharged, or released from the service must be furnished, by the Drafting Authority, with a "Termination of Service Certificate", as required by *section 20*, read with rule 21. No such certificate is required in the case of an officer.

28. *Section 21* of the Ordinance empowers the Government to make rules specifying the manner and the extent to which certain fundamental rights of persons subject to naval law may be restricted. The rights which are thus affected relate to an individual's freedom to form associations or unions, freedom to attend or address any assembly, and freedom to communicate with the press or to publish any book etc. Such restrictions are imposed in the interest of the security of Bangladesh and in the interest of public order and of the discipline in the service. These have been specified in rules 38 to 41.

(vii) Service Privileges

29. *Chapter V*.- Persons subject to the Navy Ordinance enjoy a number of privileges in their relations to civil courts in Bangladesh and the law administered by these courts. Some of these privileges are conferred upon these persons by the provisions contained in Chapter V of the Act. Section 28 of the Ordinance, however, states that the rights and privileges specified in the preceding sections of this Chapter shall be in addition to any other conferred on members of the armed forces generally by any other law for the time being in force.

30. It has, therefore, been considered desirable to give in detail the most important of these rights and privileges in a separate chapter in order to save the reader having to search through the various statutes bearing on the subject. (*See Chapter VIII of this part.*)

(viii) Offences

31. *Chapter VI* of the Navy Ordinance classifies under various heads and defines the naval offences and civil offences.

32. *Naval offences-Sections 29-77*. - For the sake of convenience offences of a similar character are grouped together and the groups have, as regards naval offences, been arranged in such an order as to emphasise their relative service importance. It must be remembered that Chapter IV of the Penal Code (*i.e.* "General Exceptions") applies to offences under special laws, such as the Navy Ordinance. The definitions of all these offences must, therefore, be read as subject to the above "general exceptions".

33. *Civil offences-Sections 78-79*.-Section 78 of the Ordinance lays down that, subject to the provisions of section 79, every person subject to this Ordinance who at any place in or beyond Bangladesh commits any civil offence shall be deemed to be guilty of an offence against this Ordinance, and if charged therewith under the section, shall be liable to be tried by a naval tribunal. Sub-section (2) of section 78 states that a person may be charged with an offence under this section notwithstanding that he could on the same facts be charged with an offence under any other section of this Ordinance. (*For civil offences see Chapter VI of this part.*)

(ix) Punishments

34. *Chapter VII-Section 80.*-Section 80 of the Ordinance provides a scale of punishments which may be awarded to persons convicted of offences under this Ordinance." For each offence, with

the exception of civil offences under section 78 (1)(a), for which an obligatory punishment is provided (*e.g.*, death or transportation for life for murder), the Ordinance provides, by sub-section (10) of section 81, that the court subject of course, to the limits imposed by the Ordinance on its powers *e.g.*, the powers of a district court-martial under section 97(2), may award a specified (maximum) punishment "or in lieu thereof, any one or more of the punishments, inferior in degree to the specified punishment, according to the scale of punishments laid down in sub-section (I) of the last preceding section". If, for example, the maximum punishment assigned to the offence is long imprisonment, either short imprisonment or any other punishment lower in scale and appropriate to the rank "of the offender can be awarded in its place.

35. A maximum punishment is only intended to be imposed when the offence committed is the worst of its' class, or is committed by" a habitual offender, or is committed in circumstances which require an example to be made. An important distinction is made by the Ordinance in that certain offences are punishable more" severely when committed in time of war or on active service than at other.

times. Instances of this distinction will be found in sections 29,30,31,32,33,36,37,46 and 49(2) etc. A person, for example found asleep on his watch, being in the presence or vicinity of the enemy, would, if the character and circumstances of the offence were sufficiently grave, be liable to suffer rigorous imprisonment for 14 years, whereas if he commits the same offence not being in the presence or vicinity of the enemy, he could at the most be sentenced to short imprisonment, namely two years (section 33).

36. Sub-section (2) of section 80 lays down the punishment which are applicable exclusively to officers and those which are applicable exclusively to sailors.

37. *Section 81* of the Ordinance gives the consequential penalties involved in a sentence awarded by a naval tribunal, for example, a sentence of imprisonment, in every case, would involve stoppage of pay during the term of imprisonment. In the case of an officer such a sentence must involve dismissal from the service; whereas in the case of sailor it would involve disranking and deprivation of good conduct badges. It may or may not be accompanied by a sentence of dismissal from the service.

38. It must be noted that the punishments enumerated in section 80 are awarded as being "subject to" the provisions of section 81 and to other provisions of the Ordinance, *e.g.*, of section 78(1)(a), referred to in the last paragraph.

(x) Penal Deductions

39. *Chapter VIII.-The* pay and allowances of every person subject to naval law are protected under section 22 of the Ordinance. A person belonging to the Navy, is therefore, entitled to

receive his pay and allowances without any deductions other than such deductions as are "authorised by or under this or any other enactment, or prescribed by the Government".

40. *Section 82*.—So far as this Ordinance is concerned, section 82 lays down the circumstances in which penal deductions may be made from the pay and allowances of officers and sailors. A "penal" deduction is, in principle, a deduction made as a penalty for an offence of which the accused has been convicted, and constitutes part or whole of his punishment. The term has, however, acquired a specialized meaning, and every deduction which is authorised in section 82 must be understood to be "penal" irrespective of the common use of that word.

41. *Section 85* allows the penal deductions, to be enforced either from pay and allowances or from any public money due to a person other than a pension; and section 87 provides for the remission of such deductions by the prescribed authority, for which *see* rule 283.

42. Other deductions, which are not "penal", but which may be made from the pay and allowance of a person, are those prescribed by the Government under section 22 of the Ordinance. These deductions are intended to meet any public or service claim that may be outstanding against a person, or any service debt that may be due from him. They may also be intended to meet compulsory contributions to any Provident Fund or any Benevolent or other Fund which may be approved by the Government (*see* rule 280).

(xi) Arrest and Proceedings before Trial

43. *Chapter IX* of the Ordinance deals with the arrest of offenders and makes provisions for bringing them to justice without undue delay.

44. *Section 89* makes it the duty of every person subject to this Ordinance who knows or has reasonable grounds for suspecting that another person subject thereto is committing or has committed an

offence under this Ordinance, to take all reasonable steps within his, power to cause that person to be brought to justice. It goes on in sub-sections (2) and (3) to describe the persons who shall have the power to arrest such a person, and the manner in which this power may be exercised.

45. *Section 90* deals with the duties of commanding officers in relation to persons under their command, who are placed in naval custody. The manner in which and the period for which such a person may lawfully be detained in custody, pending trial, have been prescribed in rules 42 to 45.

46. In order to ensure that no person subject to the Ordinance, who is charged with an offence, is unduly detained in custody subsection (3) of this section makes it incumbent upon a commanding officer to submit a special report" to the Chief of Naval Staff every eight days, giving reasons for the delay in bringing him to trial. For Form of "special report" under section 90(3); *see* the Second Appendix to the rules.

47. No accused person can, be kept in close arrest for more than 90 days without a court-martial having been assembled for his trial. At the expiration of this period an accused person must be released from arrest; and he will not be subject to re-arrest for the same offence, except on a written order of an officer having power to convene a court-martial for his trial, or on a written order signed by or on behalf of the Chief of Naval Staff, *see* rule 44(S).

48. *Section 93* lays down that every person to whom a warrant for the arrest of a person suspected of any offence under this Ordinance, is issued by competent naval authority, shall take steps to execute it as if it, has been issued by a Magistrate of competent jurisdiction.

49. *Section 94* deals with the appointment and the duties of a provost-marshal. For the purposes of the Ordinance, a provost-marshal" includes a provost-marshal appointed under the Army Act, 1952, or the Air Force Act, 1953, and any person legally exercising authority under him or on his behalf.

(xii) Authorities having power to award Punishment

50. *Chapter X* of the Ordinance deals with naval tribunals and contains the principal provisions which govern the convening, composition and dissolution of court-martial. It also gives the extent, to which the powers of punishment may be exercised and the persons who may be tried by different types of court-martial.

51. *Section 108.*-It may be noted that a person subject to this Ordinance, who has once been acquitted or convicted of an offence on trial by either a naval tribunal or by a criminal court, cannot be tried again for the same offence by any other tribunal or by a criminal court.

52. A naval tribunal has been given jurisdiction over person "not subject to service law" so far as contempt of court is concerned by sub-section (2) of section 95. *See also rule 223: (See Chapter IV of this part.)*

(xiii) Procedure of Court-Martial

53. *Chapter XI* of the Ordinance' and rules 124 to 242 lay down the procedure for trials by court-martial. (*See Chapter IV of this part.*)

(xiv) Other provisions

54. *Chapters XII to XIV* of the Ordinance deal with matters subsequent to a trial' by court-martial, namely: confirmation and revision of findings and sentences, their alteration and amendment, execution of sentences, pardons, remissions and suspension (*See chapter IV of this part.*)

55. *Chapter XV* of the Ordinance deals with the property of deceased persons, deserters and lunatics; and *Chapter XVI* gives the Government power to make rules for the purpose of carrying into effect the provisions of this Ordinance. It should be noted that all rules made under the Ordinance are published in the official Gazette and on such publication have effect "as if enacted in this Ordinance" *see* sub-section (3) of section 177.

56. These chapters call for no special remarks in addition to those which will be found in the notes appended to the various sections of the Ordinance.

CHAPTER III

ARREST, DELAYS, INVESTIGATION OF CHARGES, SUMMARIES OF EVIDENCE, CHARGE-SHEETS AND CHARGES AND SUMMARY PUNISHMENTS

(i) Arrest

1. Arrest of persons subject to Naval Law. – “Naval custody” means the arrest or confinement of a person in the prescribed manner or in accordance with the usages and custom of the naval service, and includes military or air force custody.¹ Section 89(1) makes it the duty of every person subject to this Ordinance who, knows or has reasonable grounds for suspecting that another person subject thereto is committing or has committed an offence under this Ordinance, to take all reasonable steps within his power to cause that person to be brought to justice.

2. Officer : when to be placed in arrest. - An officer may be placed under arrest without previous investigation when circumstances so require; but a commanding officer on receiving a complaint, or learning of circumstances tending to incriminate an officer, is not ordinarily to place him under arrest unless he is satisfied that it is necessary to do so.

3. Who may arrest an officer.-The following persons may place an officer under arrest :

(a) an officer² of the navy of superior rank;

(b) when the officer to be arrested is engaged in a quarrel, affray or disorder, any officer² subject to this

Ordinance;

(c) a provost-marshal⁴, or any officer or person legally exercising authority under or on behalf of a provost-marshal; provided that the arrest is made "on the order of another officer" .⁵

4. The two kinds of naval custody. - Naval custody is of two kinds.⁶ It may be close arrest or it may be open arrest. The words "arrest" or "custody" when used in the Ordinance and the rules include open arrest. An officer may be placed under either close or open arrest according to the circumstances of each case and at the discretion of the commanding officer.

5. Close arrest of an officer. - An officer under close arrest is not to leave his quarters, except to take such exercise under supervision as the medical officer considers necessary. An officer should normally be placed in charge of an "escort" consisting of an officer of the same rank, but may, if circumstances require it, be placed for custody under the charge of a guard, piquet, patrol, sentry or provost-marshal.

6. Open arrest of an officer. -An officer under open arrest may take exercise at stated Periods within certain limits, which are usually the limits of ship or establishment; he is normally, however, not to appear out of uniform, nor in the ward-room nor at any place of amusement or public resort. He may be ordered by his commanding officer to carry out, any naval duties as may be necessary in the course of his training, or such part of his ordinary duties as his commanding officer, considers advisable. An officer placed under arrest should always be informed in writing of the nature of the arrest and when under arrest, the extent of restraint placed upon his personal liberty, and any change in

the nature of the arrest should be notified, in writing to him. An Officer under open arrest may be ordered to leave his ship or establishment for some special purpose, *e.g.*, to report to another ship or establishment, or to appear in a civil court.

7. Report to superior authority. - When an officer is placed under arrest, the commanding officer is to report the matter without delay to his superior authority.

8. Release from arrest. - Once an accused person is placed under close arrest, the proper authority to release him from arrest is his commanding officer or any superior naval authority.¹

9. No right to claim trial by court-martial. - If any person conceives himself wronged by being placed under arrest or otherwise, his remedy is to make a complaint under Section 23 of the Ordinance in the manner prescribe rule 31 and 37.

10. Arrest of Master Chief Petty Officers, Senior Chief Petty Officers, Chief Petty Officers, Petty Officers and Sailors. - A sailor may be arrested by any officer, MCPO, SCPO, CPO or PO of the Navy superior in rank to himself, or by a leading sailor who is of superior rank or senior to him in the same rank, or by any sailor exercising the authority as a member of the regulating staff or as a member of the staff of the officer of the watch. Such a person may also be arrested by a provost-marshal or any officer or person legally exercising authority under or on behalf of a provost-marsha.

11. Master Chief Petty Officers, Senior Chief Petty Officers, Chief Petty Officers and Petty Officers. - The rules which govern the custody of officers, and which are set out in paras 2, 5 and 6 above, apply also to MCPO's, SCPO's, CPO's

and PO's.

12. Civilians serving in the Navy on active service. -Persons subject to the Navy Ordinance under clause (c) of sub-section (2) of section 2, as officers, Master Chief Petty Officers, Senior Chief Petty Officers, Chief Petty Officers, Petty Officers (*see* Chapter II, para 4) may, when charged with an offence, be placed under arrest under the same conditions as persons holding these ranks.

13. Sailors - when to be placed in arrest. - A sailor charged with a serious offence may be placed under arrest forthwith, but if the offence alleged appears not to be serious, it may be investigated and disposed of within previous arrest. He is not to be placed under close arrest for offences unaccompanied by drunkenness, violence or insubordination, unless confinement is necessary to ensure his safe custody or for the maintenance of discipline. A sailor who disobeys an order distinctly given or resists the authority of an officer, Master Chief Petty officer, Senior Chief Petty Officers, Chief Petty Officer or Petty Officer is to be placed under arrest forthwith.

14. Close arrest of sailors. - A sailor under close arrest should normally be detained in a cell. He will not be required to perform any duty other than such duties as may be necessary to relieve him from the charge of cash, equipment, stores, accounts or other matters for which he is responsible. On active service, however, he may be ordered to bear arms, attend parades and perform all his ordinary duties. He should be searched and deprived of knives and other weapons. He is to take sufficient exercise, under supervision for the preservation of his health.

15. Open arrest of sailors.-A sailor under open arrest is not to leave his ship or shore establishment until his case has been disposed of, but he is to attend parades. He may be ordered by his commanding officer to carry out such duties as may be necessary in the course of his training or such part of his ordinary duties as his commanding officer may consider advisable that he should perform.

16. Release from arrest of persons awaiting trial.-When an accused person is remanded for further investigation, for approval of the punishment warrant or for trial by court-martial, the commanding officer should consider whether he may be released from close arrest and placed in open arrest, or released from either form of arrest without prejudice to re-arrest. Pending the disposal of such reference or application, he should be kept under close arrest only in exceptional circumstances¹; e.g., when:-

- (a)the offence charged is one for which the maximum punishment is death; or,
.....the punishment proposed in the warrant is of imprisonment, detention or cells;
- (b) or,
.....his conduct is so violent that it would be unsafe to himself or to others not to place
- (c) him in close arrest; or,
.....he is deliberately trying to undermine discipline by acts of misconduct. Isolated instances of insubordination or violence would not in themselves justify retention in close
- (d) arrest; or,
- (e)he has been a deserter, or is known to have
habitually absented himself without leave and it is considered that he would again absent himself unless kept in close arrest.

17. Irregularity in connection with arrest or confinement. - Offences relating to, and offences by, persons in custody are set out in sections 60, 61 and, 62 of the Ordinance. Under section 60(b) it is an offence for any person subject to naval law, having committed a person into naval custody, to fail without reasonable cause to deliver:

- (a) at the time of such committal, or
- (b) as soon as practicable, and in any case within 48 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.,

The "account in writing" need not be in the form of a formal charge-sheet but should set out in ordinary language details of the allegations made against the accused, e.g. "Creating a disturbance on the ship", not an act to the prejudice of good order and naval discipline".

18. Arrest by civil power.-Under section 93 of the Ordinance a warrant for the arrest of a person suspected of any offence under the Ordinance may be issued by the Chief of Naval Staff, the commanding officer of the suspect (or by any of the authorities prescribed by

Rule 62). Every person to whom such a warrant is issued is bound to take steps to execute the warrant, as if it had been issued by a Magistrate of competent jurisdiction, to arrest the offender and; as soon as may be, to deliver him into naval custody.

A person arrested on suspicion of being a deserter or absentee must be taken before a Magistrate, who will take steps to deliver him into naval custody, if he is satisfied that there is sufficient evidence to justify his being tried under the Ordinance: (Rule 63).

(ii) Delays

19. Duty of commanding officer in respect of persons in custody. Section 90 of the Ordinance makes it 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 48 hours after the committal of such person into custody is reported to him, without the charge being investigated. He is to ensure that as soon as may be either the proceedings are taken for his trial or he is released from arrest. It is also his duty in every case where a person has been detained in custody beyond a -period of 8 days, to report the fact together with the reason thereof, to the Chief of Naval Staff, and a similar report must be made every eight days until the person under arrest is released from arrest or tried summarily or a court-martial for his trial is ordered to assemble. For Form of a "special report" on the necessity for further delay, required by sub-section (3) of section 90 *see* the Second Appendix to the Rules.

20. "Special report" under Section 90(3). - Procedure to be followed in such cases is given in Rule 44, which requires that this special report is to be made by the commanding officer to the convening authority, and a copy is to be sent to Naval Headquarters (Naval Law Branch). This report must be submitted notwithstanding that the person in custody is in hospital or whatever the cause of the delay. When submitting such a report the commanding officer must satisfy himself:

- (i) that continued custody is necessary, and
- (ii) of the reasons for delay in bringing the accused to trial.

It is an offence under section 60(1) of the Ordinance for a person subject to the Ordinance unnecessarily to detain a person in custody without bringing him to trial, or to fail to bring his case before the proper authority for investigation.

21. Close arrest not to exceed 90 days, without written authority. 90 consecutive days without a court-martial being convened and assembled for his trial, unless the officer who would be responsible for convening the court-martial or the Chief of Naval Staff directs in writing that he is not to be released from close arrest: [Rule 44(5)]

(iii) Investigation of Charges

22. Duties of commanding officer.-As stated in para 17, it is provided by section 60(b) that any person subject to the Ordinance who has committed another person into naval custody must within 48 hours of the arrest deliver 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. It is then commanding officer's duty to investigate the case without delay.

23. Manner of investigation as prescribed.-Section 92 of the Ordinance lays down that subject to the provisions of the Ordinance the procedure before trial and the manner of investigation shall be as prescribed. The procedure before trial and the manner of investigation of offences have, accordingly, been prescribed in great detail in rules 46 to 58 and the provisions

contained therein should be carefully studied by every officer concerned with the investigation of an offence, be he an officer of the watch, an officer of the day, the divisional officer, the executive officer or the commanding officer of the accused.

24. Preliminary Investigations.-A sailor committing an offence on board a ship or establishment is to be brought as a defaulter before the Officer of the Watch/Officer of the Day. After hearing the evidence in support of the charge, if in the opinion of the investigating officer, no case is made out, he shall either dismiss the case or stand it over, if further evidence is likely to become available. If there is a *prima facie* case, which the investigating officer can deal with himself, he will ask the accused if he admits the charge. If he does not so admit, the investigating officer will proceed to try the case giving the accused opportunity to make a statement and to call witness.

25. Collection of evidence.- If the investigating officer, however, considers it would be beyond his powers to punish the accused, his duty is to collect evidence. He shall in such case consider whether or not it is desirable to record the statements of witnesses as a precaution against any witness changing his statement. The Master-at-Arms (or the person performing his duties) is to be present through out the investigation and to frame charges according to the evidence. The charges, as well as other information regarding names of witnesses etc are to be entered on Form S. 241 "Report of Offender". Legal exactitude in framing the charges is not necessary during summary investigation and trial, so long as the charges are so worded that the accused fully understands the offence for which he stands charged.

26. Caution as to expressing opinion.-During the investigation the officer conducting it must be careful not to let fall, before he disposes of the case, any expression of opinion as to the guilt of the accused, or one which might prejudice him at a subsequent trial. Conduct sheets of the accused should be examined by the investigating officer after, and not before, he has satisfied himself as to the guilt of the accused.

(iv) Summary Trial

A. The Executive Officer

27. Delegated powers or punishment. - The procedure to be followed at the Summary Trial has, under the present Code, been brought on the lines of a trial by court-martial. One of the "Naval Tribunals" empowered under section 95 of the Ordinance to try and punish offenders is the "Commanding Officer, or such other officer or authority exercising powers of summary trial and punishment as may be prescribed".

28. Subsequent investigation and trial. - The Officer of the Watch, Officer of the Day after collecting the evidence and charging the accused on Form S. 241, is to bring him as a defaulter for further investigation and trial before the First Lieutenant/Officer-in-Charge, Training School, who may be next in the chain of disciplinary command and to whom powers of punishment have been delegated by the Commanding Officer. If this investigating officer considers that the accused is guilty of the offence charged, he will award him punishment, unless he considers that it is beyond his competency to do so, in which case he will refer it to the Executive Officer. This last investigating officer will thereupon present the case at the Executive Officer's defaulters and act as the prosecutor.

29. Necessity of recording evidence. - It is not normally necessary to record the evidence of witnesses unless the investigating officer desires to do so. The summary of evidence is to be taken down by the Master-at-Arms in a narrative form expressed as direct speech in the first person in the words of the witness as far as possible. If a slang or unusual expression is used, it

is to be so recorded together with any explanation given by the witness. Evidence which is clearly irrelevant to the charge is not to be recorded.

30. Witnesses for the prosecution. On completion of the examination of a witness by the prosecutor, he may be cross-examined by the accused or his Divisional Officer or his Friend. If the accused declines to cross-examine any witness the fact should be recorded.

31. Witnesses to be examined individually. – Other witnesses should not be present when a witness is giving evidence and each must give his own account of the transaction. Expressions such as “I concur with the evidence of the last witness,” or “I corroborate the evidence of so and so” are not to be used.

32. Caution to the accused and recording of his statement. When the witnesses for the prosecution have given their evidence, the accused is to be cautioned by the investigating officer in accordance with Rule 49(1). If the accused makes a statement it shall be taken down in writing in a narrative form in first person in the same manner as a summary of evidence is recorded. Care, however, is to be taken that the accused is on no account cross-examined or asked questions suggesting or indicating that he is expected to make any further statement. He may, however, be asked to clear up any ambiguity in a statement. The statement shall then be read over to him and he shall be asked to sign it, but is not to be ordered to do so if he is unwilling. However, whether the accused signs it or not, it shall be countersigned by the investigating officer and it can then be proved and used at any further investigation or trial. If the accused does not make a statement the fact that he has declined to do so should also be recorded.

33. Witnesses for the defence. - After the accused has made a statement or has declined to do so, he should be asked if he wishes to call witnesses for the defence. Their summary of evidence is to be recorded in the same manner as those of the prosecution witnesses.

34. Decision of the Executive Officer.-If at the conclusion of the Summary Trial, the Executive Officer is satisfied as to the

guilt of the accused, he may dispose of the case by punishing him if it is within his competency to do so, otherwise refer the case to the Commanding Officer by making the necessary entry in the Form S. 241. The Master-at-Arms will thereupon either read out the punishment awarded or inform the accused that he has been placed in the “Captain’s Report.”

B. Commanding Officer

35. Captain's Report.- The procedure to be followed at the Captain's Report is the same as mentioned above except that the Executive Officer now takes over the duties of the prosecutor. The accused continues to- be assisted by his Divisional Officer or such other officer as detailed by the Commanding Officer in accordance with Rule 47.

36. Administration of oath to witnesses. - If the Commanding Officer considers that the case may lead to a warrant punishment or a court-martial, the summary of evidence is to be recorded in writing in the same manner as mentioned above except that before each witness is examined he shall be administered an oath or affirmation.

37. Witnesses who cannot attend the summary of evidence.- Rule 50(8) provides that if a person cannot be compelled to attend as a witness, or if owing to the exigencies

of the service or on other grounds, including the expense and loss of time involved, the attendance of any witness cannot, in the opinion of the commanding officer, to be certified by him in writing, be readily procured, a written statement of his evidence, signed by him and countersigned, in case of a person subject to service law by his commanding officer and in case of a civilian by any magistrate, may be read to the accused and included in the summary of evidence. The object of this provision is to avoid unnecessary expense and delay. Statements made at a Board of Enquiry are not admissible and should not be used under this provision: *see* rule 258 (18).

38. Calling of civilian witnesses.-A civilian witness can be summoned to attend the summary trial and his summary of evidence can be recorded in the same manner as that of a service witness: *See* rule 50(7) and section 116 of the Ordinance. For form of summons *see* the Fourth Appendix to the rules.

39. "Caution" to the accused. - On completion of the prosecution case if the commanding Officer considers that there is a *prima facie* case against the accused, he shall caution the accused in terms of Rule 50(5). Although the witnesses have been administered oath/affirmation, it must be remembered that the accused is not to be administered any oath or affirmation before he makes a statement.

40. Effect of "Caution".- A statement made by the accused shall only be admissible in evidence at any further proceedings or trial if the accused has been cautioned before he speaks that he is not obliged to say anything unless he wishes to do so and that any statement he may make may be given in evidence. Care shall be taken to avoid any suggestion that the accused answers can only be used in evidence against him as this may discourage an innocent person from making a statement which might help to clear him of the charge.

41. Decision of the Commanding Officer.-If the commanding Officer considers the accused to be guilty of an offence, which is within his competency to punish without previous approval of a superior naval authority, he is to dispose it of by awarding a suitable punishment, which is to be announced to the accused by the Master-at-Arms. If the Commanding Officer, however, considers that the accused deserves more punishment, the accused is to be told that his case has been "remanded". The commanding Officer is then to apply to the proper naval authority either for approval of the Punishment Warrant or for a trial by court-martial. Whilst doing so, he is to forward the summary of evidence, including any statement read in accordance with rule 50(8) together with documents produced as exhibits. Non-documentary exhibits (*e.g.*, tools, motor-tyres, weapons etc.) are to be labelled with identifying tags and held in safe custody.

42. Care necessary in recording a summary.-Great care is necessary in recording a summary of evidence. The discrepancies not infrequently observable between the statements recorded at the summary trial and the evidence given before a court-martial may often be traced rather to the hasty or careless preparation of the summary than to any prevarication or desire to mislead the court on the part of the witnesses. Moreover, a carelessly prepared summary of evidence may require references between the convening officer and the commanding officer of the accused and be a cause of delay in bringing the accused to trial.

43. References of case to convening authority.-When a commanding officer submits a case to the convening authority against an officer or sailor, with a view to his trial by court-

martial, he is to do so in the form set out in the Fourth Appendix to the rules, together with the documents mentioned in para. 6 thereof.

(v) Summary Punishments

A. Sailors

44. Powers of officer in command of ship or establishment. Section 102 lays down certain limits to the powers of an officer in command of a naval ship or establishment, in respect of a summary trial.

These are:-

- (a) He may summarily try and punish only a sailor, *i.e.*, a person enrolled under the Ordinance, of or below the rank of MCPO; and may award only such punishments as may be prescribed. These punishments are prescribed by rules 68 and 69.
- (b) He cannot try an offence under the Ordinance which is punishable with death, *e.g.*, offences under sections 29, 30, 31 or 31, when committed "with intent to assist the enemy", or an offence of mutiny under section 36(1), or the offence of murder punishable under section 78 or 79 of the Ordinance.
- (c) He cannot award a sentence of imprisonment or detention for any term exceeding three months.

Rule 68 lays down the various summary punishments, which can be awarded by a Commanding Officer and rules 79 to 104 give the provisions in detail in respect of these punishments. A resume of the same is given in the following table:-

SUMMARY PUNISHMENT TABLE

45. Powers of other, officers authorised to exercise the powers of a commanding officer.

Sub-section (4) of section 102 empowers the following officers to exercise, subject to rules the powers which are conferred on the officers in Command of a ship or Naval establishment:-

(a) the officer in command of a single tender or boat, which is absent *from*, the ship" or establishment on detached service,-in respect of persons on board such tender or boat;

(b) the officer in immediate command of two or more tenders or boats which are, absent on detached service, in company or acting together, - in respect of persons on board any of such tenders or boats;

(c) the officer in immediate command of persons who are absent from their ship or establishment on detached service either on shore or elsewhere,-in respect of such

persons; and

(d) the officer commanding any body of the regular Army or the Air Force to which sailors are attached or with which they may be serving,-in respect of such sailors.

By virtue of sub-section (5), the powers of trial and punishment conferred on any officer by this section may be delegated by that officer to any, other officer "to such extent and subject to such conditions as, maybe prescribed". *For* delegated powers of punishment *see* rules 72 to 78. The authority to award minor punishments must in every case be delegated in writing; and while awarding any of the punishments so delegated, the officer must comply with the provisions contained in rules 19 to 104, as applicable, to the punishment proposed to be awarded in each case.

46. Officers to whom power of punishment may be delegated. Officers to whom such powers of summary punishment may be delegated under section 102 (5) of the Ordinance, by an officer commanding a ship or establishment which is an independent command, are ;

(i) The Executive Officer, if he is of the rank of Commander,--rule 73 (I).

(ii) The Executive Officer, if he is a Lieut. Commander or a Lieutenant,-rule 73 (2).

(iii) Officer-in-Charge Training School, if he is of the rank of Lieut. Commander of Lieutenant,- rule 74.

(iv) First Lieutenant, if he is of the rank of Lieut. Commander or Lieutenant,-rule 75.

(v) Officer of the Watch or the Day, rule 76.

(vi) Heads of department or divisional officers, rule 77.

(Vii) Commanding Officer of a tender in company with parent

ship,-rule 78 (I).

(viii) Executive Officer of such a tender, if he is of the rank of Lieut. Commander or Lieutenant, rule 78 (2).

47. Revision of Summary Punishments. - Summary punishments awarded under the abovementioned rules by a commanding officer or by any officer to whom such powers have been delegated may be revised by a proper superior naval authority under rule 118, and on such revision:-

- (i) if the punishment appears to such authority to be wholly illegal, or if the finding involved in such award appears to him to involve substantial injustice to the, accused the award must be *cancelled* and the entry in the records of the accused expunged :-
- (ii) if the award appears to such authority to be in excess of the punishment authorised by law for the offence, he may vary it so that it shall not be in excess to the punishment so authorised, and the entry in the records of the accused must also be varied accordingly ;
- (iii) if the punishment awarded appears to such authority to be too severe, having regard to all the circumstances of the case, he may remit the whole or part of the punishment awarded. This power of remission, however, can only be exercised within two years of the date of the award.

48. Record of, punishments. - As regards maintenance of "Daily record" of punishments awarded summarily to sailors together with the detail of the offences committed, and the forwarding of the "Punishment Returns" to higher authority, *see* rules 114 to 117.

49. Master Chief Petty Officers, Senior Chief Petty Officers, Chief Petty Officers and Petty Officers right to elect trial by court-martial.- A Master Chief Petty Officer, Senior Chief Petty Officer, Chief Petty Officer or a Petty Officer *may* elect to be tried by court-martial, when in the opinion of the commanding officer, his offence is such as would justify his being summarily punished by one or more of the following punishments:-

- (a) imprisonment;
- (b) dismissal from the service ;
- (c) detention;
- (d) disranking;

For the procedure to be followed in such an event, *see* rule 51. If, however, the commanding officer decides to award him a punishment lower than disranking, the accused cannot elect to be tried by a court-martial.

B. Officers

50. Summary punishment of Officers.-Section 103 of the Ordinance, read with rule 119, empowers the Chief of Naval Staff, or an officer not below the rank of Captain to such extent as he may have been empowered in this behalf by the Chief of Naval Staff, to award summarily, to an officer of the rank of Lieutenant or below, who is charged with an offence under the Ordinance, anyone or more of the following punishments :-

- (a) forfeiture of seniority in rank, or (in the case of subordinate officers) forfeiture of time for promotion, for a period not exceeding six months ;
- (b) forfeiture of pay and allowances for a period not exceeding three months, or until any proved loss or damage occasioned by the offence of which he is convicted, is made good, whichever is less;

- (c) forfeiture of pay and allowances for a period not exceeding three months for an offence under section 42, in so far as it consists of neglect to obey flying orders, or for any of the offences mentioned in sections 49 to 52, *i.e.*, navigation and flying offences;
- (d) severe reprimand or reprimand.

51. Officers' right to elect trial by court-martial.-When an officer dealing summarily with an accused officer is of the opinion that the offence proved is such as would justify any of the punishments mentioned in sub-paras (a) or (b) of para 50 above, he must give the accused an opportunity to elect trial by court-martial. If an accused officer is charged with any of the offences mentioned in para 50(c), or when the officer trying him summarily propose to award a punishment of severe reprimand or reprimand, the accused officer cannot claim the right to be tried by a court-martial.

52. Procedure for Summary disposal of charge.-As to the procedure to be followed when dealing summarily with an accused officer, *see* rule 120.

As to the Form prescribed for recording such proceedings, *see* Second Appendix to the rules.

53. Submission of report to superior authority.-Except in the case where summary punishment to an officer is awarded by the Chief of Naval Staff himself, the proceedings of summary disposal duly recorded in the form set out in the Second Appendix to the rules, together with a copy of the charge-sheet and summary of evidence, must be forwarded by the officer awarding the punishment to the superior naval authority ; *see* rule 121.

54. "Logging" of an officer.- The "logging" of an officer means the recording of the Commanding Officer's displeasure in respect of such officer's conduct, when in the opinion of the Commanding Officer, such recording is necessary for future reference. If the matter is sufficiently serious, it may be brought to the notice of the Chief of Naval Staff through the Administrative Authority: but whether so reported or not, "logging" does not constitute a "punishment" under the Ordinance, and is therefore no bar to the officer's summary trial or his trial by a court-martial in respect of such misconduct;

see rule 123.

(vi) Charge-sheets and Charges

55. Charge-sheet. - A charge-sheet is to be made out in the proper legal form and signed by the commanding officer of the accused, before he is remanded for trial by court-martial; or for summary disposal under rule 119 (in the case of an officer of the rank of lieutenant or below).

The charge-sheet should contain the whole issue, or all the issues, to be tried at one time, and may contain one charge or several charges : (rule 124). It should consist of the following :

- (a) the commencement,

(b) the charge or charges, each being divided into two parts namely the statement of offence and the particulars of the offence: (rule 126),

(c) the signature of the commanding officer with the place and date of his signature. A space should be left at the bottom of the charge-sheet for the order for trial to be signed by the convening officer, and for the place and date of his signature to be inserted.

56. Commencement of charge-sheet. - (a) A charge-sheet should commence with the number, rank, name and ship or establishment of the accused and should show by the description of the accused how he is subject to naval law.

The commencement should follow one of the forms of commencement set out in Part I of the Fourth Appendix to the rules.

(b) The rank referred to above will be the accused's substantive, temporary or acting (whichever is higher) rank, held by him on the date of the charge-sheet.

(c) Persons subject to naval law are those described in section 2 of the Ordinance.

57. Statement of offence.-(a) So far as offences under sections 29 to 77 of the Ordinance are concerned, the wording of the statement of the offence should follow one of the forms set out in **Part II** of the Third Appendix to the rules. In the case of a charge under sections 78 or 79 of the Ordinance (*i.e.*, a civil offence), the statement should be in such words as sufficiently described the offence, but not necessarily in technical words: rule 126 (3).

(b) Each charge must comprise an offence only, and in no case should an offence be described in the alternative in the same charge. If it is wished to make two or more charges, they should be separately made; and if alternative, should be so laid. If charges are laid in the alternative, care should be taken to place the major or the graver charge first, wherever this is possible.

58. Particulars of the offence.- (a) The particulars of the offence are the particulars of the act, neglect or omission constituting the offence; rule 126(4). The particulars should comprise:

(i) Such circumstances respecting the alleged offence as will enable the accused to know every act, neglect or omission which it is intended to prove against him.

(ii) Any additional facts which it is intended to prove as justifying the punishment of stoppages, (*e.g.* in a charge relating to negligent driving, the words "thereby causing damage to the said vehicle amounting to Tk")

(b) In every case the particulars should give the place and the date, approximate date, or dates between- which the offence is alleged to have been committed! The date should be exact when it relates to a charge of desertion under section 46(1) of the Ordinance, or to a charge of absence without leave under section 47(a). Since pay is forfeited for every day of absence without leave under-section 82(a), it is desirable to allege the commencement and termination of a desertion on specific days and in nearly every case it is possible to do so. There is, however, no legal objection to alleging desertion as commencing "on or about" a particular date, or "not later than"

a particular date; similarly it may be alleged that a desertion terminated "not earlier than" a particular date. This may be necessary in cases where all record have been destroyed.

(c) The particulars should detail every ingredient of the offence. In a charge under section 75, where the statement of offence alleges "an act to the prejudice of good order and naval discipline," the particulars should relate to a transaction which has some bearing on "order" and "naval discipline", and which, if established, would be capable of being an offence under the section.

59. Joint charges.-A number of accused (though preferably not more than six) may be charged jointly in one charge for an offence committed by them jointly. Where so charged, anyone or more of such accused may at the same time be charged on the same charge sheet with any other offence alleged to have been committed by him or them individually or jointly, if the charges are founded on the same facts, or form, or are part of a series of offences of the same or a similar character: (rule 130).

CHAPTER IV COURT-MARTIAL

(i) Description of Court-Martial and how convened

1. Description of Court-martial - A person subject to naval law¹ who is to be tried by court-martial may be brought before a general court-martial or a district court-martial. In certain circumstances, *e.g.*, on active service, trial may be by summary general court-martial.²

2. Distinction between a general and district court - martial- The differences between a general and a district court-martial consist in their composition, the status of the persons subject to their jurisdiction, and the extent of punishment they have power to award.

3. Order convening the court. - Every court-martial depends for its jurisdiction upon the order which calls it into being, namely the convening order issued by a person authorised under the Ordinance to convene it.

4. Convening of general court-martial. - A general court-martial may be convened by the Chief or Naval Staff or by any prescribed officer who has received from the Chief of Naval Staff a warrant authorising him to convene general court-martial.³ Since no officer has so far been, "prescribed" for this purpose, a general court-martial can only be convened by the Chief of Naval Staff.

5. Convening of district court-martial. - A district court-martial may be convened by an officer authorised to convene a general court-martial or by any prescribed officer who has received from the Chief of Naval Staff a warrant authorising him to convene district court-martial.⁴

6. Forms of Warrant. -The forms of court-martial warrants are set out in the Sixth Appendix to the rules. They are of two kinds:

(a) The general court-martial warrant issued by the Chief of Naval Staff to an "officer, not being _____ under the rank of Captain, Commanding....." authorising him to convene and confirm _____ the proceedings of general court-martial, with reservations in case of certain specified sentences.

(b) The district court-martial warrant issued by the Chief of Naval Staff to an "Officer, not being _____ under the rank, of Lieutenant Commander, Commanding authorizing him to convene and confirm _____ the proceedings of district _____ court martial.

7. Powers conferred by warrant. - The power to convene and confirm a court-martial may be exercised only "to such extent as may be specified in the warrant issued under the hand of the Chief of Naval Staff". In other words, any such warrant may contain any restrictions, reservations or conditions, and maybe wholly or partly revoked by a fresh warrant. It is normally addressed to an officer by name and also gives authority to the officer on whom the command may devolve temporarily during his absence.

(ii) Jurisdiction

8. Jurisdiction of a general court-martial. - A general court-martial can try any person subject to the Ordinance, and in special circumstances certain civilians. Except in the case of civilians, it has jurisdiction to try any service offence under sections 29 to 77 of the Ordinance and any civil offence under section 78 (subject to the provisions of section 79).

9. Jurisdiction of a district court-martial. - A district court-martial can try any person subject to the Ordinance, who is of the rank of lieutenant or below or a sailor; and can pass any sentence authorised by the Ordinance not exceeding :-

(a) in the case of an officer, forfeiture of seniority in rank or forfeiture of time for promotion for a period of one year;

(b) in the case of a sailor, short imprisonment.

10. Trial of persons who have ceased to be subject to naval law. - A court-martial has jurisdiction in certain cases to try and punish a person who, since the date when the offence is alleged to have been committed by him, has ceased to be subject to naval law." This is so in the case of desertion, of fraudulent enrolment or of any of the offences relating to mutiny. In other cases a person who has ceased to be subject to naval law can be brought to trial only if his trial is commenced within six months after he has ceased to be so subject; the six months in question will not be, deemed to have expired if the trial has commenced within that period.

11. No power to try persons already convicted or acquitted. - A person who has been tried and acquitted or convicted of any offence by a naval tribunal or by a criminal court cannot be tried again for the same offence by another tribunal or by a criminal court. This prohibition does not apply where there has been valid trial resulting in acquittal or conviction." Nor does it apply in the case of a court-martial where the finding and sentence have not been confirmed.

A fresh trial, however should be ordered only in exceptional circumstances, that is to say, when such a course is considered absolutely essential in the interests of discipline. Pardon or condonation by competent naval authority, if held to be proved, will operate to prevent a person from being tried by a court-martial.

12. Time limit for trial. - An offence, (other than desertion, or fraudulent enrolment, or any of the offences relating to mutiny) cannot be tried by court-martial if three years have elapsed since the date of its commission. Any time, however, spent by the accused as a prisoner of war, or in any enemy territory, or in evading arrest after the commission of the offence, is to be disregarded. A sailor cannot be tried even for desertion (other than desertion on active service) or for fraudulent enrolment, if he has served in any- of armed forces in an exemplary manner for three years after the commission of the offence.

13. Place of trial. - An offence, wherever committed, may be tried and punished at any place whatever.

(iii) Constitution

14. Composition of court-martial. -The following provisions apply to all court-martial, *i.e.*, general, district and summary general:

(a) The president as well as other members, including spare members, are all nominated by the convening authority.

(b) Every member must be subject to the Ordnance and must have held commission for not less than three years.

(c) All officers must be of or above the rank of lieutenant.

(d) No court shall consist of officers all of whom belong to the same ship or establishment; they may however belong to any branch of the navy.

15. General court-martial. - (i) A general court-martial shall consist of not less than five, and not more than nine officers.

(ii) The president must not be below the substantive rank of commander.

(iii) A court convened for the trial of an officer shall not include more than one member. who is below the rank of such officer.

(iv) A judge advocate must be detailed to attend the trial.

16. District court-martial. - In addition to those mentioned in para 14 above the following provisions apply to district court-martial :

(i) A district court-martial shall consist of not less than three, and not more than seven officers.

(ii) The president must not be below the substantive rank of lieutenant commander.

(iii) A judge advocate may at the discretion of the convening authority, be detailed to attend the trial.

17. Disqualifications of officers. - The following officers are dis-qualified from sitting on a general or district court-martial.

(i) the convening officer;

(ii) the prosecutor;

(iii) a witness for the prosecution;

(iv) an officer who investigated the charges before trial and recorded the summary of evidence;

(v) an officer who was a member of a board of inquiry respecting the matters on which the charges against the accused are founded ;

(vi) the commanding officer of the ship or establishment to which the accused is attached or belongs at the time of the commission of the offence or at the time of the trial;

(vii) an officer who was a member. of a previous court-martial which tried the accused in respect of the same offence ;

(viii) an officer who has a personal interest in the case.

18. Disqualification of judge advocate. - An officer who is disqualified for serving on a court-martial is also disqualified for acting as judge advocate at that court-martial.

(iv) Duties of Convening Officer

19. Consideration of proposed charge and evidence. - Before deciding to convene a court-martial the convening officer must satisfy himself that the charge submitted by the commanding officer discloses an offence under the Ordinance and *is* properly framed in accordance with the rules. He must also be satisfied that evidence sufficient to justify trial is disclosed in the summary of evidence. He may direct the commanding officer to alter the proposed charge in view of the evidence submitted; he may give directions that further evidence be obtained; in a suitable case he may direct that the accused, if under arrest, should be released from arrest pending the obtaining of further evidence. If he thinks a trial by court-martial is not justified, he should either arrange for the case to be dealt with summarily or order the charge against the accused to be dismissed.

20. Decision to order trial by court-martial. - If the convening officer is of opinion that the case should be tried by court-martial, he is, subject to the terms of his warrant, to convene either a general or a district court-martial. If the case is one for trial by a general court-martial, and he holds no warrant to convene such a court, he is to refer the case to the appropriate superior authority having power to convene general court-martial.

21. Type of court-martial to be convened. - In deciding whether the case should be tried by general or district court-martial, the convening officer is to have regard to the prevalence of the particular offence charged, the general state of discipline in the ship or establishment, the character of the accused and the sentence which the court ought to be in a position to award if the facts alleged should be found to be proved. It is to be borne in mind that there are few offences committed by Master Chief Petty Officers, Senior Chief Petty Officers, Chief Petty Officers, Petty Officers and sailors which cannot be dealt with adequately by district court-martial. For very grave offences, or where a serious example is required a general court-martial should be convened.

A case should not, as a rule, be sent for trial unless there is a reasonable probability that the accused will be convicted. On the other hand, there may be cases where allegations of disgraceful conduct have been made, and where a court-martial affords to the accused the only means of vindicating his character.

22. Order for trial by court-martial. - The convening officer, having settled or approved the charges on which the accused is to be tried, will personally endorse the charge-sheet with an order that the accused is to be tried by general or district court-martial, as the case may be. It is within the power of the convening officer to direct charges to be inserted in different charge-sheets on each of which the accused is to be separately tried, as far as, and including the finding; in that event he should indicate the order in which the charge-sheets are to be tried. If there are separate charge-sheets the convening officer may direct that in the event of a conviction upon anyone of them the accused need not be tried upon the other.

Each charge-sheet must be signed by the commanding officer and bear upon the face of it the convening officer's directions for trial.

(v) Preparation of defence by accused

23. Information to be given to accused. - As soon as practicable after an accused has been remanded for trial by court-martial and in any case not less than 48 hours before his trial, he is to be given 'gratis' a copy of the charge-sheet, a copy of the summary of evidence together with a copy of the additional summary, if any, and if the accused so requires, a list of the ranks, names and ships or establishments of the officers who are to form the court, and any spare members.

As soon as trial has been ordered, proper opportunity to prepare his defence is to be afforded to the accused, who is to be permitted to have free communication with any witnesses whom he may desire to call, and with any "friend", defending officer or legal adviser whom he may wish to consult, if such persons are available. (Other matters in connection with preparation of defence are set out in rules 128 and 129.)

24. Application by one accused charged jointly with another accused to be tried separately. - An accused who is charged jointly with any other accused person, may claim to be tried separately on the ground that the evidence of the other accused proposed to be tried jointly with him, would be material to his defence. Such a claim may be made by an accused either by notice to the convening authority, or when arraigned before the court, by notice to the court. The convening authority or the court, as the case may be, if satisfied of the genuineness of the claim, and if the nature of the charge permits, shall allow the claim and the accused shall be tried separately).

25. Appointment of defending officer. - In order to ensure that an accused person is represented at his trial, it is the duty of the convening officer to ascertain from the accused if he desires to have a defending officer assigned to represent him at the trial; and if the accused so desires, the convening officer must use his best endeavours to ensure that a suitable officer is detailed for this purpose.

26. Appearance of counsel. - The accused may himself arrange for the services of counsel to represent him at his trial. If he intends to be represented by counsel he must give notice to that effect, so that convening officer may, if he considers it desirable, obtain the services of counsel on behalf of the prosecutor. If the accused does not intend to be so represented but counsel has been obtained on behalf of the prosecutor, the convening officer must take steps to inform the accused to that effect not less than seven days before the trial, so that the accused may himself obtain counsel for his defence, if he so desires.³ Similar notice should be given to the accused where the convening officer intends to appoint or apply for the services of an officer with legal qualifications to act as prosecutor at the trial.

The qualifications of *counsel-i.e.*, Barrister-at-Law, Pleader etc. are set out in rules 196 to 201, as also their functions, rights and duties.

A defending officer has the same functions, rights and duties as counsel. The "friend" of the accused can only act in an advisory capacity.

(vi) Assembly of Court

27. Assembly of court and inquiry as to constitution. – (a) Upon a court-martial assembling, the court before proceeding with the trial are to satisfy themselves in closed court that it has been convened in accordance with the Ordinance and the rules. They should consider in particular those matters referred to in rules 135 and 136.

(b) The court are to examine the convening order for the purpose of ascertaining whether the members who have taken their seats, the judge advocate, if any, and any spare members present are those mentioned in the order.

28. Inquiry as to legal minimum of members. - The court are next to ascertain that the legal minimum of members required by section 99 of the Ordinance for a general or district court-martial, as the case may be, has been detailed and is present. When any member who is appointed is absent, a spare member, if there is one and if he is eligible and qualified may take the place of absentee member. If, however, the legal minimum number is not made up the court must adjourn.

29. Inquiry as to eligibility and qualifications of members. - The court are then to satisfy themselves that the president and members are of the required rank and are not disqualified under the Ordinance. The grounds of ineligibility and disqualification are set out in paragraphs 14 to 18 above.

30. Judge Advocate. - At a general court-martial there must be a judge advocate, and there may be one at a district court-martial. The convening officer appoints the judge advocate, who must be an officer of the department of the Judge Advocate General, or if no such officer is available, any fit person may be appointed, who in the opinion of the Judge Advocate General possesses necessary qualifications to act in that capacity. An officer who is disqualified for serving as a member on a court-martial is also disqualified for acting as a judge advocate at that court-martial.

31. Powers of adjournment of court. - If the court are not satisfied on any of the above-mentioned matters and are not empowered to put such matter right, they are to adjourn and report to the convening officer.

32. Amenability of the accused to the jurisdiction of the court. - The court are to satisfy themselves that the accused *is* subject to naval law or otherwise liable to trial by court-martial and to the jurisdiction of the court. The jurisdiction of general and district court-martial is dealt with in paragraphs 8 to 12. As to what persons are subject to naval law or otherwise liable to trial by court-martial *see* sections 2, 95 (2) and 106 of the Ordinance and notes thereto.

33. Validity of charges. - The court should be satisfied that each charge is on its face correct in law and framed in accordance with the rules. For the statement and the particulars of the offence *see* Chapter III of this part (paragraphs 41 and 42).

If not satisfied on the above matters, the court should adjourn and report to the convening officer.

(vii) Opening of the Court

34. Appearance of accused, prosecutor, counsel etc. - When the matters described in the preceding paragraphs have been considered, the court is to be opened and the accused brought before it. The accused should be escorted by another person at least of the same rank as himself. The prosecutor, who must be a person subject to naval law, and the defending officer or counselor "friend" of the accused will take their places in the court.

Witnesses may be present in court from the time when the accused is brought *in* until after the members have been sworn, at this stage they are to withdraw, and are not, except by leave of the court, to be in court when not being examined.

35. Open Court. - A court-martial is an open court like other courts of justice, but it has inherent powers to sit "in camera" if such course as necessary in the interests of justice. Further, the public may be excluded from all or any part of the proceedings at the discretion of the court. The court may be closed at any time to enable the members to deliberate in private.

36. Objections by accused to members. -The order convening the court and the names of officers appointed to try the accused are to be read to the accused, and the accused is to be given the opportunity to object to any of these officers. When a court is convened to

try more than one accused, either separately or jointly, each accused must be given the right to object and be asked separately if he has any objection. Rule 138 contains provisions as to the way these objection are to be inquired into and disposed of. If upon a successful objection to any of the members, no spare member who is eligible and qualified, is available to fill the vacancy, the court should normally adjourn, but may proceed with the trial in certain circumstances, provided that there is a legal minimum of members present. If, however, an objection is successfully made in respect of the president, the court must adjourn until a new president is appointed by the convening authority.

When upon a successful objection to the president or a member, an adjournment is necessary, the convening officer can, if he pleases convene a new court, as the trial of accused *is* not considered to begin until the court are sworn.

37. Swearing of court, judge-advocate, etc. As soon as the court is finally constituted, the president, members and judge advocate, if any, are to be sworn or affirmed, all persons present in court standing. Officers attending under instruction are next to be sworn or affirmed. Any interpreter or shorthand writer who may have been appointed is next to be sworn or affirmed, after the accused has been given the opportunity to object to such interpreter or shorthand writer.

The court may be sworn at one time to try several accused persons in succession provided that such persons are present when the oath is taken and have been given an opportunity of objecting to members. The form of oath or affirmation and the manner of taking it by all persons required to be sworn or affirmed and the persons who are to

administer it are prescribed in the rules. Provision is also made whereby an oath or affirmation may be taken in such form as the court ascertains to be binding on the person's conscience.

38. Absence of members during trial. - A member of court who has been absent during any part of the evidence ceases to be a member, and a new member, cannot be appointed or added to a court-martial after the accused has been arraigned.

(viii) Arraignment of accused

39. Reading of charges. - As soon as the members, judge advocate, if any, and others have been sworn, the accused will be arraigned. Arraignment consists in the reading of each charge upon a charge-sheet separately to the accused and asking him whether he is guilty or not guilty of it, I The judge advocate or, where there is no judge advocate, the president conducts the arraignment.

If there are several charges on the charge-sheet, the accused may claim separate trial on each or any charge on the ground that, unless so tried, he will be embarrassed in his defence.

If there are alternative charges upon one charge-sheet, and the accused pleads guilty to the first of such alternatives, the prosecutor may withdraw the other alternative charges before the accused is arraigned upon them; otherwise the accused will be arraigned upon all the charges whether they are alternative or not.

If there is more than one charge-sheet, the court must not arraign the accused upon any subsequent charge sheet until their finding upon the first charge-sheet has been arrived at.

The accused, if charged jointly with any person whom he claims as a material witness for his defence, may apply, if he has not already done so, to be tried separately from that person, and the court may grant separate trial if the nature of the charge permits.

40. Objection to charge. - Before pleading to any charge, the accused may object to the charge as not disclosing an offence under the Ordinance or as not being in accordance with the rules. If the court disallow the objection, the trial will proceed; if they allow it, they will or, if in doubt, they may, adjourn to consult the convening officer. who may amend the charge and direct that the trial be proceeded with.

The court may always themselves amend a mistake in the charge sheet so far as it relates to the name and description of the accused but not otherwise.

Apart from any objection by the accused, the court has power before they close for consideration of their finding to report their opinion as to any charge, which appears to them to be faulty, to the convening officer, who may either amend the charge or direct a new trial to be commenced.

41. Plea to the jurisdiction. - The accused, before pleading to any charge, may offer a plea to the general jurisdiction of the court and give evidence in support of the plea. The court will decide this question of jurisdiction in the same manner as any other question. If the plea is overruled, the court will proceed with the trial; if it is allowed, the court must record their decision and the reason therefore, report to the convening officer and adjourn; if in doubt, the court may either refer to the convening officer or record a special decision and proceed with the trial.

A plea to the jurisdiction is a plea that the court have no right to try the accused because, for example, He is not subject to naval law (as distinct from a plea which relates to a particular charge). The grounds for such a plea are shown in paragraphs 8 to 12 above.

42. Recording of plea; refusal to plead; insanity. etc. - The objection and plea referred to in the two preceding paragraphs having been disposed of (if raised), the accused's plea to the charges upon which he has been arraigned will be recorded this will normally be "guilty" or "not guilty".³ But the accused may refuse; to plead or plead unintelligibly, in which case a plea of "not guilty" must be recorded, or it may be urged that the accused is unfit to plead by reason of insanity, for which event provisions are made in section 123 and rule 217.

43. Plea in bar of trial. - Before pleading to a charge the accused may offer a plea in bar under section 108 of the Ordinance on the ground that he has been previously tried for the offence by a court-martial or a criminal court, and been convicted or acquitted, or that he has been dealt with summarily for the offence, or that the offence has been pardoned or condoned by competent authority (*see* para 11), or that the offence is time-barred under section 105 of the Ordinance (*see* para 12). Upon the hearing of this plea, evidence may be offered both by the accused and the prosecutor and addresses may be made. If the court find the plea not proven, they will proceed with the trial; if they find it proven, they will notify this finding to the confirming authority and adjourn, though they may proceed with any other charge not affected by the plea. In either case their finding on the plea requires confirmation.

44. General plea to the charges. - After any plea or objection as described above has been dealt with and the court proceed with the trial of the charge, the accused is to plead either "guilty" or "not guilty" thereto; except that the accused may, in certain circumstances, plead "guilty":-

(a) to an offence other than that charge, *e.g.*, to absence without leave [sec. 47(a)],
when charged with desertion under section 46(1);

or

(b) to the offence charged as having been committed in circumstances involving a
less degree of punishment, *e.g.*, when charged under section 41 with using
threatening language to his superior officer being in the execution of his
office, he may plead guilty to the charge with exception of the words "being in
the execution of his office";

or

(c) to the offence charged subject to exceptions or variations, *e.g.*, if charged under section 65 with losing service property (a number of articles) which were on his charge, he may plead guilty in respect of some of those articles only.

In such an event, the court may accept such a special plea if the prosecutor signifies the concurrence of the convening officer and the court are satisfied of the justice of taking such a course. Any failure to obtain such concurrence of the convening officer as aforesaid, however, does not invalidate the proceedings, if they are confirmed notwithstanding such failure.

45. Plea of "Guilty". - If an accused pleads guilty to a charge, before the court decide to accept the plea, the president or the judge advocate is to ascertain that the accused understands the nature of the charge and the general effect of his plea and in particular the difference in procedure when an accused pleads guilty and when an accused pleads not guilty. It should be pointed out that on a plea of guilty prosecution witnesses will not be called, but that the summary of evidence will be read. The accused should also be informed that he is entitled to make a statement in mitigation or punishment and to call witnesses of his character. If the accused in mitigation wishes to elicit circumstances of provocation by cross-examining prosecution witnesses he should be advised to plead not guilty to enable him to do this.

46. Plea of guilty where the accused is liable to death sentence :- A plea of guilty is not to be accepted if the accused is liable, if convicted to be sentenced to death.

47. Order or trial where there are pleas of guilty and not guilty. - If an accused has pleaded guilty to a charge but there are on the charge-sheet other charges to which the same accused or another accused, has pleaded not guilty, the court is to proceed to try such other charges and reach a finding thereon before proceeding further with the plea of guilty.

48. Procedure on a plea of guilty. - When the court proceed with a plea of guilty the summary of evidence is to be read. If the president has been provided with an expurgated copy of the summary' of evidence, the prosecutor is not to read to the court those parts of the summary of evidence, which have been expurgated or inform the court of the facts contained in those parts: and he is not to hand the original summary of evidence to the court until the trial is concluded. If there is no summary of evidence, or if it is inadequate or incomplete, the court is to hear and record sufficient evidence to enable them to determine the sentence, and for the confirming officer to know all the circumstances connected with the Offence.

The accused or his defending officer or counsel may then adduce evidence of character and in mitigation of punishment, and address the court in mitigation.

If from the statement of the accused, or from the summary of evidence, or otherwise, it appears to the court that the accused did not understand the effect of his plea of "guilty" the court must enter a plea of "not guilty" and proceed with the trial.

49. Duty of President. - It is the duty of the president to ensure that the trial is conducted in accordance with the Ordinance and the rules, and in particular to see that the accused does not suffer any disadvantage in consequence of his position as such, or of his ignorance, or of his incapacity to examine or cross-examine witnesses or to make his own statement clear and intelligible.

50. Change of Plea. - An accused who has pleaded "not guilty" may at any time before the court close to consider their finding withdraw his plea of not guilty and substitute a plea of "guilty". If the court are satisfied that they can accept the changed plea, after complying with the provisions of rule 146 (2) they may then proceed as on a plea of guilty.² With the consent of the convening officer they may accept a plea of guilty to a less offence in accordance with sections 112 or 113 of the ordinance, or a plea of guilty subject to exceptions and variations; (*see* para 44 above).

(ix) Procedure on plea of not guilty

51. Plea of not guilty. - Before proceeding with a trial on a plea of not guilty, the court must ask the accused whether he wishes to apply for an adjournment on the ground that he has been prejudiced by non-compliance with any of the rules relating to procedure before trial or has had insufficient opportunity to prepare his defence. The court may hear evidence upon any such application and may adjourn if they think the interests of justice so require.

52. Case for the prosecution. - The prosecutor may (and is to, if required by the court) make an opening address explaining the charge and the nature and general effect of the evidence which he proposes to call. The prosecutor is not a partisan but an officer of justice whose duty it is to bring the whole of transaction before the court and not take any unfair advantage of, or to withhold any evidence in favour of, the accused. He must act with scrupulous candour, fairness and moderation towards the accused, the witnesses and the court. Any departure from this rule of conduct should at once be checked by the court.

53. Witnesses for the prosecution. - The witnesses for the prosecution will then be called. Each witness (other than a child too young to understand the nature of an oath) is to take the appropriate oath or make a solemn affirmation. His examination is to be conducted by the prosecutor, who, except in preliminary matters, must be careful not to ask leading questions, that is to say questions suggesting the answer required. After the witness has given his evidence-in-chief, as the first examination of a witness is called, the defence is entitled to cross-examine him, and in cross-examination leading questions and suggestions may be put. After the cross-examination the prosecutor may re-examine his

witness, but this "re-examination" is to be limited to points raised in the cross-examination and leading questions may not be put.

54. Examination of witnesses by the court. - The president, judge advocate and, with permission of the president, any member of the court may put questions to a witness. If this is done both the prosecution and the defence may put such questions to the witness arising from the answers which he has given as seem proper to the court.

55. Calling additional witness for the prosecution. - If the prosecution intends to call a witness whose evidence is not contained in the summary of evidence, notice of such intention and particulars of the evidence should be given to the accused a reasonable time before the witness is called. If no such notice and no such particulars have been given, the court is to inform the accused that he is entitled to an adjournment, or to postpone his cross-examination, after such evidence has been received.

56. Procedure where the prosecutor dispenses with a witness. - The prosecutor is not bound to call all the witnesses for the prosecution whose evidence is contained in the summary of evidence, nor an additional witness in respect of whom notice has been given in accordance with the preceding paragraph. If the prosecutor does not intend to call any of such witnesses, he should, nevertheless, call such of them as the accused may desire to be called for the purpose of cross-examination and for this reason, so far as practicable, he is to secure the attendance of all such witnesses.

57. Exclusion of witnesses from the court. - During a trial, a witness (other than the prosecutor) is not, except by special leave of the court, to remain in court when not under examination; if a disqualification arises on any point during the course of his evidence he may be directed by the court to withdraw.

58. Recording of the evidence. - As a witness gives his evidence it must be translated (if not in English) and taken down in narrative form in as nearly as possible the words used; occasionally it may be material or desirable to take down question and answer "verbatim".

The judge advocate or, if there is none, the president must record the evidence or cause it to be recorded, and is responsible for its accuracy and for the proceedings "as a whole".

The form in which record is to be made is provided in the Fourth Appendix to the rules.

59. Reading back the evidence to the witness. - Before a witness withdraws, the whole of his evidence as recorded must be read to him. to ensure its accuracy; he may then make further explanations or corrections. The prosecutor or the accused may put questions to the witness arising out of any such explanation or correction as seem proper to the Court. Reading over the evidence may be dispensed with where a shorthand writer is employed. A witness does not sign his evidence.

60. Calling of witnesses by court and recall of witness. - At any time before the court close to consider their finding, they may call or recall a witness if in their opinion such course is in the interest of justice. If such a witness is called the prosecutor and defending officer may put such questions to him as seem proper to the court. Similarly, the prosecutor or the accused may recall a witness by leave of the court.

61. Submission of no case. - At the close of the case for the prosecution the accused may make a submission to the court in respect of any charge that no '*prima facie*' case to answer has been made. The prosecutor may address the court thereon and the accused may reply to the prosecutor's address. If the Court are satisfied that the prosecution has not established a '*prima facie*' case on the charge as laid, and it is not open to them on the evidence adduced to make a special finding under sections 112 or 113 of the Ordinance or rule 155 (8), they are to uphold the submission and record a finding of not guilty in respect of the charge to which it relates; otherwise the trial proceeds.

62. Rights of the accused. - After all the evidence for the prosecution has been given, the accused is to be asked by the court if he wishes to make a statement or to call any witnesses as to the facts of the case.¹ If the accused makes any statement, he shall not be sworn or affirmed and no question shall be put to him by the court or by any other person.

63. Procedure where witnesses to facts called by defence. - If the accused intends to call a witness or witnesses as to the facts of the case; he may make a statement as mentioned in the previous paragraph; or if he makes no such statement, his counselor defending officer may make an opening address. Any such address should be limited to an outline of the evidence to be called for the defence. The accused may then call his witnesses including, if he so desires, any witnesses as to character. If the accused produces witnesses as to character, the prosecutor may also produce evidence of former convictions, either by court-martial or criminal court and any entries in the service conduct sheet of the accused. After the evidence of all the witnesses has been taken, the accused, his counselor defending officer, as the case may be, may make a closing address, and the prosecutor may reply.

64. Procedure where DO witnesses (except as to character) called by defence. - If the accused does not call any witnesses as to the facts of the case, he may make a statement, as mentioned in paragraph 62 above, and call witnesses as to character. The prosecutor may then produce any evidence of former convictions, etc., as mentioned in the last paragraph. After all such evidence has been taken, the prosecutor may then make a final address for the purpose of summing up the evidence for the prosecution; and the accused, his counsel or defending officer, as the case may be, may then make a closing address in reply.

65. Addresses by prosecutor and defence. - In no case may the prosecutor, counselor defending officer of the accused in the course of an address state as a fact any matter which has not been proved, or which it is not intended to prove in evidence, nor may they state what is their opinion as to any matter of fact which the court has to decide.

66. Latitude to accused in defence. - The accused must be allowed great latitude in making his defence, and will not, within reasonable limits, be stopped by the court merely for making irrelevant observations.

67. Recalling of witnesses. - At the request of the prosecutor or the accused, and by leave of the court a witness may be recalled for the purpose of having further questions put to him through the president or judge advocate, if any. The court may also allow the prosecutor to call or recall a witness to rebut any material evidence on any unforeseen matter which may have arisen, or as a reply to the witnesses, to character called for the defence, to prove previous convictions against the accused. In all these cases the additional evidence must be given before the closing address by or on behalf of the accused. The court may, of their own motion, call or, recall any material witness if it is necessary to do so in the interest of justice; such witness may be called or recalled at any time before the finding of the court is arrived at.

68. Adjournment. - During the trial the court may adjourn from time to time, from place to place, or to consult the convening authority. Similarly, if the accused becomes ill, the court may adjourn.

69. View by court. - The court may adjourn to view any place or thing at any time before they close to consider their finding. At a view the president, members of the court, judge advocate, if any, prosecutor, accused and any defending officer or counsel are to be present.

70. Absence of president, judge advocate, or member. - If at any time after a court-martial has been sworn and before the president has signed the finding and sentence if any, the president or the judge advocate dies or is otherwise unable to attend, the court must be dissolved. The proceedings of a court-martial are valid, notwithstanding the absence of one or more members, other than the president, so long as the minimum number of members present throughout the proceedings is not reduced below the minimum required by the Ordinance to constitute the court; but when any member is absent the court must be adjourned and seek the permission of the convening authority to proceed with the trial without such member. When, however, such permission is given, the member who has been absent must not at any subsequent stage sit on that court. Similarly, a new member cannot be appointed or added to a court-martial after the accused has been arraigned.

71. Summing up by judge advocate. - After the closing addresses, if a judge advocate is sitting, he is to sum up the evidence and advise the court on the law relating to the case in open court.

(x) Deliberation on finding

72. Finding to be considered in closed court. - The finding is to be considered in closed court. If a judge advocate is present he will, after he has made his summing up, retire from the court. No one is to be present except the members and any officers under instruction. If, when deliberating, the court require further advice from the judge advocate, the court must be re-opened and the advice of the judge advocate asked and given in open court. To enable the court to deliberate on the finding in closed court, the president will either order the court to be closed or retire with the members and officers under instruction to a convenient retiring room. The court must record a finding on every charge upon which the accused was arraigned, including any alternative charge. They are to record :-

- (a) a finding of guilty, or a special finding under sections 112 or 113 of the Ordinance or under rule 155(8), or under section 123(1); or
- (b) a finding of not guilty; or
- (c) a finding of not guilty and honourably acquitted.

An honourable acquittal will be rare, as it can only arise when charges alleging disgraceful conduct have been preferred and the court are satisfied that the accused's conduct in relation to the charges has been above reproach.

13. Onus of proof. - At the outset of their deliberations the court must remember that it is a principle of law that the accused is presumed to be innocent unless he is proved to be guilty and that the onus, or burden, of proof rests throughout upon the prosecution. Unless therefore the court feel sure beyond reasonable doubt of the accused's guilt after considering the evidence as a whole, he is to be acquitted.

74. Corroboration. - It is legally open to a court to convict an accused person upon the evidence of one credible witness. But in some cases corroboration of such witness is required by practice almost amounting to a rule of law; in others it is desirable that corroboration should be looked for, though not actually required by law or practice; (*see* Chapter V, particularly as regards evidence of an accomplice).

75. Extraneous consideration. -The court, in considering their decision, must not be influenced by the consideration of any supposed intention of the convening officer in sending the accused for trial by a particular kind of court-martial. In many cases the convening officer will have decided no more than that a "*prima facie*" case against the accused is shown upon the summary of evidence, and he will have formed no opinion as to the guilt of the accused. An acquittal, therefore, is not in itself a reflection upon the convening officer. Even if it were, it would afford no reason whatever for a court to convict, unless the evidence established the charge.

76. Special finding. - The court must consider whether the facts alleged in the particulars of each charge have been proved in evidence, and, if proved, whether they disclose the offence stated in the charge itself, or some other offence of which they may, under the provisions of sections 112 or 113 of the Ordinance, find the accused guilty. Thus on a charge of desertion, they may find the particulars of the period of absence proved, but not the intention to remain permanently absent from duty or other alleged intent. In such circumstances the court could make a special finding that the accused was not guilty of desertion but was guilty of absence without leave.

77. Attempts. - An accused charged before a court-martial with any offence may be found guilty of attempting to commit that offence. An accused charged with an attempt may be convicted of it, even though it be proved that he committed the full offence.

78. Special finding as to the particulars of the charge. -Where the court find that the facts proved in evidence differ materially from the facts alleged in the particulars, but are nevertheless sufficient to constitute the offence charged, and that the difference is not, so material as to have prejudiced the accused in his defence, they may make a special finding setting out the variation" For example; if on a charge of absence without leave the court find that the period of absence was shorter than that alleged in the charge. they may make a special finding to that effect.

79. Insanity. - In rare cases a court may find that the accused did the acts, or made the omissions, constituting the offence alleged, but was insane at the time; the court in such circumstances are to find the accused guilty but insane.

80. Voting on the finding. - The opinion. of every member of the court as to the finding must be given either by word of mouth, or, if the president so directs, by secret written ballot, on each charge separately. The opinion of the members is to be taken in succession beginning with member who is junior in rank. If the opinion is given by secret written ballot, the ballot papers must be destroyed after the finding has been- recorded.' In the case of an equality of votes the accused is to be acquitted. The president has no second or casting vote on the finding. A majority of votes decides the issue and the finding of the majority is to be recorded as the finding of the court.

The president must ensure that no officer under instruction gives any indication of his views on finding lest he influences the decision of the court until after the court has reached their finding. (For form of finding, *see* Fourth Appendix to rules.)

(xi) Proceeding on conviction

81. Evidence as to character and service. - If he finding upon any charge is "guilty" (whether or not the accused has pleaded guilty thereto), and the trial of all charges and charge-sheets has been completed, the court, for the purpose of determining their sentence, must, whenever, possible, take and record evidence as to the character, age,

service, etc, of the accused. This evidence must be given by a witness on oath or affirmation, usually by the prosecutor, who will produce extracts from the service record of the accused in accordance with the rules. (Forms of statement as to character and particulars of service, both in the case of officers and sailors, are set out in the Fourth Appendix to the rules).

The accused may cross-examine any witness who gives evidence of the above-mentioned matters, and if he so requires, the service books or certified copies of material entries therein, are to be produced. Oral evidence of bad character cannot be given for the prosecution. The accused, however, may add evidence as to his good character at this stage, as well as during the hearing of the case for the defence, and the prosecutor has the right of cross-examination to test the veracity of such, evidence, even if he thereby brings out evidence of the accused's bad character.

After all the evidence as to character has been given, the accused or his counselor defending officer may address the court thereon and in mitigation of punishment.

(xii) Deliberation on sentence

82. Sentence to be considered in closed court. - The sentence is to be considered in closed court. No one is to be present except the members, judge advocate, if any, and any officers under instruction. The sentence should follow the prescribed forms set out in the Fourth Appendix to the rules. The punishment awarded must be one of those allowed by the Ordinance.³ In some cases a combination of punishments is permitted by the Ordinance.

One sentence only must be awarded in respect of all the offences of which an accused person has been found guilty, even if the trial has proceeded on different charge-sheets, and where an accused has been found guilty upon several charges, a sentence which can legally be awarded in respect of one of them will be valid notwithstanding that it could not legally have been awarded in respect of the others.

83. Discretion as to sentence. - A court-martial has [except in the case of an obligatory punishment for an offence under section 78(I)(a) of the Ordinance, *e.g.*, *murder*] an absolute discretion as to its sentence. It may award the maximum punishment allowable for the particular offence charged or such less punishment as is laid down in section 80 of the ordinance which sets out a graduated scale of punishment which a court-martial may award.

84. Maintenance of discipline the object. - A court-martial should remember that the object of awarding a sentence is not only to inflict punishment but also the maintenance of discipline.

The proper amount of punishment to be inflicted is the least amount by which discipline can efficiently be maintained. Occasion any the exigencies of discipline apart from the circumstances of a particular case may render a severe sentence necessary, but the

punishment awarded to any individual must not be more than is necessary in the interests of the service and for the maintenance of discipline, without which a fighting service must become an irresponsible mob and useless for the purpose for which it exists. It must be the object of all concerned to aim at that high standard of discipline which springs from a system administered with justice and impartiality, and to induce in all ranks a feeling of confidence, that while no offence will be passed over, no offender will in any circumstances suffer injustice.

85. Other considerations. - If the accused has elected to be tried by court-martial instead of accepting the commanding officer's award, it is not incumbent upon the court to award the same or the lesser punishment than the commanding officer has power to award.

A Master Chief Petty Officer, a Senior Chief Petty Officer, a Chief Petty Officer or a Petty Officer should as a rule be punished more severely than a sailor concerned with him in the commission of the same offence, and the instigator of an offence should normally receive a more severe sentence than a person who was incited to commit it. Where several offenders are found guilty of the same offence, it may often be proper to award different amounts of punishment, and, in order that the respective degree of criminality of several offenders charged in respect of the same transaction but tried separately may be more accurately determined the court may proceed to finding in each case separately, and, after hearing evidence of character and in mitigation, consider at one time the various sentences appropriate for each accused.

86. Premeditation and provocation. - The court must pay special regard to the question whether the offence of which the accused has been found guilty was committed with premeditation or provocation. It is obvious that a theft committed after long preparation deserves more severe punishment than a theft committed on the spur of the moment. Similarly, a court would be justified in awarding a more lenient sentence to a sailor who has been provoked into striking his superior officer than to a sailor who committed the offence without provocation. As a general rule the improper use of words should not be treated with the same severity as an offence involving physical acts.

87. Previous convictions. - Due regard should be paid to previous convictions. A habitual offender deserves more severe punishment than an infrequent offender, and a first offender should be treated as leniently as possible.

88. Prevalence of offences. - Offences must sometimes be considered in reference to circumstances other than those connected with the individual offender. When there is a general prevalence of offences or of offences of some particular kind, an example may be necessary, and on that account severe punishment may properly be awarded in respect of an offence which would otherwise receive a more lenient punishment. In such cases the punishment must be regarded more from the point of view of the effect which it will produce on the force to which the offender belongs than on the offender himself.

89. Punishment to be just and proper. Finally, having due regard to the foregoing considerations, the court must always award such punishment as they themselves consider just and proper in the particular circumstances. They must not assume that the convening officer takes a graver view of the facts than they themselves take.

90. Recommendation to mercy. In view of the discretion of the court in awarding sentence,¹ in the great majority of cases, a recommendation to mercy will be exceptional. If such recommendation is made it must be entered on the record, together with the reason for it.² A recommendation is not subject to confirmation.

Any expression of opinion as to anything occurring before the court, and any matter which the court may desire to report, must be stated in a separate document for the information of the proper naval authority.

91. Voting on the sentence. - Every member of the court must give his opinion as to the sentence to be awarded, even if he had voted for an acquittal upon the finding. The officer junior in rank must first give his opinion. In the case of an equality of votes, the decision must be in favour of the accused. The president has no second or casting vote upon the sentence. An absolute majority of the opinions of the members must be secured, but sentence of death may not be passed without the concurrence of at least two-thirds of the members in the case of a general court-martial, and of all the members in the case of a summary general court-martial.

92. Recording of sentence, signing etc., of proceedings. - When decided upon, the sentence and recommendation, if any, are to be recorded on the proceedings, which are then to be signed by the president and judge advocate, if any, and dated; but they shall not be promulgated until they have been confirmed. The proceedings are to be forwarded as directed in the convening order for confirmation of finding and sentence.² For form of proceedings *see* Fourth Appendix to the rules,

93. Times for sittings. - A trial should be continued from day to day, the court sitting for a reasonable time each day. The court is not to sit on Sunday or other closed holidays, unless in the opinion of the court or of the convening officer the exigencies of the service make such course necessary.

(xiii) Confirmation and Revision

94. Finding and sentence not valid until confirmed. - A finding (whether of guilty or not guilty or a sentence of a court-martial are not valid until confirmed. Before confirmation, the accused may put forward a petition to the confirming officer, who may take necessary steps to satisfy himself as to the correctness, legality or propriety of the order passed by the court, or as to the regularity of any proceeding to which the order relates.

After confirmation, the accused may submit a petition to the Government or the Chief of Naval Staff, who may pass such order thereon as it or he thinks fit.

The Government and the Chief of Naval Staff both possess concurrent powers to quash the proceedings of any court-martial on the ground that they are illegal or unjust.

95. Who may confirm.-The finding and sentence of a general or district court-martial are normally confirmed by the convening authority, empowered in this behalf in the warrant issued by the Chief of Naval Staff, but subject to such restrictions, reservations or conditions as may be imposed therein. (For forms of court-martial warrants *see* Sixth Appendix to the Rules).

The power to confirm may be exercised by any officer, of appropriate rank, on whom the command may devolve temporarily during the absence of the above-mentioned officers - But the proceedings cannot be confirmed by any person who was member of the court-martial, or any officer who had acted as the prosecutor at the trial; nor can they be confirmed by either of them if he becomes confirming officer in the meantime. In the latter event he must refer the proceedings to a superior authority for confirmation. For forms of confirmation *see* Fourth Appendix to the rules,

96. Revision of finding and sentence. - Upon receipt of proceedings for confirmation the confirming officer, before confirming may direct the reassembly of the court for the purpose of revising their finding and sentence or either of them. Only one such revision can be ordered or made. If the court is directed to take fresh evidence, such evidence must be taken in open court and in the presence of the accused; otherwise the proceedings on revision must be in closed court.

If the finding is sent back for revision and the court do not adhere to it, they must revoke it and record a new finding. If the finding is revoked; they must also revoke the sentence" and, if the new finding involves a sentence (*I. e.*, is not an acquittal) they must pass a new sentence.

If the sentence only is sent back for revision, the court is not to revise the finding. It should be, noted that under the Ordinance a finding of "not guilty" can be revised and the accused found guilty and sentenced; a sentence can be increased on revision; and evidence can, if so ordered, be taken on revision.

97. Non-confirmation and retrial. - As the finding and sentence of a court-martial are not valid until confirmed, a refusal of confirmation, duly entered on the proceedings operates to annul the whole trial. In such a case the accused has not been acquitted or convicted and may legally be tried again; but retrials should rarely be resorted to, unless the needs of discipline and justice demand that an offender shall not escape punishment on account of a legal technicality. It must be remembered that if an accused at the first trial has made out a defence, his defence at the second, trial may thereby be prejudiced. Retrial should not be ordered until the judge Advocate General has been consulted.

If the confirming officer considers that the finding of a court-martial is unreasonable, or cannot be supported having regard to the evidence, or involves a wrong decision on a question of law, or that on any ground there was a miscarriage of justice, he may withhold confirmation.

It is open to the confirming officer to withhold confirmation either wholly or in part, and refer the proceedings for confirmation to superior authority competent, to confirm them.

98. Power to alter findings or sentence in certain cases. – If a finding of guilty which has been confirmed is found for any reason to be invalid or cannot be supported by the evidence, it is open to the Government or the Chief of Naval Staff to substitute a new finding and pass a sentence for the offence specified or involved in the new finding. Such substitution can only be made if the new finding is such as could have been validly made on the charge by the court-martial or the officer before whom the trial took place; and if it appears that the court-martial, or the officer, must have been satisfied of the facts establishing the offence. Thus if an accused has been found guilty of murder, that finding may be altered to one of culpable homicide not amounting to murder; or a finding of guilty of a charge of desertion may be altered to a finding of guilty of absence without leave. Similarly, if a sentence passed by a court-martial, which has been confirmed, is found for any reason to be invalid the authorities mentioned above may pass a valid sentence.

The punishment which is thus awarded by any fresh sentence must not be higher than, or in excess of, the original punishment awarded by the court or by the officer who held the trial.

Where the confirming authority refuses confirmation of the “guilty” on some but not on all charges, he must take into consideration the fact of such non-confirmation and mitigate, remit or commute the punishment awarded as may seem just, having regard to the offences in the charges the findings on which he has confirmed.

99. Power of confirming officer as to sentences. - If the confirming officer confirms the finding (whether the original one or one revised under section 133 of the Ordinance, or substitutes a finding of guilty as explained in the preceding paragraph, he has the following powers with regard to the sentence; when confirming ;

- (a) he may confirm the sentence;
- (b) he may mitigate the punishment to a less amount of the same punishment;
- (c) he may remit a punishment wholly or in part;
- (d) he may commute the punishment to another punishment less severe than that imposed by the court;
- (e) he may postpone the carrying out of a sentence of imprisonment or detention pending the orders of the Government, or the Chief of Naval Staff, or any officer empowered to convene a general or a summary general court martial;
- (f) the authorities mentioned above may suspend the sentence of imprisonment or detention, whether or not the offender has already been committed to

prison or custody; (any period during which the sentence is under suspension is to be reckoned as part of the term of such sentence);

(g) he may vary the form of the sentence if he finds that the sentence passed by the court is informally expressed, or he may vary the sentence if he finds that the punishment awarded by the sentence is in excess of the punishment authorised by law;

(h) in the case of a sentence of imprisonment for a period not exceeding three months, he may direct that the sentence shall be carried out by confinement in naval custody. Advantage should be taken of this provision. where no sentence of dismissal is added to such sentences. Unless a direction to to this effect is given, the offender has to be committed to a civil prison (except on active service) which is most undesirable in the case of a person who is to return to duty after undergoing his punishment. Sentences of imprisonment combined with dismissal should, as a rule, be undergone in a civil prison.

(xiv) Promulgation

100. Promulgation of finding, etc. - The charge, finding and sentence and any recommendation to mercy must be promulgated to the accused as well as the confirmation or non-confirmation of the proceedings. Promulgation is to be carried out in such a manner as the confirming officer may direct, or, if no direction is given, according to *the custom of the service*. The commanding officer is to arrange for promulgation to the accused to be made.

(xv) Procedure after promulgation

101. Pardon and remission. etc. - Even after promulgation, the Government or the Chief of Naval Staff (or any officer not below the rank of Captain empowered in this behalf by the Chief of Naval Staff) may pardon the accused, remit the whole or any part of the punishment, mitigate the punishment or commute it for any less punishment or punishments mentioned in section 80 of the Ordinance.

As to the effect of pardon *see* notes to section 153 of the Ordinance.

102. Quashing of proceedings. - The Government or the Chief of Naval Staff have also the power to quash the proceedings of any court-martial on the ground that they are illegal or unjust, or to pass any other suitable orders. (*See* para 94.)

103. Altering the finding or sentence. - As regards the power to alter any finding or sentence, after they have been confirmed, (*see* Rule 164 and para 98).

104. Date from which sentence operates. - A sentence of imprisonment or detention must be reckoned to commence on the day on which the original sentence (even if it was subsequently revised) was signed by the president of the court, of the officer exercising

powers of summary trial, If, therefore, a sentence is ultimately confirmed and promulgated, it will probably have been running for several days date of a sentence of dismissal passed by a court-martial *see* Rule 247.

105. Custody if Court-martial proceedings. - After promulgation court-martial proceedings must be forwarded for safe custody to the office of the Judge Advocate-General, where they must be preserved for not less than seven years in the case of a general court-martial of three years in the case of a district or a summary general court-martial. A person tried by a court-martial is entitled to obtain, free of charge, a copy or the proceedings before they are destroyed.

(xvi) Carrying out of sentence

106. Direction for execution of sentence. - An officer who confirms a sentence is responsible for seeing that the sentence is carried into effect, and for this purpose he is to give the necessary directions for the execution of the sentence.

Chapter XIII of the Ordinance and rules 243 to 247 deal with the execution of sentences which have been duly passed and confirmed. The Prisoners Act, 1900. renders it unnecessary to make elaborate provisions in the Navy Ordinance or the rules as to the execution of sentences of imprisonment which are to be carried out in a civil prison. All that is required is to arrange for the transmission of naval convicts to a civil prison, after which the above-mentioned Act provides for their discipline and, when necessary, their transfer from one prison to another.

Forms of various warrants required in this respect are provided in the fifth Appendix to the Rules.

A person sentenced to imprisonment by a naval tribunal, however, continues to be subject to the Ordinance during the term of his sentence, even though he is dismissed from the service; and a person sentenced to death remains so subject till the sentence is carried out.

106-A. Conviction of enrolled persons outside Bangladesh. - Where an enrolled person is sentenced to dismissal combined With any other punishment while he is serving outside Bangladesh, such other punishment, or in the case of a sentence of imprisonment or detention, a portion of such sentence, may be inflicted before he is sent to Bangladesh.

See section 19 (3) of the Ordinance. Also *see* Article 12 (2) of the Visiting Forces (Application of Law) Order, 1954 and the Fifth schedule to that Order, which are reproduced in Part IV of the Manual.

(xvii) Suspension of sentence

107. Suspension of sentence.-When a sentence of imprisonment or detention has been awarded by a naval tribunal, the confirming officer, or, the officer exercising powers of summary trial, must consider whether the offender should be committed to undergo his sentence or whether the execution of the sentence should be postponed until the orders of any of the authorities mentioned in section 155 of the Ordinance have been obtained. These authorities are the Government, the Chief of Naval Staff and any officer empowered to convene a general or summary general court-martial. If the confirming officer or the officer or the officer holding summary trial decides to recommend the sentence for suspension, he should record a direction on the proceedings of the court-martial or of the summary trial, as the case may be that the offender be not committed to undergo his sentence until the orders of a superior naval authority have been obtained.

If the confirming officer is also a superior naval authority, namely one of those mentioned in section 155, he may dispense with the direction referred to above and forthwith issue orders as such authority.

A superior naval authority, mentioned above, may suspend a sentence at any time, whether or not it has been put into execution, and he may order a suspended sentence into execution, provided that the sentence is still running and that the offender is still subject to the Ordinance.

It should be noted that, whether the sentence is put into execution or is suspended, it will run as from the date of award until it normally expires; suspension does not affect the continuity of the sentence.

108. Considerations as to suspending sentences, and on review. - The considerations which guide an officer in deciding whether or not it is advisable to suspend a sentence immediately after trial are many and vary with the state of discipline of the force under his command, the nature of the duties on which it is engaged, and the character of the man concerned.

Suspension of sentence is primarily applicable to offences of a service nature only, although in special cases it may be applied to offences of a civil character.

In all cases special attention should be directed to the following points :

- (a) The age and previous character of the offender.
- (b) Whether the offence is a first one.
- (c) Whether the offence was premeditated.
- (d) Whether the offender was at the time subject to any special stress, fatigue, disability or temptation.
- (e) Whether the offender was influenced by others older or of worse character than himself.

On active service additional considerations may arise. For example, some men may deliberately commit crimes in the hope that a long sentence may enable them to avoid doing duty with their ships or establishments. whilst others may commit grave naval offences through momentary loss of control over their nerves and without any real wrongful intent. Each case, therefore, must be considered on its merits, it being remembered that the system of suspension of sentence is designed, on the one hand, to

ensure instant punishment for those who properly deserve it, and on the other hand, to postpone, and often entirely to avoid, punishment for those whose offences, though serious, are such as may in the circumstances not call for immediate committal to prison; the power of suspension of sentence places in the hands of the commander a means of clemency and within reach of the offender an opportunity to redeem his character.

Upon review of an already suspended sentence other considerations arise. All that need be considered then is the gravity of the offence of which the man was convicted, his previous character and his conduct since conviction. As a general rule, it may be said that the more grave the offence and the worse his character before conviction the longer is the period required to prove whether the man is honestly trying his best to redeem himself and that only acts of conspicuous merit (such as bravery, or devotion to duty in action) would justify a remission of sentence without regard to the length of the period during which it had been suspended.

Apart from such special acts, remission of sentence would be justified if the Sailor has by his consistent good conduct really shown that he has done his utmost to retrieve his character and become a good and efficient sailor.

Unsatisfactory conduct subsequent to suspension will justify an order to put a suspended sentence into execution, whilst a mere negative abstention from crime would point to the advisability of directing a reconsideration of the sentence at a later date.

In considering a case, a report must always be obtained from the man's commanding officer, which should be attached with a copy of the man's conduct sheet for future reference.

A sailor under a suspended sentence is to be regarded entirely as a free man and is to be placed under no disability whatever excepting only the liability of having his suspended sentence put into execution, if he misbehaves.

When a superior naval authority receives the proceedings of a court-martial containing a recommendation for suspension of the sentence, he should, to avoid undue delay, communicate his decision by signal to the officer commanding concerned, who must at once issue the necessary instructions. Until instructions are received from the superior naval authority, the offender cannot be committed to undergo his sentence.

109. Review of suspended sentences. - It is the duty of the superior naval authority, specified in section 155 of the Ordinance, or all officer not below the rank of lieutenant commander duly authorised by such authority, to review suspended sentence at intervals of not more than four months. He may in his discretion either keep a suspended sentence further suspended by ordering it to be brought forward for reconsideration on a specified date not more than four months ahead, or if not himself a superior naval authority, refer it to such authority with a recommendation either that the offender be committed to undergo the unexpired portion of the sentence or that the sentence be remitted.

110. Dismissal combined with suspended sentence. - In the case of a sentence of dismissal combined with a suspended sentence, the dismissal does not take effect until so ordered by a superior naval authority. 1 If the offender is subsequently committed to undergo the unexpired portion of his sentence he should ordinarily order the dismissal to take effect as provided in rule 247. If the sentence remains suspended until it expires the dismissal, though automatically remitted under section 163 of the Ordinance, should nevertheless be formally remitted under section 153 of the Ordinance.

111. Procedure when sentenced for further offence. - Where a person already under a suspended sentence is awarded a further sentence which is also suspended, the two sentences will run concurrently. If the further sentence is not suspended and is for a period of three months or more, the offender must also be committed on the unexpired portion of the previous (suspended) sentence, but both sentences will run concurrently. If the further sentence is for a period of less than three months and is not suspended, the previous sentence continues to be suspended unless a superior naval authority orders that the offender be committed.

(xviii) Summary general court-martial

112. Convening of summary general court-martial. - A summary general court-martial may be convened by :-

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

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

The president of a summary general court-martial shall not be below the substantive rank of a Lieutenant commander.

For form of convening order *see* the Fourth Appendix to the rules.

113. Powers and constitution.-A summary general court-martial must consist of not less than three and not more than five officers. It has the same powers as a general court-martial, that is to say, it may try any person subject to naval law, for any offence punishable under the Ordinance, and may pass any sentence authorised thereby, except that it cannot pass a sentence of death without the concurrence of all the members of the court.

The officers detailed to form the court must have held commission for not less than three years, and must be of or above the rank of lieutenant." The officer convening the court may also appoint a fit person to act as judge advocate.

114. Record of proceedings.-A brief record of the evidence of all the witnesses examined by the court should normally be taken down in writing and attached to the proceedings; but if it appears to the officer convening the court that circumstances prevent compliance with this, provision, he may give a direction that the trial may be carried on without any such record being taken down.

115. Application of rules. - The rules applicable to the procedure at a trial by summary general court-martial are to be, as far as practicable, the same as those applicable to a district court-martial. Similarly, no finding or sentence of a summary general court-martial is valid unless it is confirmed by proper authority.

CHAPTER V

EVIDENCE

(I) Introductory

1. Rules of evidence applicable to court-martial. -Section 114 of the Navy Ordinance lays down that "subject to the provisions of this Ordinance", the rules of evidence in proceedings before court-martial shall be the same as those which are followed in criminal courts. These rules are embodied in the Evidence Act, 1872.¹ The special provisions subject to which the Evidence Act has thus been made applicable to court-martial are contained in section 115 and sections 118 to 122 of the Ordinance. The Evidence Act is mainly based on the English law of evidence, but modified to suit local conditions.

2. Questions to be determined at every trial - The object of every criminal trial is, or may be, to determine two classes of questions-questions of fact and questions of law. If the accused person pleads guilty, there is no question of fact involved in the trial; but if he does not, he raises two questions or issues, first, whether the facts charged against him happened; and next, if they did happen, what is their legal consequence. In trials before court-martial, the members of the courts both find the facts and lay down the law. It is their duty when applying their minds to questions of fact, to consider themselves bound by the rules of evidence above referred to. In deciding question of law, a court-martial should be guided by the advice of judge advocate (if a judge-advocate has been appointed) and should not disregard it except for very weighty reasons.

3. Nature of evidence. - A member of a court-martial is supposed to bring with him to the consideration of the questions which he has to try commonsense, and a general knowledge of human nature and of the ways of the world. But he is not supposed to bring with him any special knowledge enabling him to answer the particular questions of the fact raised in the trial. His knowledge of these matters is derived from what is proved to him at the hearing. The means of proof, or evidence usually consists of statements made by witnesses under examination, or of documents produced for inspection and is therefore commonly classified as being either "oral evidence" or "documentary evidence". But the members of the court may supplement by direct information the knowledge derived from these sources. Thus, they may inspect for themselves anything sufficiently identified by evidence and produced in court as material to their decision; or they may go to view any place the sight of which may help them to understand the evidence, and they are also expressly authorised to make use of their general service knowledge.

4. Difference between judicial and non-judicial inquiries.- There is no difference in principle between the method of inquiry in judicial and in extrajudicial proceedings. In either case a person who wishes to find out whether a particular event did or did not happen tries, in the first place, to obtain information from persons who were present and saw what happened (direct evidence), and failing that he tries to obtain information from persons who can tell him about facts from which he can draw an inference as to whether the event did or did not happen (indirect evidence). But in judicial inquiries the information given must be on oath or affirmation, and must be liable to be tested by cross-examination, and the Evidence Act, by allowing evidence to be given only regarding facts which are "in issue" or "relevant", excludes particular classes of indirect evidence which an ordinary inquirer would naturally take into consideration. Statements so excluded are said to be "not admissible as evidence."

5. Reasons for excluding certain classes of evidence. - The answer to the question why particular statements, oral or written, should be excluded from evidence in judicial inquiries is that their exclusion has been found by practical experience useful on various grounds, and notably on the following :

- (1) It assists the court.
- (2) It secures fair play to the accused.
- (3) It protects absent persons,
- (4) It prevents waste of time.

It assists the court by concentrating their attention on the questions immediately before them, and preventing them from being distracted or bewildered by facts which either have no bearing on the questions before them, or have so remote a bearing on those questions as to be practically useless as guides to the truth, and from being misled by statements or documents, the effect of which, through the prejudice which they excite, is out of all proportion to their true weight. It secures fair play to the accused, because he comes to the trial prepared to meet a specific charge, and ought not to be suddenly confronted by statements which he had no reason to expect would be made against him. It protects absent persons against statements affecting their characters. And, lastly, it prevents the infinite waste of time which would ensue if the discussion of a question of fact in a court were allowed to branch out into all the subjects with which that fact is more or less connected.

6. "Proved." - The definitions of "proved", "disproved" and "not proved" in section 3 of the Evidence Act should be particularly noticed. These are:-

"A fact is said to be proved when, after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists."

"Disproved" - A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist."

"Not proved." "A fact is said not to be proved when it is neither proved nor disproved."

7. These definitions to be borne in mind. - Members of court-martial should bear these definitions carefully in mind when deliberating upon their finding, and they are fortunate in having so clear a guide in the performance of a most difficult duty.

(ii) What must be proved?

8. Charge must be proved. - What must be proved, in order to obtain a conviction, is the particular charge brought. As a general rule, every charge alleges, or ought to allege, a specific offence constituting a breach of a specific enactment; and, subject to certain exceptions, it is of this offence, and of this offence alone, that the person charged can be convicted. The reason for the rule is the unfairness of requiring a person to meet a charge for which he is not prepared; And the exceptions will be found not to conflict with this reason, since they relate either to cases where the distinction between two offences is mainly technical or a matter of correct legal description; or to cases where the distinction is one of degree, but not of kind, and the accused, having been charged with the more serious, is allowed to be convicted of the less serious offence.

9. But its substance only need be proved. - It is the substance only of the charge that need be proved. Allegations which are not essential to constitute the offence, and which may be omitted without affecting the validity of the charge, do not require proof, and may be rejected as surplusage. In some cases, as in charges against a sentry for sleeping on his post, or in charges for not giving immediate notices of desertion, the time or place of the offence is material, but as a rule, it is not so. Where the court think that the facts proved, differ materially from the facts alleged in the particulars of the charge, but prove the same charge, they are empowered by rule 155 (4) to record a special finding .instead of a finding of "Not guilty".

(iii) Arrangement of the Evidence Act

10. Arrangement of the Act. - The law of evidence shows how a court may lawfully be convinced that the facts alleged in the charge happened, or that their happening was so probable that it may be regarded as proved. The Evidence Act deals with this subject thus:

(a) Part I and certain portions of Part III show what sort of facts may be proved in order to produce this conviction in the mind of the court.

(b) Part II deals with the proofs of facts, that is, what sort of proof is to be given of those facts.

(c) The greater portion of Part III deals with the production of that proof, that is, who is to give it, and how it is to be given.

Unlike the corresponding provisions of English law, which assume that we know what is, speaking generally, admissible as evidence and merely lay down certain exclusive or negative rules as to what shall not be admitted, the Evidence Act states definitely that evidence may be given of "facts in issue" and of such other facts as are declared by it to be "relevant" but of no others. The test therefore as to the admissibility of any piece of evidence is,-does it state a fact in issue or a relevant fact (as defined)? If it does, it is admissible; if not, it is inadmissible. A definite rule such as this is clearly more suited to local conditions than the English system would have been, while the list of "relevant" facts has been so framed as to arrive at practically the same results as in English law.

11. Facts in issue. - The facts which are "in issue" in a criminal trial are those on which, either by themselves or in connection with other facts, the existence, non-existence, nature or extent of the accused person's liability to punishment depends. For instance A is accused of the murder of B. At his trial the following facts may be in issue:-

That A caused B's death;

That A intended to cause B's death;

That A had received grave and sudden provocation from B;

That A, at the time of doing the act which caused B's death, was by reason of unsoundness of mind. incapable of knowing its nature.

(iv) Relevant Facts

12. What evidence is admissible. - We have now to consider what facts are "relevant". The Evidence Act answers this question by enumerating these in the sections which make up Chapter 11 "of the relevancy of facts". If a fact is not included in this enumeration of "relevant facts" it is inadmissible unless it is actually in issue, or its admission is specially provided for elsewhere in the Act, or by some other provision of law.

13. Circumstantial evidence. - Facts which are "relevant" or which are otherwise specially admitted, constitute what is sometimes called "circumstantial evidence" of the

fact in issue with which they are connected. From the circumstances in which crimes are ordinarily committed, it follows that the evidence of witnesses who directly saw the main "fact in issue" happen can rarely be obtained, and that in very many cases reliance must be placed on the circumstantial evidence. Such evidence is in no way inferior to direct evidence, and is in some respects superior to it ; for it has become a proverb that "facts cannot lie", whilst witnesses may. On the other hand, it must always be borne in mind that if facts cannot "lie", they may, and often do deceive; in other words, that the interpretation which they appear to suggest is often not that which ought to be placed upon them. Therefore, before the court finds an accused person guilty on circumstantial evidence, it must be satisfied not only that the circumstances are consistent with the accused having committed the act, but that they are inconsistent with any other rational conclusion than that the accused was the guilty person.

One of the leading rules with respect to this class of evidence was stated by a jurist in the following terms:-

"The facts on which it is sought to found the inference of guilt must be visibly and evidently connected with the crime".

This rule he then illustrated by contrasting two groups of facts, of which the first would not, whilst the second would, constitute convincing circumstantial evidence of a crime. The characteristic difference between good and bad circumstantial evidence cannot be better explained than by producing the following illustration:

- (i) The accused was a man of bad general character.
- (ii) He belonged to a nation characteristically regardless of human life.
- (iii) He narrowly escaped conviction on a charge of murder some years before.
- (iv) There is a strong ill-feeling between his nation and that of the deceased.
- (v) He was heard to make exclamations, in his sleep indicating a consciousness of having committed some terrible deed.
- (vi) The deceased was robbed, and the accused is proved to be notoriously greedy about money.

It is scarcely necessary to say that, if a series of such circumstances were indefinitely accumulated, it would fail to produce in a sane mind a conviction that the accused was guilty. There is no visible connection between these facts and the facts sought to be established that the accused committed the murder, as all the facts are perfectly consistent with his innocence. Contrast such circumstances with such as ordinarily present themselves in strong cases of circumstantial evidence. Let us take, for instance the following series of facts:-

- (i) The deceased was found apparently murdered by a pistol bullet, which penetrated the skull.
- (ii) On the ground near the body was found a small fragment of a newspaper, which smelled strongly of burnt powder, and led to the supposition that had been used in separating the powder from the ball; and on the accused being arrested there was found another piece of newspaper, which corresponded minutely at the point where it was torn with that found near the body of the deceased.
- (iii) In a pond near the scene of the murder was found a pistol, which had evidently been only recently thrown into the water, and into which the bullet fitted.
- (iv) The pistol was proved to have belonged to a gentleman, in the neighborhood; but it also appeared that the prisoner was a servant in his employment, and that

the pistol was missed the day before murder from among several fowling pieces, pistols, powder flasks, and other articles connected with the paraphernalia of the sportsman which were arranged in a small room *in* the gentleman's

house devoted to the purposes of sport. It was a part of the prisoner's duty to keep this room and its contents in order.

(v) When asked whether he ever saw the pistol, he denied it.

(vi) On the prisoner were found two bank notes, which were proved to have been given to the deceased in part payment for a horse sold by him to a neighbor.

The first of these facts at once suggests suspicion against the accused. As the second and subsequent circumstances are disclosed, the suspicion becomes intensified; and, as the narrative goes on, the strong apparent connection between the facts and the crime rapidly culminates, until, even before the last of them is reached, the climax of moral certainty *is* attained and the mind is forced to accept the conclusion that the accused was the perpetrator of the crime.

14. Relevant Facts. - The kinds of "relevant" evidence most likely to be met with court-martial practice will be considered in the following paragraphs.

15. Facts forming part of one transaction. - Facts which form part of the same transaction as a fact in issue are relevant.

For example, A is accused of the murder of B by beating him, whatever was said or done by A or B or the bystanders at the beating or so shortly before or after it as to form part of the same transaction, is a relevant fact. So also on a charge of theft, though it is not material in general to inquire into any taking of goods other than that specified in the charge, yet for the purpose of identifying the thief it may be very relevant, and therefore admissible, to show that other goods which had been left on the same premises and were stolen on the same night, were afterwards found in the possession of the accused. This is strong evidence of the accused having been near the owner's house on the night of the theft. Such evidence the section now under consideration makes relevant. Again, A *is* accused of causing a mutiny by taking part in an armed insurrection in which property is destroyed, officers are attacked and detention, cells broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.

16. Facts which are the cause, etc., of a relevant fact. - Facts which are the occasion, cause, or effect of a fact in issue or relevant fact or which afforded an opportunity for its occurrence are relevant.

For example, on the trial of A for robbing B, the facts that shortly before the robbery B had money in his possession and showed it publicly to third person are relevant. Under this rule also evidence may be given of bruises which a medical officer or other person sees next day on the body of the petty officer whom a sailor is accused of striking.

17. Facts showing motive or preparation. - Facts which show or constitute a motive or preparation for a fact in issue or relevant fact are themselves relevant², as is also the conduct of accused persons and those against whom offences are committed, if such conduct is influenced by a fact in issue or relevant fact.

Thus evidence may be given that, after the commission of the alleged offence, the accused absconded, or was in possession of the property, or the proceeds of property, acquired by

the offence, or that he attempted to conceal things which were or might have been used in committing the offence, or as to the manner in which he conducted himself when statements were made in his presence and hearing. This rule also allows evidence of a complaint made shortly after the alleged crime was committed; and of the terms in which such complaint was made to be given in any case in which an offence against the complainant is the subject of proceedings. The English law only allows such evidence in case of rape and similar offences, but our law is wide enough to cover other crimes, *e.g.*, robbery, causing hurt, etc.

18. Distinction between a statement and a complaint. - A distinction is to be marked, however, between a bare statement of the fact, *e.g.*, rape or robbery, and a complaint. The latter evidences conduct; the former has no such tendency. There may be sometimes a difficulty in discriminating between a statement and a complaint. It is conceived that the essential difference between the two is that the latter is made with a view to redress or punishment, and must be made to someone in authority the police, for instance, or a parent, or some other person to whom the complainant was justly entitled to look for assistance and protection. The distinction is of importance; because while a complaint is always relevant, a statement not amounting to a complaint will only be relevant under particular circumstances, *e.g.*, if it amounts to a dying declaration, or can be used as corroborative evidence.

19. Explanatory and introductory facts. - Facts necessary to explain or introduce a fact in issue or relevant fact are relevant, as well as those which support or rebut an inference suggested by a fact in issue or relevant fact, establish the identity of a person or thing whose identity is relevant, fix the time or place at which- any fact in issue or relevant fact happened, or show the relation of the parties. The facts here referred to are only relevant in so far as they are necessary for the purpose indicated.

20. Acts of conspirator. - In cases of conspiracy, after *prima facie* evidence has been given of the existence of the plot, and of the connection of the accused therewith, anything said, done or written by one conspirator in reference to their common intention is a relevant fact as against each and all of the conspirators.

Thus, on the consideration of a charge of mutiny, or inciting a person to mutiny, evidence of this kind may, after such *prima facie* proof, be received against a particular prisoner. The Bangladesh law is wider in this respect than that of England. Under English law only acts and statements of conspirators in furtherance of the common purpose may be given in evidence, and only if the act was done or statement made before the connection of the conspirator against whom it is offered with the conspiracy had ceased. The Bangladesh law admits against a conspirator everything said, done or written by a co-conspirator in reference to the common intention, even if said, done or written after the conspirator against whom it is offered had ceased to be connected with the conspiracy or before he joined it. The English law would reject such evidence as hearsay (in the case of things written or said) and as irrelevant in the case of things done.

21. Inconsistent facts. - Facts which are inconsistent with, or which render highly probable or improbable, a fact in issue or relevant fact are themselves relevant.

This rule is of importance to be party whose object is to disprove something which is asserted by the opposite side. An "*alibi*" is a familiar instance of this. If A is accused of a crime committed at Khulna and he can show that he was at Chittagong on the same day, his innocence is clear, while, if he can even show that shortly before and after the time

when the crime was committed he was so far from Khulna that it was most improbable he could get there and back, a strong point in his favour will have been established.

22. Facts showing state of mind or body. - Facts showing the existence of any relevant state of mind or body are relevant. Thus, where any state of mind (*e.g.*, intention, knowledge, the absence of good faith, negligence, rashness, or ill-will) is an ingredient of an offence, the commission of the principal act being either admitted or proved, evidence may, for the purpose of proving the existence of such a state of mind in reference to the particular matter in question, be given of similar acts committed by the accused on different occasions. Thus, although on a charge of murder or of using criminal force, evidence as to the disposition of the accused is inadmissible, former menaces or attacks or expressions of vindictive feeling against the same person are admissible as evidence of intention.

On charges of criminal breach of trust effected by falsifying accounts, evidence of other incorrect entries in the accused's accounts are admissible to show that particular errors covered by the actual charge were not made accidentally.

On charges of "receiving", evidence may be given that other stolen property was found at the same time in the possession of the accused, to prove his guilty knowledge.

Upon charges of uttering forged notes or counterfeit coin, evidence is admissible to prove the uttering on other occasions of notes or coins which were not genuine, or the possession thereof.

Where the gist of an alleged offence is fraud, evidence of similar offences is admissible to prove the intent. Thus, on a charge of obtaining cash by falsely representing that the cheque given in exchange was good, in order to prove intent or knowledge, evidence is admissible as to another cheque (dishonoured on presentation) having been given to a third person.

23. Other instances. - In support of a charge for malicious, disrespectful, or unbecoming language, addressed by word of mouth, or written to, or used of, a superior officer at a stated time, or in a particular letter after having proved the words in the charge, the prosecutor, to *show* the spirit and intention of the accused, may prove also that he spoke or wrote other disrespectful or malicious words on the same subject, either before or afterwards, or that he published or disseminated copies of the latter set forth as disrespectful in the charge. This evidence is admissible, not in aggravation of the offence charged, but for the purpose of proving the deliberate malice or disrespect imputed in the charge.

24. Facts showing intention. - Facts which show whether an act was intentional or accidental by indicating the existence of a series of acts of which it formed part are relevant.

This is a special case of the principle discussed above. Thus, on a charge of murder by shooting, if it is questionable whether the shooting was by accident or design, evidence may be given that at another time the accused intentionally shot the same person. Again, on a charge of fraudulently issuing passage warrants to certain persons who were not entitled to them, after having proved that the accused had issued the warrants, evidence may be admitted of a series of similar transactions extending over a considerable period as negating a defence that the issue of these warrants was due to a mistake on the part of the accused.

25. Course of business-Facts which show a course of business according to which a fact in issue or relevant fact would naturally have been done, are relevant. For example, the question is whether a particular letter reached A. The facts that it was posted in due" course, and that it was not returned through the Dead Letter Office, are relevant.

(v) Admissions and Confessions

26. Rules as to admissions. - Admissions are statements made by a party to the proceedings, or his representative, as to the subject matter of the case, or the facts relevant thereto. The general rule is that they may "be proved against those who made them but not in their favour. In connection with crime admissions usually occur in the form of confessions. A confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference, that" he committed that crime. The value of a confession, if true, is obviously very great, but special provision as to their receipt has been made in the Evidence Act, in order to guard against torture or duress for the purpose of extorting them. Confessions are therefore only relevant subject to certain conditions. These conditions will now be considered.

27. Confession only admissible against person who makes it. The general rule is that a confession is not admissible as evidence against any person except the person who makes it. But a confession made by one accomplice in the presence of another is admissible against the latter to this extent, that if it implicates him, his silence under the charge may be used against him, whilst on the other hand, his prompt repudiation of the charge might tell in his favour. The Bangladesh law, differing in this respect from the English, further enacts that when two or more persons are tried jointly for the same offence, a confession made by one of such persons, affecting himself and any other of the accomplices jointly tried with him, when proved, may be taken into consideration by the court against that other accomplice as well as against the person who made it. The confession may have been made at anytime and not necessarily in the presence of the accused; but the confessing person must implicate himself substantially to the same extent as the accomplice against whom the confession is taken into consideration. Though the confession of an accomplice may thus, under certain circumstances, be "taken into consideration" and thus be an element in the consideration of the case against the other co-accused, it must necessarily be of less weight than sworn evidence of an accomplice who is not jointly tried. The courts have accordingly established the following rules with regard to this kind of evidence :-

- (1) Where there is absolutely no other evidence, such a confession alone will not justify the conviction of a person who is being tried jointly with its author.
- (2) The confessions of co-accused must be corroborated by independent evidence, both in respect of the identity of all the persons affected by it and of the fact that the crime was committed.

28. Confession must be voluntary. - To be relevant, and therefore admissible as evidence, a confession must be voluntary. Under the English law the onus lies upon the prosecution to prove that a confession is voluntary before it can be used in evidence. Under the Bangladesh law, though it is highly desirable that the prosecutor should prove the circumstances in which a confession was made, the onus lies upon the accused of showing that a confession made by him was not voluntary and, therefore, irrelevant. Unless, therefore, it appears doubtful whether a confession is voluntary, a court need not require the prosecutor affirmatively to establish that fact.

29. What this means. - A confession is not deemed to be voluntary, if it appears to the court to have been caused by any inducement, threat, or promise, having reference to the charge against the accused person, proceeding from a person in authority (*e. g.*, the prosecutor or a person having the custody of the accused) and sufficient, in the opinion of the court, to give the accused person grounds, which would appear to him to be reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.¹ Thus, if a handbill issued by the Government promising reward and pardon to any accomplice in a certain crime who would confess were brought to the knowledge of an accomplice in the crime, who, under the influence of a hope of pardon made a confession. that, confession would not be voluntary and could not be used at his trial.

30. A confession does not cease to be voluntary merely because it appears to have been caused by the exhortations of a person in authority to make it as a matter of religious duty, or by an inducement collateral to the proceedings, or by inducements held out by a person having nothing to do with the apprehension, prosecution or examination of the accused. Thus a confession made by a prisoner to gaoler in consequence of a promise by the gaoler that if the prisoner confessed he should be allowed to see his wife, would be admissible in evidence.

31. Confession obtained by fraud, etc. - It is, of course, improper to endeavor to trap a man into incriminating himself; but if a confession is otherwise admissible as evidence it does not become inadmissible merely because it was made under a promise of secrecy, or in consequence of a deception practiced on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, or because he was not warned that he was not bound to make the confession, and that evidence of it might be given against him.

32. Confession voluntary if made after removal of impression produced by inducement, etc. - A confession is deemed to be voluntary if, in the opinion of the court, it is shown to have been made after the complete removal of the impression produced by any inducement threat, or promise which would otherwise render it involuntary.² Thus, A is accused of a service offence, B, an officer tries to induce A to confess by promising to get the commanding officer to dismiss the case with an admonition if he does so. The commanding officer informs B that he cannot give any such undertaking, and this is communicated to A. A statement subsequently made by him is voluntary.

33. Confession to police officers.-Two provisions which are peculiar to Bangladesh Law may be mentioned here:

(1) No confession made to a police officer can be proved against a person accused of an offence.

(2) No confession made by any person whilst in the custody of a police officer, unless it be made in the immediate presence of a magistrate, can be proved as against such person.

Nevertheless, facts discovered in consequence of a confession which is itself inadmissible under (1) or (2) above, and so much of the confession as distinctly relates to the facts thereby discovered, may be proved. Thus A, accused of house-breaking by night, makes a confession to a policeman. Part of it is that A had thrown it lantern into a certain pond; the

fact that he said so, and that the lantern was found in the pond in consequence, may be proved.

34. Whole confession must be given in evidence. - If a confession is given in evidence, the whole of it (subject as stated in para 33) must be given, and not merely the parts disadvantageous to the accused person.

35. Confession made on oath in previous proceedings.- Subject to what is stated in para 90 below, a confession may be used as such against the person who makes it, though it was given as evidence on oath and though the proceedings in which it was given had reference to the same subject matter as the proceeding in which it is to be used; but if, after refusing to answer any question" the witness was compelled to answer, his answer is not admissible against him. Thus, A is charged with causing hurt to B. A had voluntarily appeared as a witness for C, who was charged with the same offence at a previous trial, and had not declined to answer any question. A's evidence can be used against him on his own trial. The same rule applies to statements made by a man when charged before his commanding officer, or at the taking of a summary of evidence. The proceedings of a board of inquiries or, any confession or statement made at a board of inquiry, cannot be used as evidence against a person subject to the Navy Ordinance before a court-martial, unless the court-martial is one for the trial of such person for wilfully giving false evidence before the board of inquiry.

(vi) Statements by persons who cannot be called as Witnesses

36. "Hearsay" excluded. - As a general rule, the statements of person not called as witnesses are inadmissible as evidence of the truth of the facts stated. This does not mean that evidence of what absent persons said is absolutely excluded. Such statements may, for instance, be admissible as part of the transaction³ as conduct influenced by it⁴ or as indicative of states of mind or body which are relevant.⁶ The cries of a mob led by the accused, the complaints referred to in para. 17 above, and statements made by the victim in a poisoning case before his illness as to his health, and during his illness as to his symptoms are examples of this.

37. Reasons for exclusion of "hearsay". - The reasons for excluding "hearsay" (*i.e.*, the statements of persons not called as witnesses) are, first, that such statements are not made on oath or affirmation, and secondly, that the person affected by the statement has no opportunity of cross-examining its author. The rule has often been criticised on the ground that it sometimes excludes the only means of proof obtainable, but its utility in excluding irresponsible statements is obvious. The general rule that "Hearsay is not evidence" is, under every system of law, subject to important exceptions. Following the principle already explained, the Evidence Act arranges for this by declaring that certain kinds of hearsay shall be "relevant", all other kinds, which are not mentioned, being left outside its enumeration of "relevant" facts and thus made inadmissible.

38. Statements of absent persons which are specially admitted. - In addition to such statements as are relevant by reason of their falling under one of the heads of relevancy already discussed, the most important of the statements thus made evidence are :-

- (1) Statements by persons since dead as to the cause of their death;
- (2) Statements of entries made in the ordinary course of business;
- (3) Statements which are against the interests of their authors or which would have exposed them to a criminal prosecution or a suit for damages.

39. Comparison with English Law. - The law of Bangladesh in all the above cases differs in a greater or less degree from English law. As to (I) the English rule is that a dying declaration is only admissible in trials for the murder or manslaughter of the declarant and only if it is proved that he had, at the time of making the declaration, abandoned all hope of living and was expecting to die within a very short time, though not necessarily immediately. Under law, however, the statement of a person who has since died is admissible in any proceeding in which the cause of his death comes into question, and there are no conditions as to the declarant being in expectation of death or having abandoned all hope of recovery. These considerations do not, therefore, affect the admissibility of such evidence, though they may materially affect the weight which should be attached to it.

40. The statements, etc., referred to in (2) and (3) are, under English law, only admissible when their author is dead. The Evidence Act, however, allows of such statements being given in, evidence when he cannot be found, or has become incapable of giving evidence, or when his attendance cannot be procured without an amount of delay or expense, which, under the circumstances of the case, appears to the court to be unreasonable.

41. If such a statement or entry as is referred to in (2) was made in the ordinary course of business no question' as to the source of the information or the time when the entry or statement was made will affect its admissibility. Under English law such statements or entries are only admissible if made in the ordinary course of business, in performance of a duty and contemporaneously with the act to which they relate; further they can only prove facts which it was the duty of the declarant to include in the statement or entry and of which he had personal knowledge. The Bangladesh law is different in these respects; so long as the statements or entries are made in the ordinary course of business, it need not have been the declarant's duty to make them, they need not have been made contemporaneously, it is not necessary that the declarant should have had personal knowledge of the transaction recorded, and they may be used to prove independent collateral matters. *i.e.*, matters which it was not necessary to include in the ordinary course of business.

42. Evidence of previous enquiry when admitted. - It may sometimes happen that a material witness, who has given evidence at a preliminary inquiry, cannot attend at the trial. If the evidence was given in a judicial proceeding, or before a person authorized by law to take it and was taken on oath or affirmation, with liberty to the accused to cross-examine (as for instance, the inquiry before a committing magistrate), the Evidence Act, allows it to be used at the subsequent trial of the accused on the same charge, if the witness:-

- (1) is dead,
- (2) cannot be found,
- (3) is incapable of giving evidence,
- (4) is kept out of the way by the accused, or
- (5) if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case the court considers unreasonable.

43. This provision will sometimes admit of the evidence which was given at a court-martial which is dissolved before coming to a finding being used at the subsequent trial of the same accused before another court. It will also admit (subject to the above conditions) of evidence recorded before a magistrate, in the presence of the accused and with liberty to cross-examine, in relation to the same charge as that on which he is afterwards tried by court-martial being used at such subsequent trial. This provision may be useful as a means of perpetuating testimony when the life of a witness is in danger, or he is under orders for active service and cannot be detained to give evidence.

44. Summary of evidence, how far admissible. - In the case of a trial by court-martial, the same rule applies making a summary of evidence taken before a commanding officer, when an accused person is remanded for trial, evidence under the same circumstances as depositions taken on oath and in a judicial proceeding. Accordingly the statement of a witness duly recorded on oath or affirmation at the summary may be admitted as evidence of the facts recorded in it. Also where a statement recorded in the summary is put in issue before a court-martial, as, for example, where a discrepancy is alleged between that statement and the evidence given before the court, or where the alleged willful falsehood of such a statement is made the subject of a charge, the summary, if purporting to give verbatim signed statement of the witness, may be given in evidence as confirmatory of the statement having been made.

(vii) Statements made under Special Circumstances

45. Documents. - The rule excluding hearsay evidence is applicable to written, or documentary, as well as to oral evidence. The statement of a person who is not called as a witness is nonetheless "hearsay" because it has been reduced to writing, and is offered in that form to the court. But in its application to documents of a public or official character, the rule is subject to very important qualifications. In the case of many such documents, the statements which they contain are, under express statutory provisions, admissible as evidence of the matters to which they relate.

46. Entries in books of accounts. - Thus, by the Evidence Act, entries in books of account regularly kept in the course of business are relevant, but such entries are not, by themselves, sufficient to charge any person with a liability.

47. Entries in public records, etc. - So also an entry in any public or other official book register or record made by a public servant in the discharge of his official duty or by any other person in the discharge of duty imposed on him by law, is admissible as evidence of the facts to which it relates. Statements in maps generally offered for public sale, or prepared under the authority of the Government, are similarly admissible as evidence as to matters usually represented in such maps, as are also statements of the law of any country contained in the official publication of its Government, and a statement of any fact of a public nature, if made in a recital contained in any Act of parliament, or in a Government notification appearing in the Official Gazette is admissible as evidence of that fact.

48. Special provisions of Navy Ordinance. - Under the special provisions of the Navy Ordinance enrolment paper, letters, returns and documents respecting service dismissal or discharge: Army, Navy or Air Force lists and gazettes published by authority and showing the status and rank of officers or warrant officers: records in Service books certificates in certain cases stating fact, date and place (but not the circumstances) of the surrender or apprehension of absentees: the reply of a Government officer to a communication

addressed to him under section 121 of the Ordinance and the "return" of a commission are made evidence of the facts stated in them.

49. Judgments of Courts of law. -The judgments of courts of law are also in some cases relevant facts. Court-martial are chiefly interested in this matter so far as it concerns pleas in bar of trial and the proof of previous convictions. As regards the former it need only be remarked that the production of the judgment of a criminal court convicting the accused of the same offence, or a certified copy thereof, effectually bars his trial: while as to the latter, a previous conviction may be proved either by a verbatim extract from the Service books or by the production of a properly certified extract from the records of the court which convicted the accused..

(viii) Opinion of Third Persons. When relevant

50. Rules as to opinion. - The general rule is that the opinion or belief of a witness is not evidence. A witness must depose to the particular facts which he has seen, heard, or otherwise observed, and it is for the court to draw the necessary inference from these facts. Thus, a witness may not on a trial for desertion characterise the prisoner's absence as "desertion". This is a matter of inference, and is the point which it rests with the court to determine according to the evidence. The examination of the witness should be confined to the fact: of accused absenting himself, and to such other facts relevant to the charge as may be within the knowledge of the witness. In certain exceptional cases, however, opinion is for special reasons admitted as evidence. These cases are dealt with in sections 45 to 51 of the Evidence Act, which, following the system already explained, declare these opinions to be relevant, relegating all others outside the enumeration of relevant facts.

51. Exception in case of "Experts". -The chief exception to the rule excluding opinion is that the opinion of an "expert" - i.e., a person specially skilled in a foreign law, in any science or art, or in the identification of handwriting or finger impressions, is admissible on any point within the range of his special knowledge.

52. Examples. - Thus, in a poisoning case, a doctor may be asked as an expert whether, in his opinion, a particular poison produces particular symptoms. And, where unsoundness of mind is set up as a defence, an expert may be asked whether, in his opinion, the symptoms; exhibited by the accused commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of their acts, or of knowing that what they do is either wrong or contrary to law. An officer may be asked, as an expert, to give his opinion on a point within his special service knowledge, but to make his opinion admissible his knowledge must be of a kind not possessed by the court generally. Thus, in a trial before a court-martial, it is not proper to ask a witness for an opinion on matters with which all officers should be familiar, but it may be perfectly proper to put questions involving opinion to an engineer as to the progress of a sap, or to an armament officer as to the probable effect of his arm, if directed as assumed, since these matters, though having reference to military science, are not of such a nature as to be presumably known to each member of a court-martial.

53. Grounds on which opinions are based when relevant. - When an opinion is relevant, facts which support or are inconsistent with it, and the grounds on which it is based, are also relevant. Evidence as to the grounds on which an opinion is based can, except as mentioned in para 71 below, only be given when the author of the opinion is alive,

as the grounds on which a deceased person's opinion was based must obviously be either guess-work or hearsay.

54. Handwriting who may give opinions regarding it. -The opinion of any person acquainted with the handwriting of the person by whom any document is supposed to have been written or signed is relevant even though the former is not an "expert" in handwriting. A person is said to be acquainted with the hand writing of another if-

- (1) he has seen that person write;
 - (2) he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person;
- or
- (3) documents purporting to be written by that person have been habitually submitted to him in the ordinary course of business.

55. Proof of handwriting by comparison. - Handwriting may also be proved by comparison, under section 73 of the Evidence Act. It will, therefore, be convenient to consider this section here, though it occurs in a later portion of the Act. It allows a writing admitted or proved to be written by any person to be compared with another which purports to be written by that person, in order that the genuineness of the latter may be established or rebutted. Nothing is said as to who is to make the comparison, and it may, therefore, be made either by the court or by an expert. A combination of both methods is the safer course. A comparison of handwriting is at all times as a mode of proof hazardous and inconclusive, and specially so when it is made by one not conversant with the subject and without such guidance as might be derived from the arguments of counsel and the evidence of experts.

The same section goes on to provide that a court may require any person present in court to write any words or figures for the purpose of enabling the court to compare the words or figures so written with any words or figures alleged to have been written by such person. The comparison is, it will be noticed, made by the court in this case. It must be borne in mind that writing made for the purpose of comparison is not unlikely to be disguised.

The importance of an expert's evidence in such cases lies not so much in the opinion which he expresses as in the fact that he draws the attention of the court to similarities and dissimilarities which they might not notice without his assistance, but the value of which (when pointed out) they can fully appraise for themselves. Where a question of forgery is to be decided by comparison of handwritings only, the assistance of an expert is most desirable.

56. Other methods of proof. - The methods referred to above are the usual ones by which an individual's authorship of a document is proved. They are not, however, the only ones; and in addition to the writer's own admission or the evidence of someone who saw him write it, the authorship of a document may be proved by circumstantial evidence. For instance, A, whose credit is unimpeachable, is able to swear that B was the sole occupant of a room, and that, as soon as B left it, he (A) entered and found a letter, with the ink still wet, lying on the table; There could be no more convincing proof that B wrote the letter, however, unlike his ordinary penmanship the writing might be. Again, the writing of an anonymous letter is the subject of a court-martial charge: Circumstances directing suspicion to a particular establishment, ship, or class have come to light and specimens of the hand writing of all suspected persons have been procured from the establishment, school, or otherwise. One of these corresponds with the writing of the anonymous letter. It has been held that section 73 can be invoked where the document in issue is alleged by the

prosecution to have been written by the particular person, such allegation being based on the resemblance of the handwriting to that of other documents admitted or proved to have been written by that person. The opinions of one or more experts as to the letter and the specimen are, however, relevant (Evidence Act. Ss. 45 and 11) and from them the authorship of the anonymous letter may be inferred.

57. Summary of law as to proof of authorship of document. The result of the foregoing remarks is that the authorship of a document may be proved by:-

- (a) the evidence of experts (para. 51)
- (b) the evidence of persons acquainted with the handwriting of the alleged writer (para 54).
- (c) comparison under Evidence Act. section 73 (para. 55.)
- (d) the admission of the writer or the evidence of someone who saw him write it (para. 56). and
- (e) circumstantial evidence (para. 56).

58. Evidence of belief not excluded.- The rule which requires a witness to state what he knows, and not what he thinks, does not require him to depose to facts with an expression of certainty that excludes all doubt in his mind. For example, it is the constant practice to receive in evidence a witness's belief as to the identity of a person or thing, or as to the fact of a certain handwriting being the hand-writing of a particular person though he will not swear positively to those facts. A witness who falsely swears that he "believes" a thing to be so and so is as much guilty of perjury as one who falsely swears that "it is" so and so.

59. Opinion as to conduct how far admissible. - In cases affecting the conduct of the accused either as to deportment or language, it is not only proper, but often necessary to require a witness to declare his opinion because that opinion may be an impression derived from a combination of circumstances occurring at the time referred to, which it would be difficult if not impossible fully to impart to the court. But it would be improper to draw the attention of a witness to facts, whether stated by himself or by another witness, and to ask his opinion as to their accordance with naval discipline or usage, because the court, when in possession of facts, are the only proper judges of their tendency. If the witness is asked a question inviting him to express his opinion as to the general conduct of the person accused, or to give his judgement on the whole matter of the charge, he may, and should decline to answer it.

(ix) Character. when relevant

60. Evidence of character when admissible. - In criminal proceedings (in which terms are included trials by naval tribunals) the fact that the accused is of good character is always relevant, but the fact that he had a bad character is irrelevant, unless evidence has been given that he has a good character. "Character" by Bangladesh law includes both reputation and disposition, but evidence may be given only of general reputation and general disposition and not of particular act by which reputation or disposition were shown. As an exception. However, to this, previous convictions can be proved as evidence of good character has been given.

61. Evidence of character, etc. after conviction. - By a special provision⁵ of the Navy Ordinance, evidence of character (good or bad), previous convictions, and certain other prescribed matters, information on which is necessary to enable the court to decide upon

their sentence, is admitted after the accused has been convicted. With these exceptions, no unfavourable evidence as to character is admissible unless the accused has brought it on himself by calling or eliciting evidence of his good character.

62. Effect of evidence as to character. - Evidence of general good character cannot avail the accused against evidence of the fact, but where some reasonable doubt exists as to his guilt, it may tend to strengthen a presumption of innocence, and proved good character should be taken into consideration with all the other facts and circumstances not as positive evidence contradicting any that has been brought on the other side, but as probable testimony to induce the court to doubt whether the other evidence is correct, and not to discard that evidence if the court thinks that it is correct.

On a charge of stealing, character for honesty may be entitled to considerable weight; so also on a charge implicating the courage of a sailor character for bravery and resolution. But it would be manifestly absurd, on a charge of stealing, to allow character for bravery to weigh heavily, or, on a charge of cowardice, to be biased by a character for honesty. General character, unconnected with the charge, though it may not weigh with the court, except in awarding punishment in discretionary cases, may essentially serve the accused by influencing the superior with whom it rests to mitigate or remit the sentence.

63. Evidence tending to show disposition but admissible. -As a general rule, it is not competent for the prosecution to adduce evidence tending to show that the accused has been guilty of criminal acts other than those included in the charge against him for the purpose of leading to the conclusion that he is a person likely from his conduct or character or disposition to have committed the offence for which he is being tried. Thus, on a charge of murder, the prosecutor cannot give evidence of the conduct of the accused in respect of other persons for the purpose of proving a blood-thirsty and murderous disposition. On a charge against a sentry of having been asleep on his post on a particular occasion, evidence that he had been found asleep on his post on other occasion would not be admissible for the purpose of showing that he would be likely to commit the offence; and on a charge of insubordination, evidence of insubordinate conduct on other occasion would not be admissible for the purpose of showing a tendency to insubordinate conduct. Evidence as to other crimes committed by the accused may, however, be admissible under paras. 15, 22 or 24, above, if these crimes form part of the same transaction, show the existence of a relevant state of mind of body, or negative the theory of accident or misfortune.

64. Conclusion of lists of "relevant facts". - This concludes the list of what the Evidence Act classes as "relevant". facts. Special provision is, however, made elsewhere for the admission of certain other evidence, a consideration of which may be helpful to a court in arriving at a decision as to how far a witness is to be believed.

These are :-

- (1) Answers to certain questions which are admissible – on cross-examination.
- (2) Evidence impeaching the credit of witnesses.
- (3) Corroboration of the statements of witnesses.

They will be considered later, when dealing with the portions of the Evidence Act in which they occur.

(x) Facts which need not be proved

65. Two categories of facts which need not be proved. – Having thus settled what sort of facts may be proved the Evidence Act goes on to show how these facts are to be brought to the notice of the court which tries a case. In the first place, certain facts need not be

proved at all. These fall into two categories. viz., facts of which courts take judicial notice, and admissions.

66. Judicial notice.-A court is said to take judicial notice, in other words not to require evidence, of any facts which are assumed to be so generally known as not to require special proof. By S.115 of the Navy Ordinance a court-martial is expressly authorised to take judicial notice of all matters within the general service knowledge of its members. Thus, evidence need not be given as to the relative rank of officers, as to the general duties, authorities, and obligations of different members of the service, or generally as to any matters which an officer, as such, may reasonably be expected to know. The Evidence Act further requires courts to take judicial notice of certain other matters. Among these are; all Bangladesh laws, Acts of the British Parliament and of the other Legislatures of Bangladesh, certain seals of the courts, the seal of any notary public, the existence title and flag of recognized States, the divisions of time, the geographical divisions of the world, the territories of the British Crown the commencement, continuance and termination of hostilities, the names of members and officers of the courts and of all advocates, attorneys, etc., and the 'rule' of the road, on land and at sea.

67. Books of reference may be consulted. In all these cases, and also on all matters of public history, literature, science or art the court may consult appropriate books of reference and may require the party asking it to take judicial notice of a fact to produce such a book, before it takes judicial notice of the fact.

68. Facts admitted. - Facts which the parties admit in court need not be proved, otherwise than by such admissions unless the court require them to be so proved. It is the practice of court-martial to receive admissions made in open court as to collateral or comparatively unimportant facts which are not in dispute, but must be proved on the part either of the prosecution or of the defence. Thus, it is the practice to allow either party the option of admitting the authenticity of orders or letters, or the signature on a document, or the truth of a copy, put in by the other party, in cases where such writings are receivable when proved; or that permission to a certain details in an enumeration of stores, or in an account, are correctly stated; or that a promise or permission to a certain effect was actually given, or that a certain letter was sent or received on a given day; and so in similar cases where admissions may expedite the proceedings and do not go to the merits of the matter before the court.

69. Plea of "Guilty". - The commonest instance of an admission is a plea of guilty, which is an admission by the accused of all the averments in the charge-sheet. On such a plea no further evidence of the guilt of the accused is necessary and he convicted and sentenced accordingly.

(xi) Oral Evidence

70. Oral Evidence defined. - All other facts must be proved by oral or documentary evidence. Oral evidence means statements made to the court by witnesses, while documentary evidence means the production of documents for the inspection of the court. All facts, except, the contents of documents, may be proved by oral evidence which must in all cases be direct; that is to say :

if it refers to a fact which could be seen, it must be the evidence
of a witness who says ,he saw it.

if it refers to a fact which could be heard, it must be the evidence

of a witness who says he heard it ;
if it refers to a fact which could be perceived by any other sense
or in any other manner it must be the evidence of a witness
who says he perceived it by that sense or in that manner;
if it refers to an opinion or to the grounds on which that opinion
is held, it must be the evidence of the person who holds that
opinion on those grounds.

71. Special rule as to treatises by experts - The opinions, however, of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead" or cannot be found, or has become incapable of giving evidence or cannot be called as a witness without an amount of delay or expense which the court regards as unreasonable.

72. Court may require production of things referred to. - If oral evidence refers to the existence or condition of any material thing other than a document. The court may, if it thinks fit, require the production of such material thing for its inspection.

(xii) Documentary evidence

73. Rules as to documentary evidence. - The existence, condition or contents of a public document may be proved either by primary or by secondary evidence. The existence, condition or contents of a private document may be proved by primary evidence, and in certain circumstances may also be proved by secondary evidence . It should be remembered that contents of a document, and not the truth of these contents is here referred to. A document, is as a rule, only proof that certain marks have been made on the paper, on whatever it is, on which they are inscribed ; *i.e.* that a certain statement has been written down. It is only in exceptional cases that a document is proof of the truth of the matters, recorded; these cases are dealt with separately.

In all cases the document, must be produced by a witness on oath or affirmation.

74. Primary evidence. - Primary evidence is the production of the document itself for the inspection of the court, or if it is one or a number of documents produced by a uniform process (*e.g.*; printing, lithography or photography), the, production of one of them. If, however, a number of documents so produced are copies of a common original, they are not primary evidence, of the original. For examples, the type of a book is set up from the author's manuscript and a number of copies printed. Every copy is primary evidence of the contents of the others but not of the contents of the manuscript.

75. Document which must be attested. If the document is of a kind which is required by law to be attested, but not otherwise, it is also necessary to call an attesting witness to prove its due execution. But this rule is subject to the following exceptions:

(a) If there is no attesting witness alive subject to the process of the court, and capable of giving evidence or if the document appears to have been executed in the United Kingdom then it is sufficient to prove that the attestation of at least one attesting witness is in his hand-writing, and that the signature of the person executing the document is in the handwriting of that person.

(b) If the document is proved or purports to be, thirty years old. or more, and is produced from what the court considers to be its proper custody an attesting

witness need not be called and it may be presumed without evidence that the document was duly executed and attested.

76. Secondary evidence, when given. - Secondary evidence may be given of the existence, condition or contents of a document in the following cases ;

- (1) when the original is shown or appears to be in the possession or power of :
 - (a) the opposite party, or
 - (b) any person out of reach of, or not subject to, the process of the court or
 - (c) any person legally bound to produce it and when, after the due notice (*see* section 66 of the Evidence Act). Such person does not produce it, any kind of secondary evidence (*see* para 77 below) may be given.
- (2) When the existence, etc., of original have been admitted in writing by the party against whom, it is to be proved, the written admission is admissible as secondary evidence.
- (3) When the original has been destroyed or lost, when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect produce it in reasonable time, any. kind of secondary evidence (*see* para. 77 below) may be given.
- (4) When the original is of such a nature as not to be easily movable, any kind of secondary evidence (*see* para. 77 below) may be given,
- (5) When the original is a public document or document of which a certified copy is permitted by law to be used as evidence, in such cases a certified copy is the only secondary evidence permissible.
- (6) When the originals consist of numerous accounts or other documents which cannot conveniently be examined in court, and the fact to be proved is the general result of the whole collection, evidence may be given as to such general result by any person who has examined them, and who is skilled in the examination of such documents.

77. Secondary evidence, nature of. - Besides certified copies [*see* clause (5) of the preceding paragraph] secondary evidence of a private document given at a court-martial will generally take one of the following forms:

- (1) Copies made from the original by a mechanical process which ensures accuracy (*e.g.*, photograph) and copies compared with such copies.
- (2) Copies made from or compared with the original.
- (3) Oral accounts of the contents of a document given by persons who have seen it.

78. Public documents defined. - The following are "public documents" :

- (1) Those which form the Acts or records of the acts:-
 - (i) of the sovereign authority,
 - (ii) of official bodies and tribunals, and
 - (iii) of public officers.
- (2) *Private documents defined.*-Public records kept in Bangladesh of private documents. All other documents are private. As mentioned above secondary evidence can always be given of the contents of a public document. The nature of this secondary evidence varies with the character of the document, the most usual kind being a "certified copy", and if the document is one provable by a "certified copy", this is the only secondary evidence admissible. The secondary evidence required to prove the various kinds of public documents is dealt with in sections

76 to 78 of the Evidence Act, which should be consulted in the original, if necessary. The public documents specified in section 78 are provable as therein stated, all others (except certain English documents specially provided for in section 82 of the same Act and with which court-martial are unlikely to be concerned) are provable by "certified copies" as provided for in sections 76 and 77.

79. Provisions as to extracts and copies of certain documents. Under the special provisions of the Navy Ordinance extracts from or copies of official records are in certain cases made admissible as evidence, while under the general law referred to above orders and notifications of the Government are provable by copies purporting to be printed by order of that Government, and orders and regulations of Her Majesty or a Department of Her Majesty's Government by copies purporting to be printed by the Queen's printer.

(xiii) Presumptions as to Documents

80. "Shall presume;" and "may presume". Sections 79 to 90 of the Evidence Act provide that certain documents shall be presumed to be what they purport to be, unless and until the contrary is proved, and that, as to certain others, courts may in their discretion, either make a similar presumption or require the genuineness of the document to be proved by the party who puts it forward. This distinction between what court "shall presume" and what they "may presume" should be noticed. An instance of the former class of presumption is found in section 118 of the Navy Ordinance which provides that certain signatures shall be presumed to be genuine until the contrary is shown. An instance of the latter is that regarding telegraph messages contained in the Evidence Act.⁴ A court may either presume that a message forwarded from a telegraph office to the addressee corresponds with a message delivered for transmission at the office of origin, or may require that fact to be proved by the party asserting it. This provision does not, however, authorise the court to make any presumption as to who delivered the message for transmission, or as to the truth of, its contents.

81. Contract, etc., rule, as to. - Where a contract, grant or other disposition of property is reduced to the form of a document, the document itself (or secondary evidence of its contents when admissible) is, save in certain exceptional cases, the only admissible evidence of the matter which it contains and the written contract cannot therefore, save as aforesaid, be varied by verbal explanations or additions.

(xiv) Burden of proof

82. Meaning of the burden of proof. - There is a fundamental distinction between the admissibility of evidence and its sufficiency to convey proof. If a fact is allowed to be placed before a court as tending to prove a fact in issue, it is said to be admissible. If, having been placed before the court, it is of such weight as to convince the court it is said to be sufficient. The burden of proof is concerned with this latter question of sufficiency of evidence.

This question of sufficiency of evidence, or of what is some times called satisfactory evidence, gives rise to three questions:

- (a) What facts must be proved in order to establish the guilt of the accused (para. 83).
- (b) By whom must these facts be proved (para. 84).
- (c) What degree of proof is required (para. 85).

83. The matters in the particulars of the offence must normally be proved - *What facts must be proved.*-Every charge-sheet placed before a court-martial consists of two parts, namely the statement of the offence, followed by the particulars of the act, neglect or omission constituting the offence. Generally speaking, each and every matter alleged in the particulars must be proved before a court can properly convict. *Part of such matters proved.*- It may sometimes happen that part of the particulars alleged may have been proved to the court's satisfaction, but not others. If such be the case, two questions arise for the consideration of the court. The first question is whether the facts which have been proved in themselves establish the offence with which the accused is charged. If they do, the court are entitled to make a special finding, *i.e.*, find the accused guilty subject to exceptions stated in the finding, since it is the substance of the offence only which needs to be proved.

Secondly, it may happen that the part of the particulars which has been proved does, in fact, establish that some other offence but not the offence charged, has been committed. In this case the court are entitled in certain cases *to* find the accused guilty of the offence which has been actually proved. Thus on a charge of desertion, if the necessary intention of remaining permanently absent from his duty is not proved the court may convict the accused of absence without leave. Similarly on a charge of murder the court may convict of culpable homicide not amounting to murder, if they are satisfied that the accused unlawfully killed his victim but he did *so* under grave and sudden provocation.

84. Onus of proof on prosecution. - *(a) By whom the fact must be proved.*- The onus of proof is dictated by two rules, namely:-

- (i) every man is presumed *to* be innocent until he is proved *to* be guilty, and
- (ii) the person who alleges a fact must prove it whether the allegation is couched in affirmative or negative terms.

It is clear, having regard to these two rules, that the onus of proof in a criminal case always rests upon the prosecution. It is *not* for the accused person *to* prove his innocence, but for the prosecution *to* prove his guilt. Subject *to* what has been said in paragraph 83, it is the duty of the prosecution *to* prove each and every ingredient in the crime with which the accused is charged.

The task, therefore, imposed on the prosecution is a heavy one, and in adducing proof the prosecution must necessarily put forward evidence. The court may however, draw reasonable inferences from

the facts proved and it is not necessary *to* prove every allegation by direct evidence.

(b) Presumption arising out of evidence off act. - *Thus* there is a presumption, until the contrary is shown, that every man intends the natural and probable consequences *of* his acts. This presumption will often be sufficient to furnish the *prima facie* proof of a specific intent which the prosecution is required *to* prove. Thus if A is charged with murdering B, it is not sufficient for the prosecution *to* prove that A killed B; it must further prove that A intended *to* kill B without any lawful justification or excuse. If, however, the prosecution prove that A put a lethal dose of poison into a glass of water and handed it *to* B *to* drink, and that B drank it with fatal results, such evidence would in itself be sufficient, in the absence of a reasonable explanation by A, to prove that A intended to kill B, since B's death was the natural and probable consequence of A's act. Again if the prosecution prove on a charge of stealing, or alternatively *of* receiving, that the goods were stolen and that shortly afterwards A was found in possession of them, the court may in the absence of a reasonable explanation by A convict him either of stealing or of receiving the goods.

Similarly a court may presume that all things have been done in the due and usual manner. Thus if the prosecution prove that, letter was despatched by prepaid post *to* A at his last

known address and was not returned through the dead letter office or otherwise, this would be sufficient *to* prove, in the absence of any denial by A, that A received it.

(c) **"Shifting" of the burden.** - It is often said in these cases, where the prosecution have proved a *prima facie* case, that the burden of proof shifts to the accused *to* prove his innocence. Such a statement is, however, very misleading. The burden of proving his innocence never passes to the accused, except in the sense that where the prosecution has put forward sufficient evidence *to* establish the offence, the accused is obliged *to* meet it by way of defence. Further more where the evidence for the prosecution is aided by presumptions of fact such as those described above, there is no question of the accused disproving such presumptions. It is sufficient if he raises a reasonable doubt in the mind of the court as to whether the presumption arises in that particular case. Thus if A, in the illustration of murder given above, stated that he thought the poison to be harmless sedative, and the court were left in reasonable doubt as to whether in fact A knew it to be a poison, the prosecution would have failed *to* prove the necessary intent.

(d) **The doctrine of recent possession.** - Similarly, if A is accused of stealing a purse, and the prosecution prove that immediately after its loss it was found in A's possession, there is a strong presumption that he stole it. As a matter of common sense practically no court-martial would acquit him in the absence of a reasonable explanation by him as to how it came into his possession. But the onus of proving the guilt of the accused always rests upon the prosecution, and, consequently, if he gives an explanation as *to* how it came into his possession which might reasonably be true, the court should acquit him if they are in any doubt as to whether his explanation is a true or false one.

According to section 195 of the Evidence Act when any person is accused of an offence, the burden of proving the existence of facts bringing the case within any of the "general exceptions" of the Penal Code or any special exception *or* proviso applicable to the particular offence is on the accused. For instance A is accused of murdering B. The burden of proving that A killed B is on the prosecution. But A pleads grave and sudden provocation the burden of proving this provocation is on A. There is, however a subtle but fundamental distinction between the degree of certainty required in cases where the burden of proving a fact is on the prosecution and those where the burden of proof is on the accused. When the burden is on the prosecution, the case must be proved "beyond a reasonable doubt"; but when the burden of an issue is upon the accused he is not, in general, called on to prove it beyond a reasonable doubt. or in default to incur a verdict of guilty; it is sufficient if he succeeds in proving a *prima facie* case, for then the burden of such issue is shifted to the prosecution, which has still to discharge its original and major onus that never shifts; i.e., that of establishing, on the whole case guilt beyond a reasonable doubt. If the court is satisfied from the statement of the accused and the evidence adduced by him, or from circumstances appearing from the prosecution evidence, that the existence of circumstances bringing the case within the exception or exceptions pleaded by the accused has been proved, or upon a review of all the evidence is left in reasonable doubt whether such circumstances do exist or not, the accused, in the case of a general exception, is entitled to be acquitted, and; in the case of a special exception, can be convicted only of the minor offence. The test is not whether the accused has proved beyond all reasonable doubt that he comes within any exception, but whether in setting up his defence he has established a reasonable doubt in the case for the prosecution and has thereby earned his right of acquittal.

(e) **Matters peculiarly within the knowledge of the accused.** - There are, however, some cases in which the law takes notice that facts may be peculiarly within the knowledge of the accused. The reason for this is that it is impossible for the prosecution to produce

evidence or facts which only the accused knows. Whilst the prosecution is under a duty to prove its cases, it is not under a duty to prove what in the existing circumstances it is impossible to prove. Thus, if A is charged with traveling on a railway without a ticket, the burden of proving that he had a ticket is on him.

Similarly, in certain service offences, the court are entitled to take into consideration the fact that an allegation made by the Prosecution is peculiarly within the knowledge of the accused *e.g.*, in a charge alleging that the accused improperly left his place of duty. upon evidence being adduced by the prosecution that the accused left his place of duty, the court would be entitled to infer, in the absence of a reasonable explanation by the accused, that he did so improperly.

85. Degree of proof is required. - *What degree of proof is required.*- In discharging the burden of proof the prosecution has a two-fold task. It must place before the court such evidence as will, in the absence of a reasonable explanation by the accused, be sufficient to establish that the offence has in fact been committed by him; and it must present evidence of such strength as to prevail over any explanation which the accused may give in his defence.

(b) Meaning of *prima facie* case.-The prosecution must, in "the first place, establish a *prima facie* case. If, at the end of the case for the prosecution, facts have not been proved which establish that the accused committed the offence, or if at that stage, the court would not be prepared to convict the accused because of the unsatisfactory nature of the evidence produced, they should stop the case without calling upon the defence. It must, however, be remembered that at this stage the court are not deliberating on their finding and, unless they are satisfied that they cannot find the accused guilty on the evidence given by the prosecution even if the accused offered no explanation, they should allow the case to proceed.

(c) The court must feel sure before convicting.- In determining whether, upon a review of the evidence as a whole, the onus of proof has been discharged by the prosecution, the court must remember that problems of human conduct are in general incapable of solution with demonstrable accuracy as in the physical sciences. What they should look for is the moral certainty of guilt. They must not convict unless they are satisfied beyond reasonable doubt by the evidence given by the prosecution that the offence has been committed by the accused; it is their duty to regard the evidence as a whole, and see if it satisfies them, so that they can feel sure when they make their finding that the accused is guilty.

(xv) Witnesses

86. Competency of witnesses - Under Bangladesh law all persons, other than the accused' or persons tried jointly with him are competent witnesses unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by reasons of:-

- (1) tender years.
- (2) extreme old age.
- (3) disease of mind or body, or
- (4) any other cause of the same kind.

87. Comparison, with English law.-The English law adds to these disqualifications or from knowing that he ought to speak the truth." Under Bangladesh law the courts have not to enter into enquiries as to the religious belief, or as to the knowledge of the consequences

of giving false evidence, of a witness whose age, appearance or circumstances suggest the probability of a want of moral perception. The court has only to consider whether he can understand a question and give a rational answer to it. Other considerations do not affect the competency, though they may often affect the credibility of a witness. The English law further disqualified both the accused and his wife, from giving evidence except for the defence subject in the case of the wife to certain statutory exceptions. The Bangladesh law, as, already mentioned, absolutely disqualifies the accused from giving evidence. It however makes his wife (subject to the privilege mentioned in para.98 below) a competent witness both for the prosecution and defence.

88. Accused cannot give evidence, but may make a statement.-Though the accused cannot give evidence, he is permitted to make an unsworn statement in his defence, to which a greater or less degree of credence may be afforded, and which is one of the "matters before it" which the court is bound to consider when arriving at a decision as to whether the charge is or is not "proved".

89. Persons jointly tried cannot give evidence.- Persons jointly tried are incompetent to testify against each other. if, therefore, the prosecution find it necessary to call one participator in a crime as a witness against the others, the proper course is not to arraign him with them, or (if he has been so arraigned) to offer no evidence and take a verdict of acquittal.

If an accused thinks that the evidence of a person whom it is proposed to try with him is material to his defence, he should claim a separate trial.

90. Evidence of accomplice.-The evidence of an accomplice is admissible against his principal, and *vice versa*, unless they are tried together, but the evidence of an accomplice should always be received with great caution. No particular number of witnesses is legally necessary to prove any fact. and the uncorroborated evidence even of an accomplice is, therefore, in strict law sufficient, if the court consider him credible, but a court-martial should very carefully consider the danger of convicting the accused on the uncorroborated evidence of an accomplice; and, if there is a judge advocate, it is his duty to warn the court of the danger, though at the same time pointing out that it is, within their legal province to convict upon it if they choose. The corroboration required is independent testimony which confirm in some material particular not only the evidence that the crime has been committed but also that the accused committed it.

Although an accomplice is a competent witness it must, however, be remembered that section of the Oaths Act makes it illegal to administer an oath or affirmation to an accused person, that is a person who suspected to be an offender. If, therefore, in any case two or more persons are suspected of complicity in an offence, and it is found necessary to call one of these as a witness for, the prosecution against the other or others charged in connection with the offence, one of two courses *must* be taken Either:-

- (i) Proceedings against him must be abandoned and any charge therein already preferred against him dismissed; or
- (ii) Steps must be taken to ensure that the case against him is disposed of summarily or tried by court-martial *before* the trial of persons concerned against whom he is to give evidence; and that he is only tendered as a witness when he has already been acquitted or convicted.

91. Deaf or dumb witness. - A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such

writing or signs must be made in open court. Evidence so given is deemed to be oral evidence. The same rule would, no doubt, apply to a deaf, or dumb, witness, who might be communicated with by writing or signs provided the court was satisfied with the reality and accuracy of such communication.

92. Member as witness - A member of a court-martial is a competent witness in favour of the accused, and might, as such, be sworn or affirmed to give evidence at any stage of the proceedings; but the Navy Rules direct that a witness for the prosecution shall not sit on a court-martial for the trial of any person against whom he is a witness.

(xvi) Privilege of Witnesses

93. Incriminating questions.-It by no means follows that because a person is competent to give evidence, he is compelled to answer every question he may be asked when giving evidence. Under English law, a witness cannot be compelled to answer a question if the answers would, in the opinion of the court, incriminate him, and though in Bangladesh law, there is no such absolute privilege still a witness, on such a question being put to him, is entitled to ask to be excused from answering it; and if after he has asked to be excused, the court compel him to answer (as they are entitled to do) his answer cannot be proved against him at any criminal proceedings; except a prosecution for giving false evidence by such answer.

94. Official matters.-Another class of privilege is based on considerations of public policy. No one is permitted to give evidence derived from unpublished official records relating to any affairs of State, except with the permission of the head of the department concerned. No public officer can be compelled to disclose communications made to him in official confidence, if he considers such disclosure injurious to the public interests, and in particular no magistrate or police officer can be compelled to state whence he got any information as to the commission of any offence.

95. Confidential reports. - On this principle, a confidential report, or letter, or official information of a confidential character, although it may refer to matters which a court-martial may have decided to be relevant to the inquiry before it, cannot be produced or disclosed except by consent of the superior authority; and this consent is refused if the production or disclosure is considered detrimental to the public service. Proof of the refusal should be laid before the court by the examination of a witness, or by a written communication, read in: open court and attached to the proceedings.

96. Boards of inquiry. - So also, the proceedings of a board of inquiry cannot be called for by court-martial, nor witnesses examined as to their contents; nor is any confession or statement made at a board of inquiry admissible against an officer or sailor before a court-martial. ¹ The only exception to this rule is in the case of a court-martial for giving false evidence before the board of inquiry.

97. Privilege which cannot be waived. - The modified privilege referred to in para.93 is the privilege of the witness, and therefore he may waive it, and answer (without being compelled to do so) if he chooses. but the privilege referred to in the following paragraphs is for the protection of other parties and cannot be waived except with their consent.

98. Communication during marriage. - A husband must not be compelled to disclose any communication made to him by his wife during the marriage; and a wife must not be compelled to disclose any communication made to her by her husband during the marriage.

99. Legal adviser-Communications to.-A legal adviser is not permitted, whether during or after the termination of his employment as such, unless with his client's express consent, to disclose any communication, oral or documentary, made to him as such legal adviser, by or on behalf of his client, during, in the course of and for the purpose of his employment, or to disclose any advice given by him to his client during, in the course of, and for the purpose of such employment. But this protection does not extend to:-

- (1) any such communication if made in furtherance of any illegal purpose:
- (2) any fact observed by a legal adviser in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment, whether his attention was directed to such fact by or on behalf of his client or not; or
- (3) any fact with which the legal adviser became acquainted otherwise than in his character as such.

The expression "legal adviser" includes the clerks of legal advisers and interpreters between them and their clients, and the person representing or assisting the accused during trial before a court-martial.

100. Procedure when privilege claimed.- The question, whether answered or not, should be entered on the proceedings. When a witness claims the privilege of not answering, it is (except as mentioned in para.94 above) for the court to decide whether the question is within any of the exceptions. Court-martial should in practice interpose by informing a witness, at the time when a question is put to him, that he is not bound to answer. Any such interposition, and any claim of privilege by the witness, and the fact whether the witness is required to answer or not, should be noted on the proceedings.

(xvii) Examination of Witnesses

101. Points requiring attention of court. - It will be the duty of the court in every case to see that the rules of evidence are strictly conformed to. The following points will require special attention in relation to any evidence that may be tendered :-

- (a) That it relates to a "fact in issue" or "relevant fact."
- (b) That it is not within the rule rejecting hearsay evidence.
- (c) That (except in the case of experts) it is not a mere expression of opinion.
- (d) That, if it is a confession or admission, it is legally admissible.
- (e) That, if it is a document, it is legally admissible and properly put in evidence.
- (f) That no document or other thing is used for the purposes of the trial which has not been properly put in.
- (g) That any witnesses called are legally competent to give evidence.
- (h) That any document with which a witness proposes to refresh his memory is legally admissible for the purpose.
- (i) That the examination of witnesses is fairly and properly conducted.

102. How examination of witnesses is conducted. - The points mentioned in (a) to (g) have been already considered and (h) will be noticed later. The Evidence Act deals with (i) as shown in the following paragraphs. The examination of a witness by the person who

calls him is called his examination-in-chief, and on this examination the questions must relate to the matters in issue at the trial or relevant to the issue. The court must, of course, in all cases see that a witness is not compelled to answer any question in respect of which he is entitled to claim privilege; and they must also see that, as far as possible, a witness is so dealt with that his honest belief is obtained from him.

103. Leading questions - Leading questions must not, if objected to by the adverse party, be asked in examination-in-chief or in re-examination, except with the permission of the court. Leading questions as to matters which are introductory, or undisputed, or which the court considers already sufficiently proved are, however permitted, and the court may also allow leading questions to be put to a "hostile witness". A leading question is one suggesting the answer which the person putting the question wishes or expects to receive. For instance, a witness must not be asked, "Did the accused then go into the barrack room?" but "what did the accused do next?" If it were not for this rule in favourable and dishonest witness might be led to give any evidence that is desired. It would, *of course*, be mere waste of time to enforce the rule where the questions asked are simply introductory and form on part of the real substance of inquiry, or where they relate to matters which, though material, are not disputed. But where a question relates to a contested point, which is either directly conclusive of the matter in issue, or directly and proximately connected with it, the rule should be strictly enforced, and no question should be allowed in a form which directly or indirectly suggests to the witness the answer desired, or which, embodying a material fact, admits of a conclusive answer by a simple "Yes" or "No",

104. Test of what are leading questions. Care must, however, be taken in enforcing this rule not to exclude questions which do not really suggest an answer, but merely direct the attention of the witness to the subject as to which he is questioned. It is often, indeed, extremely difficult in practice to determine whether or not a question is in a leading form, and in all such cases the real test should be whether or not the examination is being conducted fairly and with the object of eliciting the honest belief of the witness. The following may be taken as examples of fair and unfair examination of a witness suppose a man to be charged with the murder of another by stabbing the body having been found at the upper end of a certain street, and a witness to be called to speak to the circumstances in which the blow was struck. There would be no objection to asking the witness:-

If he remembered the 12th August, and

If he was in North Street about noon on that day.

These questions, though in a leading form, are merely introductory. If the defence of the accused was that he had struck the blow, but that he had done in self-defence there would be no objection to going a little further and asking:

Whether he saw the deceased and the accused there.

But from this point all leading questions should be avoided and the examination should be continued in some such form as this:-

In what part of the street were the accused and deceased when you first saw them?

How far were you from the accused and the deceased?

Tell us in your own words exactly what passed.

To ask, instead of the first question-

"Were they at the upper end of the street when you first saw them" would be highly improper, as it might be very important in considering whether or not there had been a long quarrel or scuffle, to know whether they had moved far from the place where the

witness first saw them to the place where the body was found. It would obviously be still more improper to ask:-

"Did you see the accused go up stealthily behind the deceased and strike him a blow with a knife", or any question of that character.

If, on the other hand, the defence set up were an alibi it would be improper to ask directly after the introductory questions:-

Whether the witness saw the deceased and the accused, there?

The questions in that event should rather be

Whether he saw any-one there?

Whether he could identify them?

Whether he can identify anyone in court as having been present; though, finally, if an answer could not be got in any other way, the attention of the witness might be called to the accused, and he might be distinctly asked?

Whether he saw that person there?

But this should not be done until the witness had said that he saw some persons there, and that he would know them again.

105. Rules as to directing attention to articles.-When any article, such as a stick, belt, or document, is produced in court for the purpose of identification, the witness may be asked such question as "Whether he recognises it" and "whether he saw anything done with it, or to it" but such a question as "whether he saw A strike B with the stick or belt" or "whether he saw A make an alteration in the document", should not be admitted.

106. Hostile witness.-The court may, in its discretion, permit the person who calls a witness to put any questions to him which the adverse party might put in cross-examination. This is called the treating of a witness as "hostile". If a person calls a witness and the witness appears to be directly hostile to him, or interested on the other side, or unwilling to give evidence, the reason of the rule forbidding leading questions fails, and the court may allow the person calling the witness not only to ask him leading questions, but to cross-examine him, and to treat him in every respect as though he was a witness called by the other side. In such circumstances he can therefore be asked question tending to show his bad character, and his credit may be impeached in the same way as that of a witness called by the adverse party; neither of these things can be done under English law.

107. Rules as to cross-examination.-When the examination-in-chief is finished the opposite party cross-examines the witness. In cross-examination leading questions may be put and also questions, otherwise irrelevant, which tend:-

(1) to test his veracity,

(2) to discover who he is and what is his position in life, or (3) to shake his credit by injuring his character.

108. A witness may be cross-examined as to previous statement made by him in writing, or reduced to writing, without such writing being shown to him, but if it is intended to contradict him by the writing his attention must be called to it before it can be proved.² It is often important that when a witness is under cross-examination as to his previous statements, the fact of their having been reduced to writing should be concealed from him. It is only reasonable, however, that when he has given his answer, he should be shown the document and have the chance of correcting himself. The summary of evidence may be used to prove any statement which the witness made and which it is proposed to

contradict, and evidence may be called to prove that the evidence of a witness, though consistent with the summary, is not consistent with the evidence given by him .at the investigation before the commanding officer.

109. Question which assume that facts have been proved which have not been proved, or that answers have been given which in fact have not been given, are improper, and should not be allowed even in cross-examination. Nor should a witness be pressed in cross-examination as to any facts, which if admitted, would not affect the matter at issue or his credibility. If the person cross-examining intends to adduce evidence contradicting the evidence given by the witness, he should put the witness in cross-examination the substance of the evidence which he proposes to adduce, in order to give him an opportunity of retracting or explaining, what he has said.

110. A witness under cross-examination may be asked any questions which tend to test his veracity, discover who he is, or shake his credit by injuring his character. But a witness may of course, decline to answer a question as to which he is entitled to claim privilege, and the right of asking questions tending merely to discredit (a right which has sometimes been seriously abused in civil courts in England) is qualified in the case of trials under Bangladesh law by section 148 of the Evidence Act, which provides that when a question which is only relevant as affecting his credit by injuring his character is put to a witness, the court shall decide as to whether or not he shall be compelled to answer it, and that in exercising this discretion the court shall have regard to the following considerations :-

Injurious questions:

- (1) Such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would: seriously affect the opinion of the court as to the credibility of the witness on the matter to which he testifies.
- (2) Such questions are improper if the imputation which they convey relates to matters so remote in time or of such a character, that the truth of the imputation would not affect or would affect in a slight degree, the opinion of the court as to the credibility of the witness on the matter to which he testifies.
- (3) Such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence.
- (4) The court may, if it sees fit, draw, from the witness's refusal to answer the inference that the answer if given would be unfavourable.

111. Exclusion of evidence to contradict answers to questions testing veracity etc. - It is further provided that when a witness has, been asked, and has answered such a question no evidence can be given to contradict his answer} This rule is however subject to two exceptions :-

- (1) When the witness is asked whether he has been previously convicted and denies it evidence of his previous conviction may be given.
- (2) When he is asked any question tending to impeach his impartiality and answers it by denying the facts suggested, proof may be given of the truth of these facts.

112. Impeaching credit of witnesses. - The credit of a witness may be impeached by the adverse party, or with the consent of the court by the party who calls him, by the evidence

of persons who testify that they, from their knowledge of witness, believe him to be unworthy of credit. Such person may not, on their examination in-chief, give reasons *for* their belief but they may be asked their reasons in cross-examination, and, their answers cannot be contradicted. When the credit of a witness is so impeached the party who called the witness may give evidence in reply to show that he is worthy of credit.

113. The credit of a witness may also, under similar conditions be impeached by proof that he has been bribed, or by proof of former statements inconsistent, with any part of his evidence which is liable to be contradicted, and, at trials for rape or an attempt to ravish, it may also be shown that the woman against whom the offence is alleged to have been committed was of general immoral character.

114. Corroboration of witnesses. - In order to corroborate the testimony of a witness as to relevant fact he may be asked question as to any other circumstances which he observed at or near the time or place at which that fact occurred. Thus A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed. Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

115. Former statements by witnesses.- In order to corroborate the testimony of a witness, any former statements made by such witness relating to the same fact:-

- (i) to anyone, at or about the time when the fact took place, or
- (ii) at any time, before an authority legally competent to investigate the fact;

may be proved. The above conditions are to some extent a safeguard against fictitious statements designedly made to support subsequent evidence. but it is obvious that the corroborative value of such statement depends on the circumstances of each case, and that they may easily be entirely valueless. The mere fact of a man having, on a previous occasion, made the same assertion often adds but little to the chances of its truthfulness, and courts should distinguish such testimony from really corroborative evidence.

116. Re-examination. - At the conclusion of the cross-examination of a witness the person who called him- may, if he pleases, re-examine him; but the re-examination must be directed exclusively to the explanation of matters referred to in cross-examination. If new matter is, by permission of the court, introduced in re-examination the other side may further cross-examine upon it.

117. Questions by courts. - After the re-examination of a witness is closed; the court often ask him questions to clear up some point which they regard as material.

Frequently, too, the court recall a witness, or allow him, to be recalled for further examination; and sometimes the even call and examine a witness who has not been called by either party. In any of these cases the party affected by the answers should be allowed to suggest further questions, or to cross-examine (as the case may require).

If a witness is so called or recalled after the case for the accused is closed, the accused should also be allowed to give further evidence in rebuttal, and to comment upon the fresh evidence if he has already made his address.

118. Refreshing memory. - A witness may not read his evidence or refer to notes of evidence already given by him; but he may while under examination refresh his memory by referring to any writing made by him at the time of the transaction concerning which he is questioned, or so soon afterwards that the court consider it likely that the transaction was at that time fresh in his memory. He may also refer to any such writing made by another person, but read by himself within the time aforesaid, if, when he read it, he knew it to be correct. Whenever a witness may refresh his memory by reference to any document, he may, if the court is satisfied that there is sufficient reason for the non-production of the original be permitted to refer to a copy of such document. An expert may also refresh his memory by reference to professional treatises.³ Any writing referred to under the provisions of this paragraph must be produced and shown to the adverse party if he requires it, and that party may, if he pleases, cross-examine the witness upon it.

119. Notes referred to are not evidence of themselves. - But a witness who refreshes his memory by reference to writing must always swear positively as to the fact, or that he has a perfect recollection that the fact was truly stated in the memorandum or entry at the time it was written. If on referring to a memorandum not made by himself he can neither recollect the fact nor recall his conviction as to the truth of the account or writing when the facts were fresh in his memory, so that he cannot speak as to the fact further than as finding it noted in a written entry, his testimony is objectionable, as being hearsay.

(xviii) Conclusion

120. Rules as to evidence improperly received or rejected.-The Evidence Act concludes by providing that the improper admission or rejection of evidence shall not be ground of itself for invalidating a trial if it appears that, independently of the evidence improperly admitted there was sufficient evidence to justify the decision of the court or that, if the rejected evidence had been received, it ought not to have varied the decision. This provision, while not excusing a court which breaks the law, will often prevent a miscarriage of justice where the improper admission or rejection of evidence does not really affect the merits of the case.

121. How to act when in doubt. - If a member of a court-martial is in doubt whether a statement or document which it is proposed to put before him is, or is not, admissible as evidence, the most useful advice that can be given to him is, first to use his common sense as to whether the matter proposed to be proved has any practical bearing on the question which he has to try, and, if he thinks that it has, then to consider whether its admission is excluded by any provision of the Evidence Act, *e.g.*, as being hearsay. He should remember that the enumeration of relevant facts in the Evidence Act is so wide that admissibility is the rule and exclusion the exception.

CHAPTER VI

CIVIL OFFENCES

(i) Introductory

1. Definition of civil offence, and jurisdiction of court-martial over civil offences.- A "civil offence", for the purposes of the Navy Ordinance, means an offence which is triable by a criminal court.

Naval tribunals are prohibited from trying cases of murder or culpable homicide of a person not subject to military, naval or air force law or rape, in relation to such a person unless the offence is committed on active service, or at any place outside Bangladesh, or at any place specified by the Government. by notification in this behalf.

Subject to the above exceptions, a naval tribunal can try all civil offences of a person subject to the Ordinance wherever committed.

2. Concurrent jurisdiction.-A criminal court and a naval tribunal may each have jurisdiction in respect of the same offence. Conflicts of jurisdiction are provided for by section 101 of the Ordinance, which gives the naval authorities the right of deciding by which court the alleged offender is to be tried, subject, however, to the reservation that, when a criminal court considers that proceedings ought *to* be instituted before itself it may by written notice require the prescribed naval authority to deliver over the offender or to postpone proceedings pending a reference to the Government.

It should be noted that the civil offence contained in Chapter VII of the Penal Code (Offences relating to the Army, Navy and Air Force), if committed by persons subject to the Ordinance are not triable by the civil power and are therefore exclusively triable by a naval tribunal under the appropriate provisions of the Navy Ordinance.

3. Principles on which jurisdiction should be exercised. - But though a wide power of trial by court-martial is given, it is not as a rule expedient to exercise the power universally.

Where ships are stationed at places having no competent criminal (civil) courts, it is necessary to try all offences committed by persons subject to the Ordinance by a naval tribunal.

But in Bangladesh and at places outside Bangladesh where a competent civil court has been established it is, as a general rule, desirable to try by a civil court a civil offence committed by a person subject to the Ordinance if the offence is one which relates to the property or person of a civilian or is committed in conjunction with a civilian, or if the civil authorities intimate a desire to bring the case before a civil court.

The general rule is, however, subject to qualifications. The line dividing the naval offence from the civil offence may be narrow. The offence may have been committed on board a ship or within a naval establishment. The offender may be one of a body of seamen about to proceed on active service. There may be reasons making the prompt infliction of punishment expedient. In any such case it may be desirable to try the offence by naval tribunal.

There may be also considerations arising out of the importance of maintaining discipline. If offences of a particular kind, or offences generally, are rife in a ship or a naval establishment it may be necessary, for the sake of discipline, to try every offence, whether civil or service, by naval tribunal so that the punishment may be prompt and in accordance with the requirements of discipline.

The heinousness of an offence is also an element for consideration. A trifling offence, such as would, if tried by a civil court, be properly punishable by a small fine, may well be punished by the service tribunal immediately, especially if the case is one in which stoppages may be ordered to make good damage occasioned by the offence. On the other hand, certain civil offences (*e. g.*, complicated frauds) are not suitable for trial by naval tribunal and had better be relegated to the civil court, as should also any case where intricate questions of law are likely to arise.

4. The Penal Code. - Most of the civil offences as defined in para.1 above and triable by naval tribunals are included in the Penal Code, an Act which codifies the criminal law of Bangladesh but a few, *e.g.*, the offences against the Official Secrets Act, are created by special statutes. It should be noted that words and expressions defined in the Penal Code have, when used in the Navy Ordinance (unless defined in the Ordinance), the meanings, attributed to them by that Code. Thus, wherever "theft", "assault", or "house-breaking" are mentioned in the Ordinance the offence so defined in the Penal Code is intended. Also, all the penal sections of the Ordinance are subject to the "general exceptions" of the Penal Code.

A table of offences against the ordinary law, (penal Code) with the punishment assigned to each, is appended to this chapter. The description of the civil offences in the first column of this table should be followed when framing charges under S. 78 of the Navy Ordinance.

5. Scheme of the chapter.-The object of this chapter is to give some description of the civil offences which may come before court-martial. The list is not exhaustive, but the more common offences have been treated in greater detail than those which experience shows rarely, if ever to come within the cognisance of court-martial.

Before proceeding to a description of the various offences it will be convenient to discuss, first, the punishments which may be awarded, and, secondly, the general principles as to criminal responsibility, principles, it must be remembered, which are applicable to the naval not less than to civil offences.

(ii) Punishments

6. Punishment. - Section 78 of the Navy Ordinance specifies the punishments which may be awarded for civil offences charged under that section. If the offence is punishable under the law of Bangladesh with death or transportation a court-martial is empowered to award any punishment (other than transportation or whipping) assigned for the offence by that law, and any such less punishment as is mentioned in section 80 of the Ordinance, provided that rigorous imprisonment for a term not exceeding the term of transportation may be substituted where the punishment assigned by the civil law is transportation. For this purpose rigorous imprisonment for fourteen years is to be deemed to be the equivalent of transportation for life.

With regard to every other civil offence charged under S.78 the effect of the section is to empower court-martial to award imprisonment up to 2 years or any less punishment mentioned in the Ordinance or the punishment (other than whipping) which under the civil law may be awarded for the offence.

Courts are, of course subject to the limitation placed on its powers of punishment, *e.g.*, a district court-martial cannot award higher punishment than two years' rigorous imprisonment.

7. In the table at the end of this chapter will be found the punishment which a civil court can award for each offence. A comparison of the various punishments will be a guide to the court as to the heinousness of each offence in the eye of the law. It must be remembered that, each punishment specified in the table is a maximum and that, except in the case of offences for which an obligatory punishment is assigned (*e.g.*, death or transportation for life for murder), any less punishment, if authorised, may be awarded by a court-martial for a civil offence, even if such punishment is not one which a civil court could have awarded, *e.g.*, dismissal from the service. In awarding punishment for a civil offence a court-martial should be guided by exactly the same principles as those which guide them in punishing service offences.

(iii) Responsibility for Crime

8. Every one responsible for natural consequences of his actions. -The general rule is that a person is responsible for the natural consequences of his acts. If, therefore, a person's acts and the natural consequences which follow them bring within the penal provisions of the Penal Code, he is criminally responsible under that code unless his case falls within one of the "general exceptions"² or any special exception applicable to the particular offence. Thus, a person who kills another under circumstances which amount to murder as defined in the codes is liable to the punishment assigned to that offence; but if he killed the other while himself in such a state of involuntary intoxication as would bring him within the terms of S.85 of the Penal Code, or in the lawful exercise of his *right* of private defence (general exceptions), he is excused, while if he did it under grave and sudden provocation (a special exception) his offence is reduced to culpable homicide.

9. Illegal omissions. - Words in the code which refer to acts also extend to illegal omissions, that is, omissions to do what a person is legally bound to do. The omission to do anything which one is not bound by law to do is not an offence; thus if a man sees another drowning and is able to save him by holding out his hand, but omits to do so, even in the hope that the other may be drowned, still he is not criminally responsible.

On the other hand, where the law imposes upon a person the duty of performing some particular act, he is held responsible if he omits to do so. Every person who has charge of another, *e.g.*, a child, a person of, unsound mind, an invalid, or a prisoner, is bound to provide him with necessaries if he is so helpless as to be unable to provide himself; and if death results from a neglect of such duty, the person in charge will be responsible unless he can show some good excuse.

So, in the case of an animal known to be dangerous, the person in charge is bound to -take such precautions as will safeguard the public from danger.

10. Omission to perform duty. - Similarly, if a person undertakes to do any act the omission of which may endanger human life (as for instance, warning persons from a range whilst firing is going on), and without lawful excuse omits to discharge that duty, he is responsible for the consequences. Again, if a person undertakes to administer surgical or medical treatment, or to do any other act which may be dangerous to human life, he is responsible if death results from a want of reasonable care and skill on his part. For instance if a sailor was to undertake to cut off the trigger finger of another sailor and mortification set in, he would be responsible for the consequences of his act.

11. Parties to an offence. - The responsibility of a person for the natural consequences of his act is not limited to the simple case where he is present, and actually commits an offence with his own hand.

12. Abetting an offence. - Thus the Penal Code provides that when a criminal act is done by several persons, in furtherance of the common intention of all, each is liable for that act as if he had done it alone. If, therefore, two or three men go out to commit housebreaking and one waits at the corner of the street to keep watch while the others break into the house, the watcher will be guilty of housebreaking equally with the others, though he never goes near the house. Further when an offence is committed by means of several acts, whoever intentionally co-operates by doing any one of those acts, commits that offence. If, therefore, in pursuance of a common intention to commit theft, A steals goods in a house and hands them to B who is waiting outside, and B then carries them away, both are guilty of theft. On the other hand, if the offence Charged involves some special intent, it must be shown that the abettor was cognisant of the intention of the person whom he assisted; thus, since B in the last example knew of A's intention to steal, and waited outside the house to assist him, his offence was theft, but if he had been unaware of the intention till the goods were handed to him his offence would not have been theft but receiving stolen property.

13. Common intent. - If several persons combine together for an unlawful purpose or for a lawful purpose to be effected by unlawful means, each is responsible for every offence committed by any one of them in furtherance of that purpose, but not for an offence committed by another member of the party which is unconnected with the common purpose unless he personally instigates or assists in its commission. Thus, if some of the party of house-breakers in the example given above are armed with revolvers, and the others all know it, thus showing a common intention not only to break into the house but to carry out their criminal object there in spite of all resistance, and the owner is killed in defending his property, all the party, including even the watchers outside, are guilty of murder. But if two persons go put to commit theft and one, unknown to the other, puts a pistol in his pocket and shoots a man, the other is not responsible.

14. Abettor present when offence committed. - Another case in which a person incurs full responsibility for the act of another is when an abettor is present at the place when the act or offence he abets is committed. In this case, and in the cases referred to above, the person made responsible for the acts of another is deemed to be guilty of the actual offence committed and should be so charged, *i.e.*, all the party in the first example in para.12 should be charged with house-breaking, and, if murder results from the pursuit of their common intention (*see* para.13), with murder also. Similarly, if A instigates B to murder C (abettment) and A is present when B commits the murder. A is guilty of murder and should be so charged.

15. Abetment. - A person may make himself responsible for the crime of another by instigating, conspiring with, or intentionally aiding the actual criminal in one of the ways described in Ss. 107 and 108 of the Code. In such cases he cannot (except as already mentioned) be charged with the actual offence committed by the other, and must be charged with "abetting" that offence. The abetment of an offence is punishable under S. 109 of the Penal Code and under S. 77 of the Navy Ordinance.

16. Innocent Agent. - It does not always follow that the person who commits the offence which is abetted is himself criminally responsible. Thus, if A instigates B (a child under seven years of age or a person in a state of involuntary intoxication²) to murder C, and B does so, A has abetted the murder of C, but B has committed no offence. Similarly, if a sailor knowing that a pair of boots does not belong to him, induces a comrade to steal them by representing that they are his property and not the property of the actual possessor, the former is guilty of abetting theft though the latter has committed no offence at all.

17. Harboursing offenders - A person may incur criminal responsibility even after an offence has been committed by helping the offender to escape from justice, or by destroying the evidence of his guilt. This form of responsibility is provided for in the sections of the Code which deal with harbouring and screening an offender. Person who offend against these section do not, however, make themselves fully responsible for the original crime, as in the cases referred to in para.14 above, and cannot be so charged. The wife or husband of an offender is exempted from any penalty for harbouring that offender; an exception to this rules is, however, the harbouring of a State prisoner or a prisoner of war who has escaped.

18. Attempt to commit offence. - A person who attempts to commit an offence or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, is criminally responsible even though the attempt is unsuccessful.

A mere intention to commit an offence unaccompanied by acts will not amount to an actual "attempt" nor will acts themselves if they are merely preparatory to the commission of the offence. For instance, if A, intending to murder B by poison, purchases poison and mixes it with food which remains in A's keeping, the mere mixing with food is not an attempt to murder B by poison. Some act must be done which is more than an intention or preparation, and which is real step towards the commission of the offence; thus, if A had placed the food on B's table, or delivered it to B's servants to place it on B's table, he would have been guilty of an attempt to murder.

It is no defence to a charge of attempting to commit a crime that it was legally or physically impossible for the offender to have committed the full offence.

Where a person is charged with committing an offence but the evidence shows merely an attempt to commit that offence a court-martial may convict him of the attempt to commit the offence charged.

(iv) Homicide

19. Culpable homicide. - Whoever causes the death of human being by doing an act :-

(1) with the intention of causing death or
(2) with the intention of causing such bodily injury as is likely to cause death, or
(3) with the knowledge that he is likely by such act cause death, commits at the least culpable homicide and his act may amount to murder if certain further conditions as to his intention and knowledge are present. The intention or knowledge, express or implied, of the accused in such a case is therefore all important and lies on the prosecution to show, by direct evidence or by inference from the facts of the case, that he had such intention or knowledge as is necessary to constitute the offence charged. In arriving at a decision upon this point a court will, however, presume that a man intends the natural consequences of his acts. This presumption will often arise in shooting cases or in other cases where death is caused with a lethal weapon.

20. Murder.-The kinds of intention or knowledge which will make culpable homicide amount to murder are set out in S. 300 of the Penal Code. If these are compared with para.19 above, it will be seen that, subject to certain exceptions which are considered in para.21, culpable homicide of the first kind is always murder: that of the second kind is murder only if the offender intends to cause such bodily injury either :-

(a) as he knows to be likely to cause the death of the person to whom it is caused, or
(b) as is sufficient in the ordinary course, of nature to Cause Death and that of the third kind is murder only if the offender knows that his act is so imminently dangerous that it must in all probability cause either death or such bodily injury as is likely to cause death. Thus, where a person hurt another, who

was suffering from disease of the spleen, intentionally, but without the intention of causing death, or causing such bodily injury as, was likely to cause death, or the knowledge that he' was likely by his act to cause death, and by his act caused the death of the other, it was held that the offence committed was that of voluntarily causing hurt.

21. Exceptions.- Culpable homicide which would otherwise be murder is reduced to "culpable homicide not amounting to murder" in certain circumstances which are specified in the exceptions to S. 300 of the Penal Code. Briefly these are:-

- (1) Grave and sudden provocation.
- (2) Right of private defence exceeded.
- (3) Powers of public servant exceeded'.
- (4) Sudden fight.
- (5) Consent by the person killed.

The full text of these exceptions will be found in Penal Code, which should be consulted, but the first is that most frequently met with and demands more detailed notice.

22. Grave and sudden provocation. - It must be clearly established in all cases where grave and sudden provocation is put forward as an excuse that at the time when the crime was committed the offender was actually so completely, under the influence of passion arising from the provocation, that he was at that moment deprived of the power of self-control; and with this view it will be necessary to consider carefully the manner in which the crime was committed, the nature of the weapon used, the length of the interval between the provocation and the killing, the conduct of the offender during that interval, and all other circumstances tending to show his state of mind.

23. Subject to certain provisos. - This exception is further subject to three provisos :

- (1) The provocation must not be sought by the person provoked. Thus, if A provokes B to strike him with the express purpose of providing himself with an excuse for killing B, and A kills B, the offence is murder.
- (2) Provocation given by anything done in obedience to law, or by a public servant in the lawful exercise of his powers, does not reduce murder to culpable homicide. Thus, a petty officer lawfully arresting a sailor may give great provocation to the latter, but if the arrest is lawful, the sailor cannot successfully plead grave and sudden provocation if he kills the petty officer. On the other hand, an unlawful arrest would constitute such provocation.
- (3) Provocation given in the lawful exercise of the right of private defence does not reduce murder to culpable homicide. For example, A, in defending himself, and his property from B who is trying to rob him, strikes B in the face with a whip. This so enrages B that he kills A. B cannot successfully plead grave and sudden provocation.

24. Culpable/homicide of persons other than the one intended. - It will be noticed that the intention and knowledge referred to in para.19 are an intention to kill or vitally injure

anyone, and knowledge that the death of anyone is likely. Culpable homicide may therefore be committed by a person who intends to kill one man and kills another by mistake. In such a case the character of the culpable homicide is determined by what its character would have been if the person intended had been killed.

25. Borden of proof. - Under Bangladesh law the killing being established, the burden of showing such intention or knowledge as makes the crime murder or culpable homicide is still upon the prosecution. If, however, facts raising a presumption of such intention or knowledge (*e.g.*, the nature of the weapon used) are shown to exist, the burden of disproving the presumption is on the accused. The killing and the requisite intention or knowledge being established, the burden is on the accused of showing that his case falls within any general or special exception, as for instance, by showing that he acted under a *bona fide* mistake of fact and the fact if true would have excused him, or that he acted on grave and sudden provocation. However, *see* Chapter V, para.84(c).

26. Penalty for murder. - The penalty for murder is death or transportation for life. A civil court can, at its discretion, award either penalty, but must sentence the offender to one or the other. When a person already under sentence of transportation for life *is* convicted of murder the death sentence is obligatory. As regards powers of a court-martial, *see* paragraph 6 above.

27. Causing death by negligence. - Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide may be punished with imprisonment extending to two years, and with fine.

A person is criminally responsible for causing death, if he fails to take proper precautions when doing anything which is in its nature dangerous, even though he had not the least intention of bringing about the consequences of his act. The offence is equivalent to what under English law is called manslaughter by negligence. It must be shown *in* order to justify a conviction that the negligence from which death resulted was so gross and culpable and showed such disregard for the life and safety of others as to amount to a crime and to conduct deserving punishment.

Thus, if a sailor fires his rifle without taking the precautions proper under the particular circumstances and the bullet kills a man, the sailor will be criminally responsible for his death. Again, if a person points a gun at another in sport and pulls the trigger without having good grounds for believing, or without having taken any proper precautions to ascertain, that the gun was unloaded, he will be responsible if death results, as the accident might clearly have been prevented if he had not been culpably negligent.

Other examples of this offence are causing death by rash and negligent driving; and by negligently mixing a live round with blank cartridges.

(v) Hurt and Grievous Hurt

28. "Hurt" and "grievous hurt" defined. - Whoever, causes bodily pain, disease, or infirmity to any person is said to cause "hurt", and if that he is one of the graver kinds

(specified in S.320 of the Penal Code) he is said to cause "grievous hurt". Whoever does an act with the intention of causing hurt to any one, or knowing that he is likely to cause hurt to anyone, and does thereby cause hurt to the same or any other person, is said "voluntarily to cause hurt". If the hurt intended or known to be likely to be caused is grievous hurt and the hurt actually caused is grievous hurt (either of the same or a different kind) he is said "voluntarily to cause grievous hurt".

Voluntarily to cause hurt or grievous hurt to anyone is an offence which varies in its gravity according to the instrument used, the provocation given, the status of the person hurt, and the object of the offender. The table appended to this chapter shows the different descriptions of hurt and grievous hurt and the punishment awardable in each case.

(vi) Criminal Force and Assault

29. "Force" defined. - The sections of the Penal Code which deal with these crimes are chiefly of interest to officers as defining the offences described in section 39 of the Navy Ordinance. The definition of force in the Penal Code³ is of a highly metaphysical nature but, for ordinary purposes, there is little difficulty in understanding what is meant by the application of force to a person, or through a thing to a person, and whoever intentionally uses force to a person without his consent, in order to commit an offence, or with an intention to cause injury, fear or annoyance, is said to use "criminal force".

"Assault" - Whoever makes any gesture or preparation:-

- (1) intending to cause anyone to apprehend that the person making the gesture, etc., is about to use criminal force to him, or
- (2) knowing it to be likely that such gesture, etc. will cause such an apprehension, is said to commit an "assault". Mere words cannot amount to an assault, but words accompanied by gestures or preparations may give the latter such a meaning as to amount to an assault.

30. Difference between assault and use of criminal force.-It will be noticed that if actual violence is done to a person, or attempted, an assault is not the proper description of the offence, which then becomes "using criminal force" or "attempting to use criminal force", as the case may be.

(vii) Rape

31. Penetration. - Rape is defined in S. 375 of the Penal Code. Penetration is sufficient to constitute such sexual intercourse as is there referred to; it must therefore be proved that there was actual penetration of the female organ by some part of the male organ. The slightest penetration will be sufficient; it is not necessary to prove that there was such penetration as would be sufficient to rupture the hymen. Whether there was an emission of semen or not is immaterial.

It is not an excuse that the woman was a common prostitute or the concubine of the ravisher, if the offence was committed by force or against her will; though proof of such facts is admissible, and is, of course, important in considering whether or not she is likely to have consented.

32. Consent when valid,- A consideration of S.375 of the Penal Code will show that the offence consists in sexual intercourse with a woman against her will, without her consent, or even with her consent when such consent has been obtained by putting her in fear of death or hurt, or by pretending to be her husband, or with or without her consent when she is under fourteen years of age; further, consent is not valid under the Penal Code when given by a person who from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which she gives consent. Sexual intercourse with a woman who has, by drugs or liquor, been reduced to such a condition as is indicated above will therefore constitute rape.

33. Caution as to evidence in cases of alleged rape.-A word of caution regarding charge for this offence is necessary. As Sir Matthew Hale, an eminent judge has said : "It is an accusation easily to be made, and hard to be proved, and harder to be defended by the party accused though never so innocent". Such charges are often brought from motives of revenge or black-mail, or to shield a reputation which has been voluntarily endangered. Courts should therefore examine and sift the evidence, especially that of the woman said to have been ravished, with the greatest care.

34. Attempted rape. - When the offence is incomplete for want of penetration the accused may be convicted of an attempt to commit rape, provided that the court is satisfied that it was his intention to gratify his passion at all events and notwithstanding any resistance. An indecent assault with intent to have illicit intercourse is not sufficient, in itself, to constitute such an attempt.

(viii) Theft and Cognate Offences

35. Property which can be subject to theft. - Theft is defined in S.378 of the Penal Code. It can only be committed in respect of movable property which is in the possession of someone.

36. Movable property. - All corporeal property except land and things attached to it is movable property. A difficulty which exists in English law is got over by the first and second explanations to S.378, which expressly state that things attached to the land may become movable property by severance, and the act of severance may of itself be theft. The cutting down of a tree, with the intention of dishonestly removing it without the owner's consent, is thus theft.

37. Property must be in possession of some one.- The property must be in the possession of someone, but it does not matter whether that possession is rightful or wrongful. A thing can be stolen from a thief who has himself stolen it, not less than from the rightful owner of the thing. A person cannot steal a thing which is in his own possession, or a thing which is not in the possession of any one. Wild animals (including game and fish) while at large,

not being in the possession of anyone, cannot be the subject of theft, but if they have been tamed or are in confinement they can be stolen like any other property. When a man mislays property in his own house it still remains legally in his possession, and anyone finding it is bound to assume that it belongs to him.

38. Possession through another. - Property in the possession of a person's wife, clerk or servant, on that person's account is in the person's possession within the meaning of the Penal Code. The same principle also extends to other cases where a man's property is in the physical possession of some one to whom he has entrusted it and from whom he can demand it unconditionally whenever he pleases. Thus, where a servant has his master's plate in his keeping or a shepherd is in charge of his master's sheep, the legal possession remains with the master; similarly, the landlord of an inn retains the legal possession of the forks and spoons which his customers are handling at the dinner table and a shop-keeper retains the legal possession of goods which a purchaser takes up in order to inspect them. The possession of any thing by a servant on his master's behalf is thus considered to be the possession of the master or the possession of the servant according to the circumstances under which the servant originally received it. If, for instance, a servant is given the custody of anything by his master, or by a fellow-servant who has been given the custody of it by his master, the servant will have no real possession of the thing, and the possession will remain in the master. Therefore, any dishonest taking of the thing by the servant will be theft. If, however, a servant receives anything from a third person on his master's behalf then the servant will have possession of the thing, and the master will have no possession until the servant does some act by which the possession is transferred from the servant to the master-as, for example, by placing it in a till, cart or go down, in which the master's goods are kept or carried.

39. What constitutes theft. -To constitute theft there must be:-

- (i) a dishonest intention to take the property out of the possession of its real or temporary owner (*i.e.*, he who has "possession" of it) without his consent, and
- (ii) a moving of the property in order to such taking.

The intention must be a dishonest one, that is, an intention to cause wrongful gain to one person or wrongful loss to another, and therefore; inconsistent with a *bona fide* claim of right. If the property is taken under the supposition, honestly entertained, that the taker has an immediate right to possession, the intention is not dishonest and there is no theft; on the other hand, a person who has pawned his watch can steal the watch from the pawn broker because he has no right to possession until he has redeemed it. A claim of right would not justify a person in taking property out of another's possession without his consent with the intention of thereby coercing the other to pay debt due to the taker. It must be remembered that consent is not valid if given under fear or misconception. Some cases of what is known in English law as "larceny by a trick" will therefore be theft in the Bangladesh law, but in others this will not be so (See para.46 below).

40. Moving. - In addition to the dishonest intention there must be a moving of the property in order to the taking of it. It is not necessary to prove that the goods were removed out of their owner's reach, or were carried away at all from the place in which they were found. In this respect the Bangladesh law differs from the English law; under

which some degree of "carrying away" is necessary. Here all that is necessary is movement, and, that being proved, and the other ingredients of theft being present the offence is complete.

41. Other allied offences. - Closely allied to theft are the offences of dishonest misappropriation and criminal breach of trust. These differ from theft in that, while theft is committed in respect of property in the possession of another, these, two offence consist in dealing dishonestly with property which is lawfully in the possession of the offender.

42. Dishonest misappropriation. - The dishonest misappropriation of property honestly come by, is punishable with imprisonment which may extend to two years, or with fine, or with both, and even a temporary misappropriation, if dishonest, is within the terms of the section. A common instance of this offence is the dishonest misappropriation of lost property by the finder. The mere taking of such property into his possession by the finder is not, in itself, an offence, but he is guilty of dishonest misappropriation if he appropriates it to his own use when he knows or has means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner, and has kept the property a reasonable time to enable the owner to claim it. A person appropriates property to his own use when he sells it, or in any other way puts it out of his own power to restore it, or when he definitely makes up his mind to keep it at all hazards as his own.

43. Criminal breach of trust. - Criminal breach of trust is defined in S.405 of the Penal Code, from which it will be seen that the offence consists in a person who has been entrusted with any property, or with any dominion over it, dealing dishonestly with that property. A person is "entrusted with property" when he is given the actual possession of it, as, for example, when a servant receives property from a third party to deliver to his master, but does not do any act to change his original possession into possession on account of his master. A person is "entrusted with dominion over property" when it remains legally in the owner's possession, but he is given a limited authority to deal with it, as for instance a shopman who can dispose of his master's stock, but must hand over to the latter the price he receives for it.

44. Receiving stolen property. For a person to receive or retain stolen property knowing or having reason to believe that it has been stolen is an offence. For this purpose, the words "stolen property" include property the possession of which has been transferred by theft, extortion, or robbery, as well as property in respect of which criminal misappropriation or criminal breach of trust has been committed.

The guilty knowledge of the receiver must be established; it is not sufficient to prove that he merely suspected the property to have a tainted origin, but it will be sufficient if it is shown that under circumstances a reasonable man must have felt convinced that the property was stolen property. The fact that he bought it much below its value, or that he falsely denied his possession of it might be evidence of guilty knowledge.

A person is considered to receive the goods as soon as he obtains control over them; But actual manual possession is not necessary; it is sufficient if they are in the actual possession of a person over whom the receiver has a control so that they would be forthcoming if he ordered it.

45. The doctrine of recent possession.- If a person is found in possession of property recently stolen, there is a strong presumption that he stole it or received or retained it with knowledge that it was stolen. The burden of proving guilty knowledge always remains upon the prosecution, and upon the prosecution establishing that the accused was in possession of recently stolen property, a naval tribunal may, in the absence of any explanation by the accused of the way in which the property came into his possession, which might reasonably be true, find him guilty; but if an explanation is given which the tribunal think, might reasonably be true, and which is consistent with innocence, although they are not convinced of its truth, the accused is entitled to be acquitted, in as much as the prosecution has failed to discharge the duty cast upon it of satisfying the court beyond reasonable doubt of the guilt of the accused, (*See Chapter V. para.84.*)

46. Cheating, - "Cheating" is defined in S. 415 of the Penal Code.

A person is said to cheat who induces another person by deception to part with property or to consent to the retention of property by another person, The object of the offender must be fraudulent or dishonest.

Another class of "cheating" is where a person intentionally deceives a person in order to induce the latter to act to his detriment.

It is important to distinguish between a transfer of 'possession' only, and a transfer of "property" in the goods taken; if A by false pretences induces B to give him possession only of an article, and then without B's consent appropriates it to himself this is "theft"; but if he so induces B to transfer to him not only the possession of, but also the property in, the article, this is "cheating".

The deception may be made in any way, either by words, by writing or by conduct, and a promise as to future conduct not intended to be kept may amount to cheating.

The property must be obtained either directly or indirectly by the deception; that is to say, it would not have been obtained but for the deception. If the person from whom the property is obtained is not deceived, the property is not obtained by the deception, but in such a case accused may be convicted of attempting to cheat.

The following are examples of "cheating":-

- (1) The giving of a cheque in exchange for goods knowing that the cheque will not be met on presentation;
- (2) Cheating by personation; *e.g.*, obtaining goods on credit from a tradesman by falsely pretending to be an officer;
- (3) Obtaining money by cheating at cards, etc.;
- (4) Obtaining a meal at a restaurant knowing that he was unable to pay for it.
- (5) Obtaining a loan by falsely pretending that he will repay it;

- (6) Selling by false weights;
- (7) Obtaining a receipt by deceiving a person into the belief that payment had been made for goods supplied.

Put briefly, the distinction between the four offences discussed above is as follows:

In theft the original taking is dishonest and without the consent of the owner.

In criminal breach of trust the original taking is honest and with the consent of the owner.

In criminal misappropriation the taking is honest but without the consent of the owner.

In cheating the taking is dishonest but with the consent of the owner.

47. Extortion. - It is an offence to extort or attempt to extort any property or valuable security from a person by threatening to injure that person or any other person. "Injury" means harm illegally caused to a person in body, mind, reputation or property.

The maximum punishment for extortion, if not aggravated by the circumstances mentioned below, is rigorous imprisonment for three years and fine. If a person is put in fear of death or of grievous hurt, or if the threat is to accuse person of having committed or attempted to commit an offence punishable with death, transportation for life, or imprisonment for 10 years, the Code provides for a more severe punishment.

48. Robbery. - The offence of "robbery" is defined in S.390 of the Penal Code. It is an aggravated form of theft or extortion from the person accompanied by violence or threats of immediate violence. The maximum punishment in ordinary cases is rigorous imprisonment for ten years and fine, but the Code provides for a more severe punishment if the robbery is committed on the highway between sunset and sunrise or if hurt is caused. The violence or threats must be intentionally used for the purpose of overcoming or preventing resistance, or of obtaining the thing stolen or extorted.

Dacoity. - If the robbery is committed by five or more persons, the offence is called "Dacoity" and is punishable with transportation for life.

49. Mischief. - Numerous offences come under the category of mischief, which is defined in S. 425 of Penal Code. The essence of the offence is injury to the property of another. Such acts are offences if done with intent to cause, or with knowledge that they are likely to cause, wrongful loss or damage.

The punishment generally varies. according to the amount of the loss or damage, but certain aggravated instances of mischief are specially provided for in the Code; *e.g.*, damaging irrigation works, roads, bridges, etc., causing inundations, obstructing public drainage, and diverting water, damaging or destroying buildings, etc. by fire or explosives; and killing or maiming certain animals.

(ix) Criminal Trespass

50. Criminal trespass. - Whoever enters into or upon property in the possession of another, or having lawfully entered into or upon such property unlawfully remains there,

with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, is said to commit "criminal trespass.

51. House-breaking, etc.-The aggravated kind of criminal trespass contained in the Penal Code are :-

- (1) House-trespass.
- (2) Lurking house-trespass.
- (3) Lurking house-trespass by night.
- (4) House-breaking.
- (5) House-breaking by night,

A person who commits house.-trespass is said to commit "housebreaking" if he effects his entrance into the house or quits the house in any of the ways mentioned in S. 445 of Penal Code .

A "house" means 'any building, tent or vessel, used as a human dwelling, or any building used as a place of worship, or as a . place for the custody of property.

Night means after sunset and before sunrise.

The maximum punishment for these offences varies according to the nature of the offence committed, or intended *e.g.*, house-breaking by night in order to commit an offence punishable with imprisonment may be punished with rigorous imprisonment for five years and fine, but if the offence intended is theft, the maximum punishment is fourteen years; and if grievous hurt is caused or intended, the offender is liable to be punished with transportation for life.

(X) Miscellaneous offences

52. Criminal conspiracy. - Criminal conspiracy consists in the agreement of two or more persons to do an illegal act or to do a legal act by illegal means; The mere intention to do such an act is not a conspiracy. An agreement to commit an offence, even if the offence is not afterwards committed is a criminal conspiracy, but if the agreement is to do a legal act by illegal means, the agreement does not amount to a criminal conspiracy, unless some overt act is done by one of the accused in pursuance of the agreement.

53. Offences against the State.-The only offences against the state which need here be mentioned are :-

- (1) Waging war against the Government *e.g.*, by joining in an insurrection.
- (2) Conspiring to wage war against the Government, or to overawe the Government by means of criminal force.
- (3) Sedition. This offence consists in exciting or attempting to excite disaffection towards the Government established by law in Bangladesh.

54. Unlawful assembly. - An assembly of five or more persons is unlawful if the common object of the persons composing that assembly is one of the five objects mentioned in S. 141 of the penal Code.

An assembly, which was not unlawful when it assembled, may become unlawful by the subsequent acts of its members; but ~ illegal act of one or two members, not acquiesced in by the others, does not change the character of the assembly.

Any person who, being aware of facts which render an assembly an unlawful assembly intentionally joins, or continues in that assembly, is liable to be punished with rigorous imprisonment for six months and fine ; if armed with a deadly weapon the maximum punishment is two years rigorous imprisonment.

Rioting - If force or violence is used by any member of an unlawful assembly, in prosecution of the common object of that assembly, every member of the assembly is guilty of "rioting" and liable to be punished with rigorous imprisonment for two years and with fine.

55. Forgery - Forgery is making a false document or part of a document, with intent to cause damage or injury to the public or to any person, or to support any claim or title or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed.

A person makes a false document who:-

- (i) dishonestly or fraudulently makes, signs, seals or executes a document, or part of the document, with the intention of causing it to be believed that the document or a part of it was made, etc.; by or by the authority of a person who did not make it or authorise its making; or
- (ii) who dishonestly or fraudulently alters a document in any material part without lawful authority after it had been made by himself or any other person; or
- (iii) who dishonestly or fraudulently causes a person to sign, seal, execute or alter a document, knowing that such person by reason of unsoundness of mind, intoxication or deception, does not know the contents of the document or the nature of the alteration.

A man's signature of his own name, if the intention is that it should pass as the signature of someone else, and the making of a false document in the name of a fictitious person or in the name of a deceased person, may amount to a forgery.

The maximum punishment for forgery under section 465 of the Penal Code is rigorous imprisonment for two years and fine, but the Code provides a severer punishment for the forgery of certain documents such as court records, public registers, birth and death certificates, wills, valuable securities and receipts. For the payment of money, etc., etc.

Uttering forged documents.- Whoever fraudulently or dishonestly uses as genuine any document which he knows, or has reason to believe, to be a forged document, may be awarded the same punishment as if he had forged the document.

TABLE OF OFFENCES AND PUNISHMENTS

CHAPTER VII

CRIMINAL PROCEDURE

(i) Introductory

1. The Code of Criminal Procedure, 1898, extends to the whole of Bangladesh but it does not effect, *inter-alia*, any special or local law; e.g., the Navy Ordinance, 1961. It has been framed to supplement the Penal Code which contains the substantive criminal law of the country. It provides rules of procedure for (1) preventing offences and (2) bringing the offenders to justice for committing offences defined in the Penal Code or any special or local law if no specific procedure is provided in the special or local law.

2. Those offences for which a police officer may arrest a person without a warrant from a Magistrate are known as cognizable offences. In other words in such cases a police officer as such can take cognizance. Whereas those offences for which a police officer may not arrest a person without warrant are known as non-cognizable offences. In other words in such cases a police officer cannot as such take cognizance.

3. Aid to Magistrate and Police. - Every person is bound to assist a Magistrate or a police officer demanding his aid:-

(i) in the checking or preventing the escape of any person whom the Magistrate or police officer is; authorised to arrest;

(ii) in the prevention or suppression of a breach of the peace;

(iii) in the prevention of any injury attempted to be committed to any railway, canal, telegraph or public property.

4. Aid to a person executing a warrant - When a person other than a police officer is executing a warrant any person may aid in its execution.

5. Information of certain offences.-Every person aware of the commission of intention to commit the following offences under the Penal Code, is bound, in the absence of any reasonable excuse to give information to the nearest Magistrate or police officer;

(i) offences against the State;

(ii) unlawful assembly;

(iii) rioting with weapons;

(iv) murder;

(v) culpable homicide not amounting to murder;

(vi) theft with preparation to cause death or hurt;

(vii) robbery and its aggravated forms;

(viii) dacoity and its aggravated forms;

(ix) mischief by fire or explosive substance;

(x) house-trespass to commit offence punishable with death or imprisonment for life;

(xi) lurking house-trespass or house-breaking by night and its aggravated forms .

(ii) Arrest and Search

6. Arrest Generally. - The police officer in making the arrest touches or confines the body of a person to be arrested, unless he submits to the custody by word or action. If he forcibly resists or attempts to evade the arrest, force may be used to effect the arrest, but he cannot be killed if he is not accused of an offence punishable with death or transportation for life;

7. Search of place for arrest of a person - If such a person has entered into, or is within any place, the person in-charge of the place must allow free ingress and afford all facilities for a search. If such ingress cannot be obtained, then any outer or inner door or window of any house or place may be broken open to obtain admittance. But if such place is an apartment in the occupation of a *zanana* woman notice to withdraw is to be given before breaking it open and entering it. The police officer or other person authorised to arrest may break open any outer or inner door or window of any place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained Therein.

8. Restraint upon arrest -The person arrested is not to be subjected to unnecessary restraint. Where he is not admitted to bail, he may be searched and all articles other than necessary wearing apparel found upon him may be placed in safe custody. In the case cognizable offence in his view or any proclaimed offender. He must, however, without delay hand over such person to a police officer or to the nearest police station.

10. Escape from custody.-If a person in lawful custody escapes or is rescued, the person in whose custody he was may pursue and arrest him in any place in Bangladesh. The person pursuing him may enter into any place for search may break open any outer or inner door for ingress or egress.

(ii)Processes to compel Attendance

11. Summons. - Every summons is to be in writing, in duplicate, signed and sealed by the presiding officer of the court issuing it, or such other officer as the High Court directs. It is served by a police officer, an officer of the court issuing it, or a public servant.⁶

12. Service of summons. - A summons is served personally on the person summoned by delivering or tendering to him one of the duplicate copy and obtaining a receipt on the back of the other? When the person summoned cannot be found, the summons may be served by leaving one of the duplicates with some adult. male member of his family.⁸ If service cannot be effected as above, the serving officer may affix one of the duplicates to some conspicuous part of the house or homestead in which he ordinarily resides.⁹

13. Service of summons to a Government servant. - Service on a Government servant may be effected by sending the summons, in duplicate, to the Head of the office who passes it to be served and returns it under his signature with the endorsement of the person on whom it is served.¹⁰

14. Production of documents and movable property summons.- When a court or on officer-in-charge of a police station considers that a document or thing is necessary or desirable for any investigation, inquiry or trial, the court may issue a summons or the officer an order, to the person in whose possession or power it is to produce it at a specified time and place. Such document or thing may be produced by the person himself or by some one on his behalf.¹

15. Issue of Warrant in lieu of Summons. - The Court may issue a warrant in lieu of a summons

(a) if it has reason to believe that such person has absconded or will not obey the summons;

- (b) if he fails to appear after the summons is served without any reasonable excuse;²
- (c) if he fails to appear when he is bound by a bond to do so before the court⁸

16. Warrant. - A warrant is an order in writing from a Court directing a police officer to arrest the person mentioned therein, and, produce him before the Court without delay.⁴ It may contain a direction that if the person arrested executes a bond with sufficient sureties for his attendance before the court, he may be released from custody. The warrant will also specify (a) the number of sureties; (b) the amount in which they and the person arrested are to be bound, and (c) the time at which he is to attend before the court⁵

(iv) Unlawful Assembly

17. Any Magistrate or officer-in-charge of a police station may command any unlawful assembly to disperse.⁶ If such assembly does not disperse, the Magistrate or officer may disperse it by force with the assistance of any male person and arrest and confine the persons forming part of it? If the assembly cannot be otherwise dispersed, the Magistrate of the higher rank who is present, may disperse it by military forces.⁸ The Officer Commanding troops must obey the requisition of the Magistrate, and use as little force and do as little injury to person and property as may be necessary in dispersing it. Any commissioned military officer may disperse such assembly by military force if (a) public security is manifestly endangered, and (b) no Magistrate can be communicated with.² Sanction of the Government is necessary for any prosecution against a military officer or soldier for any of the aforementioned acts; Any act done in good faith or any act done by an inferior officer or soldier in obedience to any order is not an offence.³

(v) Recording of a Statement before the Police and recording of a Statement or a Confession before a Magistrate

18. Attendance of Witnesses. - A police officer making an investigation may, by a written order, require the attendance of persons acquainted with the circumstances of the case.⁴ He may examine them orally and they are bound to answer all questions relating to the case other than questions the answers to which would have a tendency to expose them to a criminal charge or to a penalty or forfeiture.⁵

19. Statement to Police. - A statement made to the police, if reduced, into writing, is not to be signed by the person making it; and the statement or any record thereof, whether in a police diary or otherwise, is not to be used for any purpose at any inquiry or trial except in the following way:-

If the maker of the statement is called as a witness for the prosecution, the court on the request of the accused refers to such writing and directs that the accused be furnished with a copy thereof in order that any part of such statement, if duly proved, may be used to contradict such witness. It may also be used in his re-examination for explaining any matter. But if the Court is of opinion that (1) any part of such statement is not relevant or (2) its disclosure is not essential in the interests of justice and is inexpedient in the public interests, it records its opinion and excludes such part from the copy to be furnished to the accused. A police officer shall not offer any inducement, threat or any promise to the person making the statement. He shall not by caution prevent any person from making any statement of his own free will.¹

20. Recording of a statement or confession by a Magistrate. A First Class Magistrate or Second Class Magistrate specially empowered (but not a police officer), may record a statement,

or confession made in the course of an investigation or at any time before the commencement of the inquiry or trial. The Magistrate recording it may not be the magistrate having jurisdiction in the case and he is to forward such statement or confession to the Magistrate by whom the case is to be inquired into or tried. Before recording a confession the Magistrate is to explain to the person making it that :-

- (a) he is not bound to make it, and
- (b) it may be used as evidence against him.

The Magistrate is also to ensure by questioning him that it has been made voluntarily. The Magistrate shall endorse on the confession that he has explained to the accused, as mentioned above, and that it is voluntarily made as well as that

- (i) it was taken in his presence and bearing :
- (ii) it was read over to him ; (iii) It was admitted by him to be correct; and (iv). it contained a full and true account of the statement

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- (i) it was taken in his presence and bearing :
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- (i) It was taken in his presence and bearing:
- (ii) It was read over to him;
- (iii) It was admitted by him to be correct; and
- (iv) It contained a full and true account of the statement made by him.²

any part of such statement is not relevant or (2) its disclosure is not essential in the interests of justice and is inexpedient in the public interests, it records its opinion and excludes such part from the copy to be furnished to the accused. A police officer shall not offer any inducement, threat or any promise to the person making the statement. He shall not be called upon to prove any person from making

21. Joinder of charges. For every distinct offence there is a separate charge, and every such charge is tried separately to this the following are exceptions:

(1) When a person is accused of more offences than one of the same kind committed within one year in respect of the same person or not, he may be charged with and tried at one trial for any number of them not exceeding three.⁴ (Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Penal Code, or of any special or local law.)

(2) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with and tried at one trial for every such offence.

(3) If the acts alleged constitute an offence falling within two or more definitions of any law, the person accused of them may be charged with and tried at one trial for each of such offences.

(4) If the acts, of which one or more than one, would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for both the categories of offences.

(5) Where it is doubtful what offence has been committed, the accused may be charged with all or any of the offences, and any number of such charges may be tried at once ; or he may be charged in the alternative with having committed some one of the offences.²

22. Charge of one offence, conviction of another.-(I) When a person is charged with one offence, and it appears in evidence that he has committed a different offence, he can be convicted of that offence.³

(2) When a person is charged with an offence consisting of several particulars, and some of the particulars constitute a minor offence, he may be convicted of such minor offence.

(3) When a person is charged with an 'offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence.

(4) When a person is charged with an offence, he may be convicted of an attempt to commit it.

23. What persons may be charged jointly. -The following persons may be charged and tried together :-

(1) persons accused of the same offence committed in the course of the same transaction;

(2) persons accused of an offence and persons accused of abetment or an attempt to commit it ;

(3) persons accused of more than one offence of the same kind committed jointly within twelve months;

(4) persons accused of different offences committed in the course of the same transaction;

(5) persons accused of theft, extortion, or criminal misappropriation, and persons accused of receiving or retaining or assisting in the disposal or concealment of property obtained in the commission of these offences.¹

24. Withdrawal of charges on conviction. - When a conviction takes place on one out of several heads of a charge, the complainant, or the prosecuting officer may, with the consent of the Court, withdraw the remaining charges, or the Court itself may stay inquiry into such charges; Such withdrawal has effect of an acquittal on such charges, unless the conviction be set aside, in which case the Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into the charges so withdrawn.²

(vii) Accused

25. Examination of the accused:- the Court may at any stage of an inquiry or trial put questions to the accused to explain any circumstances appearing in the evidence against him, and it shall question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence. No oath is administered to him The accused does not render himself liable to punishment by (a) refusing to answer such questions, or (b) giving false answers to them, but the Court or jury may draw such inference from such refusal or answers, as it thinks just. The answers may be taken into consideration in such inquiry or trial and put in evidence for or against him in any other inquiry or trial for any other offence which such answers may tend to show he has committed.³

(viii) Autrefois Acquit and Autrefois Convict

26. Previous acquittals or convictions. - A person (1) who has once been tried for an offence, (2) by a competent Court, and (3) convicted or acquitted, of such offence, (4) is not, while such conviction or acquittal remains in force, (5) liable to be tried again for the same offence, (6) nor on the Same facts for any other offence for which a, different charge might have been made under S.236 or for which he might have been convicted under S.237. But –

(1) a person acquitted or convicted of any offence may be tried for any distinct offence for which a separate charge might have been made against him under S.235 (1)

(2) a person convicted of an offence constituted by any act causing consequences which, together with such act, constituted a different offence from that for which he was convicted, may be tried for such offence if the consequences had not happened, or were not known to the Court to have happened, when he was convicted;

(3) a person acquitted or convicted of an offence may be tried for any other offence if the Court by which he was first tried was not competent to try the subsequent offence.¹

(ix) Offences affecting administration of justice

27. Power to commit.-When a court is of opinion that in the interest of justice an inquiry should be made into an offence which appears to have been committed in a proceeding before such a Court.

- (1) it may, after preliminary inquiry, record a finding to that effect;
- (2) it may make a complaint in writing; (3) it forwards the complaint to a first class Magistrate having jurisdiction;
- (4) it may take sufficient security for the appearance of the accused before the Magistrate;
- (5) if the offence is non-bailable, it may send the accused in custody to the Magistrate;
- (6) it may bind over any person to give evidence before the Magistrate.

28. Contempt cases.-When an offence of-

- (i) intentional omission to produce a document;
- (ii) refusal to take an oath;
- (iii) refusal to answer a question;
- (iv) refusal to sign a statement;
- (v) intentional insult or interruption in a judicial proceeding; is committed in the view or presence of a Court, the Court may (1) cause the offender to be detained in custody, and (2) before rising take cognizance of the offence and sentence him to fine not exceeding Tk. 200, and in default, to simple imprisonment up to one month.¹

The Court records the facts constituting the offence, the finding and sentence. In the case of an offence of intentional insult or interruption in a judicial proceeding, the record must show:-

- (1) the nature and stage of the judicial proceeding in which the Court was sitting, and
- (2) the nature of the interruption or insult.²

If the Court thinks (a) that the person committing any of the offences referred to in S. 480 should be imprisoned, or (b) a fine exceeding Tk.200 should be imposed upon him or (c) the case should not be disposed of under S. 480, it may, (1) after recording the facts and the statement of the accused, (2) forward the case to a Magistrate having jurisdiction to try it, (3) require security for the appearance of the accused before the Magistrate, or (4) if security is not given, forward him in custody to the Magistrate. The Court may (1) discharge the offender, or (2) remit the punishment, on his submission to its order or requisition, or on apology being made to its satisfaction.⁴

29. Applicability to Court-martial.- The above provisions of this subheading in respect of offences affecting administration of justice are also applicable to such offences in relation to Court-martial and giving of false evidence by witnesses. is mentioned in sections 73 and 74 of

the Navy Ordinance. The procedure to be followed by the Court-martial in taking action against civilian offenders in respect of these offences is laid down in Navy Rule 223.

(x) Maintenance of Wives and Children

30. Maintenance Order. - If a person having sufficient means neglects or refuses to maintain his (1) wife, or (2) legitimate or illegitimate child unable to maintain itself, he may, upon proof of neglect or refusal, be ordered by a Magistrate to make a monthly allowance for the maintenance of his wife or child, at a rate not exceeding Tk.100, It is payable from the date of (1) the order or (2) application for maintenance.

31. Enforcement of Order. - If the person ordered fails, without sufficient cause, to comply with the order, the Magistrate may, for every breach of the order, (1) issue a warrant for levying the amount due as if it was fine (provided the application is made within one year from the date on which it is payable), and (2) sentence him, for any amount unpaid, to imprisonment up to one month. If he officers to maintain his wife if she lives with him. but she refuses to do so, the Magistrate may consider the grounds of refusal and, if they are just make an order giving maintenance, if husband has contracted marriage with another wife or keeps a mistress, it shall be considered to be just ground for the wife's refusal to live with him.

A wife is not entitled to receive an allowance from her husband and the Magistrate may cancel the order, if

- (1) she lives in adultery, or
- (2) she refuses to live with her husband without sufficient cause, or
- (3) they are living separately by mutual consent.

All evidence is taken in the presence of the husband or father or his pleader, and is recorded as in summons-cases. If he willfully avoids service or neglects to attend the Court, the Magistrate may hear and determine the case *ex parte*. An *ex parte* order may be set aside, for good cause, if an application is made within three months from its date.

Proceedings may be taken in the district in which the person (1) resides, or (2) is, or (3) where he last resided with his wife or the mother of the illegitimate child.¹

A copy of the order of maintenance is given without payment to the person in whose favour it is made, and it may be enforced by any Magistrate in any place where the person against whom it is made may be.

(xi) Habeas Corpus

32. Power to issue Habeas Corpus directions.- "The supreme court, High Court Division may direct that

- (1) a person within the limits of its appellate criminal jurisdiction be brought before it to be dealt with according to law;
- (2) a person illegally or improperly detained in public or private custody within such limits be set at liberty;
- (3) a prisoner detained in any jail, within such limits, be brought before it to be examined as a witness;
- (4) a prisoner detained as above be brought before a Court-martial or any Commissioners, for trial or for examination as a witness;
- (5) a prisoner within such limits be removed from one custody to another for trial;

(6) the body of a defendant within such limits be brought in on the Sheriff's return of *cepi corpus* to a writ of attachment.¹

(xii) Bail

33. Bailable offence.-When a person accused of a bailable offence is arrested or detained without warrant by an officer in charge of a police-station or appears or is brought before a Court, and is prepared to give bail, he is released on bail. But such officer or Court may discharge him on his executing a bond for his appearance.²

34. Non-bailable offence.-(1) When a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, he may, after recording the reasons in writing, be released on bail but he is not released if there are reasonable grounds for believing that he has been guilty of an offence punishable with death or transportation for life. But the Court may direct that (1) any person under sixteen years of age, (2) any woman; or (3) any sick or infirm person accused of such an offence be released on bail.

(2) If it appears to the officer or Court at any stage of investigation or trial that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but there are sufficient grounds for further inquiry, the accused is released on bail, after recording the reasons in writing, or on the execution of a bond for his appearance.

(3) If after the conclusion of a trial and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty, it releases the accused on the execution by him of a bond for his appearance to hear judgment.²

The amount of a bond is fixed with due regard to the circumstances of the case and is not to be excessive.¹

(xiii) Commission for the Examination of witnesses

35. Issue of commission.-When it appears to a Court that (1) the examination of a witness is necessary for the ends of justice and (2) that the attendance of such witness cannot be procured without an amount of (a) delay, (b) expense or (c) inconvenience, which would be unreasonable, (3) the Court may dispense with such attendance and may issue a commission for the examination of such witness.²

36. To whom to be issued.-(1) Depending on where the witness resides, the commission will be issued as follows :-

(a) If within Bangladesh to the District Magistrate in or in relation to the area where the witness resides.

(b) If in United Kingdom or any other Commonwealth country or in Burma, to such Court or Judge as may be specified by the Government.

(2) The District Magistrate to whom the commission is issued, or any other First Class Magistrate appointed by him, is to proceed to the place where the witness is, or summon the witness before him and take down his evidence as in warrant cases.

37. How witnesses are to be examined.- A witness on commission may be examined either on interrogatories or *viva voce* by the Parties." When commission is issued, the inquiry, trial or proceedings may be adjourned till the commission is executed and returned

38. Return of Commission.-After any commission has been executed, it is returned with the deposition of the witness to the Court issuing the commission. The commission, the return and the deposition are open to inspection of the parties and may, subject to all just exceptions, be read in evidence in the case by either party and form part of the record. The deposition, if it satisfies the conditions of Section 33 of the Evidence. Act may be received in evidence at any subsequent stage of the case before another Court.

39. Applicability to Court-martial.-The above provisions of this subheading, namely commission for the examination of witnesses (as extracted from Chapter XL of the code of Criminal Procedure), are to be followed by a Court-martial when it is considered expedient by the Court-martial to issue a commission for the examination of witnesses in exercise of the powers conferred upon it by Section 117 of the Navy Ordinance. The Court-martial may be adjourned upon issue of the commission, or may continue to record evidence of other witnesses. Upon the commission being executed, it will be returned together with the deposition of the witness to the Judge Advocate General, who will forward it to the Court-martial who issued it, or, if the Court-martial is in the meanwhile dissolved, to another Court-martial convened for the trial of the accused.

(xiv) Special Rules of Evidence

40. Evidence where accused has absconded.- If an accused has absconded, and there is no immediate prospect of arresting him, the Court competent to try or commit for trial may examine the prosecution witnesses and record their depositions. Such deposition may, on the arrest of the accused, be given in evidence against him, in any trial, if the deponent is (1) dead, or (2) incapable of giving evidence, or (3) his attendance cannot, be procured without an amount of delay, expense or inconvenience, which would be unreasonable.

CHAPTER VIII

MEMORANDA FOR THE GUIDANCE OF OFFICERS CONCERNED WITH COURT-MARTIAL

The following memoranda as to court-martial are intended for the guidance of commanding and convening officers and others with a view to securing uniformity of practice and avoiding some common mistakes:-

(i) Executive Officer

1. If the commanding officer, after hearing the case for the prosecution as well as for the defence, decides to apply for a trial by court-martial, the Executive Officer should:-

(a) Frame the charges in the proper legal form and prepare the necessary number of copies for the commanding officer's signature.

(b) Have the necessary number of copies of the summary of evidence prepared for submission to the convening officer.

(c) Prepare the application for a court-martial (*see* Form in the Fourth Appendix), and a covering letter briefly explaining the back-ground of the case and the reason why a court-martial was being applied for, for the commanding officer's signature.

(d) Hand over a copy of the charge-sheet to the accused and ascertain from him if he desires to be represented by a defending officer at his trial.

(e) Ensure that all the documents and papers required to be forwarded with the application are complete and in order.

(f) Forward the application for court-martial, the covering letter, original and necessary number of copies of the charge sheet (or charge-sheets) and the summary of, evidence, together with other relevant papers, etc, to the convening officer through normal channels.

(g) Prepare for the commanding officer's signature and forward special reports in case of delay between the arrest and trial by court-martial of the accused in accordance with N.O. Section 90(3) (See rule 44.)

2. When a trial by court-martial has been ordered, the Executive Officer should: -

- (a) Promulgate the ardoor for the assembly of the court in Daily orders.
- (b) Warn the accused and hand him a copy of the convening order, the charge-sheet (or charge-sheets) and the summary of evidence.
- (c) Prepare a suitable room for the court and detail and fully brief an officer as the officer of the court as well as stenographers.
- (d) Arrange for the presence of all witnesses during the trial.
- (e) Ensure an adequate supply of stationery for the use of the court, the prosecutor and the defending officer.
- (f) If an interpreter is likely to be required detail a suitable person (or persons).

3. During the trial, the Executive officer should:-

(a) Arrange for the following

ceremonial to be observed on

each day on which the court-martial is sitting :-

- (i) The Bangladesh National Flag to be hoisted at the peak or at the yardarm, as appropriate-when the Colours are hoisted.
- (ii) A gun to be fired immediately after the Colours have been fully hoisted and before the "carry on" is sounded.

Note:-It is normally to be fired by the ship or establishment in which the court-martial is to be held, but if this is impracticable for any reason, the gun may be fired by any other ship, establishment or shore battery in the vicinity as directed by the Convening Authority.

- (iii) The National Flag to be dipped between each separate sitting of the Court and to be hauled down when the Court adjourns for the day. (See N.R. 1722.)

(iv) A Petty Officer's Guard to be paraded for a Captain or Commander attending a Court-Martial as President or Member, on arrival as well as on departure. The President if he wishes, may order that marks of respect are not to be rendered on the departure of the Court. The Guard is to present arms only to Captains.

Note: (1) Where it is not possible for the ship, in which the court martial is to be held, to provide the Guard instructions for the Guard to be provided by another ship on other ship are to be issued by the Convening Authority.

(2) Officers attending as members of a court-martial should ensure that they arrive before the President of the Court, in order that they are present to receive him on his arrival. Guard is not to be paraded for officers below the rank of Commander. (See N. R. 1741, 1742, 1754 and 1755.)

- (v) The side to be piped-only on board ships (not in shore establishments)-whenever the President or a Member of a court-martial is proceeding to or returning from the Court. (See N.R. 1741 and 1744.)

(b) Arrange for the accused to be examined by the medical officer on the morning of the first day of the trial and for the certificate of fitness of the accused for trial to be handed over to the prosecutor.

(c) Prepare, or obtain from the officer having the custody of service records of the accused, an up-to-date extract of the service record and character of the accused and keep it ready for production to the court, if required.

(d) Render such assistance as is required to the court the judge advocate; the prosecutor and the accused and his defending officer, during the course of their duties.

4. After confirmation (or non-confirmation) of the findings and sentence by the confirming authority, the Executive Officer should:

(a) If the proceedings are confirmed promulgate, to the accused the findings and sentence-(if any) and the confirmation. If not confirmed, promulgate that fact only, taking care not to divulge the finding and sentence of the court.

(b) Take necessary extracts for record in the documents of the accused.

(c) He must remember that if the accused is acquitted, or if any finding of guilty has not been confirmed, no. extract must be taken for the service documents of the accused in respect of such finding or findings.

(d) If any proceedings are, subsequent to promulgation, quashed by competent authority (Section 137), he must ensure that the entry relating to the conviction of the accused in the latter's service documents is deleted referring to this revision order, under the signature of the commanding officer.

(II) Points to be remembered while recording Summary of Evidence

5. The investigating officer should make himself acquainted with all the circumstances of the case and the testimony of the witnesses and carefully consider whether any additional evidence is relevant and necessary. Intelligent and patient investigation will often result in the discovery of a missing link in the chain of evidence, or corroborating evidence or evidence tending to exculpate the accused.

6. When reducing the evidence of witnesses to writing, the investigating officer should:-

(a) Have the evidence recorded as far as possible so that events are set out in chronological order.

(b) Have it recorded in the first person, noting at first the status, employment or appointment of the witness, followed by the place date and time (if material), to which the evidence refers, *e. g.*, "I am employed- as Senior Commissioned Master-at- Arms at BNS Issa Khan At 0815 hours, on 12th August" 1980 when I was standing in the verandah of the Guard Room, I saw the accused, whom I now recognise, walking towards the gate with a small box on his shoulder".

(c) Ensure that only such evidence as is admissible in law is adduced; particularly eliminate all irrelevant and hearsay statements; *see.* rule 204.

(d) Avoid attempting to tell the story of the crime by recording conversations at which the accused was not present.

(e) Ascertain that any document intended to be produced is legally admissible in evidence. Every document intended to be produced to the court must be produced by a witness and described and, where necessary, identified by a witness able to do so, for example, where a document has been acknowledged as correct or signed by the accused, evidence must be given to show that he has acknowledged it or his signature must be identified. Mark and -number documents according to order of production.

(f) Arrange for the preparation; production and proof of plans where necessary.

(g) Record the evidence of witnesses as nearly as possible in their own words and expressions. When evidence is not given in English, it will be interpreted and recorded in English.

(h) If the accused has, to any person or at any time, said anything by way of explanation or admission of any of the facts in issue, consider the circumstances in which the statement was made and if it is admissible let a witness be called to prove it.

(i) Remember that when it is proposed to tender evidence of an admission or confession, it is desirable that evidence should first be adduced by the prosecution of the circumstances in which it was made to show that it was voluntary, although under the Bangladesh law the onus lies upon the accused of showing that a confession made by him was not voluntary (*See Chapter Y, para.84*).

(j) With regard to the attendance of witnesses, take advantage where desirable of the provisions of rule 50(8). The written

statement of such witnesses must be signed and countersigned as required by this rule.

(k) Remember that a civilian witness can be compelled to attend the summary trial, *see* section 116 and rule 50(7).

(l) At the close of the evidence of each witness who is not cross-examined by the accused, make a note that "the accused declines to cross examine".

(m) Ensure that the record of any statement made by the accused is prefaced by a note that he was formally

"cautioned" in the terms laid down in rule 50(5).

7. Where the charge is for deficiency of kit, the fact that the accused has been at some time previously in possession of a complete kit or of the articles alleged to be deficient, the date and place of discovering any, subsequent deficiencies, and that none of the articles have since been recovered, should be included in the summary of evidence; Any articles recovered will be omitted from the charge.

8. Where a certified true copy of a record in any official register, book or document is to be produced (section 120(4)], the copy should show clearly that the record purports to have been signed by the commanding officer or by the officer whose duty it was to make the record (section 120(3)].

9. Where the charge is for neglecting to obey any general or local order under section 42 of the Ordinance, the original order must be produced.

10. As regard the evidence to be recorded at a board of inquiry into the illegal absence of a person, *see* rule 259.

11. A certificate of surrender or apprehension under section 120(6) should only state the fact, date and place of the surrender or apprehension and is only admissible as evidence of those facts and only in cases of desertion or absence without leave. The circumstances of the surrender or apprehension must be proved by a witness. The certificate must be signed by, a police officer not below the rank of an officer in charge of a police station.

12. Many cases depend on the identification of person or things. Evidence should be recorded to show that each witness identifies the accused, and any other person or thing mentioned in his evidence whose identity is relevant to the charge; *e.g.*, on a charge for theft, the articles, the subject of the charge, must be produced and identified or their absence satisfactorily accounted for. Articles alleged to have been damaged should be produced and identified.

13. Where the charge is for any offence which has occasioned any expense, loss, damage or destruction for which it is expedient to award compensation under section 82(d), values should be assessed and evidence taken as follows;

(a) When an article which has an official value has been lost or rendered unserviceable, a witness is required who can prove the value (inclusive of authorised departmental expenses) of the article at the date of loss upon a basis of its age and/or condition and by reference to the regulations which should be produced for fixing the value of the article at that age or in that condition.

(b) When the article has no official value, competent evidence is required to prove the approximate value.

(c) When an article has been damaged but not rendered unserviceable competent evidence is required to prove the pecuniary amount of the damage, which will be either the cost of repairing it, if it can be repaired, or the loss of value caused by the act of the accused if it cannot be repaired, or the cost of repair plus any ultimate loss of value due to the act of the accused.

(d) In the case of absence or desertion, the deficiencies, to be alleged in a charge under section 64(a), are those ascertained when the accused rejoined, not necessarily those found on, the Commencement of the absence or by a board of inquiry. Evidence, should not be taken of the value of personal clothing and necessaries the property of the accused, the value of which has not to be made good to the public.

14. Where the charge is for misappropriation or losing by neglect money or stores, etc., the evidence should show:-

- (a) The period during which the accused held office and was responsible for certain money or stores, etc.
- (b) That at the opening of this period the accounts and money, stores, etc, were correct.
- (c) Receipts and expenditures of money, stores, etc, during this period.
- (d) That at the close of this period there was a specific deficiency of money or stores, etc.

Items (b), (c) and (d) must, as a rule, be proved by the production of a sworn witness of the original account books, and vouchers and evidence that they were kept or signed by the accused. Witnesses should then give evidence explaining the deficiency which is checked with the original books, etc, and recorded.

15. In cases of attempts to commit suicide, medical evidence giving an opinion as to the state of mind of the accused at the time of the commission of the alleged offence should be taken.

16. In case of self-maiming, the medical witnesses should be asked whether the injury sustained by the accused will render him unfit for further service.

17. Where the accusation arises out of complaint made by an individual who has not yet identified the person whose conduct is complained of, the complainant and any other alleged eye-witness in the same circumstance, should have an opportunity of picking out from a group the man against whom they are prepared to give evidence. For this purpose an identification

parade should be held in the presence of the investigating officer before the witness or witnesses give evidence or otherwise see the accused in circumstances which may suggest that they are expected to recognise one particular man as the offender. At such a parade a witness should not be permitted to see or hear anything which might induce him to take a cue from the behaviour of another witness.

18. If in any case two or more persons are suspected of complicity in an offence, and it is found necessary to call one of these as a witness for the prosecution against the other or others charged in connection with the offence, one of the two courses must be taken; either :-

(a) Proceedings against him must be abandoned and any charge therein already preferred against him dismissed; or

(b) Steps must be taken to ensure that the case against him is disposed of summarily or tried by court martial *before* the trial of persons concerned against whom he is to give evidence; and that he is only tendered as a witness when he has already been acquitted or convicted *See* Chapter V, para.90

In all such cases, the circumstances and the course proposed should be fully set out in a covering letter to the convening officer.

(iii) Commanding Officer

19. When the commanding officer has decided to remand the accused for trial by court-martial, he shall normally within 48 hours apply in the form set out in the fourth appendix to the rules to the proper naval authority to convene a court-martial. (*See* Rule 50(10).J

20. Before applying for the trial of an offender, a commanding officer should satisfy himself :-

(a) That the accused is subject to the Navy Ordinance, and is charged with an offence against that Ordinance.

(b) That the offender is not exempt from trial under the provisions of Section 1 OS.

(c) That the offence is such that it is beyond the competency of his powers of punishment due either to its gravity or due to the previous conduct of the accused.

(d) That the summary of evidence is properly recorded. (*See* paras.5 to 18 above.)

(e) That the evidence justifies the trial of the offender on the charge or charges.

(f) That the charge is framed in proper and legal manner under the appropriate section (rules 124, 125 and 126) and signed by him.

(g) That the Executive officer (or other officer) has given the accused a copy of the charge-sheet as soon as practicable after he had been remanded for trial and that his rights as to preparing his defence and of being assisted or represented at the trial have been explained to him by that officer.

21. When making application for the trial of the offender, the commanding officer should satisfy himself that the following provisions are strictly complied with:-

- (a) The application for trial must be accompanied by all necessary documents as therein specified and the medical officer's certificate at the foot completed. The application should be submitted, without unnecessary delay after the accused has been remanded for trial.
- (b) The name of the officer to act as prosecutor should be stated on the application.
- (c) The convening officer must be informed whether or not the accused desires to have a defending officer assigned to represent him at the trial.
- (d) The information required as to officers who have investigated the case, or sat on a board of inquiry, must be given with great care.
- (e) The charge-sheet must be signed by the officer in actual command of, the ship or establishment to which the accused belongs, and should state the place and date of signature.
- (f) Sufficient space should be left at the foot of the chargesheet for the orders of the convening officer. The place and the date should be entered by the officer signing such orders.
- (g) The section of the Ordinance under which each charge is framed should be entered in the margin, opposite the charge to which it refers.
- (h) When it is intended to prove any facts in respect of which any penal deductions from the pay and allowances of the accused can be awarded in consequence of the offence charged, those facts must be clearly shown in the particulars of the charge and the sum of the loss or damage it is intended to charge (see para.13 above)
- (i) The statement containing the summary of entries in the service records of the accused, by whomsoever produced, is to be signed by the commanding officer or the officer having the custody of the books from which it compiled. In this form, only those summary punishments as are permitted by rule 106 (3) are to be entered. Offences of the same class as that being charged should be shown in a separate group (rule 157).

22. After a trial has been ordered, the commanding officer should satisfy himself that the following provisions are complied with:-

- (a) The accused must be warned for trial not less than 48 hours before the court assembles, must be informed by an officer of every charge on which he is to be tried, must be given a copy of the charge-sheet and of the summary of evidence, and notice of the intention to call witnesses whose evidence is not contained in the summary and an abstract of their evidence, and (if he so desires it) must be informed of the ranks and names of the others who are to form the court as well as of any spare members (rule's 128 and 129).
- (b) The accused must be informed that on his giving the names of any witnesses for the defence, all reasonable steps will be taken to procure their attendance.

- (c) The accused must be afforded proper opportunity for preparing his defence (rule 128).

- (d) The accused must be seen by a medical officer on the morning of the first day on which the court is sitting for his trial and the medical officer's report should be produced to the court immediately after it opens.

- (e) In the case of a joint trial, the accused persons should be informed of the intention to try them together and of their right to claim separate trials if the nature of the charge admits of it; (rule 130).

23. After confirmation (or refusal thereof), the commanding officer must satisfy himself that the following provisions are complied with:

- (a) The proceeding, if confirmed, must be promulgated as laid down in rule 168. If not confirmed, that fact is only to be promulgated, care being taken to ensure that

the finding and sentence of the court are not divulged.

(b) The record of the promulgation must be entered on the proceedings, and extracts recorded in the relevant records of the accused. No extracts should, however, be taken when the accused has been acquitted.

(c) After promulgation, the proceeding together with the Committal Warrant, if any-must be forwarded without delay to the proper authority (rule 191).

(iv) Conveying Officer

24. The convening officer should satisfy himself as regards the matters mentioned in paras.20 and 21 above, and in addition will ensure:-

(a) In all cases for trial by general court-martial and in all cases of indecency fraud, theft (except ordinary theft), and civil offences, and in all other cases which present doubt or difficulty that the charge-sheet and summary of evidence are submitted to the Deputy Judge Advocate General, before trial is ordered.

(b) That he holds the necessary court-martial warrant empowering him to convene the description of court-martial that he considers appropriate, or is 'otherwise Competent under the Ordinance to convene such a court.

(c) That the court which he has decided to convene is properly composed in accordance with sections 96 to 99 and rules 133 and 134.

Note:-In the case of theft, etc., from an officer's mesa all the officers of that mess are regarded as interested, and are therefore, disqualified.

(d) That the president and other members are duly nominated [section 99 (2).)

(e) When the appointment of a judge-advocate is legally required or is desirable (section 100), a suitable officer, with the approval of the Judge Advocate General, is to be appointed to carry out these duties.

(f) That in trials by general court-martial, and in complicated cases, a prosecutor is specially selected for his experience and knowledge of naval law.

(g) That the orders for trial is signed personally by him at the end of the charge-sheet.

(h) That the convening order is signed personally by him.

(i) That necessary instructions are issued to another ship/ establishment (or shore battery) in the vicinity to carry out either of the following court-martial ceremonial, if is impracticable for the ship or establishment, in which the court-martial is to be held, to do so:-

(i) Firing of the court-martial gun (N.R. 1722).

(ii) Provision of the guard for the president and members of the court-martial (N.R. 1754 & 1755).

25. That convening officer must ascertain whether the accused desires to have a defending officer assigned to assist him at his trial, and if so, must endeavour to meet his wishes. Should no suitable officer be available, the convening officer must notify the president in writing [rule 195(2)].

26. The convening officer must send to the president of the court-martial the convening order, charge sheet and summary of evidence. Except in the case of a joint trial of two or more persons, a separate copy of the convening order should be supplied in respect of every person to be tried. He must send to each of the other officers appointed to form the court a copy of the charge sheet [rule 131 (4)].

(v) The Court

27. The original convening order must be before the court and the president must satisfy himself that the court is duly constituted according to its terms. The court must not make any alteration or correction in the convening order, nor save as allowed by rule 143 in the charge-sheet.

28. In any case of doubt as to the constitution of the court, or any other matter affecting jurisdiction or validity of the charges, the president should consult the convening officer before the court assembles, or if the court has assembled, before proceeding with the trial.

29. The president is responsible for the trial to be conducted in the proper order and in a manner befitting a court of justice. It is his duty to see that accused gets a fair trial and he does not suffer any disadvantage through ignorance or incapacity to examine or cross-examine the witnesses.

30. He is to detail members of the court to carry out other duties so as to keep himself free to:-

(a) study the demeanour of witnesses giving evidence. This will help him in assessing the value of evidence given, and

(b) follow the summary of evidence and note and discrepancies between evidence given at the trial and that given at the summary of evidence.

31. The judge-advocate, if appointed, otherwise the president is responsible for the accuracy of the record of the proceedings of the court. It is important that evidence is carefully recorded and written in a way that the confirming and reviewing authority are able to read and understand it.

32. The president should normally appoint a member to maintain a list of all documents produced as exhibits before the court, as well as, be responsible for their systematic arrangement and safe custody until the close of the trial. Each of such exhibits shall be marked with a reference letter starting from "A" and signed by the president or the judge-advocate on its admission. This member should ensure that all exhibits shown to the prosecutor, the defence, or the witnesses are returned to him.

33. The full name and description of the accused should be entered on the first page of proceedings.

34. Care should be taken that, whenever a board of inquiry has been held, the relevant certificate is properly completed. (*See* note 10 to rule 135.)

35. Any person addressing the court, or examining or cross-examining a witness should always do so standing.

36. Every witness, including the officer producing the service records of the accused, must be sworn or affirmed in the presence of the accused to whom his evidence refers; he must not be examined on a former oath/affirmation taken in the presence of another accused person. The prosecutor or other person producing documents must be sworn/affirmed. By the custom of court-martial, however, the accused is allowed to hand in letters and certificates of character purporting to be in the hand-writing of absent officers or former employers, and unless there is reason to doubt their authenticity, they may be accepted.

37. The evidence will usually be taken down in narrative form. Any question and answer may, however, be taken down verbatim if desired by the prosecutor or the accused or considered necessary by the court. If there is no shorthand writer, the president is to appoint a member of the court to take down the proceedings of the court in longhand.

38. When original documents are not retained by the court and copies are attached to the proceedings, it must be stated in the proceedings that the copies have been compared with the originals and found to be correct. As a rule, it is preferable to attach copies and not original documents, to the proceedings.

39. In accepting certified true copies of extract from official records or books, attention should be given to paras.8, 10, 11 and 21 (i) above. Where these documents are given in evidence it is sufficient to record upon the proceedings the mere fact of their production without setting out the facts which they purport to prove, but the record of the evidence should always show that a witness identified the accused as the person to whom the particular document relates.

40. A certified true copy of a record in an official register book or document is sufficient evidence thereof, and it is not necessary, as a rule, for the court to compare the copy with the original register, book or document.

41. Where the value of arms, ammunition, equipment of public clothing lost or damaged is proved, the accused, if convicted should be sentenced to be put under penal deductions, notwithstanding the fact that he may also be sentenced to be dismissed from the service, in case the latter part of the sentence should be remitted.

42. If, loss or damage has been averred and proved penal deductions should be awarded, so that compensation may be made.

43. The proceedings of the court-martial are to be recorded in form IC as given in the Fourth Appendix, with such variations as required.

44. Where two or more persons are charged and tried jointly on a charge-sheet, only one set of proceedings should normally be used, the relevant pages of the form being adapted accordingly and the replies of each of the accused to the questions set out therein being separately recorded. A separate sheet, however, should be used for the finding and proceedings on conviction and for the sentences in each case.

45. Where the trial proceeds on more than one charge-sheet, necessary amendments should be made in form to provide for the insertion of the charge-sheets in the proceedings.

46. The charge-sheet is to be inserted in the proceedings after page on which the plea of the accused to the charge is recorded. All other documents are to be attached at the end of the proceedings in the order of their production to the court.

47. Documents, other than those which are produced as exhibits, are to be attached to the proceedings as *Annexures* and numbered serially I, II etc. Articles produced before the court as case property are to be labelled and serially numbered as *Article Nos.* 1, 2 etc. One of the member is to be made responsible for their systematic arrangement and safe custody until the close of the trial.

48. In case of a plea of "Guilty", the summary of evidence is to be annexed to the proceedings. In case of a plea of "Not guilty", it will be annexed if it or any part of it has been put in evidence at the trial. In other cases the summary will merely be enclosed with the proceedings when sent to the confirming officer.

49. All erasures of written or printed matter, and all interlineations and corrections should be initialed by the president or judge advocate.

50. The pages of the proceedings, as recorded in form "IC" of the Fourth Appendix, are to be numbered consecutively up to the end, i.e., up to the recording of the sentence. In case of

revision, the later proceedings are added at end, and the numbering of pages carried on. The proceedings are to be followed by:-

(a) the exhibits, together with a list :

(b) the list of articles or case property produced before the court:

(c) the Annexures *viz.*, other documents not forming part of the proceeding *i.e.*, applications, if any, moved before the court, summary of evidence etc. An index of the proceedings exhibits etc., is also to be made out and attached as a frontispiece to the proceedings clearly indicating the number of pages/items under each heading.

51. Care must be taken that the proceedings are both signed and dated by the president.

(vi) Duties of the Prosecutor

52. For the general duties of a prosecutor *see* rule 172.

53. Before the trial, the prosecutor should have previous knowledge of the subject matter of the charge or charges. For that reason the officer detailed as prosecutor must make it his business to acquaint himself with the circumstances; and assure himself that the various rules relating to procedure before trial have been complied with. He will, normally be the commanding officer who has carried out the investigations. The court will look to him for an explanation of any defect or omission apparent. or alleged by the accused;

54. On being detailed for duty, he should:-

(a) Obtain a copy of the charge-sheet and of summary of evidence, and enquire whether there is any correspondence or other material relative to the case, which he should peruse and note.

(b) If he thinks there is any legal defect, irregularities or serious omission in either the charge-sheet or the summary of evidence, he should refer to the commanding officer of the accused. The ability to detect irregularities connotes a working knowledge of the rules under the Ordinance and, of the law of evidence.

(c) Satisfy himself that provision of rules 128, 129, and (in the case of joint, trials) 130 have been complied with.

(d) Satisfy himself that proper steps are being taken to secure the attendance of all, necessary witnesses.

(e) Obtain a record of the accused's service and character for production at the trial if required. This, form must be signed by the officer having the custody of the documents of the accused.

(f) Consider whether an opening address is desirable or is likely to be required from him by the court. [Rule 149 (b)]. If so, prepare such an opening address, setting out in the form of a narrative the facts which are alleged against the accused, and the nature of the evidence by which those facts are to be proved. The opening address must be as impartial as he can make it free from unnecessary comment, denunciation or prejudice. There must be no reference in into any allegation which is not, to be proved in evidence subsequently at the trial. An opening address is not ordinarily required in disciplinary cases of a simple character, but is valuable where accounts are involved, or the evidence is largely circumstantial.

(g) On the morning of the trial obtain from the Executive Officer (or other officer), and, take with him to the court, a certificate by a medical officer, stating that he has examined the accused on that morning and that he is fit for trial.

55. The duties of the prosecutor at the trial are as follows:-

(a) On the opening of the court, the prosecutor presents the medical certificate to the president.

(b) If any material witness is absent, the prosecutor should inform the court at once, and if necessary apply for an adjournment (rule 209).

(c) If a board of inquiry has been held respecting a matter Upon which a charge against the accused is founded, the prosecutor should hand to the court a list of the names of the officers who sat on the board of inquiry.

(d) As to the prosecutor's right to address the court and call witnesses in reply in the event of a special plea to the jurisdiction of the court; or a plea in bar of trial, *see* rules 142, 144 and 145.

(e) Where the accused pleads "Guilty", the duties of the prosecutor are confined to calling such witnesses as may be necessary if the summary be insufficient [rule 147 (2)] and producing the service records of the accused.

Note:-If the accused in a statement in mitigation says something which is inconsistent with his plea of "Guilty", the prosecutor should call the attention of the court to rule 147(4), and prepare to call witnesses as on a plea of "Not guilty".

(f) Where the accused pleads "Not guilty", the prosecutor makes his opening address, if any, and if it is in writing reads it and hands it in, and calls his first witness.

(g) Before calling his witnesses, and as the case proceeds, the prosecutor must consider whether he should call all those whose evidence is in the summary of evidence and whether it is his duty to call as a witness any person whose evidence is not contained in the summary (rules 205 and 206).

(h) As to accomplices as witnesses for the prosecution, *see* para.18 above.

(i) After a witness for the prosecution has been sworn or affirmed, the prosecutor will ascertain the witness's number, rank, name, ship or establishment address, occupation etc., as may be material and will elicit from the witness the relevant facts to which the witness can speak. This may be done by means of questions of a non-leading character (*see* Chapter V, paras.103 and 104), or by permitting the witness to tell his own story, questions being subsequently asked to make good any omissions. A series of short simple questions will generally assist the witness to recount facts in chronological order, and the president or judge-advocate in making the record.

(j) The rules which govern cross-examination are described in Chapter V, paras.107 to 115. The limits within which re-examination is permitted are set out in para.116. It may happen that a question in cross-examination has been so framed as to compel the witness to answer simply "Yes" or "No", whereas there is within the prosecutor's knowledge an explanation which should in fairness be made. In such a case the prosecutor may in re-examination refer the witness to that question and answer and ask him if he has anything to add or explain:

(k) The prosecutor should not dismiss a witness until he has ascertained whether the court desire' to question him and until provisions of rule 212 have been complied with.

(l) The prosecutor must take care that each exhibit which he desires to put before the court is produced and identified by one of his witnesses. If an exhibit (e.g. the property alleged to have been stolen) is to be referred to by more than one witness each witness who refers to it must be invited to look at the exhibit, and say whether he identifies it. If the prosecutor is himself producing documents he should do so, after being sworn or affirmed as a witness, after he has called all other witnesses for prosecution (rule 14g(d)). Neither the prosecutor nor a witness may refer to the contents of a document which is not before the court, unless evidence is given accounting for its absence (*see* Chapter V, paras.76,77).

(m) The prosecutor having called his witnesses the case for the prosecution is closed. The subsequent proceedings depend upon the exercise by the accused of his rights and are fully set out in rules 150, 151 and 152.

(n) If the accused calls any witnesses to the facts, it is the duty of the prosecutor to assist the court to test the value of their evidence by cross-examination. The result of omission to cross-examine is frequently that the evidence for the defence stands unchallenged, and the prosecutor cannot properly, in a subsequent address, characterise as untrue a defence which he has not attempted, by questions to the witnesses at the proper time, to impugn. Cross-examination

Page no. 190 and 191 not scanned

be alleged in defence in so far as this matter is or should be within the witnesses's knowledge; see Chapter V, paras.107-113. As to injurious questions, see para.110.

(d) The defending officer may take objection to any question put to a witness for the prosecution on one of the following grounds; the objection should be made if possible before the witness answers:-

(i) That it is a leading question.

(ii) That it invites hearsay, or an account of an involuntary confession, or evidence of the accused's bad character when that character has not been put in issue, etc. (see Chapter V, para.60)

(e) At the close of the case for the prosecution, the defending officer may submit that the accused has no case to answer, and therefore should not be called upon for his defence, because the prosecution have not produced evidence in support of one or more essentials in the charge, [rule 150(2)1.

Note:-This submission must be to the effect that there is no evidence at all on the point or points, and not that the evidence is untrustworthy.

(f) Where a witness whose summary of evidence has not been recorded, is called by the prosecutor, the defending officer may apply for an adjournment or postponement of cross-examination (rule 206).

(g) The defending officer is entitled to consult the judge advocate, if one has been appointed, on any question of law or procedure relative to the charge or trial [rule 203(1)1.

(h) The defending officer must throughout the proceedings treat the court with respect and candour.

CHAPTER IX

SERVICE PRIVILEGES

(1) Legal Status of Officers and Sailors.

1. Legal status of officers and sailors -A person who joins the Bangladesh Navy, whether as an officer or as a sailor does not cease to be a citizen. His official character is super-imposed upon his civil character, and does not obliterate it. At the same time it has been found necessary, or desirable to modify in certain minor respects his status as a civilian, in some cases by imposing restrictions and in others by conferring immunities and privileges.

2. Under the criminal law. - So far as the criminal law is concerned, the position of an officer or a sailor is the same as that of a civilian. If he commits an offence against the ordinary criminal law' he can be tried and punished by the civil courts just like a civilian, subject, however, to the privilege given by section 107 of the Ordinance to the prescribed naval authority to claim him for trial by court-martial, (unless the offence is one of those mentioned in section 79 of the Ordinance and committed in circumstances which exclude trial by court-martial).

3. III civil matters. - In the case of civil rights, duties and liabilities there is a greater difference between the position of a person subject to naval law and that of an ordinary citizen. Certain privileges are granted to the former under sections 22 to 27 of the Ordinance, while as to others section 28 lays down that the rights and privileges specified in the said sections shall be in addition to any other conferred on the service personnel of the Army, Navy and Air Force generally by any other law for the time being in force.

(ii) Privileges under the Navy Ordinance, 1961

4. Pay and allowances protected. - The most important privilege conferred by the Navy Ordinance is that by section 22. The pay and allowances of every person subject to the Ordinance are protected from any deductions other than those authorised by or under that Ordinance or any other enactment or prescribed by the Government. Deductions authorised by the Ordinance are given in section 82 and those prescribed by the Government in rule 280.

5. Remedy of persons aggrieved. - Section 23 of the Ordinance provides statutory remedies to officers and sailors who deem themselves wronged by any superior officer. All complaints or application for redress of grievances, (other than those against convictions by a naval tribunal) and the method of submitting these to appropriate authority are described in rules 29 to 37. As to the remedy against the finding and sentence of a court martial *see* sections 134 to 138.

6. Immunities from attachment and arrest. - Sections 24 to 26 grant immunities to persons subject to the Ordinance in respect of attachment of their pay, allowances, arms, clothes, equipment, accoutrements, and other necessities, in satisfaction of any decree or order passed by any civil or revenue court or revenue officer. Similarly members of a court-martial, witnesses and others attending the court on duty, are immune from arrest by civil or revenue process, while proceeding to, attending, or returning from the court-martial.

7. Priority in respect of litigation. - If a person subject to Naval Law has suit or other proceeding pending in a civil court, he is entitled, under section 27 of the Ordinance to claim priority for the disposal of his case. On presentation of a certificate, either personally, or through some one else from his commanding officer that he has either been granted leave of absence, or has applied for leave, for the purpose of prosecuting or defending any such suit or proceeding, the court is bound to arrange, so far as may be possible, for the hearing and final disposal of the case within the period of leave so granted or applied for. No fee is payable to the court in respect of the presentation of any such certificate or of any application for priority for the hearing of the case.

When an officer or sailor has a case pending against him before a criminal court, every such court is bound, as far as may be possible, to arrange for the early hearing and final disposal of such case.

(iii) Privileges under other Statutes

8. Pension protected. - All Government pensions, which include naval pensions are protected from attachment in the execution of the decrees of civil courts.

(a) *The Pensions Act, 1871:*

"SECTION II - No pension granted or continued by Government on political considerations, or on account of past services or present infirmities, or as a compassionate allowance, and no money due or to become due on account of any such pension or allowance, shall be liable to seizure, attachment or sequestration by process of any court in Bangladesh, at the instance of a

creditor, for any demand against the pensioner, or in satisfaction of a decree or order of such court.

SECTION 12-All assignments, agreements, orders, sales and securities of every kind made by the person entitled to any pension, pay or allowance mentioned in section 11, in respect of any money not payable at or before the making thereof, on account of any such. pension, pay or allowance, or for giving or assigning any future interest therein, are null and void."

(b) *The Code of Civil Procedure*; 1908

SECTION 60, proviso. (g) specifically lays down that stipends and gratuities allowed to pensioners of the Government shall not be liable to attachment and sale in execution of a decree.

9. The Code of civil Procedure. 1908. - order XXVII provides that where any officer, soldier, sailor or airman, actually serving in such capacity is a party to a suit and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorise any person to sue or defend in his stead. This authority is to be in writing and shall be signed in the presence of his commanding officer.

10. The Soldiers (Litigation) Act, 1925. - This Act gives special protection to persons subject to service law, whilst serving under war conditions, in respect of civil and revenue litigation. [For full text of the Soldiers (Litigation) Act, 1925 and the Seamen (Litigation) Rules, 1944 *See* NR Part I Appendix xvii and for their extent and applicability *see* Appendix XVIII thereof]

11. The Stamp Act, 1899. - Schedule I exempts from stamp duty receipts for pay and allowances given by sailors when serving in such capacity.

CHAPTER X

DUTIES IN AID OF THE CIVIL POWER AND MARTIAL LAW

Note.-As regards martial law, see para.7 below

1. Unlawful assembly, riot and rebellion. - An assembly which through the action of those composing it is likely to cause a disturbance of the public peace is an unlawful assembly. As soon as an act of violence is committed it becomes a riot; while - if the riot is committed with the intention of waging war against Bangladesh, it becomes an insurrection or rebellion.

2. Relations of Civil and Military Authorities. - An officer called on to act in case of sudden tumult will seldom have any knowledge of the intention of the mob: For this reason, and to protect him from the serious consequences of a failure to appreciate the situation correctly, he is directed to take his instructions from a magistrate, whenever possible, and, in the absence of a magistrate, to act only when the public security is manifestly endangered. The obligation lies upon the magistrate, when he is present *or* within reach, to use all the ordinary means at his disposal to preserve public order. If further aid is required, he is empowered to call for military assistance, and the officer to whom the requisition is addressed will act as directed in this Chapter. His action must be limited to the dispersal of assembly, and, subject to the orders of the magistrate, to the arrest and detention, but not the punishment, of the rioters. He must, moreover, use as little force as is consistent with these objects. If he is compelled to, act in the absence of the magistrate, and in anticipation of a requisition for troops, he should be even more careful to use no more force than is absolutely necessary.

3. Powers and Duties of Civil Authorities. - The civil authorities have power, under the ordinary law, to disperse, unlawful assemblies and suppress rioting and disturbance. If their force is insufficient for the purpose, the civil authorities are empowered to call for military assistance. The Code of Criminal Procedure, after providing for the dispersal, by means of the police and ordinary citizens called in to their aid, of unlawful assemblies likely to cause a disturbance of the public peace, continues as follows:-

SECTION 129. - If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank, who is present, may cause it to be dispersed by military force.

SECTION 130.-(1) When a Magistrate determines to disperse any such assembly by military force, he may require any commissioned or non-commissioned officer in command of any soldiers in Bangladesh Army to disperse such assembly by military force, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law.

(2) Every such officer shall obey such requisition in such manner as he thinks fit, but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons. Where such a course is feasible the requisition should be given in writing, but it is clear that this will often be impossible.

For the purposes of sections 128 to 131 of the Code of criminal Procedure, references to officers, non-commissioned officers and men of the Bangladesh Army include references to corresponding ranks of the National Guard and the Territorial Force. *See* section 15 of the National Guard Act 1950 and section 18 of the Territorial Force Act, 1950.

Military assistance is, it will be seen, not to be called for unless the civil force is inadequate (of this the civil officer is the judge) but when called for must be accorded. The strength and composition of the force, the amount of ammunition to be taken and the manner of carrying out the operations, are matters for the decision of the military authorities alone. The degree of force which may lawfully be used depends on the nature of the occasion, for the force used must always be strictly limited by the necessity of the case and proportioned to the end to be attained, which is the dispersal of the assembly and the execution of such orders as the Magistrate may pass in respect of the arrest and detention of its members.. It has been repeatedly stressed that the primary factor of policy whenever, circumstances unfortunately necessitate the suppression of civil disorder by military force within Bangladesh is the use of the minimum amount of force necessary to secure the object in view.

4. Magistrate not available. - It may, however, happen that a serious situation arises when there is no magistrate within reach. This is provided for in the next section of the Code.

SECTION 131.--When the public security is manifestly endangered by any such assembly, and when no Magistrate can be communicated with, any commissioned officer of the Bangladesh Army may disperse such assembly by military force, and may arrest and confine any persons forming part of it, in order to disperse such assembly or that they may be punished according to law; if, while he is acting under this section, it becomes practicable for him to communicate with a Magistrate he shall do so, and shall thence-forward obey the instructions of the Magistrate as to whether he shall or shall not continue such action.

This section confers powers to act without the presence of a Magistrate only on commissioned officers of the Bangladesh Army and then only when the emergency is so serious that the public security is manifestly endangered and it is not possible to communicate with a magistrate. As soon as it becomes possible to communicate with a magistrate, the officer must do so, and must obey his instructions as to stopping or continuing his action. The principle laid down in the second sub-section of section 130 applies also to action under this section.

Under section 131 of the Code of Criminal Procedure, the power dispersing an unlawful assembly in the absence of a Magistrate can *only* be exercised by a commissioned officer. This power cannot be exercised by a non-commissioned officer. The lack of such power, however, in no way affects the right of a non-commissioned officer to take such action as may be necessary in the exercise of the right of private defence under the ordinary civil law to safe guard the lives of himself, the men under his command and other persons to protect any property against robbery, mischief, criminal trespass, or fire.

5. Firing on Assembly. - When an officer is required by a Magistrate (as in para.3 above) or determines (as in para.4) to disperse an assembly by force, he will, if his detachment is not already organised in platoons and sections and does not exceed 40 men, tell it off into four sections, if it exceeds 40 men, he will tell it off into more sections than four. He will, before taking action, adopt the most effectual measures possible to explain to the people that, if necessary, fire will be opened and that if firing becomes necessary the fire of the troops will be effective. If he is of opinion that it is necessary to fire, but that the fire of a few men will attain the object of dispersing the assembly he will personally give the command to a few specified men to fire. If a greater effort be required, he will personally give the command to one of the sections to fire. He will, when telling off the sections, clearly indicate to the troops the officer or non-commissioned officer who is to order each section to fire, should it be necessary for more sections than one to fire at a time; and no order to a man or section to fire will be given by any person except himself or the officer or non-commissioned officer so indicated. Care must be taken not to fire on persons separated from the crowd who do not appear to be acting with it or inciting it, or over the heads of the latter. The firing must be carried out with steadiness and be stopped the moment it becomes unnecessary. Firing with blank is forbidden. The fire, if firing is necessary, must be effective. Firing on specified ring leaders may sometimes be the most effective way of dispersing a crowd, and will be justified if it is necessary and likely to obviate greater bloodshed. Machine guns should not be employed to disperse rioters if the object to be attained can be secured without recourse to this weapon, and if so employed, the fire should be most carefully controlled.

6. Protection from prosecution. - The interest of officers, soldiers and others are protected by section 132 of the Code of Criminal Procedure, which is as follows:-

SECTION-132-No prosecution against any person for any act purporting to be done under this Chapter shall be instituted in any Criminal Court, except with the sanction of the Government; and

- (a) no Magistrate or police officer acting under this Chapter in good faith
 - (b) no officer acting under section 131 in good faith.
 - (c) no person doing any act in good faith, in compliance with a requisition under section 128 or section 130,
 - (d) no inferior officer, or soldier, doing any act in obedience to any order which he was bound to obey.
- shall be deemed to have thereby committed an offence.

7. Martial law. - So long as the disturbances amount to no more than a riot, the measures contemplated in this Chapter may be expected to suffice to restore order. Since the crowd is not acting in general defiance of the Government, the danger is, as a rule, local and disappears with the dispersal of the rioters and the arrest of the ring leaders. But where the disturbances are recurrent, widespread concerted and directed against the constituted authorities it becomes the duty of the executive in exercising, the common law right of repelling force by force, to assume such exceptional powers and to take such exceptional measures, as may be necessary for the purpose of restoring order. The state of things thus set up is generally known as "Martial Law".

THE NAVY ORDINANCE. 1961

ORDINANCE No. XXXV OF 1961

An Ordinance to consolidate and amend the law relating to the Government and Discipline of the Bangladesh Navy

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

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

CHAPTER I

PRELIMINARY

1. Short title and commencement.-(1) This Ordinance may be called the Navy Ordinance 1961.

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

NOTES

1. The Ordinance was brought into force with effect from 1st March, 1962 and adapted in Bangladesh with textual amendments by the Navy (Amendment) Ordinance, 1977 (XLIII of 1977)

2. Notification. *See* section 4(xxv)

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

(a) Officers on the active list officers of the Bangladesh Navy, and sailors of the Bangladesh Navy;

(b) officers on the retired or emergency list of officers of the Bangladesh Navy, when ordered on any duty or service for which as such officers they are so liable;

(c) persons belonging to any of the Bangladesh Naval Reserve Forces when called up for training, exercise or service (including active service) in pursuance of regulations;

(d) Persons belonging to any auxiliary force raised in Bangladesh to which this Ordinance is applied to such extent and subject to such conditions as may be prescribed.

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

(a) Persons subject to the Army Act, 1952 (XXXIX of 1952) or the Air Force Act, 1953 (VI of 1953)-

(i) When seconded for service with the Bangladesh Navy: or

(ii) When embarked for passage on board any of the naval ships; shall be subject to all the provisions of Naval law.

(b) Persons, other than those mentioned in the last preceding clause, when embarked as passengers on board any of the naval ships;

(c) persons who are employed by, or are in the service of, or are followers of, or accompany any body or member of the naval force on active service;

(3) Persons not otherwise subject to this ordinance shall be so subject if they are accused of :

(i) Seducing or attempting to seduce any person subject to this ordinance from his duty or allegiance to Government, or

(ii) Having committed, in relation to any work of defence arsenal Naval, Military or Air force establishment or station, ships or Aircraft or otherwise in relation to the Naval, Military or Air force affairs of Bangladesh, an offence under the official Secret Act 1923"

6. Persons mentioned in this clause includes civilians connected with the navy on active service in the manner specified 'in the clause; e.g. contracts, news correspondents etc.

7. Naval vessels.-See section 4(xxiii).

8. Naval establishments.-See section 4(xviii).

9. Enemy.-See section 4(x).

10. All persons subject to the Ordinance under clause (a) of sub-section (1) are so subject, at all times and wherever they may be, Persons mentioned, in clauses (b), (C) and (d) and those mentioned in sub-section (2) are only subject to the Ordinance in the circumstances given in each case and to the extent and under conditions specified therein.

3. Secondment to Army or Air Force.- Persons subject to this Ordinance, when seconded for service with the Army or the Bangladesh Air Force, shall be subject to the Army Act, 1952 (XXXIX of 1952), or as the case may be, Air Force Act, 1953 (VI of 1953), to such extent and under such conditions as the Government may direct.

NOTE

Section 2.A of the Army Act, empowers the Government to direct by order in writing, that any person belonging to the Army Medical Corps, be seconded for service with the Bangladesh Navy or the Bangladesh Air Force. Section 3-A of the Air Force Act provides for the secondment of persons belonging to the Air Force Medical Corps to the Army or the Navy Medical Corps.

Section 3 of the Ordinance however, is much wider in scope, as it is not confined to persons belonging to any "medical corps" of any of the three services. This section merely states that whenever persons subject to this Ordinance are seconded to the Army or the Air Force, they shall become subject to the Act governing the service to which they are seconded, to such extent, and under such conditions as the Government may direct.

4. Definitions in this Ordinance, unless the context otherwise requires,-

(i) "Active service" as applied to a person subject to this Ordinance, means the time during which such person

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

(b) is engaged in naval operations in, or is on his way to a country or place wholly or partly occupied by an enemy, or

(c) is attached to, or forms part of a force which is in

military occupation of any foreign country ;

- (ii) "Armed forces" means the Bangladesh Army, the Bangladesh, Navy and the Bangladesh Air Force and includes their reserves when called up for training, exercise or service
- (iii) "civil offence" means an offence which is triable by a criminal court:
- (iv) "civil person" means any jail or place used for the detention of any criminal prisoner under the Prisons Act, 1894 (IX of 1894), or under any other law for the time being in force;
- (v) "Chief of Naval Staff" means the flag officer appointed by the President as the Chief of Naval Staff Bangladesh Navy, or in his absence on leave or otherwise the officer appointed by the Government to officiate as such, or, in the absence of such officiating appointment, the officer on whom the command may devolve in accordance with the regulations made by the Government
- (vi) "commanding officer" means the officer appointed in command ' of a naval ship, vessel or establishment or the officer on whom such command may devolve in accordance with .the regulations made by the Government, or, the officer, specified by the Government as the commanding officer for the purpose of all or any of the provisions of this Ordinance;
- (vii) "court-martial" means a court-martial held under this Ordinance; ,
- (viii) "criminal court" means a court of ordinary criminal justice in any part of Bangladesh or established elsewhere by the authority of the Government;
- (ix) "desertion" has the meaning assigned to it by section 45 and "desert" and its cognate expressions shall be construed accordingly;
- (x) "enemy" includes all armed mutineers, armed rebels, armed rioters, pirates and any person in arms against whom it is the duty of any person subject to military, naval or, air force law to act;
- (xi) "Flag officer" means an officer of the rank of Admiral of the Fleet, Admiral, Vice-Admiral or Rear-Admiral;
- (xiii) "Intoxication" has the meaning assigned to it by section 58;
- (xiv) "Judge Advocate General" means a person appointed as such to give advice on matters relating to naval law and to perform such other duties of a legal character as may arise in connection therewith;
- (xv) "Long imprisonment" means rigorous imprisonment for a term exceeding two year's but not exceeding fourteen years;
- (xvi) "Mutiny" has the meaning assigned to it by section 36
- (xvii) "Naval custody" means the arrest or confinement of a person in the prescribed manner or in accordance with the usages and customs of the naval service and includes military or air force custody;

(xviii) "Naval establishment" means an establishment belonging to or under the control of the navy, whether within or out side Bangladesh ;

(xix) "Naval law" means the law contained in this Ordinance and the rules and regulations and includes the usages and customs of the navy;

(xx) "Naval reserve force" means the Bangladesh Naval Reserve Forces and includes the Bangladesh Naval Fleet Reserve, the Bangladesh Naval. Volunteer Reserve, the Bangladesh Naval Reserve, and the Bangladesh Women Naval Reserve;

(xxi) "Naval reward" includes any gratuity or annuity for long service or good conduct or pension and any other naval pecuniary reward:

(xxii) "Naval ship" means a ship commissioned for service in the Bangladesh Navy and flying .the Naval Ensign;

(xxiii) "Naval vessel" means a ship or vessel, other than a naval ship, engaged in the naval service of Bangladesh;

(xxiv) "Navy" means the regular naval forces of Bangladesh arid includes the Bangladesh Naval Reserve Forces, when called up for training, exercise or into actual service;

(xxv) "Notification" means a notification published in the official Gazette;

(xxvi) "offence" means any act or omission punishable under their

Ordinance and includes a civil offence;

(xxvii) 'Officer' means a person holding a commission not being junior commission in the Navy, and includes a sub-ordinate officer, and when serving under prescribed conditions, an officer, of the Bangladesh Army or the Bangladesh Air force;

(xxviii) "prescribed" means prescribed by rules made under this Ordinance;

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

(xxx) "Sailor means a person enrolled under this ordinance of or below the rank of Master chief petty officer:

(xxxi) "regulations" means rules made under this Ordinance;

(xxxii) "rules means rules made under this ordinance;

(xxxiii) "Service " when qualifying institution, necessities, book band mess, money, goods or other property, means belonging to or connected with the army, the navy or the air force or any part thereof;

(xxxiv) "service law" means this Ordinance, the Army Act, 1952 (XXXIX of 1952) the Air Force Act, 1953 (VI of 1953), and the rules and regulations made there under;

(xxxv) "short imprisonment" means simple or rigorous imprisonment for a term not exceeding two years;

(xxxvi) "subordinate officer" means a person appointed as an acting sub lieutenant, a midshipman *or* a cadet in any branch of the navy;

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

(xxxviii) all words expressions used herein and defined in the Penal Code (Act XLV of 1860), and not herein before defined, shall have the meanings respectively assigned to them in that Code.

NOTES

1. Expression "Unless the context otherwise requires" means that the words defined in this section are also used in a number of other sections with meanings sometimes of a wide and sometimes an obviously limited character.

2. The expression "means" indicates that the term defined is used as a synonym. for a longer or more cumbersome expression.

3. The expression "includes" means that wherever the law, as it stands, applies to the class. of persons or things indicated by the first tet\11, it will also apply to the class or classes who are "included" though the natural meaning of the English language might not indicate that it would apply to the latter.

4. A person may be an active service even before embarkation for the seat of operations if the circumstances are such that he can reasonably be held to be attached to, or, to form part *of*, a force as is !specified in this clause.

5.. Enemy-See clause, X.

CHAPTER II

SPECIAL PROVISIONS FOR THE APPLLICATION OF THIS ORDINANCE IN CERTAIN CASES

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

NOTE

Notification-see section 4(xxv).

6. Special provision as to rank and command in. certain cases.-Any person or class of persons subject to this Ordinance under clause (c) of sub-section (2) of section 2:

(1) Shall be so subject as Officers, Master Chief Petty Officers, Chief Petty Officers or Petty Officers as the Government or any officer authorized by it in that behalf may direct;

(2) in respect of whom no direction under clause (I) is in force, shall be deemed to be of a rank lower to that of a petty officer;

shall be deemed to be under the commanding officer of the naval ship, naval vessel or naval establishment, if any, to which he is attached, and if he is not so attached, under the command of any officer who may, for the time being, be named as his commanding officer by the officer commanding the force with which such person may be serving, or of any other prescribed officer, and if no such officer is named or prescribed, under the command of the said officer (3)commanding the force;

(4) Shall not be placed under the command of an officer of official rank lower to that of such person if there is present.

at the place where such person is any officer of higher rank under whose command he can be placed.

Note

1. Commanding *Officer*. - See section 4(vi)
2. Prescribes. - See section 4(xxviii).

7. Officers exercising powers in certain cases.-(1) Whenever persons subject to this Ordinance are serving, whether within or outside' Bangladesh under an officer not subject to this Ordinance the Government may prescribe the officer by whom the powers which, under this Ordinance; may be exercised by a commanding officer, shall as regards such persons, be exercised.

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

NOTES

1. Prescribed. - See section 4(xxviii).

2. Bangladesh Navy personnel, whilst under training with the Royal Navy on board any of H.M. Ships or in any of the H.M. naval establishments, shall be governed by the (U.K.) Naval Discipline Act, 1958 *Section 111(6)* (reproduced below) deals with breach~ of discipline by members of the Armed Forces of the Commonwealth and Foreign Governments under training with the Royal Navy. This section has also been made applicable to the Bangladesh Navy so as to ensure that minor offences are dealt with by the R. N. authorities in the same manner as if the offence was committed by a R.N. personnel. The application of this section to Bangladesh Navy would not mean that an offender would necessarily be tried 'and punished only by the R.N. authorities; in some cases, of grievous nature it might be more appropriate to send or call the offender back to Bangladesh and dealt .with under this Ordinance:

"NAVAL DISCIPLINE ACT, 1958 Section 111(6). - A person not other wise subject to this Act. being a member of-

(a) Any of the armed forces of the Crown raised outside the United Kingdom; or

(b) any armed forces other than armed forces of the Crown, not being, in either case forces excepted from this sub-section by directions of the Admiralty is subject to this Act when ordered to be trained or exercised on board any of Her Majesty's ships or in any of Her Majesty's naval establishments.

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

NOTE

The object of this section is to prevent legal difficulties arising from the use of the service in regard to the delegation of authority by one officer

to another. It will allow orders of a flag or other officer to be signed by the staff officer as authorized by the custom of the service; but the confirmation of court-martial, and warrants or other documents relating to imprisonment or detention, or the infliction of any other punishment, must be signed by the officer himself. So too must an order convening a court-martial. (*See*) part I, Chapter II, para 9.)

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

Note

The . section is intended to empower the Government to declare any person or class of persons who are subject to the Ordinance, to be on active service for certain purposes, even when the conditions of "active service" as defined in section 4(i), do not apply. Such a declaration must be made by a notification published in the Official Gazette. (*See* also Part I, Chapter II, para 9.)

CHAPTER III

APPOINTMENT, COMMISSION AND ENROLMENT

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

11. **Appointment and commission.**-(t) Officers other than subordinate officers shall be appointed by commission by the President.

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

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

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

(3) Notwithstanding' anything contained in any other law for the time being in force.

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

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

NOTES

1. *Enrolment.* See Part I, Chapter II, paras 17-23. As regards conditions of service etc., see Navy Regulations, Part I. The prescribed form of enrolment will be found in the Eighth Appendix to the rules. It is to be remembered that making a false answer at the time of enrolment, to certain questions set forth in the Described form, Is an offence punishable under section 69 of the Ordinance.

2. The initial period of engagement is prescribed in Rule 8.

13. **Validity of enrolment.**-Every person who has for the space of three months been in receipt of pay as a person enrolled under this Ordinance and been borne on the books of any naval ship or naval establishment shall be deemed to have been duly enrolled and shall not be entitled to claim his discharge on the ground of any irregularity or illegality in his enrolment or on any other' ground whatsoever; and if any person in receipt of such pay and borne on the books as

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

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

NOTE

1. For the prescribed form of oath or affirmation, *see* the First Appendix to the rules. The oath or affirmation must be administered by the commanding

officer of the person to be attested or by any other officer authorized by him in this behalf; *see* Rule 7(2).

Attestation must normally take place as soon as possible on successful completion of the person's probationary period. In no case must it be delayed for more than three months after it has become due; *see* Rule 6(4).

CHAPTER IV

CONDITIONS OF SERVICE

15. **Tenure of service.**-Every officer and Sailor shall hold office during the pleasure of the President.

NOTE

This section recognizes a well established principle of Service law. An officer holds his Commission at the pleasure of the president, who can at any time dismiss him without assigning a reason: no contract to the contrary unless sanctioned by statute has any legal effect. So, too, a Sailor can be discharged at any time, and in his case the declaration made by him in enrolment

form binds him to serve for a definite period if his services are so long required. (*See* rules 9 and 23 respectively.)

In practice, of course the prerogative power to dismiss or discharge is not exercised arbitrarily.

An officer cannot claim as a matter of right to resign his commission when ever he pleases. (See also note 1 to section 16.)

An officer or sailor cannot recover pay alleged to be due to him by action against the Government in the civil courts.

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

NOTES

1. A person once subject to the Ordinance remains subject until discharged in the proper manner. This is what is meant by "shall be liable to serve in the navy until his services have been duly terminated.." A career in the armed forces is a career of honour, Dot contract, based on a special relation between the Head of the State and the officer by virtue of the commission granted by the President. The fact that officers are said to retire, or to have short term commissions or the use of any other form of words suggesting a time limit on the expiry of which an officer can claim a supposed right are notions derived from contract. There are DO "rights" of this kind in a career of honour in which the officer's sword (wllich he *always* retains) is always at the service of the State. The Power to retain an officer in the *service*

at will without reasons is paralleled by the power to dismiss at will without reasons; whether the powers should be exercised is a question which has nothing to do with their undoubted existence.

2. Until his services have been duly *terminated*.-*See* Sections 17 to 20 and rules 9 to 17 (officers) and rules 21 to 26 (sailors).

17. **Termination of service.**-(I) The Government may dismiss, remove, discharge or release any officer from the service or compel him to resign or retire from the service.

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

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

NOTES

1. For dismissal as a court-martial sentence *see* section 80 and rules 23 and 247.
2. For effective date of termination of service *see* rules 17 and 22.
3. Officers-For dismissal, otherwise than by sentence of Court-martial, removal, or release-*see* Rules 9 to 14,
4. Sailors-For dismissal, discharge or release *see* rules 23 to 26.
5. As to furnishing a "Termination of Service Certificate" *lee* section 20 and rule 21.
6. Any prescribed officer mentioned in sub-section (3) means an officer prescribed by rules made under the Ordinance; - Section 4 (xxviii). As to officer so prescribed *see* rule 23 to 25.
18. Release on expiry of period of engagement.-A sailor shall be entitled to be released at the expiration of the term of serve for which he is engaged unless-
 - (a) such expiration occurs,
 - (i) when war is imminent or existing, or
 - (ii) when the strength of the branch of service to which he belongs is five per cent below its strength.

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

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

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

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

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

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

NOTES

1. Sub-section (3) of this section is permissive and must be read with sections 143, 144 and 145 which provide for the execution of sentences of imprisonment and detention.

2. On active service special arrangements for a military prison in the field are made, where necessary. (*See* the second proviso to section 143.) Persons sentenced to dismissal and imprisonment can legally be retained in such a prison to undergo the whole or any part of their term of imprisonment, before being sent to Bangladesh under sub-section (3) of this section.

3. Naval custody includes military or air force custody, section 4(xvii).

20. **Certificate on termination of service.**-Every Sailor who is dismissed, discharged, or released from the service shall be furnished by the prescribed officer with a certificate setting forth

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

NOTE

1. The "Termination of Service Certificate" required to be issued under this section may be furnished to the person concerned either by personal delivery to him or by its transmission by registered post to such person; rule 21. In the case of a person sentenced to Imprisonment which is carried out in a civil prison. it should be sent to the superintendent of the civil prison, in which the person is confined for delivery to the person.

2. The prescribed officer for the purpose of this section is the Drafting

Authority, rule 279.

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

(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

NOTE

This section empowers the Government to restrict certain fundamental rights, which may be guaranteed by the Constitution, in such manner and to such extent as may be specified by rules made under the Ordinance, *see* rules 38 to 41.

CHAPTER V

SERVICE PRIVILEGES

22. Authorized deductions only to be made from pay. The pay and allowances of every officer and sailor due to him as such under any regulation for the time being in force, shall be paid without any deduction other than the deductions authorized by or under this or any other enactment or prescribed by the Government.

NOTE

Deduction authorized under the Ordinance are given in section 82, and those prescribed by the Government in rule 280.

For an example of deductions authorized by "any other enactment" *see* Income Tax Act, 1922, section 18, under which income tax is deducted at source.

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

NOTES

1. The procedure for making a complaint for redress of grievances is Prescribed in detail in rules 29 to 37. Complaints may be made respecting any matter, but can be made by an individual only. Joint or collective or anonymous petitions or representations of any kind are forbidden. A complaint cannot legitimately be preferred to a superior officer except in the regular course

defined by the rules. It is only where the immediate superior refuses or unnecessarily delays to redress or forward the complaint that direct application can be made to higher authority; (rule 36), In such event, the officer in question ought to be informed of the application being made to his superior, and the applicant should observe in the channel of approach to the Government each intermediate gradation of command. Although the complaint is to the Government, the intermediate authority is not debarred from expressing its own view of the case, and such an expression of opinion may even in some cases suffice to render further steps unnecessary.

2. The proper treatment of complaints and grievances of a service or personal nature, is of the utmost importance. A grievance, real or imaginary, which is not dealt with promptly and correctly, leads to dissatisfaction and the lowering of moral and reflects adversely on the officers concerned. Nothing could be more harmful to the discipline in the service than the feeling that a serviceman's rights to complain to prescribed authority with a view to obtaining justice can be denied by the administrative authorities by withholding such applications.

3. A false accusation or false statement made in preferring a complaint

under this section is punishable under section 72; but the mere fact that a complaint appears to be baseless, or even frivolous, does not render the maker liable to punishment. As to the repetition of baseless complaint or the submission of complaints in disrespectful language *see* notes to section 75.

4. A petition from a person who considers himself aggrieved by any order passed by a court-martial, does not fall within the scope of this section. Such petitions must be dealt with under the provisions of section 134. Before confirmation, an aggrieved person may present, at the conclusion of the trial, a petition to the confirming authority, who 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 proceedings to which the order relates. After confirmation, a petition may be submitted, under section 136, to the Government or the Chief of Naval Staff who have power, under section 137, to quash the finding, and under section 138, to annul the sentence.

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

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

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

(3) For the making of such complaint and for the recovery of such costs, no court-fee, shall be payable by the complainant.

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

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

27. Priority in respect of naval personnel's litigation.-(1) On the presentation to any court, by or on behalf of any officer or sailor of a certificate, from the proper naval authority, of leave of absence having been granted to or applied for by him for the purpose of prosecuting or defending any suit or other proceeding in such court, the court shall, on the application of such person, arrange, so far as may be possible, for the hearing and final disposal of such suit or other proceeding within the period of the leave so granted or applied for.

(2) The certificate from the proper naval authority shall state the first and last day of the leave or intended leave, and set forth a description of the case with respect to which the leave was granted or applied for and shall be duly signed and authenticated by such authority.

(3) No fee shall be payable to the court in respect of the presentation of any such certificate or of any application by or on behalf of any such person for priority for the hearing of his case, and every such certificate duly signed or authenticated as aforesaid shall be conclusive evidence of the correctness of the contents thereof.

(4) Where the court is unable to arrange for the hearing and final disposal of the suit or other proceeding within the

period of such leave or intended leave as aforesaid, it shall record its reasons for its inability to do so, and shall cause a copy thereof to be furnished to such person on his application without any payment whatever by him in respect either of the application for such copy or of the copy itself.

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

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

NOTE

As to the special protection given under the soldiers (Litigation) Act, and the Rules made there under, *see* Navy Regulations Part I Appendices XVII and XVIII.

28. 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 Ordinance 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

NOTES

1. A copy of this Chapter is to be displayed in a prominent position in the ship or establishment for the information of the ship's company.

2. The contents of this Chapter are to be read over to the following-

(a) to new entries after they have received instructions in punishments;

(b) to re-entries before their first draft to duty, and

(c) to the ship's company once in every quarter.

3. An entry is to be made in the Deck Log whenever provisions of Note 2 have been complied with. It is not necessary for all the sections of this Chapter to be read over at one time, it may be read in suitable portions. The Administrative Authority during its inspection (N.R.5020)) is to ensure that these provisions have been complied with.

4. A separate charge is to be framed for each offence giving the statement of the offence as well as the statement of particulars of the act, neglect or omission constituting the offence (*see* rule 126).

5. A charge sheet shall contain the whole issue or issues-one charge or several charges to be tried by a court-martial at anyone time. A charge sheet shall begin in one of the following forms. as set out in the Third Appendix to the Rules:

COMMENCEMENT OF CHARGE-SHEET

(i) The accused (rank, name, personal number, branch, naval ship/establishment), an officer of the Bangladesh Navy, is charged with;

or

(ii) The accused (official number, name, Rank, naval ship/establishment), a sailor of the Bangladesh Navy, is charged with;

or

(iii) The accused (personal/official number, rank, name, branch, naval ship/establishment, if any), an officer/(a sailor) of the Naval Fleet Reserve called out for service/(under-going training), is charged with;- .

or

(iv) The accused (name), being a person subject to the Navy Ordinance, 1961, as an officer/(a sailor) under the provisions of section 2(2) of the said Ordinance, is charged with;

or

Where an offence has been committed by a person while subject to the Ordinance, and he has ceased to be subject at the time he is charged (in accordance with the provisions of section 106 of the Navy Ordinance, 1961, the commencement of the charge shall be as follows;-

(V) The accused (name) is charged with having, while being (personal/official number, rank) of the (naval ship or establishment) an officer/sailor of the Bangladesh Navy, or a person subject to the Navy Ordinance, 1961 as an officer/sailor under the provisions of section 2(2) of that Ordinance, committed the following offence (offences), namely;

(vi) The accused (name) is charged with having, while being (personal/ official number, rank) of the (naval ship or establishment) an officer (a sailor) or the Naval Fleet Reserve called out for service (or when undergoing training), committed the following offence (offences), namely :

6. The statements of offences in respect of Sections 29 to 79-as set out in the Third Appendix to the Rules-are reproduced below and they should normally be referred to before framing a charge.

STATEMENT OF OFFENCE

Section 29-Misconduct in action by persons in Command.

the Flag Officer commanding ship
Being he Captain commanding a naval vessel.
In command of establishment

(With intent to assist the enemy).

(a) failing to use his utmost exertions to bring into action the said ship/(vessel/(establishment), which it was his duty to bring into action.

(b) surrendering the said ship/(vessel)/(establishment) to the enemy, when it was capable of being successfully defended or destroyed.

(c) failing to pursue an enemy whom it was his duty to pursue; *or* failing to assist to the utmost of his ability a friend whom it was his duty to assist.

(d) in the course of an action by/(against)the enemy, improperly withdrawing from the action/(from his station);

or

in the course of an action by/(against)the enemy, failing in his own person and according to his rank to encourage the persons under his command to fight courageously.

Section 30-Misconduct in action by other officers and men :-

(With intent to assist the enemy).

failing when ordered to prepare for action by/(against) the enemy;

or

failing during action by/(against) the enemy to use his utmost exertion

to into execution the lawful orders of his superior officer.

Section 31-Obstruction of operations:

(With intent to assist the enemy). wilfully delaying/(discouraging) an action/(a service), which had been commanded on the part of the Bangladesh forces/(a force co-operation with the Bangladesh forces)

Section 32-Corresponding with, supplying or serving with the enemy:(With intent to assist the enemy).

(a) Communicating with/(giving intelligence to) the enemy.

(b) Failing to make known to the proper authorities information

received by him from the enemy.

(c) Furnishing the enemy with supplies.

(d) When a prisoner of war serving with (aiding) the enemy in the

Prosecution of hostilities;

or

in the prosecution of measures calculated to influence morale;

or

in a manner not authorized by international used.

Section 33-Sleeping on watch or abandoning post :

(1) Being in the presence/(vicinity) of,/or, being under orders to be prepared for action by or (against) the enemy, abandoning his post improperly;/(or, sleeping upon his watch).

(2) Improperly abandoning his post';

or

Sleeping upon his watch.

Section 34-Neglect of duty :

Neglecting to perform a duty imposed on him ;

or

Negligently performing a duty imposed on him.

Section 36-Mutiny :

(I) (a) Taking part in a mutiny involving use of (the threat of the use of) criminal force;

or

Taking part in a mutiny having as an object the refusal (the avoidance) of a duty (a service) against the enemy, (in connection with operations against the enemy);

or

Taking part in a mutiny having as an object the impeding of the performance of a duty (a service) against the enemy, (or, in connection with operations against the enemy).

(b) Inciting a person subject take service law to take part in a mutiny (continue as in preceding charges).

(2) Taking, part in a mutiny; or, inciting a person subject to service law to take part in a mutiny.

(3) Endeavoring, to seduce a person subject to service law from his duty/allegiance to the Government.

Section 37-Failure to suppress mutiny:

(a) Know in, (having reason to believe) that a mutiny is taking place (is intended), (with intent to assist the enemy), failing to use his utmost endeavors to suppress (prevent) it.

(b) Knowing (have in, reason to believe) that a mutiny is taking place
(is intended), with intent to assist the enemy) failing to report without delay.

Section 38-Attempt to stir up disturbance:

Attempting to stir up a disturbance in a naval ship
vessel
establishment

Section 39-Using criminal force to superior officer:

Using criminal force to
his superior officer.

Committing an assault on

Section 40-Disobedience:

Wilfully disobeying a lawful command given by

Section 41--insubordinate behavior:

Using threatening (insulting) language
his superior officer.

Behaving with contempt.....

NOTES.-(i) When an offence under this section is committed on active service, the words "when on active service" should be prefixed to the statement of offence.

(ii) If the "superior officer" was at the time in execution of his office, the words "being in the execution of his office" should be added after the words "superior officer"

Section 42-Violation of the Act, regulations and orders:

Contravening the provisions of..... the Navy Ordinance 1961
the navy Ordinance 1961.

(a regulation made under the Navy Ordinance, 1961) or
(a general)

(a local) order.

Section 44-Obstruction of provost officers:

Willfully	A provost Officer
Obstructing	A person legally exercising
Willfully refusing	authority under (on behalf of) provost
when called on to officer	
assist	

Section 46-Desertion :-

(1) (a) When on active service

When under orders for active	Deserting	the
service...	service	

(b) Deserting the service

(2) Inciting a person subject to service law to desert his service

Or

Knowingly harbouring a deserter.

Section 47-absence without leave:

- (a) Absenting himself without leave.
- (b) Improperly leaving his ship (place of duty).
- (c) Inciting a person subject to service law to absent himself without leave,
or
inciting a person subject to service law improperly to leave his ship/ place of duty.

Section 48-Failure to report deserters and absentees-

(had deserted,

had absented himself without leave improperly left his ship/place of duty.

Knowing that a person sub- was attempting to desert.

ject to service law was attempting to absent himself

without leave,
was attempting to improperly to
leave his ship/place of duty.

(a) Failing to report the fact without delay;

(b) Failing to take steps within his power to cause the said person to be
apprehended.

Section 51-Low flying:

Being the pilot of an aircraft belonging to the Government, flying it at a height less than the height provided by regulations.

Section 52-Annoyance of flying:

Being the pilot of an aircraft belonging to the Government, Dying it so as to cause/(be likely to cause) unnecessary annoyance to a person.

Section 53-Prize offences by commanding officer :

- Being in command of a naval ship/(a naval vessel) (an aircraft),
- (a) having taken a ship/(vessel)/(an aircraft) as prize, failing to send to the High Court division or to some other prize court having jurisdiction in the case all the ship's/(aircraft's) papers found on board the said prize.
 - (b) unlawfully making an agreement for ransoming of a ship/(vessel (aircraft)/goods) taken as prize.
 - (c) in pursuance of an unlawful agreement to ransom/(by collusion), unlawfully restoring/(abandoning) a ship/(a vessel) (an aircraft)/(goods) taken as prize.

Section 54-Other prize offences:

- (a) Striking/(ill treating) a person on board a ship/(vessel)/(aircraft)
taken as prize.

or

Unlawfully taking a thing from the possession of a person who was
on board a ship/(vessel)/(aircraft) taken as prize.

- (b) Unlawfully removing out of a ship/(vessel)/(aircraft) taken as prize
goods not previously adjudged by a Prize Court to be lawful prize.

- (c) Breaking bulk on board a ship/(vessel)/(aircraft) taken as prize/(detained in exercise of a belligerent right)/(detained under an enactment), with intent to commit breach of trust/(with intent to dishonestly misappropriate anything therein).

Section 55-Inaccurate certification:

Making (signing) a certificate,
relating to a matter affecting the ship/(vessel), seagoing/(fighting) efficiency of a naval
or
relating to an aircraft/(aircraft material) belonging to the Government, without having ensured
its accuracy.

Section 56-Improper Carriage of goods:

Being in command of a naval ship/(vessel)/(an aircraft), without lawful authority,

(a) receiving/(permitting to be received) on board the ship/(vessel) (aircraft), goods/(merchandise) intended for disposal or delivery by way of trade or business, not being merchandise received in the course of salvage ;

(b) agreeing to carry in the said ship/(vessel)/(aircraft) goods/(merchandise) in consideration of the payment of freight,

or

demanding/(receiving) payment in respect of carriage of goods/(merchandise) in the said ship/(vessel)/(aircraft).

Section 57-Malingering:

(a) -----

(b) ----- Malingering

(c) -----

NOTE.-The act or omission described in the statement of the particulars in each case should indicate the clause covering the offence of malingering.

Section 59-Intoxication: -

Being in a state of intoxication:-

NOTE-If the offence falls under clause (a) of this section, the words "while on active service", or "while under orders of active service", or "while on duty", as the case may be should be prefixed to the statement of offence.

Section 60-Irregularity in connection with custody:

(a) Unnecessarily detaining a person in custody without bringing him

to trial;

or

Failing to bring the case of a person in custody before the proper authority for investigation.

(b) After having committed a person to naval custody, failing without reasonable cause to deliver at the time of committal or as soon as practicable within 48 hours after such committal to the officer (the person) in whose custody the person arrested was committed, an account in writing signed by himself of the offence with which the person so committed was charged.

Section 61-Escape from custody :

Being in lawful custody escaping/(attempting *to* escape).

Section 65-Loss and waste of Government and service property:-

- (a) Losing Government/(service) property of which he had the charge. which had been entrusted to his care which formed part of the property of which he had the charge/which had been entrusted to his care.
- (b) By negligence destroying (damaging) Government/(service) property.

or

By negligence allowing Government/(service) property to be damaged/(destroyed).

- (c) Wastefully expending Government/(service) property

Section 66-Unauthorised disclosure of information:- .

Without lawful authority wilfully disclosing/(purporting to disclose) information, which was entrusted to him in confidence, (or, to which he had access owing to his position).

Section 69-False answers on enrolment:

At the time of enrolment making a wilfully false answer to a question set forth in the prescribed' form of enrolment.

Section 70-Unbecoming conduct by officers:

Behaving in manner unbecoming the position and the character expected of an officer

Section 71-Disgraceful conduct:

a cruel

Disgraceful conduct of an indecent.. kind

an unnatural

Section 72-False accusation :-

(a) Making a false accusation against a person subject to the Navy

Ordinance, 1961

Knowing

such accusation to be false.

having reason to believe

(b) In making a complaint under section 23 of the Navy Ordinance, 1961, (Making a statement affecting the character of a person subject to the said Ordinance, knowing (having reason to believe) such statement to be false.

or

knowingly/(wilfully) suppressing a material fact/(facts)

Section 74- False evidence:-

Having been lawfully sworn/(affirmed) 88 a witness/an interpreter) before
a Court-martial
a board/(person, having power by virtue of the Navy Ordinance,
1961) to administer an oath/(affirmation),

making a statement material in those Proceedings, which he
knew to be false.

did not believe to be true.

Section 75-Conduct to the prejudice of naval discipline:

An Act left left, ..

Disorder..... to the prejudice of good order and naval discipline.
Neglect.. ..

Section 76-Attempts to commit naval offences:

commit an offence specified in section** of the
Navy Ordinance, 1961

Attempting to

cause an offence specified in section** of the Navy Ordinance, 1961, to be
committed.

and in such attempt doing an act towards the commission of the same.

**Specify any of the sections 29 to 75 inclusive, which is relevant.

Section 77-Abetment of offences:

Abetment within the meanings of the Penal Code of the commission of an offence specified in
section of the Navy Ordinance, 1961

**Specify any of the sections 29 to 75 inclusive, which is relevant.

Section 78-Civil offences triable by naval tribunal:

Committing a civil offence, that is to say.....**

**State the offence as described in the Penal Code or other law in force Bangladesh.

(I) Misconduct in Action and Assistance to Enemy

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

- (a) fails to use his utmost exertions to bring into action any such ship, vessel or establishment which it is his duty to bring in to action;
- (b) surrenders any such ship, vessel or establishment to the enemy when it is capable of being successfully defended or destroyed ; (c) fails to pursue any enemy whom *it* is his duty to pursue, or to assist to the utmost of his ability any friend whom it is his duty to assist; or
- (d) in the case of any action by or against the enemy, improperly withdraws from the action or from his station, or fails in .his own person and according to his rank to encourage the persons under his command to fight courageously;

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

NOTES

1. Enemy.-See section 4(x).

2. Action has a wider meaning here than the actual engagements with the enemy, but at least there must be a hostile operation in progress.

3. To establish a charge under this section:

(a) the accused must have been a Flag Officer, a Captain or some other officer or Sailor in command of one Or more of naval ships, naval vessels or naval establishments;

(b) there must have been an "enemy" as defined above;

(c) there must have been misconduct of one of the types described in the section, *see* specimen forms of charges below;

(d) it must be proved that the accused intended to assist the enemy, if that is alleged in the charge (*see* Note 4 below).

4. In any other case covers misconduct within this section not committed with an intention to assist the enemy. If the court has any difficulty in deciding whether the accused's actions amounted to misconduct within the terms of this section, it should draw on its experience of the Service and consider what it would expect of an officer or sailor of the accused's experience, background, etc.

5. A person may be charged *with intent to assist the enemy* even if the only evidence of such an intention is the doing of the act charged, since in absence of evidence to the contrary everyone may be presumed to intend the natural and probable consequences of his voluntary acts. (*See* Section J 14, Evidence Act.)

6. When a person is charged *with intent to assist the enemy*, he may be found guilty of committing the offence without such intent; section 112.

7. As the maximum penalty for an offence under this section is death,

(i) a District Court Martial should not try the case; and

(ii) a plea of guilty cannot be accepted; rule 146(4)

8. Although no person may be tried by court-martial for an offence against this section unless the trial is begun within time years after the commission of the offence, this period of three years does not include any time during which the accused was a prisoner of war, or in any enemy territory, or any time spent in evading arrest after the alleged commission of the offence ; section 105(3).

9. The offence of *surrendering* a naval ship, vessel or establishment can only be committed by this person in charge of it at the time. The surrender by a person' charged with its defence can

only be justified by superior orders, or the utmost necessity such as want of provisions or water, the absence of hope of relief and the certainty or extreme probability that no further effort could prevent it, and those defending it, falling into the hands of the enemy.

SPECIMEN CHARGES

No.1

The accused, Captain ~~left~~P. N. ~~left~~, of B.N.S. ~~right~~.....,

an officer of the Bangladesh Navy, is charged with :-

Being the Captain Commanding a naval ship, with intent to assist the enemy (omit if inapplicable), failing to use his utmost exertions- to bring into action the said ship, which it was his duty to bring into action,

in that he, at....., on....., failed to use his utmost exertions to bring into action the said ship, namely, B.N.S.which it was his

duty to bring into action.

No.2

The accused, Lieutenant Commander ~~center~~right, P.No..... of B.N.S. ~~center~~., an officer of the Bangladesh Navy, is charged with:-

Being in command of a naval establishment with intent to assist the enemy (omit if inapplicable), surrendering the said establishment to the enemy when it was capable of being successfully defended or destroyed,

in that he, at ~~left~~., on ~~right~~....., surrendered a naval establishment namely,

B.N.S....., to the enemy, when it was capable of being successfully, defended or destroyed.

No. 3

The accused, O. No., Chief Petty Officer..... of B.N.S., a sailor of the Bangladesh Navy, is charged with:

Being in command of a naval vessel, with intent to assist the enemy (omit if inapplicable), failing to assist to the utmost of his ability a friend whom it was his duty to assist,

in that he, at....., on....., failed to assist to the utmost of his ability a friend, namely right right....., Whom it was his duty to assist.

No.4

The accused, Commander left left..., P. Norigh right.....of

B.N.Srigh right, an officer of the Bangladesh Navy, is charged

with:-

Being in command of a naval ship, with intent to assist the enemy (omit if inapplicable), in the course of an action against the enemy, failing in his own person and according to his rank to encourage the persons under his command to fight courageously,

in that he, at left left, on left left, in the course of an action against the enemy, failed in his own person and according to his rank to encourage the persons under his command to fight courageously.

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

NOTES

1. This section applies only to officers and sailors who are not in command of any of the naval ships, naval vessels or naval establishments.
2. Enemy. See section 4(x).
3. Action.-See Note 2 to section 29.
4. Lawful orders of his superior officers.-See Notes to sections 39 and 40.
5. With Intent to assist, the enemy and in any other case.-See Notes 4 to 7 to section 29.
6. To establish a charge 'under this section-

(a) there must be some action (as defined in the Notes to section 29) in progress or the accused must have been ordered to prepare for such action, either himself or as a member of a large body (e. g. the whole crew of a ship) either by word of mouth or by, for instance, an alarm signal described in orders;

(b) there must be some lawful orders given by a superior officer (*See* Notes on "lawful command" in section 40);

(c) the accused person must have failed to use his utmost exertions to carry out the order.

7. As to period of limitation for trial, *See* Note 8 to section 29.

SPECTMEN CHARGES

No.1

The accused, (Rank, Name, P.No.) of B.N.Srightright.....,an officer of the Bangladesh Navy, is charged with:

with intent to assist the enemy (omit if inapplicable, failing, when ordered to prepare for action against the enemy,

in that he, atleftleft.,onrightright.....,when ordered by (rank, name,)

his superior officer to prepare for action against the enemy,failed to do so.

No.2

The accused (O.No., Name, Rank) of B.N.Sa sailor of the Bangladesh Navy, is charged with:

with intent to assist the enemy (omit if inapplicable), failing during action by the enemy, to use his utmost exertions to carry into execution the lawful orders of his superior officer,

in that he, at right,.....on., during action by the

enemy, failed to use his, utmost exertions to carry into execution the order of
Commander....., his superior officer, when ordered to.....

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

NOTES

1. Upon any pretext whatsoever.-Owing to these words the text under this section is more stringent than under the two previous sections. Once it is established that the accused by his action or inaction has wilfully (*i.e.* deliberately and not by accident) delayed or discouraged the action or service, it is not defence, for example, to claim that he genuinely attempted to do something that he considered more useful or to claim that he made an error of judgments.

Action. *See* Note 2 to section 29.

3. Service includes any activity directly connected with the prosecution of operations against the enemy, *e.g.*, an order to prepare for escort duty, laying a minefield, rescue or towing work, etc. The action or service must have been commanded on the part of Bangladesh forces or of forces co-operating with them.

4. With intent to assist the enemy.-*See* Notes 5 to 7 to section 29.

5. In any other case.-*See* Note 4 to section 29.

SPECIMEN CHARGE

The accused, (Rank, Name, P. No.) of B.N.S.....an officer of

the Bangladesh Navy, is charged with.

with intent to assist the enemy (omit if inapplicable) wilfully delaying a service, which had been commanded on the part of Bangladesh forces, in that he, at, on....., having been ordered to prepare

for escort duty wilfully delayed the said service by.....

32. Corresponding with, supplying or serving with the enemy. Every person subject to this Ordinance who-

- (a) communicates with or gives intelligence to the enemy;
- (b) fails to make known to the proper authorities any information received by him from the enemy;
- (c) furnishes the enemy with supplies of any description; or
- (d) having been made a prisoner of war, serves with or aids the enemy in the prosecution of hostilities or of measures calculated to influence morale, or in any other manner what so ever, not authorised by international usage shall be liable, if the offence is committed with intent to assist the enemy to suffer death, and in any other case' to suffer long imprisonment.

NOTES

1. Communicates with. -On a charge under this clause it must be proved that the accused established contact with the enemy either directly or indirectly through a third party. It is not sufficient to show that the accused disclosure information's and that by chance it had reached the enemy. Where there is no enemy within the meaning of the Ordinance, offences of this nature can only be charged under section 66, or, if done to assist a potential enemy, under section 78 of the Ordinance as offences under the Official Secrets Act, . 1923 (*see* Part IV of the Manual).

2. Gives intelligence to. - It must be proved that the communication or intelligence reached the enemy. Intelligence means information which is or purports to be information as to any matter such that information about it would or might be directly or indirectly useful to an enemy. For example, information as to any of the following matters would be such information:

- (a) the number, description, armament, equipment, disposition, movement or condition of any of the Bangladesh forces or of any forces co-operating therewith, or any ships or aircraft belonging to any of such forces;
- (b) any operations or projected operations of any of such forces, ships or aircraft;
- (c) any code, cipher, call sign, password or countersign ;

- (d) any measures for the defence or 'fortification of any place on behalf of the Government;
- (e) the number, description or location of any prisoners of war;
- (f) munitions of war.

3. **Enemy**.....See section 4(X)

4. The phrase *supplies of any description* is very wide and the clause would for example cover faking steps to restore a supply of water cut off by the Bangladesh forces.

5. **Prisoner of war**.-See Note 8 to section 29.

6. Serves with *i.e.*, serves with an armed or uniformed force.

7. Aids *i.e.* helps the enemy directly or indirectly but without necessarily "serving with" the enemy.

8. It is for the court trying a case to say if the act charged can be said can be *calculated* to influence moral. An example of such an act would be broadcasting for the enemy. It is immaterial whether the act was calculated to influence the morale of Bangladesh forces & subjects or of the enemy forces or subjects, but the act must have been calculated to influence morale to the enemy's advantage.

9. **International usage**.-See the Geneva Convention 1949. For example, prisoners of war may help with the harvest without exposing themselves to this section.

10. **Intent to assist the enemy and in any other case**.-See Notes 4 to 7 to section 29.

SPECIMEN CHARGES

No.1

The accused, (Rank, Name, P. No.) of B.N.S., an officer of the Bangladesh Navy, is charged with :-

With intent to assist the enemy (omit if inapplicable), giving intelligence to the enemy,

in that he, at left left, on left left..... gave intelligence to the enemy

by reporting to X an enemy agent a projected bombardment by the Bangladesh Navy of the enemy town of....., on the night of.....

No' 2

The accused, (Rank, Name, P. No.) of B.N.S....., an officer

of the Bangladesh Navy, is charged with:-

With intent to assist the enemy (omit if inapplicable), when a prisoner of war, aiding the enemy in the prosecution of measures calculated to influence morale.

in that he, at., onwhen a prisoner of war, (with intent to assist the enemy)'aided the enemy in the prosecution of measures calculated to influence morale by delivering a broadcast in Bengali to the Bangladesh public, and which broadcast contained the following passages (set out).

(ii) Neglect of Duty

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

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

NOTES

1. *Enemy.*-See section 4(x)

2. (a) **Under order to be Prepared for action**-Such orders may have been given to the accused individually or as a member of a larger body (*e.g.* the whole ship's company), either by word of mouth or by, for instance, an alarm signal-described in orders.

(b) When a person is charged under sub-section (1)-i.e., "being in presence or vicinity of the enemy"-or-"under orders to be prepared Correction by or against the enemy", he may be found guilty of committing the offence under sub-section (2),-i.e., "not being in the presence or vicinity of the enemy or under such orders as aforesaid", "see section 112.

3. (a) Post refers to the position or place in which it is the duty of an individual to be, especially when under arms. With respect in particular to a sentry it applies:

NOTES

(i) to the spot where the sentry is left to the observance of his duties by the officer or other person posting him; or

(ii) to any limits pointed out as his beat. The fact that a sentry has not been regularly posted is immaterial if he is charged with an offence committed while at his post, provided evidence is given to prove that he knew where his duty required him to be.

(b) The charge should specify the post at which the accused should have been, *e.g.*, "abandon his post as aircraft lookout of the first watch". It is necessary to prove that the accused deliberately left his post without authority.

(c) A charge of abandoning post, which applies to a Particular post, *e.g.*, a look out, must be distinguished from "improperly leaving his ship or place of duty" under section 47 (b), which refers to a general place of duty.

4. A charge of sleeping on his watch should include a description of the duty on which the accused was engaged, *e.g.*, "sleep upon his watch as a look out/a member of the middle watch".

SPECIMEN CHARGES

No.1

The accused, (0. No., Name, Rank) of B.N.S,

a sailor of the Bangladesh Navy, is charged with:-

Being in the vicinity of the enemy, abandoning his post improperly,

in that he, aton.....being in the vicinity of the enemy,

improperly abandoned his post as life boat sentry.

No.2

The accused, (0. No., Name, Rank) of B.N.S., a Sailor of the Bangladesh Navy, is charged with :

Sleeping upon his watch,

in that he, at.....on.....between.....hours and.....

hours while boatswain's mate of the middle watch was asleep at his watch.

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

NOTES

1. This section creates two offences.-(a) neglect of duty and (b) negligent performance of duty.. Neglect of duty covers non-performance of duty whether wilful or negligent. In "negligent performance of duty" the duty was performed, but was performed negligently. Before a person can be found guilty of either offence, the court must be satisfied that the accused either has done something which a reasonably capable and careful person of his seniority and his experience in the Service would not have done, or has failed or omitted to do something which a reasonably capable and careful person in his position in the Service would have done. These charges cover culpable or wilful neglect, carelessness, indifference or general slackness in the performance of duty. A mere error of judgment, which is not in itself based on negligence, is not sufficient; if, however, the error' arose because a judgment was formed too hastily in circumstances which did not warrant a hasty judgment or if, in forming the judgment, the accused omitted to take into account factors which would have been taken into account by a reasonably capable and prudent person in his position in the Service, or took into account, factors which such a person would not have taken into account then the court can find that the accused is guilty of an offence under this section.

2. A description of the alleged neglect or negligence, sufficient to let the accused know what the charge is about, must be included in the charge.

3. Duty imposed on him.-There must be a duty imposed on the accused because he is acting in a specific capacity (*e.g.*, as Officer of the Watch or as mess treasurer) and not a duty imposed on him in a general capacity (*e.g.*, as an officer or even as an officer of a particular rank). If the accused is acting in a general capacity, it may be possible to charge him with an act or neglect to the prejudice of good order and naval discipline under section 75.

4. In some cases it may be desirable to specify in the charge the effect of the alleged neglect or negligent performance of duty, *e.g.*, where the measure of neglect or negligence can only be judged by its results or where the results or where the results could not have happened but for neglect or negligence. There must then, of course, be complete evidence that the alleged neglect or negligence is the actual and direct cause of the result specified. Moreover, the result must not amount to an allegation of another offence (*e.g.*, against section 65); otherwise the whole charge would be bad for duplicity. Where loss of life results from negligence, the inclusion in the charge of that fact will amount to a charge of "causing death by a rash or negligent act" (punishable

under section 304A of the Penal Code). In such a case, consideration should be given to charging the accused with the civil offence under section 78 of the Ordinance, instead of neglect of duty. When a charge of causing death by a rash or negligent act is laid, it is the practice not to include any other charge in the same charge-sheet.

5. A charge under this section may sometimes usefully be added as an alternative to a charge involving fraud where the evidence of fraudulent intent is weak but there is evidence of carelessness in the custody of money or stores or in the keeping of accounts. If the carelessness results in the loss as opposed to the theft of money or for the loss, damage or destruction of stores, a charge under section 63 or 65 should be brought.

SPECIMEN CHARGES

No.1

The accused (Rank, Name, P. No.) of B.N.S. ,an officer of
the Bangladesh Navy, is charged with :-

Neglecting to perform a duty imposed on him,
in that he, while employed as Supply Officer of B.N.S.....at.....
on.....failed to ensure that the clothing stocks in his charge Were
mustered as required by Article.....of the Victualling Manual.

No.2

Negligently performing a duty imposed on him,
in that he, at.....on.....while acting as Commanding Officer of
B.N.S.contrary to the provisions of Article.....of
..... Port Order's caused that ship to proceed at high speed to the
south of right, thereby giving legitimate cause for complaints of
danger to life and property on shore owing to the wash made.

(iii) Mutiny

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

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

36. Offences of mutiny.-(I) Every person subject to this Ordinance who-

(a) takes part in a mutiny involving the use of criminal force or the threat of the use of criminal force or having as its object or one of its objects the refusal or avoidance of any duty or service against or in connection with operations against, the enemy, or the impeding of the performance of any such duty or service, or

(b) incites any person subject to service law to take part in such a mutiny, whether actual or intended, shall be liable to suffer death.

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

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

NOTE

1. There must be the intention to act in the manner described in (a), (b) or (c) of the definition in section 35 and some action in pursuance thereof ; the action may be any step towards the mutiny, *e.g.*, the making out or preparation of a plan, or the preparation of a list of those who may be persuaded to join in, or the approach in a of a third person. The "action" may be positive (*e.g.*, switching off lights, a small arms party throwing down their arms).or negative (*e.g.* refusing to move when ordered).

2. A combination between two or more persons subject to service law means that there must be at least two or more persons subject to service law acting in concert to constitute the offence. One person cannot alone commit mutiny. It is normal to charge mutineers collectively for the same charge; but, if for any reason one accused has to be charged separately, the charge should read "took part in a mutiny together with."(naming or at least identifying other offenders subject to service law and proving their participation).

3. Service law.-See Section 4(xxxiv). Before a combination can amount to mutiny at least two members of it must be subject to service law. If, therefore, one sailor subject to the Ordinance combines with members of a force who are not subject to service law, or with members of a foreign force or with civilians then, although the combination is directed against authority in the armed forces of Bangladesh, the sailor is not guilty of mutiny.

4. Criminal force.-See Section 350 of Penal Code. A mutiny does not "involve the use of criminal force or the threat of the use of criminal force is used or contemplated or the threat made before the actual mutiny is at an end. Thus, if during an investigation of the case one of the mutineers struck the officer of the watch, this would not by itself convert simple mutiny into mutiny involving the use or the threat of criminal force.

5. The Phrase "subversive of discipline" is stronger than conduct to the prejudice of good order and naval discipline, and must be such disobedience as is actually likely to undermine discipline. Something done by two sailors in a place where no one else is present may be to the prejudice of discipline, but is not necessarily subversive of discipline.

6. To impede the performance of any duty or service.-A "sit-down strike" would be an offence under this section.

7. An inciter is one who counsels, commands, encourages or advises the commission of an offence even though the incitement has no effect. The normal rule is that, if the full offence is committed, the instigator must be charged with abetment, but, since sub-sec. (I) (b) refers to incitement of a mutiny "whether actual or intended", an accused can be convicted of inciting others to commit a mutiny whether or not the mutiny took place. If a person is charged with mutiny and it is proved that he, only incited others to mutiny he may nevertheless be found guilty of mutiny under section 77, provided that the mutiny he incited took place.

8. (a) If a person is charged with an offence either against clause (a) or clause (b) of sub-sec. (1) and the court are satisfied that he took part in a mutiny or incited a person subject to service

law to take part in a mutiny, as the case may be, but are not satisfied that the mutiny concerned was of the character specified in clause (a) of sub-sec. (1) the court may, by a special finding, find him guilty of mutiny under sub-sec. (2) ; -see section 112. As a matter of practice, however, if there is any doubts as to whether the mutiny is of the character referred to in sub-sec. (I), an alternative charge should be laid under sub-sec. (2)

(b) When an accused is charged under this section the court have no power to convict him by special finding of an offence under section 37, but if it is desired when an accused is so charged that the court should have an opportunity to convict him of an offence under section. 37 an alternative charge under that section must be preferred.

(c) There is no time limit within which the offences under this section must be brought to trial; see section 105 (2)

(d) As the maximum penalty for an offence under sub-section (1) is death ;

(i) AD.C.M. should not try the case.

(ii) A plea of guilty cannot be accepted; see Rule 146 (4)

9. In cases of conspiracy (-i.e. a combination of two or more persons to do an illegal act), after *prima facie* evidence has been given of the existence of the plot, and of the connection of the accused therewith, anything said, done or written by anyone of the conspirator *in reference to their common intention* (not necessarily. "in furtherance of the common purpose") is a relevant fact as against each and all of the conspirators; See section 10 of the Evidence Act and the Illustration thereto.

10. (a) In framing a charge under this section the specific act or acts which constitute the offence must always be alleged; and the offence is so grave that a charge of it should only be brought On very clear evidence. Cases of insubordination, even on the part of two or more persons should unless there appears to be 'a combined design on their part to resist authority, be charged jointly under section 39 with using criminal force or committing an assault; or separately under section 40 with wilfully disobeying a lawful command; or under section 41 with using threatening or insulting language or behaving with contempt; or if these sections are inapplicable jointly or separately under section 75

(b) Provocation by a superior or the existence of grievances is no justification for mutiny or insubordination.

11. Sub-section (3).-Any attempt to bring the Government into hatred or contempt or to excite disaffection towards it, is *sedition*,. punishable under section 124-A of the Penal Code. The expression "disaffection includes disloyalty and all feelings of enmity. Sub-section (3) of this section makes it an offence punishable with long imprisonment; *see* Section 4(XV)for an officer or sailor, who endeavors to seduce any person belonging to the armed forces of Bangladesh, from his duty or allegiance to the Government. It is immaterial whether the Endeavour" is by words, either spoken or written, or by signs, or by visible representation, 'or otherwise. It is also immaterial whether or not any person is in fact seduced from his duty or allegiance to the Government.

12. Civilians who abet the committing of mutiny, Or who attempt to seduce any person serving in the Army, Navy or the Air Force from his allegiance or his duty, commit an offence under section 131 of the Penal Code, and are liable to be punished with transportation for life, or with imprisonment which may extend to ten years and with fine. It may, however, be noted that persons, who are not otherwise subject to the ordinance, become so subject and thereby liable to be tried by court-Martial, if they act as spies for the enemy, or Endeavour to seduce any person subject to the Ordinance from his duty or allegiance to the Government, if they commit the offence while on board any of the naval ships or vessels, or within any of the naval establishments ; -*See* section 2 (2) (d).

SPECIMEN CHARGES

No.1

The accused, namely; (1)- (O. No., Name., Rank), of B.N.S.....
(2)-(O. No.; Name., Rank), of B.N.S.....
(3)-(O. No. Name., Rank), of B.N.S.
all sailors of the Bangladesh Navy, are charged with;-

Taking part in a mutiny involving the use of criminal force,

in that they atonhaving combined together to

Overthrow lawful authority in the armed forces of Bangladesh by measures involving the use of criminal force, made a combined armed attack, on the main guard room with the object of releasing the prisoners from the Cells.

No.2

Taking part in a mutiny,

in that they, at... .. on... .. having combined together to resist lawful authority in the armed forces of Bangladesh and having been

ordered by O.N.....Chief Petty Officer No....., their superior

officer' to fall in on parade for guard duty did not do so, thereby taking part in an actual mutiny.

No. 3

The accused (O.No., Name Rank) of B.N.S....., a sailor of the Bangladesh Navy, is charged with;

Inciting a person subject to service law to take part in a mutiny, in that he at;.....onincited a number of sailors there assembled to join himself and certain other sailor subject to service law in an intended mutiny which had for its object the refusal to turn out at the Captain's Divisions at..... (hours) the next day.

No.4

Endeavouring to seduce a person subject to service law

from his allegiance to the Government,

in that he, at.....on.....by saying to leading seaman.....

of B.N.S.....rightthat the Government of this country holds the lives of servicemen of no value and is prepared to shoot them down under the pretext of maintaining discipline, or words to that effect, endeavoured to seduce the said leading seamanrightfrom his allegiance to the Government.

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

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

NOTES

1. The offences created by this section can be committed in circumstances involving a higher degree of punishment, i.e. with intent to assist the enemy" or in circumstances involving a less degree of punishment, *toe* where the offence is committed without such intent. Section 112 empowers a court when the accused is charged with committing an offence against this section "with intent to assist the enemy" to convict him by special finding in an appropriate case of having committed the offence without that intent. as the latter offence involves a less degree of punishment.

2. Persons should not be charged jointly of committing an offence under this section.

3. There is no time limit, within which offences under this section must be brought to trial, *see* section 105(2).

4. If a person is charged with committing an offence under this section with intent to assist the enemy, the maximum punishment is death-and therefore;

- (i) such a charge should not be tried by a D.C.M., and
- (ii) a plea of guilty cannot be accepted, *see* Rule 146(4).

(5) **Fans to use his utmost endeavours.**-does not necessarily mean the almost of which a man is capable but such endeavours as a man might reasonably, and fairly be expected to make.

6. The person who comes to know of an existing or intended mutiny will have performed his duty under this section if he gives information without delay *to* a person in authority. Such

information would naturally be given to the immediate superior of the person who would, in his turn; be bound to communicate it to higher authority.

7. Enemy.-See section 4(x).

SPECIMEN CHARGE

The _____ accused (O. No., Name, Rank of B.N.Srightrigha sailor of the Bangladesh Navy, is charged with:-

Knowing that a mutiny is intended, failing to report without delay in that he, aton. having on present in the room in which(O. No., Name and Rank of at least two sailors) and other persons subject to the Bangladesh Navy Ordinance were in his hearing planning together to mutiny by refusing to turn out for the Captain's Division at.....hours) the next day, failed to report without delay that such mutiny was intended.

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

NOTES

To stir up disturbance means to throw into confusion, or to cause agitation or tumult in a ship, vessel or a naval establishment. The disturbance caused must be such as to disrupt normal service discipline. Any agitation short of a mutiny would be punishable under this section, on whatever around it may have been caused.

2. Procedure for making a representation affecting welfare etc.. Whether the matter affects one individual or more than: one individual, is laid down in rule 30. A combination of individuals either by the appointment of committees or in any other manner, is forbidden as being contrary to the tradition and practice of the service and injurious to its welfare and discipline. See rule 29.

3. This section makes an express provision for the punishment of an attempt. Attempt to commit other offences specified in the Ordinance are punishable under action 76.

4. Long imprisonment.-See section 4(xv).

SPECIMEN CHARGE

The accused (O.No., Name, Rank) of B.N.Sa sailor of the Bangladesh Navy, is charged with:-

Attempting to stir up a disturbance in a naval establishment, in that he, at.....,onattempted to stir up a disturbance in B.N.S.....by throwing away his plate of cooked rice in the presence of other sailors of the said establishment and shouting "this food is not fit for dogs" or words to that effect.

(iv) Insubordination

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

NOTES

1. For the difference between "criminal force" and "assault" see PC sections 350 and 351. The following example will make the difference clear:-

(a) A throws a stone at B. If the stone hits B, A has used criminal force; if it misses him; A has attempted to use criminal force.

(b) A during an altercation with B, picks up a stone in a threatening manner. If A intends or knows it to be likely that this will cause B to believe that A is about to throw the stone at him A commits an assault on B.

2. An "assault" includes any defiant gesture or act which if completed would end in a blow being struck or criminal force used, but does not include insulting or impertinent gesture or acts which would not result in a blow being struck *or* in criminal force being used. For example, a sailor throwing down his arms or, his equipment on parade or throwing away his cap or belt in an impertinent manner could not be deemed to be committing an assault within the meaning of this section if they were thrown in such a direction that they could not strike a superior. A sailor who shakes his fist or even draws a bayonet or who in any other way makes a show of violence against a superior is not guilty of assault if he was behind bars or at such a distance that it was at the time impossible for him to strike or throw anything at the superior. On the other hand, throw-

ing a missile would be "using criminal force" if it hit a Superior or "attempt to use criminal force" if it missed him. Pointing a loaded firearm at a superior who is within range would be "committing an assault".

3. Superior officer.-(a) This term in relation to any person subject to the Ordinance means an officer or a sailor not below the rate of petty officer who is of rank or rank higher than that person, or is senior to that person in the same rank or rank rate; *see* section 4(xxxvii). Lending ranks are therefore not superior officers, so offences of insubordination against them should not be charged under sections 39, 40 or 41, but should be charged as acts to the prejudice of good order and naval discipline (section 75), or under section 78 with the appropriate civil offence as the case may be.

(b) Officers, junior commissioned officers, warrant officers and noncommissioned officers of the Bangladesh Army or the Bangladesh Air Force are "superior officers" in relation to a person subject to the Ordinance only when they are serving under such conditions as the Government may direct.

4. Whether or not that officer is exercising authority as such.-A superior officer is exercising authority on all occasions, whether in uniform or not, when he might reasonably be required to exercise his authority, and as the maximum punishment in either case is the same, it is not necessary to state in the charge that the superior officer concerned was exercising authority as such at the time of the offence. Such a fact may, however, have a material bearing on the sentence. Whether or not the officer was in fact exercising authority as such, should therefore, be brought out in the evidence so as to enable the court to assess appropriate punishment in the event of conviction.

5. A superior officer in plain clothes may be the subject of an offence under this section, and it will depend on all the circumstances judged from the service standpoint whether a court-martial should, or should not hold that the offender knew or had reason to believe him to be his superior officer when he committed the offence. Although ignorance that a person is a superior officer is no defence, it may be a strong factor in mitigation.

6. Provocation.-The law does not recognize that anyone should ever so lose control of himself as to strike another, and while provocation can be a strong factor in mitigation of punishment its only legal effect as a defence is to reduce a charge of murder (section 302 PC) to one of culpable homicide not amounting to murder (section 304 pc). In considering such action, the court should bear in mind the degree of provocation required in a disciplined service is even greater than in civil life. In a disciplined service it is a cardinal principle; instilled into all ranks, that it is absolutely forbidden to touch a superior officer; in those circumstances the degree of provocation would have to be such as would be enough to over-whelm not only the normal civilian inhibitions but also the ingrained instinct and training of a disciplined man. Mere use of vulgar language or criticism of a service nature, however, severe or prolonged would not constitute such provocation.

7. The rank and name of the superior officer concerned should be given in the particulars of every charge under this section. A court is entitled to rely upon its general service knowledge with regard to the respective seniority of various naval ranks but when the accused and the superior against whom the offence is alleged to have been committed are of the same rank evidence may be adduced to prove that the accused was the junior. Ignorance that a person is a superior officer is no defence. Nevertheless it is usually a strong factor in mitigation.

8. When threatening or insulting language accompanies the use of criminal force or the assault, only using criminal force or committing an assault need be charged, if the evidence is satisfactory. The language may be given in evidence as showing the manner in which the offence was committed. An additional charge under section 41 is not necessary.

9. Persons should not be charged jointly of committing an offence under this section, because such a joint offence would constitute mutiny.

SPECIMEN CHARGES

The accused (O. No., Name, Rank) of B.N.S. " a sailor of the Bangladesh Navy, is charged with :

No.1

Using criminal force to his superior officer,

in that he, at.....,on.....when checked by O. No.....Petty Officerwho was then checking the sailors identity cards, hit said 'Petty Officer
.. on his face.

No.2

Committing an assault on his superior officer,

in that he, at....., on.....; when ordered by O. NoPetty

Officer. to leave the room picked up a stone and threatened to throw it at the
laid, Petty Officer.

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

NOTES

1. Superior officer.-See notes 3-5 to Section 39.

2. The disobedience must be "wilful", that is to say, deliberate. The order disobeyed must be a personal order, to the accused and not a general instruction. Disobedience, of general instructions or regulations can be charged under section 75, if amount to an act or neglect to the prejudice of good order and naval discipline, or under, section 34 if amounting to negligent performance of duty, or under section 42 if amounting to a contravention of any rule or regulation made under the ordinance or of any general or local order.

A personal order can be oral, written or conveyed by message; in the case of a message it, must be conveyed to the accused by a person whom he might reasonably suppose to have 'been authorized to convey it and it must be given to him as the command of the superior officer. Thus the order need, not be given directly but it must be a personal order to the accused. Exceeding a definite wine bill limit imposed 'on the accused personally by his commanding officer is wilful 'disobedience. Details of an order given by a superior officer to a messenger, to convey, to the accused. may be stated in evidence by that officer, provided that the, messenger himself is called to give evidence as to the actual message he delivered.

3. The command which, is alleged to have been disobeyed must be set out in the charge.

4. An accused should not be charged in one cha* with disobeying two separate orders as such a charge would be bad for duplicity; *see* Rule 126(1).

5. When an accused person is given an order which is to be complied with at some future time, and on receipt of the order he says that he will not obey it, he should not be charge with wilful disobedience unless, of course, the time arrives to carry out the order and he does not do so. A mere statement by the accused that he will not obey some order to be carried out in the future is not disobedience because he may change his mind and obey when the time comes, but' consideration should be given to framing a charge of behaving with contempt under section 41, which would usually be appropriate; in exceptional cases, where that is not the case, it is probable that the words or action would fall within section 75.

6. Lawful command.-A superior officer has the right to give a command for the purpose of maintaining good order or suppressing a disturbance or for the execution of a naval duty or

regulation or for a purpose connected with the welfare of his men. Below are given examples of what are and what are not lawful commands. These examples should not be regarded as constituting hard and fast rules. Circumstance alter cases and it is possible for the same command to be in one instance lawful and in another instance unlawful according to the attendant circumstances.

Examples of lawful commands

- To act as batman.
- To undergo electric treatment.
- To take medicine or drugs.
- To enter hospital.
- To wear free spectacles.
- To get hair cut.
- To do work of national importance during a strike.

Examples of commands which may be termed unlawful

- To sign for pay when not received.
- To undergo a surgical operation.
- To do an act which is illegal under the Law of Bangladesh.

7. A command does not cease to be given personally because it is given to a number of men at one time, *e.g.*, a command addressed by a superior officer to four men to "dismiss" is for the purpose of this section a lawful command to each of the four men so addressed;

8. Religious scruples, however *bona fide*, afford no justification for disobedience of commands which are clearly lawful.

9. A civilian cannot give a "lawful command" under this section to a sailor employed under him; but it may well be the sailor's duty as such to clothe act indicated, and if so, he may be punished for not doing so under section 75. The particulars of the charge should clearly show that the disobedience was prejudicial to good order and naval discipline because the sailor had been placed under the orders of the civilian by a superior naval authority.

SPECIMEN CHARGES

The accused (O. No., Name, Rank) of B.N.S.....
a Sailor of the Bangladesh Navy, is charged with:.....

No.1

'Wilfully disobeying a lawful command given by his superior officer.

in that he, at left:., on right, when ordered by Lieut.....

of B.N. Sleft, to stand to attention did not do so.

No.2

At....., on....., when informed by (O. No., Name, Rank).....

.....of B.N.Sright...that he (the accused) had been

ordered by Commanderleft, his commanding officer

to report to his office forthwith did not do so, saying to the said Petty Officer "I am off duty and I am not stirring for that old fish or anyone else, or words to that effect.

41. Insubordinate behaviour.-Every person subject to this Ordinance who uses threatening or insulting language to, or behaves with contempt to his superior officer, shall, if such officer's at the time in the execution of his office, or, if the offence is committed on active service, be liable to suffer long imprisonment, and in any other case to suffer short imprisonment.

NOTES

1. **Superior officer.**-see note 3 to section 39.

2. The offences created by this section can be committed in circum

stances involving a higher degree of punishment (i.e., if at the time of the offence the superior officer concerned is "in the execution of his office", or if the offence is committed "on active service") or in circumstances involving a lower degree of punishment-(i.e. when neither of these two conditions is present) A person charged with an offence in circumstances involving higher degree of punishment may be found guilty of the offence without such circumstances; section 112.

3. Threatening or insulting language.-The actual words used by the accused must be set out in the particulars of the charge. *Threatening language* means language from which a person may reasonably infer that violence may be used. This may be inferred, either from the character of the words used or from the surrounding circumstances. It is necessary to prove that such language was addressed to or at the superior officer within his hearing. If made about a superior officer to a third party or generally, but not in the presence or hearing of such superior officer, it will not be an offence under this section, but may be under section 75. If, however, the words were used in the form of a message or reply to be conveyed to the superior officer, this could be an offence under this section. Similarly, a person who writes a letter containing insulting or disrespectful language about a superior and causes it to be delivered to that superior intending that he should read it can be charged under this section.

4. Behaves with contempt.-It is not necessary for the subordinate to be insolent in manner or disrespectful in tone, so long as, while he is in the presence of his superior officer, the act done, or the words used show contempt for the position or the orders of such superior officer, *e.g.*, a sailor sentenced summarily says:-"I refuse to do it (the punishment), Sir". This shows a contempt for authority, although the words used may have been respectful.

5. The rank and name of the superior officer concerned should be given in the particulars of every charge under this section. A court is entitled to rely upon its general service knowledge with regard to the respective seniority of various naval ranks but when the accused and the superior to whom he used the language which is the subject of the charge are of the same rank evidence must be adduced to prove that the accused was the junior and that he knew it.

6. Care must be taken to see that charges under this section are not bad for uncertainty or duplicity; for instance a charge alleging that the accused "used threatening or insulting language", or "used insulting language and behaved with contempt" would be bad.

SPECIMEN CHARGES

The accused (O. No., Name, Rank) or B.N S a sailor
of the Bangladesh Navy, is charged with :

No.1

Using threatening language to his superior officer

in that he, at ..,on .., after having been awarded a punishment by his commanding officer said to Chief Petty Officer O. No.....

"I'll bash your head for this yet", or words to that effect.

No.2

Using insulting language to his superior officer

in that he atleftleft.,onrightright.....,when ordered by Chief Petty Officer... ..0.
No. to report to him for duty at.a.m. next morning, said to him "Go to Hell, I have seen ~any bastards like you" or words to that effect.

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

NOTES

1. A neglect to obey, or contravention of, an order in respect of which other punishment has been provided in the Ordinance, should not be charged under this section.

2. General and local orders include all orders with which it is the duty of naval personnel to acquaint themselves *e.g.* Captain's and other Standing Orders Daily orders etc. They do not include orders given by word of mouth as such orders only apply to the person or persons to whom they are actually given. Although there may be a large number of such persons present, they are not general orders and failure to obey them should be charged under this section 40, not under this section.

3. Ignorance of the order is no excuse if it is one which the accused ought in the ordinary course to know. But a misapprehension reasonably arising from want of clearness in the order is a ground for exculpation. The existence of the orders and the fact of the neglect must be proved. The order contravened, or a certified copy where such copy is admissible under

section 120 (4), must be produced on oath to the court, and the court will make It note in the proceedings of its having been so produced. Evidence must also be given to show that the order

was duly posted or brought to the notice of the accused, or that he was otherwise in a position to be acquainted with its contents. Concealment of venereal disease in contravention of standing orders directing personnel suffering from such disease to report sick is to be dealt with under this section.

SPECIMEN CHARGES

The accused (O.No. Name, Rank) of B.N.S.....a sailor of the

Bangladesh Navy, is charged with:

Neglecting to obey a local order,

in that he, at....., on....., went into street, contrary to paragraph of the Daily Routine Order Serial No... dated ,which directed that the said street was out of bounds to all ranks.

43. Fighting and quarreling,-Every person subject to this Ordinance who-

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

NOTES

1. Clauses (a) and (b) of this section create two offences which involve aggressive conduct to any person in or out of the Service, viz :

(i) Quarrelling or fighting with any other person.

(ii) Using threatening, abusive, insulting or provocative words or behaviour likely to cause a disturbance.

2. Quarrel or fight.- This makes duelling an offence. It also covers certain forms of disorderly conduct committed on shore in which civilians are involved or fights between men of different ships or between naval sailors and members of other Services.

3. In laying a charge under clause (b) the words used or the behaviour alleged must be specified in the particular of the charge.

4. Clause (c).-(i) A person may be charged under this clause whether the officer who ordered him into arrest was of inferior or superior rank, but where the officer was of superior rank the offender may be charged under section 39 or section 40, as the case may be.

(ii) A charge alleging using criminal force *and/or* assaulting 'would be bad for duplicity, *i.e.*, that it discloses two offences ; -Rules 126. In such cases, separate charges may be preferred.

(iii) An accused charge under, this section with using criminal force could be found guilty of assault. Provided the court was satisfied that the other ingredients of the offence were proved;- section 113 (1) (b)

(iv) As to being in a state of intoxication as a defence to a charge, *see* notes to section 59.

(v) Criminal force and assault-See note 1 to section 39. For *affray see*

section 159 PC,

5. Clause (d)-A charge may be laid under this clause for using criminal force to or assaulting, a civil policeman, if the offender is subject to naval law, and has been placed in the policeman's custody by an officer, Master Chief Petty Officer, Chief Petty Officer or Petty Officer.

See also note 4 above.

6. Clause (i) Threatening words and a threatening attitude might amount to resisting an escort if the threats were sufficient to deter the escort from arresting the accused. Resistance may be passive, *e .,*, a man lying down and refusing to move, if physically able to move, could be said to resist. The particulars of the charge should specify the nature of the resistance. The court should use their service knowledge to determine whether it was the duty of the escort to apprehend the accused or to have him in charge. Breaking away from an escort is not an offence under this clause, but may be charged under section 61.

(ii) There are two separate offences under this clause. An accused, who has been apprehended, should be charged with "resisting escort whose duty it was to have him in charge"

(iii) Resisting an escort whose duty it was to apprehend him applies only when the "accused immediately resisted an escort on being apprehended. It is not essential that a sailor should be informed beforehand that he is about to be arrested.

No.2

Behaviour Likely to caused a disturbance,

in that he, atleftleft, onleftleft, while attending a cinema show, by abusing certain members of the audience behaved in a manner likely to cause a disturbance.

No.3

The accused (p. No. or O. No., Rank Name) of B.N.S.

an officer or a sailor of the Bangladesh Navy, is charged with;

When concerned in a quarrel, refused to obey an officer

who ordered him into arrest,

in that he, on left, on , at right after having quarreled with and struck left on being ordered into arrest by Lieutenant.

. . . . of B. N. S. refused to obey the order.

No. 4

Using criminal force to a Person in whose custody he was placed,
in that he, at , on , when placed by Lieu. :
of B. N. S. . . . left in the custody of Police Constable left.
hit the said Police Constable on the face with his hand.

No. 5

Resisting an escort whose duty it was to have him in charge, in that he, at , on while
under escort of Petty Officer.
.. . . of B. N. S. resisted the escort by kicking and struggling.

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

Explanation. - For the purposes of this section, a "provost officer" shall be deemed to include a provost-marshal appointed under this Ordinance or under the Army Act, 1952 (XXXIX of 1952), or the Air Force Act, 1953 (VI of 1953) and any person legally exercising authority under him or on his behalf.

NOTES

1. As to the appointment and duties of a provost marshal, *.See* section 94. The court may exercise their service knowledge as to whether a person was a provost officer or a person legally exercising authority under him or on his behalf, but it is open to the accused to Show that the person he is charged with obstructing was not properly appointed provost marshal or was not a person legally exercising authority under or on behalf of provost marshal.

2. Provost Officer means a naval provost marshal, an assistant to a naval provost marshal and any other officer being a provost officer within the meaning of the "Explanation" to this section.

3. Since naval, military and air force police exercise authority under provost officers, to obstruct them or to refuse to assist them when called upon to do so would be an offence under section Naval patrols exercising authority on behalf of a provost officer are included in the term *any person*, but members of the regulating branch do not come within this definition unless they are actually exercising authority under or on behalf of a provost officer.

4. *The obstruction or refusal* must be wilfull, i.e.; deliberate. Standing by and doing nothing is not obstruction unless there is a legal duty to do something.

SPECIMEN CHARGE

The accused (O. No., Name. Rank) of B.N.S.. sailor or
the Bangladesh Navy, is charged with :

Wilfully obstructing a person legally exercising authority

Under a Provost Officer

in that he, at.....,on.. .., willfully obstructed Petty Officer.....O.No.....who has attempting to arrest a sailor by endeavouring to pull the said sailor out of the grasp of the said Petty Officer, well knowing that the said Petty officer was a member of the Naval police legally exercising authority under a provost officer.

(V) Desertion and Absence Without Leave

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

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

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

(b) if he commits the offence under any other circumstances he is liable to suffer short imprisonment.

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

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

NOTES

(1) (a) On charges of desertion the onus is on the prosecution to prove :

(i) absence of the accused from his ship or other place of duty;

(ii) the intention of remaining permanently absent from duty without proper authority;

(iii) that the intention existed at the time when he left or failed to attend at his ship or other place of duty, or at some time during his absence.

(b) The necessary intention can be proved:

(i) by some admission made by the accused; or

(ii) by inference from his conduct (which includes any statements made by him).

Apart from an admission by the accused, his intention can rarely if ever be proved otherwise than by an inference from his conduct, which to establish a charge of desertion, must be such as to lead to the conclusion that he intended to remain permanently absent from his ship or other place of duty.

2. The word "act" in section 45 is not to be construed in a narrow sense but can be treated as an equivalent to "conduct". Thus while, for example, obtaining civilian employment or moving to some place away from his home where he would not be likely to be found are positive acts from which it is open to the court to infer the necessary intention, the requirement that there should be an "act" will also be satisfied by evidence that the accused stayed away from his ship or other place of duty for so lengthy a period as leads the court to conclude that he had that intention.

3. No particular length of time can be laid down as being necessary or sufficient to justify the court in drawing the inference that the accused intended to remain permanently absent from duty and each case must be judged in the light of all the surrounding circumstances.

4. The fact that the accused was recovered by being apprehended is not conclusive evidence that he did not intend to return since he may have been arrested before the date when he intended to return or while on his way for that purpose. This fact is, however, material evidence to be considered in the light of all the other facts and may in some cases justify the inference of desertion being drawn from a shorter length of absence than would otherwise be the case. Similarly the fact that the accused surrendered is not conclusive evidence that he did not intend to desert at the material time, *i.e.*, when he left or failed to, attend at his ship or place of duty or at a later time prior to his surrendering, since he may subsequently have changed his intention.

5. The inference, drawn from the conduct of the, accused by his remaining absent and by his other acts, amounts to *prima facie* evidence of his intention to desert and the court is entitled on this evidence to convict him accordingly. However, if on production of evidence by the defence in rebuttal, the court is not satisfied that the accused had the necessary intention to remain permanently absent from duty, the accused may be acquitted of the charge of desertion.

6. The ingredients of offence of the desertion are :

(a) leaving a ship or place of duty or failing to attend at his ship or place of duty with the intention of remaining permanently absent,

or

(b) having left a ship or place of duty in any circumstances(perhaps legitimately), doing any act with the intention of remaining permanently absent.

7. The prosecution must, as always, prove every ingredient of the offence, including the accused's "intention". This may be proved by direct evidence, *e.g.* an admission by the accused or remarks made by him to his mess mates'; or it may be proved from circumstantial evidence, *e.g.*, state of accused's kit, change of name, circumstances in which accused has been living, accused engaging in civil employment or joining other armed forces, possession of a passport with recent visa, length of absence.

8. It is not necessary, in order to sustain a charge under this section, that the deserter should have fully succeeded in affecting his escape, but he must have left his ship or place of duty or failed to return to it.

9. If the circumstances would otherwise justify his trial for desertion, a person may legally be convicted of that offence even if he has subsequently repented and returned of his own volition.

10. A person who deserts while away from his ship or other place of duty, whether at the time he is legally absent or not, should be charged as deserting from his ship or place of duty.

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11. A Person who deserts while in transit from one ship or place of duty to another can be charged with desertion from his place of duty, namely the route by which he has been ordered to travel, or can be charged with desertion in failing to attend, according to the circumstances.

12. If a person who is not otherwise subject to the Ordinance fails to comply with lawful instructions to join a ship or other place of duty for call up or training or otherwise, he may be charged with desertion by failing to attend at the ship or place of duty which he is required to join; *see* sections 2 (1) (b) and (c).

13. In an appropriate case; a charge of attempting to desert may be drawn, but the occasions on which a person may be convicted of attempting to desert are necessarily rare. When an accused is charged with attempting to desert and it transpires that he actually deserted he may nevertheless be convicted of the offence charged. A person remains liable to be convicted of an attempt even though the court might consider that the attempt had been perfected in the commission of the full crime.

14. A person charged with desertion may be found guilty of attempting to desert of being absent without leave, and a person charged with attempting to desert; may be found guilty of being absent without leave. Again, a person charged under section 46(1)(a) with deserting or attempting to desert in circumstances involving a more severe punishment may be convicted by special finding in an appropriate case under section 46(1)(b), of having committed the offence in circumstances involving a less severe punishment; *see* sections 112 and 113(1).

15. An inciter is one who counsels, commands, encourages or advises the commission of an offence even though the incitement, has no effect.

16. Harbour -This term is defined in section 52-A of the Penal Code, according to which it includes "the supplying a person with shelter, food, drink, money,. clothes, arms, ammunition or means of conveyance, or assisting a person by any means, whether of the same kind as those enumerated in this section or not, to evade apprehension." The gist of the offence is concealment of deserter to prevent his apprehension. Evidence should; if possible, be given that the accused knew the person harboured to be a deserter; but if the fact of harbouring is proved, the court may infer knowledge from the circumstances.

17. Owing to the semi-automatic forfeitures consequent on convictions of desertion, section 77 should not be used to convict of the substantive offence of desertion a person who only aids; abets, counsels or procures the desertion of some-one else.

18. As to forfeiture of service for pension or gratuity which follows upon desertion, and regulations as to restoration of service so forfeited, *see* Pay and Allowances Regulations and Pension Regulations. The period between desertion and apprehension does not, reckon as service towards discharge, *vide* rule 66(4).

19. The time limit laid down by section 105(1) applies to offences created by sub-section (3), but does not apply to desertion. Section 105(4), however, provides that a person (other than an officer) who deserted when not on active service and who has since served with any portion of the armed forces in an exemplary manner continuously for not less than three years, shall not be tried for his desertion. Section 105(4) thus deprives a naval tribunal of jurisdiction to try a person to whom it relates and once a tribunal become aware that the provisions of section 105(4) apply to the accused whether the matter has been raised by him or not, it should adjourn and report to the convening authority. It should be borne in mind that a deserter is merely struck off the effective list and not dismissed. On return he is brought on the strength and has never ceased to be subject to naval law.

20. Persons cannot be charged jointly with desertion, but can be so charged with "knowingly harbouring a deserter" under sub-section (3).

21. As to persons who are not subject to service law who abet the desertion of an officer or a sailor or knowingly harbour a deserter, *see* sections 135 and 136 of the Penal Code.

22. It is desirable to allege in a charge of desertion or absence without recording the fact of accused's absence leave the commencement and termination of absence on specific days and in nearly every case it is possible to do so. There is, however, no legal objection to alleging desertion or absence as commencing "on or about" a particular date, or "not later than" a particular date. This may be necessary where all records have been destroyed.

23. The following are the most usual ways of proving the commencement of a desertion:

- (i) by a witness stating that he found the accused to be absent
- (ii) by a witness producing one of the following documents and identifying the accused as the person to whom it relates:

- (a) record of the declaration of a board of inquiry made in accordance with Rule 259(3).

- (b) certified true extract of the entry made against the name of Such a deserter in the ship's books in accordance with Rule 259(6).

- (c) a certified true copy of any record made in any service book recording the fact of accused's absence.

24. The following are the most usual ways of proving the termination of a desertion:

(i) by a witness stating that he arrested the accused or that the accused surrendered to him;
(ii) by a witness producing one of the following documents and identifying the accused as the person to whom it relates:

- (a) a certificate of arrest or surrender under section 120(5);
- (b) a certificate of arrest or surrender under section 120(6);
- (c) a certified true copy of any record made in any service book recording the fact of the termination of accused's absence.

SPECIMEN CHARGES

The accused (O. No. Name,) of B.N.S....., a sailor of the Bangladesh Navy, is charged with:

No.1

When under orders for active service deserting the service, in that he, at, on, when under orders of active service absented himself from B.N.S .from .to..... with intent to avoid serving overseas.

No.2

Deserting the service,

in that he, at center center, on left left absented himself from his ship until apprehended by the civil police aton.....

No.3

Knowingly harbouring a deserter, in that he, at, on. concealed in his house leading seaman. . . .of B.N.S.. . . . , whom he knew to be a deserter from the said ship.

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

(a) absents himself without leave;

(b) improperly leaves his ship or place of duty; or

(c) incites any other person subject to service law to absent himself without leave or improperly to leave his ship or place of duty shall be liable to suffer short imprisonment.

NOTES

1. This section creates three offences:

(a) absence, without leave;

(b) improperly leaving ship or place of duty;

(c) incitement to commit (a) or (b).

2. Two or more accused persons cannot be charged jointly with the offences specified in clauses (a) and (b) of this section.

3. Only one continuous period of voluntary absence without leave should be charged in anyone charge. If a court trying a charge of absence without leave 'find that the period of absence alleged' in the charge is really made up of -two separate periods of absence they may under Rule 155(4) and (5) convict the accused by special finding of being absent without leave for one of these periods but not for both of them, since that would be convicting him of two offences under one charge.

4. Absence without leave must be voluntary.-(a) If it is proved that the accused was absent and that he had not been granted leave, the court may, in the absence of any satisfactory explanation by him, infer that his absence was voluntary.

(b) The absence is voluntary if it is due to the deliberate intention of the accused to be absent, or if it is caused by means which were within his own control. Thus, if a sailor gets drunk so that

he is unable to return; or if he goes to sleep when returning to duty and is carried past his station so that he is unable to get back in time; or if he loses his railway warrant and has insufficient money so that he cannot get back in time; in all these cases he is guilty of absence without leave.

(c) When, however, a person is arrested, he ceases from that moment to be guilty of absence without leave, even though he voluntarily committed the act which led to his arrest and was aware of the risk which he ran; his absence is regarded as involuntary because he is physically prevented from returning by the action of another. This applies equally whether he was arrested for a crime or for illegally entering a foreign country, unless he entered it with the intention of being arrested.

(d) Again, if a man meets with an accident or contracts an illness which renders him unable to travel and so prevents his return to duty, he is not guilty of absence without leave: although the accident was due to his own negligence or it was his own fault that he contracted the illness, his absence is regarded as involuntary because a new cause outside his own wrong doing, has intervened to prevent his return. If a sailor who is on leave is thus prevented from returning, but fails to report the fact, he should be charged with an offence under section 75, or if his ship's orders require him to report the fact, under section 42.

(e) If, however, a sailor on leave deliberately inflicts an injury on himself with the intention of rendering himself unable to return to his ship or place of duty, he is guilty, not only of an offence against section 57 (b), but also of absence without leave until he either returns to his ship or place of duty or is admitted to a naval, military, or air force hospital.

(f) It will be seen from the examples in (c) and (d) above that a person who is guilty of absence without leave may cease to be so guilty through his absence becoming involuntary, even though he had no intention at that time of returning to his unit. If, however, when the compulsion is removed, he fails to rejoin his ship or place of duty immediately, but remains absent, he may be charged with having been continuously absent from the date when he first went absent until the date of his final arrest *or* surrender. His failure to return when the compulsion is removed shows that his absence during the whole time was in fact voluntary and not due to the compulsion.

(g) Equally a man who, though absent from his unit, is not guilty of absence without leave because his absence is involuntary, will become guilty of absence without leave if he remains absent when the compulsion is removed. If a sailor on leave commits a crime and is sentenced to imprisonment by the civil power, he is not guilty of absence without leave so long as he remains in custody. But, if his leave has expired when he is released and he does not then return immediately, he is guilty of absence without leave from the time of his release.

(h) Absence without leave must be culpable. Thus a sailor who leaves his ship or place of duty because he reasonably and honestly though mistakenly believes that he has been granted leave has committed no offence, but a person who applies for leave and then leaves his ship or place of duty believing that it will be granted but before he has been notified or has reasonable grounds for believing that it has been granted is guilty of absence without leave.

(i) With regard to the ways in which the commencement and termination of an absence without leave may be proved, *see* notes 24-25 to section 46.

(j) The mere reporting by an absentee to a provost officer or any other officer will not of itself terminate a voluntary absence nor" will the giving of orders by any such officer to the absentee to return to his unit, and the voluntary absence will continue to run until the absentee in fact joins his ship or place of duty. If, however, he is taken into custody when he so reports, his absence will cease when he is taken into custody, and in such a case a certificate may be given under section 120 (5) or (6) as the case may be.

5. An accused convicted of an offence of absence without leave will forfeit pay and allowances for the period of absence under section 82 (a) and rule 97, but he will not forfeit any service by reason of such absence.

6 When a person has been absent for 30 clear days a Board of Inquiry must be assembled under rule, 259.

7 If it is proved that a person has overstayed his leave, it will be for him to show that he had "sufficient cause" for doing so, *e.g.* sickness or the unexpected interruption of the ordinary means of transit. If however, any evidence as to the cause of his failure to return is known to the prosecutor, it should be adduced, leaving it to the court to decide as to the sufficiency of such cause.

8. By the wording of the section (i.e. "without being guilty of desertion) an accused cannot be found guilty of desertion as well as absence without leave or improperly leaving his ship but, if charged with desertion, he can be found guilty of either absent without leave or improperly leaving his ship under section 112 or of attempt to desert under section 113 (a).

9. If a person not otherwise subject to the Ordinance is called up for service *or* training and fails to report and a charge of desertion does not lie, he may be charged with absence without leave *See* Specimen Charge No 4. below.

10. Improperly leaving ship or place of duty.-Although the maximum punishment is the same this offence is regarded as more serious than absence without leave. The essence of the offence is leaving a ship or general place of duty without leave, but with the intention of returning ultimately. If there were evidence that the accused intended to remain permanently absent, the proper charge would be desertion, under section- 46.

11. "The accused must have left his ship or place of duty "improperly".

He clearly does this if he fails to comply with Standing Orders, e.g. in not handing in his leave card, or, not ticking off" in the leave book, or, in going ashore when no leave, or no leave to his watch, has been piped. Where however a person obtains leave by a false pretence, it is better to charge him under section 75 with obtaining leave by false pretences, as an act to the prejudice of good order and naval discipline.

12. Place of duty means here a general place of duty *e.g.* a Naval establishment so charges of saulking from work or quitting a specific post cannot be brought under this section.

13. Even in the case of improper leaving, it is necessary to state the period of absence in the charge, in order to enable the court to punish the offender by forfeiture of pay (mulcts) on the appropriate scale.

14. Incitement.-An inciter is one who counsels, commands encourages or advises the commission of an offence even though the incitement has no effect.,

15. Section 77 should not be used to convict of the full offence a person who only aids, abets, counsels or procures someone else to commit it as such a conviction would render the former liable to mulcts.

SPECIMEN CHARGES

The accused (O. No. Name, Ranks) of B.N.S , a sailor
of the Bangladesh Navy, is charge with :

No.1

Absenting himself without leave,

in that he, absented. himself without leave fromtofrom
B.N.S.....

No.2

Improperly leaving place of duty,

in that he, at.....onleftleft....., improperly left his place of duty,

namely the Naval Emergency Party and remained absent without leave
from.....to.....

No.3

Inciting a person subject to service law improperly to leave his ship.

in that he, at....., on..... .incited (0. No. Name, Rank a

sailor of the Bangladesh Navy).. ;improperly to leave his ship, B.N.S..

No.4

The accused (0. No., Name, Rank) of B.N.S(if any), a sailor of the Bangladesh
Naval, Fleet Reserve called up for undergoing training, is charged with,:

Absenting himself without leave,

in that he, at. on. , having been duly called up for training absented himself
without leave by failing to attend on board B.N. S..

48. Failure to report deserters and absentees.-Every person subject to this Ordinance, who
knowing' that any other person subject to service law has deserted, absented himself without

leave, or, improperly left his ship or place of duty, or is attempting to desert, to absent himself without leave or improperly to leave his ship or place of duty,-

(a) fails to report the fact without delay: or

(b) fails to take any steps within his power person to be apprehended, shall be liable to suffer short imprisonment.

NOTES

1. Charge drawn under this section from a useful alternative to charges of inciting offences under sections 46(3), and 47(c), or of abetting

the offences of desertion etc. read with section 77.

2. The report must be made to someone in authority.

3. If the charge is under clause (b) of this section, the particulars must specify the precise steps which it was in the power of the accused to take in order to cause the deserter or intending deserter etc. to be apprehended.

SPECIMEN CHARGES

The accused (O. No.,Name, Rank) of B. N.S.....a sailor of
the Bangladesh Navy, is charged with:

No.1

Knowing that a person subject to service law had absented himself Knowing that a person subject to service law had absented himself without leave, failing to report the fact without delay,

in that heatleftleft, on right right, knowing that (O No., Name,

Rank), II. sailor of the Bangladesh Navy, had absented himself without leave from his ship, B.N.S....., failed to report the fact without delay.

No.2

Knowing that a person subject to service law was attempting to desert, failing to take steps within his power to cause the said person to be apprehended,

in that be at.....on.....knowing that (O.No., Name, Rank), a sailor of the Bangladesh Navy, was attempting to desert his Ship. B.N.S.....failed to raise an alarm for the apprehension of the said sailor.

(vi) Navigation and Flying Offences

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

(a) causes or allows to be lost, stranded or hazarded any of the naval ships or vessels; or

(b) causes or allows to be lost or hazarded any of Government's aircraft, shall be liable, if he acts wilfully or with wilful neglect, to suffer long imprisonment, and in any other case to short imprisonment.

NOTES

1. Wilfully in both places means that the accused deliberately did some act or omitted to do something with the intention of losing, stranding

or hazarding a ship or aircraft.

2. With wilful neglect means that the accused deliberately omitted to do something or to take some precaution with the intention of losing, stranding or hazarding a ship or aircraft or with a reckless disregard of possibility that such a loss, etc, might result from his neglect; that is to say, his omission must not be merely due to carelessness or negligence; it must be made deliberately.

3. In any other case means cases where an accused has acted negligently, *i.e.*, by negligence, but not wilfully or with wilful neglect as defined in Note I above and subject to that, the test to be applied is that given in Note I to section 34.

4. Causes or allows; the ordinary dictionary meaning must be given to these words (causes-effects or 'brings about, allows-permits) except that a person is not to be convicted of allowing an

occurrence unless some act or omission on his part has contributed to it. The following examples will help to illustrate the difference between "causes" and "allows":

- (a) If the Captain were on the bridge personally directing operations when a disaster occurred, he should be charged with 'causing' and not with "allowing".
- (b) If the Captain were on the bridge when some error in an order given by the Navigation Direction Officer caused the ship to run ashore, "allowing" might be the more appropriate charge against the Captain, with the direct charge of "causing" the grounding against the Navigating Officer; but this must depend on the circumstances.
- (c) If a Captain were below at the time of a disaster and the prosecution merely contend that he ought to have been on the bridge, he should normally be charged under section 34 with neglect of duty in leaving the bridge in circumstances which should be stated, or in not being on the bridge when he should have been.
- (d) If the Captain (or Navigation Direction Officer) were to be tried for a disaster to his ship while in charge of a Pilot when a "common degree of attention" on his part "would have prevented the disaster" a charge of "allowing" would be correct.

The above examples are intended merely to give general guidance. Whether to charge the accused with "allowing" or "causing" the occurrence can only be decided upon the circumstances and merits of each particular case.

5. Loss.-This means total loss. A surface ship can be lost without necessarily being lost to view as, for example, when salvage operations for her recovery are abandoned. Salvage operations undertaken for the purpose merely of saving anything of value that may be in the hull, but not the hull itself, will not prevent a ship from being regarded as lost. A vessel which is wholly submerged and incapable of coming to the surface by her own efforts is lost within the meaning of this section;

The same applies to aircraft which is lost when it is written off charge as such, notwithstanding that some components are salvaged.

6. Stranding.-It is not sufficient to prove that the ship touched ground. It must be established that the ship ran aground, or into some object affixed to the ground, *e.g.*, a groyne, and remained fast for a time (*i.e.*, other than momentarily). A ship is not stranded if she scrapes over a shoal patch. In cases of doubt an alternative charge of hazarding should be added.

7. Hazarding.-There is no official definition of "hazarding". The word has always been regarded as having here its ordinary dictionary sense of "exposure to danger". When a large ship is brought into risk of collision with a small boat which could not endanger her, the large ship cannot be said to be hazarded.

A charge of hazarding can sometimes be added as an Additional or alternative charge to one of losing or stranding. Where it is established that the ship was hazarded before she was stranded or lost, both charges can be found proved. If, however, the act causing the stranding or loss is clearly the first hazardous action, a charge of hazarding should not be brought, except as an alternative (if there is doubt whether the stranding or loss will be proved).

8. In relation to aircraft this section applies only to losing or hazarding aircraft. Alternative charges under sections 50, 51 or 52 should be drawn, if necessary, in addition to a charge under this section.

9. This section should be regarded as applying only to persons who are responsible for the navigation control, management, or propulsion of the ship or aircraft. Thus, if a person unconnected with these responsibilities does something by which the loss or hazarding is caused *e.g.*, leaving a water-tight hatch open, or smoking near inflammable matter, he should not be charged under this section.

10 The offences created by this section can be committed in circumstances involving a higher degree of punishment, *i.e.*, "wilfully" or "with wilful neglect" or in circumstances involving a less degree of punishment *i.e.* where the offence is committed as a result of mere carelessness or negligence. Section 112 empowers a court when the accused is charged with committing an offence wilfully or with wilful neglect, to convict him by special finding in an appropriate case, of having committed the offence by mere negligence-*i.e.* without such deliberation as alleged in the charge.

11. (a) As regards the evidence to be given on navigational matters when a charge is brought under this section, and the documents which should be made available at the trial, *see* rules 218 to 221.

(b) Rule 222 empowers a court to "formulate a fresh allegation" of negligence against the accused during a trial under this section, if they consider that the accused has been negligent in any way not specifically stated in the charge on which he is being tried. The court, if satisfied that the fresh charge thus formulated has been established, may find the accused guilty of such fresh charge. It must be noted that this exceptional

procedure is only authorized during a trial for an offence under this section. In all other cases, when any addition to, omission from, or alteration in the charge is considered necessary, the normal procedure to be followed is prescribed in rule 143(2).

SPECIMEN CHARGES

The accused (Rank, Name, P.No.) of B.N.S. ,an officer of the Bangladesh Navy, is charged with:

No.1

Wilfully allowing a naval ship to be hazarded,

in that he, at. ,on. ,being the Captain of B.N.S.. . . . wilfully allowed the said ship to be hazarded, when he being on the bridge of the said ship allowed the execution of a wrongful order, namely. ,

given by Lt. Commanderleftleft,the Navigation Direction Officer, thereby exposed the said ship to the danger of running ashore.

No.2

By negligence causing a naval vessel to be stranded,

in that be, at left, on right, being Captain of a naval vessel namely.....as so negligent in..... right, that it caused the said vessel to be stranded.

50. Dangerous flying.-Every person subject to this Ordinance who is guilty of any act or neglect in flying, or in the 'use of any aircraft, or in relation to any aircraft or aircraft material, which causes or is likely to cause loss of life or bodily injury to any person, shall be liable.

- (a) if he acts wilfully or with wilful neglect, to suffer long imprisonment;
- (b) in any other case to suffer short imprisonment.

NOTES

1. Wilfully *with wilful neglect* and in *any other case* see notes 1, 2 and 3 to section 49.

2. The section is wide enough to cover the acts and omissions of ground crews and passengers and is not limited to persons actually flying aircraft.

3. Each offence can be committed in circumstances involving a higher degree of punishment (i.e. if the accused acts wilfully or with wilful neglect) or in circumstances involving a less degree of punishment (*i.e.* If the accused did not act wilfully or with wilful neglect) and section 112 enables a court when the accused is charged with having committed the offence in circumstances involving a higher degree of punishment to convict him by special finding if appropriate, of having committed the offence in circumstances involving a less degree of punishment. The converse, however, is not the case.

4. For other offences relating to aircraft, *see*:

Section 49 (loss or hazarding aircraft);

section 51 (low flying);

Section 52 (annoyance by flying);

Section 53 (Prize offence by commanding officers);

section 54 (other prize offences);

Section 55 (inaccurate certification of aircraft) ; and

Section 56 (improper carriage of goods by aircraft).

SPECIMEN CHARGE

The accused (Rank. Name. P.No.) of B.N.Srightright, an officer of the Bangladesh Navy, is charged with:-

Being guilty of a wilful act in the use of aircraft which

was likely to cause loss of life - or bodily injury to a parson.

in that he atleftleft.airfield, on.....rightright.when pilot of a Government aircraft (type)leftleft, Norightright..... wilfully taxied the said aircraft across a hangar at a speed likely to cause loss of life or bodily injury to persons in the said hangar.

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

(a) while taking off or alighting; or

(b) in such other circumstances as may be so provided shall be liable to suffer imprisonment

NOTES

1. Only the pilot of one of the Government's aircraft can be charged under this section.

2. *Government.*-See section 4 (xii).

3. The regulations regarding low flying must be such as are issued under the authority of the Government.

4. Obviously a pilot must fly low when taking off or landing and he should also not be convicted under this section if he flies low in other pilot should not be convicted under this section if he flies low in circumstances in which a reasonably competent and careful pilot would have felt obliged to do so hence it is advisable to use the words "without lawful excuse." in the charge.

It may be desirable to add an alternative charge under section 75 of improperly and without reasonable excuse flying the aircraft at whatever low level alleged. The reason for laying the alternative charge is that in adverse weather a pilot may well have been justified in flying below the permitted height but not in flying as low as he did. Similarly, if it should be desired to try a pilot for flying lower than he should have done in the prevailing conditions (but above the prescribed height), the charge should be brought under section 75.

5. If the low flying occurred over a place where the pilot has had previous associations. *e.g.* over his home or his school evidence may be produced on this matter to suggest a motive for associating the accused with the alleged low flying, although this itself would never be sufficient to justify a conviction.

6. For reference to all other offences in this Ordinance connected with aircraft, *see* Note 4 to section 50.

7. When a witness gives evidence of his seeing a low-flying aircraft, and as to its identification and the height at which he saw it flying, he may refresh his memory from any note which he made at the time or while the matter was still fresh in his memory, about its height or its identification numbering or lettering; *see* Evidence Act, section 159.

SPECIMEN CHARGE

The accused (Rank, Name, P. No.) of B.N.S....., an officer of the Bangladesh Navy, is charged with:

No.1

Being the pilot of an aircraft belonging to the Government, flying it at a height less than the height provided by regulations,

in that he, at..... in the vicinity of.. . . ., on.. . . .

when pilot of a Government aircraft (type), Norightright.....flew the said aircraft without lawful excuse at a height less than the height of....

.. .. ., provided in Regulationrightright.. .. . issued under the authority of the Government.

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

NOTES

1. Only the pilot of one of the Government's aircraft can be charged with this offence.
2. Government.-See section 4 (xii).
3. The annoyance caused must be unnecessary and, if the pilot has a reasonable excuse for flying as he did, he should be acquitted. He has a reasonable excuse if he acted as a reasonably careful and capable pilot, who has a proper regard for his responsibilities to others, would have acted in similar circumstances.
4. For reference to all other offence in the ordnance connected with aircraft, *see* Note 4 to section 50.

SPECIMEN CHARGE

The accused (Rank, name, P. No.) of BoN.S.rightright, an officer

of the Navy, is charged with :

Being the pilot of an aircraft belonging to the Government, flying it so as to cause or to be Likely to cause unnecessary annoyance to a person,

in that he, at.....from.....hours to..... .hours,

on..... when pilot of a Government aircraft (type). , No. without reasonable excuse flew the said aircraft over and around the Girls High School in a manner likely to cause unnecessary annoyance to persons in the said school.

(vii) Prize Offences

53. Prize offences by commanding officers.-Every person subjects to this Ordinance who being in command of any of the naval ships, naval vessels or aircraft,-

- having taken any ship, vessel or aircraft as prize, fails to send, to the High Court or to some other prize court having jurisdiction in the case, all the ship papers or aircraft papers, as the
- (a) case may be, found on board;
 - (b) unlawfully makes any agreement for ransoming of any ship, vessel, aircraft or goods taken as prize; or in pursuance of any such agreement as aforesaid, or otherwise by collusion, restores or abandons any ship, vessels, aircraft or goods taken as prize; shall be liable to suffer long imprisonment.

NOTES

1. This section only applies to persons in command of naval ships, naval vessels or aircraft.

2. Fails.-The test to applied in charges under clause (a) of the section is that given in Note 1 to section 34.

3. Ship's papers.:-The following papers are usually carried by Merchant Ships of all nationalities:

- (i) Certificate of Registry or Nationality.

- (ii) Official Log-Book.
- (iii) Clearance from the last port of call.
- (iv) Bill of Health.
- (v) Bills of lading or manifest of Cargo.
- (vi) List of passengers.

SPECIMEN CHARGES

The accused (Rank, Name, P. No.) of B.N.S....., an officer
of the Bangladesh Navy, is charged with:

No. 1

Being in command of a naval ship having taken a vessel as prize, failing to a High Court or to some other prize court having jurisdiction in the case all the ship's papers found on board the said prize,

in that he, at left left, on.....right right, while in command of B.N.S.....

having taken a vessel right right.....as prize, failed to send.....

(here specify ships papers which it is alleged the accused failed to send) found on board the said prize to a High Court or to some other court having jurisdiction in the case.

No. 2

Being in command of a naval ship, by collusion unlawfully restoring
goods taken as prize.

in that he, at left left, on.....right right, while in command of B.N.S.....

having taken right right (here specify goods) as prize; unlawfully by collusion restored the said goods to.....

54. Other prize offences.-Every person subject to this Ordinance who -

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

NOTES

1. The offences in this section can be committed by any person subject to the Ordinance as well as the person in command.

2. Strikes or otherwise ill-treats.-In order to prove a charge of striking must be shown that a blow of some kind was struck and also that there was continuity of contact between the person striking and the person struck. Striking may be done with a part of the accused's body such as the fist, foot, or butting with the head etc, or with an implement such as a stick. Where, however, a person is otherwise molested the charge should allege ill treating and not striking. The ill-treatment must be physical; *e.g.* shutting a man up in a cupboard, or compelling a person to stand in the sun for an hour.

3. To break bulk means to unload or to unpack.

4. With intent to commit criminal breach of trust or dishonestly misappropriate.-See sections 403 to 409 P.C.

SPECIMEN CHARGES

The accused (Rank, Name, P. No.) of B.N.S.....right, an officer
of the Bangladesh Navy, is charged with:

No.1

Unlawfully taking a thing from the possession of a person who was on
board a ship taken as prize,
in that he, at left, on..... unlawfully took from Mr..... ,
a person on board a ship right,.....which had been taken as prize, a gold
watch belonging to the said Mr.....

No.2

Breaking bulk on board a ship taken as prize, with intent to dishonestly
misappropriate anything therein,
in that he, at left, on.....right, with intent to
dishonestly misappropriate 10 bags of sugar, broke bulk on board. (ship),
taken as prize.

(viii) Other Offences in respect of Ships and Aircraft

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

NOTE

This offence may be committed wilfully or negligently (*see* Note 1 to section 34); but there must have been a duty cast on the accused to ensure the accuracy of the certificate.

SPECIMEN CHARGES

The accused (Rank, Name, P. No.) of B.N.S....., an officer *or*
the Bangladesh navy, is charged with:

No.1

Signing a certificate relating to a matter affecting the fighting efficiency

Of a naval ship without having ensured its accuracy,

in that he, at left, on right....., when acting as gunnery

officer of the said ship signed, without having ensured its accuracy, a certificate relating to a matter affecting the fighting efficiency of the said ship namely.

No. 1

Making a certificate relating to an aircraft belonging to the Government, without having ensured its accuracy,

in that he, at.; on.....right, without having ensured its accuracy, made a certificate, namely a form (Form 700) relating to a Government's aircraft (type).....Norightto the effect that the amount of fuel put in Number 1 tank of the said aircraft was. gallons.

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

(a) receives or permits to be received on board the ship, vessel or aircraft any goods or merchandise intended for disposal or delivery by way of trade or business (whether on his own account or on account of any other person), not being merchandise received in the course of salvage; or

(b) agrees to convey any goods or merchandise on board the ship, vessel or aircraft in consideration of the payment of freight, or, demands or receives any payment in respect of such carriage shall be liable to be dismissed from the service.

NOTE

The effect of this section is to prevent naval ships, vessels and aircrafts being used for trafficking and it applies only to the person in command.

SPECIMEN CHARGE

The accused (rank, Name, P. No.) of B.N.S.., an officer of the Bangladesh Navy, is charged with :

Being in command of a naval ship, without lawful authority agreeing to carry in the said ship goods in consideration of the payment of freight, in that he, at, on..... .., being in command of B.N.S.

.agreed, without lawful authority, to carry in the said ship certain goods, namely consideration of the payment of freight.

(ix) Malingering and Intoxication

57. Malingering.- Every person subject to this Ordinance who:

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

Explanation.-In this section the expression "unfit" includes temporarily unfit.

NOTES

1. In a charge of malingering the particulars should specify the precise way in which the accused is alleged to have malingered and what sickness or disability he has pretended or has produced, prolonged or aggravated.

2. Clause (b) (i).-any person- the person who inflicts the injury need not be subject to naval law and may be a civilian.

(ii) *that intent-i.e.*, with intent thereby to render himself unfit for service.

(iii) unfit-see *Explanation* to the section.

3. If there is doubt whether the intent required by the section can be proved, consideration should be given to preferring an alternative charge under section 75.

4. If A. with intent to render himself unfit for service, instigates' (another person subject to naval law) to injure him, and B complies, B may be charged with abetment under section 77 such a case, A and B, although not charged jointly, may, nevertheless, be tried *together-see* rule 130(2).

5. Clause (e).-To *produce* any sickness or disability is wilfully to cause .genuine disease to develop, *e.g.* by the infection of microbes or poisonous drugs. The involuntary production, prolongation or aggravation of *delirium tremens* by intemperate habits, or of venereal disease by immoral conduct does not render a person liable under this section. Nor would a person incur liability under it who refuses to undergo a surgical operation as a person cannot be lawfully ordered to undergo an operation. Failure to attend for treatment or to report that one was suffering from venereal disease might, however, be an offence under section 42.

6. In a case under clause (b) or clause (C) evidence must be given of the *intent*, but it would be sufficient to raise a presumption of intent if the act were shown to have been done wilfully and not accidentally.

7. Penal deduction are also to be imposed for an offence under this section. See Section 82(c) and Rule 281(1).

SPECIMEN CHARGES

The accused (O. No., Name, Rank) of B.N.S; a sailor of the Bangladesh Navy, is charged with :

No.1

Malingering,

in that he, at left left, on right right, falsely pretended to Surgeon Commander. of the said ship that he was suffering from a sprained ankle.

No.2

Malingering,

in that he, at left left,, on., by discharging a rifle wilfully blew off two fingers of his right hand with intent thereby to render himself unfit for service.

No.3

Malingering,

in that he, at left left, on, right right, with intent to render himself unfit for service, caused Leading Seaman right right of the said ship to injure him, the accused, in the left leg with a bayonet.

No.4

Malingering,

in that he, at left, on.....right, when under medical treatment for a varicose ulcer of the leg, with intent to keep himself unfit for service, tampered with the said ulcer, whereby he prolonged his sickness.

No.5

Malingering,

in that he, at....., on.....right, "when under medical treatment for a stiff knee joint, with intent to keep himself unfit for service, failed to attend for treatment which had been ordered by Surgeon Commander., whereby he prolonged his disability.

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

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

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

NOTES

1. The offence of intoxication is one which cannot be tried jointly.

2. A charge alleging that an accused was intoxicated, say at 13.30 hrs, and also at 20.30 hrs would be bad for duplicity, as it would contain two separate offences.

3. It is no defence to a charge under this section that the accused was not due to perform any definite duty at or shortly after the time of the alleged offence. In ordinary routine circumstances a person unexpectedly called on to perform some duty for which he was not warned (*e.g.*, an officer or a sailor suddenly summoned from a club or a canteen or from some public sport) and found to unfit for duty, should in practice be dealt with as for intoxication while not on duty under clause (b) of the section.

4. A witness who states in evidence that the accused was drunk should state his reasons for saying so. A sailor suspected of being in a state of intoxication should not be put through any drill or test for the Purpose of ascertaining his condition. If, however, a doctor has examined such a sailor for the purpose of ascertaining his condition, he may be called in the same way as any other witness to describe what he saw when the sailor was brought before him and to state whether in his opinion, based on what he saw, the sailor was in a state of intoxication though any person may give his opinion whether or not the accused was drunk, such opinion will have little weight unless the witness describes the symptoms on which he based his opinion; as it rests finally with the court to decide the issue whether or not the accused was in fact drunk.

5. (a) Responsibility for deciding in cases of alleged drunkenness whether an officer or man is in a fit state to perform his duties rests, as regards the aspect of immediate action, with his superiors and ultimately with the Captain. The opinion of a medical officer, or a civilian doctor on shore, should, however, be obtained at once. If this is not done, a foully person may escape conviction for his offence by later bringing forward a plea of sickness, or an innocent person who really is sick may be prejudiced in his defence.

(b) When the Medical Officer's opinion is sought he must determine whether the condition of the accused can be accounted for wholly or in part by disease or injury. If the condition and behavior of the accused is abnormal, he should endeavour to formulate an opinion whether such abnormality is wholly or partly due to consumption of alcohol or drugs, or wholly or partly due to and disease or injury.

(c) A medical Officer should conduct his examination in a private place, for example, whenever possible, he should examine an officer in the officer's cabin and a sailor in the sick bay. Such an examination should never take place on the quarter deck.

6. Where there is some doubt as to whether or not an accused was intoxicated within the meaning of the section, but he was incapable of performing his duties by reason of previous indulgence in alcohol or other drugs an alternative charge should be laid under section 75 alleging his incapability of performing his duties by reason of previous indulgence in alcohol or other drug.

7. As in the offence of intoxication the attendant circumstances affect the amount of punishment, evidence must in all cases be given as to whether the accused was or was not on active service, or under orders of active service, or was or was not on duty at the material time. Section 112, however, empowers a court when a person is charged with having committed the offence in circumstances involving a higher punishment to convict him by special finding in appropriate cases of having committed it in circumstances involving a less degree of punishment.

8. Nothing can justify a person subject to this Ordinance using criminal force to his superior and great care must, therefore, be taken to avoid bringing intoxicated persons in contact with their superiors. Mere abusive and violent language used by an indicated man as the result of being taken into custody should not be used as a ground for framing a charge under section 41, of using threatening or insulting language to his superior officer. If trial by court martial is considered necessary, the charge should be framed for intoxication, the language being treated in the nature of riotous conduct only and to that extent aggravating the offence. Where, however, a person under the influence of drink strikes a superior officer or is guilty of any other offence, it is the duty of the convening officer to consider carefully, according to the circumstances, whether it is necessary to charge the more serious offence. *See* Rule 42(3). 9. Drunkenness often has to be considered by court-martial not as an offence itself, but in relation to greater offences which it accompanies. It is a principle of the law that drunkenness is no excuse for crime. But where intention is of the essence of the offence, drunkenness may justify a court-martial in awarding a less punishment than the offence would otherwise have deserved, or reduce the offence to one of a less serious character. Thus, if an ordinarily steady, respectful man misbehaves himself when drunk by the use of insubordinate language, it may be clear that he did not really intend to be insubordinate; and though the offence cannot be passed over, yet a more lenient punishment will meet the justice of the case than if the same man had used the same Language deliberately when sober. So, too, if it should appear that a man absenting himself in circumstances which might ordinarily show an intention of not returning, was drunk, the court would be justified in treating the absence as a mere drunken frolic, and finding the man, though charged with desertion, guilty of absence without leave. A sailor so drunk as to be incapable of attending a parade should not be charged with absence without leave but rather with being in a state of intoxication under this section.

10. As to general exceptions in relation to offences committed by a person while in a state of intoxication, *see* sections 85 and 86 and the Penal Code. These exceptions it will be noticed only apply in the case of an accused person when the thing which intoxicated him was administered to him "without his knowledge or against his will".

SPECIMEN CHARGE

The accused (Rank, Name, P. No.) of B.N.S....., an officer the Bangladesh Navy; in charged with :

While on duty being in a state of intoxication

in than he aton..... at/about.....hours) while on duty as Officer of the Day on board B.N.S..... was in a state of intoxication

(x) Offences in respect of Naval Custody

60. Irregularity in Connection with custody.-Every person subject to this Ordinance who,-

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

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

NOTES

1. **Naval custody**.-See section 4 (xvii).

2. **Clause (a)**-In support of a charge laid under this clause for either of the offences therein created the prosecutor will have to prove the facts which either show, or enable the court to infer, that the accused could have brought the person in custody to trial or brought his case before the proper authority for investigation. If these are proved the court may Infer that it was unnecessary to keep the person in question in custody in the absence of an explanation by the accused this clause is the natural corollary to section 90(1).

3. **Clause (b).**-This must be read in conjunction with sections 89 to 92 and Rules 42 to 45. The *account in writing* mentioned in this clause is not required to be in any particular form. All that the clause requires is that it shall be in writing and signed by the person making it.

4. If it is practicable to deliver the account in writing" at the time of committal the offence is technically complete if it is not delivered then, but it would be difficult to prove it could have been delivered at the time of committal, and unless there is some special reason for taking.- immediate action in the matter or the interests of discipline require that the accused should be charged with, not delivering 1 the account. at the time of committal, it is safer to allow the full 48 hours to elapse before taking any action against the accused.

5. The "account in writing" referred to in clause (b) must be delivered to the person into whose custody the person arrested is committed.

SPECIMEN CHARGE

The accused (Rank, Name, P. No.) of B.N.S....." an officer of the

Bangladesh Navy, is charged with:

After having committed a person to naval custody, failing without reasonable cause to deliver within 48 hours after such committal, an account in writing signed by himself of the offence with which the person so committed was charged,

in that he, atleftleft, onrightright....., lifter having committed (O. No.,

Name, Rank) to naval custody failed without reasonable cause to deliver within 48 hours after such committal an account in writing signed by himself of the offence with which the said.
. was charged.

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

NOTES

1. Lawful custody.-These words' mean any lawful custody, so that a person subject to naval law may be convicted under this section when escaping or attempting to escape from a person, be he policeman or not, who has arrested him as a suspected deserter or absentee (*see* Rule 63). Where a person is held by the civil police or by the provost marshal or any person legally exercising authority under him or on his behalf (*see Explanation* to section 94), he may be charged with an offence under this section. An officer of the civil police has power under section 54 of the Code of Criminal Procedure to arrest "without an order from a Magistrate and without a warrant" any person reasonably suspected of being a deserter from the armed forces of Bangladesh.

2. Custody may be open arrest or close arrest. Accordingly a person who escapes or attempts to escape while in open arrest could be charged with an offence under this section.

3. What constitutes an escape is a question of fact, but before a prisoner can be said to have escaped it must be shown that he was out of the control and reach of his escort. If a person breaks away from an escort but does not get away he may be charged with attempting to escape.

4. A person who escapes and who then remains absent without leave, or deserts, may be charged under this section in addition to being charged with absence without leave [section 47(a)], or desertion [section 46(1)], as the case may be. The absence or desertion and the escaping from custody should be made the subject of separate charges.

SPECIMEN CHARGE

The accused (O. No., Name, Name. Rank) of B.N.Srightight....., a Sailor of the Bangladesh Navy); is charged with:

Being in lawful custody attempting to escape,

in that he, atrightright, on. , when proceeding under escort

to. broke away from his escort and attempted to escape.

.

62. Permitting escape of person in custody.-Every person subject to this Ordinance who,-

- then 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
- (a) refuses to receive any prisoner or person so committed,
or
wilfully or without reasonable excuse allows to escape any person who is committed to his
- (b) charge, or whom it is his duty to keep or guard,
shall be liable, if he has acted wilfully, to suffer long imprisonment, and if he has not acted
wilfully, to suffer short imprisonment.

NOTES

1. The offence under clause (a) is committed whether the release without proper authority is wilful or not; whereas under clause (b) to constitute an offence the accused must have acted wilfully or without reasonable excuse. In a charge laid under clause (b) however, where a doubt exists as to the accused having acted wilfully, he should be charged with having acted without reasonable excuse. Further, the person improperly released or allowed to escape need not be a person subject to naval law. If the charge is one of wilfully committing an offence, the court may, if it is not satisfied that the act was wilful, make a special finding that the accused acted without reasonable excuse; *see* section 112.

2. In a charge laid under clause (a); the court may use their service knowledge with respect to whether the authority alleged was or was not sufficient.

3. An act or omission is wilful if it is done or made by a person with the intention of allowing the escape of a person committed to his charge or

whom it is his duty to guard or keep.

4. The person committed to the accused's charge or whom it is his duty to keep or guard need not be subject to naval law.

5. Section 91 (2) makes it the duty of every officer or sailor in charge of a guard and of a provost marshal to receive and keep any person who is duly committed to his custody. A violation of that duty, whether wilful or without reasonable excuse punishable under clause (a) of this section.

6. When an escort consists of a petty officer and a sailor, and the petty officer wilfully allows the prisoner whom they are escorting to escape, the sailor will also be guilty of an offence under clause (b) of this section if he was a party to what the petty officer did.

7. As to what constitutes an *escape*, see Note 3 to section 61.

8. It will be noticed that; for tact purpose of clause (a), the person released must have been committed to the charge of the accused, while for the purpose of clause (b) the person allowed to escape need only have been a person whom the accused was under a duty to keep or guard. The offender under clause (a) must be in the command of the guard, piquet, patrol or post, and previously have had the released person committed to his charge; while under clause (b) the offender who allows a person to escape need not have any such command.

SPECIMEN CHARGES

The accused (0. No., Name, Rank) of B. N. S. , a Sailor of the Bangladesh Navy, is charged with:

No. I

When in command of- guard room; releasing without proper authority

a person committed to his charge,

in that he atleftleft, on.....rightright, when in command of the guard-room without authority released (0. No., Name Rank) of B. N. S. a, person committed to his charge.

No.2

Without reasonable excuse allowing to escape a person, committed to his charge,

in that he, atleftleft.,onleftleft, when conducting. to his ship (0. No., Name, Rank) of B. N. S. a person committed to his charge, allowed a crowd to assemble round the said Person without taking reasonable means to prevent it, and the permitted the escape of the said person.

(xi) Offenses relating to Property

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

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

(b) dishonestly misappropriates or converts to his own use any such property;
 (c) commits original breach of trust in respect of any such property;
 (d) dishonestly receives or retains any such property in respect of which any of the offences under clauses (a), (b) and (c) has been committed, knowing or having reason to believe the commission of such offence;
 (e) wilfully destroys or injures any property of the Government entrusted to him; or
 (f) does any other thing with intent to defraud, or to cause wrongful gain to one person or wrongful loss to another person,
 shall be liable to suffer long imprisonment,

NOTES

1. Briefly the *distinction* between the three offences "mentioned in this section, viz., theft, dishonest misappropriation and criminal breach of trust is as follows:

(a) In *theft* the original taking is dishonest and without the consent of the owner.

(b) In *dishonest misappropriation* the taking is honest but without the consent of the owner.

(c) In *criminal breach of trust* the original taking is honest and with the consent of the owner.

2. **Government.**-See section 4 (xii).

3. Service mess, band or institution.-See section 4 (xxxiii).

4. Service law.-See section 4 (xxxiv).

5. By virtue of section 113 (1) (b) a person charged with any of the offences mentioned in this section can in an appropriate case be convicted special finding of any other offence mentioned in the section, as they are all offences of the Same class and, none of them involves greater, punishment than the others.

6. As regards the custody and disposal of property during and after the trial, see sections 128 and 129.

7. On a charge under clauses (a), (b) (c), or (d), it is essential to prove that the property belonged:

(i) to the Government, or (ii) to any service mess, band or institution, or (iii) to any person subject to military, naval or air force law (iv) to any person serving with or attached to the navy.

When it is doubtful whether this can be proved the possibility of preferring a charge under section 78 should be considered. If it is clear that the property belonged to the Government etc., as the case may be, the charge should be laid under this section and not under section 78.

8. Theft-To constitute theft there must be:-:

- (a) a dishonest intention to take the property out of the possession of its real or temporary owner (*i.e.*, he who has "possession" of it) without his consent, and
- (b) a moving of the property in order to accomplish such taking. (PC

section 378).

9. Every Instance of *theft- i.e.*, each "taking" must be charged separately (Rule 126 (1), but, in deciding what constitutes a "taking" the intention of the accused .and the nature of the property stolen must be considered. Thus a sailor who goes to a stack of jerricans with a jeep and proceeds to load his jeep with twelve jerricans of petrol which he carries two at a time from the stack can be charged on one charge with committing theft of all twelve jerricans of petrol notwithstanding that he took them two at a time.

10. Where an accused is charged with theft under this section, the ownership of the property alleged to have been stolen should be clearly set out in the charge and-proved; in evidence, and its identity established (where possible) by production and identification in court; if not produced, its non production should be accounted for.

11. It should be borne in mind when considering the question of theft of Government or service stores by finding that though they may be useless for the purpose for which they were originally intended, they can be converted into salvage and that it is therefore wrong to draw the inference that they have been abandoned as it may be possible in the case of civilian property.

12. Dishonestly misappropriates.-(a) The verb "to appropriate" in this connection means setting apart for or assigning to, a particular person or use; and to "misappropriate" means to set apart for or assign to the wrong person or a wrong use, and this act must be done dishonestly.

(b) The essential matters which have to be proved before an accused can be convicted of dishonest misappropriation under cause (b) of this section are therefore:

(i) that the property belonged to the Government etc. as stated in

clause (a)-(see note 7 above);

(ii) that it was in the accused's possession or control at the time of the offence;

(iii) that the accused misappropriated it or converted it to his own use; and

(iv) that he did so dishonestly.

13. (a) Every- instance of misappropriation should be charged separately if possible but in cases where it is alleged that various sums have been misappropriated over a period but it is not possible to isolate particular instances of misappropriation one charge alleging the total deficiency may be preferred.

(b) A mere error or irregularity in accounts or a mistake in the application of money or goods does not by itself constitute an offence under this clause. There must be an intent to defraud on the part of the accused either for the benefit of himself or some other person.

14. The - fact of dishonest misappropriation may be proved in various ways but if the prosecution satisfy the court that the accused actually received the property into his possession and subsequently failed to produce it or to account for it when called upon to do so the court may draw the inference that the accused misappropriated it without it being shown what he actually did with it provided they are satisfied from the circumstances in which the accused held the property or from other evidence that there is no other reasonable explanation to account for its non-production.

15. It is immaterial whether the accused intended permanently to deprive the owner of the property or not. Once a person has dishonestly misappropriated property the offence is complete and he cannot purge-his offence by replacing it, though the fact that he has done so may properly be pleaded in mitigation.

16. The value of the property which forms the subject of an offence under this clause should be stated in the particulars of the charge and proved in evidence, so that the court if it convicts the accused may add penal deductions to its sentence.

17. Clause (e)--Criminal breach of trust.-see Sections 405-406 of PC.

18. Clause (d) Receiving or retaining. *See* Section 411 Pc. The original theft dishonest misappropriation or criminal breach of trust in respect of the property in dispute must be proved, though criminal proceedings need not have been taken in that respect or the thief etc.. apprehended. It must next be proved that the property was in the possession or control of the

accused. It must also be proved that he either knew or had reason to believe that the property was such in respect of which an offence under clauses (a), (b) or (c) of this section has been committed, and -finally that he received or retained it dishonestly, *i.e.*, that he intended that it should not be returned to the proper owner.

19. A charge under this clause can only be laid in respect of *such* property -*i.e.* property belonging to the Government etc. as mentioned in clause (a). If the property does not belong to the Government etc. a charge under section 78 should be considered; (*see* note 7 above).

20. The prosecution must affirmatively prove their case. In other words guilty knowledge of the accused must be established. It is not sufficient to prove that he merely suspected the property to have a tainted origin, but it will be sufficient if it is shown that under the circumstances a reasonable man must have felt convinced that the property was stolen property etc. For instance the fact that he bought it much below its value, or that he falsely denied his possession of it might be evidence of guilty knowledge. If however the accused can suggest a possible explanation which may reasonably be true the case is not proved satisfactorily.

21. Clause (e)-Wilfully means deliberately; *i.e.*, that the mind and will of the accused were directed to what he was doing. The prosecutor must adduce evidence which will either prove, or enable the court to infer, that the destruction or injury was not accidental. If the injury appears to be the result of neglect it will be for the court to determine whether the neglect was wilful and the accused *intended* to destroy or injure the property. If injury or destruction was caused through carelessness, no offence under this clause will have been committed.

22. A charge under this clause can only be brought in respect of any property of the Government entrusted to the accused', which he wilfully destroys or injures. Where such property is lost by the accused or is destroyed or damaged by negligence, the charge should be laid under section 65.

23. As to penal deductions and evidence of value *see* section 82(d) and note there to.

24. Clause (f)-"Intent to defraud".-Whenever the words "fraud" or "intent to defraud" or "fraudulently" occur in the definition of a, crime two

elements at least are essential to the commission of the crime namely, first,' deceit or an intention to deceive or in some cases mere secrecy; and, secondly, either actual injury or possible injury by means of that deceit or secrecy. This intent is very seldom the only or the principal intention entertained by the fraudulent person, whose principal object in nearly every case is his own

advantage. The injurious deception is usually-intended only as a means to an end though this does not prevent it from being intentional. A practically conclusive test as to the fraudulent character of a deception for criminal purposes is this: Did the author of the deceit derive any advantage from it which he could not have had if the truth had been known? If so it is hardly possible that advantage should not have had an equivalent in loss, or risk of loss, to some one else; and if so, there was fraud. In practice people hardly ever intentionally deceive each other in matters of business for a purpose which is not fraudulent" : (per. Sir James Stephen).

25. The expression *intent to defraud* implies conduct coupled with an intention to deceive and thereby to injure; in other words, 'defraud' involves two conceptions namely, deceit and injury to the person deceived, that is an infringement of some legal right possessed by him, but not necessarily deprivation of property. The term "defraud" denotes some form of dishonesty,. An "intention to defraud" has to be inferred from the conduct of the accused, and must necessarily involve something in the nature of cheating. Thus, a mere irregularity in accounts, due to incompetence or ignorance of book keeping, would not be efficient under this clause, as no fraudulent conduct is involved. Such acts as:-with intent to defraud presenting for signature acquittance rolls, containing entries known to be false; passing a worthless cheque; and charging money for railway warrants, tickets or vouchers, to which an. officer or sailor is entitled free of charge, would all amount to offences punishable under this clause, as "doing a thing with intent to defraud".

26. Wrongful gain and wrongful loss.-See P. C. section 23. The word 'wrongful' means prejudicially affecting a party in some legal right. For either wrongful gain or wrongful loss, the property must be lost to the owner or the owner must be wrongfully kept out of it. When the owner is kept out of possession of his property with the object of depriving him of the benefit arising from, the possession, even temporarily, the case will come within the definition. But where the owner is kept out of possession temporarily not with any such intention, but only with the 'object of causing him trouble in the sense of mere mental anxiety, and with the ultimate intention of restoring the thing to him without exacting or expecting any recompense, such detention will not amount to causing "wrongful loss" to the owner within the meaning of this clause.

SPECIMEN CHARGES

The accused (O. No., Name, Rank) of B.N.S....., a sailor of the Bangladesh Navy, is charged with :

No.1

Theft of property-belonging to a person subject to naval law,

in that he, at., on., committed theft of a watch
belonging to (Rankleft, Name.....rightright, P. No.....
of B.N.S.), a person subject to naval law.

No.2

[*Under section 63(b)*]

Dishonestly misappropriating property belonging to the Government,
in that be, atleftleft; onrightright.....dishonestly misappropriated
twenty rounds of ball ammunition, the property of the Government, value..
, when carrying out the duties of the Gunner's Yeoman.

[*Alternative charge under section 65(a)*]

Losing Government property of which he had the charge,
in that he, at , on , through neglect lost twenty rounds of ball ammunition; the property of
the Government, value., when carrying out 'the duties of Gunner's Yeoman.

No.3

Criminal breach of trust in respect of property belonging to a person
subject to naval law,
in that, he, at.....rightright, on., having been entrusted
by (O..Norightright, Namerightright....., Rank.....
of B,N.S.rightright.), a person subject to naval law, the sum of Taka. 50/-, for the purpose of
dispatching a money order, did not dispatch the money order, but dishonestly converted the
money to his own use and thereby committed criminal breach of trust in respect of the said sum
of Taka 50/-

No.4

Dishonestly receiving stolen property,

in that he, atleftleft....., on.....rightright, dishonestly received a

watch the property of (Rank.., Name.....

P. Nocentercenter, of B.N.Srightright) a person subject to naval law, when he had reason to believe, that it had been stolen.

No.5

Doing a thing with intent to defraud,

in that he, atcentercenter, onrightright, with intent to defraud, obtained from.
., four gallons of petrol, value., by falsely pretending that he, the accused,
was authorized to obtain the said

petrol for staff car No.

No.6

Doing a thing with intent to defraud

in that he, atleftleft, on.....rightright, with intent to defraud, forged the name of
Lieutenantleftleft.on a Postal Order for Taka Thirty and thereby obtained the said sum.

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

(a) any clothing, arms, ammunition or other equipment

issued to him for his use for naval purposes; or

(b) any military, naval or air force decoration granted to

him;

shall be liable to suffer short imprisonment.

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

NOTES

1. Loss.-This section and section 65 must be read issued to persons with the "Explanation". Once, the prosecution has proved that the accused has lost the property, the onus shifts to the accused to show that he took reasonable steps for the care and preservation of that property. The burden of proof upon the accused is not as great as on the prosecution and, if the court think that the accused may well have taken reasonable step for the care and preservation of the property, he should be acquitted.

2. Clause (ii) of this section refers only to articles issued to persons for their own use for naval purposes, *e.g.*, duffle-coat, binoculars, arms and ammunition. Where property of the Governments issued to a person for safe custody or for issue to others, and he wilfully destroys or injures it he should be dealt with under clause (e) of section 63. Where such property is lost by the accused or is destroyed or damaged by negligence the charge should be laid under section 65. *See* Notes 21 and 22 to section 63.

3. By negligence *See* Note 1 to section 34.

4. Decorations.-This term includes medal, medal ribbon, clasp and good conduct badge. It does not cover civilian decorations.

SPECIMEN CHARGES

The accused (O. No. Name, Rank) of B.N.S. a Sailor

of the Bangladesh Navy, is charged with :-

No. 1

Losing clothing issued to him for his use for naval purposes,
in that he at, on right., was deficient of the
following public clothing issued to him for his use for naval purposes. viz.
one blanket, value and one great-coat. value.

No. 2

By negligence damaging equipment issued to him for his use for naval purposes in that he, at
on by negligence damaged a pair of binoculars Pattern No. ,
value. , issued
to him, or his use for naval purposes, by dropping them on the deck.

65. Loss and waste of Government and service property.-Every person subject to this Ordinance who:

- (a) loses any Government or service property of which he has the charge or which has been entrusted to his care, or which forms part of property of which he has the charge or which has been entrusted to his care;
- (b) By negligence destroys or damages any Government or service property or allows any such property to be destroyed or damaged; or
- (c) Wastefully expends any such property, shall be liable to suffer short imprisonment.

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

Notes

1. **Losses.** - *See* Notes 1 and 2 to section 64.
2. In order to prove a loss, the prosecution must establish in every

case:-

- (a) That the property came into the accused's charge or care or was part of property which had done so, (if the property was issued to him for his personal use, he should be charged under section 64);
- (b) that the property was missing.

3. The following example show the distinction which should be drawn, between "**has the charge of**" and "**has been entrusted to his care**"; but each case must be considered on its merits :-

The Supply Officer has the "**Charge of**" all public money, victualling and naval stores which
(a) has not been issued or otherwise taken off his charge, unless some other officer. *e.g.*, a

Supply Store Officer has been appointed to have charge of some particular Class' of stores.

Departmental officers holding permanent loan lists would have the "**charge of**" stores
(b) issued to them on permanent loan.

(c) The Gunner would have the "charge of" the Gunner's stores.

(d) The clothing in the clothing store would be "entrusted to the care of" the stores P. O. in charge of the clothing stores, or any other sailor left temporarily in charge of the store. If the Stores P. O. lost part of the proceeds of the sale of clothing, he could be charged because the proceeds "formed part of property" which had been entrusted to his care.

(e) The coxswain of a motor boat would be "entrusted with the care"

of the equipment or tools in the boat which he took over, and

could be charged accordingly, if he lost them or part of them.

4. By negligence destroy or damage.- "By negligence" means by carelessness, indifference or general slackness, as distinct from the wilful acts described in section 63 (e). The burden of proof is on the prosecution to show that the damage or destruction of the property was caused by negligence on the accused's part or that by negligence the accused allowed the property to be destroyed or damaged. The test of negligence is that given in Note 1 to section 34.

5. Wastefully expends. A charge of wastefully expending under clause (c) of this section may be useful when a person throws something overboard.

SPECIMEN CHARGES

The accused (0. No., Name, Rank) of B.N.S.. a Sailor of the Bangladesh Navy, is charged with:-

No. 1

Losing service property which had been entrusted to his care,

in that he, at....., on. , lost certain service, property, namely.
belonging to the Ward Room Mess of the said ship, which was entrusted to his care as Ward
Room Wine Steward.

No. 2

By negligence damaging Government property,

in that he, at... , on.. . . . , so negligently drove Motor Vehicle No. B.N. 123,
property of the Government, as to cause it damage to the extent of Taka 50.

No. 3

Wastefully expending Government property,

in that he, at... , on.. . . . , wastefully expended one gallon of mineral vaporising oil
by pouring the said oil into the bilges.

(xii) Miscellaneous Offences

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

NOTES

1. The offence specified in this section must be distinguished from the offence punishable under clause (a) of section 32 and that punishable under section 5 of the Official Secrets Act.

2. The disclosure of information must be "wilful" and "without lawful authority", and it must be to an unauthorised person, It would not be an offence if a person discloses or purports to disclose any information to any one whom he is authorized to disclose it, or to a court of justice or to a person to whom it is, in the interests of the State, his duty to disclose it.

SPECIMEN CHARGE

The accused (Rank, Name, P. No.) of B.N.S., an officer of the Bangladesh Navy, is charged with:-

Without lawful authority wilfully disclosing information
to which he had access owing to his position,
in that he, atleftleft, on.., being in Possession of information by virtue of his
position as Intelligence Officer of B.N.S..... without lawful authority, wilfully disclosed the
same in a letter, dated., written to his brother..at (address) stating. . .
. . .

67. Falsification of documents.-Every person subject to this Ordinance who,-

(a) makes or signs any muster, record or other official document

which is to his knowledge false in a material particular;

(b) alters any such document so that it is to his knowledge

false in a material particular; or

(c) connives at the commission by another person subject to

this Ordinance of an offence against this section (whether

or not he knows the nature of the document in

to which that offence' is committed);

shall be liable to suffer short imprisonment.

NOTES

1. To establish this charge it is not necessary to prove that the accused. acted with intent to defraud or deceive or in any way dishonestly, but only that the document was false to his knowledge.

2. A false record is one which is intended by the person responsible for ,it to produce, as a whole, a wrong impression as to facts which should be recorded; so a false record may be made by omitting some particulars from it.

3. Record means a permanent document of an official nature.

4. Altering an official travel warrant could be charged under this section.

5. A person who signs with another's name a document which is not otherwise false makes a false document.

6. A person *connives* when he knows that a wrongful act is being done and, being under a duty to interfere, does not interfere to prevent it.

7. When a person is charged with conniving, it must be proved that the offence was committed by someone who was, subject o the Ordinance. If, for instance, an officer were to ask- a sailor in charge *of* a petrol point to issue him with petrol for his private car and to "cover it up in his accounts", he would be conniving at the commission of an offence under this section (if the sailor did it), although he did not know what documents would have to be altered in order to "cover it up". Furthermore the sailor would be charged for criminal breach of trust under section 63 (C) and the officer under sections 63 (d) and 75. *Set specimen charge No.3 below.*

8. In a proper case a charge under this section can be preferred as an alternative to a charge of forgery under section 78 read with sections 463/465 P.C.,

SPECIMEN CHARGES

.The accused (Rank, Name, P. No.) of B.N.Sleftleft.....,an officer of the Bangladesh Navy, is charged with:

No.1

Signing an official document, which was to his knowledge false in a

material particular,

in that he, atrightright, on.. , signed an acquaintance roll, an official document, which included an entry purporting to show that he had paid Taka 25/- to Petty Officertrightright.....,0. No... , well knowing such entry to be false.

No.2

Altering an official document so that to his knowledge it was false

in a material particular,

in that he, atleftleft, onleftleft, in the sailors acquitance roll for the month ofleftleft.,19leftleft, an official document; altered an entry showing a payment of Taka. 30/- to Petty Officer.....
.0. No ...leftleft. .on the day of 19..... by

changing the figure Taka 30/- into the figure Taka 50/-. Well knowing that the failure of Taka 30/- was the correct figure.

No.3

Conniving at making a false official document by a person subject to the Navy Ordinance,
.1961"

in. that he. at. .,leftleft..., .,onleftleft... .,asked O. Norightright..... .Name and rank. . .
. who was then in charge of petrol point, to issue him four gallons petrol for his private car and to cover it up in !WI accounts, which the said Petty Officer did by making an entry in his

accounts falsely showing the issue of our gallons of petrol for use in a service transport No. B. N. 123.

68. Signing in blank and failure to report.- Every person subject to this Ordinance who,

- (a) when signing any equipment clothing, supplies, or stores, or any property of the document relating to pay, Government, fraudulently leaves in blank any material part for arms, ammunition, which his signature is a voucher; or
- (b) refuses or by culpable neglect omits to make or send a report or return which it is his duty to make or send shall be liable to suffer short imprisonment

NOTES

1. Fraudulently.-A person is said to do a thing fraudulently if does thing with intent to defraud but not otherwise; PC section 25.

2. In a charge involving an intent to defraud it is not necessary to show an intent to defraud the public or a particular individual, so long as an intent to defraud is shown.

3. In a charge under clause (b) of this section the particular must show that it was the duty of the accused to make the report or return but where the signature of the accused is proved the court may use their service knowledge to infer his duty. If the report or return was one for which the superior had no right to call, it is not an offence under this section to refuse to make or send it

4. The report must be in writing; the clause does not contemplate a verbal report. The neglect under this clause must be culpable i.e. something more than mere forgetfulness or mistake. *See* Notes to section 75.

SPECIMEN CHARGES

The accused (Rank, Name, P. No.) of B.N.S.....right, an officer of the Bangladesh Navy is charged with:

when signing a document relating to supplies fraudulently leaving", blank a material part for which his signature was a voucher,

in that he, at...leftleft,on.....rightrightwhen signing a receipt for the fresh provisions for B.N.Srightright with intent to defraud, left in blank the column under the heading chicken, when he had in fact received 250 pounds of the same' from the Supply Depot.

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

NOTES

1. Having become subject. -It win be observed that the wording in this section differs from the wording in other sections. Which create offences triable by court-martial. This is essential since at the time the offence is this section differs from the wording in other sections. Which create offences triable by court-martial. This is essential since at the time the offence is committed the person is not actually subject to naval law, as he does not become so subject until he has signed the enrolment paper.

2. If false answers are given to two or more questions in the enrolment

form each false answer should be made the subject of a separate charge

3. The original enrolment form must be produced at the trial by a person who can -identify the accused as the person named therein; see section 119 (1).

4. The falsity of the answer must be proved in accordance with the normal roles of evidence. Where the false answer is as to previous service in the forces, evidence as to such previous service can be given by the production of previous enrolment paper. record of service etc.; *see* section 120 (1).

5. The answer must be wilfully false, thus where a man might reasonably have been mistaken as to the fact of his having "served", where for instance he was discharged as unfit before he had done duty or worn a uniform, a conviction would not be upheld.

6. Presaibec1 form or earolment.-see Eighth Appendix.

SPECIMEN CHARGE

The accused (O. No.. Name, Rank) of B.N.S....., a sailor of the Bangladesh Navy, is charged with:

At the time of enrolment making a wilfully false answer to a question set forth in the prescribed form of enrolment, in that he, at., on., when he appeared before Lieutenant....., an Enrolling Officer, for the purpose of being enrolled for service in the Navy, to the question put to him "Have you ever served in any of the armed forces of Bangladesh?" answered "NO" where as he had served; as he well knew, in the Bangladesh Air Force.

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

NOTES

1. A charge under this section ought not to be preferred against an officer unless it is of so grave a nature as to bring discredit to the Navy.

2. This section is frequently invoked in cases where an offender has given cheques which are returned by his bank because there were no funds to meet them. Such a charge should only be preferred where it is clear from the evidence from the bank that the offender acted in such a reckless manner as is tantamount to fraud. In cases involving dishonored cheques, evidence must always be given as to the state of the accused banking account.

3. Offences of fraudulent conduct will generally be punishable by ordinary law under section 78. In a case, however, of a series of fraudulent acts by an officer in his capacity as an officer and arising from the trust put in him because he is an officer, a charge under this section might be

justified. Again, where the accused had not gone far enough to complete an ordinary, criminal offence, but was nonetheless guilty of conduct which is unbecoming his position and the character expected of him as an officer of the Navy, it might, by reason of the higher standard of conduct expected of an officer, amount to an offence under this section. *e.g. see specimen charge No.2 below.*

SPECIMEN CHARGES

The accused (Rank, Name, No.) of B.N.S....., an officer of the Bangladesh Navy, is charged with:

Behaving in a manner unbecoming the position and the character
expected of an officer,

No. 1

in that he, at....., on....., in exchange for cash gave to... a

cheque for Taka 100/-datedleftleft. .made payable to the saidrightright.....and

drawn by him, (the accused), onleftleft.Bank Ltd rightright.....(Branch),

well knowing that he (the accused) had not sufficient funds in the hands of the said bank to meet the said cheque and having no reasonable grounds for supposing that the said cheque would be honoured when presented.

No.2

in that he, at.....,on....., when arrested by the Civil Police for creating a disturbance on shore inHotel, lie assumed the name of Lieut. Commander....., another officer of the said ship.

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

NOTES

1. The particulars of charges of disgraceful conduct under this section must specify the details, of act or acts alleged to constitute the disgraceful conduct of the kind charged. It will be for the court in each case to say whether the accused's acts amount to disgraceful conduct of the kind specified. In the case of an officer accused, the same facts may constitute an offence either of disgraceful conduct under this section, or an offence under the previous section of conduct unbecoming the position and the character expected of an officer.

2. To allege in a charge under this section conduct of an indecent *and* unnatural kind would be bad for duplicity, since they are two separate offences Rule 126 (1).

3. Conduct may be disgraceful within the meaning of this section although it does not constitute an offence known to civil law. Thus:

- when a person is charged under this section with indecently exposing himself, it is not necessary for the prosecution to prove that he had the intention to insult anyone, (as is necessary for instance on a charge under section 509 of the P.C.)
- (b) A conversation which does not amount to an attempt in law but only to preparation to commit an offence (*e.g.* an unnatural offence punishable under P.C. section 377) may be charged under this section, notwithstanding that it cannot be charged under section. 78.

4. In some cases the conduct of the accused may equally well be described as indecent or unnatural. In such cases the prosecution must elect with which type of conduct they will charge him. Normally indecent and natural conduct between human beings should be charged as disgraceful conduct of an indecent kind and indecent and unnatural conduct by a human being with an animal as disgraceful conduct of an unnatural kind.

SPECIMEN CHARGES

The accused (O. No., Name, Rank) of B.N.S , a sailor of the Bangladesh Navy,
is charged with:-

No.1

Disgraceful conduct of cruel kind,
in that he, at. , on.....cruelly throwing it against a wall. .

No.2

Disgraceful conduct- of cruel kind,
in that he, at. , on..... with indecent intent got into bed
with O. Noleftleft.....Nameleftleft.....sailor of the same ship.

No.3

Disgraceful conduct of an unnatural kind,
in that he, atleftleft, onleftleft....., attempted to have carnal knowledge of a pony mare,

72. False accusation.-Every person subject to this Ordinance Who,-

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

NOTES

1. Clause (a).-A mere false statement, not involving an accusation. (*e.g.*, a letter to a friend containing insinuations against a superior officer) is not within the meaning of this clause.

2. Before an accused can be convicted under this clause it must be proved:

(a) that the accusation was made against the person named in the particulars of the charge;

(b) that it was false; and

(c) that the accused knew or had reason to believe it to be false.

3. An accusation need not be made to any particular person or in any particular manner.

4. Clause (b).-To suppress knowingly and wilfully any material facts in connection with complaints for the redress of grievances under section 23 is an offence under this, clause. It is not necessary that the false statement affecting the character of an officer or sailor should be directly related to the subject of the complaint. If the false statement is calculated to create prejudice against the officer or sailor with reference to whom the complaint is addressed, then it is a false statement under this clause.

SPECIMEN CHARGES

The accused (O. No., Name, Rank) of B.N.S., a sailor of the Bangladesh Navy is charged with :-

No.1

Making a false accusation against a person subject to the Navy Ordinance, 1961, knowing such accusation to be false,

in that he, at....., on.....in a letter dated.....written and

sent to.....stated that No.....rightName

a person subject to the Navy Ordinance, 1961, had stolen a camera, which

accusation he (the accused), knew to be false.

No.2

In making a complaint under section 23 of the Navy. Ordinance, 1961, making a statement affecting the character of a person subject to the said Ordinance, knowing such statement to be false.

in that he, at.....on.....during the course of a complaint under section 23 of the Navy Ordinance, 1961 for the redress of his grievances made to his commanding officer, Captain, used language to the following effect. "Chief Petty Officer is not fair in taking men for duty and no one in the ship can get on if he does not grease his plam" well knowing the said statement to be false.

73. Offences in relation to court martial.-(I) Every person subject to this Ordinance who,-

(a) having been duly summoned or ordered to attend before a court-martial fails to comply with the summons or order;

(b) refuses to take an oath or make an affirmation when duly

required by a court-martial to do so ;

(c) refuses to produce any document in his custody or under his control which a court-martial has lawfully required him to produce;

(d) when a witness, refuses to answer any question which a court-martial has lawfully required him to answer;

(e) willfully insults any person, being a member of a court martial or a witness or any other person whose duty it is to attend on or before the court, while that person is acting as a member "thereof or is so attending, or while that person is going to or returning from the proceedings of the court; or

(f) wilfully interrupts the proceedings of a court-martial, or otherwise misbehaves before the court, shall be liable to suffer short imprisonment.

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

NOTES

1. Court-martial means a court-martial held under this Ordinance; section 4 (vii).

2. This section does not apply to summary trial or boards of inquiry. A person, however, who misbehaves in a similar manner before an officer holding a summary trial or before a board of inquiry could be charged with an offence under sections 40, 41 or 75 as appropriate.

3. For the manner in which a person may be summoned or ordered to attend as a witness at a court-martial *see* section 116 and rule 208. As to the appropriate form of summons, *see* Fourth Appendix to the rules.

4. With regard to the privilege of witnesses, *see* Sections 121 to 132, Evidence Act.

5. Clause (e).-The phrase *any other person whose duty it is to attend on or before the court* would not include members of the audience, but would include, for example, the Judge Advocate, a spare member (until dismissed), the prosecutor, defending officer or counsel, a shorthand writer, an interpreter, the officer of the court, the provost marshal and an officer under instruction.

6. Bona fide cross-examination, however, rigorous and searching it may be and even if its purpose is to show that the person cross-examined is a rogue and a liar will not constitute an 'insult within the meaning of this clause.

7. Clause (1). *Otherwise misbehaves i.e.,* in any way whatsoever otherwise than by interrupting. Such misbehavior, however, must be before the court, *i.e.,* in the presence of the court.

8. Sub-section (2).-As to the procedure which the court should adopt when any of the offences mentioned in this section is committed before it by a person who is not subject to naval law, *see* Rule 223.

SPECIMEN CHARGES

The accused (O.No., Name, Rank) of B.N.Sleftleft.....a sailor of
the Bangladesh Navy, is charged with:

No.1

When duly ordered to attend before a court-martial
failing to comply with the order,
in that he, at.; on....., failed to attend the District
Court-Martial held at B.N.S....., for the trial of
when he had been duly ordered by the Judge Advocate.....
on. to do so.

No.2

Wilfull interrupting the proceedings of a court-martial,
in that he, at., on., when present as member of the audience at a
court-martial held for the trial of (O. No., Rank, Name) wilfully interrupted the proceedings of the
said court-martial by shouting abusive remarks at the President of the said court-martial.

74. False evidence.-Every person subject to this Ordinance who, having been lawfully sworn or affirmed as a witness or as an interpreter in proceedings before a court-martial or before any board or person having power by virtue of this Ordinance to administer an oath or affirmation,

makes a statement material in those proceedings which he knows to be false or does not believe to be true, shall be liable to suffer long imprisonment.

NOTES

1. The offence created by this section is almost identical with the civil offence punishable under P.C. section 193. The maximum penalty under this section is, however, much greater than the maximum punishment under section 193 P.C.

2. Where a person makes two contradictory statements he may be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false.

3. To prove the making of a false statement before a court or board etc. the person who made the record and took down what the accused said should be called to state what he heard the accused say. He may refresh his memory from the record as this would be a note made at the time.

4. With regard to the admissibility of a statement made by the accused
at a board of inquiry, *see* Rule 258(18).

5. With regard to the action that might be taken against a person who is not subject to the Ordinance, but who commits the offence mentioned in this section before a naval court-martial, *see* Rule 223.

6. Lawfully sworn or affirmed:

(a) at a court-martial trial, *see* section, 110,

(b) at Summary, Trial (i) sailors *see* rule 50 (ii) officers *see* Rule 120,

(c) at a board of inquiry, *see* Rule 258 (12) and Rule 259 (1) and (5). As to the forms of oaths or affirmation *see* Fourth Appendix to the rules.

7. This offence can be committed only by a person who has been lawfully sworn or affirmed. A person who has not been so sworn or affirmed cannot be charged under this section, however, false his statements may have been. He might, however, in certain circumstances be charged under section 75.

8. In order to establish that the accused was lawfully sworn or affirmed care must be taken in any case in which. the administration or oath or affirmation is not mandatory, (*e.g.* before a board of inquiry, *see* Rule 258(12) to see that evidence is adduced to show that proper directions were given for the evidence to be taken on oath or affirmation.

9. By virtue of this Ordinance.-The power to administer oath or affirmation may have been conferred either by the Ordinance or by the rules, , since all rules made under this Ordinance, on publication in the official Gazette, have effect "as if enacted in this Ordinance", *see* section 177 (3).

10. Whether a statement is material in any proceedings is a question of fact to be determined by the court. Any statement is material if it is made for the purpose of affecting the court's decision.

11. To secure a conviction on a charge under this section, it is necessary to show that the accused intentionally gave false evidence, which he knew to be false or did not believe to be true. An error or unintentional mistake would not justify a conviction.

SPECIMEN CHARGE

The accused (O. No., Name, Rank) of B.N.S..... a sailor of the Bangladesh Navy, is charged with:

Having been lawfully affirmed as a witness before a person having power by virtue of the Navy Ordinance, 1961, to administer an affirmation, making a statement material in those proceedings, which

he did not believe to be true,

in that he, at..... on,....., having been lawfully affirmed as a witness at the Summary Trial held by Lieut. Commander..... made the following statement material in those proceedings, which he did not believe to be true, namely... ..

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

NOTES

1. The alleged act, neglect or disorder on the part of the accused must have been prejudicial *both* to good order *and* to naval discipline.

2. Whether an act, neglect or disorder *can* be prejudicial to good order and naval discipline is a question of law. Whether such act, etc., was actually prejudicial in the circumstances is a question of fact. So where a charge under this section is being tried, it is the function of the judge advocate to advise the court whether the act, etc., alleged could or could not possibly be considered prejudicial to good order and naval discipline; unless he advises that it could not, it is for the court to find as a matter of fact whether in all the circumstances, it was prejudicial.

3. Whether an act is prejudicial both to good order and to naval discipline is not always an easy matter to decide. It is impossible to lay down any rules that will be applicable to all cases that may arise, but it can be accepted that every act or omission which is prejudicial to naval discipline is also prejudicial to good order. Further, any act which in itself is a dereliction of a Service duty on the part of the person who commits it is prejudicial to naval discipline and therefore falls within this section, wherever it is committed and whether or not it has any effect on the discipline of others.

4. Contravention of Navy Regulations, Fleet Orders. Captain's or Departmental Orders, if committed without sufficient cause, is ipso-facto prejudicial both to good order and naval discipline. Disobedience of orders given personally by a superior officer should be charged under section 40 but contravention of oral instructions, of a general nature may found a charge under

this section, e.g., if a sailor disobeys in such circumstances that a charge would not lie under section 40.

5. Acts committed or omissions made on board ship or in a naval establishment, which are prejudicial to good order, are generally speaking prejudicial to naval discipline, but the court must decide each case on its merits. If the misbehavior took place Onshore and was unconnected with the service, such factors as place, company and the surrounding circumstances must be taken into account, and the general test in such cases is whether the accused's conduct was such that it was likely to affect the discipline of persons who were actually present, bearing in mind the sort of persons they were e.g. the discipline of petty officers of nearly equivalent seniority to that of the accused is usually unlikely to be affected, while "that of junior sailors might well be Knowledge of such incidents which as, or could have subsequently been, acquired by naval ranks or sailors junior to the accused is not of itself sufficient to make an act prejudicial to naval discipline; but, if such juniors witness the incident, this could make it prejudicial.

6. Therefore, to found a charge under this section there must be either a definite dereliction of a Service duty on the part of accused or at least some reasonably direct connection between the accused's behavior and its effect on good order and naval discipline. Possible notoriety is not sufficient.

7. The person who drinks to excess, unfitting himself for duty, should be charged under this section unless the drinking was done with *intent* to render himself unfit for duty, in which case he should be charged under section 57(c). To sustain such a charge the actual drinking to excess must be proved; It must also be proved that the excessive drinking produced or aggravated the illness. (*See notes to section 57.*)

8. Since this section refers to any act, disorder or neglect to the prejudice of good order and naval discipline not described in the foregoing provisions of the Ordinance, any offence which is capable of being charged under a preceding section of the Ordinance cannot be charged under this section, e.g. *if* the accused neglects to perform some duty which is imposed on him when and because he is acting in a specific capacity, he must be charged under section 34 and not under this section (*see Note 3 to section 34*).

9. Offences 'punishable under the ordinary law should normally be charged as civil offences under section 78 and must not be charged under this section unless the alleged offence can be considered as basically prejudicial to naval discipline. For example, driving a vehicle so rashly or negligently as to endanger human life or the personal safe of others, (an offence punishable under section 336 P.C.) is not necessarily prejudicial to naval discipline; but if it were a naval vehicle, such driving might well be prejudicial.

10. When a person has negotiated a worthless cheque within the naval service or in connection with his naval duties (*e.g.*, in settlement of a mess debt to a merchant), a charge under this section should be considered as an alternative to a charge of obtaining by false pretences under section 78. To establish a charge under this section an intent to defraud need not be proved, but it is necessary to establish that the negotiation of the cheque was a dereliction of a Service duty on the part of the accused or was done in such circumstances. *e.g.*, to a junior officer or sailor, as to prejudice good order and naval discipline.

11. When threatening language is addressed to someone about a third person, the offence cannot be charged under section 40, even if one of those persons is a superior officer, but can properly be charged under this section.

12. Disobedience of the lawful command of a person other than a superior officer (*see* Note 3 to section 39)-should be charged under this section. In certain cases because *of* the capacity in which a person is acting, (*e.g.* as Officer *of* the Watch *or* sentry) a junior may give a lawful order *to* his senior. In such a case the capacity in which the junior is acting should be stated in the charge.

13. Obscene language used by a person otherwise than in the presence of his inferiors cannot be charged under this section.

14. As an alternative charge to one of indecency, it is sometimes possible to charge the accused under this section with being in some specified place at some specified time contrary to some standing orders or without reasonable excuse.

15. Where someone is found to be in possession of property that is not his own, and it is impossible to prove either that he stole it or that he knew that it was stolen, a charge under this section should be considered, either alone or as an alternative to theft or receiving property knowing it to have been stolen.

16. Where the alleged offence is an omission, it should be charged as neglect to the prejudice, etc.

17. The Regulations relating to the landing or unshipping of dutiable goods absolutely prohibit the landing or unshipping of dutiable goods not covered by the concessions referred to in those articles, unless either duty has been paid previously to a Customs Officer on board ship. If such goods are knowingly landed or unshipped add such landing or unshipping is in contravention of those articles, the charge should be laid under this section as an act to the prejudice etc., in contravening the appropriate article. If there is any doubt whether the accused knew that he was landing or unshipping the goods, an alternative, charge also under this section, of neglect to the prejudice, etc., in not taking proper precautions to ensure that he was not landing (or unshipping) dutiable goods in contravention of the appropriate article, should also be laid, as it is the duty of

every member of the Service to take every precaution to ensure that he does not contravene these Regulations.

SPECIMEN CHARGES

The accused (O. No., Name, Rank) of B.N.S. , a sailor of the Bangladesh Navy, is charged with:

No.1

t

An act to the prejudice of good order and naval discipline,
in that he, atleftleft, onleftleft....., was improperly in possession of one pair of boot the property of O. No. Leading Seaman.

No.2

Disorder *to* the prejudice *of* good order and naval discipline,
in that he, atleftleft:leftleft, onleftleft....., violently resisted his escort.....
when he, was being brought on board B.N.S.

No.3

Neglect to the prejudice of good order and naval discipline.
in that he, at. ,on. so negligently drove service vehicle No.. . . . as to cause it to come into collision with a tree, thereby occasioning damage to the said vehicle to the extent of Taka.....

No.4

The accused (Rank, Name, P. No.) of B.N.S....., an officer of the Bangladesh Navy, is charged with :

An act to the prejudice of good order and naval discipline.

in that he, at.....on.....;improperly borrowed the sum of Taka.....from Chief Petty Officer....., O. No....., a sailor subject to his authority.

No.5

Neglect to the prejudice of good order and naval discipline,

in that he ,at.....,on....., having delivered to....., the mess secretary of the Officers' mess of the said ship in payment of his mess bill a cheque for Taka , dated ..and drawn on Bank Ltd, failed, without reasonable excuse, to ensure that the said cheque would be honoured when presented.

(xiii) Attempts and Abetments

76. Attempts to commit naval offence.-Every person subject to this Ordinance who attempts to commit any of the offences specified in the foregoing provisions of this Ordinance, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence shall, where no express provision is made by this. Ordinance for the punishment to such attempt; be liable- .

- (a) if the offence attempted to be committed is punishable with death, to suffer long imprisonment;
- (b) *if* the offence attempted to be committed is punishable with imprisonment, to suffer imprisonment for a term i.e. which may extend to one-half *of* the longest term provided for that offence; and
- (c) if the offence attempted to be committed is punishable with dismissal from the service, to suffer any punishment lower than dismissal in the scale *of* punishments provided in section 80.

NOTES

1. Attempt to commit an offence.-A mere "intention" to commit an offence, or any act which amounts only to a "preparation" for the commission of an offence, will not amount to an actual "attempt". It is essential that the accused must have done, some act towards the commission the actual offence, before he can be convicted of an attempt under this section.

2. This section is applicable only to attempts to commit any of the offences specified in sections 29 to 75 : except those sections where an express provision is made by this Ordinance for the punishment of such attempts. e.g. section 36 (3) or section 38. Attempts to commit civil offences are not triable under this section but are triable under this section 78.

3. Where a person is charged with committing an offence, but the evidence shows merely an attempt to commit that offence, a court-martial may convict him of the attempt to commit the offence charged; section 113 (1) (a). On the other hand, if a person is charged: with an attempt to commit an offence and the evidence shows that the attempt had been perfected in the commission of the full crime, he may, nevertheless, be convicted of the attempt as charged.

SPECIMEN CHARGE

The accused (O. No., Name, Rank) of B.N.S. centercenter....., a sailor of the Bangladesh Navy, is charged with ;

Attempting to commit an offence specified in section 63(a) of the Navy Ordinance, 1961, and in' such attempt doing an act towards the commission of the same,

in that he, at. , on. attempted to commit theft of a purse belonging to Leading Seaman. , a person subject to service law, and in such attempt put his hand under the pillow of the said Leading Seaman when the latter was asleep.

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

NOTE

For definition of abetment *see* section 107 of the Penal Code:

SPECIMEN CHARGE

The accused (Rank, Name, P. No.) of B.N.S. , an officer of the Bangladesh Navy, is charged with ;

Abetment within the meanings of the Penal Code of the commission of an offence specified in section 74 of the Navy Ordinance, 1961,

in that he, at. , on instigated Petty Officer. to make a statement before a Board of Inquiry held on board B.N.S. to inquire into the smuggling of two cartons of Cigarettes from the said ship to the effect that he, the accused, had not directed the said Petty Officer to take the two cartons on shore, which statement was material in those proceedings and which the Petty Officer knew to be false.

(xiv) Civil Offences

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

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

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

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

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

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

(Vide Ordinance III of 1967)

NOTES

1. A civil offence is defined as an offence which is triable by a criminal court-section 4 (iii).
2. As to the concurrent jurisdiction of naval tribunal and criminal court, *see* Section 107 and 108.
3. "Naval tribunal"; section 95.

“Criminal Court”; section 4 (viii).

4. Subject to the provisions of section 79, this section gives a naval tribunal jurisdiction to try any persons who, while subject to the Ordinance commits a civil offence whether he commits such offence in or beyond Bangladesh.

5. The Naval Tribunal has power to award any punishment "assigned for the offence by the law in force in Bangladesh", and it therefore includes the power to award fine. The recovery of fine is to be made in the same manner as it has been awarded by criminal court.

6. As to special findings as under this section see section.113(2), which gives a naval tribunal the same powers as those possessed by a criminal court in this respect.

7. Certain Acts provide that no proceedings for an offence there under shall be instituted, except upon a complaint made by order of, or under the authority of the Government, *e. g.* section 13(3) of the Official Secrets Act, 1923. No such complaint is, however, necessary when the accused is tried by a naval tribunal.

8. The words “and such less punishment” etc. in clause (a) of sub. section (1) indicate that a naval tribunal may sentence a person convicted of murder to, *e. g.* dismissal from the service in addition to rigorous imprisonments for fourteen years; the punishment assigned for the offence of murder under P.C. section 302 being, death or transportation for life.

SPECIMEN CHARGES

The accused (0. No., Name, Rank) of B.N.S.rightright....., a sailor of
the Bangladesh Navy, is charged with :

No.1

(Under Section 78 read with P. C. section 124-.A)

Committing a civil offence, that is to say, sedition,

in that he, at.....on....., by saying in the presence of Petty Officer.
.and other sailors of the Bangladesh Navy then assembled at.....(set out the words
used), or words to that effect, attempted to excite disaffection towards the Government
established by law in Bangladesh.

No. 2

(Under section 78 read with P.C. section 147.)

Committing a civil offence, that is to say. rioting,

in that he, at.. .., on.. .., was a member of an unlawful assembly, which, in
prosecution of the common object of such assembly, to use criminal force the civil police, beat
the civil police with lathis, thereby committing the offence of rioting.

NO.3

(Alternative under section 78 read with P.C. section 143.)

Committing a civil offence, that is to say, being a member of an

unlawful assembly,

In that he, at.....leftleft, on, was a member of unlawful assembly, the common object of which was to use criminal force to the civil police.

NO.4

(Under section 78 read with P .C. section 304-A.)

Committing a civil offence, that is to say, causing death by a rash or negligent act not amounting to culpable homicide,

in that he, at....., on..... .. .rightright, by rashly or negligently driving motor vehicle truck Norightright..... caused the death of..... .. ., a pedestrian.

No.5

(Under section 78 read with P.C. section 307.) .

Committing a civil offence, that is to say, attempt to murder, .

in that he, at , on. , fired two shots from a rifle at Lieutenantof B.N.S.....with intent to kill him, and thereby wounded the said Lieutenant.. in the right side of the chest and left thigh.

No.6

(Under section 78 read with P.C. section 325.)

Committing a civil offence, that is to say, voluntarily causing grievous hurt,

in that he, at....., on....., voluntarily caused grievous hurt to
.....by fracturing his arm with a heavy stick

No.7

(Under section 78 read with P.C. section 380.)

. Committing a civil offence, that is to say, theft,

in that lie, at....., on....., committed theft in respect of two pairs of silk stocks,
value....., from the shop of:.....on New airport Road, the property of the said
.....

No.8

(Under section. 78 read with P.C. section 420.)

Committing a civil offence that is to say, cheating

in that he, at....., on....., by falsely pretending to

Mr.right....., proprietor of.....(firm) that he (the accused) was
Commander of the Bangladesh Navy, dishonestly induced the said
Mr.....to let him have on credit one Grundig Radiogram,
valueright....., and thereby cheated the said

Mrleft..

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

(a) while on active service;

(b) at any place outside Bangladesh; or

(c) at any place specified by the Government by notification in this behalf.

NOTES

1. This section provides an exception to the general power given under section 78 to a naval tribunal of trying civil offences. The exception extends only to three offences specified in the

section, namely, (a) murder of a person not subject to service law; (b) culpable homicide not amounting to murder of such person; and (c) rape on a woman who is not subject to service law. Normally, therefore, if a person subject to the Ordinance is charged with anyone of these three offences, he cannot be tried by a naval tribunal but must be handed over for trial before a criminal court. If, however, any of these offences is committed (a) while on active service; (b) at any place outside Bangladesh; or (c) at any place specified by the Government by notification in this behalf, a naval tribunal will have jurisdiction under this section to try the offender.

2. *See* notes to section 78 generally.

3. (i) *active service*, *see* section 4 (i).

(ii) *service law*, *see* section 4 (xxxiv).

SPECIMEN 'CHARGES

The accused (O,No., Name, Rank) of B.N.Sleftleft, a Sailor of the Bangladesh Navy, is charged with :-

No.1

(Under section 79 read with P.C. section 302.)

While on active service committing a civil offence, that is to say,

murder against a person not subject to service law,

in that he, atrightright, on.....leftleft, while on active service, by causing the death of a civilian. . .
....., committed murder.

NO.2

(Under, section 79 read with P.C. section 376.)

At a place outside Bangladesh committing a civil offence, that is to say, rape in relation to a person not subject to service law,

in that he, at., (a place outside Bangladesh, committed rape on one..... a person not subject to service law.

NO.3

(Under "section 79 read with P.C. section 304.)

Atleftlefta place specified by the Government by leftleftnotification
(No....., dated.....) in this behalf,
committing a civil offence, that is to say, culpable homicide not amounting to murder against a
person not subject to service law.

in that he, at. on., by causing the death of a man
named..... committed culpable homicide not amounting to murder.

CHAPTER VII PUNISHMENTS

80. Scale of punishments.-(1) Subject to the provisions of this and the next following section, the following are the punishments which may be awarded to persons convicted of offences under this Ordinance that is to say:-

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

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

NOTES

I. (a) The punishments referred to in this section are the only punishments which can be awarded by a naval tribunal, even though in cases of charges under section 78 a criminal court could have awarded another punishment had the accused been tried before the criminal court for the same offence.

(b) The correct wording of sentences is set out in the Fourth Appendix to the Rules, which should be strictly adhered to while recording a sentence.

(c) As to the jurisdiction and powers of general, district and summary general court-martial, *see* sections 96, 97 and 98 respectively.

2. **Death.**-(a) A sentence of death can only be passed by a general or a summary general court-martial, and then only if concurred in by, in the case of a general court-martial, at least two thirds of the members and, in the case of a summary general court-martial, all the members of the court; *see* provision to section 111(i).

(b) In awarding a sentence of death, the court must add a direction that the accused shall suffer death by "being hanged by the neck until he be dead", or by "being shot to death"; section 141.

(c) A sentence of death may be commuted by the confirming authority under section 132, or by the competent authority under section 153, to any

punishment or punishments lower in the scale laid down in sub-section (1) This is so even if the sentence has been: passed in respect of an offence of murder. .

(d) As to carrying out of sentence of death, *see* rule 243.

3. Imprisonment.-See section 4 (XV) and (XXXV). (a) A sentence of

imprisonment or detention, whether revised or not, and whether the accused is already undergoing sentence or not, commences on the day on which the original sentence was signed by the president of the court-section 142. As to execution of sentence of imprisonment, *see* section 143.

(b) An officer sentenced to imprisonment must also be sentenced to dismissal from the service-section 81 (I) (b).

(C) A sentence of imprisonment may be commuted to a sentence of detention under section 132 or section 153, but the term of detention must not exceed the term of imprisonment awarded by the court.

4. Dismissal from the service,-(a) As to dismissal other than by sentence of court-martial, *see* section 17 : also *see* rules 9 and 23. .

(b) For the date on which sentence of dismissal takes effect. *see* rule 247.

(c) As to the effect of suspension and remission on dismissal, *see* section 163.

5. Detention.-(a) A sentence of detention cannot be awarded to an officer sub-section (2). : and the maximum term for which detention can be awarded to a Sailor by a court-martial is six months section 81 (4), A commanding officer, on summary trial, cannot award imprisonment or detention for a period exceeding three months j *see* section 102 (3) and rules 68 and 79, (3).

(b) As to commencement of sentence of detention, *see* section 14*h*. and as to execution of such sentence, *see* section 144.

6. Forfeiture of seniority in rank.-(a) This punishment must be imposed in substantive rank held by the officer at the date of the sentence. As to the effects of such a sentence. *see* section 81 (5) and (6).

(b) This punishment may be awarded summarily by the Chief of Naval Staff or a prescribed officer empowered by him in this behalf, to an officer of the rank of Lieutenant or below, for a period not exceeding six months: *see* section 103. As for a D.C.M., *see* section 97 (2) (a)

(7) Forfeiture of time for promotion.-(a) This punishment can only be awarded in case of 1i subordinate officer namely: a person appointed as an acting sub-lieutenant a midshipman or a cadet: section 4 (xxxvi). The effect of the punishment is that it delay s the promotion of the person concerned by the time specified section 81 (7).

(b) The maximum period for which this punishment can be awarded summarily to a subordinate officer is six months: section 103. As for a D.C.M *see* section 97 (2) (a)

8. Disranking-See section 81 (8) and rule 82.

9. Penal deductions-8ee section 82 and notes thereto,

81. Provision as to award of punishment.-(l) A sentence of imprisonment shall involve-

(a) in a11 cases, stoppage of pay during the term of imprisonment ;

(b) in the case of an officer dismissal from the service:

(c) in the case of a sailor, disranking and deprivation of good conduct badges and may be accompanied by a sentence of dismissal from the service.

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

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

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

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

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

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

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

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

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

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

1. This section controls the previous section and specifies the particular instances in which more than one punishment may be awarded. It also lays down the effect which certain punishments shall have on the person concerned.

(2) Subsection (1).-Although a sentence of imprisonment, in the case of an officer, "involves" his dismissal from the service, the court should invariably specify the dismissal in the sentence. Where the court fails to add the sentence of dismissal, they must be asked to revise their sentence. Similarly, in the case of a Sailor, although a sentence of imprisonment involves disranking, it is desirable to specify the disranking in the sentence, see sub-section (8) and rule 82.

3. Subsection (4).-*See* note 5 to section 80.

4. Subsection (10)-*Subject to the provisions of this Ordinance*: these words indicate that although, a naval tribunal may on conviction, award either the particular punishment specified by this Ordinance as the penalty for an offence or in lieu thereof, anyone or more of the punishments inferior in degree to the specified punishment, according to the scale of punishments laid down in section 80 (1) this power is subject to other provisions of the Ordinance. For example *see* section 78 (1) (a) and note 7 thereto. The extent of the power to award punishments also depends, on the type of the naval tribunal trying an offender A D.C.M., for instance cannot award a sentence of more than two years R. I. to a Sailor; section 97 (2); even though the offence for which it is trying the accused is punishable with long imprisonment.

CHAPTER VIII

PENAL DEDUCTIONS

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

- (a) all pay and allowances for every day of absence without leave unless a satisfactory explanation is given to the commanding officer and approved, in case of officers, by the Chief of Naval Staff;
- (b) all pay and allowances, for every day while he is in dun or naval custody or under suspension from duty on a charge for an offence of which he is afterwards convicted by a naval tribunal or a criminal court and sentenced to imprisonment;
- (c) all pay and allowances for every day while he is in hospital on account of sickness certified by the prescribed medical officer to have been caused by an act amounting to an offence punishable under this Ordinance:

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

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

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

(e) any sum which after due investigation appears to the prescribed officer to be due to a service mess or canteen; and

(f) any sum which a criminal court or the Government orders him to pay for the maintenance of his wife or illegitimate or illegitimate children.

NOTES

1. (a) It is illegal to make deduction; from the pay and allowances of an officer or Sailor unless they are authorised by or under this or any other enactment or prescribed by the Government", section 22.

(b) This on states the penal deduction~ that *may* be made from the pay and allowances of an officer or Sailor; the section is permissive, not mandatory.

(c) As to deductions actually made within the limits of the section, *see* Pay and allowances Regulation; and as to remissions *see* section 87 and rule 283.

(d) Other deductions which may be lawfully made are set out in rule 280. They are limited to deductions which are not penal under this section.

2. Clause (a).-If pay has not been drawn during a period of absence without leave, such pay is forfeitable under this clause; if pay has been drawn during a period of absence without leave, the issue constitutes an "over issue made through an error as to the facts", and the amount is recoverable as a "public claim", *see* Explanation in rule 280. It is not necessary for a person to be found guilty of absence without leave before a forfeiture can be enforced under this clause.

3. Clause (b).-*See* also section 84, which Is a corollary to this clause.

4. Clause (c).-For "prescribed medical officer" and "prescribed officer" *see* rule 281.

5. Clause (d).-(i) "Occasioned by"-The loss must be the natural and reasonable consequence of the wrongful act or negligence of the person concerned. It is not sufficient to show merely that the loss was facilitated or made possible by such act or negligence, though in such circumstances recovery may be effected as a "public claim" under rule 280.

(ii) It must be shown to the satisfaction of the Chief of Naval Staff or the prescribed officer as the case may be, that there has been a loss etc. occasioned by (in the sense referred to above) some wrongful act or negligence on the part of the officer or the Sailor concerned. As a general rule, an officer should in the first instance be afforded an opportunity to advance any reasons why a deduction should not be made. The Chief of The Naval Staff can legally impose a penal deduction on an officer, under this clause notwithstanding that he has been dealt with under section 103 for the wrongful act or negligence, but he cannot increase a penal deduction awarded by a court-martial. An invitation to an officer to make payment towards any loss or damage occasioned by his wrongful act or negligence does not debar the Chief of Naval Staff from making an under order this clause.

(iii) Negligence has the same meaning as neglect under section 75; (*see* note 11 to section 75).

(iv) The proviso to this clause lays down the maximum amount of deductions which can be made under this clause, that is to say, the deduction must not in any case exceed the pay and allowances of the person concerned for three months.

(v) For "prescribed officer" *see* rule 281.

6. Clause (e).-"Prescribed officer", *see* rule 281.

7. Clause (r).-This clause is restricted to the orders of the criminal court in proceedings under section 488 or the Code of Criminal Procedure and the amount directed by such order is to be deducted from the pay and allowances of the person concerned and deposited in the court or as

specified therein. But where no such order has been made by the court and the Government are satisfied as to the genuineness of a wife's or child's claim to maintenance, they may order deductions to be made from the pay and allowances of the person concerned for such maintenance; provided such deductions do not exceed in anyone month one half of the person's pay and allowances for that month; section 83.

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

NOTE

This section lays down the restriction that the total deductions made under clauses (C) to (f) of section 82 must not exceed in anyone month one-half of the pay and allowances of the officer or Sailor concerned for that month. It is always desirable to make an order for deductions to be effected by easy installments so that the officer or Sailor concerned is not financially embarrassed, as that would be injurious to discipline. Also *see* note 7 to section 82.

84. Pay and allowances during trial.-In the case of any person subject to this Ordinance who is in naval or civil custody on a charge for an offence, the prescribed officer may direct that the whole or any part of the pay and allowances of such person shall be withheld, pending the result of his trial on the charge against him:

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

NOTES

1. Prescribed officer.-*See* rule 282.

2. The proviso to this section is mandatory. Unless a specific direction to the contrary is made by the prescribed officer, the pay and allowances (or any part thereof) of an officer or Sailor, who is in custody on a charge for an offence, must not be withheld pending the result of his trial.

85. Deduction from money due to a person.-Any sum authorized by this Ordinance to be deducted from the pay and allowances of any person may, without prejudice to any other mode of recovering the same, be deducted from any money due to him from Government other than a pension.

NOTE

Any money due to him.-This means that deductions may be made from a gratuity, or other sum earned but not paid to an officer or Sailor. It would not include money lodged in a fund of whatever description.

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

NOTE

Prisoner of war.-See section 88 (2).

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

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

NOTES

1. Authority prescribed.-See rule 283. The most common case is that of a man absent without leave for a short period. In such a case, unless the man is convicted by a naval tribunal, his commanding officer may remit the forfeiture of pay and allowances which his absence entails. *See* section 82 (a).

2. To such extent.-The remission may be partial; but there is nothing to prevent a further remission being made later.

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

(2) For the purpose of this section, a person shall be deemed to continue to be a prisoner of war until the conclusion of any inquiry into his conduct such as is referred to in section 86; and if he is dismissed from the service in consequence of such conduct, until the date of such dismissal.

NOTE

Prescribed authority for the purpose of this section is the Chief of Naval Staff; *see* rule 284.

CHAPTER IX

ARREST AND PROCEEDINGS BEFORE TRIAL

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

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

(a) In case of an officer, an officer subject to this Ordinance who is his superior officer, or, if the person to be arrested is engaged in a quarrel, affray or disorder, any officer subject to this Ordinance;

- (b) in the case of a Sailor an officer subject to this ordinance, a Master chief petty officer, Chief petty officer, Petty officer or a leading sailor subject to this Ordinance who is of superior rank or senior to him in the same rank, and any sailor exercising the authority as a member of the regulating staff or as a member of the staff of the officer of, the watch;
- (c) in any case, a provost officer or any officer or person legally exercising authority under or on behalf of a provost officer; Provided that an officer shall not be arrested by virtue of clause (c) except on the order of another officer:
- (3) Any power of arrest under this section may be exercised either personally or by ordering into arrest the person to be arrested or by giving orders for the person's arrest.

NOTES

1. As to arrest and investigation of charges generally, *see* rule 42 to 58.
2. Superior officer; *see* "section 4 (xxxvii).
3. Any officer in clause (a) of sub-section (2) indicates that an officer who is, engaged in a quarrel, affray or disorder may be arrested by any other officer even though inferior in rank to the one who is so engaged. The Superior officer would be guilty of an offence under section 43 (c) if he refuses to obey the officer who orders him into arrest or if he uses criminal force to or assaults such officer. *See* note 4 to section 43.

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

(2) Every person subject to this Ordinance who has been taken into naval custody and kept under close arrest shall be produced before his commanding officer within a period of 48 hours of such arrest, excluding the time necessary for the journey from the place of arrest to the commanding officer, and no such person shall be detained in custody beyond the said period without authority of the commanding officer.

(3) Whenever any person subject to this Ordinance having been taken into naval custody, remains, under close arrest for a period longer than eight days without being tried summarily or a court for his trial being ordered, to assemble, a special report on

the necessity' for further delay shall be made by his commanding officer to the Chief of Naval Staff and a similar report shall be so made every eight days until the person under arrest is released from arrest or tried summarily or such a court is ordered to assemble.

NOTES

1. Commanding officer. See section 4 (vi).
2. As to the Form of special report require under sub-section (3) see note 2 rule 44.

91. **Duty to receive or keep in the custody.**-(1) The Commanding officer shall be responsible for the safe custody of every person who is in naval custody on board his ship or in his establishment.

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

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

NOTES

As to the manner of investigation of offences *see* rules 46 to 58.

93. **Arrest under warrants of naval authorities.**-A warrant for the arrest of person suspected of any offence under this Ordinance may be issued in the prescribed form by the Chief of Naval Staff his Commanding officer or any other officer empowered by the Chief of Naval Staff in his behalf, and shall be executed as it has been issued by a Magistrate of competent jurisdiction.

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

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

NOTES

1. As to the prescribed form of warrant, *see* Fifth Appendix to the rules. (*see* also rule 62).
2. As to the arrest of deserters and absentees *see* rule 59.

94. Provost-Marshals.-(1) Provost-Marshals maybe appointed by the Chief of Naval Staff or by any prescribed officer.

(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 servings in, or attached to the Navy.

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

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

Explanation.- For the purposes of sub-sections (2) and (3), a “ provost-marshal” shall be deemed to included a provost-marshal appointed under the Army Act, 1952 (XXXIX of 1952), or the air force Act, 1953 (VI of 1953), and any person legally exercising authority under him or on his behalf.

NOTES

1. The term provost-marshal by the Chief of Naval staff, by it includes “any person legally exercising authority under him or on his behalf, It also includes provost-marshals appointed by the Army and Air Force authorities who possess exactly the same powers as the one appointed under the Ordinance.

2. Provost-marshal has no power of punishment, but may carry into effect any punishment, including punishment of death, awarded by a naval tribunal.

3. The words charged with an offence in sub section (3) merely mean that a complaint has been made against the person concerned that he has committed an offence, The word “charge” in this context is to be distinguished from the formal charge defined in rule 124(2), namely an accusation contained in a written charge-sheet, which is essentially required for the purpose of trial by court-marshal.

CHAPTER X

AUTHORITIES HAVING POWER TO AWARD

PUNISHMENT

- Naval tribunal.**-(1) An officer triable under this Ordinance shall be tried by a naval tribunal, namely:
95. (a) general court-martial,
 - (b) district court-martial,
 - (c) summary general court-martial,
 - (d) commanding officer or such other officer or authority exercising power of summary trial and punishment as may be prescribed.

2. A trial by a naval tribunal under the provisions of this Ordinance shall be deemed to be a judicial proceeding within the meaning of section 193 and 228 of the Penal Code (Act XLV of 1860), and the naval tribunal shall be deemed to be a court within the meaning of section 480 and 482 of the Code of Criminal Procedure, 1898 (act V of 1898),

NOTE

Section 193 P.C. refers to giving false evidence whereas section 228 deals with intentional insult of the court. Section 480 and 482 of the Code of Criminal procedure lay down the procedure for dealing with such cases. For the offences relating to contempt of court-martial by witness and others *see* Rule 223.

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

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

NOTES

1. Form of G.C.M. warrant; *see* Sixth Appendix to the rules.
2. As to the duties of an officer before convening a court. *see rule*

97. District court-martial.-(1) A district court-martial may be convened by any authority having power to convene a general court-martial or any prescribed officer empowered in this

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

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

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

NOTES

1. Form of D.C.M. warrant, *see* Sixth Appendix to the rules,

2. Although a D.C.M. may be convened by any authority having

power to convene a G.C.M., but a warrant authorising an officer to convene a D.C.M. can only be issued by the Chief of Naval Staff.

Prescribed officer for the purpose of this section is the Administrative

Authority *see* rule 285.

4. As to the duties of an officer before convening a court, *see* rule 131.

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

- by any authority having power to convene a general court-martial or any prescribed officer empowered in this behalf and to such extent as may be specified in the warrant issued under
- (a) the hand of the Chief of Naval Staff.
- (b) on active service, by an officer commanding a flotilla or squadron not below the substantive rank of commander, if in the opinion in writing of such officer commanding which

opinion shall be final, it is not practicable having regard to discipline and the exigencies of the service, to try the alleged offender by a general or district court-martial.

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

NOTES

1. The object of this section is to provide for speedy trial of offences committed abroad or on active service.

2. The power conferred by clause (b) of sub-section (1) is absolute and may be exercised without any warrant. But like all judicial powers, it must be exercised judiciously and not arbitrarily and only on active service as defined in section 4 (i) or when active service has been declared under section 9.

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

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

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

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

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

NOTES

1. A court would have no jurisdiction each officer had not held a commission for the required period of three years, or if its composition differed in any respect from that detailed in the convening order.

2. As to ineligibility and disqualification of officers for court-martial *see* rule 133.

3. As to extent and nature of the control that civil courts exercise over the proceeding of court-martial *see* notes to section 140.

100. Judge Advocate.-(1) Every general court-martial shall and every district or summary general court-martial may, be attended by a judge advocate, who shall be either an officer, belonging to the department of the Judge Advocate General, or if no such officer is available, a fit person appointed by the convening officer.

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

NOTE

NOTE

The Court will in no circumstances proceed in the absence of a judge advocate who has been duly appointed, as this would affect the constitution of the court as required by the Ordinance. *See* note to section 140.

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

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

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

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

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

NOTES

1. Sub-section (4).-This sub-section confers a very wide power on convening officer who must exercise it judiciously and only when the circumstances make its exercise imperative, otherwise he would be liable to be questioned for the abuse of his power.

2. Sub-section (5).-It may frequently be inexpedient to convene a fresh court for retrial under this sub-section especially where the accused has been for some time under arrest or in confinement.

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

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

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

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

(a) in respect of persons on board a single tender or boat which is absent from the ship or establishment on detached service, by the officer in command of that tender or boat,

(b) in respect of persons on board any one of two or more tenders or boats which are absent as aforesaid on detached service in company or acting together, by the officer in immediate command and of those tenders or boats:

(c) in respect of other persons absent from the ship or establishment on detached service either on shore or elsewhere, by the officer in immediate command or those persons, and

(d) in respect of sailors attached to or serving with any body of the regular army or the air force under prescribed conditions by the commanding officer or any such body.

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

NOTES

1. This section empowers commanding officers of ships and establishments, and certain other officers specified in sub-section (4) to summarily try a Sailor and award such punishment as may be prescribed. These punishments are prescribed in rule 68.

2. As regards officers in command of tenders or boats detached and officers in immediate command of Sailors on detached service on shore or elsewhere, *see* rules 70 and 71.

3. **Sub-section (5).**-As to the delegated powers of punishment to "other officers", *see* rules 72 to 78.

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

NOTE

This section empowers the Chief of Naval Staff to summarily try an officer of the rank of lieutenant or below and award certain punishments which are prescribed in rule 119. This power can be conferred by the Chief of Naval Staff on any officer not below the rank of captain. For the procedure relating to summary disposal of a charge against an officer, *see* rules 120 to 123.

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

NOTE

This section enables a court to try an offender in any place whatever, whether within or outside Bangladesh. A court-martial may be convened on board a naval ship even when it is on high seas or in any foreign territorial waters; because international law recognises a naval ship as a floating part of the territory of the State, which owns it and whose flag it is flying.

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

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

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

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

NOTES

1. The effect of this section is that on the expiration or three years from the commission of an offence, the offender is free from being tried or punished under this Ordinance by a naval tribunal, for any offence except mutiny, desertion or fraudulent enrolment.

2. Mutiny and desertion on active service may be tried at any time. For desertion not on active service and fraudulent enrolment, a man can not be tried if he has since served continuously in an exemplary manner for three years with any portion of the armed forces.

3. **Fraudulent enrolment.**-The offence of fraudulent enrolment has not been specified as such in the Ordinance but the term would apply to the case of a person who enrolls himself in the Navy by willfully giving false answers to any question set forth in the enrolment form.

4. **Active service.**-See section 4 (i) and section 9.

5. **Sub-section (3).**-Continuous absence without leave constitutes "evading arrest" The onus is on the prosecution to prove such absence.

6. **Armed forces.**-See section 4 (ii).

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

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

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

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

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

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

NOTES

1. This Section meets the case of a person who commits an offence against the Ordinance whilst subject to it and then ceases to be so subject. It applies where a charge is made that an offence has been committed, even if it eventually transpires that the accused was innocent. Such cases will occur, for example, when an officer resigns his commission or is dismissed, or when a Sailor is discharged from the service or when a civilian who became subject to the Ordinance under section 2 (2) (c) has ceased to be so subject such a person who has ceased to be subject to naval law even before the discovery of the offence, may be arrested, tried and punished just as he were still so subject. The trial of such a person, however, must commence within six months of his ceasing to be subject to the Ordinance, Exception is made in the case of desertion, fraudulent enrolment and the offences relating to mutiny. As regards fraudulent enrolment, however, *see* note 3 to section 105.

2. As to the date on which a sentence of dismissal takes effect, *see* rule 247. A person so sentenced who commits another offence between the trial and the date on which his dismissal takes effect can be tried for it under this section after that date.

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

(2) Where it is decided to institute the proceedings before a naval tribunal under sub-section (1) but the criminal court is of the opinion that proceedings ought to be instituted before itself, it may by written notice require the prescribed naval authority to postpone the proceedings pending

the determination of the matter by the Government, and thereupon the proceedings shall be so postponed.

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

NOTES

Prescribed officer.-See rules 250 and 286. As to the consideration which should be kept in view deciding whether the accused should be tried by a naval tribunal or by a criminal court, *see* rule 251.

108. Prohibition of second trial.-(1) where a person subject to this Ordinance is acquitted or convicted of an Offence on trial by a naval tribunal, a criminal court or a naval tribunal shall be debarred from trying him subsequently for the same Offence.

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

to any loss or forfeiture of seniority or of rank, of privilege in respect of leave, or of pay or service (other than pay and service in respect of time spent in civil custody pending trial, or while attending his trial, or while serving any sentence of imprisonment, awarded by the criminal court):

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

NOTES

1. It is a general principle of law that it does not permit a man to be tried twice in respect of the same offence, *see* section 26 of the General Clauses Act and section 403 of the Code of Criminal Procedure.

2. The application of this principle, however, is not always easy. Where the same incident, or set of incidents, gives rise to two trials, the test of whether the offence is *the same* offence would appear to be this: Could the accused have been lawfully convicted at the first trial upon the charge sheet then before the court of the offence charged at the second trial? If so, the second trial is illegal and void.

3. A finding of a court-martial, if not confirmed, is of no validity; in such case, therefore, the accused has not been acquitted or convicted and may legally be tried again; *see* section 130 (3); but re-trials should rarely be resorted to, and only when the needs of discipline and justice demand that an offender shall not escape punishment on account of a legal technicality.

4. Where a court is not legally constituted, as for example, if the convening order is not signed, or is signed by an officer not authorised to convene such a court; or if the court is composed of members less in number than the legal minimum required by section 99; or if unqualified officers sit; it is no court at all. The accused will not have been really tried, and may be tried again, even though the proceedings of such illegally constituted court have been inadvertently confirmed. *See* also notes to section 140.

Where, however, a conviction is confirmed and then quashed, not for improper constitution of the court, but because evidence was improperly admitted, the accused has stood a trial and cannot be tried again.

5. Where a new trial is ordered, an officer may serve on it who sat on the former court; *see* rule 133 (2) (e).

CHAPTER XI

PROCEDURE OF COURT MARTIAL

109. **Objections.**-(1) At all trials by court-martial, as soon as the court is assembled, the names of the president and members shall, be read over in the presence of the accused, who shall thereupon be asked whether he objects to being tried by any officer sitting on the court.

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

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

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

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

NOTES

1. As *to* challenges generally, *see* rule 138 and notes there under.

2. As *to* adjourning for the purpose of appointing fresh members and the power *to* convene another court, *see* rule 132 and notes, there under.

3. As *to* the right of the accused *to* object *to* the members of the court is being sworn *to* try several persons, *see* rule 184 and notes there under.

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

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

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

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

NOTES

1. The prescribed forms of oath and affirmation required to be administered under this section are given in the Fourth Appendix to the rules.

2. The oath or affirmation by the members of a court-martial binds them to try the accused "according to the evidence" discarding from their opinions any private feeling or information they may happen to possess: and to "administer justice, without partiality, favour or affection"

3. The oath taken by members also implies that, as a general rule, the opinions of the individual members ought not to be stated and consequently the court ought not to disclose whether the decision was unanimous or by a majority: the decision is the decision of the court as a whole and the effect of its being unanimous or not is usually immaterial but *see* the proviso to section 111 (1)

4. As to the officer empowered to administer oaths or affirmation and the mode of doing so, *see* rules 139 and 140.

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

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

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

NOTES

As to manner of voting generally, - *see* rule 182. As regards voting in respect of finding, *see* rule 154 (2).

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

NOTES

1. The object of this section is to prevent a miscarriage of justice by permitting a person to be found guilty of a lesser offence, when the graver offence with which he is charged is not established. This is possible only in cases where the higher punishment for any offence under the Ordinance depends upon the intention with which the accused acted, or the circumstances in which he committed the act. For example, *see* sections 29, 30, 31, 32, 33, 36, 37, 41, 46, 49, SO, 59 and 62.

2. Alternative charges should not be preferred in cases where a conviction for the lesser offence is permissible under the provision of this section.

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

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

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

(2) Where a person is charged with a civil offence under sections 78 and 79 but that offence is not proved, he may be found guilty and convicted of any other civil offence of which he could be

found guilty and convicted by a criminal court in a trial for the same offence as he is charged with.

NOTES

1. Attempt to commit offence.-See section 511 P.C.
2. Abetment-See section 107 and 108 P.C.
3. Punishments for attempts to commit naval offences and for abetment of such Offences are laid down in sections 76 and 77 respectively.

4. Offence of the same class as the offence charged.- sections 29 to 65, dealing with the offences are divided into 11 different classes and a person, charged under one of the sections of a particular class may be found guilty of an offence under another section of the same class and not involving greater punishment:-for example a person charged under section 46 with desertion may be found not guilty of desertion but guilty of absence without leave under section 47, or a person charged with anyone of the offences specified in section 63 may be found guilty of any other of these offences with which he might have been charged as all these offences are of the same class and none of them involves greater punishment than the others.

5. Sub section (2)-For the special findings in respect of civil offences, see sections 237 and 238 of the *Code of Criminal Procedure*.

6. A court-martial has no power to find a person guilty of any offence other than that with which he is charged in the statement of the offence except in cases which are covered by this section. A court may, however, as allowed by rule 155 (5), find a person guilty of a charge with the exception of certain words, in the particulars of the charge or with certain immaterial variations, and each finding will be valid as long as in its reduced or varied form it discloses the offence which forms the subject of that charge.

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

NOTES

1. Subject to the provision of this ordinance-See for example, sections 115 to 122.

2. The section makes all statutes relating to evidence which are followed in criminal courts applicable to naval 'court-martial *e.g.* The Evidence Act 1872 and the Bankers Books Evidence Act, 1891.

3. It must be noted that a court-martial is not permitted to receive any evidence for the prosecution which is not relevant to the facts stated in the charge, or any evidence which is not admissible either under the Evidence Act 1872. or under the Ordinance, or under any other law; (rule 204).

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

NOTES

Judicial notice means that the court will recognise a matter without formal evidence. Thus evidence need not be given as to the relevant rank of officers, as to the general duties, authorities, and obligations of different members of the service or generally as to any matters which an officer, as such, may reasonably be expected to know. For other- matters of which a court may, under the Evidence Act, take judicial notice, *see* sections 56 and 57 of the Evidence Act,

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

(2) In the case of a witness, subject to service law the summons shall be sent to his commanding officer and such officer shall serve it upon him accordingly.

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

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

NOTES

1. As to procuring the attendance of witnesses whom the prosecutor or the accused desires to call at the trial, *see* rule 208.

2. Civilian witness can be required to attend at a summary trial by summons under the hand of the commanding officer of the accused; rule 50 (7).

For form of summons to attend at a summary trial or a court-martial, *see* Fourth Appendix to the rules.

3. Witnesses who are subject to the Ordinance should be ordered by the Proper naval authority to attend without the issue of formal summons, If a witness so subject then makes default he may be dealt with under section 73 (1) (a), for failing to comply with the order. A formal summons should; however-be issued to witness sub.- ct to military or air force law, through their commanding officers.

4. For action where a civilian witness, who has been duly summoned whose and

5. As . to privilege from arrest under civil or "revenue process of a witness summoned attend before a court-martial, *see* section 26.

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

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

(3) Such a commission shall be executed by the magistrate or officer, to whom it is issued in the same manner as if it was issued in the trial of a warrant case under the Code of Criminal Procedure, expenses have been tendered, makes default in attending, *see* rule 223 (C). 1898 (Act V of 1898), or of any corresponding law in force at the place where the evidence is recorded; and shall be returned, together with the deposition of the witness examined there under to the Judge Advocate-General.

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

NOTES

1. Under Chapter XL of the Code of Criminal Procedure the power to issue commissions in criminal cases is conferred on the High Court, a court of Session and a District Magistrate. This section confers a similar power on a court-martial to issue commission for the examination of a witness by means of a series of written questions, decided upon by the court trying the case. These questions are sent to another court or officer, within the local limits of whose jurisdiction the witness resides. Any questions which the prosecutor or the accused desire to have put to the witness, and which the court considers relevant, should be added to the list of such questions.

2. The magistrate or the officer to whom the commission is issued will take down the evidence of the witness and must return the record of it to the Judge Advocate General of the Navy, who will forward the same to the court which issued the commission, or, if that court has in the meanwhile been dissolved, to another court-martial which may be convened for the trial of the accused in respect of the same charge. The evidence of the witness, thus obtained on commission, becomes part of the record of the case.

3. The taking of evidence by commission in criminal trials should be most sparingly resorted to and ought not to be adopted save in extreme cases of delay, expense or inconvenience. The following considerations should guide court-martial in this, important matter:

(i) A complainant, or a witness who practically fills the role of complainant should never be examined on a commission; the risk of injustice to the accused is too great.

(ii) A material prosecution witness, the value of whose evidence can only be made apparent under full examination and cross-examination in court, should very seldom be so examined. ,

(iii) A merely "formal" or corroborative witness for either side, or a material witness for the defence, if the accused is fully satisfied by this action, might generally be examined on a commission. By "formal" is here meant a witness who has to prove a document, entry, or similar fact, which must be legally proved, but which when so proved cannot rationally be disputed by the accused, or by the prosecution.

4. If great delay in the return of a commission is anticipated, it may be more convenient to dissolve the court-martial and to assemble a fresh court after the commission is returned. In such a case however; each of the witness who gave evidence at the first trial will be examined as a witness oath or affirmation at the second trial, unless;-

- (a) he is dead or cannot be found; or
- (b) he is incapable of giving evidence: or
- (c) he is kept out of the way by the adverse party: or
- (d) his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable.

In any of these events the evidence given at the first trial can be read and considered at the second trial; *see* section 33 of the Evidence Act.

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

NOTES

Purporting.-This expression means that if the paper appears to be certified or signed as mentioned in the section, it can be accepted without calling a witness to prove that it has been so certified, signed etc., unless indeed some evidence is given to the contrary. If any evidence is given casting a doubt on the authenticity of a document, the court should require evidence of the certificate or signature etc., to be given by a witness.

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

(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 custody of the enrolment paper.

NOTES

1. On the trial of a sailor, on a charge under section 69, for having made a false answer at the time of enrolment, the answer made by the accused can be proved by the production of his original enrolment paper. (*See* form in Appendix VIII to the rules.)

2. The fact of the enrolment, however, may be proved either by producing the original, or a properly certified true copy of the enrolment paper.

3. In either case the enrolment paper-or when admissible a true Copy thereof must be produced by a witness on oath or affirmation and the accused identified as the person referred to.

120. Presumption as to certain documents.(I) Where any letter, return or other document with respect to a person,

(i) having or not having at any time served, in, or been dismissed or discharged from any part of the armed forces of Bangladesh;

(ii) having, or not having, held any rank or appointment in, or been posted or transferred to any part of such forces or having or not having served in any particular country or place; or

(iii) being, or not being, authorised to use or wear any military, naval or air force decoration, medal, medal ribbon, badge wound strip or emblem, the use or wearing of which by an unauthorised person, is by any law for the time being in force an offence;

purports to have been signed by or on behalf of a Secretary to the Government, or by an officer of any of the headquarter of the armed forces or by the commanding officer or the officer having the custody of the records of any portion of those forces or of any ship or establishment of the Bangladesh Navy to which such person appears or alleges to belong or to have belonged shall be evidence of the facts stated in such letter, return or other document.

(2) Any army, navy or air force list or gazette purporting to have been published by the competent authority shall be evidence of the status, rank and appointment of the officer or warrant officer and also of the unit or branch of the service to which he belongs according as it is shown in the list or gazette.

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

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

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

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

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

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

1. (i) This section provides for the admissibility in evidence of a variety of documents or copies of documents used in connection with the administration of the armed forces of Bangladesh.

(ii) A document purporting to be such a document as is specified in the various sub-sections is upon mere production on oath or affirmation to the court *prima facie* evidence of the facts therein stated.

2. Sub-sections (I) to (7). *see* note to section 118;

3. Sub-section (3):-

(i) The sub-section is limited to proof of the facts, or incidents specified therein; it does not assist proof of other particular incidents occurring during a man's service. A telegram, as delivered by the telegraph department, respecting the service of a person is not signed at all and would not be admissible.

(ii) The words "service book" are very wide and include any official books, records whatever which are required to be maintained by the navy.

(iii) It should be noted that every entry in a service book is not made evidence under the Sub-section. The entry must be made for the purpose of being used as a record, and must be made in pursuance of this Ordinance or of any rules made there under or in pursuance of duty, and it must purport to be signed by the commanding officer or by the officer whose duty it is to make the record. No hard and fast rule can be laid down as to what entries can properly be considered as "records", but as a general rule the sub-section should only be taken advantage of in cases where a formal record, *prima facie* of a noncontroversial character, is made in a service book or record in pursuance of the Ordinance or rules or of naval duty and purporting to be signed in accordance with the sub-section. Entries which cannot properly be considered as records such as daily entries in accounts, and entries in books not being "service books", can, of course, be proved under the ordinary provisions or the Evidence Act.

4. Sub section (4):-

(i) Such a copy cannot be certified by another officer "for" the officer having the custody of the book.

(ii) Where a certified true copy of a record in any "service book" is to be produced, the Copy should clearly state that the record purports to have been signed by the commanding officer or by the officer whose duty it was to make the record.

5. Sub section (5) and (6).-The certificate should only state the fact, date and place of the surrender or apprehension; it can only be admitted, as evidence of those facts and then only in cases of desertion or absence without leave. It is necessary to prove the circumstances of the surrender or apprehension a witness must be called.

6. Under sub-section (6).-It is essential that the certificate should be actually signed by a police officer not below the rank of officer in charge of a police station.

7. Sub-section (8):

(i) This provision is similar to one contained in section 512 (1) of the Code of, Criminal Procedure before the commanding officer (or other prescribed person) examines any persons who might appear to him to be acquainted with the case, he must record some evidence which proves to his satisfaction:

(a) that the person charged with an offence under the Ordinance has absconded; and

(b) that there is no immediate prospect of arresting him. He should then record an order that in his opinion it has been Proved that the accused hat absconded and them is no immediate, prospect of his arrest.

(ii) The deposition of a witness recorded, in respect of the facts of the case although recorded in the absence of the absconding accused, can be offered as evidence at his trial in three cases:

(a) If the witness is dead;

(b) if he is incapable of giving evidence; or

(c) if his attendance at the trial would cause unreasonable delay, expense or inconvenience.

121. Reference by accused-to Government officer:-(1) H at any trial, or other proceedings for desertion or absence without leave, the accused states in his defence any sufficient or reasonable excuse for his unauthorise absence, and refers in support thereof to any officer in the service of the Republic or if it appears that any such officer is likely to prove or disprove the said statement in the defence, the court or officer conducting the proceedings shall address such officer and adjourn the court or proceedings until his reply is received.

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

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

NOTES

1. Officer in this section is not confined only to a person holding a commission in the Navy, as defined in section 4 (xxvii), but as the context shows it means any officer, civil or military, In the service of the Government.

2. For presumption as to an officer's signature, *See* section 118 and the note thereto.

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

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

NOTE

This section should be read with rule 157 which prescribes other matters which may be proved.

123. Lunacy or 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 president of the court shall forthwith report the case to the confirming officer.

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

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

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

NOTES

1. 'Finding' of Insanity.- The manner of recording a finding of insanity is given in the form of proceedings of a general (or district) court-martial, under sub-head FINDING in the Fourth Appendix to the rules.

2. It is to be observed that two distinct cases are contemplated by this section. A person may have been sane at the time of the alleged offence but may not be sane enough to make his defence

at the time of his trial. On the other hand, a man who was insane at the time of the offence may have recovered sufficiently to take his trial. In both cases the finding of the court requires confirmation. The proceedings, after the finding has been duly signed by the president, and the judge-advocate, if any, must be at once transmitted to the confirming officer: *see* rule 217.

3. An application that the accused is of unsound mind and consequently incapable of making his defence should be made before arraignment. The application will normally be made by counsel for the defence or defending officer, but should, if necessary, be made by the prosecutor. Evidence in support of the application may, of course, be given.

4. Where a Court-martialing that an accused person committed the act, (or made the omission) alleged as constituting the offence but was, by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was wrong or contrary to law, such finding does not amount to a conviction, (see P.C. section 84), but means that on the facts proved the court would have found him guilty of the offence had it not been established to their satisfaction that the accused at the time was not responsible for his actions. If such a finding is recorded, no pay and allowances are forfeited automatically under section 82(b) of the Ordinance and Pay and Allowance Regulations, e.g. in respect of the period during which the accused was in custody awaiting trial.

5. Sub-section (4).-As to the "prescribed manner" in which an accused person is to be kept in custody, *see* rule 287.

6. Sub section (5).- "Other suitable place of safe custody". This would normally be a civil jail, if it is not a lunatic asylum.

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

(a) if such person is in custody under sub-section (4) of section 123, on the report of medical officer that he is capable of making his defence, or

(b) if such person is detained in a jail under sub-section

(5) of section 123, on a certificate of the Inspector General of Prisons, and if such person is detained in a lunatic asylum under the said sub-section, on a certificate of any two or more of the visitors of such asylum that he is capable of making his defence, take steps to have such person tried by the same or another court-martial for the offence with which he was originally charged or if the offence is a civil offence by a criminal court.

NOTE

The certificate referred to in clause (b) is a certificate, in the case of a person detained in a lunatic asylum, by the visitors of such asylum or any two of them, or, in the case of a person detained in jail, by the Inspector General of Prisons, to the effect that, in their or his opinion, such person is capable of making his defence.

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

126. Release of lunatic accused.-Where any person is in custody under sub-section (4) of section 123, or under detention under sub-section (5) of that section-

(a) if such person is in custody under the said sub-section (4), on the report of a medical officer, or

(b) if such person is detained under the said sub-section (5), on a certificate from any of the authorities mentioned in clause (b) of section 124

that, in the judgment of such officer or authority such person may be released without danger of his doing injury to himself or to any other person, the Government may order that such person be released, or detained in custody, or transferred to a public lunatic asylum if he has not already been sent to such an asylum.

127. Delivery of lunatic accused to relatives.-Where any relative or friend of any person, who is in custody under sub-section (4) of section 123 or under detention under sub-section (5) of that section, desires that he should be delivered to his care and custody, the Government may, upon application by such relative or friend on his giving security to the satisfaction of the Government that the person delivered shall.

(a) be properly taken care of and prevented from doing injury to himself or to any other person ; and

(b) be produced for the inspection of such authority, and at such times and places, as the Government may direct, , order such person to be delivered to such relative or friend.

128. 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 to it be sold or otherwise disposed of.

NOTE

The provisions of section 128 shall also apply to case property produced before an Officer carrying out the "Summary trial"

129. Order for disposal of property regarding which offence is committed. (1) After the conclusion of a trial before a court-martial, the court or the officer confirming the finding or sentence of such court-martial or any authority superior to such officer, 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 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 (I) in respect of property regarding which an offence appears to have been committed, a copy of such order signed and certified by the authority making the same may, whether the trial was held within Bangladesh or not, be sent to a magistrate in any district in which such property for the time being is, and such magistrate shall thereupon cause the order to be carried into effect as if it was an order passed by such magistrate under the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898).

Explanation.-In this section the term "property" includes, in the case of property regarding which an offence appears to have been committed ,not only such property as has been originally

in the possession or under the control of any person, but also any property into or for which the same may have been converted or exchanged and anything acquired by such conversion or exchange whether immediately or otherwise;

NOTES

1. The commanding officer carrying out the *Summary trial* of a sailor shall be competent to pass an order for the destruction, confiscation, disposal etc. of a property produced in the case before him. If such an offender is punished by a warrant, requiring the approval of the administrative authority such an order regarding property shall also require his approval similarly an administrative authority, trying summarily an officer, shall be competent to pass orders in respect of case property:

2. The stealing or misappropriation of property does not alter the ownership, and therefore *prima facie* the person from whom property has been stolen or misappropriated is the lawful owner of it, and can recover it from the holder.

3. When stolen property has not been recovered the value of the property should be stated in particulars of the charge and proved in evidence Penal deductions may then be, awarded to, recoup the owner. In case of theft followed by sale to an innocent purchaser, penal deductions may be awarded to recoup the purchaser on a charge of theft, provided that the charge contains and additional averment informing the accused of the further liability he has incurred in respect of the innocent purchaser.

4. For the manner of recording a sentence of penal deductions, *see* form of proceedings of a general (or district) court-martial, under subhead SENTENCE, in the Fourth Appendix to the rules.

CHAPTER XII

CONFIRMATION, REVISION AND REVIEW

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

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

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

NOTES

1. Confirmation is complete when the proceedings are promulgated. If proceedings are confirmed in error by an officer not having power to confirm, his act and the subsequent promulgation are null and void and it is open to the proper authority to confirm.

2. The result of sub-section (3) is that if a finding is not confirmed it is invalid; consequently there is no conviction or acquittal, and the accused has not been convicted or acquitted by a court-martial for the purpose either of any subsequent trial or of any entry in service books or of any forfeiture. *See* section 108 and notes thereto. As to cases in which confirmation ought to be withheld *see* notes to section 131.

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

(a) be confirmed

(i) as passed by the court, or

(ii) subject to such mitigation, remission or commutation of the sentence as specified hereinafter;

(b) be returned to the court once for revision, as specified hereinafter, prior to their being confirmed; or

(c) be not confirmed.

NOTES

1. Confirmation of the sentence alone implies confirmation of the finding also, but it is not the correct mode of recording confirmation. The correct form of recording the minute of confirmation is given in the form of proceedings of a general (or district) court-martial, under sub-head CONFIRMATION, in the fourth Appendix to the rules,

2. In the following cases proceedings of a court-martial, ought NOT to be confirmed:

(i) Where the provisions of this Ordinance relating to jurisdiction have been contravened.
See sections 96 to 101, 109 and 110.

(ii) Where evidence of a nature prejudicial to the accused has been wrongly admitted.

(iii) Where the accused has been unduly restricted in his defence.

(iv) Where a finding of guilty has come to with the exception of certain words of the charge and these words so far describe the essence of the offence that the finding with the words omitted fails to disclose of which the court could legally have convicted.

(v) where a special finding of guilty fails to disclose an offence of which the court could legally have convicted.

(vi) Where the charge is bad in law, even though the accused has pleaded guilty.

(vii) Where there has been such a deviation from the rules made under this Ordinance that injustice has been done to the accused.

132. Power of confirming authority to mitigate, remit or commute sentences.-A confirming authority may, when confirming the sentence- of a court-martial, mitigate or remit the punishment there by awarded, or commute that punishment for any punishments or punishments lower in the scale as laid down in this Ordinance:

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

NOTES

1. As to mitigation of sentence for offence in several charges, where the finding on one or more of them is not confirmed, *see* rule 164; and as to the power of confirming officer to vary a sentence informally expressed or in excess of the punishment authorised by law, *see* rule 165.

2. The powers conferred by this section may be exercised by the confirming officer, as such, only before confirming the sentence. After the confirmation, the power of the confirming officer in that capacity ceases and the above powers can only be exercised by one of the authorities mentioned in section 153.

3. A confirming officer may also, under section 156, direct that an offender sentenced to imprisonment or detention be not committed to prison or custody until the orders of a superior naval authority mentioned in section 155 are obtained. If he is himself a superior naval authority he has further power as such under that section.

4. Mitigation is awarding a less amount of the same species of punishment, as for example, by reducing the length of imprisonment detention to which an offender has been sentenced: it is in effect equivalent to a remission of part of the sentence.

5. Remission may be remission of the whole or of part of the sentence; thus a sentence of imprisonment or detention may be remitted altogether, or a portion of the term may be remitted.

6. Commutation is changing the description of punishment by awarding a punishment, or lower in the scale of punishments in section 80, as detention in lieu of imprisonment, or forfeiture of seniority in rank in the case of an officer in lieu of dismissal from the service.

7. **Or punishments.**—The commutation of one punishment for two or more punishments is permissible but partial commutation of any punishment by the substitution for a portion thereof of another punishment is illegal thus where in a case of *e.g.* losing Government property (Under section 65) a court passed a sentence of imprisonment, but omitted to pass a sentence of penal deductions, which would have been valid; a portion of the imprisonment cannot be commuted to penal deductions. However the confirming authority may refer the sentence to the court for revision, see Section. 133.

8. The imprisonment or detention, under commutation, will be reckoned to commence on the date of the original sentence, even though that sentence was not one of imprisonment or detention, as the case may be. For instance, the court sentenced a sailor to dismissal from the service but the confirming authority commuted that sentence to one of detention for three months. The period of three months will count from the date when the original sentence was signed by the president of the court (section 142) and not from the date when it was commuted by the confirming authority.

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

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

(3) In the case of unavoidable absence of any of its members the Cause whereof shall be duly recorded in the proceedings, the court shall proceed with the revision, unless the president himself is absent or the number of members present is less than the minimum required to constitute the court under section 99 in which case the court shall be dissolved and the accused may be tried by a court-martial constituted afresh.

NOTE

As to the procedure on revision, *see* rule 162 and notes thereto.

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

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

NOTES

1. This section provides remedy against the finding and sentence of a court martial, before confirmation while section 136 provides the remedy after confirmation.

2. As to the powers of the confirming authority, *see* section 131 and notes thereto.

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

NOTES

1. This section empowers the Government or the Chief of Naval Staff to review, at any time any finding of guilty and any sentence of a court-martial whether or not any petition for review has been submitted.

2. On review, the Government or the Chief of Naval Staff may:

- (a) under section 137, quash or alter the finding;
- (b) under section 138 annul, remit or commute the sentence; or substitute a valid sentence for an invalid sentence;
- (c) under section 153 pardon the person concerned, or mitigate or commute the punishment awarded; or
- (d) under section 155 suspend any sentence of imprisonment or detention, whether or not the offender has already been committed to prison or custody.

3. The word "or" appearing in between the expressions "the Government" and "The Chief of Naval Staff" under section 135 to 138 is disjunctive. Remedies provided for in these sections cannot be again availed of if one of the authorities has pronounced judgment on them. These Sections do not contemplate presentation of successive review petitions to the Chief of Naval Staff and to the Government but contemplate only one such petition either to the Government or to the Chief of Naval Staff. In exercise of such revisional jurisdiction either the Government or the Chief of Naval Staff may set aside the conviction as well as the sentence. The review petition

of the convicted person having been rejected by the Chief of Naval Staff, there can be no further review of the petition by the Government under these Sections.

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

NOTE

See notes to sections 134 and 135.

137. Power to quash or alter findings.-(I) On review of a finding of a court-martial, the Government or the Chief of Naval Staff may,-

(a) in any case, quash the finding;

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

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

(a) if the sentence passed in respect of that finding relates to that finding only, the sentence shall i.e. quashed;

(b) if the sentence relates to that and any other finding or finding or the Government or the Chief of Naval Staff may substitute such sentence as is authorised by this Ordinance in respect of the other finding or findings.

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

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

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

NOTE

See note 3 to section 135.

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

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

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

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

NOTE

See note 3 to section 135

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

NOTE

Judge Advocate-General, *see* section 4 (xiv).

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

NOTE

According to this section, no appeal, revision or other remedy shall lie to any court in respect of any proceeding, order, finding or sentence of a court-martial. *Any court* would, include the Supreme Court and the High Court. The only remedy of a person aggrieved, on conviction by a court-martial, would lie, "in accordance with the provisions of this Ordinance", *e.g.* by a

petition for review under section 136.

CHAPTER XIII EXECUTION OF SENTENCES

141. 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.

NOTES

1. No sentence of death can be passed by a general court-martial unless at least two-thirds of its members concur or by a summary general court-martial unless all the members concur. If therefore, a general court-martial consists only of five members, it is essential that not less than four of them should concur in the sentence; *see* proviso to section 111 (I).

2. Normally a sentence of death against the accused should be directed to be carried out by being hanged by the neck until he be dead but on active service it may not be convenient for arrangements to be made for hanging an offender. In such circumstances the court-martial should direct that the accused shall "suffer death by being shot to death". The sentence can then be carried into effect by the provost marshal in exercise of his powers under section 94 (3).

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

NOTES

1. A term of Imprisonment or detention awarded by way of commutation must commence on the date of the original sentence even though such sentence was one of a different character.

2. The suspension of a sentence of imprisonment or detention has no effect on its currency; *see* section 158.

3. It is essential that the proceedings be dated as well as signed.

143. Execution of sentence of imprisonment.-The officer who confirms the sentence or such other officer as may be prescribed, may direct that the sentence of imprisonment in any particular case shall be carried out by confinement in a civil prison or by confinement in a military, naval or air force prison, and the commanding officer of the person under sentence or such other officer as may be prescribed, shall forward a warrant in the prescribed form to the officer in charge of the prison in which the person is to be confined, and shall forward him to such prison with the Warrant:

Provided that in the case of a sentence of imprisonment for a period not exceeding three months, the sentence may be directed to be carried out, by confinement in naval custody instead of a prison;

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

NOTES

1. A sentence awarded by a court-martial is inoperative until confirmed; *see* section 130 (3); action in respect of such sentence cannot, therefore, be taken under this section before confirmation. Until promulgation has been effected, confirmation is not complete; *see* rule 168.

2. Officer prescribed is the confirming officer or any higher authority *see* rule 288.

3. Prescribed form of warrant. See Fifth Appendix to the rules. Forms G and H. Where Sentence of death is commuted to imprisonment form D is Section 4 (iv).

5. Sentences of imprisonment combined with dismissal should as a rule, be carried out by confinement in a civil prison. Sentences of imprisonment not exceeding three months, to which no dismissal has been added, should be out by confinement in naval custody. For "naval custody" *see* section 4 (xvii).

6. The direction of the confirming officer that the sentence shall be undergone in naval custody should be part of the confirmation minute, (*See the form of recorded the minute given in the form of proceeding of a general (or district) court-martial under sub-head CONFIRMATION, in the Fourth Appendix to the rules.*)

7. Under the second provision active service, the officer commanding the naval command may appoint any convenient place for a sentence of imprisonment to be carried out.

144. Execution of sentence of detention.—A sentence of detention under this Ordinance shall be carried out by detaining the offender in any, military, naval or air force detention barracks, detention cells or other military, naval or air force custody, and when the sentence is to be carried out by detention in any military, naval or air force detention barracks, the commanding officer of the person under sentence, or such other officer as may be prescribed, shall forward the person under sentence together with a warrant in the prescribed form, to the officer in charge of the said detention barracks.

NOTES

1. A sentence of detention must not be directed to be carried out in a civil prison. If there are no detention barracks or detention cells, the sentence must be carried out in naval custody, when the following routine shall be followed;

(a) for the first 14 days of the sentence of detention; the offender shall carry out the routines for the punishment of solitary confinement in a cell as laid down in Rule 91.

(b) the routine for the remaining period shall be relaxed so that although the offender is to be confined in a cell, he is no longer to be kept in solitary confinement. If, however, the offender's conduct or behaviour becomes objectionable the Commanding officer of the establishment in which the offender is undergoing the punishment may at his discretion direct that the offender be again kept in solitary confinement for a period not exceeding 7 days at a time.

(c) in partial relaxation of sub-rule 3 of the above rule, the offender after the first 14 days shall be brought on deck under the sentry's charge and made to carry out hard labour with working parties or individual task out of which instructions may be given for not more than two hours. The total period for work shall not exceed seven hours per day.

2. For committing a prisoner to a military, naval or air force detention barracks, Form H in the Fifth Appendix to the rules may be used with the necessary variations (*see rule 4 and section 152*).

3. A sentence of rigorous imprisonment which is commuted to one of detention would be a sentence of detention passed under this Ordinance; *see section 138(3)*. Since a sentence is

inoperative until confirmed, action under this section in respect of such sentence cannot be taken before confirmation. Until promulgation has been effected, confirmation is not complete; *see* rule 168.

145. Interim custody of persons under sentence of death, imprisonment or detention.-(1)

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

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

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

NOTE

For the prescribed forms of warrant, *see* Fifth Appendix to the rules.

146. Authority for committal and transfer of prisoners,- A warrant issued in accordance with the provisions of section 143 or section 144, or an order of the prescribed officer for the transfer of a person undergoing a sentence of imprisonment or detention from one description of custody to another, shall be sufficient authority for committing the person concerned to prison, detention barrack or naval custody or, as the case may be, for transferring him from one description of custody to the other.

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

148. Communication of certain orders to prison officers. (1) Whenever an order is duly made under this Ordinance setting aside or varying any sentence, order or warrant under which any person is confined in a civil, military, naval or air force prison or detained in a military, naval or air force detention barracks a warrant in accordance with such order shall be forwarded by the prescribed officer to the officer in-charge of the prison or detention barracks in which such person is confined.

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

NOTES

1. *See* various forms of warrants in Fifth Appendix to the rules. The heading of each of these forms shows clearly the cases in which it is to be used. Form I is applicable to a case in which a sentence of imprisonment is varied by superior authority, and Form J in which a prisoner is pardoned or his trial set aside, or when the whole sentence or the unexpired portion thereof, is remitted.

These forms may be used for the respective purposes therein mentioned with such variations as the circumstances of each case may require, *see* rule 4.

2. Any order made under the Ordinance setting aside or varying any sentence should, after promulgation be Sent to the Judge Advocate General, for attachment to the court-martial proceeding, as these are preserved in his department; rule 192

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

150. Power to make rules in respect of prisons and prisoners. The Government may make rules providing:

(a) for the government, management and regulation of naval prisons and detention barracks;

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

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

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

(e) for the application to naval prisons or detention barracks of any of the provisions of the Prisons Act, 1894 (IX of 1894), relating to the duties of officers of prisons;

(f) for the admission into any prison, at proper times and subject to proper restrictions, of persons with whom prisoners may desire to communicate, and for the consultation by prisoners under trial with their legal advisers without the presence as far as possible of any third party within hearing distance.

151. Restriction of rule-making power in respect of corporal punishment.- Rules made under section 150 shall not authorize corporal punishment to be inflicted for any offence, nor render the imprisonment more severe than it is under any law for the time being in force relating to civil prisons in Bangladesh.

152. Procedural defect or error in the order or warrant.-Confinement of a person undergoing a sentence of imprisonment or detention under this Ordinance in any place or manner in which he might be confined under a lawful order or warrant under this Ordinance, shall not be deemed to be illegal only by reason of any procedural defect or error in or as respects the order, warrant or other document, or the authority by which, or in pursuance whereof such person was brought into or is confined in any such place, and only such order, warrant or document may be amended for rectifying such defect or error.

NOTE

Any order, warrant or other document in pursuance of which a person is confined to undergo a sentence of imprisonment or detention, may be amended for rectifying any procedural defect or error appearing there in, as long as the order or warrant in question is lawful under the Ordinance.

CHAPTER XIV

PARDONS, REMISSIONS AND SUSPENSION

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

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

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

NOTES

1. As to mitigation, remission and commutation of sentence. *see* notes to section 132: as to substitution of a valid for an invalid sentence, *see*: section 138 (I) (d) ; and as to the mitigation of the sentence when the finding on one of several charges has been found to be invalid, *see* rule 164 (2).

2. A sentence of dismissal might be remitted on the condition that the person sentenced shall not receive pay in respect of or count service for any purpose during the period spent under dismissal. The conditions, if any, must be clearly stated and the written acceptance of the persons obtained.

Mitigation or commutation cannot be made conditional.

3. A pardon takes away the conviction, and when a pardon has been granted the record of the conviction must be removed from the pardoned person's conduct sheet and will not be provable against him should be again tried by court-martial and convicted of any offence.

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

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

NOTE

Any order made under this section should, after promulgation, be sent to the Judge Advocate General for attachment to the court-martial proceedings, as these are preserved in his department: *see* rule .192.

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

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

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

NOTES

1. Sub-section (1).-(i) Under this sub-section read with section 159, the authority or officer competent to act can suspend a sentence, or order it into execution and again suspend it etc., at any time.

(ii) The power conferred by this sub-section is available to such officer or authority, in addition to their powers of mitigation, remission or commutation of sentence under other provisions of the Act. *see* section 162.

2. **Sub-section (2)** The authority or officer may, in his discretion, issue a general direction that DO person sentenced to imprisonment or detention is to be committed to prison or to military custody, as the case may be, until his orders have been obtained.

3. **Sub section (3).**-When an authority competent to do so has already mitigated or commuted a sentence it may still exercise his power to suspend the sentence under sub-section (1).

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

NOTES

If the confirming officer is himself empowered to convene a general or summary general court-martial he need not record a formal direction requiring reference to himself, but may record his orders of suspension under section 155 (1) forthwith.

The reference by the confirming officer, who is not empowered to act under section 155 (I) must be made at the time of confirming the sentence.

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

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

NOTE

Suspension of sentence does not affect its continuity. Under section 142, sentence of imprisonment or detention, whether suspended or not, runs from the date on which the original proceedings of the court were signed and runs continuously until it expires.

159. Order after suspension.-The authority or officer specified in section 155 may, at any time whilst a sentence is suspended, order ;

(a) that the offender be committed to undergo the unexpired portion of the sentence: or .

(b) that the sentence be remitted.

NOTE

1. *See* note 1 to section 155.

2. If at the specified periodical review required by section 160, the competent authority considers that a sentence ought not to remain suspended, he will refer the case to an authority empowered to act under this section. When an offender is committed to prison to undergo the unexpired portion of his sentence, the unexpired portion (commuted in accordance with Section 158), should be stated in the committal warrant. As to signing such warrant, *see* rule 245.

3. The section does not contemplate the partial remission of the unexpired portion, of the sentence; the only power of remission under clause (b) is to remit the whole of the unexpired portion of sentence. Partial remission must, if at all, be effected under section 153.

160. Reconsideration of case after suspension.-(I) Where a sentence has been suspended, the case may at any time, and shall, -at intervals of not more than four months, be reconsidered by the authority or officer specified in section 155, or by an officer not below the rank of lieutenant commander duly authorised by the authority or officer specified in section 155.

(2) Where on such reconsideration by the officer so authorised it appears to him that the conduct of the offender since his conviction has ~ such as to justify a remission of the sentence, he shall refer the matter to the authority or officer specified, in section 155

NOTES

1. *See* notes to section 159.

2. Failure to reconsider a sentence at the proper date has no effect upon the sentence; it can be subsequently reconsidered, and a further suspension or a committal may then be ordered.

3. Officer duly authorised.-Such authorization may be made by a general or special order; but the officer authorized must not be below the rank of lieutenant commander. It will ordinarily be convenient to authorise the accused commanding officer in this behalf.

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

(a) if the further sentence is also suspended under this Ordinance, the two sentences shall run Concurrently;

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

(c) if the further sentence is for a period of less than three months and is not suspended under this Ordinance the offender shall be so committed on that sentence only, and the previous sentence shall, subject to any order which may be passed under section 159 or section 160, continue to be suspended

NOTES

1. The case of a further sentence of exactly three months which is not suspended will be dealt with~ under clause (b) and not under clause (c).

2. Under clause (b) the offender is committed to undergo the unexpired portion of the previous sentence from the date the further sentence is signed. An order by a superior naval authority under section 159 (a) is not required.

Committal warrants must, in order to comply with the provisions of the Prisoners Act (III of 1900), be forwarded to the authorities of the prison to which the offender is sent. It will generally be convenient to prepare separate warrants; in preparing the warrant in respect of the former sentence care must be taken to state the unexpired portion which -the offender has to undergo.

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

NOTES

1. See note I(ii) to section 155.

2. The powers of an authority or officer who may mitigate, remit or commute a sentence under section 132 or section 153 are not, in any way, affected by any of the sections 155 or 159.

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

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

NOTE

In the case of a sentence of dismissal combined with rigorous imprisonment, or detention which is suspended, the dismissal does not take effect until so ordered by the officer or authority who can act under section 155. But when the unexpired portion of a suspended sentence of imprisonment, or detention is remitted under section 159, the punishment of dismissal must also be remitted.

CHAPTER XV

PROPERTY OF DECEASED PERSON DESERTERS AND LUNATICS

164. Property of deceased persons and deserters (other than officers).-The following provisions shall apply to the disposal of the property of every person subject to this Ordinance, other than an officer, who dies or deserts, Namely:

(1) The commanding officer of the ship or naval establishment, to which the deceased person or deserter belonged, shall secure all the movable property belonging to the deceased or deserter that is in ship or naval establishment and cause an inventory thereof to be made, and draw any pay and allowances due to such person.

(2) In the case of a deceased person who has left in a bank (including any post of the savings bank, co-operative bank or society or any other institution receiving deposits in money, however named) a deposit not exceeding one thousand Taka, the commanding officer, may, if he thinks fit, require the agent, manager or other proper officer of such bank or other institution to pay the deposit to him forthwith; notwithstanding anything, in any rules of the bank or the other institutional and when any money has been paid by such bank or other institution in compliance with such requisition, no person shall have any claim against the bank or the other institution in respect of such money.

(3) In the case of a deceased person whose representative, widow or next of kin is on the spot and. has given security for the payment of the service or other debts in ship or naval establishment. if any of the deceased, the commanding officer I may if he thinks fit deliver

over any property, received under clauses (1) and (2) to that representative, Widow or next of kin. as the case may be, and shall not further interfere in relation to the property of the deceased.

(4) In the case of a deceased person whose estate is 'not dealt with under clause (3), and in the case of any deserter, the commanding officer shall cause the movable property to be sold by public auction, and may convert into money any cash certificates (including post office cash certificates, defence savings certificates and national savings certificates and shall pay the service and other debts in ship or naval establishment, if any, from the proceeds of the sale or conversion and from any pay and allowances drawn under clause (1) and from the amount of the deposit, if any, received under clause (2).

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

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

(6) In the case of a deserter, the surplus, if any, shall be forthwith remitted to the prescribed person and shall, on the expiry of three years from the date of his desertion, be forfeited to the Government, unless the deserter shall in the meantime have surrendered or been apprehended.

(7) The decision of the commanding officer as to what are the service and other debts in ship or naval establishment of a deceased person or a deserter and as to the amount payable therefore shall be final.

NOTES

1. Sections 164 to 166 provide for the disposal of estate of sailors. The produce for the disposal of the estates of officers is laid down in sections 168 to 175.

2. Every person subject to this Ordinance.-The property of civilians when subject to Ordinance under section 2 (2) (c) is to be dealt with under the Ordinance.

3. Who deserts.-A person who has been absent from duty without authority for thirty days and has not subsequently surrendered or been apprehended is a deserter for the purpose of this section; *see* section 176(1).

4. **Clause (1).**-*Movable property belonging to the deceased or deserter that is in ship or naval establishment.*-If any movable property of the deceased is lying elsewhere say, in his ancestral home, the commanding officer cannot interfere in relation to it.

5. **Clause (2).**-*The commanding officer may.*-The power to collect bank balance is discretionary and the commanding officer must exercise it with due regard to the circumstances of each case. It would obviously be undesirable to collect a bank balance where the estate is contested and the amount is not required for the payment of service and other debts in ship or naval establishment. Where, however, the estate is not contested and the total value thereof does not exceed one thousand Taka and it is desirable, in order to help the widow or next of kin, to realise the bank balance without obtaining a succession certificate etc. the commanding officer may exercise the power conferred upon him by this clause.

6. **Clause (3).**-The representative widow or, next of kin, who takes over the estate under this clause must be *on the spot*. See also section 165 which empowers the commanding officer [*vide* rule 289(2)], to hand over the estate to anyone of the next of kin etc. Once the commanding officer hands over the property to deceased's representative etc., he cannot further interfere in relation to the property for any purpose whatsoever.

7. **Clause (4).**-In the best interest of an estate, the auction should be conducted by Some responsible person under the supervision of the Commanding Officer,

8. **Clause (5).**-*See* section 165 and notes thereto.

9. The “prescribed person”, for purposes of clauses (5) and (6) is the Chief of Naval Staff or any person authorised by him in this behalf *see* rule 289(1).

165. Disposal of certain property without production of probate, etc. (other than officers).-Property deliverable and money payable to the representative, widow or next of kin, of a deceased person under section 164 may, if the total value or amount thereof does not exceed one thousand Taka, and if the prescribed person thinks fit, be delivered or paid to any person appearing to him to be entitled to receive it or to administer the estate of the deceased, without requiring the production of any probate, letters of administration, certificate or other such conclusive evidence of title; and such delivery or payment shall be a full discharge to those ordering or making the same and to the Republic from all further liability in respect of the property or money; but nothing in this section shall affect the rights of any executor or administrator or other representative, or of any creditor of a deceased person against any person to whom such delivery or payment has been made;

NOTES

1. *See* note 6 to section 164. It is no part of the duty of the prescribed person to adjudicate upon rival claims. He may hand over the property or surplus to anyone of the representatives, the widow or the next of kin *appearing to him to be entitled to receive it.* , But it is, for *obvious* reasons, necessary that the prescribed person should select the most deserving *of* them.

2. The section protects the Republic and its agents from pecuniary liability, where their decision happens to be questionable. The section does not, however, affect the right of the rightful claimant against the person to whom the property or surplus is actually, but wrongfully, delivered

3. The prescribed person is the Chief of Naval Staff, or any person authorized by him or the Commanding Officer. *See* rule 289(2).

166. Application of sections 164 and 165 to lunatics, etc.-The provisions of sections 164 and 165 shall. so far as they can be made applicable, apply in the case of a person subject *to* this Ordinance (not being an officer) who notwithstanding anything contained in the Lunacy Act, 1912 (IV of 1912), is ascertained in the prescribed manner to be insane, or, who being on active service, is officially reported missing, as if he had died on the day on which his insanity is so ascertained, or as the case may be, on the day on which he is officially reported missing:

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

NOTES

1. Officially presumed to be dead.-The ordinary rule for the proving of death is stated in sections 107 and 108 of the evidence Act. This section, however, creates an exception and provides that the death of a person missing *on active service only* may be presumed for official purposes, without reference to those sections of the Evidence Act. and, when so presumed, the provision of clauses (2) to (5) of section 164 may be acted upon as if the person reported to be missing were in fact dead.

2. Prescribed manner of ascertaining intensity.-*See* rule 276.

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

168. Powers of Committee of Adjustment. (1) On the death or desertion of an officer, a Committee of Adjustment appointed in this behalf in the manner prescribed, (hereinafter referred to as the Committee) shall, ~s soon as may be, subject to rules:

(a) secure all the movable property belonging to the deceased or deserter that is in ship or naval establishment and cause an inventory thereof to -be made and ascertain and draw the pay and allowances, if any, due *to* him; and

(b) ascertain the amount, and provide for the payment, of the service and other debts in ship or naval establishment, if any, of the deceased or deserter.

(2) In the case of a deceased officer whose representative, widow or next of kin has given security to the satisfaction of the satisfaction of the Committee for the payment of the service and other debts in ship or naval establishment, if any, of the deceased, the Committee shall deliver any property received by it under subsection (I) to that representative, window or next of kin, as the case may be and shall not further interfere in relation to the property of the deceased.

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

(4) In the case of a deceased officer whose estate has not been dealt with under sub-section (2) and in the case of a deserter the Committee subject to rules, shall, for the purpose of paying the service and other debts in ships or naval establishment and may in any other case, sell or convert into money the movable property of the deceased or deserter

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

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

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

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

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

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

NOTES

1. **Sub-section (1).**-(it "desertion", *see* section 176 (1);
(ii) "Movable property belonging to the deceased or deserter that is ship or naval establishment" ; *see* note (4) to section 164.
2. **Sob-section (2)**-See note 6 to section 164.
3. **Sub-section (3).**-(i) *Prescribed limit*-The aggregate sum lying in one or more banks upto Taka. 2,500/- may be collected by the Committee, *see* rule 290.

(ii) the power of a Committee of Adjustment to lift bank balances is restricted to the amount required for the payment of service and other debts in ship or naval establishment and the expenses incurred by the Committee.
4. **Sub-section (4).**-*and may in any other case*-Where, for instance, the committee have no money to pay the expenses of the last illness or the expenses incurred by them, or where they have been specifically asked by the legal representative, Widow or next of kin to do so, they may sell or convert into money any movable property; *see* subsection (5).

5. Sub section (9)-This subsection is intended to save all those who deal with a Committee of Adjustment from the risk of further claim by the heirs of the deceased officer.

6. Prescribed person. For the purpose of this section and section 169, the prescribed person would be the same as for section 170 namely the Chief of Naval Staff, any person authorised by him or the president of the Committee; *see* rule 291

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

(1) If he knows of a representative, widow or next of kin of the deceased, he shall pay the surplus to that representative, widow or next of kin.

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

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

NOTES

1. Prescribed *person*. -*See* note 6 to section 168.

2. Clause (2).-*Prescribed form of notice* given in the Seventh Appendix to the rules, is reproduced below:

Prescribed Form of Notice under Clause (1.) of Section 169 of the

Navy Ordinance, 1961

NOTES

In pursuance of clause (2) of section 169 of the Navy Ordinance 1961, notice is hereby given that there is available for distribution amongst the next of kin Or other entitled persons the sum of money set opposite to the name of (or, each of) the deceased officer (or, officers) mentioned in the list below.

Applications from persons supposing themselves entitled as next of kin or otherwise should be addressed to the Chief of Naval Staff, Bangladesh Navy, and marked outside "Claim to the estate of deceased officer".

*(If no claim is made to the estate of the . deceased officer within six months after the publication of this sixth notice, the amount together with any income or accumulation of income accrued there from shall be deposited to the credit of the Government.)

Place:

Date

First (or, second, third, fourth, fifth, sixth) publication.

Full name, rank branch and ship/establishment of the deceased	Date and place of death	Amount available for distribution amongst next of kins

*To be entered only in case of the SIXTH and last publication.

170. Disposal of certain property without production of probate. etc.-Property deliverable and money payable to the representative widow or next of kin of a deceased officer under section 168 or section 169 may, if the total amount of value thereof does not exceed five thousand taka, and, if the prescribed person thinks fit, be delivered or paid to any person appearing to him to be entitled to receive it or to administer the estate of the deceased, without requiring the production of any probate, letters of administration, succession certificate or other such conclusive evidence of title.

NOTES

1. Prescribed person.-*See* rule 291.
2. *See* notes to section 165 which apply also to this section.

171. Discharge of Committee prescribed person and the Republic.-Any payment of money or delivery, application sale or other disposition of any property or money made, or purported to be made by the Committee or the prescribed person, in good faith in pursuance of section 168, section 169 or section 170 shall be valid and shall be a full discharge to the Committee or the prescribed person, as the case may be, and to Republic from all further liability in respect of that money or property; but nothing herein contained shall affect the right of any executor or administrator or other representative, or of any creditor of the deceased officer against any person to whom such payment or delivery has been made.

NOTE

Compare section 165 and *see* note (2) thereto.

172. Property in the hands of the Committee or the prescribed person not to be assets at the place where the Committee or the prescribed person is stationed.-Any property coming under section 168 into the hands of the Committee or the prescribed person shall not, by reason of so coming, be deemed to be assets or effects at the place in which that Committee or the prescribed person is stationed and it shall not be necessary by reason thereof that representation be taken out in respect of that property for that place.

NOTE

This section is intended to make the Committee of Adjustment a sort of representative of the deceased officer, without their actually taking out representation to enable them to deal with the estate in the manner specified in the preceding sections.

173. Saving of rights of representative.-After the Committee has deposited with the prescribed person the surplus of the property of any deceased officer under sub-section (6) of section 168, any representative of the deceased shall, as regards any property of the deceased not collected by the Committee and not forming part of the aforesaid surplus, have the same rights and duties as if section 168 had not been enacted.

NOTE

A Committee of Adjustment is not, of course, expected to collect all the assets of a deceased officer. Any assets not collected by them may be collected by any representative of the deceased.

174. application of sections 68 to 173 to lunatics, etc.- The provisions of sections 168 to 173 shall;- so far as they can be made applicable, apply in the case of an officer who notwithstanding anything contained in the Lunacy Act, 1912 I).V of 1912), is ascertained in the prescribed manner to be insane, or, who being on active service, is officially reported missing as if he had died on the day on which his insanity is so ascertained or, as the Case may be, on the day on which he is officially reported missing:

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

NOTE

Officially reported missing -*See* note to section 166. *See* also rules 274 and 275.

175. Appointment of Standing Committee of Adjustment when officers die or desert while on active service-When an officer dies or deserts while on active service, the references in the foregoing provisions of this Chapter to the Committee shall be Construed as references to the Standing Committee of Adjustment if any appointed in this behalf in the manner prescribed.

NOTE

It is very difficult, if not impossible, to appoint a fresh Committee of Adjustment for dealing with the estate of each officer who dies on active service. It would,- therefore, be convenient to utilise the provisions of this section and to appoint a Standing-Committee of Adjustment at the base of operations to deal with estates of all officers who die or desert,

176. Interpretations.-For the purposes of this Chapter:

(1) a person shall be deemed to be a deserter if he without authority has been absent from duty for a period of thirty days and has not subsequently surrendered or been apprehended ;

(2) the expression "service and other debts in ship or naval establishment" includes money due as naval debts, namely sums due in respect of, or any advance in respect of (a) quarters; (b) mess band and other service accounts; and (c) naval clothing appointments and equipments not exceeding a sum equal to three months' Pay of the deceased and having become due within eighteen months before his death;

(3) "Representation" includes probate and letters of administration with or without the will annexed. and a succession certificate, constituting a person the executor or administrator of the estate of a deceased person or authorizes him to receive or realize the assets of deceased person;

(4) "representative" means any person who has taken out representation.

NOTE

Clause (1).-Mere absence without leave for a period of thirty days is enough to constitute a man a deserter for the purposes of Chapter XV, *i.e.*, for all purposes-connected with the effect of a deserter in the ship or naval establishment. Note that the estate of a deserter outside the ship or naval establishment" cannot be collected or otherwise dealt with under this Chapter.

CHAPTER XVI

RULES

177. Power to make rules.-(I) The Government" may make rules for the purpose of carrying into effect the provisions of this Ordinance.

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

(a) the retirement, release discharge, removal or dismissal from the service of person subject to this Ordinance:

(b) the procedure to be observed during investigation, arrest, custody and summary trial and powers of punishment of commanding officers and other authorities at such trials and delegation of such powers;

(c) the assembly and procedure of boards of inquiry, the recording of summaries of evidence and the administration of oaths and affirmation at such proceeding,

(d) the convening and constitution *of* court-martial' ;

(e) the adjournment, dissolution and sittings of court-martial;

(f) the procedure to be observed in' trial by court-martial; and the appearing *of* legal practitioners thereat;

(g) the confirmation, revision and annulment of, and petitions against, the findings and sentences of court-martial;

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

(i) the forms of orders to be made under the provisions of this Ordinance relating to court-martial, and sentences of death, imprisonment or detention;

(j) the constitution of authorities to decide *for* what person to what amounts and in what manner provision should be made for dependents of prisoners of war or missing persons under section 88 and the due carrying out of such decisions;

(k) the relative rank of and powers of command to be exercised by officers, junior commissioned officers, warrant officers, petty officers and non-commissioned officers of the Bangladesh Army, the Bangladesh Navy and the Bangladesh Air Force, when acting together;

(l) deductions on account of public and service debts from the pay and allowances of persons subject to this Ordinance; and

(m) any other matter directed by this Ordinance to be prescribed

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

NOTES

1. The "Rules" made under this section together with notes are included in Part m of this Manual.

2. Subsection (2), clause (m).- See section 4 (xxviii).

3. Sub section (3).-The rules were published in the Gazette of Bangladesh Extraordinary, dated 28th December, 1961 and are called the Bangladesh Navy Rules. They "have effect if as enacted in this Ordinance" and have been brought into force together with the Ordinance w.e.f. 1st March 1962.

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

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

(a) the rank, precedence, powers of command and authority of officers and sailors ;

(b) the terms and conditions *of* service, the pay, pensions, allowances and other benefits of officers and sailors;

(c) the ceremonials to be observed and the marks of respect to be paid in the service; and

(d) any other matter which is directed by this Ordinance or the rules, to be specified by regulations.

NOTES

1. The- Navy Regulations, 1961, have been issued in two parts, Part I under the authority of the Government and Part II under the authority of the C.N.S. and brought into force from 27th October 1961.

2. This section has however become effective from 1st March, 1962, on the Ordinance and the Rules being brought into force. These Regulations shall-by virtue of Section 24 of the General Clauses Act, 1897-be deemed as from that date *to* have been made under the provisions of this section. However, such of the provisions of these Regulations as are inconsistent with the provisions of the Ordinance and the Rules shall thereafter be deemed to have been superseded.

179. Repeals.- (1) The Acts and Ordinances mentioned in the Schedule are repealed.

THE SCHEDULE

(See Section 179)

- | | |
|--------------------------------------------------------------|---------------|
| (1) The Pakistan Navy (Discipline) Act, 1934. | XXXIV of 1934 |
| (2) The Pakistan Naval Reserve Forces (Discipline) Act, 1939 | |
| (3) The Naval Discipline Ordinance, 1945 | VII of 1945 |
| (4) The Pakistan Navy (Court-martial) Ordinance, 1949 | XXI of 1949 |

GOVERNMENT OF BANGLADFSH

MINISTRY OF DEFENCE

NOTIFICATION

Karachi, the 28th December, 1961

S. R. O. 1225(K)/61. - In exercise of the powers conferred by section 21 and section 177 of the Navy Ordinance, 1961 (XXXV of 1961), the Government is pleased to make the following rules, namely:-

THE NAVY RULES, 1961

CHAPTER I

PRELIMINARY

1. Short title.-These rules may be called the Navy Rules 1961.

NOTE

1. These Rules have been brought into *force* with effect from 1st March, 1962 (see note 2 to section 1).

2. Definitions. - In these rules, unless a contrary intention appears from the context,-

(a) "Administrative Authority" means a senior officer who is designated as such and is in command of a group of ships or naval establishments and installations and authorised to exercise administrative control over such ships and establishments;

(b) "Drafting Authority" means the authority responsible for the maintenance of the sailor's service records, for their advancement, draft, leave, re-engagement, release on completion of engagement and such other matters as may be specified in this behalf by the Chief of Naval Staff ;

(c) "Ordinance" means the Navy Ordinance, 1961 (XXXV of 1961);

(d) "President" when used in relation to a court-martial means the president of the court-martial;

(e) "Proper naval authority" when used in relation to any power, duty, act or matter, means such naval authority as, in pursuance of the regulations *for* the navy or the custom of the service, exercises or performs that power or duty concerned with that act or matter;

(f) "Section" means a section of the Ordinance.

3. Reports and appendices. -Any report, or application directed by these rules to be made to a superior, authority or proper naval authority, shall be made in writing through the proper channel, unless the authority, on account of the exigencies of the service or otherwise dispenses with the writing.

4. Forms in Appendices.-(I) The *forms set forth* in the Appendices to these rules, with such variations as the circumstances of each case require shall, as *far* as possible, be used *for* the respective purposes therein mentioned, but a deviation from such forms will not, by reason only of such deviation, render any charge, warrant, order, proceedings or other document invalid.

(2) Nor failure to use any such form shall render any act or thing invalid.

(3) The notes to, and instructions in, the forms shall, as far as possible, be followed in and in relation to all cases to which such notes and instructions apply, but shall not have the force of rules.

NOTE

Sub-rule (1). - As *for* example, a deviation from an enrolment form (Appendix VIII) will not render the enrolment invalid. Indeed any minor deviation may properly be made under this sub-rule to suit a special case, without a formal amendment of the enrolment form by a notification in the Official Gazette in accordance with section 177 of the Ordinance

5. Regarding matters not provided for. - All matters not provided for by the Ordinance, these rules and the regulations shall be regulated and determined according *to* the established practice and custom *of* the Bangladesh Navy, in so far as such practice *or* custom is not inconsistent with the provisions *of* the Ordinance, these rules and regulations, and in the absence *of* such practice or custom by the general principles of equity and justice.

CHAPTER II

ATTESTATION

6. Attestation.-(1) Every person enrolled under the Ordinance shall on successful completion of the probationary period be attested as required by section 14.

Explanation. -A boy *or* artificer apprentice shall be on probation until he has attained the man's rank as well as successfully completed the basic training of his branch as specified in the regulations. A direct entry man shall be on probation for the first year of his service.

(2) Every person, who has been enrolled prior to the commencement of the Ordinance and has not yet completed the probationary period, shall also be attested.

(3) A Sailor on the Fleet Reserve list, shall also be attested when called up for training, exercise *or* into actual service, provided he has not already been attested.

(3A) Every person who was attested prior *to* the twenty seventh day *of* July, 1962, in pursuance of sub-rule (1), (2) *or* (3) shall be attested for a second time.

(4) In no case shall attestation be delayed for more than three months after it has become due.

NOTE

Sub-rule (3A) was inserted by Gazette Notification, S.R.O. 787 (K)162, dated the 27th July, 1962, *see* Part V of the Manual.

7. Oath or affirmation to be taken on attestation.-(I) The oath or affirmation to be taken on attestation shall be in one or the forms given in the First Appendix to these rules, or in such other form *to* the same purport as the attesting officer ascertains *to* be in accordance with the religion of the person to be attested *or* otherwise binding on his conscience.

(2) The oath *or* affirmation prescribed in sub-rule (1) shall be administered by the commanding officer *of* the person to be attested *or* any other officer authorized by him in this behalf.

(3) Every Sailor *to* whom the oath *or* 'affirmation is administered as aforesaid shall also sign the oath *or* affirmation in confirmation *of* the same having been administered to him, and such

confirmation shall be authenticated by the signature *of* the officer administering the oath *or* affirmation and that document shall be maintained by the Drafting Authority in the sailors service record.

NOTES

1. For manner of administering and taking the oath *or* affirmation . see notes to rule 139.
2. Form of oath or affirmation and certificate of attestation as given in the First Appendix to the rules-are reproduced- below:

B. CERTIFICATE OF THE ATTESTING OFFICER

This is to certify that the above mentioned Sailor was administered* oath*/affirmation by me in token whereof the above declaration has been signed by him in my presence - on the day of19, B.N.S..... Signature and Rank of

the Attesting Officer.

(*Delete whichever is not applicable.)

8 Period and conditions of engagement and re-engagement.-(I) The initial period of engagement on enrolment shall not exceed twelve years in the case of a boy or direct entry man and eighteen years in the case of an artificer, apprentice, to be reckoned from the day the boy, direct entry man or artificer, apprentice attains the age of seventeen years or completes the probationary period whichever be later, and on completions of the said period the sailor shall be released, unless he is compulsorily retained in the service in accordance with section 18, or voluntarily offers himself for re-engagement.

(2) The terms and conditions for engagement, and re-engagement, the periods of re-engagement in the various branches of the navy and the terms and conditions and the period of service in the Fleet Reserve shall be as specified in the regulations.

NOTE

No person can be enrolled as a sailor for a initial period of engagement exceeding the period prescribed by this rule, *see* section 12 (2).

CHAPTER III

TERMINATION OF SERVICE - OFFICERS

9. Dismissal from the service. - (I) An officer may be dismissed from the service either by a sentence of a court-martial, or by administrative action without assigning any reason, with the prior approval of the President.

(2) An officer, dismissed from the service, may be granted pension as an *ex-gratia* award at the discretion of the President.

NOTES

1. The approval of the President for the dismissal of an officer by administrative action alone is necessary. No such approval is required in case of a sentence of dismissal awarded by court-martial.

2. Pension as an *ex-gratia* award may be granted at the discretion of the President whether the dismissal was by administrative action or by sentence of court-martial.

3. *See* - also notes to sections 15 and 17.

10. Removal from the service. - (1) An officer who, in the opinion of the Government, has by reason of misconduct become unworthy of holding a commission in the navy, shall be liable to removed from the service.

(2) The Government may instead of removing an officer under sub rule (I), call upon him to, resign his commission, and if he fails to resign within the time specified by the Government he may be removed from the service.

(3) The Government may grant an officer, whose services have been terminated under sub-rule (1) or sub-rule (2) a pension or gratuity, not exceeding two-thirds of his earned entitlement, as an *ex-gratia* award.

NOTES

1. Misconduct. - It is not easy to lay down any hard and fast rule as to when does an officer become "unworthy of holding a commission in the navy" by reason of misconduct. Each case must be judged on its merits and the surrounding circumstances. When an officer has committed an act or omission which amounts to an "offence" under the Ordinance, he may be dismissed or removed from the service by administrative action but normally however, he would be tried, either by court-martial or summarily, according to the nature of the offence and other circumstances of the case.

2. As to the procedure which should be observed before ordering an officer's dismissal, removal or compulsory retirement, *See* N.R 0807

11. Compulsory or voluntary resignation. - (I) (a) An officer shall be liable to be Compelled to resign his commission if he is, in the opinion of the Government, unfit for further retention in the service, by reason of his incapacity, inefficiency, unsatisfactory performance or neglect of duty or for similar other causes, but in coming to any such opinion the Government shall have due regard to factors, if any, beyond the officer's control.

Explanation.--No consequences resulting from drunkenness or carelessness on the part of an officer shall be considered to be factors beyond his control for purposes of the rules.

(b) The Government may, before compelling any such officer as aforesaid to resign his commission, afford him an opportunity to retire from the service voluntarily

(c) In forwarding such an application the commanding officer shall report as to whether or not the application has been submitted in anticipation of any action against the officer for misconduct, inefficiency, incapacity, unsatisfactory performance or neglect of duty or for similar other causes or by reason of any circumstances affecting the officer's honour or character as a gentleman, and if the commanding officer is convinced that it has been submitted in such anticipation or in such circumstances he shall state in his report all the facts and particulars of the case and shall, obtain the officer's signature to the report in token of his having seen it. The commanding officer shall also state in his report as to whether or not there are any local or other outstanding claims against the officer and whether there is any objection to the officer being permitted to resign.

(d) An officer who is permitted to resign his commission voluntarily may be granted such pension or gratuity as is provided for in sub-rule (3) of rule 10.

12. General provisions regarding retirement- Retirement *of* officers will always be subject to the exigencies *of* service. Full power is reserved *to* the government temporarily *to* suspend or *to* limit retirement in general or in individual cases whenever it may be necessary to do *so* in the public interest. Officers *of* the rank *of* Captain and above will not be permitted to retire voluntarily unless deemed expedient *by* the Government

12A. Age/Service limits for retirement of officers of Navy:-

(1) Subject to the provision of rule 12, an officer shall, unless he exercises option under rule 12B(1) on completion *of* the service limit specified in the Table below, retire from service on completion *of* the age limit specified in that Table:-

TABLE

(a) Officers of General Branch

Rank	Service Limit	Age Limit		
Lt. Commander and below (other than SD List)	23 years	48 years		
Lt. Commander and below (SD List)	23 years	50 years. "In special case, Government may extend another: 02 (two) years i.e. upto 52 years with the recommendation of the Chief of the Naval Staff:		
Commander	25 years	50 years		I
Captain	26 years	53 years		I
Commodore:	28 years	55 years		
Rear Admiral	30 years	57 years		
Vice Admiral	32 years	58 years		
Admiral	35 years	60 years		I

(b) . Officers of Education and Judge Advocate General's Branch

Rank	Service Limit	Age Limit
Lt Commander and below	25 Years	52 Years
Commander	27 Years	54 Years
Captain	28 Years	55 Years

(2) The tenure in the appointments of the Chief of the Naval Staff will continue to be governed by SRO No. 235-L/81/2C-S-I/81/D-1, dated 8th July 1981, SRO No. 391-L/82/2C-S-I/81/D-1, dated 24th November 1982 SRO No. 491-L/84 dated 12th November 1984 of the Ministry of Defence.

12B. Voluntary Retirement :- (1) An officer intending to retire from service on completion of the service limit specified in rule 12A may exercise his option to do so by serving a notice of his intention in writing to the Government at least six months prior to the date of such completion. The option once exercised shall be irrevocable subject to acceptance thereof by the Government.

(2) The Chief of the Naval Staff may, if he is satisfied that an officer who has completed his service limit specified in rule 12A(1) but not opted for retirement should be retired from service in the public interest, recommend to the Government for considering the cases of such officer for retirement.

(Ref: Bangladesh Gazette Extra Ordinary Notification No. SRO. 87-L/88 dated 23 April 1988).

NOTE

Retired List, *see* N.R. 0840

13. Discharge from the service :- (1) A short service commissioned officer may be discharged from the service on the same grounds and in the same manner as a permanent commissioned officer may be removed or compelled to resign as provided for in rule 10 and sub-rule (1) of rule II. A short service commissioned officer may also be discharged from the service, if his services, in the opinion of the Government, are no longer required. In such cases his short service commission shall be terminated and he shall be entitled to gratuity or pension as admissible under the regulations.

(2) Whilst under training and until confirmed in the rank of SubLieutenant, a subordinate officer shall be liable to be discharged from the service at any time at the discretion of the Chief of Naval Staff, if :

- (a) he fails to reach a satisfactory standard. Or
- (b) his conduct is unsatisfactory, or
- (c) he is considered unsuitable for the service.

14. Compulsory and Voluntary release : - (1) A short service commissioned officer shall, unless exigencies of service otherwise require, be released on the expiry of the term of his commission.

(2) (a) An officer including a short service commissioned officer who is, in the opinion of the Government, unsuitable for further retention in the service by reason of infirmity of body or mind not being in infirmity sufficient to warrant invaliding or for any other cause not amounting to misconduct, and not being a cause within the control of such officer, shall be given three months notice for termination of the service, and shall be placed on the Retired List

(b) An officer retired from the service as, aforesaid, shall be granted a compensation pension.

(3) (a) All officer including a short service commissioned officer who intends to retire from the Active List Voluntarily, must submit his application through his commanding Officer and the procedure laid down in sub rule (2) of rule II shall be followed.

(b) An Officer permitted by the Government to retire voluntarily shall be placed on the Retired List and shall be granted such pension or gratuity as may be admissible under the regulations.

(4) On release, a short service commissioned Officer shall be placed on the Emergency List.

(5) Right of Government to Retire any Officer: - Notwithstanding any other provisions of these Rules, the Government may retire any officer at any time without assigning any reason whatsoever.

(6) Overriding Effect of this Rule: - All other rules on the subject to which this rule relates shall to the extent of their repugnancy to this rule, be deemed to have been superseded.

Note:- For the purposes of these rule.. "Service" means commissioned service including service as a Branch Officer and Service forfeited as a result of sentence of a court-martial.

(Ref: BD Gazette Extra Ordinary Notification No. SR0-87-LAWI88 dated 23 April 1988).

NOTE

Emergency List see N R 0842

15. Procedure. - Prior to the termination of the service of an officer under any of the provision of the Chapter, the procedure as specified in the regulations shall be observed.

16. Invaliding out of service. - An officer, who by bodily or mental infirmity is incapacitated for the service or for the particular branch of the service to which he belongs, shall be invalided out of the service and granted such invalid pension as may be admissible under the regulations.

17. Effective date of termination of service.-The Government, when authorizing termination of service of an officer may specify any future date from which it shall take effect:

Provided that when no such date is specified, the termination of service shall take effect from the date on which it is duly authorized, or from the date on which the officer concerned ceases to perform naval duty, whichever is later.

18 Liability of recall to service.- (1) A permanent or short service commissioned officer shall, notwithstanding is being retired or released from the Active List and placed on the Retired List or the Emergency List respectively, be liable, on being recalled by a general or special Order of the Government at a time of imminent national danger of grave emergency, to serve on the Active List until the completion of the following age limits:

<i>Substantive rank on retirement or release</i>	<i>Age limit</i>
--------------------------------------------------	------------------

(a) Captain and above	... 60 years.
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(b) Commander and below...	... 55 years,
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(2) The services of an officer recalled under sub-rule (1) may be retained during the continuance of the danger emergency, although he may pass the age limit for recall during his employment on Active List.

(3) If an officer recalled under sub-rule (1) by the competent naval authority fails to report for duty at the time and place notified to him, he shall be liable to have his pension or any portion of it suspended or withheld under the orders of the Government, if his reasons for not reporting are not deemed to be satisfactory by the Government.

(4) An officer so recalled shall be employed in the substantive rank and branch in which he was serving at the time of his retirement or release, and shall be governed by the same terms and conditions of service as are applicable to officers on the Active List subject to such modifications: as may be specified in the regulations.

NOTES

1. sub-rule (3)-An officer who is recalled for duty under sub-rule (1) becomes subject to the Ordinance under section 2 (1) (b).

2. As to *Retired List, Emergency List* and the liabilities of officers Placed on *such Lists* see *N. R. 0840 to 0842*.

19. Removal from the Retired List or the Emergency List. - A Permanent. or a short service commissioned officer shall be liable to be removed from the Retired List or, as the case may be, the Emergency List by order of the Government for Disconduct, and on such removal the Government may suspend or with-hold the whole or any part of the pension of such officer

20. service with foreign powers. - An officer whose services have terminated under any of the provisions of this Chapter, shall not serve in the armed forces of foreign power without the prior consent in writing of the Government.

CHAPTER IV

TERMINATION OF SERVICE AND REVERSION - SAILORS

21. Certificate on termination of service. - A certificate furnished in accordance with the provisions of section 20, hereinafter

called a "Termination of Service Certificate" may be so furnished either by personal delivery thereof by or on behalf of the Drafting Authority to the person dismissed, discharged or released, or by its transmission by registered post to such person.

NOTE

See section 20 and note thereto. The Drafting Authority is the officer prescribed under rule 279 for the purpose of furnishing the required Certificate under section 20.

22. Effective date of termination of service. - The authority competent to authorize termination of service of a Sailor may when authorizing it, specify any future date from which it shall take effect:

Provided that if no such date is specified, the termination shall take effect from the date on which it is duly authorized, or from the date on which the sailor concerned ceases to do naval duty, whichever is later.

1. Authority competent to authorise, See role 23 to 26.

2. In the case of a sailor serving in Bangladesh it will generally be convenient for the authority, authorising termination of service, not to specify any date but to leave the commanding officer free to relieve the person of naval duty on the most convenient date. There may be cases, however, where it is found to be convenient for that authority to specify a date.

3. If the competent authority desires to specify a date, he must specify it at the time he authorises the termination of service. There is no legal objection to the future date being made indefinite in suitable cases e.g., in the case of a man serving overseas, the-date of disembarkation" in Bangladesh but whenever possible a precise date should be specified. However the competent authority cannot make the dismissal or discharge retrospective.

4. If the dismissal or discharge of a person is found to be illegal, e.g., if it was not authorised by competent authority, that person will be entitled to pay from the date of his illegal dismissal etc., to the date of legal dismissal etc. *although he performed no naval duty* from that date.

5. When a person has been legally dismissed, removed, discharged, released or retired in the prescribed manner, he ceases to be subject to the ordinance and the rules, and his dismissal etc., cannot subsequently be cancelled, except with the consent of the person concerned. However such a person may be arrested and kept in naval custody for any offence committed by him while subject to the Ordinance, provided his trial commencing within six months of his ceasing to be so subject. *See section 106.*

23. Dismissal from the service.-A Sailor may be dismissed from the service by a sentence of a court-martial, or summarily by his commanding officer, but in the latter case prior approval in writing of the Chief of the naval Staff shall be necessary.

NOTE

A Sailor may also be dismissed by administrative action under the orders of the Government or the Chief of naval Staff; *See section 17(3),*

24. Discharge from the service; - (1) The discharge of a sailor from the service may be of the following kinds, namely:-

(a) as undesirable;

- (b) as S.N.L.R ;
- (c) as unsuitable;
- (d) on compassionate grounds; and
- (e) on expiry of engagement.

(2) *Discharge "Undesirable".* - A Sailor whose further retention in the service is, on account of repeated misconduct or indiscipline on his part, considered to be detrimental to the service, but who has not recently committed a specific offence for which dismissal may be an appropriate punishment, is liable to be discharged as Undesirable by the Drafting Authority. It is the only type of discharge which is to be regarded as a punishment and is accompanied by forfeiture of all benefits which would normally be admissible under other types of discharge.

(3) *Discharge 'S.N.L.R.'* - A Sailor whose services have to be dispensed with due to any such reason as reduction in sanctioned strength or reorganisation of the branch, may be discharged by the Drafting Authority as "services no longer required" (S.N.L.R.). A Sailor who has been convicted by a criminal court may also be so discharged.

(4) *Discharge 'Unsuitable'.* -

(a) *During probationary period.* - A boy, artificer apprentice or direct entry man, who during the probationary period is considered by his commanding officer as unlikely to make an efficient Sailor due to unsatisfactory progress or conduct, is liable to be discharged as unsuitable by the under mentioned authorities :-

(i) A boy, artificer apprentice or direct entry man, whilst under training in a naval establishment by the commanding officer of that establishment;

(ii) A boy or direct entry man under training afloat by the Drafting Authority. on the recommendation of the commanding officer of the ship in which he is borne for training.

(b) *On completion of probationary period.* - A sailor who, on account of infirmity of body or mind not being an infirmity sufficient to warrant invaliding or by reason of his incompetence, is considered to be incapable of performing the duties of the lowest rank to which he can be reverted in his branch or on transfer to any other branch, is liable to be discharged as unsuitable by the Drafting Authority.

(5) *Discharge on compassionate grounds.* - A boy, artificer apprentice or direct entry man may be granted by the Drafting Authority discharge on compassionate grounds, in cases in

which it is evident that further jretemioIIJ of such boy, artificer apprentice or man in the service will entail material hardship to him or to his dependents,

(6) The Chief of Naval staff may suspend or limit the powers of the authorities mentioned in this rule to grant discharges, and may direct that all or any class of such cases be referred for decision to rumor any other authority specified by him.

.d the authorities empowered to order such discharge.

15.. Discharge on expiry of engageDlent.-(1) The Drafting

Au . is competent to authorize the discharge of a sailor who has

completed his' period of engagement or re-engagement and does not desire to re-engage for further service:

NOTE

This rule prescribes the different kinds of discharge applicable to a sailor and the authorities empowered to order such discharge.

25. Discharge on expiry of engagement.-(1) The Drafting Authority is competent to authorize the discharge of a sailor who has

completed his period of engagement or re-engagement and does not desire to re-engage for further service:

Provided that in case war is imminent or existing, or the strength of the branch of service to which the sailor belongs is 5 per cent below its sanctioned strength or will be so on release of such a Sailor such authority shall report the matter to the Chief of Naval Staff for decision as to whether the sailor is to be Compulsorily retained in the service in accordance with section 18.

(2) sailor shall normally be discharged from the service and place on the fleet Reserve List on completion of the following age or service limits, whichever is reached earlier.

Rank	<i>Age Limit</i>	<i>Service Limit</i>
(a) Master Chief Petty	52 years	32 years

officers		
(b) Chief petty officers	52 years	30 years
(c) Petty officers	50 years	28 years
(d) Leading rank	45 years	23 years
(e) A.B. rank	40 years	18 years

3. The Chief of Naval Staff may sanction an extension of service, if the exigencies of the service warrant it, beyond the age or service limit as stated in sub-rule (2). Such extensions may be granted up to one year at a time subject to the condition that the individual concerned is physically fit for satisfactory discharge of the duties required of him. In no case, such extension will be granted beyond the age of 52 years. (Ref: SRO No. 123 Law/91dt.30 Apr 91).

26. Invaliding out of service. - A Sailor who by bodily or mental infirmity is incapacitated for the service in his branch or in any other branch to which he may be invalided out of the service and granted such invalid pension as may be admissible under the regulations.

27. Reversion in rank.- (1) If after due trial in his rank a Master Chief Petty Officer, Chief Petty Officer, Petty Officer or leading sailor is found to be inefficient or unsuitable for his rank, he may be reverted by his commanding officer to a rank immediately below that held, if no reduction in confirmed rank is involved. If such a sailor has been confirmed in his rank or if it is necessary to reduce him by more than one rank, prior approval of the Chief of Naval Staff shall be obtained.

(2) No sailor is to be reduced to any rank in his own branch or to any lower class in his rank below the limits specified in the regulations nor lower, either actually or relatively, than the rank in which he first joined.

(3) Reversion to a lower rank is never to be used as a means of dealing with an offence. But the character of the offences for which a sailor has been punished may be such as to show that the individual is professionally unsuitable or inefficient for the rank he holds, in which case he may be reverted as stated in this rule.

(4) Reversion is not to be carried out by warrant nor included in the punishment return as it is not awarded as a punishment. The cause for, reversion is however to be noted in the sailor's service certificate

Sub rule (1).- *After due trial in his rank* means the testing of his performance and efficiency in the rank held by him and it does not mean judicial examination either by court martial or summary trial.

28. Re-advancement of men reverted.-(1) Sailors, who have been reverted in accordance with the preceding rule, are eligible for re-advancement in accordance with the provisions of this rule and as specified in the regulations.

(2) A man reverted by more than one step is to be re-advanced by successive steps only through the ranks previously held.

(3) Time served in a higher rank is not to count for any purpose connected with re-advancement, except for the periods of continuous "Very Good" conduct as required by the regulations for re-advancement.

(4) A man, after reversion, will be required to re-qualify as specified in the regulations in the professional subjects in which he was found lacking or in both.

NOTE

As regards re-advancement, see N.R. 0984.

CHAPTER V

SERVICE PRIVILEGES AND CONDITIONS

PART (I)-REPRESENTATIONS AND COMPLAINTS

29, Combinations. –(1) All associations and combinations of officers or men formed for the purpose of bringing about alterations in the existing rules, regulations or customs of the service, whether affecting their interests individually or collectively, are prohibited as being contrary to the traditions and practice of the service and injurious to its welfare and discipline. [See also rule 38 (2)]

(2) Every person is fully authorized individually to make known to his superior any proper grievance or cause for complaint, but individuals are not to combine, either by the appointment of committees or in any other manner, nor are they to sign collectively memorials, petitions or applications, nor to obtain signatures to such documents.

NOTE

See notes to section 23. The procedure for making complaints laid down in this and the subsequent rules must be strictly adhered to.

30. Representations affecting welfare and conditions of service. Master Chief Petty Officer, Senior Chief Petty Officer, Chief Petty Officer, Petty Officer, or man who wishes to make any representation affecting his welfare, or who has any suggestion to make connected with the service, should bring the subject to the notice of his divisional officer through his divisional petty officer.

(2) Whether the matter affects one individual or more than one individual, the procedure laid down in sub-rule (1) is invariably to be followed, that is to say, each person must make his own representation. The instructions in rule 29 are to be carefully observed.

(3) If the representation is one with which the divisional officer cannot himself deal, he shall bring it to notice of the executive officer (through the departmental officer, where applicable,) and subsequently, if necessary, through him to commanding officer and so to higher authority as circumstances may require,

(4) It is the duty of every Master chief Petty officer, Senior chief Petty officer, chief petty officer, petty officer or leading sailor to keep himself informed of any grievance or cause for complaint or dissatisfaction among the men, and to inform his divisional officers so that matter may be investigated. A copy of this clause is to be kept permanently pasted on a notice board in all the messes of the master chief petty officers, chief petty officers and petty officers.

(5) The instructions in this rule do not alter

(a) The procedure by which men may bring requests before Inspecting Officers at inspections in accordance with the custom of the service;

(b) the custom by which any sailor is allowed to request through his divisional officer, to see the commanding

officer with regard to matters of a private nature; or

(c) the custom by which complaints of an immediate nature

may be taken before the officer of the watch or the officer

of the day.

31. Complaints of personal oppression, injustice and ill-treatment. - (1) Every person subject to the Ordinance who, is desirous of seeking redress for any grievance may proceed in the manner set out in the following rules of this Chapter.

(2) No officer, Master chief petty officer, Senior chief petty officer, Chief Petty Officer, Petty officer or man shall be penalised for having made a complaint in accordance with these rules.

(3) A gist of these rules, so far as it affects Master chief petty officer, Senior Chief Petty Officer, chief petty officers, petty officers and men shall be kept permanently displayed in an accessible part of the ship for the information of the ship's company, to whom it is to be read out quarterly.

NOTE

The administrative Authority during its inspection (N.R. 5020) is to ensure that provisions of sub-rule (3) have been complied with.

32. To whom the complaint is to be made.- (I) If the complainant is the commanding officer of a ship or naval establishment, his complaint shall be in writing and addressed to his immediate superior.

(2) If the complainant is an officer serving under the commanding officer of a ship or naval establishment his complaint shall be made orally to the commanding officer in accordance with the service custom whereby a complainant makes an oral request to see the commanding officer for this purpose. Such requests shall be made through the executive officer and, if the complainant is not the head of a department the request shall be made in the first place to the head of his department.

(3) If the complainant is an officer whose case is not covered by sub-rules (1) and (2), his complaint shall be made to his Immediate superior, either orally or in writing as may be practicable.

(4) If the complainant is a Master Chief Petty Officer, Senior Chief Petty Officer, A Chief Petty Officer, Petty Officer or man, his complaint shall be made orally to the commanding officer. A request to see the commanding officer shall be made to the executive officer through the complainant's divisional officer and head of the department. A sailor detached from his ship or establishment shall make his complaint to the officer under whose immediate command he may be at the time.

33. Assistance to the complainant. – If the complainant is an officer of junior rank a master chief petty officer, Senior Chief petty officer, Chief Petty officer, petty officer or man, he may request for an officer in his ship to advise and assist him in the statement of his case at all stages. If no such request is made, it shall be the duty of the divisional officer or such other officer, as the commanding officer may detail, to give him assistance. The officer shall point out to the complainant the provisions of rule 34.

34. Substance of complaints. - The complaints shall bear in mind that-

(a) complaints are to be confined to a statement of the facts complained of and to the alleged consequences to the complainant himself:

(b) joint complaint, by two or more persons are not allowed each individual is to make his own complaint;

(c) it is an offence against good order and naval discipline to make a complaint, either oral or written, which includes a statement of fact which is untrue to the knowledge of the complainant:

(d) it is an offence against good order and naval discipline to make a complaint in terms which comprise language or comments that are disrespectful or insubordinate, or

subversive of discipline except in so far as such language or comments are necessary for an adequate statement of the facts.

35. How the complaint is to be dealt with. - (1) On receipt of any complaint the commanding officer or other officer receiving the same shall satisfy himself that the complaint is made in accordance with these rules; He shall then deal with it in the exercise of his discretion in such manner as may seem to him right, and cause the complainant to be informed of his decision.

(2) If the commanding officer refuses or is unable to remedy the complaint so made, the complainant, may respectfully ask that he may be allowed to make his complaint in writing and on receiving the request, the commanding officer shall give the complainant 24 hours to reconsider the matter. The complainant while still having the assistance of the officer referred to in rule 33 may then address his complaint in writing to the commanding officer, who shall then forward the complaint to his next superior officer, together with his own remarks thereon, to be dealt with in accordance with the preceding sub-rule.

36. If the complainant is not satisfied - If the complainant is

not satisfied with the decision on his complaint, he may request that it be forwarded to the next superior authority and so on to the Chief of Naval Staff and finally to the Government to be dealt with in accordance with rule 35, and all such requests shall be complied with. The complainant is only justified in appealing direct to a superior authority when the authority to whom such a request is made has neglected or refused to forward the complaint;

37. Complaints against punishments. -Any man who wishes to make a complaint against a punishment should do so as early as practicable whilst it is still possible to ascertain the facts, and explore fully the grounds of his complaint. Complaints should not be delayed until completion of the punishment.

PART (2) - MEMBERSHIP OF POLITICAL ORGANISATIONS AND COMMUNICATION TO THE PRESS

38. Trade or labour unions.- (I) No officer or sailor shall be a member of or be associated in any trade union or any class of trade or, labour unions except as. provided in sub-rule (2).

(2). Ex-merchant service personnel, engaging to serve in the navy may continue to remain members of their respective trade unions for the purpose of furthering their interests in the merchant service. They may not, however, in pursuance of these purpose do anything calculated to embarrass the navy not are they permitted to utilize their membership for the purpose of bringing about alternation in the existing rules regulation or customs or conditions of 'service in the navy. No combination can be permitted in the navy for such purposes

NOTE

See section 21 and note thereto.

39. Assistance to organizations – Officers and sailor are not permitted, without the express sanction of the Government, to assist officially or take official cognizance that is not recognized part of the navy, or any other force administered by the Government.

40. Political meetings and candidature.-(I) No officer or Sailor is allowed to join a political party or to speak or appear on the platform at, or take any active part in any meeting or demonstration held for party or political purposes, or to act as a member of a candidate's election committee, or in any way actively to prosecute a candidate's interest, or to distribute or disseminate any electioneering literature, or belong to or subscribe in aid of any political association or movement, until his services have duly terminated. Leave preparatory to retirement is not termination of service for the purpose of this rule.

(2) No officer or Sailor is permitted to issue an address to electors or in any other manner to publicly announce himself or allow himself to be publicly announced as a candidate or prospective candidate, for election to a legislative body or political constituency until his services have been duly terminated.

(3) An officer or Sailor who desires to stand as a candidate for any political constituency, shall make an application through the usual channels, to retire or resign or to be discharged. The approval will depend on the exigencies of the service. If approval is accorded, the officer or Sailor shall be treated as retiring or resigning voluntarily or being discharged, and will have no right to be reinstated in service on failure to secure election.

(4) No election agent or any representative; whether paid or unpaid, or any candidate or prospective candidate for election to any municipality or other public body shall be allowed on board any naval ship or establishment for the purposes of holding a meeting or debate, or delivering an election address or canvassing or distributing election literature.

41. Communication to the press etc. - No officer or sailor shall publish in any form whatever, or communicate directly or indirectly to the press, or to any broadcasting organisation, any information or his views on any subject, or publish or cause to be published any book or letter or article, whether purporting to be fiction or fact, or produce or present plays speeches, lectures gramophone records, film or broadcasts, without prior permission of the Chief of Naval Staff or any other officer specified by him in this behalf.

CHAPTER VI

DISCIPLINE

PART (1) - ARREST

42. Arrest. - (I) No person either on board a ship or in naval establishment shall be authorized to arrest any other person subject to the Ordinance, except in accordance with section 89.

(2) When an officer or man is placed under arrest, the commanding officer shall take due care that no more restraint is put upon his personal liberty than the discipline of the service requires and

the nature of offence may render expedient. Arrest is not a punishment but merely a means of ensuring the safe custody of an offender until he can be dealt with adequately according to law.

(3) All altercations with excited or drunken men are to be avoided and no man under the influence of temper or drink is to be placed in a situation likely to excite him further, and thereby lead him to acts of violence or insubordination.

43. Arrest of officers. - (I) An officer who disobeys an order or otherwise misbehaves may be placed under arrest. When this happens, the commanding officer is to report the circumstances to his superior authority as soon as possible. If the charge is later withdrawn, the officer is to return to his duty without prejudice to the investigation of any complaint he may make.

(2) If the commanding officer, or other superior officer, decides that service requirements make it necessary to release the officer from arrest without withdrawing the charge against him, the officer is to return to his duty without prejudice to any subsequent inquiry or to any future disciplinary action;

44. Eight-day reports. - (I) Whenever a person remains under close arrest for more than eight days without being tried summarily or without a court-martial for his trial being ordered to assemble, a special report on the reasons for further delay shall be made by the commanding officer to the convening authority, a copy being sent to the Naval Headquarters (Naval Law Branch). Both report and copy are to be forwarded by the quickest method which is reasonably available. On receipt of the report the convening authority is to satisfy himself of the necessity for continued retention of the accused under close arrest.

(2) A similar report (with copy to the Naval Headquarters) is to be rendered in a similar manner on every eighth day until the man is brought to trial or released.

(3) After receiving copies of three such reports in a particular case, the Naval Headquarters will take such action as may be appropriate to expedite the trial or to effect the release of the accused from arrest.

(4) Where by reason of a ship being at sea or for other good cause, it is impracticable to submit an eight-day report to a convening authority without undue delay, it is to be submitted to the senior officer present, who is to take the action mentioned in sub-rule (I). In such cases copies of all eight-day reports submitted superior authority shall be furnished to the appropriate convening authority as soon as contact, can reasonably be re-established.

(5) No accused person shall be kept Under close arrest for more than 90 days without a court-martial having been assembled for his trial, and at the expiration of such period he shall be released from arrest and shall not be re-arrested for the same offence except-

(a) on the written order of an officer having power to convene

a court-martial for the trial of the offence; or

(b) on the written order signed by on behalf of the Chief of, Naval Staff; or

(c) on receipt through official channels of information that an order as at (a) or (b) has been signed. Such an order may authorize immediate rearrest of the accused for a further term not exceeding 90 days if the nature of the charge requires retention in close arrest without a break.

NOTES

1. It must be noted that the detention of a person for more than 90 days in close arrest become illegal, unless either a court-martial has actually assembled for his trial, or a written order for his further detention has been signed by the competent authority.

2. Form of Special Report- as given in the Second Appendix to the rules is reproduced below:-

From:-

To:-

Date:-

Reference:-

Special report under Section 90 (3) of the Navy Ordinance 1961

1. leftleft,...(No., rank, name, branch, ship/establishment of the accused).....
was taken in naval custody on.....

.....and has been placed in open (close) arrest.

The charge (s) against him is (are) as follows:-

(Give the statement of the offence and the particulars of the act, neglect or omission constituting the offence.)

2. The reasons justifying the detention of the accused in custody and preventing the investigation are as follows:

.....

.....

Commanding Officer

45. Naval Custody.- (1) The commanding officer is responsible for the safe keeping of every person offender, or prisoner who is placed in naval custody in the ship or establishment;

(2) Such custody may be open or close, according to the circumstances of each case and at the discretion of the commanding officer, it being clearly understood that open custody involves only such restraint as may be necessary for safe-keeping, whereas close custody involves deprivation of all liberty and , requires continuous supervision;

(3) No gags shall be used and men who are noisy or violent may be confined to a cell for such time as may be necessary.

(4) Handcuffs shall be used as seldom as possible and only for ensuring safe custody and every effort shall be made to reduce to a minimum the period during which handcuffed offenders are borne in public view.

PART (2)-INVESTIGATION OF OFFENCES

46. Investigation of Offences. - (1) The preliminary investigation of offences by the officer of the watch or officer of the day is to take place as soon as possible after the commission of the offence while witnesses memories are still fresh. The formal investigation of offences is, when the service and circumstances admit, to be deferred until the day following that of the commission of the offence. Hasty charges are invariably to be discouraged but no avoidable delay should take place in the investigation of a charge or in signing and reading the punishment warrant. Investigation and punishment for mutiny, however, may take place at any time when immediate example is necessary.

(2) All charges shall be investigated as fully as possible on the quarterdeck or other suitable place, in the presence of the complainant and the accused, both of whom and their witnesses shall be heard as fully and impartially as possible. When, a master chief petty officer, chief petty officer or sailor is brought before an officer as an offender or offender he shall take off his cap.

(3) The accused, his divisional officer or other friend (*see* rule 47), the complainant (if he is not a witness) and the master-at-arms (or the person performing his duties) are to be present throughout the investigation. The witnesses shall be kept apart and out of earshot so that they cannot hear what other witnesses say in the course of evidence; they shall, if possible, be kept apart from the witnesses who have not yet given their evidence; and they shall be prevented from discussing any evidence already given. When the complainant is a witness, he shall normally be treated as such.

(4) When the executive officer is a material witness he is not to present the case to the higher authority and this duty shall be performed by another officer. In minor or simple cases, there is no objection to the officer of the watch, although a witness, presenting his case to the higher authority, but this shall be avoided in serious or complicated cases. When the officer of the watch is a witness as well the complainant, his evidence shall be taken and completed before that of other witnesses. If the master-at-arms (or the person who normally performs his duties) is a witness, he shall be treated as such and another person shall, be detailed to perform the functions of the master-at-arms at the investigation.

(5) The investigating officer shall in every case consider whether or not the case is sufficiently serious to warrant the recording of the statements of witnesses and whether or not it is desirable to record it as a precaution against any witness changing his statement.

NOTE

Sub-rule (S).-A written record of the evidence is more satisfactory not only from the point of view of the accused who is thus in a position to know exactly what has been alleged against him, but it is also more satisfactory from the point of view of the higher authorities who can thus ensure that there has been no miscarriage of justice as a result of a hasty or any arbitrary award of punishment. *See* also rule 50(3).

47. Assistance to the accused.-If the alleged offence is one which may be brought before the commanding officer, the accused may request, and is to be afforded at the earliest steps at which this is practicable, the assistance of any officer or other person in his ship whose assistance is reasonably available. If no such request is made, it is the duty of the divisional officer or such other officer as the commanding officer may detail, having regard to the requirements of the case to advise the accused at all stages. The officer or other person assisting the accused may exercise on his behalf the accused right to cross-examine witnesses for the prosecution and examine witnesses for the defence. The officer or person advising the accused may be changed at any stage either at the request of the accused or because of the exigencies of the service.

48. Procedure at investigation;-(1) At all investigations the evidence in support of the charge shall be heard first. Immediately after the charge has been read out, the investigating officer shall warn the accused that he should not make any statement until all the evidence against him has been heard.

(2) During this stage of the proceeding the accused (for his divisional officer or other friend *see* rule 47) shall however, be permitted to cross-examine the witnesses who have given evidence

in support of the charge and it should be made quite clear that the accused shall have the opportunity of speaking on his own behalf after the completion of such evidence.

(3) On conclusion of the evidence in support of the charge the investigating officer shall decide whether or not a case has been made out against the accused. If in his opinion no Case is made out, the investigating officer shall either dismiss the case or, if further evidence is likely to become available, stand it over. If there is a *prima facie* case and it is a simple one with which the investigating officer thinks he can deal himself, he shall ask the accused if he admits the charge. If the accused does not admit the charge and the matter is within the investigating officer's powers. of punishment, he shall inform the accused that he will now proceed to try the case, giving him an opportunity of making a statement and calling witnesses.

49. Investigation by the officer of the watch, the officer of the day, or the executive officer--
(n If, after hearing the evidence in support of the charge(s), the officer of the watch, the officer of the day or the executive officer concludes that the charge(s), if proved, would be beyond his power to punish, he shall bear in mind that a confession made before him by the accused will not be admissible in evidence at any further proceedings unless the accused has been cautioned, before he speaks, that he is not obliged to say anything unless he wishes to.. do so, and that any statement he .may make , may be given in evidence. Care shall be taken *to* avoid any suggestion that the accused's answers can only be used in evidence against him, as this may discourage an innocent person from making a statement which might help to clear him of the charge. The investigating officer" shall also bear in mind that incases beyond his powers of punishment his functions are to see whether there is a *prima facie* case; to collect evidence when it, is important that evidence be collected immediately; and, in cases likely to lead to at least a warrant punishment, to give the accused a chance to make a statement and to call witnesses if be wishes to do so. If the alleged offence is one which is likely in itself to lead at least to a warrant punishment (as distinct from one which may lead to a warrant punishment because it is the culminating offence in a series of minor offences), the investigating officer shall address. the accused in the following words after hearing the evidence in support of the charges :-

"I have now heard the evidence in support of the charge (s) and the case will have to be decided on the evidence. You may wish to make a statement, in answer td the charge(s), you are not bound to make a statement, but if you do, anything that you say may be taken down in writing and given in evidence if there are further proceeding.

If. ..leftleft(his divisional officer or other friend) speaks for you, what he says will be recorded. You may wish at this stage to reserve your defence, or to call witnesses; such witnesses may be cross-examined and their evidence may be taken down. You are entitled to take any of these courses.

The officer of the watch or the officer of the day need not use these words unless he decides to hear the defence before sending the case to the executive officer.

(2) If at any earlier stage in the investigation the accused shows any desire to make a statement, as distinct from merely asking a witness a question, the investigating officer shall at once caution him in the following terms:-

"Before You speak, it is my duty to tell you that you are not obliged to say anything unless you wish to do so; but whatever you say will be taken down. in writing and may be given in evidence."

Even if this caution has already been once given, the investigating officer must warn the accused at the appropriate time in the longer form given in sub-rule (I)

(3) If the accused makes a statement, it shall be taken down iii

writing. On conclusion of this statement the investigating officer shall not ask any question save to point out any ambiguity and ask if the accused wishes to clear it up, or to point out that no reference has been made to some charge and ask if the accused wishes to say anything about it. In particular, nothing shall be said to suggest or indicate that the accused is expected to make any further statement.

(4) If he has not already done so, the officer shall then determine whether or not a case against the accused has been made out, and if he decides that no case has been made out, he shall dismiss

the charge.

(5) If the investigating officer decides to refer the case to higher authority, the accused shall be informed: "Commander's report" or "Captain's report" as the case may be.

(6) Any statement in answer to the charge shall then be read out to him and he shall be asked to sign it. Whether the accused signs the statement or not, it shall be counter-signed by the investigating officer and it can then be proved and used at any further investigation or trial.

NOTES

1. Form S. 241 "Report of Offender" (reproduced below) is to be prepared for each accused sailor, entering therein the charges, as well as other information regarding names of witnesses, divisional officer etc. Legal exactitude in framing of the charges is not necessary during summary investigation and trial so long as the charges are so worded that the accused fully understands the offence for which he stands charged. The name and designation of the investigating officer is also to be entered in the appropriate columns. He is to write down his decisions/award of punishment on completion of each hearing, as well as sign and date it.

2. These forms are to be maintained separately in a file for each quarter and are to be produced at the inspections carried out by the Administrative Authority (N.R. 5020).

3. In the course of an investigation, the accused must in no case be authoritatively called on to account for his actions; nor must his statement be taken an oath or affirmation. If the accused declines to sign his statement, he must not be compelled or ordered to do so. The counter-signature by the investigating officer is sufficient to prove, if required at a later stage, that the accused made the statement.

warrant punishment or a court-martial, act as prosecutor, to examine witnesses for the prosecution and to cross-examine, if necessary, those for the defence.

(2) If the commanding officer considers that the offence or offences may lead to a warrant punishment or a court-martial or if the accused may eventually have the right of electing trial by court-martial (*see* rule 51), the evidence shall be recorded in writing referred to hereinafter as summary of evidence, in the following manner:

(a) every witness, whether for prosecution or for defence shall be administered an oath or affirmation by the commanding officer in the same form and manner as provided for a court-martial;

(b) the evidence of the witness and the statement, if any, of the accused shall be recorded in Bengali read over to and signed by the persons making them and countersigned by the commanding officer~ If the correctness of any part of such a summary of evidence is, on its being read over to him, denied by him the commanding officer shall make a memorandum to that effect and shall add such remarks as he thinks necessary.

(3) The commanding officer may in his discretion apply to sub-rules (1) and (2) in less serious cases.'

(4) The principles of rule 48 shall apply to all investigations by the commanding officer, and those of rule 49 to investigations by the commanding officer of charges which, because of the gravity of the alleged offence, are likely to lead to a trial by court-martial. If, after hearing the evidence in support of the charge (s), the commanding officer decides that there is a *prima facie* case that the charge (s), if proved, would be within his power to punish, he shall proceed to try the case, bearing in mind, in appropriate cases, the provisions of rule 51.

(5) When the commanding officer has made up his mind to try a case and the charges if proved, would merit at least a warrant punishment, he is to address the accused as follows after hearing the prosecution's case. This warning must be given in all cases, including any case in which the accused may eventually be given the option to elect trial by court-martial, even though the caution in sub-rule (2) of rule 48 may already have been given, namely:

"I have now heard the evidence in support of the charge(s) and the case will have to be decided on the evidence. You may wish to make a statement, in answer to the charge (s). you are not bound to make a statement but if you do, anything that you say may be taken down in writing and given in evidence if there are further proceedings. If (his divisional officer or other friend) speaks for you, what he says shall be recorded. You may also produce witnesses any evidence given by them may be cross-examined."

(6) If the accused then makes a statement or calls witnesses for the defence the witnesses shall be liable to cross-examination by the prosecutor and re-examination by the defence.

(7) Any person who is not subject to the Ordinance may be summoned to attend as a witness in the same manner, as provided for a court-martial, under the hand of the commanding officer of the accused. The summons shall be in the form set out in the Fourth Appendix to these rules.

(8) If a person cannot be compelled to attend as a witness, or if owing to the exigence of service or on other grounds, including the expense and loss of time involved, the attendance of

any witness cannot in the opinion of the commanding officer to be Certified by him in writing, be readily procured, a written statement of his evidence, signed by him and countersigned, in case of a person subject

to the Service Law by his commanding officer and in case of a civilian by any magistrate, may be read to the accused and included in the summary of evidence.

(9) If the commanding officer decides to apply for trial by court-martial or to give a warrant punishment which requires approval the accused is to be told that the case is "remanded"

(10) If the accused is remanded for trial by court-martial the commanding officer shall without unreasonable delay apply in the form set out in the Fourth Appendix to these .role to the proper naval authority to convene a court-martial, and such reference to superior naval authority shall ordinarily be made within forty-eight hours of the accused being remanded. .

NOTES

1. After hearing the evidence against a Sailor brought as a defaulter before the commanding officer three courses are open to him namely;

(a) he may dismiss the charge, if he finds that the evidence does not disclose *a prima facie* case:

(b) he may decide to try the offender summarily, if he is *of* the opinion that the charge(s) if Proved, would be within his power to punish. In deciding ,to do 10. He must bear in mind the provisions *of* rule 51: or

(c) he may apply for trial by court-martial to the proper naval

2. (i) Every offence which, a person subject to naval law can commit is an offence under. the Ordinance becaus6 it is either a service, offence, that is to say and offence punishable under sections 29 to 77. or civil offence punishable under section 78.

(ii) He must consider whether, having regard to the limitation *of* time prescribed by section 105 *of* the Ordinance, the accused is liable to bc proceeded against.

(iii) The commanding officer must dismiss' the charge if there is no evidence *of* any offence under the, Ordinance, *of* if the accused has been previously convicted or acquitted *of* the alleged offence by any court, naval or civil, *or has* been summarrily dealt, with. It is *of* course within the discretion of the commanding officer to dismiss a charge if he considers that the evidence is doubtful or the case triable or if for any other reason amend the charge if the evidence before him discloses a different one, *or* he does not consider. it desirable that the charge should be proceeded with .

3. Under section 116 police and other civilian witnesses may be summoned to attend before a commanding officer, if it is desirable to compel their attendance by service *of* summons. All witnesses must be given an oath *or* affirmation in the same form and manner as. provided for a court- martial (For forms of summons to witnesses and forms of oaths and affirmation, see fourth Appendix)

4. As to the procedure where a criminal court and a naval tribunal both have jurisdiction 'in respect *of* a civil offence, *see* section 107 and rulea2S0 and 286.

5. Sub rule . (7)-The summons to a witness to attend the summery trial shall be signed and dated by the commanding officer in the following form as set out in the Fourth Appendix' of the rules:

To

.....(name and address).....

Whereas a charge of having committed an offence triable by naval
tribunal has been preferred before me against.....

(number. Rank name, ship/establishment) and whereas I have decided to try him summarily
and have directed a summary evidence to be taken in writing at ,..... .(place), on the.. ...
..day of,.....19.....at.....hours:

I do hereby by summon and require you.....(name)rightright:..... to attend as at
witness at the said place and hour/[and to bring with you the document(s) specified' on the
reverse hereof].

Whereof you shall fail at your peril.

Given under my hand at ..leftleft.leftleft on the.....day

Of..... 19.....

(Signature)

Commanding Officer of the accused

6. Sub-rule, (8):

(i) The provisions of this sub-rule will, in many cases, save time and expense, e .g, where a civilian witness is required to prove some fact not really in dispute.

(ii) The commanding officer must append ,his certificate in writing it can conveniently be added below the written statement of the absent witness or attached to the summary of evidence on a separate sheet of paper.

(iii) H it

is

necessary

to call at

the trial

some

witness secution whose evidence is not included in the summary, an abstract of the

for the evidence proposed to be given by him should be supplied to the accused as early as

pr0 possible: see rule 206.

7. The provisions of sub rule (2) may be suspended by the senior officer present on the grounds of the exigencies of service or the necessities of discipline vide rule, 134; but such an order must be made under his band specifying the nature of such exigencies and necessities, (see Form B-3. as set out in the Fourth Appendix).

8. The Commanding officer is to investigate offences committed by an officer in the manner laid down in this rule. If he considers the offence to be serious enough to lead to a trial *of* the accused officer either summarily (under rule 119) or by court-martial, he is to record summary *of* evidence in the same manner and inform the Administrative Authority at the earliest.

9. The Commanding Officer is to apply for a court-martial on the following form as set out in the Fourth Appendix to the rules:-

B . N. S Date.....19.....

Application for a court martial.

Sir,

I have the honour to submit.....charge(s) against.....

..... (No.....rank.....name.....branch) *of*

B.N.S..... under my command, and request that a..... court martial may be assembled for his trial at.....

(1) The accused has elected to be tried by a "court-martial under rule(a).
.

(2) The case was investigated by. rightright.. (b)

(3) The summary *of* evidence was taken by rightright.....

(No rightright.....rankname rightright.ship/establishment.)

(4) A board *of* inquiry was held on.....(c).

The constitution of the board was as follows:---

President.....No.....rank

Name.....ship/establishment).

Member.....(No.rank.....

Name.....ship/establishment).

(5) The accused is now at.....

(6) enclose the following documents.....(d)

(i) Charge-sheet, original and right right.....copies:

(ii) Summary of evidence, original and left left.....copies;

(iii) Original Exhibits;

(iv) List of witnesses for the prosecution and defence;

(v) List of Exhibits;

(vi) Statement as to character and conduct sheet of the accused in
original..... (e).

(vii) Statement by accused as to whether or not he desires to have an officer assigned by
the convening officer to represent him at the trial. [see rule 128 (2)].

(viii) The accused is in close/(open) arrest/(not in arrest) .

I have the honour to be.

Sir.

Yours obedient servant.

(Signature of Commanding Officer).

To

Medical Officer's Certificate

I certify that.....(No. rank.

Name.....,branch.....ship/establishment)is.....

to undergo trial by court-martial.

(Signature of Medical Officer)

**Insert ``fit'' or ``unfit*

(a) Strike out if not applicable.

(b) Here insert name 'of the officer who made preliminary inquiry into the case.

(c) To be filled in if there -has been a board of inquiry respecting any matters connected with the charge(s); otherwise to be struck out;.....[see rule 133 (2)].

(d) Any items not applicable to be struck out.

(e) To be returned to the Commanding Officer with the convening order.

10. The Commanding Officer is also to make out a statement as to character and particulars of service of the accused in the following form-as set out in the Fourth Appendix to the rules:

FORM OF STATEMENT AS TO CHARACTER AND PARTICULARS

OF SERVICE OF THE ACCUSED

(i) *Officers:*

FORM OF STATEMENT AS TO CHARACTER AND PARTICULARS

OF SERVICE OF THE ACCUSED

(i) *Officers:*

1. Name.
2. Rank.
3. Date of birth.
4. Ship or Establishment.
5. ' Typo and branch of commission.
6. Date of first commission.
7. Dates of promotion.
8. Previous service as a sailor, if any.
9. ' Foreign service and war service.
10. Orders, decorations and medals:

(a) Nature of award.

(b) Service for which awarded.

11. Mentions in dispatches, commendations and favorable reports. 12. Wounds.

13. Summary punishments under section 103 of the Navy Ordinance, 1961

14. Court-Martial entries.

15. Retired pay, pension or gratuity. ,

This is to certify that the foregoing is a true extract from the record of the above named officer.

Dated. (Signature) Officer i/c Records (Officers),

Bangladesh/Navy

To be completed local/y before trial

16. Period awaiting trial.....days.

In naval custody of open/(close) arrestdays.

In civil custody close arrest.....days.

Total.....days. of which.....days
were spent in hospital

Dated (Signature) Commanding Officer

(ii) Sailors:

No....., rank....., name....., ship/establishment.

(1) The following is a fair and, true extract of summary

punishment mentioned in sub-rule

(3) of rule 106, of convictions by court-martial or a civil court.(State particulars of each offence,

with punishment and date of award, in chronological order). If no punishment recorded state. (Nil)

(2) Mentions of gallantry or distinguished conduct.

(3) Wounds.

(4) The accused is not under sentence at the present time.

OR

The accused at the present time is under sentence for beginning on the.....day of.....19.....

(5) The accused has been in confinement, awaiting trial on the present charge(s), for..... days in civil custody, and.....days in naval custody, making a total of days in custody, of which..... days were spent in hospital.

(6) The present age of the accused according to his certificate of service is. . . .

(7) The date of his enrolment specified in his certificate of service isand the date of his attestation is.....The date of his re-engagement (if any) is.....

(8) The service which the accused is allowed to reckon towards is charge or transfer to the reserve is :.....

(9) The accused is entitled to.....gratuity in respect of.....years service.

(10) The accused is entitled to reckon.years service for the purpose of determining his pension. etc.

(11) The accused is in possession of, or is entitled to no military naval or air force decoration or reward, which the court can forfeit; or, is in possession of, or is entitled to. (State any military, naval or air force decoration or reward).

(12) The accused has served as a Master chief petty officer chief petty officer /(petty officer) continuously without reduction to the present date:-

Date of Advancement.

In the rank of.....years

In the rank of.....years

(Signature)Commanding Officer.

Instructions :-(1) If any matter in any of the above paragraphs cannot be stated from the service books, the paragraph must be struck through.

(2) The conduct ,sheets are to be produced in court with this statement, but are not to be annexed to the proceeding.)

51. Right to elect trial by court-martial.-(1) If a .Master chief Petty officer, chief petty officer or petty officer is charged with an offence which, if proved, would justify his being summarily,

punished by one or more of the following:

- (a) Imprisonment;
- (b) Dismissal from the service;
- (c) Detention;
- (d) disranking;

the procedure prescribed in this rule shall be followed.

(2).Both before and during the investigation the accused shall be

afforded the assistance required under rule 47.

(3) If the commanding officer thinks that the proper punishment for the offence should it be proved, would be at least disranking, or, for a man who cannot be disranked, detention, he shall at the conclusion of the investigation inform the accused in the following terms:-

"I consider that this charge, if I hold that it is proved, and decide to convict you, would justify your punishment being at least disranking or detention (as appropriate), but before I reach and announce my findings I have to inform you that you can, if you wish, be tried by court-martial, and I have to give you not less than 24 hours for the purpose of making up your mind about it, during which time I will consider the matter further."

(4) When a Master chief petty officer, chief petty officer or petty officer who cannot be disranked is to be dealt with summarily for an offence other than an offence set out in rule 80, the only punishment which may be awarded by the commanding officer, and at the same time give to the accused the option to elect trial by court martial, is dismissal , and in such cases the

commanding officer when giving the accused the option to elect trial by court-martial, shall omit the words "at least" from the form set out in sub-rule (3)

(5) If the accused, after the specified period, indicates that he does not elect to be tried by court-martial, the commanding officer, shall in case he finds the accused guilty, deal with the case himself and take necessary steps for obtaining approval of the punishment to be awarded. Every warrant shall be accompanied by the summary of evidence

(6) Should the accused elect to be tried by court-martial, necessary measures in that behalf shall be taken.

NOTE

The punishments mentioned in sub-rule (1) are the major punishments which a commanding officer is empowered to award summarily to a sailor under his command. If anyone or more of these punishments are proposed to be awarded to a master chief petty officer, chief petty officer or a petty officer an option must be given to the accused to elect trial by court-martial, otherwise the award would be illegal.

52. Medical examination.-(1) When a person is charged with the offence of drunkenness, indecency, affray or of causing hurt or such other offence as may be specified in the regulations he, and every other person directly concerned or affected by the offence, shall, as soon as possible, be medically examined .

(2) A sailor may be ordered to present himself for medical examination; and failure to comply with such order or with the instructions of the medical Officer shall amount to disobedience and may be dealt with accordingly; but no force shall be used for the purpose of subjecting any person to medical examination against his wishes.

53. Identification of suspects.-(1) When an offence has been committed and it is possible that witnesses may not be certain of the identity of the person apprehended, an identity parade shall be held. The accused is to be fallen in with, if possible, at least eight other person of the same or similar height, age, appearance and rig as himself. The accused' shall be allowed to stand where he pleases and shall be asked whether he has any objection to the arrangements. His divisional officer or the officer or other person who may have been appointed to advise and assist him (*see* rule 47), shall attend, but other spectators shall be excluded

(2). Such witnesses shall be admitted to the parade one by one and asked to identify the suspect, and their reactions shall be recorded. If a witness so desires, any or all of the persons on

the parade shall be ordered to remove or replace his cap, speak, walk, or do anything else that may help identification, and all such actions shall be recorded. After every witness has withdrawn, the accused shall be given an opportunity "to change his position in the rank and the witnesses called one by one to identify again. Witnesses who have inspected the parade shall be segregated from those who have not. Steps shall be taken to ensure that no witness sees the suspect before he is fallen in with others in the position of his choice and that no witness sees his photograph or is given any description of him before the parade.

54. Documentary evidence.-No person shall be convicted. on the basis of documentary evidence alone, except where he admits

the charge and the presence of necessary witness cannot be easily secured; and in the case of every such conviction the facts of admission of the charge by the accused and the conviction being based on documentary evidence alone shall be expressly stated in the warrant of punishment. If the accused does not admit the charge and the presence of necessary witnesses' cannot be easily secured in the ship or establishment to which h~ belong, he may for facility of investigation be drafted temporarily to the ship or establishment in which', the offence is alleged to have been committed.

55. Accused sick or in civil prison.-Should the accused be on the sick-list; or serving a sentence in a civil prison, the investigation may, if the commanding officer so thinks fit, be postponed so long as the accused remains unfit for duty or continues to serve the sentence.

56. Security of service documents.-(1) The service documents of the accused shall not be scrutinized by the commanding officer or investigating officer until the accused has made his statement or expressed his intention not to make a statement.

(2) The commanding officer or the investigating officer. having

decided whether or not the case against the accused has been made out, may examine his service record in order to decide whether to deal with the case himself or refer it to higher authority; and such examination shall not be deemed to be conviction of the accused.

57. Regarding retention of an accused in close arrest.- (1) If a punishment warrant in respect of an accused is referred to superior naval authority, or, if an application for his trial by court-martial has been made, the accused shall not normally be kept in close arrest pending disposal of such reference, or application unless.-

(a) the' offence charged is one for which the maximum punish ment is death, or

(b) The punishment proposed in the warrant is imprisonment

detention or cells or

(c) the conduct of the accused is so violent that it would be unsafe to himself or to others not to place him in close arrest, or

(d) the accused is found deliberately, trying to undermine discipline by acts of misconduct, but isolated, instances of insubordination or violence shall not by themselves justify retention in close arrest, or

(e) the accused has been a deserter, or is known to have habitually absented himself without leave and he is considered likely to absent himself again unless kept in close arrest.

(2) An aroused person, whom it is considered unnecessary to keep in

close arrest, may be placed in open arrest, if it is considered desirable in his own interest or in the interest of service discipline that he

he should be kept under some restraint .

(3) In all other circumstances, the accused shall, pending the approval of the punishment Warrant or disposal of application for trial by court-martial be at liberty, but nothing herein shall affect his liability to be arrested at any subsequent stage.

58. Liability to further trial for same offence.-(1) when at, or as a result of, a formal summary investigation of an offence the officer authorized to award punishment indicates by word or act that he has come to a definite conclusion as to the guilt or innocence of the accused, *e.g.*, by forwarding a punishment warrant for the approval of a senior officer, or by dismissing the case, accused cannot be tried again for the same offence.

(2) If the executive officer refers the case to the commanding officer, as requiring a more severe punishment" that he is authorized to award, or if the commanding officer applies for the offender to be tried by court- martial, neither of these facts is of itself a bar to a subsequent trial, provided the precautions mentioned in these rules are taken. .

NOTE

See rule 145 as to the plea in bar of trial, and notes 2 to 6 thereof as

to autrefois acquit and autrefois convict.

PART (3) -DESERTERS AND ABSENTEES

59. Apprehension of deserters and absentees.-(1) A sailor who quits - his ship without leave, or overstays his leave, or improperly absents himself when detached on duty and who may be Apprehended beyond the precincts of a dockyard or other government establishment in which he may have been employed shall be charged as an absentee or as a deserter according to circumstance. which shall be judged by the commanding officer;

(2) Every possible effort is to be made to check-desertion and absence without leave and by lawful means to detect and apprehend deserters or absentees.

(3) Within Bangladesh, a warrant for the arrest of an accused shall be sent in accordance with rule 62, to the police at the place where the accused is likely to be found, whether it is his usual place of residence or not and action in that behalf shall ordinarily be taken not later than the day on which the accused is marked "R"

(4) On the recovery of a deserter or absentee any warrant known to have been issued shall be cancelled.

(5) If any sailor- is found absent without leave for more than seven days, the commanding officer shall inform his next of kin by means of an airmail letter. Such letter shall mention that the sailor has failed to report on board when he was expected and all the known circumstances relating to his absence, and also state that necessary enquiries are being made and that the next of kin shall be kept informed; but in no case, unless the facts have been ascertained beyond all doubt, shall the sailor be described as missing or absentee in any such letter.

(6) In foreign waters, a report, giving brief particulars of the case and the description of the man, and his photograph, if available, shall be sent to the Naval or Military Attache or Adviser of the Bangladesh Mission in the appropriate foreign country requesting for permission and assistance of local authorities for apprehension of a man who has deserted or remained absent without leave in that country.

(7) No officer shall search any foreign ship for any naval deserter or absentee, whether such ship be in foreign waters or elsewhere, even if he has a warrant for arrest under section 93.

60. When absentees to be marked "Run":-(1) If any person absent himself from his duty without leave and fails to give a good and sufficient reason. for his absence, he shall be checked to absence: on the ships books.

(2) If an absentee has not returned at the expiration of seven days or before his ship sails during this period, he shall be marked "Run" and the letter "R" shall be placed against his name on the ship's books on the day on which his absence began. While so marked "Run", he shall not

be entitled to receive the pay which has accrued unless the court-martial or officer by whom he is tried, or the Chief of Naval Staff shall otherwise direct.

(3) If any sailor is absent without leave when a ship sails, a copy of the warrant for his arrest, together with the details of his current offence, shall be forwarded to the Administrative Authority, so that the case may be investigated, in case he returns or is apprehended while the ship is away.

(4) If the commanding officer is subsequently satisfied that there was no intention on the part of such sailor to desert, he shall remove the letter "R" marked against his name, provided the person has not been convicted summarily as a deserter, and shall also cause payment to be made of the pay accrued, provided that no pay shall accrue where "R" is substituted by notation "shore" under sub-rule (4), rule 248.

(5) Whenever a person is convicted of desertion, the letter "R" shall be placed against his name on the ship's books if not already done under sub-rule (2)

(6) When a person has been absent without leave for more than 30 days, the commanding officer shall convene a board of inquiry to inquire into his absence and to record their declaration in the ship's books. The commanding officer shall then authorize his transfer from the ship's books to the books of the depot and also forward the absentee's service documents together with the declaration of the board of inquiry. If the ship is likely to be away from the port for any considerable period the commanding Officer may convene the board of inquiry and authorize the absentee's transfer from ship's books at any time after the expiry of seven days.

61. Voluntary surrender.-(1) A deserter or absentee who voluntarily surrenders himself to a naval authority may be dealt with under the Ordinance, whether or not a warrant for his arrest has been issued, and without being brought before a magistrate.

(2) A deserter or absentee who voluntarily surrenders to the police shall be brought to a police station. If it appears to the officer in charge of the police station that he has been illegally absent, he may be handed over direct to naval custody, or may be brought before a magistrate, as the officer in charge of the police station decides.

62. Arrest by naval warrant.-The Chief of Naval Staff, the commanding officer of any of the ships or naval establishments or any other officer empowered by the Chief of Naval Staff in this behalf, may issue a warrant in the form set out in the Fifth Appendix to these rules to the police for the arrest of any person suspected of having committed an offence against the ordinance (*see* section 93).

NOTE

The form for the warrant of arrest, as set out in the Fifth Appendix. is reproduced below:

WARRANT OF ARREST

(Navy Ordinance, 1961, Section 93)

To. rightright. (name and

designation of the person (or persons) who is (or are) to execute the warrant;

And to all others whom he (or they) may call upon to assist him (or them) in the execution of this warrant.

WHEREAS I.....am empowered by section 93

of the Navy Ordinance 1961, to issue a warrant for the arrest of a person suspected of any offence under the said Ordinance;

AND WHEREAS..... a person whose

name and description are given below stands charged with the offence

of. (state the offence):

YOU are hereby directed to arrest the said.....and to deliver
him into na1111 custody. Herein fail not.

DESCRIPTION OF THE PERSON TO BE ARRESTED

Name

Rank

Official Number.....

Ship or Establishment.....

Date of birthleftleft"*****"

Usual place of residence.....

Height

Complexion.leftleft.....

Hairleftleft,.....

Byes.

Marks on person..... Remarks (including any indication as to the
probable whereabouts of the offender).

Given under my hand at. this the. . . . day of. . .19.. .

Signature
(Name and Designation)

63. Arrest without naval warrant.-A person arrested on suspicion of being a deserter or absentee shall be taken before a magistrate is satisfied that there is sufficient evidence to justify his being tried under the Ordinance, he shall cause him to be delivered to naval custody or commit him until he can be so delivered. He may then be dealt with under the Ordinance.

64. Identification of deserters and absentees. - (1) When any deserter or absentee, whether delivered to naval custody by order of a magistrate or by naval warrant or by voluntary surrender, is brought before the commanding officer of one of the ships to which he does belong not be dealt with summarily, a thorough investigation shall be made with a view to establishing his identity and proceedings relating thereto shall at the same time be asked formally if he has any statement to make and such statement, if made shall be signed by the offender and duly witnessed. The accuracy of any such statement shall be tested carefully before the investigation is closed.

(2) The written note of the investigation and the offender's statement shall form enclosures to the punishment warrant.

(3) Due caution shall be taken in receiving men from foreign vessels who may represent themselves, or are reported to be deserters from the Bangladesh Navy.

(4) Railway warrants shall not be issued nor any other expenses incurred in connection with the apprehension of an alleged deserter or any enquiry or investigation relating thereto unless action has been taken to confirm as far as possible, the naval identity of the individual and that he is in fact recorded as an absentee or deserter.

65. Punishment and drafting of deserters and persistent leave breakers.-In punishing deserters and persistent leave-breakers, whom the commanding officer regards as unlikely to render any further useful service to the navy, he shall also consider whether in punishment of dismissal from the service.

66. Forfeiture consequent upon desertion.-(1) All pay, bounty salvage, and allowances which have been earned by a deserter, and all annuities, pensions and gratuities which may have been granted to him shall be forfeited to the Government unless that tribunal by which he is tried, or the Chief of Naval Staff otherwise directs. These forfeitures may in exceptional circumstances be remitted but the reason for every such remission shall be reported to the Chief of Naval Staff.

(2) Nothing in sub-rule (1) shall apply to pay allowances and other moneys which except for some accidental reason, should have been paid on the last regular pay day preceding desertion.

(3) The Chief of Naval Staff may at any time remit the forfeiture of any property that has not been sold, or pay the proceeds of its sale to the former owner or his representatives. The Chief of Naval Staff, the court or the officer trying the offender may order the uniform and effects to be restored.

(4) The period between the date of desertion and that of apprehension or surrender, shall not be taken into account in determining the length of service rendered by a deserter.

67. Removal of 'R' by Chief of Naval Staff. - (1) A man who has completed the following service with continuous "Very Good Conduct" may apply to his commanding Officer for the letter "R" to be removed:

(a) three years within five years of service after punishment for desertion;

(b) four years within nine years of service after punishment for desertion:

(c) six years within any time; after Punishment for desertion d.

The said period of five or nine years shall be reckoned from the day after the completion of the sentence served for desertion, or, if the sentence has been suspended before committal, from the day after the award of the punishment.

(2) If the commanding officer considers the man's general behavior to have been satisfactory and thinks it fit to recommend him for the concession, he shall forward the application with an express recommendation for the consideration of the Chief of Naval Staff as soon as practicable after the completion of the qualifying period of continuous service with "Very Good Conduct". If the commanding officer does not think it fit to recommend a man, he shall inform him accordingly and a note "Not recommend for removal of 'R'" shall be entered in his Conduct Sheet. Belated applications shall give any known reason for the delay and also state whether or not the man had previously applied. Original service certificate and conduct sheet shall accompany every such application.

(3) Where a man has deserted more than once, an application under clauses (a), (b) or (c) of sub-rule (1) may be made for the removal of the last 'R'. If this is approved, a man may be eligible to qualify for the removal of a previous 'R' under the same rules, the period of five or nine years being reckoned from the date of removal of the last 'R' and similarly with any further marking of 'R'

CHAPTER VII

SUMMARY TRIAL - SAILORS

PART (I)-POWERS OF COMMANDING OFFICERS

68. Summary punishments. - (1) The commanding officer of any naval ship or establishment, which is an independent command, may subject to the provisions of this Chapter award the several major punishments in accordance with section 102, that is to say :-

1.	Imprisonment for a period not exceeding three months
2.	Dismissal from naval service.
3.	Detention for a period not exceeding three months.
4.	Disranking.

The following minor punishments are allowed in accordance with clause (k) of sub-section (1) of section 80:-

5.	Reduction from standard conduct.
6.	Solitary confinement for a period not exceeding 14 day's
7.	Deprivation of good conduct badges.
8.	Reprimand by the commanding officer.
9.	Extra work and drill for a period not exceeding 14 day's

10.	Stoppage of leave for a period not exceeding 30 days.
11.	Mulcts of pay or Fine for improper absence.
12.	Extra work or drill for not more than two hours a day for a period not exceeding seven days.
13.	Admonition,

And any of these punishments may be referred to by the number shown against it.

2. The commanding officer is responsible for every punishment awarded in the ship or establishment. He shall ensure that no punishment is awarded or inflicted otherwise than as authorized by these rules and that no punishment is awarded by any other person except an officer authorized under rules 72 to 78.

3. Sub-rule (1) shall apply to a ship or establishment which is an independent command even if its accounts are carried in an other ship or establishment; and such ship or establishment shall not be considered to be a tender for the purpose of rule 78.

NOTE

The provisions in respect of individual punishments are given in detail in rules 79 to 104-Part 3 of this Chapter- whereas the following table gives a resume of the same:-

TABLE FOR SUMMARY PUNISHMENT

69. Warrant punishments and their approval. - (1) Punishment Nos. 1 to 7 may be known as "warrant punishments" and shall be made out in the form set out in the' second Appendix to these rules. These punishment shall not be promulgated unless prior approval is obtained in accordance with sub-rules (2) to (4).

(2) Punishment No.2 shall require the approval of the Chief of Navy Staff.

(3) Punishments Nos. 1,3,4 and 5 shall require the approval of the Administrative Authority, except for the disranking (No.4) of a leading sailor.

(4) Punishments Nos. 6 and 7 can be awarded by the commanding officer, if he is of the rank of, or higher than, a commander; otherwise prior approval of an officer of that, or higher rank is required.

(5) Except in the case of dismissal from the service, the warrant may, if the approval of the proper superior naval officer cannot be obtained within a reasonable period, be approved by the senior officer present, Who Shall report particulars of the case to the Administrative Authority without delay. A copy of the correspondence is to be inserted in the relevant, punishment warrant.

(6) If an officer having power to approve a warrant in accordance with this rule considers for any reason that the punishment proposed is inadequate, he shall inform the commanding officer so that he may reconsider the punishment and, if he thinks fit, after it but no such action shall be taken unless it is necessary to secure-uniformity of punishment in the command.

70. Tenders or boats detached. - (1) The officer in command of a tender absent from a parent ship or in command of ship's boats away on detached service is authorized by sub-section (4) of section 102 to exercise the disciplinary powers of a commanding officer without reference to him, subject to, provisions of rule. 69. The officer in immediate command of two or more tenders absent from the parent ship and in company or acting together is similarly so authorized,

(2) The officer in command of a detached tender or tenders may delegate in writing to the officer in command of any tender or tenders similarly absent from the parent ship and temporarily under his orders, and to the executive officer of his own vessel or of such other tenders as are under his orders, the same, powers as those which the commanding officer of the parent ship is authorized to delegate under rule 78.

(3) The commanding officer of the parent ship may at his discretion restrict the powers to be, exercised under this rule according to the circumstances, including the time that the tender or the boat will be away and the seniority and experience of the officer who is to be in command.

71. Men on detached service. - (1) Under sub-section (4) of section 102, the powers of summary trial and punishment may be exercised by the officer in immediate command of sailors on detached service on shore or elsewhere without reference to the commanding officer.

(2) The commanding officer of the parent ship or establishment is authorized to restrict the powers exercisable under sub-rule (1) and should in every case consider whether it is advisable to do so.

PART (2) - DELEGATED POWERS OF PUNISHMENT

72. Commanding Officer to authorise.-(1) The commanding officer of a ship or establishment which is an independent command may, In accordance with sub-section (5) of section 102, delegate in writing to the, officers mentioned In the following rules of this Part, when and so long as he may see fit, authority to award the punishments specified therein.

(2) In awarding any of these punishments, an officer shall comply with the relevant rules contained in Part-(3) of this Chapter.

NOTES

1. The commanding officer is to delegate the authority to award punishments in writing by name to the officers indicating the capacity and extent of punishment as specified in rules 73, 74, 75 or 78. As such an order cannot give authority to exercise the power of punishment with retrospective effect, care must be taken to ensure that it is issued before the effective date.

2. A copy of such an order is to be forwarded, every time a change made in the delegation of such authority, to the Administrative Authority as well as to the Judge Advocate General.

3. *See* notes to Rule 116 regarding the maintenance of record of offences and punishments.

73. The Executive Officer. - (1) The Executive Officer may, if he is a commander be authorized to award the following punishments:-

(a) extra work and drill for a period not exceeding 14 days (No.9):

(b) stoppage of leave for a period not exceeding 24 days (No.10):

(c) mulcts for leave-breaking Offences for a period not exceeding 24 days (No.11):

(d) extra work or drill for not more than two hours a day for a period not exceeding 7 days (No. 12):

(e) admonition (No. 13):

(2) The Executive Officer may, if he is of the rank of lieutenant commander or lieutenant, be authorized to award the following punishments:-

(a) extra work and drill for a period not exceeding 7 days

(No.9):

(b) stoppage of leave for a period not exceeding 14 days (No.10), but not to master chief petty officers, chief petty officers or petty officers:

(c) extra work or drill for not more than two hours a day for a period not exceeding 7 days (No. 12):

(d) admonition (No.13):

74. Officer-in Charge, Training school. -The officer holding appointment as in-charge of a training school in a ship or establishment may, if he is of the rank of commander, lieutenant commander or lieutenant, be authorised to award the following punishments to sailors belonging to his school:-

(a) extra work and drill for a period not exceeding 7 days (No.9);

(b) stoppage of leave for a period not exceeding 14 days (No.10), but not to Master chief petty officers, chief petty officers or petty officers;

(c) extra work or drill for not more than two hours a day for a period not exceeding 7 days (No. 12);

(d) admonition (No. 13).

75. First Lieutenant. -The first lieutenant may, if he is of the rank of lieutenant commander or lieutenant, be authorized to award the following punishments to sailors employed under him:

(a) extra work and drill for a period not exceeding 7 days (No.9); ,

(b) stoppage of leave for a period not exceeding 14 days (No.10), but not to master chief petty officers, chief petty officers or petty officers:

(c) extra work or drill for not more than two hours a day for a period not exceeding 7 days (No. 12);

(d) admonition (No. 13).

76. Officer of the watch or day. - The officer of the watch or the officer of the day may be authorized to award the following punishments :

(a) extra work or drill for not more than two hours a day for one day (No. 12).

(b) admonition (No. 13).

77. Heads of the departments and divisional officers. - The heads of departments and divisional officers may be authorized to award (a) extra work or drill for not more than two hours a day for one day (No. 12): (b) admonition {No. 13} to any sailor of their respective departments or divisions for an offence connected with his professional or divisional duties and not connected with the general duties of the ship or establishment.

78. Tender in company with parent ship. - (l) The commanding officer of tender, other than a drifter, launch or, small craft, in company with the parent ship may be authorized to award the following punishments:-

(a) if he is a captain, any punishment referred to in rule 68:

(b) If he is a commander or lieutenant-commander:

- (i) reprimand (No.8):
- (ii) extra work and drill for a period not exceeding 14 days (No.9) :
- (iii) stoppage of leave for a period not exceeding 24 days (No. 10):
- (iv) mulcts for leave-breaking offences for a period not, exceeding 24 days (No. 11).
- (v) extra work or drill for not more than two hours a day for a period not exceeding 7 days (No. 12)
- (vi) admonition (No.13).

(c) - if he is a lieutenant:

- (i) reprimand (No.8):
- (ii) extra work and drill for a period not exceeding 7 days (No.9):,
- (iii) stoppage of leave for a period not exceeding 14 days (No; 10), but not to master chief petty officers, chief petty officers and petty officers.
- (iv) extra work or drill for not more than two hours a day for a period not exceeding, 7 days (No. 12):
- (v) admonition (No. 13).

(2) The Executive officer of such a tender may, if he is of the rank of lieutenant-commander or Lieutenant, be authorized to award following punishments:-

- (a) extra work and drill for a period not exceeding 7 days (No.9).
- (b) stoppage of leave for a period not exceeding 14 days (No.10), but not to master chief petty officers, chief petty officers or petty officers;
- (c) extra work or drill' for not more than two hours a day for a period not exceeding 7 days (No.12).
- (d) admonition (No.13).

(3) If the commanding officer of the parent ship is, or is about to be, absent for so long a period that there would be undesirable delay and dealing with offences which could not be disposed of in accordance with sub-rule (1) or sub-rule (2), he may authorize the officer next in seniority to him, whether borne part complement or additional, to try and punish offences as if he were the commanding officer.

PART (3)-PROVISIONS FOR INDIVIDUAL PUNISHMENTS

(For a resume of these provisions, see table under note to rule 68)

(A) Imprisonment and Detention (Nos. 1 and 3)

79. When to be awarded.- (1) Sentences of imprisonment shall normally be confined to men who have already undergone several sentences of detention without effect and to other men who are not to return to the service on expiration of their sentence.

(2) Ordinarily the punishment of detention shall be awarded in preference to the sentence of imprisonment to persons who are likely to be retained in service after serving the sentence. .

(3) Imprisonment or detention may be awarded summarily for a period not exceeding three months' but shall not ordinarily be awarded for a period of less than 15 days.

(4) No offender below the age of twenty-one shall be sentenced to imprisonment whether by court-martial or summarily, if he is to be retained in the service after serving his sentence. Sailors' below the age of twenty-one may be sentenced to imprisonment if, by reason of dismissal or for other reasons, they are not being retained in the services.

(5) No pay shall be admissible for the period of the sentence of imprisonment or detention actually served and such period shall not be taken into account in determining the length of service rendered by the person concerned, except for purposes connected with his advancement.

(6) A person sentenced to imprisonment or detention shall be deprived of all his good conduct badges, and if he is a master chief petty officer, chief petty officer or a petty officer or a leading sailor, then, subject to rule 80, he shall also be disranked to a rank below that of leading sailor.

(7) A sentence of imprisonment or detention shall not take effect unless approved by the Administrative Authority on the punishment

warrant (see rule (9)).

(8) Master Chief petty officers, chief petty officers and petty officers shall have the right to elect trial court-martial, before being summarily punished by imprisonment or detention(see rule-51).

80. Restrictions regarding certain sailors - (1) Master Chief petty officers, Senior Chief Petty Officers, Chief petty officers and petty officers who can be disranked shall not be sentenced summarily to imprisonment or detention except for desertion. They shall not be sentenced summarily to imprisonment or detention and disranked at the same time unless their offences include desertion.

(2) Master Chief petty officers, Senior Chief Petty Officers, chief petty officers and petty officers who cannot be disranked, leading sailors and men wearing good conduct badges shall not be sentenced summarily to imprisonment or detention, except for the following offences:

- (a) mutiny or highly insubordinate conduct ;
- (b) desertion, or deserting post;
- (c) sleeping .on watch;
- (d) indecent acts of an immoral character;
- (e) theft or fraud (including major offences against custom regulations when fraud is involved);
- (f) smuggling liquor into ship;

- (g) quitting ship, boat or working party without leave;
- (h) drunkenness on duty;
- (i) violent assault;
- (j) aggravated or repeated leave breaking;
- (k) flagrant contravention of the censorship regulations:
- (l) flagrant contravention of gasoline, ammunition, or damage control regulations, which endanger life, the ship, aircraft or establishment.

(B) Dismissal from Naval Service (No. 2)

81. Dismissal. - (I) Without prejudice to the power of dismissal conferred by the provisions of the Ordinance and these rules, no person shall, save in exceptional circumstances; be dismissed from the service summarily, unless he has been previously sentenced to some of the other punishments referred to in rule 68 and is in the opinion of the Administrative Authority not likely to reform himself by being subjected to any of those punishments any further.

(2) A Sailor who has committed an offence deserving imprisonment should, if his past record clearly shows that he is unworthy of retention, properly be dealt with by imprisonment and dismissal.

[NOTE I."Imprisonment followed by discharge S.N.L.R. (services no longer required), is not normally appropriate.

[NOTE II.-A sentence of dismissal should not normally be accompanied by a sentence of detention)

(3) When in the opinion of the commanding officer dismissal from the service is the appropriate punishment for an accused, he shall, enquire carefully into the case and record summary of evidence which shall accompany the punishment warrant when it is forwarded to the Chief of Naval Staff for approval.

(4) Dismissal does not automatically entail any other punishment, and disranking or the deprivation of the good conduct badges should be included in the sentence, if appropriate.

(5) Master Chief petty officers, Senior chief petty officers, chief petty officers and petty officers have the right to elect trial by court-martial, before being summarily punished with dismissal.

(C) Disranking (No.4)

82. Extent of disranking. - (1) A man may be disranked to any rank in his own branch or to any lower class in his lank provided that no man shall be disranked or reduced

(a) below the such limits as may be specified in the regulations; (b) below, either actually or relatively, the rank in which was first enrolled.

(2) A man holding an acting rank may be disranked and the effect of such disranking shall be the same as disranking from a confirmed rank.

(3) When a man holding a good conduct badge is disranked deprivation of the badge is not a consequential effect of disranking; though it may be imposed in appropriate cases.

(4) In order to avoid any differentiation between conditions of re-advancement of men disranked summarily and those disranked by court-martial, the commanding officer, when seeking the approval of the Administrative Authority for sentence of a disranking or for any sentence which involves disranking, shall recommend on the punishment warrant whether the man should be eligible for re-advancement by his commanding officer or whether re-advancement should be permitted only with the Chief of Naval Staffs approval. The decision of the Administrative Authority shall be recorded on the sailors service certificate, and shall be final unless amended by the Chief of Naval Staff during review of warrant punishments.

(5) The punishment warrant of summarily disranking a leading sailor does not require the approval of the Administrative Authority and the re-advancement of such a sailor shall also be within the powers of the commanding officer and the foregoing procedure shall not apply to such disranking Of re-advancement.

(6) Master Chief petty officers, Senior Chief petty officers, Chief petty officer and petty officers have the right to elect trial by court-martial, before being summarily punished by disranking.

83. Re-advancement after disranking - (1) Commanding officers shall ensure that equal consideration is given to men whose re-advancement is subject to the Chief of Naval Staffs approval and to men whose re-advancement is within the powers of the commanding officer and that the question of re-advancement receives consideration as soon as a sailor is otherwise qualified for re-advancement under sub-rule (3). With a view to ensuring that sailor who can be re-advanced only with the Chief of Naval Staff's approval, are not overlooked, commanding officers shall keep such men under periodical review, and shall represent to the Chief of Naval Staff the case of every man of such Category as soon as he can be recommended and becomes eligible for re-advancement. It is not necessary to wait for a man to prefer a request for re-advancement before taking action in that behalf.

(2) The nature of the offence for which a man has been disranked is a material factor to be considered when the commanding officer decides whether he is fit for re-advancement after the minimum period of "Very Good Conduct" laid down in sub-rule (3). A note in writing of the offence shall therefore be attached to the man's service certificate and shall remain so attached until he is reinstated in his former rank. Such re-advancements shall never be antedated and shall be notified at once to the Drafting Authority.

(3) Man who are disranked are not to be replaced on the advancement roster, but may be re-advanced, irrespective of vacancies ; if

(a) they have passed such examinations as may be specified in the regulations, for confirmation to the next higher rank. Where, owing to the exigencies of the service, no opportunity has occurred since the date of the disranking of completing such examination, the man, if otherwise eligible may be re-advanced to the acting rank, but the examination shall be taken at the first opportunity, and if he passes the same" he shall be confirmed forthwith except in cases where confirmation is to be withheld or postponed for such reasons as may be specified in the regulations, and, if he fails, he shall revert to the lower rank but shall remain eligible for re-advancements under the provisions of this rule;

(b) they have maintained a continuously "Very Good conduct" for the under mentioned period immediately preceding re- advancement, namely:-

SL	Rank	Class(if any)	Re-advancement to	Period of continuous "Very Good conduct"
(ia)	CPO	-	MCPO/SCPO/CPO	2 years
(i)	Artificer or Mechanician	4 th class or above	Chief	2 years to next higher class other than Chief 1 year
(ii)	Petty Officer Rank	-	SCPO/CPO Rank	2 years
(iii)	Leading rank	-	PO Rank	1 ½ years
(iv)	Able rank	-	Leading rank	1 year

(Amended vide No. S.R.O. 148-l/84, Ministry of Defence Notification, Dhaka, the 17 April, 1984.)

In calculating "Very Good Conduct" for re-advancement purposes the general provisions as specified in the regulations shall apply except that the time for which a character assessment of "Indifferent" has been awarded is not forfeited;

(c) they are not actually suffering from any venereal disease.

(4) A man who was disranked by more than one step shall be eligible under these rules for re-advancement by successive steps through the rank previously held, but he must serve in. each grade the prescribed period with continuous "Very Good Conduct" before re-advancement to next grade.

(5) Re-advancement to leading and petty officer ranks in all branches except the Artificer Branch, shall be through the acting rank.

(D) Reduction from Standard Conduct (No. 5)

84. Offences for which awarded.-(1) Reduction from standard conduct is art appropriate punishment for sailors for whose continual slackness or misconduct the repeated award of lesser punishments has proved ineffective. When it is awarded to such sailors the fact that the present offence is the culminating offence of a series of minor offences shall be brought out on the punishment warrant.

(2) The Punishment may also be awarded for any offence punishable with detention or cell when it is likely to have a more corrective effect on the offender or when it is to the advantage of service, except that in cases of leave-breaking it may be awarded only for aggravated or -fourth (or subsequent) repeated offence. It shall not be awarded in conjunction with imprisonment, detention or cells.

(3) The approval of the Administrative Authority is required on the Punishment warrant before this punishment may be awarded.

85. Restrictions regarding certain sailors. - Sailors who hold leading rank or above and cannot be disranked shall not be awarded this punishment. Sailors, who hold leading rank or above and can be disranked may be awarded this punishment only if they are disranked

below leading rank.

86. Penalties. - So far as practicable, every sailor who is undergoing this punishment shall-

(a) forfeit one sixth of his basic pay, excluding extra pay and

allowances;

(b) be deprived of leave for the first fourteen days, there after being allowed, when possible up to one day's leave a week at the discretion of the commanding officer;

(c) be subject ,to the routine "laid down for punishment No. 9 for the first fourteen days; thereafter performing extra work or drill in the dog -watches for not more than one hour a day;

(d) fall in for inspection at such times as the commanding officer may appoint;

(e) be deprived of any good conduct badges he may hold;

(f) be debarred from advancement to leading rank or above.

Men reduced from standard conduct shall not be employed on special or isolated duties.

87. Duration or punishment - (1) Except as provided in sub-rule (2), no Sailor shall undergo the punishment of reduction from standard conduct for more than ninety days at anyone time.

(2) If a sailor deserts while reduced from standard conduct and is not recovered before the expiration of ninety days from the date of reduction, such punishment shall be deemed to have terminated on recovery.

(3) Every sentence of reduction from standard conduct shall be reconsidered by the commanding officer at intervals of not more than twenty-one days. Time in desertion and time for which pay is not allowed shall not count towards the Period of twenty-one days.

(4) On reconsidering a sentence, the commanding officer may, if he is satisfied with the sailor's behaviour and has reason to believe that he is inclined to reform himself, terminate the punishment at any time after the first twenty-one days have elapsed.

(5) The commanding officer may at any time terminate the punishment if the offender does some act of gallantry or some other exceptionally meritorious act.

(6) If a man is drafted from a ship or naval establishment while still undergoing this punishment the commanding officer is to note on his conduct sheet the date on which he proposes that the punishment should be terminated; and the man's character on discharge from the ship or establishment shall be assessed accordingly. If the man's papers are not available, this information should be sent immediately by letter to his new commanding officer.

(7) The words "Reduced from Standard Conduct" are to be clearly noted in red ink after the names in the nominal rolls or on the genforms pertaining to the sailors concerned.

(E) Cells (No. 6)

88. Cells. - (1) The punishment of solitary confinement in a cell may be imposed for offences punishable with imprisonment or detention, and should be awarded only where the punishing authority is satisfied that a feeling of loneliness is likely to produce wholesome influence on the offender and help him reform himself.

(2) Any such punishment shall not exceed fourteen days in duration and may be awarded by warrant by the commanding officer, if he is of the rank of, or higher than, a commander; otherwise such warrant requires the approval of an officer of that, or higher rank.

(3) A person sentenced to the punishment of solitary confinement shall be deprived of good conduct badges; no pay shall be admissible for the period of such sentence and such period shall not be taken into account in determining the length of service rendered by the person concerned except for purposes connected with his advancement.

(4) Such punishment may, with the permission of the Administrative Authority, be carried out in a ship or naval establishment other than, that in which it was awarded.

89. Restrictions regarding leading sailors. No leading sailor, who can be disranked shall be sentenced to cells, nor can a leading sailor be disranked and awarded such sentence at the same time. Leading sailors who cannot be disranked may be awarded such sentence but only for the offences specified in sub-rule (2) of rule 80.

90. Physical conditions. (1) A cell shall be a closed space under a canvas screen or a cell approved by the Administrative Authority who will also approve any alterations required.

(2) It shall measure not less than ten feet in length and four feet in breadth and be as high as the space between decks.

(3) No sailor shall be confined in a cell in which the temperature exceeds 90 degrees unless the commanding officer is satisfied that there is adequate ventilation.

91. Routine to be followed.(1) A person sentenced to solitary confinement shall be required to pick daily, Fridays and holidays excepted, either two pounds of tarred hemp or six pounds of tarred sisal, either of which shall be weighed when given to him and against

when received from him.

(2) He shall not be allowed to have or use tobacco, or a knife or razor, or writing material or books or papers of any kind other than suitable religious books, books of instruction or educational text books which may be supplied to him on his request.

(3) He shall be required to keep himself and his cell clean. After the third day's confinement he shall be brought on deck under the sentry's charge for two hours a day, one hour in the forenoon and one hour in the afternoon. He may be given the normal forms of arms drill during these exercise period.

(4) He shall be allowed to attend any congregational prayers once a week. or more at the discretion of the commanding officer, if held on board or in the establishment.

(5) He shall be visited by a medical officer at night and in the morning during hot weathers and in other weathers once at any time in twenty four hours. He shall be visited in his cell once in each watch by the master-at-arms or duty petty officer's but this particular duty shall not be delegated to a sailor below petty officers rank With the exception of the medical officer and regulating sailor, he shall not be permitted to communicate with any person, except when authorized by the commanding officer.

(6) A sailor in cells may be permitted to receive letters addressed to him, but such letters shall be opened, by him in the presence of one of the regulating staff so as to ensure that nothing undesirable is enclosed. A man undergoing the punishment or confinement in cell shall not be permitted to write a letter except in exceptional circumstances.

(7) The requirements of any of the forgoing provisions of this rule shall be relaxed by the commanding officer if the medical officer is of the opinion that such relaxation is necessary to avoid permanent injury to the health of the sailor, and may be relaxed at the discretion of the commanding officer in the case of a boy on apprentice or in any other suitable case.

(F) Deprivation of Good Conduct Badges (NO.7)

92. Deprivation of badges. - (I) Any sailor to whom one or more good conduct badges have been awarded may be deprived of one or more of them for misconduct summarily by warrant.

(2) A sailor sentence to any of the following punishments;

(a) imprisonment,

(b) detention, ,

(c) solitary confinement in cell.

(d) reduction from standard conduct,

shall be deprived of all the badges which he may be holding.

(3) This punishment may be awarded by warrant by the commanding officer, if he is of, the or rank of higher than, a commander; otherwise such warrant requires the approval of an officer of that, or higher rank.

93. Restoration. - (1) Restoration of badges shall be considered when it becomes due, whether the sailor prefers his claim or not, and the procedure specified in the regulations for the award of a badge shall be observed.

(2) One badge may be regained by six month's "Very Good Conduct" and additional badges by further periods of six months, reckoned in each case, from the date of the preceding restoration. If however a sailor has been sentenced to deprivation a second time within three years of actual service, period of qualification shall be twelve months for the first restoration and six months for each subsequent restoration. Time which does not count for purposes of award shall not be reckoned for purposes of restoration of badges.

(3) It shall be in the discretion of the commanding officer to delay the restoration of badge if, when restoration would normally be due, the sailor has failed to reach the required standard of conduct. In such a case the continuity of "Very Good Conduct" shall be deemed to have been broken on the date on which the man completed six months, or as the case may be twelve months' Very Good Conduct period, and a fresh period of qualification commenced the following day. This procedure may be repeated until the required standard of conduct is attained. The fact that the restoration of a badge has been delayed shall be noted on the man's conduct sheet.

(4) When a badge is restored after the normal date, the notation of restoration on the service book shall be underlined in order to indicate that restoration has been advisedly delayed.

(G) Reprimand by the commanding Officer (No.8)

94. Reprimand by the Commanding Officer.-The punishment of reprimand may be awarded by an order in writing to a leading rank

of a higher rank. Such punishment shall not involve a break in the continuity of the period of "Very Good Conduct" unless otherwise stated in the order.

(H) Extra Work and Drill (No. 9)

95. Extra work and drill. - (1) *To whom awarded* - This punishment may be summarily awarded to able sailors and below.

(2) *Routine to be followed:*

(a) Leave to be stopped for the period of punishment.

(b) To turn out half an hour before the hands.

(c) To do extra work during non-working, hours from half an hour before the hands turn to until 2100, one hour of which, during the dog watches, to be if possible, drill or boat pulling.

(d) To be mustered constantly,

(e) To have full time for meals, except dinner, for which half an hour will be allowed; to be employed for the remainder of dinner hour at drill or work.

(3) Other instructions

(a) Drill is to be performed wearing correct drill order only.

(b) Extra work is to be substituted when drill would have to be carried out in sight of civilian on-lookers.

(c) When possible extra work is to be done in the department to which the sailor belongs.

(d) If a sailor has to keep night watch either in harbour or at sea, this punishment is to cease at 2000 and he is not to be turned out before the usual time.

(e) While under this punishment a sailor should be allowed to leave the ship or establishment only on duty, except that he may be allowed to proceed on long leave at the discretion of the commanding officer.

(f) In the case of boys and apprentices the routine laid down in

sub-rule (2) may be relaxed at the discretion of the commanding officer,

(t) Stoppage of leave (No. 10)

96. Stoppage of Leave.-(I) As stoppage of leave, in common with other punishments, commences from the date on which it is awarded and runs continuously from that date and as it may not be awarded for more than thirty days, it is ineffective if given in conjunction with a sentence of imprisonment or detention of thirty days or more.

(2) When awarded for leave beaking, it must not exceed the scale laid down in rule 97 except for aggravated or repeated offences.

(3) It may also be awarded in appropriate cases for any other offence either as the only punishment.

(4) While under stoppage of leave a sailor shall be allowed to leave the ship or establishment only on duty, except that he may be allowed to proceed on long leave at discretion of the commanding officer. No other penalties are involved, except mustering with men under punishment.

(J) Mulcts or Pay for improper Absence (No.11)

97. Scale of mulcts. - (1) Except as provided in sub-rule (2) and (3) every sailor who is found guilty absence without leave or improperly leaving his ship or place of duty shall suffer forfeiture of pay and benefits in accordance with the following scale:-

(a) Where the period of absence does not exceed six hours, half a days pay and one day's leave;

(b) Where the period of absence exceeds six hours but does not exceed 72 hours, one day's pay and one day's leave for every, twelve hours (or part of twelve hours) of absence;

(c) Where the period of absence exceeds 72 hours, one day's pay and one day's leave for every twelve hours of absence upto 72 hours and one day's pay and one day's leave for each period of 24 hours (of part of 24 hours) thereafter; but the stoppage of leave shall in no case exceed 30 day's.

(2) The officer trying the case may at his discretion reduce the mulct of pay to not less than one day's pay for each (or -{)8rt. of a day) of improper absence and he may at his discretion also reduce the forfeiture of leave to arty extent.

(3) If a sailor is sentenced to imprisonment or detention for an offence of leave-breaking or for offences which include leave-breaking the mulct shall be one day's pay for every 24 hours (or part of 24 hours) of improper absence.

(4) The pay and allowances for the period of improper absence shall only be paid to the sailor after deducting the mulct of pay awarded in accordance with this rule, by the officer trying the case.

(5) A day's pay for the purpose of this rule is to include full pay and allowances but not extra pay, provision, lodging and kindred allowances. The term "kindred allowances" includes kit upkeep, haircutting and washing allowances.

98. Calculation of period of absence. - (1) The period of improper absence included in the charge should strictly be computed from the time when leave expires (or the time of breaking out) until the time of return to the ship or place of duty. Absence may, however, terminate in many different ways and computation of the period of absence for the purpose of mulcts can be decided only by the commanding officer having regard to the circumstances of each case.

(2) when a sailor surrenders or is apprehended as an absentee away from the locality in which his leave expired, it is within the discretion of the commanding officer, having regard to the

circumstances, to consider the absence as having terminated at the time of such surrender or apprehension, but if a lengthy journey is involved in returning to the place, where leave expired it might be appropriate to include the time involved thereby in computing the period of absence.

(3) When an absentee is arrested by the civil power on another charge and is subsequently handed over to the naval authorities his absence without leave is to be regarded as ceasing from the time of his arrest by the civil power.

99. Simple leave breaking. - Unless the offence is an aggravated or repeated offence as defined in rules 100 and 101, the punishment for an offence of leave-breaking involving improper absence shall normally be confined to a mulct in accordance with rule 97, but if the offence was a sequel, to an offence of improperly leaving a ship or place of duty, other punishments may be awarded in addition.

100. Aggravated offences. - (1) An offence of leave-breaking is aggravated.

- (a) if the absentee misses his ship or draft;
- (b) if, when leave was granted, a warning had been given that

the ship was under sailing orders;

- (c) if the offender was undergoing any form of punishment at the time;

- (d) if there are any other particularly serious circumstance.

(2) The charge in a case of leave-breaking falling within the terms of sub-rule (1) may refer to the offence as aggravated, but the charge shall not, contain anything which directly or indirectly refers to a previous offence.

101. Repeated offences. - A repeated offence of leave-breaking is one committed in the same ship or establishment within six months of a previous leave-breaking offence. A subsequent repeated offence is one committed within six months of a previous repeated offence. When a sailor is drafted to another establishment solely to undergo detention or cells and afterwards returns direct to the ship or establishment in which he was sentenced, his service should be regarded as continuous in that ship or establishment for the purpose of assessing whether an offence subsequently committed should be considered as a repeated offence. AU proved offences of leave-breaking are to be recorded on a man's conduct sheet in order that the appropriate punishment may be awarded for subsequent offences.

102. Punishment of aggravated or repeated offences. - (1) If the offence is aggravated or repeated (or if the offence was a sequel to one of improperly leaving the ship or place of duty.) other punishments authorized in this Chapter may be awarded in addition to the mulct.

(2) If the officer trying the case considers it necessary to award imprisonment or detention for absence without leave, he is to report his reasons in submitting the punishment warrant.

(3) Reduction from standard conduct is not to be awarded for leave-breaking unless it is an aggravated or fourth (or more often) repeated offence.

(4) Stoppage of leave in excess of the scale laid down in rule 97 is not to be awarded as a punishment for leave-breaking unless the offence is aggravated or repeated, but shall in no case exceed 30 days.

(K) Extra Work or Drill (No. 12)

103. Extra work or drill. - (t) Extra work or drill for not more than two hours a day may be awarded for any period not exceeding seven days to Sailors, including juniors, below leading ranks.

(2). Drill shall be performed wearing correct drill order only. When drill would have to be carried out in sight of civilian on lookers, extra work shall be substituted.

(L) Admonition (No. 13)

104. Admonition - When a Sailor is found guilty of an offence which of itself, or in view of mitigating circumstances, is not considered to deserve any more serious punishment, he shall be admonished.

PART (4).-SENTENCE AND CONSEQUENCES

105. Sentence. - (l) If an officer, having investigated an offence in accordance with the provisions of these rules, is satisfied that the accused is guilty of an offence which can be adequately punished by such officer, having regard to his powers of punishment he shall award such sentence as he thinks fit in the case.

(2) In awarding a sentence, the officer shall have regard to the record and character of the accused and shall also allow him to make a statement regarding the circumstances, if any, which may lead to the mitigation of punishment and such statement may be made on behalf of the accused by his divisional officer or other friend.

106. Punishment by warrants. - (l) A warrant of punishment shall be correctly drawn up and, completed in every detail according to instructions, on the form set out in the Second Appendix to these rules. It shall be signed by the complainant and the commanding officer who shall also insert therein the date on which he decided to punish the accused. When a warrant requires approval of a superior authority it shall not be promulgated until the necessary approval, has been obtained.

(2) Every punishment awarded, and every punishment which must accompany that award, shall be set out in the appropriate column of the warrant, except that stoppages of pay and leave necessarily involved in a sentence of cell punishment, detention or imprisonment shall not be shown.

(3) If a Sailor is punished by warrant for the first time in a ship, all the offences committed by him in the ship during the preceding six months shall be entered in the warrant. If a Sailor is punished by warrant more than once in the same ship, the offences committed since the date of the last warrant, but within the preceding six months, shall be entered, and the numbers and dates of all the previous warrants shall be mentioned.

(4) Warrants shall be numbered consecutively and a new series shall be started on 1st January each year.

NOTES

1. Following instructions are to be carefully observed whilst completing the Punishment Warrant (S. 271):

- (a) The date of the Warrant on top of page] is to be the date on which the commanding officer has finally decided to punish the accused by a Warrant. The same date is also to be inserted as one of the dates in the middle of page 1 indicating the date on which the commanding officer has "personally and publicly" investigated the offence. The same date is also to be inserted at the bottom of page 2 indicating the date on which the warrant has been given "under the hand of the Commanding Officer."
- (b) When according to the rules the approval, of a superior authority is necessary, all the entries on pages] and 2 of the Warrant –except the proposed punishment on top of page 1 and in the middle of page 2-are to be completed in ink. The proposed punishments are to be entered in pencil - a line being drawn through all unused columns and will be inked by the superior authority whilst approving the Warrant together with such reduction in punishment as he may consider desirable. *See* Rule 69(6) regarding the return of the Warrant for reconsideration by the commanding officer, when the superior authority considers the proposed punishment to be inadequate.
- (c) After the Warrant has been signed by the commanding officer and approved by the superior authority-whenver necessary, it is to be promulgated to the accused normally by the commanding officer on the quarter deck in accordance with rule 108, the reading of the warrant is to be preceded by the reading of the section under which the offence falls.. The date of promulgation is to be entered at the bottom of page 2 of the Warrant and signed by the officer reading the Warrant. This date will necessarily be a date after the Warrant has been approved by the superior authority. The punishment shall be effective from the date of promulgation but it shall be reckoned as commencing from the date on which the punishment warrant was "given under the hand of the commanding officer". (*See* rule. 109).
- (d) The G.C.B. Certificate at the bottom of page 3 of the Warrant is to be filled properly in all cases whether or not the Warrant requires the approval of the superior authority.
- (e) The certificate of medical fitness is to be signed after the promulgation of the Warrant in all "cases of cell, as well as detention. In case of imprisonment, such a certificate is to be endorsed to the "Committal Warrant". (*See* relevant form in the Fifth Appendix).
- (f) On page 4 of the Warrant, the "particulars of the accused and former offences" are to be properly entered in accordance with sub-rule (3), care being taken to write the word. 'Nil' if there are no former offences.

2. Sub-rule (4). - The same series is to be used for numbering the Punishment Warrants belonging to the parent ship as well as all the tenders of that Parent ship.

3. Form of Punishment Warrant (S.-271) - as given in the Second Appendix to the rules-is reproduced below:-

(Page 1)

S.-271

B.N.S. _____

Warrant No. _____ dated _____ 19

(The warrants are to be numbered consecutively, a new series being started on 1st January of each year.)

For -----

(Here specify all punishments for which, taken separately, a warrant would be required. To be inserted in pencil when the warrant is being submitted for approval).

(Page No. 3)

B.N.S. _____

_____ 19 _____

Sir,

I have the honour to submit that the offence(s) disclosed herein may be dealt with summarily, and that approval may be given to the proposed sentence which is considered suitable for the offence(s).

2. The accused's Service documents (complete to date) are enclosed.

3. With reference to N. Rnl~2 (4) it is recommended that the sailor should be re-advanced

by his Captain.

(Delete as necessary)

(only with the Chief of the Naval Staff's approval).

4. [Insert here any remarks on the suspension of any sentence of imprisonment or detention (N. Ordinance, Section 156)].

(Delete paragraphs 3 and 4 as may be necessary.)

I have the honour to be

Sir.,

Your obedient servant.

To _____

Remarks on. any excess, undue leniency or irregularity in the above proposals:

Approved

Signature
Rank
Date

The Commanding Officer,

B.N.S.-----

certificate of Medical Fitness to undergo Court Punishment

I hereby certify that I have today examined and I find him medically fit to undergo the punishment awarded.

Signature
Rank
Date

Good Conduct Badge Certificate

The following certificate must be completed in all cases (unless the man is in possession of three Good Conduct Badges).

The offender's Service documents have

The best evidence available in the absence of the offender's Service documents has been examined and I find that he :-

(Delete whichever is not applicable)

(a) is not overdue for the award or restoration of a Good Conduct Badge;

(b) is overdue for the award/restoration of his-----Good Conduct Badge, and was undergoing the period of probation specified

by Navy Regulations Art. 1275, clause 3, at the time of this/these offence(s)

[Delete (a) or (b)] -----Signature and Rank

Particulars of the Accused

Date of Birth ----- Date of Entry in Ship-

Date of first entry in Naval Service -----

Former Offences

(If a sailor is punished by warrant for the first time in a ship, all the offences committed by him in the ship during the preceding six months shall be entered in the warrant. If a sailor is punished by warrant more than once in the same ship, the offences committed since the date of the last warrant, but within the preceding six months, shall be entered, and the numbers and dates of all the previous warrants shall be mentioned.)

Number of Punishment 1		2	3	4	5	6	7	8	9	10	11
Nature of Offence	Date of Punish- ment	No. of days imprisoned	No. of days detention	Disranking to	Reduced from Standard	No. of days confined in Cell on board	Deprived of G.C. Badges No.	Reprimand by Captain	Days	Days	Days
									Extra work - 14 days	Leave stopped - 30 days	Pay forfeited for improp Absence
	19										

107. Modification of sentence. - At anytime before the warrant is promulgated the commanding officer may modify or even withdraw the sentence, if on further consideration it appears to him desirable to do so; but, if the warrant has been approved by superior authority, the sentence shall not be modified or withdrawn without the consent of such authority.

108. Promulgation of punishment by warrant. - (1) After a warrant has been signed and, where necessary approved, it shall forthwith be promulgated by the commanding officer by reading aloud to the offender the section under which the offence falls and the contents of the warrant, but the previous offences entered in warrant shall not be read out unless the commanding officer considers it necessary to do so in order to make the promulgation exemplary. Such promulgation shall be ordinarily carried out on the quarter-deck.

(2) Where an offender is in the hospital, the warrant shall be promulgated to him in hospital, unless the medical officer certifies that the offender is not medically fit to have the warrant read out to him, in which case the promulgation may be carried out on the quarter-deck in his absence and such promulgation shall have the same effect as if it had been read out to the offender. The fact of a warrant having been promulgated in the absence of the offender shall be stated on the warrant and shall be communicated to him as soon as he is in a fit state for it.

NOTES

1. See note 1 (C) to rule 106.

2. If the sentence requires a Committal warrant to be issued in terms of rules 245 and 246 the Commanding Officer is to do so as appropriate, from as specified in the Fifth Appendix to the rules amended as required to suit the particular requirements of the case. A copy of the same is to be forwarded forthwith to Naval Headquarters (Department of Judge Advocate General).

109. Date from which sentence runs. - Every sentence shall begin to run from the day on which it is awarded by the officer summarily trying the case, but a sentence awarded by a punishment warrant shall only be effective after promulgation, although it shall be reckoned as commencing on the day on which the punishment warrant is signed by the commanding officer.

110. Fridays and holidays. - Summary punishments which are carried out in a ship or naval establishment, other than punishments Nos. 1, 3, 6 and 10, shall not be carried out on Fridays and holidays; but such days shall count as part of the period for which the sentence is awarded.

111. Sickness of accused. - Should an offender be in such a state of health as to be unable to undergo all, or any part of the summary punishments to which he may be rendered himself liable, and should it appear probable that he will be invalided from the service, or remain for a considerable time unfit for punishment, the punishment merited by his offence is nevertheless, to be awarded and should it require a warrant the warrant shall be completed and duly signed and promulgated, if necessary in the absence of the accused in order that he may not escape the consequences, such as loss of pay or badges, of the punishment.

112. Principles to be observed in awarding punishment. - In awarding punishments the officers shall bear in mind the following principles, namely:-

(a) Inconsiderate and protracted punishment should as far as possible be avoided.

(b) The severity of the punishment should be in proportion to the gravity of the offence.

- (c) Due regard should be had of the effect of punishment on the maintenance of order and discipline.
- (d) The previous character of the offender should be reckoned as a factor in determining the severity or leniency of the punishment.
- (e) In the case of repeated offences the punishment should ordinarily be gradually increased beginning, if possible, with a minor punishment and raising it ultimately, to the maximum, but care should be taken that such method of gradually increased punish does not; result in undue leniency to an habitual offender or in the case of a grave offence.
- (f) The indirect consequences of the offence and of the punishment should also be taken into account.

NOTES

1. In order to ensure uniformity in the award of summary punishments, a table indicating the maximum punishments to be awarded normally for various offences is given below. It *is* not exhaustive as to offences and is intended to be merely suggestive. These limits are only to be exceeded in cases of aggravated nature or those of continual or persistent misbehavior, when the reasons for so doing are to be stated in the Daily Record of Offences and Punishments (section 240) and in the Punishment Warrant (section 271).

2. However, in those cases when the Commanding Officer considers that the charges clearly indicate that more severe punishment than authorised to be awarded by him-is required, he is to apply to the Superior Authority concerned for the trial of the accused either by General or District Court-Martial depending on the gravity of the offence. If the Commanding Officer is in doubt as to whether the accused should be tried summarily or by Court-Martial he is to "remand" the accused rule 50 (9) and forward the facts of the case by a

letter seeking the advice of the Administrative Authority. Whilst forwarding such a letter, the Commanding Officer must comply with the provisions of rule 58 (I) and ensure that the punishment warrant is not submitted at the same time for approval.

PART (5) - RECORD OF PUNISHMENTS

114. Conduct Sheet. - (1) All offences committed and service punishments awarded to a sailors Shall be recorded on his conduct sheet, except as provided in rule 115. Naval Penalties following conviction by the civil power shall also be noted on this form.

(2) All peaty offences committed by any man should not remain on permanent record against him and for this reason when he joins a ship (other than for passage or to serve a sentence of imprisonment or detention) with conduct sheet on which there is a record of any offences in a previous ship (other than on passage) a new conduct sheet shall be made out but the old one shall also be retained until the next assessment of character on the service book, after which it shall be destroyed unless the assessment is being made on desertion.

(3) When a man sentenced to imprisonment or detention is transferred to the books of another ship or establishment, and after release from imprisonment or detention he returns direct to the ship or establishment in which he was sentenced his conduct sheet shall continue to be used as if there had been no break in the continuity of his service in that ship or establishment.

(4) When a man is transferred to another ship, the- conduct. sheet or sheets containing details of his offences since the last assessment of naval character on his service book (usually 31st December) shall remain in that document and accompany him to his new ship, so that the commanding officer of that ship may 'have full details of the man's offences throughout the year when assessing his naval character in accordance with the regulations.

115. Minor Punishments Books. - (I) Officers who have been authorized under rules 76 and 77 to award the punishment two hour's extra work or drill for one day (No. 12) and admonition (No. 13) shall keep a record of the punishments awarded in a Minor Punishments, Book. It shall be signed by such an. officer at the time of awarding the punishments, signed by the executive officer daily and by the commanding officer weekly, and produced at inspection.

(2) The punishments mentioned in sub-rule (1) shall not be recorded on the men's conduct sheet or on Daily Record of offences and punishments or in the Punishment Return.

116. Daily record of offences and punishments. - (1) Details of all summary punishments awarded and the offences to which they relate shall with the exceptions of those entered in the Minor Punishments" Book, be recorded in the "Daily Record of offences and punishments.

(2) Officers to who authority has been delegated for awarding summary punishments by the commanding officer under rules 73, 74,

75 and 78, shall initial the entries in the Daily Record of offences and punishments in respect of such punishments as awarded by them. This record shall be examined and signed by the commanding officer weekly and produced at inspections.

NOTES

1. Daily Record of Offences and Punishments in form S. 240 (outer) and S.240-(a) (inner) (Revised March 1962), is to be maintained in separate series for the parent ship, tender or detached party, and this fact is to be mentioned clearly on the first and second page of form S. 240 (outer). On the second page, under the heading "Delegation of Powers of Punishment", are to be entered the rank and name of the officer to whom the commanding officer has delegated the powers of punishment indicating the capacity in accordance with one of the rules mentioned in sub-rule (2) as well as the Captain's Temporary Memo giving such an authority Against this entry, the officer concerned is to put his initials as specimen.

2. The Commanding officer of the parent ship is responsible for every punishment awarded in the ship or establishment, vide rule 68 (2), and is to endorse a "covering certificate" to that effect on page 2 of form S. 240, at the end of each quarter. If, however, he is superseded during the quarter, he is endorse such a certificate on the last day of his command, the certificate for the end of the quarter being endorsed by his successor.

3. On form S. 240 (a) all punishments, with the exception of those entered in the Minor Punishments Book, are to be entered consecutively on the date of the award. Following instructions are to be carefully observed whilst completing this form, a specimen of which, is reproduced below :-

S.-240-(a) (Revised March 1962.)		
<div style="text-align: center;">Serial No.</div>	<div style="text-align: center;">OFFICIAL No and NAME</div> <div style="text-align: center;">(The cause of any delay in punishment is started to be under the name.)</div>	<div>Sailor</div>
S.240(a) (Revised March 1962)		

PUNISHMENTS											
Note :- When an offence is punished as an aggravated offence, and this fact cannot be included in the charge, or is punished as a repeated offence, a brief explanation of the offence was aggravated or repeated is to be made across these columns.											
1	2	3	4	5	6	7	8	9	10	11	12
Imprisonment	Dismissal from Naval service	Detention	Disranked to	Reduces from Standard Conduct	Cell Punishment	Deprived of Good Conduct Badges - Number	Reprimand by Captain	Extra work and Drill	Leave Stopped	Mulcts of Pay or fine	Extra work or Drill (2 hours of day)
Days		Days			Days			Days	Days	Days	Days

- (a) A serial number is to be inserted in the first column against each offender.
- (b) If a delay of more than five days occurs between the commission of offence and the award of punishment, the reason thereof is to be briefly mentioned under the name of the offender.

(c) The charges are to be worded in the same manner as entered in form S. 241 "Report of offender".

Punishments should not be awarded in excess of the scale laid down for a particular offence, unless it is an aggravated or repeated offence for which higher punishment is permissible under the Rules. If this fact of aggravated or repeated offence cannot be included in the charge, it is to be briefly explained underneath the sentence in the column of "Punishments". Similarly if a Commanding officer has in his discretion for valid reasons - according to rules - reduced the punishment to less than that authorised by

(d) scale, a notation to that effect is also to be made in the column of "Punishments."

(e) If two or more separate offences have been tried on the same "Report of offender" or on the same day by the same investigating officer and punishments awarded, then the sentence thereof should be shown as "one in respect of all such offences-see rule 158 (2). More than one punishment- commensurate with the offence-may however be awarded at anyone time. Care must, however, be taken to ensure that a lesser punishment (*e.g.* No. 100 stoppage of leave) - which is involved in a higher punishment (*e.g.* No. 9 - extra work and drill) is not awarded at the same time as the higher punishment, unless the duration of the lesser punishment is longer.

(f) The date of award of punishment as well as the number of the Punishment Warrant are to be inserted in the appropriate column.

(g) Each sentence is to be initialled by the Officer awarding the punishment, and his rank and the capacity in which he has exercised this authority are to be written underneath. If the sentence is awarded by the captain, he is not required to initial the entry, but the word "captain" or "commanding officer" is to be written in this column to indicate the authority exercising the powers of punishment.

(h) The Daily Record - form S. 240 (a) - is to be closed every week, indicating the number of offences for the week. The commanding officer of the parent ship is to inspect it thereafter and sign it every week. It is to be closed on the last day of each quarter-indicating the total number of offences for the quarter and inspected and signed by the commanding officer of the parent ship. If the commanding officer is superseded before the end of the quarter, he is to similarly close it on the last day of his command; the same form being continued by his successor, who is to close it at the end of the quarter. This form is also to be closed and produced at the inspections (*see* N.R. S020) carried out by the Administrative Authority.

(i) No obliteration of or pasting over of any entry is to be carried out in this form. If, however, there is necessity to make a deletion, such portions are to be ruled over by double lines so that they are readable and such deletions are to be initialled by the commanding officer.

111. Punishment Return. - (I) At the end of each quarter the "Daily record of offences and punishment" shall be closed and signed by the commanding officer; The particulars of the punishments shall be extracted for the punishment Return which, when completed and signed by the Commanding officer, shall be forwarded to the Chief of Naval Staffs through the administrative Authority, accompanied by

- (a) daily record of offences and punishments;
- (b) punishment warrants; and
- (c) reports of arrests and trials by civil power.

(2) After examination, the Punishment Return and the enclosures shall be forwarded by the Administrative Authority With his remarks to the Chief of Naval Staff.

NOTES

1. Following instructions are to be carefully observed whilst completing the punishment Return (S. 181);

(a) The name and rank of the commanding officer, who had been responsible for all the punishments awarded in the ship or establishment to be inserted on the first page in block capitals. If more than one officer had exercised command during the quarter, names and ranks of all such officers, together with their periods of command, are to be indicated.

(b) The particulars of summary punishments as well as offences are to be extracted carefully from the "Daily Record of Offences and Punishments" and all the relevant columns in these two tables are to be carefully filled in, a line being drawn through those columns which are not applicable.

(c) Details of "sentences suspended or reconsidered" (Sections 156 and 160) - and of "naval penalties approved by the commanding officer" (Rule 259) are also to be properly filled in. The word "Nil" is to be written under these headings if no such action is required to be taken during the quarter.

(d) The commanding officer is then to give his opinion on the "general conduct of the ship's company" as well as on the "cause of increase or decrease in offences during the quarter".

(e) The commanding officer is following form, care being taken before signing it to ensure that all the conditions mentioned therein, specially in para. (v), have been complied with. a certificate The conditions mentioned in para. (iv) are in the alternative and care must be taken to delete that line which is not applicable.

"I hereby certify that :-

(i) the whole of the punishments inflicted on board this ship during the period covered by this Return, except non-warrant punishments awarded in conjunction with a warrant punishment and those recorded in the Minor Punishment Book (See N. Rule 115) have been included in the Abstract of Punishments,

(ii) that the punishments are in 'accordance with the N. Rules.

(iii) that in all cases where imprisonment, detention or cell punishment has been accompanied by stoppage of leave, the period of confinement has been reckoned as a portion of such stoppage.

(iv) that during the period covered by this Return.

*all suspended sentences have been reconsidered in accordance

*no suspended sentences have become due for with *Sec. 160*

reconsideration of the Navy

*(Delete whichever is not applicable.) Ordinance.

(v) a gist of N. Rules 31 to 37 (Form S. 272) have been read to the ship's Company in accordance with N. Rule 31(3)."

(f) This is a legal document and commanding officer and the Administrative Authority are to ensure to write the date in their own hand after their signatures.

2. Two copies of the Punishment Return, together with the documents mentioned in sub-rule (1), are to be forwarded through the Administrative Authority concerned to the Judge Advocate General, Naval Headquarters, for the information of the Chief of Naval Staff. These documents are to reach the Administrative Authority by the tenth of the month following the quarter to which they pertain.

3. Sub-rule (2) -The Administrative Authority is to examine all these documents/with a view to ensure that the summary punishments awarded are in accordance with the preceding rule of this Chapter. If any illegality irregularity or mistake is detected, necessary action is to be taken by the Administrative Authority to rectify the same by using, if necessary, the powers vested in it by Rule 118.

4. After this examination and necessary action, all these documents are to be forwarded to the Judge Advocate General, who will scrutinize them so as to ensure that no illegality, irregularity or mistake has been left undetected. One copy of the Punishment Return, together with all the accompanying documents, will be preserved in the department of the Judge Advocate General for not less than two years. The other copy of the Punishment Return shall be returned together with such remarks as may be necessary-to the Administrative Authority either for return to the commanding officer concerned or for further action under Rule 118.

PART (6) - REVISION

118. Revision of Summary Punishments. - (1) If any award made by or under the authority of the commanding officer dealing summarily with the charge under the preceding rules of this Chapter appears, to any proper superior naval authority to be wholly illegal, or if the finding involved in such award appears to such superior officer to involve substantial injustice to the

accused, such superior officer shall direct that the award be cancelled and the entry in the records of the accused be expunged.

(2) If any punishment awarded by or under the authority of a commanding officer dealing summarily with a charge under the preceding rules of this Chapter appears to the aforesaid superior officer to be in excess of the punishment authorized by law for the offence, such superior officer may vary the punishment awarded so that it shall not be in excess of the punishment authorized by law and the entry in the records of the accused shall be varied accordingly.

(3) If such punishment appears to the aforesaid superior officer to be too severe, having regard to all the circumstances of the case, such superior officer may remit the whole or a part of the punishment awarded.

Provided that the power to make such remission may be exercised by the superior officer within a period of two years only from the date of the award.

NOTE

See notes 3 and to rule 117

CHAPTER VIII

SUMMARY PUNISHMENTS-OFFICERS

119. Summary Punishments-Officers.-The Chief of Naval Staff, or, an officer not below the rank of captain to such extent as he may have been empowered in this behalf by the Chief of Naval Staff may, without the intervention of a court-martial, award summarily of an officer of the rank of lieutenant or below, who is charged with an offence under the Ordinance, anyone or more of the following punishment.

- (a) forfeiture of seniority in rank or in case of subordinate officers forfeiture of time for promotion, for a period not exceeding six months, but subject to the right of the accused, which shall be exercised only before the punishment is awarded, to elect to be tried by court-martial;
- (b) forfeiture of pay and allowances for a period not exceeding three months or until any proved loss or damage occasioned by the offence, of which he is convicted, is made good, whichever is less; but subject to the right of the accused specified in clause (a);
- (c) forfeiture of pay and allowances for a period not exceeding three months for an offence under section 42 in so far as it consists of neglect to obey flying orders, or for any of the offences mentioned in sections 49 to 52.
- (d) severe reprimand or reprimand.

NOTES

1. As to "forfeiture of seniority in rank" and "forfeiture of time for promotion", *see* notes 6 and 7 to section 80.

2. The option to elect trial by court-martial must be given to an accused officer, when it is proposed: to award any of the punishments mentioned in clauses (a) or (b) of this rule, but when the accused is charged with any of the offences mentioned in clause (c) or when it is proposed to award him severe reprimand or reprimand only, he has no right to claim trial by court-martial.

120. Procedure for summary disposal of charge against an officer.-(1) Where officer is remanded for the disposal of a charge against him by an authority empowered under rule 119 to deal summarily with that charge, a certified copy of the summary of "evidence shall be delivered to him, with a copy of the charge as soon as practicable after its preparation, and in any case not less than forty-eight hours before the disposal of such charge.

(2) Where the authority empowered under rule 119 decides to deal summarily with a charge against an officer he shall, unless he dismisses the charge or unless the accused has consented in writing to dispense with the attendance of the witnesses, hear the evidence in the presence of the accused. The accused shall have full liberty to cross-examine any witness against him and to call any witnesses and make any statement in his defence.

(3) The evidence of every such witness, whether for or against the accused, shall be taken on oath or affirmation and the oath or affirmation shall be administered by the authority dealing summarily with the case in the same form and manner as provided for a court-martial.

121. Submission of report to superior naval authority.—Proceedings of summary disposal under rule 119 shall be recorded on the form set out in the Second Appendix to these rules and the officer awarding the punishment shall forward a copy of this form together with a copy of the charge-sheet and summary of evidence to the superior naval authority, except in the case where the punishment is awarded by the Chief of Naval Staff himself.

NOTE

Form for recording summary trial proceedings of an officer as set out in the Second Appendix to the rules-is reproduced below:-

FORM FOR USE AT SUMMARY DISPOSAL OF OFFICERS

The accused (Rank, Name, P. No.) of B.N.S..

When an officer empowered under section 1103 of the Navy Ordinance, 1961, to deal summarily with a charge against an officer, decides (with the written consent of the accused).

A. to dispense with the attendance, of witnesses :-*

Questions to the accused ;

1. Have you received a copy of the charge-sheet and
summary of evidence? rightAnswer:-.....

2. Have you had sufficient time to prepare your
defence? Answer:-.....

The charge-sheet is read.

The summary of evidence is read, or the officer authorised to deal summarily with the charge informs the accused that he has already perused it.

3. Do you wish to make a statement.

(not on oath) ?

Answer :-

[Instruction :-If the accused desires to make a statement (not on oath), he may do so. Any statement so made by the accused must be taken down in writing and attached to this form.

If at the conclusion of the hearing the said officer considers that the charges(s) should not be dismissed, he is to examine the accused's record of service or his conduct sheet.

If the said officer proposes to award a punishment mentioned in clause (a) or clause (b) of rule 119; he must put the following question to the accused :

4. Do you elect to be tried by a court-martial, or will

you accept my award?

Answer :-.....

AWARD :-.....

PLACE:

DATE :-..

(Signature)

Officer empowered

under Section] 03

Of the Navy Ordinance, 1961.

*This form is to be accompanied by the charge-sheet, summary of evidence and written consent of the accused; and forwarded to the superior naval authority as required by rule 121.

"Reproof" cannot be awarded as a punishment under rule 119.

Where a number of charges are alleged and an award made, it should be indicated if any of the charges have been dismissed.

When the officer empowered under section 103 of the Navy Ordinance 1961 to deal summarily with a charge against an officer (or, the accused), requires the attendance of
B. witnesses :-*

Questions to the accused:

1. Have you received a copy of the charge-sheet and
summary of evidence? Answer :-.....

2. Have you had sufficient time to prepare your
defence? Answer :-

The charge sheet is read.

The prosecution witnesses give their evidence accused being permitted to cross-examine them.

3. Do you wish to make a statement (not on oath) ?
Answer :-

4. Do you desire to call any witnesses?
Answer :-

(Instruction.-If the accused makes a statement, it must be taken down in writing and attached to this form.)

The accused produces witnesses.

If at the conclusion of the hearing the said officer Considers that the charge(s) should not be dismissed, he is to examine the accused's record of service or his conduct-sheet.

If the said officer proposes to award a punishment mentioned in clause (a) or clause (b) of rule 119, he must put the following question to the accused :-

5. Do you elect to be tried by a court-martial, or will you accept my award?

Answer:-.....

AWARD :-.....

PLACE :-.....

DATE :-.....

(Signature)

Officer empowered under section 103 of the Navy Ordinance, 1961.

*This form is to be accompanied by the charge-sheet and summary of evidence, and forwarded to the superior naval authority as required by rule 121. ..

*"Reproof" cannot be awarded- as a punishment under rule 119.

*Where a number of charges are alleged and an award made, it should be indicated if any of the charges have been dismissed.

122. Naval officers in civil employment – Misconduct - Should a naval officer, while serving under a civil department of the Government or a Government, misbehave, he shall be dealt with under the appropriate civil law, rules or regulation, unless the misconduct was some act or omission of the officer in his naval, as opposed to his civil capacity. If his act or omission in a naval capacity were an offence under the ordinance, his case shall be dealt with under the ordinance and these rules and regulations.

123. "Logging" of an officer.- (1) The "logging" an officer means the recording of the commanding officer's displeasure with an officer's conduct where the commanding officer considers it necessary to record it for purposes of future reference. If the commanding officer considers the matter to be sufficiently serious to bring it to the notice of the Chief of Naval Staff, he shall report it to the Administrative Authority, who shall then decide whether the Chief of Naval Staff should be so informed or not.

1A(i). Negligence or failure, on the part of an officer, to perform his normal duties, or to conduct himself in a manner expected of his rank and appointment, where the nature or degree of such negligence or failure is not considered serious enough, for the time being, to take recourse to trial by a Court-Martial, the concerned Administrative Authority, the Principal Staff Officer at Naval Headquarters or the Chief of the Naval Staff may also "log" an Officer;

(ii) In a case where the Administrative Authority, the Principal Staff Officer at Naval Headquarters or the Chief of the Naval Staff decides to "log" an officer, the officer concerned should be informed of the allegations against him and the representation, if any, submitted by the concerned officer should be considered before deciding whether and in what degree the censure is necessary.

The format of such a letter or censure (admonishment) i.e. "logging" an officer will be similar to the one used by the Commanding Officer."

(Ref: Gazette Extra Ordinary dt. 4 Sep 91. .

Mindef letter SRO No. 258-LA W191 dt. 31 Aug 91.)

(2) The "logging" of an officer, whether reported to the Chief of Naval Staff or not does not constitute a punishment under the ordinance and is not a bar to subsequent trial either summarily or by court-martial in respect of any such misconduct.

NOTE

The logging is to be recorded as a memorandum in the following form and kept in the Captain's office; no entry being made in the Ship's Log :-

1. have had occasion to admonish right,.....
(*name, rank and designation of the officer being logged*) and hereby record his having incurred my displeasure in terms of N. Rule 123 for committing the following irregularity/ misconduct, namely :

(*Here insert the details*)

2. *1 further consider the matter to be sufficiently serious to be brought to the notice of the Chief of Naval Staff and forward the same to the(*Administrative Authority*) for further action as he may deem fit.

**(Omit this para, if not applicable.)*

Given under my hand on board BNSleftlefton therightrightday

Of.....19

Commanding Officer
BNS

Read and understood.

(Signature of the Officer being logged).

Date

CHAPTER IX

TRIAL BY COURT-MARTIAL

PART (I)-FRAMING OF CHARGES

124. Charge-sheet and charge.-(1) A charge. sheet shall , contain

the whole issue or issues to be tried by a court-martial at one time.

(2) A charge means an accusation contained in a charge-sheet that a person subject to the Ordinance has been guilty of an offence.

(3) A charge sheet may contain one charge on several charges.

NOTES

1. Sub-rule (1)

(i) The charge-sheet is usually prepared by the commanding officer but in the case of trial by court-martial, rule 131 makes the convening officer responsible for its correctness. It must be signed by the officer in actual CON11T'and of the ship or establishment to which the accused belongs on the day on which he is remanded for trial. if trial is ordered, the order must be added at the foot and signed by the convening officer.

(ii) The charge-sheet must di~close that the officer, who signs it, is the accused's commanding officer. Where two or more persons are jointly charged and they belong to

different ships; or establishments steps should be taken to ensure that they are drafted and put under the command of the same commanding officer.

- (iii) There may be several charge-sheets, *see* rule 175; but the court can only deal with one charge-sheet at a time. When there are two or more charge-sheets they must be consecutively numbered

2. Sub-rule (2). The "charge" here referred to is the formal written charge upon which the accused is to be tried, as distinct from the charge or complaint (mentioned in rules 46 to 50) which gives rise to preliminary investigation. Legal exactitude in framing charges is not necessary during summary trial.

3. Sub-rule (3).-All charges, including alternative charges must be consecutively numbered. As to insertion of charges in separate charge-sheets, *see* rule 175 and notes.

125. Commencement of charge-sheet.-Every charge-sheet shall begin with the name and description of the person charged, and shall state his number, rank, name and ship or establishment. When the accused person does not at the time of the trial belong to the regular navy, the charge-sheet shall show by the description of him, or directly by an express averment, that he is amenable to naval law in respect of the offence charged.

NOTE

As to the correct form U), which every charge-sheet should begin, *see* Third Appendix to the rules under the heading "Commencement of Charge-sheet."

126. Contents of charge.-(1) Every charge shall state one offence only, and in no case shall an offence be described in the alternative in the same charge.

(2) Each charge shall be divided into two parts, namely;

(a) the statement of the offence and

(b) the statement of the particulars of the act, neglect or

omission constituting the offence.

(3) The offence shall be stated, if not a civil offence, in the words of the ordinance; and if a civil offence, in such words as sufficiently described that offence, but not necessarily in legal terminology.

(4) The particulars shall state such circumstances respecting the alleged offence as will enable the accused to know every act, neglect or omission which it is intended to prove against him as constituting the offence.:

(5) The particulars in one charge may be framed wholly or partly by a reference to the particulars in another charge; and in that case so much of the latter particulars as is so referred to shall be deemed to form part of the first mentioned charge as well as of the other charge.

(6) Where it is intended to prove any facts in respect of which any deduction from pay and allowances can be awarded as a consequence of the offence charged, the particulars shall state those facts, and the sum of the loss or damage it is intended to charge.

NOTES

1. As regards the "statements of offence" in respect of the various offences punishable under the Ordinance, *see* Third Appendix to the rules. Specimen charges have been included in the notes to all the penal sections of the Ordinance namely sections 29 to 79. These should be consulted when drafting a charge under any of those sections.

2. A charge which is bad in law may invalidate the proceedings and thus end in an abortive trial. Some of the errors which commonly occur in the drafting of charges are noted below and every effort should be made to guard against such pitfalls:

A. (i) A single charge disclosing two separate offences would be a bad charge.
e.g. a charge under section 41 of "using insulting language and being having with contempt".
See notes to section 41. But the use of the word "and" in the statement of offence is permissible where the charge discloses only one offence *e.g.* a charge under section 64 of "losing arms *and* ammunition issued to him for his use for naval purposes", because the accused is not charged with two offences, but with a single offence which is constituted by his having lost the various articles specified in the charge.

ii) A single charge disclosing two separate offences even in the alternative would be a bad charge, *e.g.*, a charge under section 41 of "using insulting language or behaving with contempt to his superior officer"

B. A single transaction though technically disclosing more than one offence, should not, as a rule, be made the subject of more than one charge.-For instance, where violence to a superior is accompanied by insubordinate language, the violence alone should be charged (assuming the evidence to be satisfactory), the language being admissible in evidence as to the intent, *see* section 39, note 8.

On the other hand, if it seems desirable a man can legally be charged in two separate charges with "escaping from custody" (section 61) and "absence without leave" (section 47) (following such escape).

The statement of the particulars must support the statement of the offence, *e.g.* if the statement of an offence laid under section 63 (a) alleged that the accused committed "theft of property belonging to the Government" and the particulars stated that the accused dishonestly received or was in unauthorised possession of the property such particulars would not support the statement of the offence and the charge would be a bad charge and the fact that the accused pleaded guilty to it would not affect the

C. matter.

But a mere technical difference (*e.g.*, where the word assault is used in the statement of offence and the [particulars disclosed the use of criminal force), would not invalidate the charge, if the statement of offence and the particulars taken together supply the court and the accused with sufficient information of the nature of the offence which the court has to try and the accused to meet.

Where the statement of offence discloses an offence under the Ordinance and one or more essential elements of that offence are; omitted from the particulars, *e.g.*, the word "dishonestly", in a charge of "dishonestly misappropriating", or the words "knowing it to be stolen" in a charge of "receiving", the omission of that element from the particulars would not invalidate the charge, if taken as a whole, it informs the accused of the allegations he is called upon to meet, and the offence for which he is arraigned.

Sub-rule (3).-When civil offences are tried by court-martial under section 78, although technical terms need not be used in, the charge, the essence of the civil offence must be

D. expressed,

Sub-rule (4).-The statement of particulars should state shortly in ordinary language what the accused is alleged to have done. *All the ingredients necessary constitute the offence should be specified* for example, if the charge is under section 40, for "wilfully disobeying a lawful command given by his superior officer", the particulars must state the command, the rank and name of the superior officer who gave the command, and the

E. fact that the accused disobeyed it.

Where a state of mind, *e.g.*, intention or knowledge, is an essential ingredient of the offence, such state of mind should be stated in the particulars, for example, *see* specimen charges in the notes under various sections which require a particular intent (*e.g.* sections 29 to 32) or a particular knowledge (*e.g.* sections 37, 63 (d), 69, 72. etc.)

Vague statements must be avoided, *e.g.*, in charge for using threatening (or insulting) language (section 41), or for making a false accusation (section 72), it is not sufficient to state that the accused "used threatening (or insulting) language", or "made a false accusation., knowing such accusation to be false"; the words alleged to have been spoken or written must be set out in the particulars. Similarly, in a charge under section 42, it is not sufficient to state that the accused neglected to obey a general or a local order by doing a particular act; the order, which the accused is alleged to have neglected to obey must be set out in the particulars; *see* specimen charge in the notes to section 42.

3. Sub-rule (5).-If the particulars in a charge are framed wholly or partly by a reference to the particulars in an earlier charge, and the accused is acquitted of the earlier charge but convicted of the second charge, the court when recording a finding; of guilty on the second charge, should specify the place and date mentioned in the earlier charge.

4. Sub-rule (6). In a case where any loss or damage has been caused *e.g.* to Government or Service property as a consequence of an offence and so that the court might order penal deductions to compensate, wholly or partly, for such loss or damage, the particulars of the charge must state the facts in respect of which such deduction can be awarded. Unless these facts are stated in the particulars and proved in evidence, the court cannot award the punishment of penal deductions specified in section 80(1) (i) and explained in section 81 (9). *See* specimen charges under sections 64 and 65 of the Ordinance.

127. Validity of charge-sheet. - (1) A charge-sheet shall not be invalid by reason only of any mistake in the name or description of the person charged, if he does not object to the charge-sheet during the trial it is not shown that injustice has been done to the person charged.

(2) In the construction of a charge-sheet or charge there shall be presumed, in favour of supporting the charge, every proposition which, though not expressly stated therein, was necessary to support its validity and. can be fairly implied by it.

NOTES

1. Sub-rule (1) - Although the trial of an offender is not invalid on account of a mistake in name, such mistakes are dangerous, in so far as they may lead to mistakes of substance. For instance, the accused might thus be mistaken for a man named in a certificate of previous conviction or in the sheet-roll and a mistake of this description might cause the invalidity of the whole proceedings. Where, however, a man has been enrolled and is commonly known under an assumed name, he may be described by that name. The court has power to amend the charge by correcting any mistake in the name or description of the accused, *see* rule 143 (1) (a).

2. Sub-rule (2).-This sub-rule must not be regarded as excusing any carelessness in preparing charge-sheets. It enables a court to presume matters which though not stated in the charge, are necessary to support its validity, and can reasonably be implied from it.

PART (2)-WARNING TO ACCUSED OF THE TRIAL AND PREPARATION OF DEFENCE

128. Rights of accused to prepare defence.-(1)An accused person for whose trial a court-martial has been ordered to assemble shall be afforded proper opportunity of preparing his defence, and shall be allowed free communication with his witnesses and with any friend defending officer or legal adviser whom he may wish to consult.

(2) As soon as practicable after an accused has been remanded for trial by court-martial, and in any case not less than forty-eight hours before his trial, an officer shall give him gratis a copy of the summary of evidence and explain to him his rights under these rules as to preparing his defence and being assisted or represented at the trial, and shall ask him to state in writing whether or not he wishes to have an officer assigned by the convening officer to represent him at the trial, if a suitable officer should be available. The convening officer shall be informed whether or not the accused so elects. If any other or additional summary of evidence be taken subsequently, a copy thereof shall be given gratis to the accused as soon as may be.

NOTES

1. The accused should be afforded all facilities in preparing his defence and, consistent with the necessities of discipline and his safe custody, he should be allowed absolutely free communication with his legal adviser, defending officer or friend as well as with any witnesses that he may wish to call in his defence. He is, of course not bound to call as a witness everyone with whom he communicates as a possible witness on his behalf.

The accused, however, or the defending officer is not entitled to interview witnesses for the prosecution without special authority.

2. Where an accused selects a particular officer to act as his defending officer, that officer should, if practicable, be made available, see rule 195 (2). If the accused declines the services of a defending officer, and he is not represented by counsel, a certificate signed by the accused stating that he has declined the services of a defending officer should be attached to the proceedings.

3. As to the defending officer and friend of the accused, *see* rule 195, and as to counsel at general and district court-martial see rules 196 to 201. As to the right of the accused to consult the judge advocate on any question of law or procedure, *see* rule 203 (1).

4. A copy of the summary of evidence and of the additional summary, if any, should personally be handed over to the accused by a responsible officer, not less than 48 hours before the trial.

5. For power to dispense with this rule, *see* rule 134.

129. Warning to the accused of the trial.-(1)The accused, before he is arraigned, shall be informed by an officer of every charge on which he is to be tried; and also that, on his giving the

names of any witnesses whom he desires to call in his defence, reasonable steps will be taken for securing their attendance and such steps shall be taken accordingly. The interval between his being so informed and his arraignment shall be such as, to allow him sufficient time to consider his defence and shall not in any case be less than forty-eight hours.

(2) The officer, at the time of so informing the accused, shall give the accused a copy of the charge sheet and where the accused is, a sailor, shall, if necessary, explain the charge-sheet and the charges to him and shall also, if he so desires, give a vernacular translation of the charge-sheet to him.

(3) A list of the ranks, names and ships or establishments of the officers who are to form the court, and where spare members are named, also of those members shall as soon as they are named be delivered, to the accused, if he so desires.

(4) If it appears to the court that the accused is liable to be prejudiced at his trial by any non-compliance with this rule, the court shall take steps, and if necessary, adjourn, to avoid the accused being so prejudiced,

NOTES

1. Sub-rule (1) As to arraignment of the accused, see rule 141 and notes thereto.

2. As to the duty of procuring the attendance of witnesses for the accused, *see* rules. 207 and 208. Even if this rule is suspended under rule 134, the accused must be given information of every charge on which he is to be tried and the opportunity of calling his witnesses.

3. The request of an accused person for witnesses to be called on his behalf should not be refused; unless, it is quite clear that their evidence would be immaterial, or if their attendance cannot be secured within a reasonable time. If the request is refused the refusal and, reasons for it should be communicated to the court who will deal with the matter under sub rule (4) or under rule 209. If an essential witness is absent, the court should always adjourn for the purpose of enabling him to attend or of procuring his examination on commission under section 117 of the Ordinance.

For forms of summons to the witnesses, *see* Fourth Appendix to these rules.

4. **sub-rule (2).**- In the case of a sailor, even where this rule has been dispensed with (under rule 134), the-charge(s) must be clearly explained to the accused, as otherwise he may not have proper opportunity to prepare his defence. If the accused objects to the charge, he will have an opportunity of making his objection when called upon to plead; *see* rule 142.

5. **Sub-rule (3).**-The list of the members should be delivered to the accused, irrespective of any demand in his part, as soon as their names are known.

6. For power to dispense with this rule, *see* rule 134.

130. Joint trial of several accused persons.-(1) Any number of accused persons may be charged jointly and tried together for an offence averred to have been committed by them collectively.

(2) Any number of accused persons, although not charged jointly, may be tried together for an offence averred to have been committed by one or more of them and to have been abetted by or attempted by the other or others;

(3) Where two or more persons are charged jointly and tried together under sub-rule (1), or where two or more accused persons although not charged jointly, are tried together under sub-rule (2), anyone or more of such persons may at the same time be charged and tried for any other offence alleged to have been committed by him or them individually or collectively; provided that all the said offences are founded on the same facts, or form or are a part of a series of offences of the same or similar character.

(4) In any case falling under sub-rule (1), (2) or (3), notice of intention to try the accused persons together shall be given to each of the accused at the time of his being informed of the charge, and any accused person may claim either by notice to the authority convening the court or, when arraigned before the court, by notice to the court, that he or some other accused be tried separately on one or more of the charges included in the charge-sheet, on the ground that the evidence of one or more of the other accused persons proposed to be tried together with him will be material to his defence or that he would otherwise be prejudiced or embarrassed in his defence. The convening authority or court, if satisfied that the evidence will be material or that the accused "may be prejudiced or embarrassed in his defence as aforesaid; and if the nature of the charge admits of this, shall allow the claim, and such accused person, or, as the case may be, the other accused person or persons whose separate trial he has claimed, shall be tried separately. Where any such claim has been made and disallowed by the authority convening the court, or by the court, the disallowance of such claim, shall not be a ground for refusing confirmation of the finding or sentence unless, in the opinion of the confirming authority, substantial miscarriage of justice has occurred by reason of the disallowance of such claim.

NOTES

1. Sub-rules (1) and (2).-If one accused pleads guilty and the other not guilty, the trial of the latter up to and including the finding must be carried out before the court deal with the case of the accused who has pleaded guilty.

2. **Sub-rule (3).** - The fact that some of the charges are preferred only against one of the accused should be clearly shown on the charge-sheet.

3. **Sub-rule (4).**-(i) Where it is clear that the defence of the accused persons who are tried together under this rule will conflict, steps should be taken to ensure that they are separately represented by defending officers or counsel.

(ii) To admit a joint charge and trial the accused must have acted together with the common purpose of committing the offence charged. In the case of "taking part in a mutiny" the essence of the charge is combination between the accused. In such case the nature of the charge may not admit separate trial. In cases of doubt, the accused should be tried separately.

(iii) Certain offences cannot from their very nature be committed collectively. Such offences are *e.g.*:-

Section 33 - improperly abandoning post or sleeping on watch; Section 57 - malingering;

Section 59 - intoxication;

Section 74 - giving false evidence; etc.

Speaking generally, offences where a person's individual state of body or mind is of the sense of the offence, (*e.g.* desertion), should not be made the subject of a joint charge against two or more persons, (*see* notes to section 46).

PART (3)-CONVENING COURT-MARTIAL

131. Procedure of convening a court-martial.-(1) An officer before convening a court-martial shall first satisfy himself that the charges to be tried by the court are for offences within the meaning of the Ordinance and that the evidence, justifies a trial on those charges, and if not so satisfied, shall order the release of the accused, or refer the case to superior authority.

(2) He shall also satisfy himself that the case is a proper one to be tried by the description of a court-martial he proposes to convene.

(3) The officer convening a court-martial shall nominate the officers to form the court, and may also nominate such sp. are members as he thinks expedient. He may also; where he considers the services of an interpreter to be necessary, appoint or detail an interpreter to the court.

(4) The officer convening a court-martial shall send to the officer nominated as its president the original charge-sheet on which the accused is to be tried, the summary of evidence and the order for the assembly of court-martial, and to each of the other officers nominated as members a copy of the charge-sheet.

NOTES

1. As to the composition of different kinds of court-martial, *see* section 99.

2. A court-martial which, after the commencement of the trial is reduced below the legal minimum is dissolved under section 101. When, therefore, a trial is likely to be prolonged, the number of members detailed to serve should be in excess of the legal minimum required by section 99. In doubtful and complicated cases also, it is advisable to detail additional members to serve on a court-martial.

3. It is usually desirable to add two or more spare members in order to fill any vacancies caused as a result of challenge or illness etc.

4. In almost every case an intercept in the language of the accused person will be necessary; *see* rule 186.

5. Where several persons are to be tried separately by the same court, a copy of the convening order should be prepared for each accused. The original charge-sheet and convening order will subsequently be annexed to the proceedings.

6. The object of *sub-rule* (4) is to enable the president of the court to have a general knowledge of the case which is to come before it. If any amendment in the charges appears to him to be required, he should communicate with the convening officers before the trial begins.

7. The summary of evidence must be read in court if the accused pleads guilty, and may be used for determining the sentence; *see* sub-rule 147 (2). It may be used at the trial for the purpose of showing that a witness has previously made a particular statement or is giving evidence which differs from that given by him when the summary was taken. Any statement of the accused contained in the summary may be read to the court, but before reading such statement formal proof should be given that it was made voluntarily. Except in the above instances the summary cannot be read as evidence.

8. During the trial the president should compare the evidence given by each witness with his statement contained in the summary of evidence and if there is any material variation, should question him thereon.

Members of the court must take care that they are not unduly influenced by any statement appearing in the summary of evidence, though they will naturally have regard, in testing the credibility of a witness, to the fact that his evidence given at the trial is contradictory to his statement at the summary. It is usually expedient that the president alone should refer to the summary.

9. Where the accused pleads guilty, the summary of evidence is to be annexed in the proceedings; *see* rule 147(2) and the Form of proceedings given in the Fourth Appendix to these rules.

If the accused pleads not guilty, the summary should be enclosed with the proceedings when sent to the confirming officer, but it should only be annexed to the proceedings if it has been used in evidence.

10. Sub-rule (1).-The convening officer after satisfying himself that the charges are in order, is to personally sign the orders for the trial at the end of the Charge-sheet.

11. Sub-rule (4). - The order for the assembly of the Court-Martial is also to be personally signed by the convening officer in the following form as set out in the Fourth Appendix to the rules:-

Orders by

Place Date

The detail of officers as mentioned below will assemble at..... on the.....day of19....., or as soon thereafter as practicable, for the purpose of trying by a.....

court-martial the accused person (persons) named in the margin (and such other person or persons as may be brought before them)

	<i>President.</i>	<i>Members.</i>
<i>Spare Members.</i>		
<i>Judge-Advocate.</i>		
<i>Prosecutor</i>		

The accused will be warned, and all witnesses duly required to attend.

The proceedings (of which only one copy is required) will be forwarded to. . . .

Signed this left day of right 19.....

(Place)

Convening Officer.

12. The duty of appointing the prosecutor also devolves on the convening officer and in trials by general court-martial and in complicated cases a prosecutor with experience and knowledge of Naval law is normally to be selected. In ordinary cases the commanding officer of the accused who carried out the summary trial or the president of the board of enquiry which investigated the subject of the charge against the accused, should be appointed prosecutor.

13. The convening officer is also to ensure that necessary instructions are issued to another ship/establishment (for shore battery) in the vicinity to carry out either of the following court-martial ceremonial, if it is impracticable for the following court-martial ceremonial, if it is impracticable for the ship or establishment, in which the court-martial is to be held, to do so:-

(i) Firing of the court-martial gun. (N.R. 1722).

(ii) Provision of the guard for the president and members of the court-martial (N.R. 1754 & 1755).

132. Adjournment for insufficient number of officers.-(1) If before the accused is arraigned, the full number of officers nominated are not available to serve, by reason of ineligibility, disqualification, challenge or otherwise, and if there are not sufficient, number of spare members to take the place of those unable to serve, the court shall ordinarily adjourn for the purpose of fresh members being appointed; but if the court are of the opinion that in the interest of justice and for the good of the service it is inexpedient so to adjourn, they may, if not reduced in number below the legal minimum, proceed, recording their reasons for so doing.

(2) If the court adjourns for the purpose of the nomination of a new president or of fresh members whether under these rules or otherwise, the convening officer may if he thinks fit, convene another court.

NOTES

1. For legal minimum required for a court-martial, *see* section 99.

2. Sub-Rule (1).-A general court-martial, for which, say seven members have been detailed, will not ordinarily begin the trial with less than seven. It may be assumed, that the convening officer in detailing seven members when five would have legally sufficed, had in view the possible prolongation of the trial; or, the desirability in the circumstances of the case of submitting the issues to be decided to the arbitration of a larger tribunal. But under this sub-rule the court may proceed unless reduced below the legal minimum.

(*See* notes 2 and 3 to rule 131).

3. Sub-rule (2).-*New president* will be necessary if the president who has been detailed is found ineligible or disqualified or if an objection to him is allowed or if he cannot attend. The court must adjourn to report to the convening authority for appointment of a new president.

After the trial has once begun fresh members cannot be appointed in any circumstances (*see* section 101).

133. Ineligibility and disqualification of officers for courtmartial.-(1) An officer is not eligible for serving on a court-martial unless he is subject to the Ordinance.

(2) An officer is disqualified from serving on a general or district court-martial if he.

(a) is the officer who convened the court; or

(b) is the prosecutor or a witness for the prosecution; or

(c) investigated the charges before trial, or took down the summary of evidence, or was a member of a board of enquiry respecting the matters on which the charges against the accused are founded; or

(d) is the commanding officer of the ship or establishment to which the accused is attached or belongs at the time of the commission of the offence or at the time of the trial; or

(e) was a member of a previous court-martial which tried the accused in respect of the same offence; or

(f) has a personal interest in the case.

NOTES

Eligible is used with reference to an officer being subject to the Ordinance and of the necessary standing *i.e.* he must have held commission for a period of not less than three years and must be of or above the rank of lieutenant (*see* section 99). In other words, it refers to the status of

1. the officer and involves no personal considerations.

Disqualified is used with reference to the personal qualification of an officer. It is immaterial to which branch of the Navy the officer belongs, as long as he is not disqualified under sub-

2. rule (2).

Personal interest.-This will extend to even a remote or very small interest, *e.g.*, in a charge relating to the theft of a sum of money however small belonging to an officers' mess, or a club, every officer of that mess or club has a personal interest, and is therefore disqualified. A merely technical interest has been held to disqualify a person from holding a judicial position, *e.g.*, a person who holds, as trustee or otherwise on behalf of others, money in which he has no beneficial share himself, nevertheless has a personal interest in any charge relating to that

3. money.

134. Suspension of rules on the ground of the exigencies of the service or the necessities of discipline.- Where it appears to the officer convening a court martial, or to the senior officer on the spot that exigencies of the service or the necessities of discipline, render it impossible or inexpedient to observe any of the provisions of sub-rule (2) of Rule 50, rules 128 and 129, he may by order under his hand, make a declaration, to that effect specifying the nature of such exigencies or necessities, and there, upon the trial or other proceedings shall be as valid as if the rule mentioned in such declaration had not been contained herein; and the declaration may be made with respect to any or all of the aforesaid rules in the case of the same court-martial.

Provided that the accused shall have full opportunity of making his defence, and shall be afforded every facility for preparing it which is practicable, having due regard to the said exigencies or necessities.

NOTES

1. The declaration, dispensing with certain rule~, must be signed and dated by the competent authority on the following form-as set out in the Fourth Appendix to these rules-before the provisions of this rule can be made applicable to a court-martial;-

In my opinion exigencies of the service/the necessities of discipline namely
.....*render it impossible/inexpedient to observe the provisions of
rule(s).....**on the trial of.....by.....court-martial assembled
pursuant to the order of the.....of.....

Signed atleftleftthisleftleft.... .day ofrightright.19..

(Signature).

(*Instructions:* This declaration must be signed by the officer whose opinion is given, and will be annexed to the proceedings. It should not be included to the Convening Order but should be a separate document).

*State these.

**State the rule or rules which cannot be observed (*see* 134).

2. The power conferred by this rule should rarely be exercised, except on active service and then only if absolutely necessary. Occasionally it may be necessary, to resort to it in the case of embarkation or possibly in an extreme case where the necessities of discipline require speedy trial and punishment.

In exercising the power conferred by this rule, it is not necessary to dispense with all the provisions mentioned, *e.g.*, it may be expedient to comply with sub-rule (2) of rule 50 but not with rule 128.

3. If sub-rule (2) of rule 50 is suspended steps must be taken to inform the accused before hand of the nature of the charge the names of the witnesses and the purport of their evidence and the court must take care that the accused is not prejudiced by reason of the suspension as for instance by not having received a summary of evidence.

4. Rule 129 (3) should always be complied with and rule 129 (1) and (2) if not complied with within the time therein mentioned, should be complied with as soon as possible before the court assembles.

5. The accused will not have *full opportunity* of making his defence unless receives in reasonable time the information mentioned above; and if he requests a reasonable adjournment in order to consider the witnesses evidence, or to acquaint himself with the charge, or requests the postponement of the cross-examination of a witness the court should grant the request, and may adjourn for the purpose. A refusal might be held to be non-Compliance with the proviso and thus to invalidate the trial. For the same reason, the court even in the absence of such request, must take care that the accused is not prejudiced by being taken by surprise, either by the charge or by the evidence of the witnesses.

PART (4)-PROCEDURE AT TRIAL

135. Inquiry by court as to legal constitutions.-(I) On the court assembling, the order convening the court shall be laid before them together with the charge-sheet and the summary of evidence, or a true copy thereof, and also the ranks, names, ships or establishments of the officers

appointed to serve on the court, and it shall be the first duty of the court to satisfy themselves that the court is legally constituted; that is to say:-

- (a) that as far as the court can ascertain, the court has been convened in accordance with the Ordinance and these rules;
- (b) that the court consists of a number of officers not less than the legal minimum required by section 99 and save as mentioned in rule 131 not less than the number detailed;
- (c) that each of the officers so assembled is eligible and not disqualified for serving on that court...martial;
- (d) that the president and other members are of the required rank; and
- (e) that the judge-advocate, if any, is duly appointed and is not disqualified for acting at that court-martial.

2. The court, if not satisfied on any of the above matters, shall report their opinion to the convening authority, and may adjourn for that purpose.

NOTES

1. Court-martial Ceremonial.- The following ceremonial is to be observed on each day on board the ship or establishment on which the court-martial is being held ;

- (i) The Bangladesh National Flag to be hoisted-at the peak or at the yardarm, as appropriate-when the Colours are hoisted.
- (ii) A gun to be fired immediately after the Colours have been fully hoisted and before the "carry on" is sounded.

Note,-It is normally to be fired by the ship or establishment in which the court-martial is to be held, but if this is impracticable for any reason, the gun may be fired by any other ship, establishment or shore battery in the vicinity as directed by the convening authority,

(iii) The National Flag to be dipped between each separate sitting of the court and to be hauled down when the court adjourns for the day, *see* N.R. 1722).

(iv) A petty officer's guard to be paraded for a captain or commander attending a court-martial as president or member, on arrival as well as on departure. The president, if he wishes, may order that marks of respect are not to be rendered on the departure of the court. The guard is to present arms only to captain.

Note,-(1) Where it is not possible for the ship in which the court-martial is to be held to provide the guard instructions for the guard to be provided by another ship are to be issued by the convening authority.

(2) Guard is not to be paraded for officers below the rank of commander (*see* N.R. 1741, 1742, 1754 and 1755).

(v) The side to be piped-only on board ships (not in shore establishments) -whenever the president or a member or a court-martial is proceeding to or returning from the court (*see* N.R. 1741 and 1744).

(vi). It enhances the dignity of the occasion if members of the court arrive and leave the ship in which the trial is taking place singly in their own boats. Members should make a point of arriving before the president and await his arrival on the quarter-deck. The president should arrive as punctually as possible and it is polite for, the ship to compliment him on his punctuality by striking the bell in between the pipes. For example, if the court-martial has been summoned for 0930 one should hear the boatswain's first pipe as the president comes alongside followed by three bells struck smartly by the quartermaster in the back ground followed by the second pipe as the president comes up the ladder.

2. The inquiries necessitated by this and the following rule should be conducted by the court viz by the president the members the judge advocate in closed court. The court is not "open" at this stage and the accused has not yet been brought before it. Nor should the prosecutor or defending officer or counsel be admitted.

3. The convening order charge-sheet and summary of evidence will be in the possession of the president .see rule 131- (4).

4. It is essential that the court should ascertain as far as lies in their power, that they have jurisdiction. The convening order must in every case be signed personally by the convening officer and not by any other officer "for" him. The absence of a properly signed convening order is a fatal flaw although an order for trial is endorsed upon the charge-sheet. Apart from the specific requirements of this rule the court must be satisfied that it is constituted strictly in accordance with the convening order.

5. If the court is satisfied that a member is not able to serve due to illness, ineligibility or disqualification; the senior of the spare members is to take his place.

6. The court in considering whether they are convened in accordance with the Ordinance and the rules can only look at the convening order. The convening officer is responsible the convening order. The convening officer is responsible him to convene the court and the court are not required to satisfy themselves in his respect .

7. For legal minimum see section 99: and for eligibility and disqualification of members see rule 133. The eligibility and disqualification of a spare member should also be considered by the court at this stage.

8. As to the required rank of the president and other members .see sections 96 to 99.

9. As to the disqualification of a judge advocate .see rule 202 (2).

10. When a board of inquiry has been held respecting a matter upon which a charge against the accused is founded the president should insert in red ink, at the bottom of the first page of the proceedings a certificate to the following effect:

"I have satisfied myself that none. of the officers detailed as members of this court has previously served upon any board of inquiry respecting the matters forming the subject of the charge(s) before this court-martial".

(See Form of proceedings of a general (or district) court-martial in Fourth Appendix to these rules).

136 Inquiry by court as to amenability of accused and validity of charge.-(1) The court, when satisfied on the above matters, shall satisfy themselves in respect of each charge about to be brought before them:

(a) that it appears to be laid against a person subject to the Ordinance and to the jurisdiction of the court; and

(b) that each charge discloses an offence under the Ordinance and is framed in accordance with these rules, and is so explicit as to enable the accused readily to understand what he has to answer.

(2) The court, if not satisfied on any of the above matters, shall report their opinion to the convening authority and may adjourn for that purpose.

NOTES

The inquiry by the court under this and the preceding rule should be conducted in closed

1. court; *see* note 1 to rule 135. .
2. For amenability of the accused to naval law *see* sections 2 and 5.
3. As to the validity of charges *see* rules 124 to 127 and notes thereto.

137. Appearance of accused prosecutor and defending officer:- When the court have satisfied themselves as to the above facts, they shall cause the accused to be brought before the court. The Prosecutor, who must be a person subject to the Ordinance, the counsel for the prosecution, if any, the defending officer, the counsel or friend of the accused if any, shall then take their respective places.

NOTES

Before the president declares the court open he is to ensure that the officer of the court has

1. reported that all witnesses are in attendance.
It is customary for the court and the judge advocate to have their caps on until the
2. administration of the oath after which they remain uncovered.
The accused is to be marched into the court by the provost marshal with his sword drawn and cap on. The accused is to remain standing until the president gives him permission to sit. This is usually done after a special plea to the jurisdiction or a plea in bar of trial if any and after the general plea of "guilty" or "not guilty". The provost marshal follows the motion of the
3. accused as regards standing or sitting.
If the accused is an officer his sword in its scabbard is laid on the table opposite the president so that neither the hilt nor the point is towards the accused. The officer of the court is to ask
4. the accused for his sword when he enters the court and to place it on the table.
5. On entering the court the prosecutor the defending officer and the friend of the accused salute

the president.

The counsel for the prosecution or for the defence is to wear robe and on entering the court is

6. to bow to the president.

All the witnesses are to be present in the court until after the accused persons have been

7. arraigned when the president shall direct them to withdraw.

After the audience is admitted the president shall direct everybody except the accused and the

8. provost marshal to sit down

138. Proceedings for challenges on members of the court.-(1) The order convening the court shall be read in the hearing of the accused and he shall be asked, as required by section 109 on the Ordinance, whether he objects to be tried by any officer sitting on the court. Any such objection shall be disposed of in accordance with the provisions of section 109 and the following procedure, namely:

(a) The accused shall state the names of all the Officers to whom he objects before any objection is disposed of.

(b) The accused may call any person to give evidence in support of his objection, such person may be questioned by

the accused and by the court.

(c) If more than one officer is objected to, the objection to each officer shall be disposed of separately, and the objection to the lowest in rank shall be disposed of first; except that, if the president is objected to, the objection to him shall be disposed of before the objection to any other officer. On an objection to an officer all the other officers present shall vote on the disposal of the objection, notwithstanding that objections have been made to any of these officers.

(d) When an objection to the president or to any other officer is allowed, the court shall follow the procedure laid down in sub-sections (3) and (4) of section 109 respectively;.

(e) The eligibility, absence of disqualification and freedom from objection of an officer filling a vacancy shall be ascertained by the court, as in the case of other officers appointed to serve on the court.

(2) The accused shall have no right to object to the prosecutor or the judge-advocate.

NOTES

1. This rule must be read with section 109.

2. The principle underlying section 109 and this rule is that the court should not only be impartial but be believed by the accused and his comrades to be so. Therefore in a doubtful case, the objection should always be allowed.

3. An officer objected to on the ground of personal enmity, prejudice or malice or for having formed or expressed an opinion on the case should unless the objection is obviously groundless

himself request and be permitted to retire. An officer successfully objected to on the ground-of personal interest is disqualified from serving as a member; *see* rule 133 (2) (f) and notes.

The court may be closed to consider each objection.

4. Sub-rule (1) (a).-The accused must make each objection separately. He cannot object to the court collectively except upon a plea to the-jurisdiction under rule 144. If the accused persists in objecting to the court collectively the court should treat the objection as made to all members individually, and the procedure provided by sub-rule (I) (c) should be followed.

5. Sub-rule (1) (b).-At this stage the witnesses cannot be examined on oath, as the court are not yet sworn, but rule 212, as to the mode of questioning witness shall substantially apply.

6. Sub-rule (1) (c).-Excludes an officer from voting on his own case but all the other Officers present, namely those who have not returned upon objections to them being allowed, must vote on the disposal of the objection.

7. Sub-rule (1) (d).-When an objection to the president or to any other officer is allowed, the court must follow the procedure laid down in sub-sections (3) and (4) of section 109 respectively. It is the duty of the president to appoint, the first officer nominated as a spare member, to fill any vacancy thus created. If the president is himself successfully objected to, the court must adjourn until a new president is appointed by the convening authority. Similarly, if there is no spare member available and the court are reduced in number below the legal minimum, they must adjourn for the purpose of the appointment of fresh members; and even though not so reduced, they should ordinarily adjourn unless they are of the opinion that, in the interest of justice and for the good of the service, it is not expedient to do so; (rule 132).

8. Sub-rule- (1)(e).-It is desirable to ascertain before the accused is brought the court whether a spare member is eligible and qualified to serve if called upon. An objection to a spare member called upon to serve will be deal with immediately. If he is junior to any other officers who have been objected to; if he is not, the section to junior officers will first be disposed of and he will have to vote on such objections.

9. As to the voting by members, *see* section m. The decision of the majority prevails. As the president has no second or casting vote in respect of objection to members, in case, there is an equality of votes, the decision shall be in favour of the accused.

139. Swering or affirming of members.-(1) As soon as the court is constituted with the proper number of officers who are not objected to, or the objections to whom have been over-ruled, an oath or affirmation shall be administered to, and taken in the presence of the accused by, each member of the court, in the form given in the Fourth Appendix to these rules, or in such other form to the same purport as the court ascertains to be according to his religion or binding on his conscience.

(2) If there k a judge-advocate, the oath or affirmation shall be administered by him to the president first, and afterwards to the other member of the court. If there is no judge-advocate the oath on affirmation shall be administered by the president to the other members at the court, and shall be administered to the president by any member of the court already sworn or affirmed.

NOTE

See notes to rule 140 below

140. Swearing or affirming of judge-advocate and other persons.-(1) After the members of the court are all sworn or have affirmed, an oath or affirmation shall be administered in the presence of the accused to the following persons or such of them as are present at the court-martial, in such of the forms as are provided in the. Fourth Appendix to these rules as may be appropriate or' such other form to the same purport as the court ascertain to be according to the religion or otherwise binding on the conscience of the person to be sworn or affirmed:-

- (a) Judge-advocate;
- (b) Officers attending for the purpose of instruction;
- (c) shorthand writer;
- (d) Interpreter.

(2) If there is a judge-advocate, he shall be administered the oath or affirmation by the president. The judge-advocate shall then administer oath or affirmation to others. If there is no judge-advocate, the oath or affirmation shall be administered by the president or by some member of the court.

NOTES

1. Rules 139 and 140 must be read with section 110 of the

Ordinance.

2. In general practice, Muslims and Hindus are affirmed. Christians and Sikhs are generally sworn, the former on the New Testament or some book containing it, the latter on the Granth Jews are sworn on Old Testament.

3. A person taking the oath shall place his hand on, or hold, the book and will repeat the oath after the person administering it. It is not necessary to kiss the book. The oath must be administered and taken with solemnity. The members are to be sworn separately.

4. Affirmations are repeated by the person making affirmation after the person administering it.

5. Normally the oath or affirmation is to be administered in the following form, as set out in the Fourth, Appendix to the rules, but it may also be administered to the person to be sworn or affirmed in such other form to the same purport as the court ascertains to be according to his religion or binding on his conscience:

(i) *President and Members.*

I..... (name in full). swear by Almighty God/do solemnly, affirm that I will, well and truly, try the accused before the court according to the evidence, and that I will duly administer justice according to the Navy Ordinance, 1961 and the rules made thereunder, without partiality, favour or affection; and I do further swear/affirm that I will on no account at any, time

whatsoever, disclose or discover the vote or opinion of any particular member, of this court-martial, unless thereunto required in due course of law.

(ii) *Judge- Advocate.*

I..... (name in full)..... swear by Almighty God/do solemnly affirm that I will to the best of my ability carry out the duties of the judge-advocate in accordance with the Navy Ordinance and the rules made thereunder without partiality, favour or affection; and I do further swear/affirm that I will not on any account whatsoever, disclose or discover the vote or opinion on any matter, of any particular member of this court-martial, unless thereunto required in the course of law.

(iii) *Officers under instruction.*

I,..... (name in full)..... swear by Almighty God/do solemnly affirm that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

(iv) *Shorthand writer.*

I (name in full)..... swear by

Almighty God/do solemnly affirm that I will truly take down to the best of my power the evidence to be given before this court-martial, and such other matters as may be required, and will when required, deliver to the court a true transcript of the same.

(v) *Interpreter.*

I..... (name in full)..... swear by Almighty God/do solemnly affirm that I will to the best of my ability truly interpret and translate, as I shall be required to do touching the matter before this court-martial.

(vi) *Witnesses.*

I,..... (name in full)..... swear by Almighty God/do solemnly affirm that the evidence which I shall give before this court, shall be the truth, the whole truth, and nothing but the truth.

141. Arraignment of accused.-(1) After the members of the court and other persons are sworn or have affirmed as herein before provided, the accused shall be arraigned on the charges against him.

(2) The charges upon which the accused is arraigned shall be read out and if necessary, translated to him and shall be required to plead separately to each charge.

NOTES

1. The accused should be arraigned by the president, or if there is a judge advocate present, by the judge-advocate.

2. Arraignment consists of:

(i) calling upon the accused by his number, rank, name and description as given in the charge-sheet and asking him "Is that, your number, rank and name" etc. ?;

(ii) reading the charge to him; and

(iii) asking him "Are you guilty or not guilty of the charge against you, which you have heard read over"?

3. Where two or more persons are jointly charged and tried for the same offence, each is separately arraigned. Where there are more charge-sheets than one against an accused, he must be arraigned and tried upon the first charge-sheet before arraignment upon the second or subsequent charge-sheets, *see* rule 175.

4. Under rule (1314) a copy of the charge-sheet is supplied to every officer nominated as member of the court. The original charge-sheet, which is supplied to the president, will be annexed to the proceedings.

5. The plea of the accused must be taken on all the charges in a charge sheet. This applies to alternative charges if the accused has been, arraigned upon them, but *see* rule 146 (3).

142. Objection by accused to charge.-(1) The accused, when required to plead to any charge, may object to the charge on the ground that it does not disclose in offence under the Ordinance, or is not in accordance with these rules.

(2) The court, after hearing any submission which may be made by or on behalf of the accused and the reply of the prosecutor, shall consider the objection in closed court and shall either disallow it and proceed with the trial, or allow it and adjourn to report to the convening authority, or, if they are in doubt, they may adjourn to consult the convening authority.

NOTES

1. Offence under the Ordinance.-For example, a charge laid under section 64, which alleges:-"By negligence damaging **property** of a comrade", would not disclose an offence under that section.

2. "**.... in accordance with these rules**", *See* rules 124 to 127, *e.g.* that the charge discloses two Separate offences (using insulting language *and* behaving with contempt) or that it was bad for vagueness ("making a false accusation knowing such accusation to be false"; without stating what the false accusation consists of).

See notes to rule 126.

3. Adjourn to report to the Convening authority.-once the court has allowed the *objection*, it cannot continue with the trial and if the convening officer considers that the decision of the court was wrong he must dissolve the court and order a fresh trial before a new court.

4. Consult the convening authority. The convening authority may either advise the court what action to take of dissolves the court or convene a fresh court for the trial of the accused.

5. For procedure where it appears that the accused is by reason of insanity, unfit to take his trial, *see* section 123 and rule 217.

CHAPTER X

GENERAL PROVISIONS AS TO PROCEEDINGS OF COURT-MARTIAL

170. Seating of members-The members of a court-martial shall take their seats in the following order:

- (a) The president shall be seated in the centre with the judge-advocate on his right and the next senior member on his left remaining members shall be seated alternately to the right and left of the president in the order of seniority.
- (b) When there is no judge-advocate, the member next in seniority to the president shall be seated on his right and the remaining members shall be seated alternately to the left and right of the president in the order of seniority.

NOTES

1. This rule is prescribed in the interest of uniformity at court-martial trials and the prestige of the member's consonant with their ranks. The members will take their seats in accordance with their seniority in the substantive rank but their failure to do so would not vitiate the trial.

2. In preparing convening orders the names of members appointed to form the court, or to be spare members, should be mentioned in their correct order of seniority in the substantive rank.

171. Responsibility of president.- (1) The president shall be responsible for the trial being conducted in proper order and in accordance with the Ordinance and with these rules, and in a manner befitting a court of justice.

(2) It shall be the duty of the president to see that justice is administered, and that the accused has a fair trial, and that he does not suffer any disadvantage in consequence of his position as a person under trial, or of his ignorance, or of his incapacity to examine or cross-examine witness or to make his own statement clear or intelligible, or otherwise.

1. Sub-rule (1). The president should maintain the dignity of the court and the solemnity of its proceedings. The court have powers under rule 223 for dealing with persons who interrupt their proceedings.

2. If the accused is not represented by counselor defending officer, the president should take care that he is not prejudiced in putting forward his defence by his inability to put proper questions to the witnesses or bring out clearly the points on which he relies. If there is a judge-advocate he has a similar duty (rule 203 (7)), but the presence of a judge-advocate does not relieve the president of his responsibility under this rule. If a witness gives evidence different from that given by him when the summary of evidence was taken, the president may question him as to the difference, if the accused fails to do so.

The president should, always put to the witnesses any questions which appear to him necessary or desirable for the purpose of eliciting the truth, *see* rule 215 and notes.

172. Duties of the prosecutor.-(1) It shall be the duty of the prosecutor to assist the court in the administration of justice, to behave impartially, to bring the whole of the transaction before the court, and not to take any unfair advantage of, or suppress any evidence in favour of, the accused.

(2) The prosecutor shall not refer to any matter not relevant to the charge or charges then before the court, or any matter which the court is not investigating, and it shall be the duty of the court to stop him from so doing and also to restrain any undue violence of language or want of fairness or moderation on the part of the prosecutor.

NOTES

1. The prosecutor is an officer whose duty it is to *see* that justice is done, not a partisan intent on securing a conviction independently of the justice of the case. He should; therefore, put before the court facts which show the true character of the offence, and must be careful to prove affirmatively any facts tending to show the innocence of the accused or extenuate his offence, *e.g.*, he should himself produce any available evidence of provocation which might mitigate punishment.

2. It occasionally happens that a Sailor charged with desertion was to the knowledge of the prosecutor, arrested or rendered an involuntary absentee at a date earlier than the termination of his absence as alleged in the particulars of the charge. In such circumstances it is the duty of the prosecutor, to tell the court all the information which he possesses and to invite them to act upon such information by recording a special finding under rule 155 (4).

3. The prosecutor must not introduce matters of aggravation into the evidence against the accused unless they are relevant to the charge against him.

4. He should be careful in his address to the court, not to mislead them either as to the law of the facts of the case. *See* also note 3 to rule 151 above.

173. Latitude to the accused in making his defence-The court

shall allow great latitude to the accused in making his defence; but the accused must abstain from any remarks contemptuous or disrespectful towards the court, and from coarse and insulting language towards others, but he may for the purposes of his defence impeach the evidence and motives of the witnesses and prosecutor, and charge other persons with blame and even criminality, subject if he does so, to any liability which he may thereby incur. The court may caution the accused as to the irrelevance of his defence, but shall not, unless in special cases, stop his defence solely the ground of irrelevance.

NOTE

The court should not-except under very special circumstances stop the accused in his defence or exclude, on the ground of irrelevancy, evidence offered by him or recommend any further proceedings against him on account of his defence, *See* also note 2 to rule 151.

174. Procedure on trial of accused persons together.- Where two or more accused persons are tried together and any evidence is tendered by any one or more of them, the evidence and addresses on the part of or on behalf of all the accused persons shall be taken before the prosecutor replies, and the prosecutor shall make one address only in reply as regards all the accused persons.

NOTE

This rule should be read with rules 151 and 152. The effect of this rule is that if no evidence as to the facts of the case is called for the defence of two or more persons jointly charged and tried the prosecutor's final address will precede that of the counsel for the accused or the defending officer. If 'however' anyone of the accused calls witnesses as to the facts the prosecutor will have a right of reply on the whole case.

175. Separate charge-sheets.-(1) The convening officer may direct any charges against an accused person to be inserted in different charge-sheets, and where he so directs, the accused shall be arraigned, and until after the finding tried, upon each charge-sheet separately, and accordingly the procedure in rules 141 to 155 both inclusive, shall until after the finding, be followed in respect of each charge-sheet, as if it contained the whole of the charges against the accused.

(2) The trials upon several charge-sheets shall be in such order as the convening officer directs.

(3) When the court have tried the accused upon all the charge-sheets they shall, in the case of the finding being "Not Guilty" on all the charges, proceed as directed by rule 156 and, in case of the finding on anyone or more of the charges being "Guilty", proceed so directed by rules 147 and 157 to 160 both inclusive, in like manner in each case as if all the charges in the different charge-sheets had been contained in one charge-sheet, and the sentence passed shall be of the same effect as if all the charges had been contained in one charge-sheet.

(4) If the convening officer directs that, in the event of the conviction of an accused person upon a charge in any charge-sheet, the court in such an event may, without trying the accused upon any of the subsequent charge-sheets, proceed as directed by sub-rule(3).

(5) Where a charge-sheet contains more than one charge, the accused may, before pleading, claim to be tried separately in respect of any charge or charges in that charge-sheet, on the ground that he will be embarrassed in his defence if he is not so tried separately; and in such a case the court, unless they think his claim unreasonable, shall arraign and try the accused in like manner as if the convening officer had inserted, the said charge or charges in different charge-sheets.

(6) If the accused pleads "Guilty" to a charge in a charge sheet, and the trial does not proceed under sub-rule (1) of rule 147 with respect to the other charges in that charge-sheet, the court shall, subject to the directions of the convening officer, proceed to try the accused on the charges in the next charge sheet before they proceed as directed by sub-rules (2) and (3) of rule 147.

NOTES

1. Sub-rule (1)

(i) Most of the ordinary cases which come before court-martial are so simple in their facts that an accused person is not likely to be embarrassed by being tried upon several charges at the same time. But if the charges are complicated, or if the alleged offences were committed at different times, or if different sets of witnesses are required to prove the different charges, if the convening officer considers that embarrassment is likely to arise, he should cause the charges to be inserted in separate charge-sheets, numbered consecutively in the order in which he directs them to be tried.

It is difficult to lay down for the guidance of convening officer any definite rules as to the placing of the charges in different charge-sheets; much will depend upon the circumstances of each particular case. But the following general principles may be laid down :-

(a) Alternative charges must not be placed in different charge - sheets,

(b) A series of charges forming part of one escapade should be placed in a single charge-sheet, such as absence followed by resistance of an escort and wilful damage to a cell after committal to confinement. Multiplicity of charges arising out of the same

transaction should, however; be avoided, though in some cases it is necessary to allege a series of offence, e.g., to prove some particular intent ,or to guide the court in determining the proper punishment to be awarded.

- (c) Offences of a similar nature such as a series of barrack room thefts or falsification of accounts should be inserted in one charge-sheet.
- (d) Offences of entirely different descriptions should be entered in separate charge-sheets except where they form part of or are relevant to one transaction, or where the facts of each case are simple.
- (e) Where the offence is murder, no other offence should be included in the charge-sheet and, generally, the same rule applies to culpable homicide not amounting to murder. Even if the convening officer has directed all charges to be inserted in a single charge-sheet, the accused under sub-rule (5) of this rule has the right to apply for separate trial.
- (ii) Where the accused is arraigned on separate charge-sheets, the court must arrive at their finding upon one charge-sheet before the next charge-sheet is proceeded with.
- (iii) Where any evidence given upon the trial of an accused on one charge-sheet is required to be given on the trial of the same accused person on a subsequent, charge-sheet, it must be given afresh, but the witness giving such evidence need not be sworn or affirmed again.

2. Sub-rule (2).-Generally speaking the convening officer will regulate the order for the trial of different charge-sheets according to the date of the respective offences. But where the gravity of the various offences differs it may be desirable to insert the charge involving the gravest offence in the first charge-sheet, as, If the accused is convicted, he will be sufficiently punished without trying him in respect of the minor offences, *see* sub-rule (4) of this rule. Occasionally it will be desirable to direct that a charge 'which necessitates the calling or a large number of witnesses should be inserted in the first charge-sheet, so that the attendance of such witnesses can be dispensed with after the trial on that charge-sheet has been completed.

3. Sub-rule (3).-After the finding of the court upon all the charge-sheets has been arrived at, the procedure will be same as if all the charges had been inserted in one charge-sheet. Unless, therefore, the convening officer directs that the accused, need not be tried upon any subsequent charge-sheet, the court will not proceed on sentence until they have arrived at a finding on all the charge-sheets, and will then award one sentence in respect of them all.

4. Sub-rule (4).-It will often be unnecessary, if the accused is convicted of a grave charge contained in one charge-sheet, to proceed with any other or minor offences contained in the other charge-sheets. On the other hand, it may be desirable to try the accused upon the other charge-sheets in order that a more severe sentence may, be awarded, if justified.

The powers given to the convening officer under this sub-rule cannot be exercised by the prosecutor on his own initiative or by the court.

5. Sub-rule (5).-The court is to take into consideration the grounds of the accused to be tried separately and unless they think the claim to be unreasonable, accede to such a demand to be tried separately in respect of any particular charge.

6. Sub-rule (6).-Under this sub-rule, where an accused has pleaded guilty to a charge entered in one of several charge-sheets, the summary of evidence relating thereto and any statement which he may make in mitigation of punishment will not be read or recorded until after the finding of the court on all the charge-sheets has been arrived at. But for this provision, the fair trial of the accused upon the other charge-sheets might be prejudiced, especially if he stated, In mitigation of punishment, anything which might point to his guilt on any charge in a charge-sheet which has not yet been tried.

176. Sitting in closed court.-(1) A court-martial shall where it is so directed by these rules, and may in any other case on any deliberation amongst its members, sit in closed court.

Provided that when a court-martial is closed to deliberate on their finding on any charge, the judge-advocate shall not be present.

(2) Where a court-martial sits in closed court, no person shall be present except the members of the court, the judge-advocate, if any, subject to the proviso to sub-rule (1) and any officers under instruction.

(3) For the purpose of giving effect the foregoing provision of this rule, the court-martial may either retire or may cause the place where they sit to be cleared of all other person not entitled to be present, as may appear expedient having regard to the persons to be present in closed court and other circumstances.

(4) Except as above mentioned, all the proceedings, including the view of any place, shall be in open court and in the presence of the accused.

NOTES

1. Sub-rule (1)

(i) The judge-advocate is excluded from the deliberations of the court only when they are deliberating on their finding on any charge, *i.e.*, on their verdict. He is not excluded when they are deliberating in closed court on any other matter, *e.g.*, on the admissibility of a confession, on the submission of the defence that there is no *prima facie* case at the close of the case for the prosecution, or on the sentence.

(ii) When there is a judge-advocate and the court is cleared for finding, the judge-advocate including any officer under instruction as judge-advocate shall retire. When the court has

arrived at their finding, the president will reopen the court, and the judge-advocate will return to the court.

2. Sub-rule (4)

(i) All the members of the court and the judge-advocate (if any) must be present at the "view" as well as, the prosecutor; the accused and his counselor defending officer.

(ii) All the proceedings of a court shall be in open court but it does not affect the inherent power of the court to sit *in camera*, if necessary, for the proper administration of justice.

(iii) It is for the court-martial to decide whether to sit *in camera* or not, though the convening officer may properly draw the court's attention to its powers. This power is invoked when publicity would endanger public safety or the life of a witness. A court would also be justified in hearing evidence *in camera* when a witness could not, by reason of its distressing nature, give evidence properly in public.

(iv) When a court decides to sit *in camera*, the court shall be cleared of all the spectators, except those permitted by the court.

177. Time for trial,-(1) A court-martial may sit at such times and for such periods between the hours of six a.m. six p.m. as may be directed by the proper naval authority and so far as no such direction extends as the court from time to time determine, provided that a court-martial shall not ordinarily sit for more than six or at the most eight hours during one day.

(2) If the court consider necessary to continue a trial after six p.m. they may do so, but if they do so should record in the proceedings their reason for so doing.

(3) If the court or the convening officer, or other superior naval authority, think that the exigencies of the service or the interests of discipline require the court to sit on Friday or other closed holiday the court may sit accordingly, but otherwise the court shall not sit on any of those days.

NOTE

Prolonged sittings unduly strain the attention of members of the court and may operate unfairly upon the accused, who should never be required to make his defence at the close of a prolonged sitting. Sittings of six hours will be found as a rule quite long enough.

178. Continuity of trial and adjournment of court.-(1) When a court is once assembled and the accused has been arraigned the court shall continue the trial from day to day and sit for a reasonable period on every day, unless it appears to the court that an adjournment is necessary for the ends of justice, or that such continuance is impracticable.

(2) A court may adjourn from time to time, and from place to place and may, when necessary, view any place.

(3) If the time to which an adjournment is made is not specified the adjournment shall be until further orders from the proper naval authority, and if the place to which an adjournment is made is not specified the adjournment shall be to the same place as may be specified in further orders from the proper naval authority,

(4) A court-martial in the absence of a judge-advocate, if one has been appointed for the court-martial, shall not proceed, and if necessary, shall adjourn.

(5) The senior officer at the place at which the court is sitting may also for exigencies of the service, adjourn or the adjournment of the court.

NOTES

1. It is very important that a trial, once begun, should proceed without interruption to its conclusion. This rule, therefore, requires the court to sit from day to day unless an adjournment is necessary for the ends of justice.

2. Apart from the specific provisions under the rules, it is advisable to allow an adjournment only on the following occasions:-

- (a) for enabling the accused to prepare his defence;
- (b) for the prosecutor to prepare his reply; or
- (c) for the judge-advocate to prepare his summing up.

3. The court should not, as a rule, permit an adjournment to enable the prosecutor to call new witnesses, unless the necessity for their presence at the trial could not reasonably have been foreseen. The court should adjourn if they consider that the accused has not had sufficient

opportunity for procuring the attendance of any witnesses whom he desires to call, or where it would be unjust to the accused not so to adjourn.

4. The reasons for any adjournment must be entered in the proceedings, and either announced in court in the presence of the accused, or communicated to the prosecutor and the accused.

5. Civilian witnesses, on completion of their evidence, may be exempted by the court from being in attendance, until such time as they may be required again.

6. **Sub-rule (2)** meets the case where for example a view is necessary or where adjournment to a hospital for purpose of taking evidence of a sick witness is rendered necessary.

179. Suspension of trial.-(1) When in consequence of anything arising while the court is sitting, the court is unable by reason of dissolution under section 101 or otherwise, to continue the trial, the president, or in his absence the senior member present, shall immediately report the facts to the convening authority.

(2) Where a court-martial is dissolved before the finding, or, in case of a finding of "Guilty", before the sentence, the proceeding shall be null and void and the accused may be tried before another court-martial.

NOTES

1. A court-martial shall be considered to have been dissolved under section 101 :-

(a) if the president or the judge-advocate dies or

(b) if by the death of a member, it is reduced below the legal minimum.

2. If it is not possible to continue with the trial due to prolonged absence of the president, the judge-advocate or a member thereby reducing it below the legal minimum, the facts shall be referred to the convening authority.

3. Though there is no promulgation of a decision to try the accused again he should be informed of the decision before being arraigned before a new court.

180. Proceeding on death or illness of the accused.-In case of the death of the accused or of such illness of the accused as renders it impossible to evidence, and record the same and adjourn and, transmit the proceedings to the convening authority.

NOTE

"Impossible to continue" means to continue within a reasonable time having regard to all the circumstances. Oral evidence of the fact of the death or illness must be taken on oath or affirmation. Also a medical certificate should always where possible be obtained, stating that the illness of the accused renders his presence in court impracticable, or dangerous to himself or others, and also the time when, in the opinion of the medical officer, the accused will be able to be present. .

181. -Appointment or addition of new members -A new member shall not be appointed or added to a court-martial after the accused has been arraigned.

NOTE

As to It member being absent, *see* section 101 (3).

182. Taking of opinions of court-(1) Except as provided in sub-rule(2) of rule 154 every member of a court-martial must give his opinion by word of mouth on every matter which the court has to decide, including the sentence, notwithstanding that he may have given his opinion in favour of acquittal.

(2) Subject to the provisions of the Ordinance every question shall be determined by .an absolute majority of the opinion the members of the court, and in the case of an equality of opinion the president's second or casting vote shall be reckoned as determining the majority.

(3) The opinions of the members of the court shall be taken in succession, beginning with the junior in rank.

NOTES

1. Rule 154 (2) provides that the opinion of members, if the president so directs, may; in the case of finding alone, be given by secret written ballot; otherwise opinions must always be given orally. Section III of the Ordinance requires all decisions to be passed by a absolute majority, except in the case of a sentence of death which requires a two-thirds majority in the case of a G.C.M. and unanimity of all members in the case of a S.G.C.M. The president has no second or casting vote in the case of a sentence of death, nor where there is an equality of votes on a

challenge (under section 109) or finding or sentence; in such cases the decision shall be taken to be in favour of the accused, *see* section III.

2. In order to obtain an absolute majority in respect of the sentence, every member must note, even if he had voted for an acquittal on the finding. It is desirable that the *nature* of the punishment to be awarded should first be considered. The procedure to be adopted will best be illustrated by the following example:-

At a general court-martial, for the trial of an officer, consisting of seven members, three are in favour of a sentence of imprisonment, two in favour of dismissal from the service, and two in favour of forfeiture of seniority in rank.

The most lenient punishment will be first put to the vote and will be rejected by 5 votes to 2. The next most lenient-punishment will then put to the vote, *viz.* dismissal. All seven members must vote again and the two members who had previously voted for forfeiture of seniority hi rank will naturally give their votes in favour of dismissal rather than imprisonment. The result will be an absolute majority of 4 votes to 3 in favour of dismissal.

Similarly, where the majority have voted in favour of imprisonment, the quantum or the length of the imprisonment to be awarded should be arrived at in the same manner, the most lenient proposal being put to the vote first.

It is improper to strike an average between the various sentences suggested by the members of the court, but it may often happen that in the course of further discussion, members who had or originally made different proposals will arrive at a unanimous decision as to the proper sentence to be awarded.

3. Sub-rule (3). The opinion of each member on the finding must be taken separately upon each charge upon which the accused is arraigned *see* rule 154 (2). "Junior in rank means junior in the substantive rank *see* rule 170.

183. Procedure on incidental questions.-If any objection on any matter of law evidence or procedure is arised by the prosecutor, or by or on behalf of the accused during the trial; the prosecutor or the accused or counselor the defending officer (as the case may be) shall have a right to answer the same and the person raising the objection shall have the right to reply.

NOTE

This rule will apply to such questions as the admissibility of evidence the propriety of any question or the recalling of a witness. It will also apply to a submission of "no case" if one is made at the close of the prosecution case under rule 150 (2).

184. Swearing of court to try several accused persons.-(1) A court, may be sworn or affirmed at one time to try number of accused persons then present before it, whether those persons are to be tried together or separately, and each accused person shall power to object to the members of the court, and shall be asked separately whether he objects to any member.

(2) In the case of several accused persons to be tri::d separately the court, upon one of those persons objecting to a member may according as they think fit, proceed to determine that objection or postpone the case of that person and swear or affirm the member of the court for the trial of the others alone.

(3) In the case of several accused persons to be tried separately the court when sworn or affirmed, shall proceed with one case, postponing the other case, and taking them afterwards in succession.

(4) When several accused persons are tried separately by the same court upon charges arising out of the same transaction, the court may, if they consider it to be desirable in the interest of justice, postpone consideration of any sentence to be awarded to any one or more of such accused persons until the trials of all such accused persons have been completed.

NOTES

1. Sub-rule (1)-(i) Notwithstanding that under this rule the members of the court are sworn only once to try the person before them there will be a separate court for the trial of each case, and the swearing of the court will be mentioned in the proceedings of each case.

(ii) When, in consequence of an objection raised by one of several persons jointly charged, a new officer serves, the other accused persons, who had previously raised no objection to the members of the court, will have the right to object to the new officer.

2. Sub-rule (2).-Where 2 or more accused persons are tried separately by the same court and the objection of one accused to a member is allowed that officer shall not sit as a member of the court for the trial of any of the several accused persons brought before it, because the same court must try all of them so as to ensure that the provisions of sub-rule (4) are followed.

3. Sub-rule (3).-The finding and sentence except where the court decides to act under sub-rule (4) of this rule must be arrived at before the next case is tried.

4. Sub-rule (4).-It is very desirable that the court should, where several persons are separately tried and convicted in respect of the same transaction, be in a position to apportion the proper sentences to be awarded to all the accused persons.

185. Swearing of interpreter and short hand writer.-(1) At any time during the trial an impartial person may, if the court think , it necessary, and shall, if either the prosecutor or the accused requests it on any reasonable ground be sworn or affirmed to act as interpreter.

(2) An impartial person may at any time of the trial, if the court think it desirable, be sworn or affirmed to act as a shorthand writer.

(3) Before a person is sworn or affirmed as interpreter or shorthand writer, the accused shall be informed of the person who is proposed to be sworn or affirmed, and may object to the person as not being impartial; and the court, if they think that the objection is reasonable, shall not swear or affirm that person as interpreter or shorthand writer.

NOTES

1. Sub-rule (1)

- (i) An interpreter or shorthand writer is usually sworn at the commencement of the trial.
- (ii) For the occasions when an interpreter must be employed *see* rule 186 and note.

An interpreter may either be appointed by the convening officer rule 131 (3) or by the court under this rule. If a member of the court is appointed interpreter he must take the interpreter's oath (or affirmation) in addition to the oath prescribed for a member of the court under rule 139. A member should not normally act as an interpreter where the trial is likely to be prolonged.

- (iii) For form of oath or affirmation *see* Fourth Appendix to the rules.

2. Sub-rule (3).-The same procedure will be followed as in the case of an objection to a member of the court.

3. On completion of the administration of oath to all concerned the court and the judge-advocate shall remove their caps and thereafter they will remain uncovered.

186. -Evidence when to be translated.-When any evidence is given in a language which any of the officers composing the court the judge-advocate the prosecutor or the accused does not understand the evidence shall be interpreted to such officer or person in a language which he does understand. If an interpreter in such language has been appointed by the convening officer, and duly sworn or affirmed, the evidence shall be interpreted by him. If no such interpreter has been appointed and sworn or affirmed, an impartial person shall be sworn or affirmed by the court as required by rule 185. When documents are put in for the purpose of formal proof it shall be in the discretion of the court to cause as much to be interpreted as appears necessary.

NOTE

As the charge-sheet and documentary evidence as to character will be in English, an interpreter in the language of the accused person should be appointed in every case in which the accused does not know enough English to understand these documents. Whoever interprets any evidence must be sworn or affirmed as an interpreter before doing so; (*see* rule 185 and notes).

Proceedings

187. Record in proceedings of transactions of court-martial. At a court-martial the judge-advocate, or, if there is none, the president, shall record, or cause to be recorded, in the English language, an transactions of that court, and shall be responsible for the accuracy of the record (in these rules referred to as the proceedings); and if the judge-advocate is called as a witness by the accused, the president shall be responsible for the accuracy of the record in the proceedings of the evidence of the judge-advocate.

NOTES

1. The record, where no shorthand writer is employed must be taken in a clear and legible hand or type. Interlineations and corrections must be avoided, as much as possible; if made they should be initialled by the president for (or judge-advocate). If desired, a typed copy may be substituted for the original manuscript record if so substituted it must be checked with the original by the officer responsible for the accuracy of the proceedings. The pages should be numbered and the various sheets fastened together. Sufficient space must be left below the signature of the president for the decision of the confirming authority. The place and date of the signing of the sentence by the president must be inserted.

2. No correction or addition may be made to the proceedings of a court-martial after promulgation. When an obvious oversight has been made in the record such as the omission of the words "the president and members are duly sworn" a certificate, signed by the president, to the effect that they were sworn should be attached.

188. Taking down of evidence and addresses.-(1) The evidence shall be taken down in a narrative form in as nearly as possible the words used; but in any case where the prosecutor, the accused person, the judge-advocate, or the court considers it material, the question and answer shall be taken down verbatim.

(2) Where an objection has been taken to any question or to the admission of any evidence or to the procedure of the court, such objection shall, if the prosecutor or accused so requests, or the court think fit, be entered in the proceedings together with the ground of the objection, and the decision of the court thereon.

(3) Where any address by, or on behalf of the prosecutor or the

accused is not in writing, it shall not be necessary to record the addresses in the proceedings further or otherwise than the court think proper, except that.

(a) the court shall in every case make such record of the defence made by the accused as will enable the confirming officer to judge the reply made by or on behalf of the accused to each charge against him; and

(b) that court shall also record any particular matters in the address by or on behalf of, the prosecutor or the accused, which the prosecutor or the accused, as the case may be, requires.

NOTES

1. The material effect of the question and answer will be written down *e.g.*, where the question is "What did the accused do next?" and the answer is "He left the room"; the evidence, as recorded, would read". The accused then left the room".

2. Documentary evidence, on being admitted; shall be marked with a distinguishing letter or figure and attached to the proceedings. In many cases it will be sufficient to attach copies of documents which must, however, be compared with the originals by the court and certified under the hand of the president or one of the members to be true copies, *see* note 2 to rule 160.

3. Even if a shorthand writer is employed the evidence shall be taken down in narrative form.

The rule applies to questions and answers given in cross examination and re-examination as well as the examination-in-chief.

189. Procedure where court wishes to comment or report on any matter not forming part of trial. -The court shall not enter in the proceedings any comment or anything not before the court, or any report of any fact not forming part of the trial; but if any such comment or report seems to the court necessary the court may forward it to the proper naval authority in a separate document, signed by the president.

NOTE

The court can make in a separate document any remarks they think proper on the conduct of any person who appeared before them, or on the manner in which the prosecution has been conducted.

The court must be very careful in commenting upon the individuals not before them for trial; indeed, cases justifying such expression will be rare and exceptional.

It will usually be desirable to make a note at the time of any matter upon which the court intend to make any such comment or report although it will not be correct to enter such matter in the proceedings.

190. Custody and inspection of proceedings.-During the trial the proceedings shall be deemed to be in the custody of the judge advocate, if any, or, if there is none, of the president, but may, with proper precaution for their safety, be inspected by the members of the court, the prosecutor and accused, respectively, at any reasonable time before the court is closed to consider the finding.

191. Transmission of proceedings after finding and sentence. The proceedings shall be at once sent by the person having the custody thereof to such person as may be directed by the order convening the court, or in default of any such direction, to the confirming officer,

NOTES

1. As to the custody of the proceedings during the trial, *see* rule 190.
2. For procedure when a member of the court has become confirming officer, *See* rule 167.
3. The proceedings of court-martial, when despatched by post, shall invariably be sent under registered cover.

192. Preservation of proceedings.- The proceedings of a court- martial shall be preserved in the department of the Judge-Advocate General for not less than, in the case of a general court-martial, seven years, and in the case of any other court-martial, three years.

193. Right of person tried to copies of proceedings.-Every person tried by a court-martial shall be entitled free of charge at any time after the confirmation of the finding and sentence, and before the proceedings are destroyed, to obtain a copy thereof, including the proceedings upon revision, if any.

194. Loss of proceedings.-(1) If, before confirmation, the original proceedings of a court-martial, or any part thereof, are lost, a copy thereof, if any, certified by the president or the judge-advocate may be accepted in lieu of the original.

(2) If there is no such copy, and sufficient evidence of the charge, finding, sentence; and transactions of the court can be procured, that evidence may, with the assent of the accused, be accepted in lieu for the original proceedings, or part thereof lost.

(3) In any case failing under, sub-rule (1) or (2) the finding and sentence may be confirmed and shall be as valid as if the original proceedings, or part thereof, had not been lost.

(4) If the accused refuses his assent as required by sub-rule (2) he may be tried again, and the finding and sentence of the previous court of which the proceedings have been lost shall be null.

(5) If, after confirmation, the original proceedings of a court, martial, or any part thereof are lost, and there *is* sufficient evidence of the charge, finding and sentence, and confirmation of the finding and sentence, that evidence shall be valid and sufficient record of the trial for all purpose.

NOTES

1. Sub-rule (1). -Confirmation is not complete until the finding and sentence have been promulgated, *see* rule 168.

As to annexure to the proceedings of original documents, *see* note 2 to rule 160.

2. Sub-rule (2).-The evidence may be obtained by the president or some other member of the court writing out from memory the substance of the charge, finding, sentence and transactions of the court, which should be authenticated by the signatures of the members. A copy of the charge, however, should always be procured, if possible.

As soon as it is known that the proceedings have been lost, steps should be taken to obtain and preserve the best evidence available.

Defending officer, friend of the accused, and counsel

195. Defending officer and friend of accused.-(1) If an accused person is not represented at his trial by counsel, he may be represented by any officer subject to the Ordinance who shall be called "the defending officer" or assisted by any person whose services he may be able to procure and who shall be called "the friend of the accused"

(2) It shall be the duty of the convening officer to ascertain whether an accused person not otherwise represented desires to have a defending officer assigned to represent him at his trial, and, if he does so desire, the convening officer shall use as his best endeavours to ensure that the accused shall be so represented by a suitable officer; if, owing to exigencies of the service, or for any other reason, there shall, in the opinion of the convening officer, be no such officer available for the purpose, the convening officer shall give a written notice to the president of the court-martial, and such notice shall be attached to the proceedings.

(3) The defending officer shall have the same rights and duties as appertained to counsel under these, rules and shall be under the like obligations.

(4) The friend of the accused may advise the accused on all points and suggest the questions to be put to the witnesses but he cannot examine or cross-examine the witnesses and address the court.

NOTES

1. Sub-rule (1) - Under rule J28 (I) the accused, after he has been ordered to be tried by court-martial, is to be allowed free communication with his "friend", defending officer or legal adviser. This rule would suggest that an accused cannot have both counsel and a defending officer; in

practice, however, it will be better to ensure that an officer is detailed to act as his "friend" when counsel is employed to render assistance in preparing the defence and to supply the local background. The officer so detailed will not have any right of audience. *see* sub-rule (4).

2. Sub-rule (2).-Every effort should be made to secure the services of a competent officer, and he should be allowed time and opportunity for properly preparing the defence of the accused. Where an accused selects a particular officer steps should be taken to obtain his services. Such officer should be made available if this is possible, unless he is unavoidably required for some other essential naval duties. Where two or more accused are charged jointly, care must be taken to *see* that they are separately represented if it is likely that their defences will conflict.

3. Sub-rule (3).-The defending officer must conduct the case as representing the accused, *See* rules 197, 199 and 200.

196. Counsel allowed in certain court-martial-(I) Subject to these rules, and save as provided in sub-rule (2), counsel shall be allowed to appear on behalf of the prosecutor and accused at general and districts court-martial.

(2) The Chief of Naval Staff or the convening authority may, if he considers expedient, disallow the appearance of a counsel at a particular general or district court-martial all general and district courts-martial held in any particular area.

(3) Save as provide⁴ in sub-rule (2), the rules with respect to counsel shall apply to the court-martial at which counsel are, under this rule, allowed to appear.

NOTES

1. Sub-rule (2).-The power conferred by this sub-rule is normally to be exercised in exceptional circumstances and may not be necessary except on active service.

As to the qualifications of a counsel, *see* rule 201 (2).

2. There is no restriction as to the number of counsel engaged in a case. Where more than one counsel appears on behalf of the accused, (or on behalf of the prosecution) it is a matter within the discretion of the court whom they allow to address them and to examine witnesses. As a rule when two counsel appear both are given audience, any right of address given by these rules may be exercised by either but not both of them and any witness may be examined or cross-examined, as the case may be, .by either but not both of them.

Members of the bar should wear robes when appearing before court-martial.

3. Counsel for defence, though not bound to such strict impartiality as the prosecutor, must nevertheless recollect that he is assisting in the administration of justice and must not be guilty of any unfairness or want of candour in his conduct of the case. In his address he will have the same liberty as the accused (*see rule 113*), but he should exercise more restraint in commenting on the acts of persons not before the court, *See Rule 199*.

197. Requirements for appearance of counsel-(1) An accused person intending to be represented by counsel shall give to his commanding officer the earliest practicable notice of such intention and, if no sufficient notice has been given, the court may, if it thinks fit, on the application of the prosecutor, adjourn to enable him to obtain counsel on behalf of the prosecutor at the trial.

(2) If the convening officer so directs, counsel may appear on behalf of the prosecutor, but in that case, unless the notice mentioned in sub-rule (1) has been given by the accused, notice of the direction for counsel to appear shall be given to the accused at such time not in any case less than seven days before the trial, as would, in the opinion of the court enable the accused to obtain counsel to represent him at the trial.

(3) The counsel who appears before a court-martial on behalf of the prosecutor or accused, shall have the same right as the prosecutor or accused for whom he appears, to call, and orally examine, cross-examine, and re-examine witnesses, to make an objection or statement, to address the court, to offer any plea; and to inspect the proceedings, and shall have the right otherwise to act in the course of trial in the place of the person on whose behalf he appears, and he shall comply with these rules as if he were that person; and in such a case that person shall not have the right himself to do any of the above matters except as regards the statement allowed by clause (a) of rule 151 and clause (a) of rule 152 of except so far as the court permit him so to do.

(4) When counsel appears on behalf of the prosecutor, the prosecutor, if called as a witness, may be examined, cross-examined and re-examined as any other witness.

NOTES

When the convening officer intends to appoint or apply for the service of an officer of Judge-Advocate General's Department of an officer holding a legal qualification to act as prosecutor,

similar notice should be given to the accused, to enable him, if he so desires, to obtain counsel to represent him at the trial.

198. Counsel for prosecutor.- (1) Counsel appearing on behalf of the prosecution shall always make an opening address and shall state therein the substance of the charge against the accused, and the nature and general effect of the evidence which he proposes to adduce in support of it without entering into unnecessary detail.

(2) Counsel appearing on behalf of the prosecution shall have the same duty as the prosecutor, and is subject to be stopped and restrained by the court in the manner provided by sub-rule (2) of rule 172.

199. Counsel of accused.-(1) Counsel appearing on behalf of the accused has the like rights and is under the like obligation as are specified in rule 173 in the case of the accused.

(2) If the court ask counsel for the accused a question as to any witness or matter, he may decline to answer, but he must not give to the court any answer or information which is misleading.

NOTE

See note (3) to rule 196.

200. General rules as to counsel.-(1) Counsel whether appearing on behalf of the prosecution or of the accused, shall conform strictly to these rules and, subject to these rules, to criminal court relating to the examination cross-examination, and re-examination of witnesses and relating to the duties of counsel.

(2) Counsel shall treat the court and judge-advocate with due respect, and shall, while conducting his case bear in mind the requirements of naval discipline in the respectful treatment of any superior of the accused who may attend as a witness.

NOTE

Counsel should not state as a fact any matter which is not proved, or which he does not intend to prove in evidence, nor should he state what is his own opinion as to any matter of fact before the court. In a question to a witness he should not assume that facts have been given in evidence which have not been so given, or that particular answers have been given contrary to the fact.

201. Qualifications of counsel.- (1) Neither the prosecution nor the accused has any right to object to any counsel if properly qualified.

(2) Counsel shall be deemed properly qualified to appear at a court-martial wherever held:-

(i) if in Bangladesh, he is a legal practitioner, authorized under any law for the time being in force to practice with right of audience in a Court of Sessions.

(ii) if in any other country, he is recognised by the convening officer as having in that part of the country, rights and duties

similar to those of an advocate in Bangladesh. and as being subject to punishment or disability for a breach of professional rules.

NOTES

1. A civilian gazetted officer holding legal qualifications cannot appear as a Counsel since he is not actually practicing.

2. Similarly serving Army or an Air Force Officer who is a Bar-at-Law or an Advocate cannot appear as a counsel because he is not actually practicing but has suspended his practice because of his Service.

Judge -Advocate

202. Appoint of Judge-Advocate and disqualification.-(1) For the purpose of-section 100 a person shall be deemed fit to act as judge advocate if in the opinion of the judge-Advocate General he possesses necessary qualifications to act in. that capacity.

(2) An officer who is disqualified for serving on a court-martial shall be disqualified for acting as judge-advocate at that court-martial.

NOTES

1. As to the appointment of a judge-advocate at a court-martial *see* section 100. Omission to appoint a judge-advocate at a general court-martial will in validate the proceedings.

2. As to disqualification, *see* rule 133 (2) and notes.

3. A judge-advocate should be free of all suspicion of bias or prejudice. He should have had experience of the practice and procedure of court-martial and knowledge of the general principles of law and of the rules of evidence.

203. Powers and duties of Judge-Advocate.-(1) The prosecutor and the accused shall at all times, after the judge-advocate is named to act on the court, be entitled to his opinion on any question of law or procedure relative to the charge or trial, whether he is or out of court, subject, when he is in court, to the permission of the court.

(2) At a court-martial he shall represent the Judge-Advocate General;

(3) He shall be responsible for informing the court of any informality or irregularity in the proceedings. Whether consulted or not he shall inform the convening officer and the court, of any informality or defect the charge, or in the constitution of the court and shall give his advice on any matter before the court.

(4) Any information or advice given to the court on any matter before the court shall, if he or desire, be entered in the proceedings.

(5) At the conclusion of the case he shall sum up the evidence and advise the court upon the law relating to case, before the court proceed to deliberate upon their finding.

(6) Upon any point of law or procedure which arises during the trial which the judge-advocate attends, the court shall be guided by his opinion, and shall not disregard it, except for very weighty reasons. The court shall be responsible for the legality of their decision. But they shall always consider the consequences which may result from their disregard of the advice of the judge-advocate on a legal point. The court, in following the opinion of the judge advocate on a legal point, may record that they have decided in consequence of that opinion.

(7) The judge-advocate shall have equally with the president, the duty of taking care that the accused does not suffer any disadvantage in consequence of his position as such or of his ignorance or in capacity to examine or cross-examine witnesses or to make his own statement clear or intelligible or otherwise, and may, for that purpose, advise the court that witnesses should

be called or recalled for the purpose of being questioned by him on any matters which appear to be necessary or desirable for the purpose of eliciting the truth.

(8) In fulfilling his duties the judge-advocate shall be careful to maintain absolute impartiality.

NOTES

1. Sub-rule (5).-*See* rule 153 and notes.

2. Sub-rule (7).-For duty of president, *see* rule 17.1 (2), and notes. The advice to call or recall witnesses should always be acted upon unless the court considers that the judge-advocate is acting improperly or in such a manner as to obstruct the proceedings. If his advice is disregarded, the court should record their reasons for disregarding it.

Witnesses and Evidence

204. Evidence to be according to rules in criminal courts. -A Court-martial shall not receive evidence for the prosecution which is relevant not to the facts stated in the statement of particulars in the charge, or any evidence which is not admissible either under the Evidence Act 1872 (I of 1872), or under the Ordinance, or under any other law.

NOTE

See section 114 and notes for general rules as to evidence. Admission of evidence which is not relevant to the charge or is otherwise legally, inadmissible may seriously prejudice the accused and may vitiate the proceedings.

205. Calling of all prosecutor witnesses. - The prosecutor is not bound to call the witnesses whose evidence is in the summary of evidence or whom the accused has been informed it is intended to call, but should ordinarily call such of them as the accused desires to be called, in order that he may, if he thinks fit, cross-examine them, and shall, for this reason, so far as practicable, secure the attendance of such witnesses.

NOTES

1. As to giving the accused a copy of the summary of evidence, *see* rule 128(2)

2. It will be noted that the prosecutor is not required to call any witness at the court-martial who was called by the accused at the summary trial as defence witness.

3. It is not necessary for the prosecutor to examine at length all witnesses for the prosecution whose summary of evidence have been recorded, but, such witnesses, whom the prosecutor does not wish to examine, may be called at the request of the accused and tendered for cross-examination by the accused under this rule .

206. Calling of witnesses whose evidence is not contained in summary.-If the prosecutor intends to call a witness whose evidence is not contained in any summary of evidence given to the accused, notice of such intention such be given to the accused a reasonable time before the witness is called, together with an abstract of his proposed evidence; and if the witness is called without such notice or abstract having been given the court shall if the accused so desires, either adjourn after taking the evidence of the witness, or allow the cross-examination of the witness to be postponed, and the court shall inform the accused of his right to demand such an adjournment or postponement.

NOTES

This rule applies only in the case of witnesses called for the prosecution and not in the case of witnesses called by the accused or by the court under rule 215 (4).

207. List of witnesses of accused.-The accused shall not be required to give to the prosecutor a list of the witnesses whom he intends to call, but it shall rest with the accused alone to secure the attendance of any witness whose evidence is not contained in the summary, and for whose attendance the accused has not requested steps to be taken as provided for by sub-rule (1) of rule 129,

NOTES

A member of the court, the judge-advocate and prosecutor are competent witnesses for the defence, and may be sworn at any stage of the proceedings, but an officer should not be detailed to serve as a member of, or act as prosecutor or judge-advocate at a court-martial if his evidence is likely to be required. A witness for the prosecution cannot serve a member of the court or act as judge-advocate at the trial of the case in which he is a witness; *see* rules 133 (2) and 202(2)

208. Procuring attendance of witnesses-(1) The commanding officer of the accused; the convening or a staff officer on his behalf, or after the assembly of the court, the president, or judge-advocate shall take proper steps to procure the attendance of the witnesses whom the prosecutor or accused desires to call, and whose attendance can reasonably be procured; provided that if any of the said authorities considers that any witness is being summoned for the purpose of vexation or delay, or of defeating the ends of justice, such authority may either refuse to summon such witness, recording reasons for such refusal, or direct the person requiring the attendance of such witness to undertake to defray the cost, if any, of his attendance.

(2) The summons to such witnesses shall be in the form provided in the Fourth Appendix to these rules and shall be served on the witnesses in accordance with the procedure laid down in section 116.

NOTES

1. The Summons to witnesses are to be signed and dated by the commanding officer in the following form, as set out in the Fourth Appendix to the rules:-

In the case of a court-martial

To,

..... (name and address)

WHEREAS a.....court-martial has been ordered to assemble at.
..... on the. day of

.....19.at..... hrs for the trial of.

.....right(right.(number, rank, name, ship/establishment)

.....I do hereby summon and require you

(name) to attend as a witness, the sitting of the said court at right(right,.....

(place), on the center(center. day of.19

.at right(right) hour's and to bring with you the document (s) (specified

on the reverse hereof), and so to attend from day to day until you shall

be duly discharged:

Where or you shall ran at your peril.

Given under my hand at,this.....day of.....19.....

Commanding Officer of the accused.

2. All reasonable steps should be taken to secure the attendance of my witness whom there is any ground to suppose to be material to the defence and rule 209 makes provision for the adjournment of the court if the attendance of such witness is essential.

3. The power to require the person calling a witness to undertake to defray the cost of his attendance is given in order to prevent an unreasonable demand for the attendance of witnesses. The absence of a material witness might afterwards be held to invalidate the proceedings of a court-martial, even though, in the witness had been called, the court would probably have arrived at the same decision in as much as it is impossible to tell what effect the evidence of such a witness might have had upon the court

As to expenses of witnesses, *see* Passage Regulations, Rule 258.

4. If a civilian witness has in his possession or under his control any books, accounts, letters, returns, papers or other documents which are considered necessary for the trial, care must be taken to mention such documents in the summons directing him to bring them with him; the witness would be justified in declining to acknowledge a mere oral request.

209. Procedure when essential witness is absent.-If such proper steps as are mentioned in the proceeding rule have not been taken as to any witness, or if any witness whose attendance could not reasonably be procured before the assembly of the court is essential to the Prosecution or defence, the court shall-

- (a) in the circumstances laid down in section 117 take steps to secure the issue of a commission for the examination of such witness: or
- (b) adjourn and report the circumstances to the convening officer.

NOTES

As to power of a court-martial to issue a commission for the examination of witness and the considerations-which should guide the court in this matter, *see* section 117 and notes thereto.

210. Withdrawal of witnesses from court.- During the trial a witness, other than the prosecutor, shall not, except by special leave of the court, be permitted to be present in court while not under examination, and if, while he is under examination, a discussion arises as to the allowance of question or the sufficiency of his answers, or otherwise as to his evidence, he may be directed to withdraw.

NOTES

1. It is customary to have all witnesses present in court while the members of the court are being sworn, but they should withdraw before the arraignment. This does not, of course, apply to the prosecutor if a witness.

Permission to remain in court while not under examination, may reasonably be given *e.g.*, to expert or professional witnesses; provided that no objection is made by or on behalf of the accused;

2. If any such discussion arises as is mentioned in the rule, the court should generally order the witness to withdraw, as his answer might be influenced by the discussion.

211. Swearing of witnesses. -An oath or affirmation shall be administered by the judge-advocate, if any; or by the president or by a member of the court in the presence of the accused to every witness before he gives his evidence, in the form and manner provided in the Fourth Appendix to these rules, or in such other form or manner to the same purport as the court ascertains to be according to the religion or otherwise binding on the conscience of the witness.

NOTE

As to the power of dealing with recalcitrant witnesses, *see* section 73 in the case of persons subject to the Ordinance, and rule 223 in other cases.

212. Mode of questioning witnesses.-(1) Every question shall be put to a witness orally by the prosecutor or by or on behalf of the accused, or by the judge-advocate without the invention of the court and the witness shall forth with reply, unless an objection is :made by the court, judge-advocate, prosecutor, or by or on behalf of the accused, in which case he shall not reply until the objection is disposed of the witness shall address his reply to the court.

(2) The evidence of a witness as taken down shall be read to him after he has given all his evidence and before he leaves the court and shall, if necessary, be corrected.

(3) If the witness denies the correctness of any part of his evidence when the same is read over to him, to court may, instead of correcting the evidence, record the objection made to it by the witness,

(4) When a witness makes any correction to his statement the prosecutor, the accused or his counselor defending officer may respectively examine his respecting the same.

(5) If the evidence is not given in English and the witness does not understand that language the evidence as recorded shall be interpreted to him in the language in which it was given, or in a language which he understands.

(6) Where evidence is recorded by a shorthand writer, is shall not be necessary to read the evidence of the witness to' him under sub-rule (2), if in the opinion of the court and the judge-advocate, if any (such opinion to be recorded in the proceedings) it is necessary so to do, but nevertheless if any witness so desires, his evidence shall be read to him.

NOTES

1. Sub-rule (1).-The court and judge-advocate must carefully listen to the actual questions put by the prosecutor and by or on behalf of the accused, as well as to the form ill which such questions are put and they should intervene before the witness replies, if, in their opinion, any question is improper or "leading". If either the prosecutor or the accused, or the officer or counsel representing him, considers that a particular question about to be put by him may be objected to, he should submit the propriety of the question to the decision of the court, having first informed the witness that he must not make his reply until the decision of the court has been given.

2. Sub-rule (2).-When the evidence of a witness has been read to him, he should be asked whether it is correct. Any material alteration or explanation should be inserted at the end of the record of his evidence, and not by way of interlineations or erasure.

213. Examination and cross-examination. - (1) A witness may be examined by the person calling him, and may be cross-examined by the opposite party to the proceeding, and on the conclusion of the cross examination may be re-examined by the person calling him on matters raised by the cross-examination.

(2) The court may, if they think fit, allow the cross-examination of a witness to be postponed.

214. Question to witness by members of court or judge-advocate.-(1) The president the judge advocate (if any) and, with the permission of the president, any member of the court may address a question to a witness while such witness is giving his original evidence and before he withdraws.

(2) Upon any such question being answered, the president or judge-advocate, if any, may also put to the witness any question relative to that answer which the prosecutor or the accused or counsel or the defending officer may request him to put and which the court deem reasonable.

NOTES

1. Sub-rule (1).-It will be noted that this rule applies to the original evidence of a witness and not to any evidence given by him on being recalled. As to recalled witnesses, *see* rule 215.

It is desirable that any question should be put after the conclusion of the examination, cross-examination and re-examination, if any, of the witness; but questions may properly be put to a witness during his examination in order that his evidence may be clearly recorded.

2. Sub-rule (2).-The president or the judge-advocate should always, under the provisions of this rule, put any question which they are requested by the prosecutor, or by or on behalf of the accused, to put and which does not seem unreasonable

215. Recalling of witnesses and calling of witnesses in reply.(1) At the request of the prosecutor or of the accused a witness may, by leave of the court, be recalled at any time before the closing address of *or* on behalf of the accused, for the purpose of having any question put to him through the president, or judge-advocate, if any.

(2) The court may, if they consider it expedient, in the interests of justice, so to do, allow a witness to be called or recalled by the prosecutor before the closing address of or on behalf of the accused for the purpose of rebutting any material statement made by a witness for the defence or for the purpose of giving evidence on any new matter which the prosecutor could not reasonably have foreseen.

(3) Where the accused has called witnesses as to character, the prosecutor before the closing address of or on behalf of the accused may call or re-call witness for the purpose of proving a previous conviction or entries in the conduct sheet of the accused.

(4) The court may call or re-call any witness at any time before the finding, if they consider that it is necessary in the interest of justice.

NOTES

1. Sub-rule (1).-The president or the judge-advocate should also put to a witness recalled under the provisions of this sub-rule any further questions which they consider necessary in view of the answer given.

2. Sub-rule (2).-The power given under this provision of calling or, recalling a witness should only be exercised in exceptional circumstances, e.g., where it appears for the first time from the evidence given at the trial, that a person, who has not been called either by the prosecutor or on behalf of the defence, was present at, and probably witnessed, the occurrence which forms the subject of the charge which is being tried.

Witness should not be called or recalled under this provision in order to supplement any negligent conduct on the part of the prosecution. If witnesses are called or recalled under this provision, the prosecutor and the accused should be invited to put or suggest any relevant questions which in their opinion should be put by the court. If new evidence is given after the closing address by or on behalf of the accused, the court should permit the accused or his representative to make a further address upon the new matter which has been elicited, if any.

216. Addresses by the prosecutor and the accused and the summing up of the judge-advocate:-All addresses by the prosecutor and the accused *or* counsel on their behalf and the summing up of the judge-advocate, may either be given orally or be in writing and, if in writing, shall be read in open court.

NOTE

In order to ensure that the closing addresses and the summing .Up are delivered before the court on the same day, the prosecutor and the defence are to give a copy of their addresses to the other party and the judge-advocate well in advance at a time to be fixed by the court for each party. The court is to be adjourned for a suitable period.

217. Provision as to finding of insanity:-Where the court finds either that the accused is of unsound mind and consequently 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 that it was wrong or contrary to law, the president shall date and sign the finding ; and the proceedings, upon being signed by the Judge-advocate, if any, shall be at once transmitted to the confirming officer as required by section 123.

NOTE

See section 21 and note thereto.

Evidence on navigational matters

218. Documents to be made available in navigational cases.(1) At all trials at which evidence is to be given on the navigation of one of the naval ships *or* vessels, the commanding officer shall make available such of the following documents as exist and are relevant in the trial:-

- (a) the ship's log book;;
 - (b) the rough and fair engine room registers
 - (c) control room log;
 - (d) the chart or charts and sailing directions by which the ship was navigated;
 - (e) the last table of compass deviations ;
 - (f) the navigational data book and the gyro compass log;
 - (g) the commanding officer's night order book; and
 - (h) the navigating officer's note-book and work-book.
- (2) *Evidence by navigation experts.*-Before a trial at which evidence is to be given on the navigation of one of the naval ships or vessels the president shall, unless he considers the circumstances so exceptional that such procedure would be a waste of time, order the documents referred to in sub-rule(1) to be handed to one or more Navigation Direction or other competent officers who shall work up the ship's recokning throughout the material time; the result, together with such other details as may be required, is to be delivered to the court in the prescribed form completed in all relevant respects and attested by the signature of the officer or officers so directed, and he or they are to be sworn and to be subject to cross-examination by both

prosecution and defence as to its accuracy. The president is to endorse such report as approved if the court concurs, and if not, an expression of its dissent is to be added, signed by the president, showing in what respects and for what reasons it dissents. With the said report such officer or officers shall also deliver to the court a copy or tracing of the chart by which the ship was navigated on which the position of the ship so determined have been laid off, and also the determined position when ashore or in danger, as noted in the log book. The rate and direction of the current and of the tidal stream and the state of the tide should also, if possible, be ascertained, stated, and verified on oath.

(3) These documents, namely, the report in the prescribed form and the prepared chart, as well as an attested copy of the ship's log book and the engine room register or of the control room log, commencing from at least 48 hours before the ship took the ground or was endangered, if so long from a known anchorage, are to accompany the minutes.

NOTES

1. Rules 218 & 222 provide a special procedure which must be followed in all trials at which evidence is to be given on the navigation of any naval ship or naval vessel.

2. "Naval ship" and "naval vessel", *see* section 4, clauses (xxii) and (xxiii) As to the definitions of the words "ship" and, 'vessel" generally *see* General Clauses Act, section 4. sub-sections (51) and (56) respectively in part IV of this Manual.

219. Absence of documents.-Should the absence of any of the documents mentioned in rule 218 be likely to render it difficult for the officers mentioned therein to complete their task to the satisfaction of the court, it is permissible for the prosecution to call an expert witness (if possible a qualified Navigation Direction Officer) to assist the court. Such a witness would not be called under sub-rule (2) of rule 218 and could, with permission of the court, be present to hear the evidence and could then lay out the resulting courses on the chart. Like any other expert witness he would be subject to unrestricted cross-examination.

220. Affidavits by local navigation experts.- At trials at which evidence may be required on the navigation of a ship, affidavits or statutory declarations made by officers or others having special local knowledge of navigation may be put in evidence by the person or persons on trial, but not by the prosecutor.

221. Navigation Direction Officers-examination and cross-examination.- The examination and cross examination of the officers who have been directed to perform the duty mentioned in sub-rule (2) of rule 218 is to be limited to ascertaining the accuracy or inaccuracy of the document thus laid before the court. Nevertheless, if on other navigational experts are reasonably available and it is desired to have further evidence from such experts, the court may recall these officers and permit them to be questioned on other navigational matters by both the prosecution and the defence.

222. Evidence of negligence not specifically stated. –If the court, at any time during the trial, considers that the accused has been negligent in any way not specifically detailed, they shall formulate a fresh allegation and inform the accused that they hold this view at that particular stage of the trial, and invite him to deal with the fresh allegation in his defence, adjourning the court if necessary to give him time to meet it. Any witness for whom the accused asks shall, if practicable, be called or recalled. If he is a prosecution witness, he may be cross-examined by the accused's friend and re-examined, by, the prosecutor. If he is a defence witness he may be examined by the accused's friend. Cross-examined by the prosecutor and re-examined, by the accused's friend. If the charge is found proved, any such additional heading indicating a form or negligence, if finally established to the satisfaction of the court, should be included in the finding.

NOTE

This rule empowers the court during a trial relating to navigational matters, to add a fresh charge of negligence, it at any time during the trial they consider that the accused has been negligent in any way which is not specifically detailed in the charge on which he is being tried.

It is to be noted that this rule is an exception to the normal procedure laid down in rule 143 (2) under which any addition to, omission from, or alteration in a charge can only be made by the convening authority. *see* note 2 and 3 to rule 143.

Offences relating to Court-Martial by Witnesses and others

223. Offences of witnesses and others.—When any court-martial is of opinion that there is ground for inquiring into any offence, specified in section 73 or 74 and committed before it or brought under its notice in the course of its proceedings, or into any act done before it, or brought under its notice, in the course of its proceedings which would if done by a person subject to the Ordinance, have constituted such an offence, such court-martial may proceed as follows that is to say:-

(a) If the person who appears to have committed the offence is subject to the Ordinance, the Court may either take cognizance of the fact and sentence the offender as provided in sub-section (2) of section 73 OI: may bring his conduct to the notice of the proper naval authority with a view to his trial summarily or by court-martial, and may if necessary, order him to be placed in naval custody.

(b) If the person who appears to have done the act is subject to military or air force law the court may bring his conduct to the notice of the proper military or air force authority.

(c) If the
person
who
appears to
have done
the act is
subject
neither to
the
Ordinance
nor to the law, then;

military
or air
force

- (i) in the case of acts which would, if done, by a person subject to the Ordinance, have constituted an offence under clauses (a), (b), (c) and (d) of sub-section (1) of section 73, the officer who summoned the witness to appear or the president of the court-martial, as the case may be, forward a written complaint to the nearest magistrate of the first class having jurisdiction;
- (ii) in the case of acts, which would, if done as aforesaid, have constituted an offence under clause (e) or clause (f) of sub-section (1) of section 73, the court may either take cognizance of the offence and sentence the offender as provided in sections 480 and 481 of the Code of Criminal Procedure, 1898 (Act V of 1898), read with sub-section (2) of section 95 or after recording the facts constituting an offence and the statement to the offender, if any, forward the case to the nearest magistrate of the first class having jurisdiction for trial in accordance with the procedure laid down in section 482 of the Code of Criminal Procedure, 1898 (Act V of 1898); and
- (iii) in the case of acts which would, if done as aforesaid, have constituted an offence under section 74, the court making any preliminary enquiry that may be necessary may send the case to the nearest magistrate of the first class having jurisdiction for enquiry or trial in accordance with section 476 of the Code of Criminal Procedure 1898 (Act V of 1898).

NOTES

1. When in the course of a trial by court-martial, it appears to the court that a person has committed any of the offences specified in section 73 or section 74 of the Ordinance and the court is of opinion that there are grounds for inquiring into the matter, they may proceed in the manner prescribed by this rule.

2. Clause (a)-i.e., when the offender is a person subject to the Ordinance.-

The court may either :-

- (i) take cognizance of the fact if the offence is one under section 73 (1), and the court considers that offender should be tried by them summarily, the court may sentence the offender as provided in section 73 (2). This is not possible if the alleged offence is one of giving false evidence under section 74; or
- (ii) may bring his conduct to the notice of the "proper naval authority" (*see* rule 2 (e)), normally the convening authority, for suitable disciplinary action. The court may also, if necessary, order the offender to be placed in naval custody. If such a person is ordered into custody, this fact must be mentioned in the report and it then becomes the duty of the officer receiving the report to see that the case is promptly investigated in accordance with section 90 of the Ordinance. The report should be in sufficient detail to place the officer in full possession of the facts and enable him to exercise his discretion whether to order the trial of the offender, by court-martial or to direct a summary trial.

3. Members of a court-martial reporting an offender under clause (a) are individually disqualified from trying him on the charges arising out of their report, rule 133 (2); and the officer

to whom the case is finally referred if he decides on trial, must convene new court for the purpose.

4. A court-martial should exercise the greatest discretion in instituting proceedings or taking measures which may result in the institution of proceedings against a person subject to the Ordinance for the offence specified in section 74. It is not enough that the court-martial has by its verdict shown that it did not believe the witness, for it may have thought him to be, mistaken, or on the balance probabilities, it may have accepted another version of what took place. Before instituting proceedings against a witness the court should be satisfied that there are good grounds for believing that the witness has made a statement which he knows to be false or *does not believe* to be true, on some point which is *material* to the issue, and that his conviction is likely, *see notes to section 74*.

When it is likely that a witness will be prosecuted for giving false evidence the exact words used in the language in which the evidence was given should be recorded *see rule 188 (1)*.

5. Clause (b)-i.e., When the offender is a person subject to military or air force law.-In the case of such person the only course open to the court is to make a report about his conduct to the proper military or air force authority. It would then be a question for that authority to take appropriate disciplinary action against the offender.

6. Clause (r)-i.e., When the offender is a civilian:-

- (i) In a case where a civilian offender is involved, it is to be noted that sections 195 and 476 of the Code of Criminal Procedure provide for the institution of proceedings for certain offences against the Penal Code on the written complaint of the public servant concerned or of the court before which the offence complained of was committed. A court-martial is a "criminal court" for the purposes of the above sections and is also a "court of justice" for the purposes of the Penal Code. (*See Code of Criminal Procedure section 6 and Penal Code section 20*). The effect of this is that all acts and omissions which are punishable under section 73 (1) (a), (b), (c) and (d) when committed by persons subject to the Ordinance are, when committed by civilians, offences under sections 174, 175, 178 or 179 of the Penal Code for which the officer who summoned the witness to attend or the president of the court-martial, as the case may be, can institute proceedings, under section 195 (1) of the Code of Criminal Procedure. Similarly all acts and omissions which are punishable under section 73 (1) (e) and (f) or under section 74, when committed by persons subject to the Ordinance, are, when committed by civilians, offences under sections 228, 193 or 194 of the Penal Code for which the aggrieved court-martial can institute proceedings under section 476 of the Code of Criminal Procedure. Before instituting proceedings a court-martial must *prima facie* be satisfied that a definite offence has been committed by some definite person against whom proceedings in a criminal court are to be taken. It is not sufficient that circumstances may raise some sort of a suspicion against someone. In such a case the officer or the court-martial, as the case may be, should either allow the matter to drop, or should make or hold a preliminary inquiry to *see* who is to be prosecuted and for what offence. A court's decision to institute proceedings must be a judicial one, *i.e.*, either based on what the court has itself heard of seen and considered, or on the evidence taken before it and considered. Similarly, an officer's decision to institute proceedings must be a reasonable one, based on sufficient grounds.

- (ii) The report to the magistrate may be in the form of a letter, but it should be sufficiently detailed to put him in full possession of all the materials on which the decision to prosecute was based. It should set forth the name and the identity of the person accused and of the witnesses who can substantiate the accusation. A narrative of the event complained of should be included in the report and a record of the evidence taken in the preliminary inquiry (if any) attached.
- (iii) If a case arises in which it appears necessary to resort to the provisions of section 476 of the Code of Criminal Procedure outside Bangladesh the officer, or the court-martial as the case may be, should, in the first instance ascertain whether the civilian concerned is amenable to the laws of Bangladesh. Pending a decision on this point the court-martial should content itself with excluding him from the room in which its proceedings are held, if such course appears to be necessary.

7. Clause (C), sub-rule (ii).-When a civilian appears to have committed any act, which would be punishable under section 73 (1), (e) or (f), if committed by person subject to the Ordinance, it is open to the court-martial in respect of which the offence is committed, itself to take cognizance of the offence and follow the procedure laid down in sections 480 and 481 of the Code of Criminal Procedure and sentence the offender to fine not exceeding two hundred taka, and in default of payment to simple imprisonment for term which may extend to one month, unless the fine be sooner paid. Also see section 95(2) of the Ordinance.

Section 480 Cr. P. Code provides summary remedy, which enables a court to preserve its decorum and maintain its dignity. It gives special power to court to deal with a case of insult offered to the court in its presence. The court is not bound to hear any evidence, it can rely on its own opinion of what happened, and can detain the offender in custody, take cognizance of the offence, and sentence him. All this, however, is normally required to be done *before the rising of the court*, that is, *on the same day*. It is not desirable for the court to hear evidence and postpone sentence until a later date.

8. If a court-martial should find it necessary to take cognizance of the offence, it should bear in mind that rule 223 empowers it to take action under sections 480 and 481 Cr. P. Code only in cases where the act complained of would have constituted an offence under clause (e) or clause (f) of sub-section (1) of section 73 of the Ordinance, and not as offence under any of the other clauses of that sub-section. The record of the court should show:-

- (i) the facts, showing the nature and stage of the proceedings interrupted;
- (ii) the nature of the interruption or insult. Where possible, the very words used by the offender should be reproduced;
- (iii) the statement of the offender, if any; and
- (iv) the finding and sentence.

For Warrant of commitment, *see* Form L in the Fifth Appendix.

9. If the court consider that the conduct of the offender calls for a heavier sentence, than that permissible under section 480 Cr. P. Code, they may record the facts constituting the offence and the statement of the offender, if any, and forward the case to the nearest magistrate of the first class having jurisdiction for trial in accordance with the provisions laid down in section 482 C. P. Code. The court 482 Cr. P. code. The court may require security to be given for the appearance of the offender before such magistrate, or if sufficient security is not given, shall forward him in custody to such magistrate.

10. When a person, whether subject to the Ordinance or not, commits an offence, which is punishable under any of the clauses of sub-section (1) of section 73, or under the corresponding sections of the Penal Code, a court-martial, instead of resorting to the more severe measures here indicated, may accept an unconditional apology from such a person, if in the opinion of the court it is sufficient to indicate their dignity.

CHAPTER XI

SUMMARY GENERAL COURT-MARTIAL

224. Foregoing rules relating to court martial general inapplicable to summary general court-martial.:- The rules relating to court martial contained in Chapters IX and X shall not, save as hereinafter provided, apply to summary general court-martial, which shall be subject to the rules contained in this Chapter.

225. Convening of summary general court-martial.-A summary general court-martial may be convened by any officer mentioned in section 98 and the proceedings recorded in accordance with the form set out in the Fourth Appendix to these rules, with such variations as the circumstances of each case may require;

NOTE

As to convening of summary general court-martial *see* section 98 and notes convening order must be signed personally by the convening officer.

226. Composition of summary general court-martial.-(1) The provost-marshal, an assistant provost-marshal, or an officer who is prosecutor of witness for the prosecution, shall not be appointed a member of the court, but save as aforesaid any available officer may be appointed to sit.

(2) The officer convening the court may also appoint a fit person to act as judge-advocate.

NOTE

1. The provisions of section 99 apply to summary general court martial in as much as:-

(i) it shall consist of not less than three and not more than five officers;

(ii) the officers may belong to any branch of the Navy;

(iii) each officer must have held commission for a period of not less than three years;

(iv) all officers must be of or above the rank of lieutenant-(the president, however, must not be below the substantive rank of a lieutenant commander; section 98 (2);

(v) the president and all other members, including spare members, must be nominated by the convening authority;

(vi) the convening officer cannot be a member of the court-martial, nor must any of the person mentioned in sub-rule (1) be appointed a member of the court;

(vii) the court must not consist of officers all of whom belong to the same ship or naval establishment; and

(viii) if the court is convened for the trial of an officer, it shall not include more than one member, who is below the rank of such officer.

2. As to the consequences of failing to comply with the above-mentioned mandatory provisions of the Ordinance, *see* notes to section 99 and section 240.

3. The appointment of a judge advocate on a summary general court-martial is optional as it is in the case of a district court-martial; but if a "fit person" (*see* rule 202) is available he should be appointed except in simple and straight forward cases. Once, however, a judge-advocate has been appointed, the court cannot proceed with the trial in his absence (section 100 (2)).

227. Charge.-The statement of an offence may be made briefly in any language sufficient to describe or disclose an offence under the Ordinance; No formal charge-sheet shall be necessary, but the convening officer may nevertheless direct separate trial of two or more charges preferred against an accused; or the accused before pleading may apply to be tried separately on any one or more of such charges on the ground that he will be embarrassed in his defence if not so tried separately, and the court shall accept his application unless they think it to be unreasonable. If such charges are separately tried the provisions of rule 103 shall apply as if the summary general court-martial were a district court-martial.

NOTE

As to separate trial of two or more charges, *see* rule 175 and notes thereto.

228. Trial of several accused persons.- The court may be sworn or affirmed at one time to try any number of accused persons then present before it, but except so far as accused persons are tried together for an offence averred to have been committed collectively or averred to have been committed by one or more of them and to have abetted or attempted by other or others, the trial of each accused person shall be separate.

NOTE

As to joint trial of several accused persons, *see* rule 130 and notes.

229. Challenges. - (1)-The names of the president and members of the court shall be read over in the hearing of the accused person (2) If any accused person objects to an officer, the object shall be dealt with in the manner provided in section 109 and any vacancies thus caused shall be filled from among the spare members, if any, or by fresh member being appointed by the convening officers.

(2) If any accused person objects to an officer, the object shall be dealt with in the manner provided in section 109 and any vacancies thus caused shall be filled from among the spare members, if any or by fresh member being appointed by the convening officer.

NOTE

As to the manner of making objections and the procedure to be followed, see section 109 and rule 138 and notes thereto.

230. Swearing or affirming of the court.-The provisions of the foregoing rules 139 and 140 relating to the administering and taking of oaths and the making of solemn affirmations shall apply to every summary general court-martial.

231. Arraignment.-When the court are sworn or have affirmed the judge-advocate, or the president shall state to the accused the offence with which he is charge, with, if necessary, an explanation giving him full information of the act or omission with which he is charged, and shall ask the accused whether he pleads guilty Or -not.

NOTE

The procedure on arraignment of the accused, before a summary general court-martial shall, as far as practicable, be the same as that before a district court "martial, as rule 242 makes certain rules applicable to such a court, ;-in particular attention is drawn to the notes appended to :

Rule 142 objections by the accused to charge;
Rule 144, special plea to jurisdiction;
Rule 145, plea in bar;

Rule 146, general plea of 'guilty or' "not "guilty"; (which implies that, a plea of "guilty "cannot be accepted if the offence is punishable with death);

Rule 147, procedure after plea of "guilty";
Rule 149, procedure after plea of "not guilty":

Rule 171.responsibility of president;

Rule 172, duties of the prosecutor; and

Rule 173, latitude to the accused in making his deffence.

232. Plea to jurisdiction.-If a special plea to the general Jurisdiction is offered by the accused, and is considered by the court to be proved, the court shall report the same to the convening officer.

NOTE

See rule 144 and notes thereto;

233. Witnesses and evidence.-(1) The witnesses, for the prosecution "shall be called and the accused shall be allowed cross-examine them and to call any available witnesses for his defence.

(2) An oath or affirmation as provided in Fourth Appendix to these rules shall be administered to every witness, before he lives his evidence, by one of the persons specified in rule 211.

NOTE

Although by rule 242 only a limited number of foregoing rules are applied; as far as practicable to summary general court-martial the procedure to be adopted at such a court should be the same as at a district court-martial.

234. Defence.- The accused shall asked what he has to say in his defence and shall be allowed to make his defence. He may be allowed to have any person to assist him during the trial, whether a legal adviser or any other person.

1. *See* note to rule 233.

2. As to the rights of the accused to prepare his defence, *see* rule 28 and notes.

1. If the accused is assisted by a defending officer or a counsel he should be allowed full privileges of address etc. *See* rules 195 to 201.

235. Record of the evidence and defence.-(1) The judge-advocate, or, if there is no judge-advocate, the president shall take down, or cause to be taken down, a brief record of the evidence of all the witnesses at the trial, and the record so taken down shall be attached to the proceedings:

Provided that, if it appears to the convening officer that the exigencies of the service or other circumstances prevent compliance with this provision, he may direct that the trial may be carried on without any such brief record being taken down.

(2) If the accused pleads "Guilty" the summary of evidence, if any, may be read and attached to the proceedings, and it shall not be necessary for the court to hear witness for the prosecution respecting matters contained in the summary of evidence so read.

NOTE

It would hardly ever be necessary for the convening officer to give such a direction as is mentioned in the proviso to sub-rule (1). If he does so he must record it in his order convening the court and state shortly the exigencies or other circumstances which appear to him to prevent compliance with this rule.

236. Procedure at trial.-Where during the course of trial any doubt arises as to the procedure to be allowed, in connection with the calling or recalling or questioning of witnesses, or the order in which witnesses are to be examined and addresses are to be made by the prosecutor or by or on behalf of the accused the provisions of Chapters IX and X relating thereto, shall, so far as practicable, apply as if the summary general court-martial were a district court martial.

NOTE

In case of doubt it is always advisable to follow the procedure laid, down in the foregoing rules on the subject.

237. Finding and sentence.-(1) The court shall deliberate on their finding in closed court.

(2) If the finding on any charge is "Guilty" the court may receive any evidence as to character, age, service, rank and recognized acts of gallantry or distinguished conduct or any previous' conviction of the accused, which is available: the court shall then deliberate in closed court as to its sentence.

(3) The court may award any sentence which a general court-martial can award but the sentence of death, shall not be awarded unless all the, members of the court concur.

NOTE

As to voting by members, *see* section III and rule 182.

238. Proceedings after the sentence of finding.- The proceeding duly completed shall be signed by the president and judge-advocate, if any, and transmitted to the confirming officer without delay.

239. General provisions.-(1) A summary may adjourn from time to time and from place when necessary, view any place.

(2) The proceedings shall be held in open court, in the presence of the accused, except during any deliberation among the members, when the court may be closed.

240. Confirmation. - (1) The finding and sentence of a summary general court-martial shall be valid only in so far as they are confirmed by proper authority.

(2) In any case where a sentence of death is passed, the convening officer shall reserve confirmation of the sentence by an authority having power to convene a general court-martial;

Provided that the convening officer shall not be required to reserve confirmation by such authority if on confirming the, sentence he commutes the punishment for any punishment other than death.

NOTE

See section 130 and notes as to confirmation generally.

141. Evidence of opinion of convening and confirming officer. Any statement in an order convening a summary general court-martial as to the opinion of the convening officer, and any statement in the minute confirming the finding of sentence of a summary general court-martial as to the opinion of the confirming officer shall be conclusive evidence of that opinion, but this rule shall not prejudice the proof at any such opinion when not so stated.

242. Application of rules.- The foregoing rules,

128	(Rights of accused to prepare defence),
129	(Warning of the accused for trial).
134	(Suspension of rules on the' ground of the exigencies of the service or 'necessities of discipline),
137	(Appearance of accused, prosecutor, and the defending officer),
142	(Objection by the accused to charge).
144	(Special plea to the jurisdiction).
145	(Plea in bar),
146	(General plea of "Guilty" or "Not Guilty").
147	(Procedure after plea of "Guilty").
154	(Consideration of finding),
155	(Form and record of finding),
156	(Procedure on acquittal),
157	(Procedure on conviction),
164	(Mitigation of sentence on partial confirmation).
166	(Confirmation notwithstanding technical or other deviation)
168	(Promulgation).
170	(Seating of members),
171	(Responsibility of president).

172	(Duties of the prosecutor),
173	(Latitude to the accused in making his defence).
176	(Sitting in closed court).
191	(Transmission of proceedings after finding),
192	(Preservation of proceedings).
193	(Right of person tried to copies of proceedings),
194	(Loss of proceedings).
204	(Evidence to be according to rules in criminal courts),
208	(Procuring attendance of witnesses) and
217	(Provisions as to finding of insanity). shall as far as practicable, apply as , if a summary general court-martial were a district court-martial.

NOTE

See also special procedure laid down for summary general court-martial in the following rules

:-

Rule 229 (challenges);

Rule 230 (swearing or affirming of the court); and

Rule 233 (witnesses and evidence).

CHAPTER XII

EXECUTION AND SUSPENSION OF

SENTENCES

243. Carrying out of sentence of death.-Upon the receipt of an order carry out a sentence of death the officer to whom the order is issued shall.

(a) if the person sentenced has been committed to a civil prison under section 145 obtain custody of his person by issuing warrant in one of the forms in the Fifth Appendix to these rules;

(b) inform the person sentenced as soon as possible that the sentence has been confirmed and of date OD which the sentence will be carried out ;

(c) proceed to Carry out the sentence as required by the order and in accordance with any general or special instructions which may from time to time be given by, the order the authority of, The Chief of Naval Staff.

NOTES

1. A sentence of death is normally carried out in civil prison but where military, naval or air force detention barracks are established, or the Government has, under section 149, set apart any place under its control is a naval prison of detention barracks, such a sentence may conveniently be carried into execution in such place.

Warrants (Forms A, B and C) given in the Fifth Appendix to the rules may be used, as appropriate.

2. On active service, a sentence of death may be carried out as required by the circumstances and in accordance with any general or special instructions on the subject issued by, or under the authority of, the Chief of Naval Staff.

244. Procedure on commutation of sentence of death.-If a sentence of death is commuted under the ordinance or if the person sentenced to death is pardoned, and

(a) if he has been committed to a civil prison under a warrant issued under section 145, a further warrant in one of the forms given in the Fifth Appendix to these rules shall be issued by the commanding officer of such person;

(b) if he has been detained in naval, custody, any warrant which may be necessary to give effect to the sentence as so commuted shall be issued in one of the forms given in the Fifth Appendix to these rules.

NOTE

For appropriate forms of warrants for action under this rule *see* Forms D, E and F in the Fifth Appendix to the rules.

245. Committal warrants.-(I) A warrant for the committal of a person to a civil prison, or to a military, naval or air force prison or military, naval or air force detention barrack, under the provisions of sections 143 to 145 shall be in one of the forms set out in the Fifth Appendix to these rules. Such warrant shall be signed by the Commanding officer of the prisoner or by the Commander of any higher naval formation within which the person sentenced may be or any, staff officer of such commander.

(2) Medical examination.-A Medical Officer shall examine the offender before his committal to a prison or detention establishment to ascertain whether he is physically capable of undergoing his sentence, and again on his return to the ship. When a man sentenced to imprisonment or detention is found or suspected to be suffering from a mental or physical infirmity which is not considered to render him unfit to undergo his sentence, a report by a Medical Officer to that effect shall accompany him to the prison or detention quarters.

NOTES

1. *See* Forms G.H and K in the Fifth Appendix.

2. If the sentence requires a Committal Warrant to be issued in terms of this rule or rules 243, 244 and 246, the Commanding Officer is to do so on an appropriate form-as specified in the Fifth Appendix to the rules-amended as required to suit the particular requirements of the case.

3. A Copy of the same is to be forwarded forthwith to Naval Headquarters Naval Law Department in respect of a sentence awarded summarily by the Commanding Officer; whereas in case of a sentence by a Court Martial, a copy of it is to be attached to the proceedings after promulgation.

246. Warrants under section 148.-Any warrant issued under the provisions of section 148 shall be in one of the forms set out in the Fifth Appendix to these rules and shall be signed by the officer making the order in pursuance of which such warrant is issued, or by his staff officer.

NOTE

See Forms land J in the Fifth Appendix.

247. Sentence of dismissal-A sentence of dismissal awarded by a court-martial shall take effect from the date on which the sentence is promulgated to the person sentenced, or except in the case of an officer, from such subsequent date as may be specified by the commanding officer at the time of such promulgation.

Provided that, when dismissal is combined with imprisonment or detention which is carried out in military naval or air force prison, or in military, naval or air force detention barracks, or other military, naval or air force custody the dismissal shall not take effect, until the date on which the prisoner is duly released from a military, naval or air force prison or military, naval or air force detention barrack or other military, naval or air force custody.

Provided also that, when dismissal is combined with imprisonment which is carried out in civil prison the dismissal shall not take effect until the date on which the prisoner is received into a civil prison.

NOTES

1. Under section 20 and rule 21 a "Termination of Service Certificate" must be furnished to every sailor who is dismissed, discharged; or released from service.

2. A sentence of dismissal awarded by a court-martial to an officer takes effect from the date of promulgation, or, when combined with imprisonment, from the date on which the prisoner is received into a civil prison. In the latter case the commanding officer should report to the proper naval authority the date of the prisoner's admission in the civil prison.

3. In the case of a sailor, it may sometimes be expedient for a commanding officer to specify a date of dismissal subsequent to the date of promulgation, with a view to keep the sailor subject to the naval law for a short period. If he considers such action desirable he must do so at the time of the promulgation of the sentence to the person and he should record the date he specifies in the minute of promulgation. When a commanding officer exercises his option of specifying a

subsequent date, the date specified must be strictly limited by the requirements of the case. For instance, in the case of a person sentenced out of Bangladesh to dismissal alone, or to dismissal combined 'with imprisonment which is carried out locally either in naval custody or for special reasons in local civil custody through an order made under section 145 (3) of the Ordinance, (*see* note to section 19), the subsequent date might be "date of disembarkation" or "date of embarkation" according to whether the intention is to despatch the person to Bangladesh on a transport or by private vessel. It is obviously desirable to keep the person subject to naval discipline while travelling on a transport or until he can be despatched to Bangladesh. If the person is to be sent by a transport the commanding officer can enter in the certificate of termination of service "date of disembarkation" as the date from which the dismissal takes effect.

4. The effect of the second proviso is that a prisoner under sentence of dismissal combined with imprisonment which is carried out in a civil prison remains subject to the Ordinance until he is received into a civil prison. The commanding officer, in the case of a sailor, should enter on the Termination of Service Certificate the date of admission into a civil prison as the date from which the dismissal takes effect. (As regards the case of an officer, *see note 2* above).

248. Sickness of accused persons and offenders.(1) An offender transferred to prison, etc., or a person awaiting trial, by court-martial or otherwise, for a serious offence, shall not be sent, to hospital without the sanction of the Administrative Authority. The officer in charge or command of the Naval or Military Hospital shall be informed that the person is to be considered as under arrest and pointed out one of the following categories into which he falls:

(a) offender; sentenced on.....to.....
(period), imprisonment or detention by court-martial;

(b) (i) accused person awaiting trial by court-martial; .

(ii) recovered deserter whose case has not yet been dealt with

(iii) accused person whose case has been investigated and charge proved, but punishment not awarded.

(c) offender; sentenced summarily on.....
to.....(period) imprisonment or detention or confinement in cells.

(d) accused person awaiting summary trial, details of the nature of the offence, the punishment awarded and the number and date of the punishment warrant shall also be sent, if appropriate.

(2) Such officers or men are not to be brought forward for survey with a view to invaliding without the special directions of the chief of Naval Staff. When a survey is held under such directions the result shall be reported to the Chief of Naval Staff, who shall subject to the provisions of this rule decide the disposal of the person concerned.

(3) The Chief of Naval Staff shall not, in consequence of the report of the surveying officers, authorize any step which may result in an accused persons escaping trial unless the surveying officer certify that his mental condition at the date of the alleged offence. was such that he ~as not responsible for his actions, or that his physical or mental condition is such that even the fact of being tried, apart from any sentence that might be awarded, would be likely permanently to impair his health. When survey of an accused person is likely to be delayed by hospital treatment, certificate may be signed by any three medical officers.

(4) If the surveying officers certify that a person awaiting trial for desertion was not responsible for his actions at the time of the -alleged desertion, the commanding officer shall substitute the notation "Shore" for that of desertion ("R") in accordance with sub-rote (4) of rule 60, but pay shall not be credited for the period of absence.

(5) Where the physical condition of a person awaiting trial for desertion is certified to be such that trial is likely permanently to impair his health, directions of the Chief of Naval Staff shall be sought a bout the notation of desertion and credit of pay and while submitting the case for such directions details of the offence and illness shall be given.

(6) The Chief of Naval Staff shall not, in. consequence of the report of the surveying officers, authorize any step which may result in a person under sentence of imprisonment or detention escaping the residue of his sentence, unless the surveying. Officers certify that the offender is medically unfit to undergo even a modified prison or detention routine, as the case may be. If they so certify, the offender may, provided that he is not to be dismissed or discharged for misconduct, be invalided from the service; but care shall be taken that the sentence is shown on his service book and elsewhere as necessary. The sentence may then be formally remitted.

(7) If the surveying officers certify that the offender's mental Condition at the date of the commission of the offence must have been such that he could not be held responsible for his actions, directions of the Government shall be sought whether or not the finding and the sentence shall stand.

Sub-rule' (7).-See section 35 as to the power of review.

249. Suspension of sentence.-*Effect on accompanying punishments*-An authority or officer having power under section 155 to order suspension of a sentence of imprisonment or detention may, in cases in which a committal order has not been issued, direct that any punishment of disranking or deprivation of good conduct badges involved in the sentence shall be suspended also. If the authority or officer does not so direct the other punishment or punishments shall take effect as if the sentence had not been suspended. If a committal order has been issued before the sentence is suspended, the other punishments shall be maintained as from the date of the sentence. If a committal order is subsequently issued in respect of a sentence which has been suspended the other punishments, if previously suspended, shall be enforced as from the date of committal. Punishments not mentioned above which may be awarded at the same time as a sentence of imprisonment or detention, namely mulcts of pay and stoppage of leave, shall not be suspended. Forfeiture of pay and service shall be governed by the period of the sentence actually served.

(2) Other consequential effects.-A sentence of imprisonment or detention even if suspended automatically causes a break in the period of "Very Good conduct". An officer suspending a sentence of imprisonment or detention may direct: that the character of the offender is to be assessed as if the full sentence had been served. If he does not so direct and the Sailor is under a suspended sentence when a character assessment is required under the regulations, the assessment shall reflect only that part of the punishment or accompanying punishment which has actually been enforced. If the suspended sentence or the suspended portion thereof be subsequently enforced the original character assessment shall be altered to that appropriate to the full sentence.

CHAPTER XIII

CIVIL OFFENCES

250. Concurrent jurisdiction of a Naval Tribunal and a Criminal Court.-(1) Where offence is triable by a criminal court as well by naval tribunal under sections 78 the question whether the proceedings are to be instituted before a criminal court or a naval tribunal shall be decided by the appropriate Administrative Authority which shall be the prescribed naval authority within the meaning of section 107.

(2) If however, a notice is given by the criminal court under sub section (2) of section 107, such Authority shall, unless it is of opinion that the proceeding, be instituted in the criminal court, in which case it shall hand over the accused to the civil authorities postpone the proceedings and refer the matter to the chief of Naval Staff who shall decide whether proceedings be allowed to be instituted in the criminal court or a reference be made to the Government under Sub-section (3) of the said section.

(3) The criminal court shall be kept informed of the action taken in this behalf.

NOTE

Sub-rule (1).-must be read with rule 286, which provides that in cases where death has resulted (*e.g.*, as a result of a rash or negligent act, punishable under section 304-A of the Penal Code, the prescribe authority for the purposes of section 107 shall be the Chief of Naval Staff and no lower authority.

251. Exercise of jurisdiction.-In deciding whether an offence falling under, section 78 should be tried by a naval tribunal or by a Criminal court the following considerations shall be kept in view by the competent naval authority, namely:

(a) when the offence is committed on board a ship or in a naval establishment or within a naval area, or when the offender is required to proceed out of Bangladesh or when the exigencies of the service and the requirements of maintaining discipline require prompt action the offender should normally be tried by a naval tribunal.

(b) when the offence relates to the person or property of a civilian, or has been committed in conjunction with a civilian, the offender should normally be handed over to the civil authorities for trial by a criminal court.

252. Assisting civil authorities-The commanding officer shall afford every facility to the civil authorities in detecting persons serving on board whose arrest is required on any criminal charge but he shall require any constable or other civil officer coming on board to search for or apprehend such person, to produce the warrant or to show satisfactory evidence as to the authority under which he acts. No such person shall be handed over to the civil authorities but may be kept in naval custody at the discretion of the commanding officer, who shall at once report the case to the Administrative Authority for orders. Such Authority shall decide in accordance with section 107 and rule 250 whether the offender is to be tried by a naval tribunal or by a criminal court. The commanding officer shall inform the civil authority of the decision and shall take necessary action accordingly.

253. Trial by civil power-attendance of officer-(1) When an officer or Sailor is to be tried by a criminal court the commanding officer of the accused may at his discretion depute an officer to attend the trial, taking into consideration the gravity of the charge, the distance from the ship to the court and the exigencies of the service.

(2) If the officer so deputed is called upon by the criminal court to testify to the character and antecedents of the accused that officer shall not give any information regarding the, minor offences against the discipline of service committed by the accused unless specially required by the court to do so, nor shall such officer take the conduct sheet of the accused to the court.

(3) If the accused is committed for trial the officer deputed to attend the trial shall mention to the accused the desirability of asking the court whether he is not entitled to bail or if not entitled whether he may not have bail.

(4) Before leaving the court, the officer shall obtain sufficient information from the court or from an officer of the court regarding the progress of the case.

254. Men admitted to bail.- When a man arrested by the civil authorities is subsequently admitted to bail, and the ship to which he belongs is to leave the port before the decision of his case, he shall if possible be lent to a ship remaining at the port and if no naval accommodation is available, he shall be handed over to the civil authorities before the ship leaves.

255. Expenses of rejoining ship on conviction.-A man who is left behind by his ship because of proceeding against him in a criminal court by which he is subsequently convicted, shall ordinarily, in the absence of an early Government opportunity, be liable for the whole cost of rejoining his ship. Special cases in which owing to the movements of the ship, it is considered that the liability should not be enforced may be represented to the Chief of Naval Staff.

256. Restriction of pay and allowances during. Trial .(1),When a person is under arrest in naval or civil custody on a charge an offence the relevant- Administrative Authority may direct that not more than one-half the pay and allowances due to him shall withheld during the period of such arrest.. If he is subsequently acquitted, the amount so withheld shall be paid to him; but, if convicted the amount already paid may be recovered as far as possible.

(2) In the event of the person resuming duty on having been released on bail pending his appeal against conviction by a criminal court he shall be entitled to receive his pay and allowances in full from the date he resumes his duty.

(3) If the person remains in custody, otherwise than as a prisoner undergoing a sentence of imprisonment, during the pendency of his appeal his pay and allowances shall continue to be withheld to such extent as the Administrative Authority may direct provided always that the maximum amount thus withheld in any one month shall not exceed one-half of his pay and allowance's for that month.

(4) The amount paid to such person while he is in custody shall not be recovered from him until his appeal, if any, has been finally rejected.

257. Consequences of conviction by civil power.-(I) When a Sailor is convicted by a criminal court he shall be liable to forfeit pay and service for the time sent in civil custody and he may incur a naval penalty under the provisions of this rule.

(2) *Forfeiture of pay and service.*-A sailor shall forfeit one day's pay and service for each day (or part of a day) during which he is detained by the civil authorities as part of the same sentence. He shall also, as a general rule, forfeit pay and service on the same scale for time spent in custody while awaiting and attending his trial, but only if the absence interferes with the performance of his normal duties on that day; and the commanding officer may at his discretion remit this forfeiture altogether if the loss of services is trivial. The Chief of Naval Staff may on the recommendation of the commanding officer, reduce it if the absence is spread over a number of days and the full forfeiture would in the opinion of the Chief of Naval Staff be excessive. No Sailor shall forfeit more than one day's pay and service for any one calendar day.

(3) There may be three or more separate periods for which a sailor forfeits pay and service in respect of a single conviction:

(a) from the date of his arrest (unless he is on leave at the time) or from the expiration of his leave (if he is arrested during leave and is still in custody when his leave expires).

(b) from the date of surrender to bail (if he has been allowed to return to his ship pending trial);

(c) from the date of a sentence of imprisonment. Each such period shall be shown separately in the "Time Forfeited" column of the service certificate, even if some of them are continuous.

(4) Naval penalties.- An officer considering a naval penalty following a civil conviction must realize that he is not empowered to punish the sailor again for his offence or to take account of any opinion he may have formed about the adequacy or otherwise of the sentence. However, the effect of the offence on the service is to be taken into consideration. If the offence be one that has brought disgrace or discredit to the service and the sailor is considered not fit to remain in the navy, Government has an inherent right to dispense with his services. In offences involving moral turpitude, the sailor may be discharged as "Undesirable", and in other case as "S.N.L.R.". If however, due to the offence, the sailor is not considered fit to have charge of other man, at least for the time being, he may be reverted to a lower rank, so long as he is given the option leaving the service if he prefers. Similarly the offence may be such that the man could not be regarded as good character or conduct in the ordinary sense. It would then be unfair to sailor with unblemished records if the offences were not taken into account in assessing naval character and conduct. A sailor misbehaves on shore may also be deprived for the time being of the privilege of wearing plain clothes on shore. Thus the only naval penalties are:

(a) discharge "Undesirable";

(b) discharge S.N.L.R.; (services no longer required);

(c) reversion (with the option of discharge S.N.L.R.,) involves a character assessment not higher than "Good" and a break in "Very Good Conduct.

(d) an inferior character on the next occasion of assessment (e.g. "Good" "Fair" or "Indifferent")-Which involves a break in very good conduct.

(e) a break in continuity of "Very good conduct Which takes effect from the date on Which the offence was found provided .

(f) Withdrawal of the privilege of wearing plain clothes for a period not exceeding a year and the only criteria that may be taken into account in awarding them are those described above. A naval penalty shall be appropriate only in respect of an offence committed during the period of a man's naval engagement.

(5) Reports to superior authority.-When the commanding officer considers that penalty (a), (b) or (c) in sub-rule (4) is justified he shall submit his proposal, with a report of the trial to the Administrative authority, on the Form S. 273 "Report of Arrest and Trial, by civil power" set out in the Second Appendix to these rules. The sailor shall be informed that approval is being sought to impose a naval penalty but he shall not be informed which penalty has been proposed. If the commanding officer considers that the proper penalty is reversion, he shall bear in mind that it is necessary to give the sailor option to be discharged as S. N. L. R. Before this is done, the approval of the Chief of Naval Staff shall be, obtained. In such a case the sailor to which the commanding officer considers that the sailor should be reverted shall be indicated on the form. A duplicate of the form shall be made for reference to the Chief of the Naval staff and Sent to the

Administrative Authority with the sailor's service book and conduct sheet. On the receipt of the Chief of Naval Staff 's authority, the commanding officer shall, inform the Sailor that approval has been given for him to be reverted to the particular rank, but that, if he prefers, he may be discharged S.N.L.R. instead and that he has forty-eight hours in which to make up his mind. At the end of that period he shall be discharged or reverted accordingly, without further reference to any higher authority. If the commanding officer holding the rank of captain considers penalty (d) or (e) in sub-rule (4) to be appropriate he may approve the imposition of the penalty himself, in which case the form is not required: if he is below the rank of captain, he shall seek the approval of the Administrative Authority by submitting a report on the form. Penalty (f) in sub-rule (4) may be imposed on the authority of the commanding officer irrespective of his rank.

(6) *Information regarding imposition.*-Every man shall be told formally by his commanding officer of any penalty imposed upon him. When he appears before his commanding officer for this purpose, he shall not be treated as a defaulter but shall keep his cap on and be dealt with after request men. If the sailor is in a civil prison, the decision shall be communicated to him in writing.

(7) *Notation.*-Particulars of naval penalties awarded shall be noted on the sailor's conduct sheet. An inferior character assessment shall also be noted without delay in the appropriate section of the sailor's service book. The date of recommencement of the period "Very Good Conduct" shall be underlined, unless results from reversion.

(8) *Disposal of form.*-Reports of arrest and trial by civil authorities (form S.273) are to be numbered consecutively, a new series being started on the first January or each year. They shall be forwarded with the Punishment Return. When such a report has not been necessary, the following details of naval penalties imposed by the commanding officer are to be inserted on the Punishment Return:-

(a) Brief details of offence and where committed;

(b) Sentence of the court;

(c) Penalty imposed.

(9) *Appeal to higher court;*-When notice of appeal to higher court is given, action regarding any naval penalty which it is proposed to impose shall, be deferred pending the result of the appeal. If the sailor returns to duty pending the hearing of the appeal, he shall be unaffected by the decision in the original court. If the conviction is upheld on appeal, any naval penalty which may then be approved, shall take effect as if there had been no appeal.

NOTES

Form of Report (S. 273)-&s set out in the Second Appendix to the rules is reproduced below:-

S. 273 REPORT OF ARREST AND TRIAL BY CIVIL POWER

(Recommendations for Naval Penalties)

NOTE.-(i) This report is required only when the Commanding Officer cannot himself approve the naval penalty (compare Notes (iii), (v) and (vii) below:

(ii) After action this form is to attached to the Punishment Return Form S.181-relevant to the date on which the offence was found to be proved.

B.N.S.....No.....

Name.....Rank.....0.No.....

Date of commencement
of "Very Good Conduct"

No of Good

Character assessed to date

Conduct Badges.....

from last assessment.....

2. If on leave, state

(a) Date and time at which leave expired. (b) Date and hour of return to ship, if released pending trial.

3. Period absent from ship to attend Court.. ..,rightright.Date.....

From. to.rightright.

4. Forfeiture of pay and service days

5. Date of trial.....

6. Before what Court charged.....

7. Offence of exact terms or-charge.....

8. Order of Court in exact terms of order.. ..

(If offender was fined and/or ordered to pay costs, state whether paid).

9. Rank and name of officer who attended the trial.....

10. The offence having been found proved by the court, which of the following naval penalties is proposed:

(a) Discharge undesirable.

(b) Discharge S.N.L.R.....

(c) Reversion with the option of discharge S. N. L. R.....

(Insert the rank to which it is proposed the man should revert)

(d) An inferior character at the next assessment as specified in the regulations (if not automatically involve by any other penalty).....

(Insert proposed character or answer "NO")

(e) Break in continuity of "Very Good Conduct"

(if not automatically involved by other penalty).....rightright.....

(f) Withdrawal of privilege of wearing plain clothes.

(Insert period not exceeding 1 year)

Notes.-(iii) Naval penalties (a), (b) and (c) require the Administrative Authority's recommendation and Chief of the Naval Staff's approval: Form S.273 is to be submitted in duplicate and accompanied by the sailor Service documents.

(iv) Naval penalties (d) and (e) may be approved by Commanding officers of captain's rank Form S. 273 is not then required.

(v) Commanding Officers below the rank of Captain are to seek approval for naval penalties (d) and (e) from the Administrative Authority or if such approval is likely to be unduly delayed, the senior Officer present, provided he is of Captain's rank. The Commanding Officer is to make his submission on form S. 273 accompanied by the Service documents.

(vi) If naval Penalty-(e) is enforced, the new date of commencement of "Very Good, Conduct" is to be recorded in service documents as specified in the Regulations.

(vii) Naval penalty (f) may be approved by a Commanding Officer, irrespective of his rank. Form S. 273 is not then required.

11. COMMANDING OFFICER'S OBSERVATIONS AND REMARKS ON PROPOSED NAVAL PENALTIES (including a summary of the circumstances giving rise to the charge when this is not conveyed in the exact wording of the offence at para 7 above).

..... Signature

rightrightRank

rightright.....Date

12. ADMINISTRATIVE AUTHORITY'S RECOMMENDATION REGARDING NAVAL PENALTIES (a), (b) and (c) ABOVE OR DECISION OF ADMINISTRATIVE AUTHORITY OR SENIOR OFFICER REGARDING NAVAL PENALTIES (d) and (e) ABOVE:

..... Signature.

rightrightRank

rightright.....Date

CHAPTER XIV BOARDS OF INQUIRY

258. Board of inquiry, other than an inquiry into absent without leave.-(1) A board of inquiry is an assembly of officers, directed to collect and record evidence, and if so required" to report or make a declaration with regard to any matter which may be referred to them.

(2) A board of inquiry may be assembled by an officer in command of a ship or establishment or any superior authority.

(3) The board shall be composed of one to three officers who may be of any branch or department of the service, according to the nature of the investigation.

(4) Where, in the opinion of the authority who assembles the board, any of the matters to be referred to it concerns any. Part of military or air forces, or any civil department of the Government, or wherefore any reason it is considered expedient or desirable, the said authority, may with the consent of the proper military, air force or civil authority, appoint one more military, air force and civilian gazetted officers or any of them, to be members of the board, provided that the president shall be an officer of the Navy.

(5) The president of a board of inquiry shall not be of a rank less than that of lieutenant, unless in the opinion of the assembling Authority an officer of that rank is not, having due regard to the exigencies of the service, available. Where the board is directed to express an opinion which may bear upon the conduct, character or professional reputation of an officer, the president shall not be junior in rank or seniority to that officer.

(6) Officers detailed to constitute the board shall have no personal interest in the subject-matter of the inquiry and where the inquiry may involve technical or professional- knowledge or skill of any description, at least one-officer having appropriate qualifications shall be included_in the board as a member.

(7) An assembling authority shall furnish the board with terms of reference, sating, in detail the character of the investigation required and prescribing the nature of any report or declaration to be made in the findings.

(8) Previous notice shall be given of the time and place of meeting of a board of inquiry, and of all sittings of the board, to all persons concerned in the inquiry, except a prisoner of war who is still absent .

(9) A person whose conduct is the subject- matter of a board of president or any member of the board of inquiry, and if he objects, his objection and also the reply thereto of the officer objected to, shall be recorded and the proceedings preferred to the authority who

assembled the board, who shall there upon decide on the relevancy or validity of any such objection.

(10) It shall be the duty of board of inquiry to put such questions to a witness as they may think desirable for the purpose of testing the truth or accuracy of any evidence he has given, and for eliciting the truth . In order to ensure that a witness may not be compelled to answer a question which might directly or indirectly incriminate him, he shall be cautioned, before being examined, in the following terms and the fact that he has been so cautioned shall be recorded in the minutes:-

(a) *For witnesses subject to the Ordinance.*-"You are privileged to refuse to answer any question the answer to which may tend to expose you to any penalty or forfeiture; it will be for you to raise the objection and for the board to decide whether you must answer the question or not.

Note: No one charged with an offence can be compelled , to make a statement or answer any question.

(b) *For witnesses not subject to the Ordinance.* -"This board is inquiring into a matter affecting the naval service and is confident that you will give it all assistance in your power. You are not however legally obliged to answer any question the answer to which may tend to expose you to any penalty.

(11) A board of inquiry is not governed by the rules of evidence which are followed in a criminal court. The board may, therefore, receive any evidence, whether oral or documentary, which, in their opinion is relevant to the issue.

(12) When a board of inquiry is held on a prisoner of war, and in any other case in which the authority who assembled the board has so directed, the evidence shall be taken on oath or affirmation in which case the board shall administer the same oath or affirmation to witnesses as if the board were a Court-martial.

(13) The authority who assembled the board shall; when the board is held on a recovered prisoner of war, or on a prisoner of war who is still absent, direct the board to record their opinion whether the person concerned was taken prisoner through his own wilful neglect of duty, or whether he served with, or under or aided the enemy. He shall also direct the board to record their opinion in the case of a returned prisoner of war, whether he returned as soon as possible to the service, and in the case of a prisoner of war still absent whether he failed to return to the service when it was possible for him to do so. The authority who assembled the board shall also record his own opinion on these points. In other cases the board shall give no opinion on the conduct of any person unless so directed by the authority who assembled the board.

(14) The members of the board shall not be sworn or required to affirm, but when the board, is a board of inquiry on a recovered prisoner of war, the members shall make the following declaration ; I, A B, do declare upon my honour that I will dully and impartially inquire into and give my opinions as to the circumstances in which..... become a prisoner of war. according to the true spirit and meaning of the regulations for the navy on this subject; and I do further declare, upon my honour, that I will riot on any account, or at any time, disclose or discover my own vote or opinion, or that of any particular member of the board, unless required to do so by competent authority."

(15) (a) Save in the case of a prisoner of war who is still absent whenever any inquiry affects the character or professional reputation of a person subject to the ordinance, full opportunity shall be afforded to that person of being present throughout the inquiry, and of making any statement and of giving any evidence he may wish to make or give, and of cross-examining any witness whose evidence in his opinion affects his character or professional reputation, and of producing any witnesses in defence of his character or professional reputation.

(b) If after hearing the evidence, the board are of the opinion: that blame attaches any person subject to the Ordinance. The board shall inform such person accordingly and draw his attention to the particular evidence on which such opinion is based and shall ask him if he desires any further-evidence to be taken or has any further statement to make. Any such further statement or evidence shall be taken down and any point brought to light shall be investigated

(c) If the board finally attributes blame to any person subject to the ordinance, the assembling authority shall forward a copy of the proceedings to person concerned, inviting him lio make a statement giving reasons why he should not be found to blame. This statement shall be attached to proceeding.

(16) A board of inquiry shall keep a record of its proceedings which shall be authenticated by the signature of the president and members of the board. Any member who is unable to agree with any finding of fact or recommendation arrived at by other members may write his note of dissent which shall be attached do the proceedings and shall be forwarded by the president to the authority who assembled the board

(17) The board may be re-assembled as often as the assembling authority directs, for the purpose of recording additional evidence or for reconsideration of their finding.

(18) The proceedings of a board of inquiry, or any confession, statement or answer to a question made or given at a board of inquiry, shall not be admissible in evidence against a person subject to the ordinance, nor shall any evidence respecting the proceedings of the board be given against any such person except upon the trial of such person for wilfully giving false evidence before that board.

(19) The proceedings of a board of inquiry are privileged. These proceedings or any extract there from, are not to be disclosed to members to the: public, local authorities, the civil police or any Government or civil department, except with the permission of the Chief of Naval Staff or the Government.

(20) Any person subject to the Ordinance who is tried by court martial in respect of any matter or thing which has been reported on by a board of inquiry, and, unless the Chief of Naval Staff sees reason to order. otherwise, any person so subject whose character or service reputation is, in the opinion of the Chief of Naval Staff affected by anything in the evidence before, or in the report of a board of inquiry, shall be entitled free of charge of a copy of the proceeding; the board, including any report made by the board, the remarks of the assembling authority and of the superior authority (if any).

NOTE

1. For disqualification of members of boards of inquiry for serving on subsequent court, martial, *see* rule 133(2)(c). As to privilege of witnesses *see* sections 122 to 132, Evidence Act.

2. A board of inquiry has no power to compel the attendance of civilian witnesses

3. Sub-rule(2).-The commanding officer or the Administrative Authority convening a board of inquiry is to forward a copy of the convening order to his superior authority, who is to ensure that the report is finalised within the shortest possible time. Unless other wise directed, such a report is to be submitted within seven days from the date of commencement of inquiry. It Cannot be so finalised, a time is to be requested in writing from the convening authority, giving reasons thereof

4. Sub-rule (7).-The proceedings are to be taken down in long-hand by one of the members of the Board. A - short-hand writer is not to be employed unless so directed in the convening order. Additional copies of the Proceedings etc, may be typed from the long-hand record prepared during the recording of statements.

5. Sub-rule (9).-It is to be noted that any objection to the president or other members, must be referred to the authority who assembled the board. The board, unlike a court-martial, is not competent to give a decision on an objection as to its members.

6. Sub-rule (10)-

(a) The evidence of a witness is to be recorded in a narrative form excluding questions put to him: The statement of such witness is to be commenced on a new page. Questions may be put to it witness to elucidate any point in his statement or to elicit any additional information required but such questions are not to be included in the statement. Only facts relevant to the case are to be recorded.

(b) The statement of each witness is to be read over to him at the conclusion of his evidence and signed by him and countersigned by the president of the board. If a witness does not understand English, his statement after being recorded in English, is to be translated into Bengali fact recorded the in the president

7. Sub-rule (13).-See sections 86 and 88 (read with rule 284) which empower the Chief of Naval Staff to order that the whole or any part of the pay and allowances of a prisoner of war may be withheld pending the result of an inquiry into his conduct, and to make proper provision for the dependants of any such person.

8. Sub-rule (15).-The provision of this sub-rule are mandatory and should on no account be violated, as it is contrary to all principles of justice to condemn a Person without giving him full opportunity of defending himself Whenever therefore, it appears possible that the character and professional reputation of a person subject to the Ordinance may be affected as a result of the board of inquiry, the authority who assembled the board must take all necessary steps to secure that the provisions of this sub-rule are observed. The ultimate responsibility of ensuring that they are observed in every case will, however, rest upon the president of the board, and should it transpire during the sitting of the board that the character or professional' reputation of any such person is affected by the evidence put forward, the president should immediately arrange for such person to be afforded the full facilities of the rules adjourning, the board if necessary for the purpose or securing his attendance.

9. Sub-rule (16). The board is to submit its report in four parts-

Part I.-Summary of the case

Part II.-Findings

Part III.-Recommendations

Part IV.-Proceedings-(containing statements of witnesses, exhibits and other evidence collected)

Parts I, II and III of the report are to be signed by the president and members of the board

10. Sub-rule (18).-A statement by a witness at a board of inquiry may be used under section 145 of the Evidence Act, for the purpose of cross examining the witness, if it is inconsistent with the statement made by the witness in the court.

11. Sub-rule (20).-A copy of the board's proceedings may normally be supplied, on demand, to a person who is to be tried by a court-martial, in respect of any matter or things which has been reported on by a board of inquiry, Similarly, any person subject to the Ordinance whose character or service reputation is affected by anything in the evidence before, or in the report of a board of inquiry is entitled to a copy free of charge. The word unless the chief of naval staff sees reason to order otherwise imply that the Chief of Naval staff has the direction in either of the above eventualities, to withhold permission to grant a copy

259. Board of inquiry as to illegal absence – (1) When any person subject to the Ordinance has been absent from his duty without due authority for a period of thirty days, the commanding officer shall, as early as possible, assemble a board of inquiry, such board shall an oath or affirmation, duly administered. 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 necessities. If satisfied of the fact that such absence was without due authority other sufficient cause, the board shall I declare such a person or to be a deserter and record the date of desertion and the said deficiency, if any.

(2) A board of inquiry under this rule shall, when assembled require the I attendance of such witnesses as they think sufficient to prove the absence and other facts specified in sub-rule(1) .

(3) The board shall take down the evidence given before them in writing and at the end of the proceedings shall make a declaration of the conclusions at which they have arrived in respect of the facts they were assembled t5o inquire into.

(4) The board of inquiry shall examine all witnesses who may be desirous of coming forward on behalf of the absentee and shall such questions to them as may be desirable for testing the truth or accuracy of any evidence they have given, and otherwise for eliciting the truth, and the board in making their declaration shall give due weight to the evidence of all such witness.

(5) The board shall administer the same oath or affirmation to the witness as if the board were a court-martial but the members of such board shall not themselves be sworn or affirmed.

(6) The commanding officer shall have an entry made against the name of such a deserter in the ship's books in terms of the declaration of the board of inquiry and authorize the discharge of such a sailor from the ship's books to the books of the depot The deserter's service documents and

the original proceedings and declaration of the board are also to be forwarded to the depot for retention. In the case of an officer, he is to be struck off the ship's books the original proceedings etc. being forwarded to Naval Headquarters for retention. The proceedings shall, on such a deserter surrendering or being apprehended, be admissible in evidence at his trial by a naval tribunal.

NOTE

1. The period of thirty days may be reduced at the discretion of the commanding officer to seven days if the ship is likely to be away from the port for any considerable period, see rule 60 (6)

2. In the event of a person subject to the Ordinance being absent without leave for a period of 30 clear days, a board of inquiry must be assembled at once unless before such board has been assembled it has come to the knowledge of the man's commanding officer that he has been apprehended or has surrendered. In that case no board of inquiry is to be held and the facts of his absence and of deficiency (if any) of his clothing, etc. found to be deficient

3. Before declaring any deficiency of arms, etc., the board will satisfy themselves by evidence that the absentee was in possession of the missing articles within a reasonable period before the date of absencing himself. The board should record the values of the unexpired wear of all articles of the property of the Government including arms, equipments public clothing, etc., found to be deficient.

4. The property of the Government entrusted to his care.-i.e. property of the Government issued to him for his use or entrusted to his care for naval purposes or public money or stores on his charge. The board may also investigate into any deficiency in non-public money or stores on his charge.

5. The declaration of the board should contain the date and place from which the man absented himself, the date of the deficiency (if any) of clothing, etc., and the place where it occurred. Before arriving at deficiency in stores, the board *is* to collect evidence:

(a) That the absentee has been at some time previously in possession of a complete kit, or, at any rate, of the articles alleged to be deficient;

(b) That an inventory of his kit has been taken, and at the asking of the inventory certain specified articles were deficient

(c) that none of the articles have since been recovered (any articles recovered will, of course, be committed).

6. Under this rule the witnesses are sworn, but not the members of the board.

7. In order to make the record admissible in evidence it must be a record in the books of the ship to which the man belonged at the time and signed by the commanding officer or by the officer whose duty it is to make such record;-section 120 (3). The record of the board's finding will be admissible notwithstanding that the man had already surrendered or been apprehended provided that such surrender or apprehension had not come to the knowledge of the commanding officer when the board assembled.

8. As soon as the declaration of illegal absence has been made and recorded in the ship's books, the man is struck off the books of the ship and his name transferred to the books of the depot. He, however, remains subject to the Ordinance for the purposes of any subsequent trial by a naval tribunal

9. When a man who has been "struck off" as a deserter, rejoins. The commanding officer if satisfied the summary trial that the evidence does not justify a charge of desertion, may amend the charge as to one of absence without leave

10. As to the disposal of a deserter's property, *see* section 164 (in the case of Sailors) and section 168 (in case of officers).

CHAPTER XV

COMMITTEE OF ADJUSTMENT

260. Appointment of committee of adjustment. - A committee of adjustment (hereinafter referred to as the committee) shall be appointed to deal with the public and private effects of an officer in any of the following circumstances

- (a) When he dies ;
- (b) When he deserts or after an absence of thirty days is so declared by a board of inquiry assembled under rule 259;
- (c) When he is ascertained to be insane; or
- (d) being on active service, is officially reported missing.

NOTE

The rules contained in this Chapter are detailed instructions regarding the procedure to be followed by a committee of adjustment to be appointed in any of the events mentioned in this rule. These rules must be read with sections 176 to the Ordinance.

261. Officers authorized to appoint a committee of adjustment.-The committee shall be appointed by the commanding officer of a ship or establishment to which the officer belonged or Was attached at the time of his death, desertion, illegal absence or insanity.

262. Composition of a committee of adjustment.-The committee shall consist of three officers. When practicable, the president shall not be below the rank of lieutenant commander

263. Duties of committee of adjustment. The committee shall immediately on appointment, or as soon thereafter as practicable.

(a) Collect and arrange for the safe custody of all moveable property (including cash) and other effects of the deceased that may be found in the ship or shore establishment,

(b) Collect all items of service equipment, official publications or any other public property that may be found in quarters or amongst the effects of the deceased.

(c) Ascertain and draw pay and allowances, if any, due to the deceased.

(d) Ascertain if the deceased has left any money in any bank or institution receiving deposits in money.

(e) Ascertain if the deceased has left any will or other document of a testamentary nature.

(f) make out an inventory of property taken in possession in accordance with clauses (a) and (b) and also a statement of account showing debts and credits of the deceased. The inventory and account shall be prepared in triplicate and shall be dealt with as hereafter directed.

(g) the committee shall take special care to secure and safeguard small items of intrinsic and sentimental value, such as orders, decorations and medals, watches, cameras cigarette cases, lighters, rings, and other such items. These items shall be shown separately in the inventory.

264. Payment of service and other debts.-(1) The committee shall discharge all service and other debts in ship or establishment which are proved to their satisfaction and for which funds available

(2) Expenses of his last illness and funeral shall be payable in preference to all other debts and liabilities. Other debts shall be payable in the following order:

(a) Service debts;

(b) Servant's wages not exceeding two months' wages to each servants;

(c) Household expenses incurred within a month before the death or after the last issue of pay to the deceased, which ever is the shorter period;

(d) Other debts in ship or establishment.

(3) The surplus left over shall be remitted to the person's prescribed under sub-section (6) of section 168.

265. Sale of effect.-In case the committee decides to sell all or any part of the movable property of the deceased for the purpose of paying his service or other debts in ship or establishment the following procedure shall be followed :

(a) The property shall be sold either by private sale or by fair and open auction. Such sale or auction shall be held in the presence of a member of the committee.

(b) The committee shall in either case furnish a statement giving the particulars of the sale or auction together with a certificate that the sale or auction has been carried out in a manner most advantageous to the estate. Such statement shall be attached to the inventory.

(c) The amount produced by sale shall be carried to the credit of the account.

(d) Items of intrinsic or sentimental value such as orders, decorations and medals, watches, cameras, cigarette cases, lighters, and other such items shall be sold

266. Procedure where the next of kin gives security for payment of debts under section 168 (2).-When the committee withdraws from interference in relation to the property of the deceased, in consequence of the representative of the deceased, or his widow' or next of kin giving security for the payment of service and other debts in ship or establishment of the deceased, the committee shall forthwith forward, together with inventory an account, a report of the facts and circumstances to Naval Headquarters.

267. Disposal of inventory and accounts.-The original and duplicate copy of the inventory and statement of account prepared in accordance with clause (f) of rule 263 shall be forwarded to Naval Headquarters with the utmost dispatch. The triplicate copy shall be retained by the authority which appointed the committee.

268. Procedure where deceased left will or any other document of a testamentary nature. Where the deceased has left a will or any other document of a testamentary nature a complete and authenticated copy of such will or other document shall be attached to the inventory. The original shall be handed over to the commanding officer for safe custody.

269. Publication of notice by the prescribed person.-(I)The notice required to be published under clause (2) of section 169 shall be in the form set out in the Seventh Appendix to these rules with such variations as may be considered necessary.

(2) The notice shall be published in the official Gazette and in two leading Bengali dailies the province in which the deceased ordinarily resided.

270. Committee of adjustment in cases of desertion or illegal absence.-In case of desertion or' illegal absence of an officer, the committee shall be composed and appointed in the like manner as in respective cases of death. The foregoing rules relating to the committee of adjustment in cases of death, shall so far as they can be made applicable, apply to such cases.

271. Application of sale proceeds for settlement of service and other debts.- The proceeds of the sale of the effects of the deserter and the pay and allowances drawn by the

committee under clause (a) of sub-section (1) of section 168 shall be applied, so far as they extend, for the purpose and in the order following that is to say :

(a) In payment of any debt to the State on account of articles of public property made away with, or otherwise lost on desertion, and for any other debt that may be due to the public.

(b) In payment of satisfaction of such other debt or liabilities of or claims against -the deserter as the person prescribed under sub-section

(7) of section 168 may think fit to allow, including any claims arising out of any criminal or wrongful act of the deserter

272. Repayment of residue to the deserter on surrendering or apprehension.-In case the deserter surrenders or is apprehended within three years from the date of desertion any balance left after the settlement of claims which may have been payable under rule 271 may be repaid to him.

273. Lunatics.-(1) In cases of insanity, the committee shall be composed and appointed in the like manner as, in the respective cases of death.

(2) The foregoing rules relating to the respective case of death shall be applied in a case of insanity except, that whenever possible the sale of effects shall be deferred until he is removed from the active list and further that the committee shall forthwith remit the surplus remaining in their hands to the person prescribed under sub.; section (6) of section 168.

(3) Person prescribed under sub-Section (6) of section 168 shall with all convenient speed apply the surplus for the benefit of the officer to whom it belongs in such manner as he in his discretion thinks fit.

274. The manner of ascertaining the insanity of an officer.- (1) The manner in which it shall be ascertained that an officer is insane shall be the finding of a board of officers composed of five officers of which two shall be officers of the medical branch and three of any other branch. Provided that five officers are not, having due regard to the exigencies of service, readily available, the board may consist of one officer of the medical branch and two officers of any other branch

(2). The finding of the board shall be the finding of the majority of members constituting the board.

(3) The board shall be constituted I by order of the Chief of Naval Staff.

275. Committee of adjustment in cases of an officer who being on active service is reported missing. - In case of an officer who being on active service is officially reported missing the committee shall be appointed in the like manner as in the case of death. The, foregoing rules relating to the committee of adjustment in case of death shall so far as they can be made applicable apply to such cases

276. The manner of ascertaining insanity or a person subject to the Ordinance other than an officer.-(1). The manner in which it shall be ascertained that a person subject to the Ordinance other than an officer, is insane, shall be the finding of a board of officers consisting of three officers of whom one shall be an officer of the medical branch.

(2) The finding of the board shall be the finding of the majority of members constituting the board.

(3) The board shall be constituted by the commanding officer of the ship or establishment to which the insane person belonged or any superior authority.

General Provisions

277. Disposal of medals and decorations.-rightThe order, decorations and medals of an officer. or subordinate officer, or sailor during in the service whether issued before or after his death, shall be disposed (If as follows :

(a) If there is a will they shall be sent to the person who in the opinion of the commanding officer, in case of sailor and the committee of adjustment, in case of officers, is named in the will as being intended to receive them, or is a general or residuary legatee of the estate.

(b) In default of a subject to any such testamentary disposition, they shall be sent to the next of kin in the following order of relationship:

widow,

eldest surviving son,

eldest surviving daughter,
father,
mother,
eldest surviving brother,
eldest surviving sister,
eldest surviving half-brother,
eldest surviving half-sister,
or any relative or interested party who in the opinion of the Chief of Naval Staff will preserve them with due care as a memorial of the deceased.

278. Appointment of standing committee of adjustment: (1) The naval officer commanding the force in any area of operations may appoint a standing committee of adjustment at the base, or other convenient locality, within the area of operations to deal with the effects of any officer who dies or deserts while on active service

(2) The rules relating to the appointment, composition, powers and duties of the committee of adjustment shall apply to any standing committee of adjustment appointed under this rule

(3) Any standing committee appointed under this rule may, at any time, be dissolved by the naval officer commanding the force, or it may be removed to and act in any place outside the area of operations as may be convenient, and in that case the Chief of Naval Staff, or an officer nominated by him, shall exercise the functions of appointment of additional or future members of such standing committee, or of its dissolution, instead of the naval officer commanding the force, by whom it was appointed.

CHAPTER XVI

PRESCRIBED-OFFICERS, AUTHORITIES AND

OTHER MATTERS

279. Prescribed officer under section 20 of the Ordinance.-The prescribed officer for the purpose of section 20 of the Ordinance shall be the Drafting Authority.

280. Prescribed deductions under section 22.-In addition to the deductions specified in section 82 the following deductions may be made from the pay and allowances' of a person subject to the Ordinance-

(a) Any sum required by order of Government in case of an officer, or the Chief of Naval Staff in case of a Sailor, to meet any public or service claim that may be outstanding against such a person, or any service debt that may be due from him. .

(b) Any sum required to meet compulsory contributions to any Provident Fund or any Benevolent or other Fund which may be approved by the Government:

.

Provided that the total deductions from the pay and allowances of a person under clause (a): shall not exceed in anyone month one half of his pay and allowances for that month.

Explanation.-The expression "public claim" means any public debt or disallowance including any over-issue made through an error as to the facts; or a deficiency or irregular expenditure of public money or store of which, after due investigation, no explanation satisfactory to the authority empowered to order deductions under clause (a) is given by the person concerned.

281. Prescribed officers under section 82.-(1) The prescribed medical' officer *for* the purpose of clause (c) of section 82 shall be the officer or person in-charge of the hospital to which the officer or Sailor is admitted. The Administrative Authority, under those command such, a Sailor is serving, shall be the prescribed authority for accepting such a medical certificate.

(2) The prescribed officer under clauses (d) and (e) of section 82 shall be in case of an officer, the Administrative Authority, and in the case of a Sailor the commanding officer.

282. Prescribed officer under section 84.-The prescribed officer for the purpose of section 84 shall be, in the case of an officer, the Chief of Naval Staff, and, in the case of a person other than an officer, the officer empowered to convene a court-martial for his trial.

283. Prescribed authority under section 87.-Any, deduction from the pay and allowances of a person subject to the Ordinance may be remitted as hereinafter provided:-.

(a) Any penal deduction from the pay and allowances of any such person may be remitted by the Government.

(b) The commanding officer of any such person, other than an officer who has been absent without leave for a period not exceeding five days, may, unless the person is convicted by naval tribunal on a charge for such absence, remit the forfeiture of pay and allowances to which that absence renders him liable.

284. Prescribed authority under section 88.-The prescribed authority for the purpose of section 88 shall be the Chief of Naval Staff.

285. Prescribed officer under section 97.-The prescribed officer for the purpose of sub-section (I) of section 97 shall be the Administrative Authority

286. Prescribed authority under section 107. - The prescribed naval authority for the purposes of section 107 shall be the Administrative Authority under whose command the accused the person is serving of any superior authority, provided that, in cases where death has resulted, the prescribed authority shall be the Chief of Naval Staff and no lower authority.

287. Prescribed manner for the custody of an insane accused and under section 12 (4).- For the purpose of sub-section (4) of section 123, the manner in which an accused person shall be kept in custody shall be such as may in the opinion of the proper naval authority, be best calculated to keep him securely without unnecessary harshness.

288. Prescribed officer under section 143. - The prescribed officer under section 143, for the purpose of directing whether the sentence shall be carried out by confinement in a civil prison or by confinement in a military, naval or air force prison shall be the confirming officer or any higher authority.

289. Prescribed person under sections 164, 165 and 168.(1) The prescribed person for the purposes of clauses (5) and (6) of section 164 and sub-sections (6), (7) and (8) of section 168 shall be the Chief of Naval Staff or any person authorized by him in this behalf.

(2) The prescribed person for the purpose of section 165 shall be the Chief of Naval Staff or any person authorized by him in this behalf and shall, so long as the commanding officer has under the Ordinance control of the property of the deceased person or lunatic, include such commanding officer.

290. Prescribed limit for collecting moneys left by a deceased in bank, as provided by section 168 (3).-A committee of adjustment shall not, without the concurrence in writing of the Chief of Naval Staff or any person authorized by him in this behalf collect moneys lying to the credit of a deceased officer, whether in one or more banks exceeding in the aggregate the sum of taka two thousand and five hundred.

291. Prescribed person under section 170.-The prescribed person for the purpose of section 170 shall be the Chief of Naval Staff or any person authorized by him in this behalf and shall, so long as the committee has under the Ordinance control of the property of the deceased person or lunatic or of the proceeds of sale of such property, include the president of such committee.

292. Prescribed conditions under section 4 (XXVII) of the Ordinance. (I) Officer of the Bangladesh Army or the Bangladesh Air force shall be officer within the meaning of clause (XXVII) of section 4 of the Ordinance, when commanding any unit or establishment of the Bangladesh Army, the Bangladesh Navy or the Bangladesh Air Force of the Inter Services Organisation in which persons subject to the Ordinance are serving or posted as Intentioned below shall exercise the same powers under the Ordinance exercisable by an officer of the relative rank of the Bangladesh Navy:

- (a) When conveyed on board a troop-ship or merchant vessel together with the personnel of the Bangladesh Army or the Bangladesh Air Force;
- (b) When posted to a unit or establishment of the Bangladesh Army, the Bangladesh Air force or of the Inter Services Organisation;
- (c) When admitted as patients in a hospital or other medical establishment of the Bangladesh Army or the Bangladesh Air force;
- (d) When serving a sentence of imprisonment or detention or when kept in custody in a unit or establishment of the Bangladesh Army or the Bangladesh Air Force.

(2) The relative rank of the Army, Navy and Air force officers for the purpose of this rule shall be as follows, namely:-

Army	Navy	Air force
Second Lieutenant	Midshipman Cadet	Pilot Officer
Lieutenant	Sub Lieutenant	Flying Officer
Captain	Lieutenant	Flight Lieutenant
Major	Lieutenant Commander	Squadron Leader
Lieutenant Colonel	Commander	Wing Commander
Colonel	Captain	Group Captain
Brigadier	Commodore	Air Commodore
Major General	Rear Admiral	Air Vice Marshal
Lieutenant General	Vice Admiral	Air Marshal
General	Admiral	Air Chief Marshal

THE OFFICIAL SECRETS ACT, 1923

ACT No. XIX OF 1923

An Act to consolidate and amend the law in Bangladesh relating to

Official secrets

3 * * * * *

Preamble.-WHEREAS it is expedient that the law relating to official secrets in ²Bangladesh should be consolidated and amended;

It is hereby enacted as follows:

1. Short title, extent and application.--(1) This Act may be called the Official secrets Act, 1923.

(2) It extends to the whole of Bangladesh and applies also to all citizen of Bangladesh and persons in the service of lithe Republic wherever they may be.

1. For Statement of Objects and Reasons, *see* Gazette of India. 1922" Pt. V, p, 210; and for Report of Select Committee, *see ibid.*, 1923; Pt, V. p, 61.

For temporary amendment of this Act during the continuance of war and for a period of six months thereafter *see* s. 6 of the Defence of India Act, 1939 (XXXV of 1939), since expired.

For notification of Procedure provided under this Act, *see* the Enemy Agents Ordinance, 1943 (I of 1943),

2. Subs. by Act VITI of 1973 as amended by Act LIII of 1974, For "Pakistan" (w.e.f. the 26th March, 1971).

3. The first and second paragraphs of the Preamble were omitted. *ibid*

4. The word "Indian" omitted by the Federal. Laws (Revision and Declaration) Act, 1951 (XXVI of 1951). s. 3 and II Sch.

5. Subs. by the Central Laws (Statute Reform) Ordinance, 1960 (XXI of 1960), s. 3 and 2nd Sch. w.e.f. the 14th October; 1955), for sub-section (2) as amended by A.O., 1937, A.O., 1949 and the Federal Laws (Revision and Declaration) Act, 1951 (XXVI of 1951).

6. Subs. by Act VIII of 1973 as amended by Act Lm of 1974. for "Government" (w.e.f. the 26th March, 1971).

2. Definitions.-In this Act, unless there is anything repugnant in the subject or context,-

(1) any reference to a place belonging to Government includes a place occupied by any department of the Government, whether the place is or is not actually vested 1 in Government;

2.* * * *

(2) expressions referring to communicating or receiving include any communicating or receiving, whether in whole, or in part and whether the sketch, plan, model, article, note document, or information itself or the substance, effect or description thereof only be communicated or received; expressions referring to obtaining any sketch, plan, model. article, note or document, include the copying or causing to be copied of the whole or any part of any sketch, plan, model, article, note, or document; and expressions referring to the communication of any sketch, plan model, article, note or document include the transfer or transmission of the sketch, plan, model, article, note or document;

3.* * *

1. Subs. By A.O. and sch., for "his Majesty" (w.e.f. the 23rd March, 1956).

2. CI.

(6) "Office under ¹Government" includes any office, or employment in or under any department of the Government;

(7) "photograph" includes an undevelopment film or plate;

(8) "Prohibited place" means

(a) any work of defence, arsenal, naval, military or air force, establishment or station, mine, minefield, camp, ship or air craft belonging to, or occupied by or on behalf of, Government, any military telegraph or telephone so belonging or occupied' any wireless or signal station or office so belonging or occupied and any factory, dockyard or other place so belonging or occupied and used for the purpose of building, repairing; making or storing any munition of war, or any sketches' plans models or documents relating thereto, or for the purpose of getting any metals, oil, or minerals of use in time of war;

(b) any place not belonging to Government where any :munition of war or any sketches, models, plans or documents relating (hereto, are being made, repaired, gotten or stored under contract with, or with any person on behalf of Government, or otherwise on behalf of 1 Government;

(c) any place belonging to or used for the purpose of Government which is for the time being declared by the 3Govern merit, by 4notification in the 50fficial Gazette;, to be a prohibited place for the purposes of this Act on the ground that information with respect thereto, or damage thereto 'would' be useful to an enemy, and to which a copy of the 4notification in respect thereof has been affixed in English and in Bengali ;

(d) any railway, road, way or channel, or other means of communication by land or water (including any works or structures

1. Subs. by A.O., 1961, Art. 2 and Sch., for "His Majesty" (w.e.f. the 23rd March, 1956).

2. The words "or of the Government of United Kingdom or of any British possession" omitted, *ibid.* (w.e.f. the 23rd March, 1956).

3. Subs. by Act VIII of 1973 as amended by Act LIII of 1974, for "appropriate Government" (w.e.f. the 26th March, 1971).

4. For such notify., *see* Gaz. of .P., 1957, Ext. p. 1172; *ibid.*, 1959, .Pt. I. p. 518 and *ibid.*, 1960, .Pt I. p. 520.

5. Subs. by A.O., 1937, for "Gazette of India".

6. Subs. by Act VIII of 1973 as amended by Act LIII of 1974, for the vernacular of the locality" (w.e.f. the 26th March, 1971);

being part thereof or connected therewith) or any place used for gas, water or electricity works or other works for purpose, of a public character, or any place where any munitions of

war or any sketches, models plans or documents relating thereto, are being made, repaired or stored otherwise than on behalf of Government, which is for the time being declared, by the Government, by notification in the official Gazette to be a prohibited place for the purposes of this Act on the ground that information with respect thereto, or the destruction or obstruction thereof, or interference therewith would be useful to an enemy, and to which a copy of the notification in respect thereof has been affixed in English and in ⁵Bengali 6[:]

⁶Provided that where for declaring a prohibited place under sub rule (c) or sub-clause (d) a notification in the official Gazette is not considered desirable in the interest of the security of the State, such declaration may be made by an order, a copy or notice of which shall be prominently displayed at the point of entry to, or at a conspicuous place near, prohibited place.

(9) "sketch" includes any photograph or other mode of representing any place or thing; and

(10) "Superintendent of police" includes any police officer of a like or superior rank and any person upon whom the powers of a superintendent of police are for the purpose of this act conferred by the Government,

(3) Penalties for spying.-(I) If any person for any purpose prejudicial to the safety or interests of the State

(a) approaches inspects, passes over or is in the vicinity of, or enters, any prohibited place; or

(b) makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy; or

(c) obtains, collects, records or publishes or communicates to any other person any secret official code or password, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy; he shall be [guilty of an offence under this section.]

1. Subs. by A.O., 1961, Art. 2, for "His Majesty" (w.e.f. the 23rd March, 1956).

2. For such declaration *see* Gaz. of P., 1955, Pt. J, p. 43 and 383; and *ibid.*, 1958, Pt. I, p. 1470.

3. Subs. by Act VIII of 1973 as amended by Act LIII of 1974, for appropriate Government" (w.e.f. the 26th March, 1971).

4. Subs. by A.O., 1937, for "Gazette of India".

5. Subs by Act VITI of 1973 as amended by Act UII of 1974, for" the vernacular of the locality" (w.e.f. the 26th March, 1971).

6. The colon was subs. for the semi-colon at the end to sub-clause (d) and there after a new proviso was inserted by Act VIII of 1966, s.7.

7. The words "or by any L.G," omitted, *ibid*.

8. Subs *ibid*., s.3 for certain words.

(2) On a prosecution for an offence punishable under this section with imprisonment for a term which may extend to fourteen years, it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State, and, notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case or his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State; and if any sketch, plan, model, article, note, document, or information relating to or used in any prohibited place, or relating to anything in such a place or any secret official code or password is made, obtained collected, recorded, published or communicated by any person other than a person acting under lawful authority, and from the circumstances of the case or his conduct or his known character as proved it appears that his purpose was a purpose prejudicial to the safety or interests of the State, such sketch, plan, model, article, note, document or information shall be presumed to have been made, obtained, collected, recorded, published or communicated for a purpose prejudicial to the safety or interests of the State.

(3) A person guilty of an offence under this section shall be punishable:

(a) where the offence committed is intended or calculated to be, directly or indirectly, in the interest or for the benefit of a foreign power, or is in relation to any work of defence arsenal, naval, military or air force establishment or station, mine, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of

²Bangladesh, or in relation to any secret official code, ³with death, or with imprisonment for term which may extended to 14 years; and

(b) in any other case, with imprisonment for a term which may extend to 3 years.

⁴3A. Restriction against photographs, sketches, etc. of prohibited and notified areas.-(1)
No person shall, except under the authority of a written permit granted by or on behalf of the Government, make any photograph, sketch, plan, model, note or representation of any kind any prohibited place or of any other place or area notified by the Government as a place or area with regard to which such restriction appears to that Government to be expedient in the interests of the security of Bangladesh, or of any part of or object in any such place or area.

(2) The Government may by general or special order make provision for securing that no photograph, sketch plan, model. note, or representation of any kind made under the authority of a permit granted in pursuance of subsection (1) shall be published unless and until the same has been submitted to and approved by such authority or person as may be specified in the order, and may retain or destroy or otherwise dispose of anything so submitted.

(3) If any person contravenes any of the provisions of this section; he shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

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4. Communications with foreign agents to evidence of commission of certain offences.-(1)
In any proceedings against a person for an offence under section 3, the fact that he has been in communication with, or attempted to communicate with, a foreign agent, whether within or without ²Bangladesh, shall be relevant for the purpose of proving that he has, for a purpose prejudicial to the safety or interests of the State, obtained or attempted to obtain information which is calculated to be or might be, or is intended to be, directly or indirectly, useful to an enemy.

(2) For the purpose of this section, but without prejudice to the generality of the foregoing provision,-

(a) a person may be presumed to have been in communication with a foreign I agent if

(i) he has, either within or without Bangladesh, visited the address of a foreign agent or consorted or associated with a foreign agent, or

(ii) either within or without Bangladesh, the name or address of or any other information regarding, a foreign agent has been found in his possession or has been obtained by him from any other person;

1. Sub-section (4) omitted by Act, VIII of 1973 as amended by Act of 1974 (w.e.f. the 26th March, 1971).

2. Sub. *ibid.*, for "Pakistan" (w.e.f. the March, 1971).

(b) the expression "foreign agent" includes any person who is or as been or in respect of whom it appears that there are reasonable grounds for suspecting him of being or having been employed by a foreign power, either directly or indirectly, for the purpose of committing an act, either within or outside Bangladesh. Prejudicial to the safety or interests of the State, or who has or is reasonably suspected of having, either within or outside Bangladesh committed, or attempted to commit, such an act in the interests of a foreign power;

(c) any address, whether within or 'outside ¹Bangladesh in respect of which it appears that there are reasonable :grounds; for suspecting it of being an address used for the receipt of communications intended for a foreign agent, or any address at which a foreign agent resides, or to which he resorts for the purpose of giving or receiving communications, or at which he carries on any business, may be presumed to be the address or a foreign agent, and communications addressed to such an address to be communications with a foreign agent.

5. Wrongful communication, etc. of information.-(1) If any person having in his possession or control any secret official code or password or any sketch, plan, model, article, note, document or information which relates to or is used in a prohibited place or relates to anything in such a place or which has been made or obtained in contravention of this Act, or which has been entrusted in confidence to him by any person holding office under ²Government or which he has obtained or to which he has had access owing to his position as a person who holds or has held officer under ²GoveJDment, or as a person who holds or has held a contract made on behalf or Government, or as a person who is or has been employed under a person who holds or has held such an office or contract-

(a) wilfully communicates the code or password, sketch, plan, model, article, note, document or information to any person other than a person to whom he is authorized to communicate it, or a Court of Justice or' a person to whom it is, in the interests of the State, his duty to communicate it ; or

1. Subs. by Act VIII of 1973 as amended by Act LIII of 1974, for "Pakistan" (w.e.f. the 26th March, 1971).

2. Subs. by A.O., 1961, Art. 2 for "His Majesty" (w.e.f. the 23rd March, 1956).

(b) uses the information in his possession for the benefit of any foreign power or in any other manner prejudicial to the safety of the 'State' or

(c) retains the sketch, plan, model; article, note or document in his possession or control when he has no right to retain it, or when it is contrary to his duty to retain it, or wilfully fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof; or

(d) fails to take reasonable care of, or so conducts himself as to endanger the safety of, the sketch, plan, model, article, note, document, secret official code or password or information

The shall be guilty of an offence under this section.

(2) If any person voluntarily receives any secret official code or password or any sketch, plan, model, article, note, document or information knowing or having reasonable ground to believe, at the time when he receives it, that the code, password, sketch, plan, model, article, note, document or information is communicated in contravention of this Act, he shall be guilty of an offence under this section.

¹(3) A person guilty of an offence under this section shall be punishable:--

(a) where the offence committed is a contravention of clause (a) of sub-section (I) and intended or calculated to be, directly or indirectly, in the interest or for the benefit of a foreign power, or is in relation to any work of defence, arsenal, naval, military or air force establishment or station, mine, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of Bangladesh or in relation to any secret official code, with death or with imprisonment of a term which may extend to fourteen, years; and

(b) in any other case, with imprisonment for a term which may extend to two years, or with fine or with both.

1. Sub-section (3) was subs. by Act VIII of 1966, s.4, for sub-sections (3) and (4).

2. Subs. by Act VIII of 1973 as amended by Act LIII of 1974, for "Pakistan" (w.e.f. the 26th March, 1971).

3. Ins. by Act VIII of 1968.

6. Unauthorized use of uniforms; falsification of reports forgery, personation, and false documents.-(1) If any person for the purpose of gaining admission or of assisting any other person to gain admission to a prohibited place or for any other purpose prejudicial to the safety of the State-

(a) uses or wears, without lawful authority, any naval, military air force, police or other official uniform or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform; or

(b) orally, or in writing in any declaration or application, or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission; or

(c) forgers alters, or tampers with any passport, or any, naval, military, air force, police, or official pass, permit certificate licence, or other document of a similar character (herein after in this section referred to as an official document) or knowingly uses or has in his possession any such forged altered, or irregular official document; or

(d) personates, or falsely represents himself to be, a person holding, or in the employment of a person holding office under ¹Government, or to be or not to be a person to whom an official document or secret official code or password has been duly issued or communicated or with intent to obtain an official document, secret official code or password, whether for himself or other any other person, knowingly makes any false statement; or

(e) uses, or has in his possession or under his control, without the authority of the department of the Government or the authority concerned, any die, seal or stamp of or belonging to, or used made or provided by, any department of the Government, or by any diplomatic, naval, military or air force authority appointed by or acting under the authority of Government, or any die, seal or stamp so nearly resembling any such die, seal or stamp as to be calculated to deceive, or counter-feits any such die, seal or stamp, or knowingly uses,

or has in his possession or under his control, any such counterfeited die, seal or stamp, he shall be guilty of an offence under this section.

1. Subs. A.O. 1961, Art 2, "His Majesty" (with effect from the 3rd March, 1956.

(2) If any person for any purpose prejudicial to the safety of the State-

(a) retains any official document whether or not completed or issued for use, when he has no right to retain it, or when it is contrary to his duty to retain it, or wilfully fails to comply with any directions issued by any department of the Government or any person authorized by such department with regard to the return or disposal thereof; or

(b) allows any other person to have possession of any official document issued for his use alone, or communicates any secret official code or password so issued, or without lawful authority or excuse, has in his possession any official document or secret official code or password issued for the use of some person other than himself, or, on obtaining possession of any official document by finding or otherwise, wilfully fails, to restore *it* to the person or authority by whom or for whose use it was issued, or to a police officer; or

(c) without lawful authority or excuse, manufactures or sells or has in his possession for sale, any such die, seal or stamp as aforesaid; he shall be guilty of an offence under this section.

(3) A person guilty of an offence under this section shall be punishable *with* imprisonment for a term which may extend to two years, or *with* fine, or with both.

(4) The provisions of sub-section (2) of section 3 shall apply, for the purpose of proving a purpose prejudicial to the safety of the State, to any prosecution for an offence under this section relating to the naval, military or air force affairs of ¹Government, or to any secret official code in like manner as they apply, for the purpose of Proving a purpose prejudicial to the safety or interests of the State, to prosecutions for offences punishable under that section with imprisonment for a term which may extend to fourteen years.

7. Interfering with officers of the police or members of the armed forces of Bangladesh.-

-(1) No person in the vicinity of any prohibited place shall obstruct, knowingly mislead or otherwise interfere with or impede, any police officer, or any member of ²the armed forces of ³Bangladesh engaged on guard, sentry, patrol, or other similar duty in relation to the prohibited place.

(2) If any person acts in contravention of the provision of this section he shall be punishable with imprisonment which may extend to two years, or with fine, or with both.

8. Duty-of giving information as to commission of offences.(I) It shall be the duty of every person to give on demand to a Superintendent of Police or other police officer not below the rank of Inspector, empowered by ⁴the Inspector-General of police in a ⁵metropolitan area, the Police commissioner^{6***} in this behalf or to any member of the armed forces of Bangladesh engaged on guard, sentry, patrol or other similar duty, any information in his power relating to an offence or suspected offence under section 3 or under section 3 read with section 9 and, if so required and upon tender of his reasonable expenses, to attend at such reasonable time and place as may be specified for the purpose of furnishing such information.

(2) If any person fails to give any such information or to, attend as foresaid, he shall be punishable with imprisonment which may extend to two years, or with fine; or with both.

9. Attempts, incitements etc.-Any person who attempts to commit or abets the commission of an offence under this Act shall be punishable with the same punishment, and be liable to be proceeded against in the same manner as if he had committed such offence.

10. Penalty for harbouring spies.-(I) If any person knowingly harbours any person whom he known or has reasonable grounds for supposing to be a person who is about to commit or who has committed an offence under section 3 or under section 3 read with section 9 or knowingly permits to meet or assemble in any premises in his occupation or under his control any such persons, he shall be guilty of an offence under this section.

1. Subs. by A.O., 1961, Art. 2, for "His Majesty" (w.e.f. the 23rd March, 1956).

2. Subs. *ibid*, Act. 2 and Sch., for "His Majesty's forces" (w.e.f. the 23rd March, 1956).

3. Subs. by Act. VIII of 1973 as amended by Act LIII of 1974, for "Pakistan" (w.e.f. the 26th March, 1971).

4. Subs. by Ordinance LXIX of 1976, Sch., for "an Inspector General".

5. Subs. by Ordinance XLVIII of 1978, Sch. III (w.e.f. the 25th November, 1979).

6. The words "or Commissioner of Police" omitted by A.D., 1949.

(2) It shall be the duty of every person having harboured any such person as aforesaid or permitted to meet or assemble in any premises in his occupation or under his control any such persons as aforesaid, to give on demand to a Superintendent of Police or other police officer not below the rank of Inspector empowered by ¹the Inspector-General of Police or in ²a metropolitan area the police commissioner^{3**} in this behalf, any information in his power relating to any such person or persons, and if any person fails to give any such information, he shall be guilty of an offence under this section.

(3) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

11. Search warrants.— (1) If a Magistrate of the first class or Sub-Divisional Magistrate is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Act has been or is about to be committed, he may grant a search-warrant authorizing any police officer named therein, not being below the rank of an officer in charge of a police station, to enter at any time any premises or place named in the warrant, if necessary by force, and to search the premises or place and every person found therein, and to seize any sketch, plan, model, article, note or document, or anything of a like nature, or anything which is evidence of an offence under this Act having been or being about to be committed which he may find on the premises or place or any such person, and with regard to or in connection with which he has reasonable ground for suspecting that an offence under this Act has been or is about to be committed.

(2) Where it appears to a police officer, not being below the rank of Superintendent, that the case is one of great emergency, and that in the interests of the State immediate action is necessary he may by a written order under his hand give to any police officer the like authority as may be given by the warrant of a Magistrate under this section.

(3) Where action has been taken by a police officer sub-section (2) he shall, as soon as may be, report such action to the District or Sub-Divisional Magistrate.

12. Power to arrest.— Notwithstanding anything in the Code of Criminal Procedure, 1898.—

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³(b) an offence under this Act, other than an offence punishable with imprisonment for a term which may extend to 14 years, shall be a cognizable and bailable offence; and

⁴(c) any member of the armed forces of ⁵Bangladesh may, without an order from a Magistrate and without a warrant, arrest, in or in the vicinity of a prohibited place, any person who has been concerned in an offence under section 3, or under section 3 read with section 9, or under clause (a) or clause (b) of sub-section (1) of section 5. Or under clause (a) or clause (b) of sub-section (1) of section 6, or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned, and shall without unnecessary delay take or send the person arrested before a Magistrate having jurisdiction in the case or before an officer in charge of a police-station, and there-upon the provision of the said Code applicable in respect of a person who, having been arrested without warrant, has been taken or sent before a Magistrate or before an officer in charge of a police-station shall apply to him.

13. Restriction on trial of offences.-(1) No Court (other than that of a Magistrate of the first class specially empowered in this behalf by the Government) which is inferior to that of a District Magistrate shall try any offence under this Act.

(2) If any person under trial before a Magistrate for an offence under this Act at any time before a charge is framed claims to be tried by the Court of Session, the Magistrate shall, if he does not discharge the accused, commit the case for trial by that Court, notwithstanding that it is not a case exclusively triable by that Court.

(3) No Court shall take cognizance of any offence under this Act unless upon complaint made by order of, or under authority from, the Government or some officer empowered by the Government in this behalf:

Provided that a person charged with such an offence may be arrested. or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that such complaint has not been made, but no further or other proceedings shall be taken until such complaint has been made.

(4) For the purposes of the trial of a person for an offence under this Act, the offence may be deemed to have been committed either at the place in which the same actually was committed or at any place in Bangladesh which the offender may be found.

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⁶(6) The Government may if it thinks fit, by general or special

1. Subs. by Act VIII of 1973 as amended by Act VIII of 1974, for "appropriate Government" (w.e.f. the 26th March, 1971).

2. The words or "Presidency" omitted by A.D. 1949.

3. The words "the L.G." rep. by A.D., 1937.

4. Subs. by Act VIII of 1973 as amended by Act VII of 1974, for
"Pakistan" (w.e.f. the 26th March 1971).

5. Sub-section (5) which was ins. by A.D., 1937, omitted by A.D., 1964, Art. 2 and Sch.

6. Sub-section (6) ins. by the official Secrts (Amdt.) Act, 1952 (XIII of 1952), s.3.

order direct that the procedure for the trial of an offence ¹under section 3, or under section 3 read with section 9 or under clause (a) or clause (b) of sub-section (I) or subsection 5, or under clause (a) of sub-section (1) of section 6 shall be that prescribed for offences under the Enemy Agents Ordinance, 1243, or under the ²Criminal Law amendment Act³ 1958 (XL of 1958).

14. Exclusion of public from proceeding.-In addition without prejudice to any powers which a Court may possess to order the exclusion of the public from any proceeding; if in the course of proceedings before a Court against any person for an offence under this Act or the proceedings on appeal, or in the course of the trial of a person under this Act, application, is made by the prosecution on the ground that the Publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the safety of the State, that all or any portion of the public shall by excluded during any part of the hearing, the Court may make an order to that effect but the passing of sentence shall in any case take place in public.

15. Offence by companies etc.-Where the person guilt of an offence under this Act is a company or corporation, every director and officer of the company or corporation with whose knowledge and consent the offence was committed shall be guilty of the offence.

16 Repeals Rep. by the repealing Act. 1927 (XII of 1927), s. 2 and Schedule.

VISITING FORCE ACT, 1952

15 & 16 GEO. 6 & 1 ELIZ. 2 CH. 67

An Act to make provision with respect to naval, military and air forces of certain other countries visiting the United Kingdom, and to provide of the apprehension and disposal of deserters or absentees without leave in the United Kingdom from the forces of such countries; to enable corresponding provision to be made in the law of colonies and dependences; and for purposes connected with the matters aforesaid.

Be it enacted by the Queen's most Excellent Majesty by and, with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled and by the authority of the same, as follows:-

PART 1

VISITING FORCES

1. Countries to which Act applies.-(1) References in this Act to a country to which a provision of this Act applies are references to-

(a) Canada, Australia, New Zealand, the Union of South Africa, India, Pakistan, Ceylon, Ghana or the Federation of Malaya, or

(b) any country designated for the purposes of that provision by Order in Council under the next following sub-section.

(2) When it appears to Her Majesty, as respects any country not mentioned in paragraph (a) of the foregoing sub-section, that having regard to any arrangements for common defence to which Her Majesty's Government in the United Kingdom and the Government of that country are for the time being parties it is expedient that the following provisions of this act, or any of those provision should have effect in relation to that country, Her Majesty may by Order in Council designate that country for the purposes of the provisions in question.

(3) Majesty may by Order in Council provide that in so far as this Act has effect in. relation to any country designated under the last foregoing sub-section it shall have effect subject to such limitations adaptation or modification as may be specified in the Order.

(4) No recommendation shall be made to Her Majesty in Council to make an Order the last foregoing sub-section unless a draft thereof has been laid before Parliament and approved by resolution of each House of Parliament.

NOTES

1. The Act has been applied to Belgium, France, the Netherlands, Norway and the United States of America, (S.I. 1954 No. 634), and to Luxembourg, Turkey, Greece, Denmark, Portugal and Italy (S. I. 1956 No. 2048).

2. The provisions of this Act may by Order in Council be made to apply to the Channel Islands, the Isle of man, colonies, protectorates, Protected states and trust territories as they apply to the United kingdom, *see* section 15.

2. Exercise of powers by service courts and authorities of countries sending visiting forces.-(1) The service courts and service authorities of a country La which this section applies may within the United Kingdom, or on board any of Her Majesty's ship or aircraft exercise over persons subject to their jurisdiction in accordance with this section all such powers as are exercisable by them accordance La the law of that country,

(2) The persons subject to the jurisdiction of the service courts and service authorities of a country in accordance with this section are the following, that is to say-

(a) members of any visiting force of that country and

(b) all other persons who being neither citizens of the United Kingdom and Colonies nor ordinarily resident in the United Kingdom, are for the time being subject to the service law of that country otherwise than as members of that country's forces:

Provided that for the purposes of this sub-section a persons shall not be treated as a member of. a visiting force of a country if he became or last became) a member of that country's forces a t a time when he was in the United kingdom unless it is shown that he then became a member of those forces with his consent.

(3) Where any sentence has whether of within or outside the United Kingdom, been passed by a service court of a country to which this section applies upon a person who immediately before the sentence was passed was subject to the jurisdiction of that court in accordance with section then for the purposes of any proceeding in a United kingdom court the said service court shall be deemed to have been properly constituted, and the sentence shall be deemed to be within the

jurisdiction of that court and in accordance with the law of that country and if executed according to the tenor of the sentence shall be deemed to have been lawfully executed.

(4) Notwithstanding anything in the foregoing provisions of this section, a sentence of death passed by a service court of a country to which this section applies shall not be carried out in the United Kingdom unless under United Kingdom law a sentence of death could have passed in a similar case.

(5) Any person who-

(a) is detained in custody in pursuance of a sentence as respects which sub-section (3) of this section has effect, or

(b) being subject in accordance with this section to the jurisdiction of the service courts of a country to which this section applies, is detained in custody pending or during the trial by such a court of a charge brought against him.

shall for the purposes of any proceedings in any United Kingdom court be deemed to be in legal custody.

(6) For the purpose of enabling the service courts and service authorities of a country to which this section applies to exercise more effectively the powers referred to in sub-section (1) of this section, the Admiralty, the Army, Council, or the Air, Council, if so requested by the appropriate authority of that country. may from time to time by general or special orders direct members of the home forces to arrest any person, being a member of a visiting force of that country who is alleged to be guilty of an offence punishable under the law of that country and to hand him over to such service authority of that country as may be designated by or under the orders.

NOTES

1. This section enables the service court of the countries to which the Act applies (*see* section 1 and notes) to try within the United Kingdom or on board one of Her Majesty's ships or aircraft, members of the forces of such countries and their civilian component (*see* section 10) for offences against the service law of the country concerned Without this section it would not be lawful under English law for the trial to take place.

2. United Kingdom includes Northern Ireland, but not the Channel Islands or the Isle of Man, *see*, however, section 15.

3. Sub-section (6) enable the service authorities of the United Kingdom, *i.e.*, the Admiralty, Army Council and Air Council, to issue orders, where asked to do so by the appropriate authority, directing members of the United Kingdom armed forces to arrest members of the visiting force and hand such offender over to the visiting force. The order of the Admiralty, dated 17th July 1956, made under this subb-section, is reproduced below:

"WHEREAS a request has been made by the Government of Pakistan for the issue of general orders in pursuance of the powers conferred by Section 2(6) of the Visiting Forces Act, 1952 for the purpose of enabling service court and service authorities of that C8untry to exercise more effectively within the United Kingdom or on board any Her Majesty's ships or aircraft their jurisdiction in relation to members of the Pakistan Forces, being members of visiting force of that country;

Now, THEREFORE, the Lords Commissioners of the Admiralty in pursuance of the said Section do by this Order authories any member of the Naval forces of her Majesty raised in and serving in the United Kingdom to arrest any member of the Bangladesh forces, being a member of a visiting force of that country, who is alleged to be guilty of an offence punishable under the law of that country and band over such a member to the service authorities concerned at the Bangladesh. High Commission, London."

3. Restriction as respects certain offences of trial by United Kingdom courts of offenders connected with visiting force.-(I) Subject to the provision of this section a person charged with an offence against United Kingdom law shall not be liable to be trial for that offence by a United Kingdom court if at the-time when the offence is alleged to have been committed he was a member of a visiting force or a member of a civilian component of such a force and-

(a) the alleged offence, if committed by him arose out of and in the course of his duty as a member of that force or component, as the case may be; or

(b) the alleged offence is an offence against the person, and the person or, if more than one, each of the, persons in relation to whom it is alleged to have been committed had at the time thereof a relevant -association either with that force or with another visiting force of the same country; or

(c) the alleged offence is an offence against property, and the whole of the property in relation to which it is alleged to have been committed or, in a case where different parts of that property were differently owned, each part of the property) was at the time thereof the property either of the sending country or of an authority of that country or of a person having such an association as aforesaid,

Provided that this sub-section shall not apply if at the time when the offence is alleged to have been committed the alleged offender was a person not subject to the jurisdiction of the service courts of the country in question in accordance with the last foregoing section.

(2) In relation to the trial of a person who was a member of a civilian components, of a visiting force at the time when the offence is alleged to have been committed, the last foregoing sub-section shall not have effect unless it is shown that the case can be dealt with under the law of the sending country.

(3) Nothing in sub-section (1) of this section-

(a) shall prevent a person from being tried by a United Kingdom court in a case where the Director of Public Prosecutions (in the case of a court in England or Wales), the Lord Advocate (in the case of a court in Scotland) or the Attorney General for Northern Ireland (in the case of a court in Northern Ireland) certifies, either before or in the course of the trial, that the appropriate authority of the sending country has notified him that it is not proposed to deal with the case under the law of that country; or

(b) shall affect anything done or omitted in the course of a trial unless in the course thereof objection has already been made that by reason of that sub-section the court is not competent to deal with the case; or

(c) shall, after the conclusion of a trial, be treated as having affected the validity thereof if no such objection was made in the proceedings at any stage before the conclusion of the trial.

(4) In relation to cases where the charge (by whatever words expressed) is a charge of attempting or conspiring to commit an offence or of aiding, abetting, procuring or being accessory to or of being art and part in, the commission of an offence, paragraphs (b) and (c) of sub-section (1) of this section shall have effect as if references in those paragraphs to the alleged offence were reference to the offence which the person charged is alleged to have attempted or conspired to commit or, as the case may be, the offence as respects which it is alleged *that* he aided, abetted, procured or was accessory to or was art and part in, the commission thereof; and reference in those paragraphs to persons in relation to whom, or property in relation to which the offence is alleged to have been committed shall be construed accordingly.

(5) Nothing in this section shall be Construed as derogating from the provisions of any other enactment restricting the prosecution of any proceedings or requiring the consent of any authority "the prosecution thereof.

(6) For the purposes of this section the expressions "offence against the person" and "offence against property" shall be construed in accordance with the provisions of the Schedule to this Act.

NOTES

1. This section restricts the power of the United Kingdom courts to try members of visiting force and their civilian component for:

- (i) Offences arising out of and in the course of the member's duty.
- (ii) Offences committed against the person of another member of the visiting force or his dependents.
- (iii) Offences committed against the property of another member of the visiting force or of the sending country.

2. The United Kingdom courts can in certain circumstances try the offences referred to in para, (a), *see* sub-section (3).

3. This section does not apply to members of the visiting force or the civilian component if the offence was committed when the offender was not subject to the jurisdiction of the courts of the visiting force.

4. As to relevant association *see* section 12 (2).

4. United Kingdom courts not to try offenders tried by service courts of visiting forces.-(1) without prejudice to the last foregoing section, where a person has been tried by as service court of a country to which this section applies in the exercise of the powers referred to in sub-section (1) of section. 2 of this Act he shall not be tried for the same crime by a United Kingdom court.

(2) Where a person who has been convicted by a service court of such a country in the exercise of the said powers is convicted by a United Kingdom court for a different crime, but it appears to that court that the conviction' by the service court was wholly or partly in respect of acts or omissions in respect of which he is convicted by the United Kingdom court that court shall have regard to the sentence of the service court,

5. Arrest, custody. *etc.* of offenders against United Kingdom law.-(1) Neither of the two last foregoing sections shall effect-

- (a) any powers of arrest, search, entry. seizure or custody exercisable under United Kingdom law with respect to offences committed or believed to have been committed against that law; or

(b) any obligation of any person in respect of a recognisance or bail bond entered into in consequence of this arrest of any other person, for such an offence; or

(c) any power of any court to remand (whether on bail or in custody) a person brought before the court in connection with the such an offence.

(2) Where a person has been taken into custody by a constable without a warrant for such an offence as aforesaid, and there is reasonable ground for believing that in accordance with section two of this Act he is subject to the jurisdiction of the service courts of a country to which his section applies, then with a view to its being determined whether he is to be dealt with for that offence under United Kingdom law or dealt with by the court of that country for an offence under the law thereof, he may notwithstanding anything in section thirty-eight of the Summary Jurisdiction Act, 1879, be detained in custody for a period not exceeding three days without being brought before a court of summary jurisdiction; but if within that period he is not delivered into the custody of an authority of that country he shall, in accordance with the said section 38 be released on bail or brought before a court of summary jurisdiction as soon as practicable after the expiration that *of* period.

(3) In the application .of the last foregoing sub-section to Scotland for the first reference to section thirty- eight of the Summary Jurisdiction Act, 1879, there shall be substituted a reference to Section twenty-three of the Summary Jurisdiction (Scotland) Act, 1908 and for the words "in accordance with the said section thirty-eight be, released on bail or there shall be substituted the words "if not released on bail in pursuance of section fourteen of the Summary Jurisdiction (Scotland) act, 1908, be".

(4) In the application of sub-section (2) of this section to Northern Ireland for the references to section thirty-eight of the Summary jurisdiction Act, 1879, there shall be substituted references of section thirty-nine of the Summary Jurisdiction and Criminal Justice Act (Northern Ireland), 1935, and the references to a court of summary Jurisdiction shall be construed as references to such a court or al the resident magistrate out of petty sessions or a justice or of peace.

This section preserves the right of arrest, etc., by the United Kingdom authorities in respect of an offence even if the offence was one in respect of which the jurisdiction of the United Kingdom courts is restricted under section 3, e.g. if a constable saw an American soldier assaulting a member of the civilian component of the United States visiting force he would have the right to arrest the soldier notwithstanding the fact that the United States service courts have the right to try the soldier.

6. Restriction on proceedings in respect of service of members etc. of visiting force.-No proceedings shall be entertained by any United Kingdom court with regard to the pay of any person in respect of service as a member of a visiting force or as a member of a civilian

component of such a force, with regard to the terms of such service or with regard to a person's discharge from such service.

7. Provisions as to coroner's inquests and as to removal of bodies of deceased persons.-(1)

If any coroner having jurisdiction to hold an inquest touching a death is satisfied that the deceased person at the time of his death had a relevant association with a visiting force, then unless the Secretary of State otherwise directs the coroner shall not hold the inquest or, if the inquest has been begun but not completed, shall adjourn the inquest and, if a jury has been summoned, shall discharge the jury.

(2) Subject to the last foregoing sub-section, if on inquest touching a death the coroner is satisfied.

(a) that a person who in accordance with section two of this Act is subject to the jurisdiction of the service courts of a country to which this section applies has been charged before a court of that country with the homicide of the deceased person, whether or not that charge has been dealt with, or

(b) "that such a person is being detained by an authority of that country with a view to being so changed, then unless the Secretary of State otherwise directs the coroner shall adjourn the inquest and, if a jury has been summoned, shall discharge the jury and shall furnish the registrar of deaths with a certificate stating the particulars necessary for the registration of the death so far as they have been ascertained at the inquest.

(3) Where an inquest is adjourned under this section the coroner shall not resume it except on the direction of the Secretary of State and, if he does resume it, shall proceed in all respects as if the inquest had not previously been begun, except that it shall not be obligatory on the coroner to view the body or to furnish the registrar of death, with any certificate or further certificate, as the case may be.

(4) Section four of the Birth and Deaths Registration Act, 1926 (which restricts the removal out of England of the body of a deceased person) shall not apply to the body of a person who at the time of his death had a relevant association with the visiting force.

Provided that this sub-section shall not apply as respects the body of a person concerning whose death, by virtue of a direction of the Secretary of State under sub-section (1) or (3) of this section, an inquest is required to be held, or if begun, is required to be resumed.

(5) Notwithstanding sub-section (1) of section two of the said Act of 1926 (which relates to certificates to be given to persons giving information concerning deaths), the registrar shall not given to certificate under that sub-section to the person giving information concerning a death if that person informs the registrar that the body is one as respects which the last foregoing sub-section has effect and that it is proposed to remove the body out of England.

(6) In this section the expression "homicide" includes murder manslaughter, infanticide and any offence under the law of the country in question which is analogous to any of those offences.

(7) In the application of this section to Northern Ireland for the references to the Secretary of State there shall be substituted references to the Minister of Home Affairs for Northern Ireland, and subsections (4) and (5) shall be omitted.

NOTES

1. The effect of this section is generally to absolve a coroner from the necessity of holding an inquest on the death of a member of a visiting force.

2. The section further enables the body of a deceased member of the
visiting force to be taken out of the United Kingdom

3. As to relevant association, see section 12 (2).

8. Application to visiting forces of law relating to home forces. (1)Where under any enactment a power is exercisable by any authority or person.

(a) as respects any of the home forces or their members or service courts or other persons in any way connected therewith, or

(b) as respects any property used or to be used for the purposes of any of the home forces, or for taking possession of any property to be so used, or for acquiring (whether by agreement or compulsorily) any property so used or to be so used.

Her Majesty may by Order in Council make provision for securing that subject any conditions specified by or under the Order the power shall be exercisable by that authority or person in the case of any visiting force to which the Order applies an any extent to which it would be exercisable if the visiting force were a part of any of the home forces.

(2) Her Majesty may by Order in Council made as respects any visiting force make provision-

(a) for exempting that force or members or service courts there of or other persons in any way connected therewith, or property used or to be used for the purposes thereof, from the operation of any enactment specified in the Order to any extent to which the force, members, courts, persons or property would be, or would be capable of being, exempted there from if the force were a part of any of the home forces;

(b) for conferring on that force or any such members courts, persons or property as aforesaid any other privilege or immunity specified in the Order, being a privilege or immunity which would be enjoyed by, or would be capable of being conferred on, the force, members, courts, persons or property if the force were a part of any of the home forces, subject however, to any conditions specified by or under the Order.

(3) Where by any enactment the doing of anything is prohibited, restricted or required in relation to-

(a) any of the home forces or their members or service courts or other persons in any way connected therewith,

(b) any property used or to be used for the purposes of any of the home forces,

Her Majesty may by Order in Council make provision for securing that the prohibition, restriction or requirement shall have effect in the case of any visiting force to which the Order applies to any extent to which it so would have effect if the visiting force were a part of any of the home forces.

(4) An order in Council under this section-

(a) may contain such incidental, consequential and supplementary provisions as appear to Her Majesty in Council expedient for the purposes of the Order, including provisions for applying modifying, adapting or suspending any enactment;

(b) may make financial provision in respect of the exercise of any power, or the discharge of any duty, conferred or imposed by the Order.

(5) There shall be defrayed out of moneys provided by Parliament any increase attributable to the provisions of an Order under this section in the sums payable out of such moneys under any enactment.

(6) No recommendation shall be made to Her Majesty in Council to make an Order under this section unless a draft thereof has been laid before Parliament and approved by resolution of each House of Parliament.

(7) In this section-

"enactment" means an enactment (passed either before or after the passing of this Act) of the Parliament of the United Kingdom or of the Parliament of Northern Ireland and includes any instrument having effect under an enactment;

"property" includes both real and personal property, or in Scotland both heritable and moveable property.

(8) Sub-sections(1) and (3) of this section apply whether the power in question is exercisable, or the prohibition, restriction or requirement in question is imposed, by provision expressly relating to the home forces or by more general provision, and sub-section (2) of this section applies whether the exemption, privilege or immunity in question would subsist, or be capable of being conferred, by virtue of any such provision or by reason of any enactment's not binding the Crown.

NOTES

1. This section enables an Order in Council to be made applying to the visiting forces the law relating to the United Kingdom force. *See* below the Order in Council, *viz.*: The visiting Forces (Application of Law) Order, 1954 (as amended by an Order of 1956). The principal provisions are contained in Article 12 and Schedules 4 and 5 thereof.

2. Under Schedule 4 any officer authorize to convene a court-martial under A.A., 1955 and R.P. 91 may issue a summons to a witness to attend a court-martial convened by a visiting force and United Kingdom service witness may be ordered to attend a court-martial convened by a visiting force by the appropriate United Kingdom service authority.

3. Schedule 5 of the Order in Council makes provision for the custody in detention of persons sentenced by the Service courts of visiting forces in the same places as persons sentenced under A.A., 1955, may be detained.

9. Settlement of claims against visiting forces.-(1) The Minister of Defence may make arrangements whereby claims in respect of acts or omissions of members of visiting forces, or other persons connected therewith to which the arrangements relate, being acts or omissions of any description to which the arrangements relate, will be satisfied by payments made by the said Minister of such amounts as may be adjudged any United Kingdom court or as may be agreed between the claimant and the said Minister or such other authority as may be provided by the arrangements; and any expenses of the Minister of Defence incurred in satisfying claims in pursuance of any such arrangements or otherwise in connection with the arrangements shall be defrayed out of moneys provided by parliament.

(2) The said Minister shall take such steps as may be requisite for securing that persons concerned with any arrangements made by him under this section shall be informed of the nature and operation of the arrangements.

10. Definition of membership of civilian component of visiting force.-(1) In this Part of this Act references to a member of a civilian component of a visiting force are references to a person for the time being fulfilling the following conditions, that is to say-

(a) that he holds a passport issued in respect of him by a Government, not being a passport issued by the passport authorities of the United Kingdom or any colony;

(b) that the passport contains an uncanceled entry made by or on behalf of the appropriate authority of the sending country stating that he is a member of civilian component of a visiting force of that country; and

(c) that passport contains a note of recognition of that entry by or on behalf of the Secretary of State which has not been cancelled and as respects which no notification in writing has been given by or on behalf of the Secretary of State to the appropriate authority of the sending country stating that the recognition is withdrawn.

(2) The reference in paragraph (c) of the last foregoing subsection to a note of recognition of an entry in a passport is a reference to any mark or indication made in the passport by or on behalf of the Secretary of State signifying that the entry has been noted and approved.

(3) For the purpose of this section the following provisions shall have effect in any proceedings in any United Kingdom court that is to say

(a) a document purporting to be a passport issued by or on behalf of a Government and to be so, issued in respect of a person bearing the name in which a person is referred to in the proceedings (whether as a party thereto or otherwise) shall, unless the contrary is proved, be deemed to have been issued by that Government and to relate to the person so referred to;

(b) an entry in a passport containing such a statement as is mentioned in paragraph (b) of subsection (1) of this section and purporting to be made by or on behalf of the appropriate authority of the sending country shall, unless the contrary is proved, be deemed to have been so made; and

(c) a mark or indication in a passport purporting to be made by or on behalf of the Secretary of State shall, unless the contrary is proved, be deemed to have been so made.

(4) In this section the expression passport includes any document which, in accordance with the United Kingdom law for the time being in force, would be treated as the equivalent of a passport in the case of a person entering the United Kingdom, being a national of the country by whose Government the document is issued.

11. Evidence for purposes for part I. (1) For the purposes of this Part of this Act a certificate issued by or on behalf of the appropriate authority of a country, stating that at a time specified in the certificate a person so specified either as or was not a member of a visiting force of that country, shall in any proceedings in any United Kingdom court be sufficient evidence of the fact so stated unless the contrary is proved.

(2) For the purposes of this Part of this Act a certificate issued by or on behalf of the appropriate authority of a country, stating, in respect of a person specified in the certificate,-

(a) that on a date so specified he was sentenced by a service court of that country to such punishment as is specified in the certificate, or

(b) that he is, or was at a time so specified, detained in custody in pursuance of a sentence passed upon him by a service court of the country or pending or during the trial by such a court of a charge brought against him, or

(c) that he has. been tried, at a time and place specified in the certificate, by a service court of that country for a crime so specified shall in any proceedings in any United Kingdom court be conclusive evidence of the facts so stated.

(3) For the purposes of sub-section (2) of section three Of this Act, a certificate issued by or on behalf of the appropriate authority of a country, stating in connection with any charge against a person of an offence against United Kingdom law, being charge specified in the certificate, that his case can be dealt with under the law of that country shall in any such proceedings as aforesaid be conclusive evidence of the fact so stated.

(4) Where a person is charged with an offence against United Kingdom law and at the time when the offence is alleged to have been committed he was a member of a visiting force or a member of a civilian component of such a force, a certificate issued by or on behalf of the appropriate authority of the sending country, stating that the alleged offence, if committed by him, arose out of and in the course of his duty as a member of that force or component, as the case may be, shall in any such proceedings as aforesaid be sufficient evidence of that fact unless the contrary is proved,

12. Interpretation of Part 1.-(1) In this Part of this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, this is to say :

"court" includes a service court;

"Her Majesty's ships or aircraft" does not include ships or aircraft belonging to Her Majesty otherwise than in right of Her Majesty's Government in the United Kingdom;

"the home forces" means any of the forces of Her Majesty

raised in the United Kingdom and for the time being

serving in the United Kingdom;

"members" in relation to the visiting force, means a member of the forces of the sending country being one of the members thereof for the time being appointed to serve with that visiting force; .

"the sending country", in relation to a visiting force, means the

country to whose forces the visiting force belongs;

"service authorities" means naval, military or air force
authorities;

"service court" means a court established under service law

and includes any authority of a country who under the

law thereof is empowered to review the proceedings of
of such a court or to try or investigate charges brought
against persons subject to the service law of that country;
and references to trial by, or to sentences passed by service courts of a country shall be
construed respectively
as including references to trial by, and to punishment
imposed by, such an authority in the exercise of such
powers;

"service law", in relation to a country, means the law
. . . governing all or any of the forces of that country; and

"visiting force" means, for the purposes of any provision in
this Part of this Act, any body, contingent or detachment

of the forces of a country to which that provision
applies, being a body, contingent or detachment for the
time being present in the United Kingdom on the invitation of Her Majesty's Government
in the United Kingdom.

(2) References in this Part of this Act to a person's having at any time a relevant association
with a visiting force are references to his being at that time a person of one or other of the
following descriptions, that is to say –

(a) a member of that visiting force or a member of a civilian component of that force;

(b) a person, not being a citizen of the United Kingdom and Colonies or ordinarily
resident in the United Kingdom, but being a dependant of a member of that visiting force
or of a civilian component of that force.

(3) In determining for the purposes of any provision in this Part of this Act whether a person is, or was at any time, ordinarily resident in the United Kingdom, no account shall be taken of any period during which he has been or intends to be present in the United Kingdom while being a member of a visiting force or of a civilian component of such a force, or while being a dependant of a member of a visiting force or of such a civilian component.

(4) In this section the expression "dependant", in relation to a person means any of the following, that is to say-

(a) the wife or husband of that person, and

(b) an other person wholly or mainly maintained by him or in his custody charge or care.

NOTE

This section defines various expressions used in Part I of the Act and sub section (2) marks it clear that a person who is a citizen of the United Kingdom or the colonies or ordinarily resident in the United Kingdom is not a person having a relevant association with a visiting force , even if he is a dependant of a member of the force or its civilian component.

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Ss-13 to 19

PART II

DESERTERS AND ABSENTEES WITHOUT LEAVE

13. Apprehension and disposal of deserters and absentees without leave.-(1) Subject to the provisions of this section, sections one hundred and eighty-six to ; one hundred. and eighty-eight and one hundred and ninety of the Army Act, 1955 (which relate to the apprehension, custody and delivery into military custody of deserters and absentees without leave from the regular forces) shall within the United Kingdom apply in. relation t-o deserters and absentees without leave from the forces of any country to which this/section applies as they apply in relation to deserters and absentees' without leave from the regular forces.

(2) The powers conferred by the said sections one hundred and eighty-six and one hundred and eighty-eight, as applied by the last foregoing sub-section, shall not be exercised in relation to a person except in compliance with a request (whether specific or general) of the appropriate authority of :the country to which he belongs.

(3) In sections one hundred and eighty-seven, one hundred and eighty-eight and one hundred and ninety of the Army Act, 1955. as applied by sub-section (1) of this section, references to the delivery of a person into military custody shall be construed as references to the handing over of that person to such authority of the country to which he belongs at such place in the United Kingdom as may be designated by the appropriate authority of that country.

(4) *(Repealed).*

(5) *(Repealed).*

(6) In this section references: to the country to which a person belongs are reference to the country from whose forces he is suspected of being, or (where he has surrendered himself) appears from his confession to be, a deserter or absentee without leave

(7) (*Repealed*).

NOTES

1. This section as amended by R, of A.F.A. Act, 1955, provides that the provisions of A.A., 1955, sections 186-188 and 190 shall apply to absentees and deserters from visiting forces. The effect of this section is that any person can arrest a member of the visiting forces who is a deserter or absentee or is suspected of being such a deserter or absentee but the power of arrest cannot be exercised unless a request has been made by the appropriate authority [*see* section 17(3)] ,of visiting force.

2. Sub-sections (1)-(4) were replaced by sub-sections (1)-(3). There is now no sub-section (4).

14. Evidence for purposes of Part II.-For the purposes of any proceedings under or arising out of any provision of the Army Act, 1955, as applied by the last foregoing section.-

(a) a document purport to be a certificate under the hand of the Secretary of the Admiralty, the Secretary of the Army Council or the Secretary of the: Air Council, stating that a request has been made for the exercise: of the powers mentioned in sub-section (2) of the last foregoing section, and indicating the effect of the request, shall be sufficient evidence, unless the contrary is proved, that the request has been made and *of* its effect; and

(b) a document purporting to be a certificate under the hand of the officer commanding a unit or detachment of any of the forces of a country to which this section applies, stating that a person named and described therein was at the date of the certificate a deserter, or absentee without leave, from those forces shall be sufficient .evidence, unless the contrary is proved, of the facts appearing from the document to be so certified.

PART III

SUPPLEMENTARY PROVISION

15. Extension of Act to colonies and dependencies.-(1) As regards any territory specified in sub-section (3) of this section. Her Majesty may by Order in Council direct that-

(a) the provisions of this Act other than this section, and

(b) Any Order in Council made under sub-section (2) of section one of this Act which is in force at the coming into operation of the Order under this section shall extend to that territory, subject to such adaptations, modifications or exceptions as may be specified in Order under this section.

(2) Where an Order in Council is made under this section as respects a territory, and while that Order is in force an Order in Council is made under subsection(2) of section one of this sub-section referred to as "the subsequent Order") the subsequent Order may either be made so as to extend to the territory as aforesaid, subject to such adaptations, modifications or exceptions as may be specified in the subsequent Order, or may be made so as not to, extend thereto, as may be provided in the subsequent Order.

(3) The territories herein before referred to are the following:-

(a) the Channel Islands and the Isle of Man;

(b) all colonies;

(c) all protectorates and protected states within the meaning of British Nationality Act, 1948; and

(d) all United Kingdom trust territories as defined in 'that Act.

NOTES

1. This section enables the provisions of the Act to be extended to the Commonwealth countries the United States of America has been designated so far as Cyprus, Gibraltar, Hong Kong, and Malta are concerned, see S. Is. 1954 No. 537 and No. 1041, and France has been designated so far as Cyprus is concerned, see S. 1. 1956 No. 1368.

2. S.1. 1954 No. 636 as amended by S. 1. 1957 No. 103 applies the Act colonies referred to therein with modifications, see page 46 .

3. The expression "colony" includes the Central Africa Federation, see S. 1 1953 No. 1199, Section 13(2).

16. Provisions as to proof of fact by certificate.-(1) For the purposes of this Act--

(a) a certificate issued by or on behalf of the appropriate authority of a country, stating that a body, contingent or detachment of the force of that country is, or was at a time specified in the certificate, present in the United Kingdom, shall in any proceedings in any United Kingdom court be conclusive evidence of the fact so stated; and

(b) Where in any such proceedings it is admitted or proved (whether by means of a certificate under the foregoing paragraph or otherwise) that a body, contingent or detachment of the forces of a country is or was at any time present in the United Kingdom, it shall be assumed in those proceedings, unless the contrary is shown, that the body, contingent or detachment is or was at that time present in the United Kingdom on the invitation of Her Majesty's Government in the United Kingdom.

(2) Where in any certificate issued for the purposes of this Act reference is made to a person by name, and in any proceedings in a United Kingdom court reference is made to a person by that name (whether as a party to the proceedings or otherwise), the references in the certificate and in the proceedings respectively shall, unless the contrary is proved, be deemed to be references to one and the same person.

(3) Any document purporting to be a certificate issued; for the purposes of any provision of this Act. and to be signed by or on behalf of an authority specified therein, shall be received in evidence and shall, unless the contrary is proved, be deemed to be a certificate issued by or on behalf of that authority; and where under the provision in question a certificate is required to be issued by or on behalf of the appropriate authority of a country, and the document purports to be signed by or on behalf of an authority of that country, that authority shall, unless the contrary is proved, be deemed to be that appropriate authority of that country for the purposes of that provision.

17. Interpretation.-(1) In this Act, unless the context otherwise requires, the expression "forces", in relation to a country, means any of the naval, military or air forces of that country, the expression "United Kingdom court" means a court exercising jurisdiction in the United Kingdom under United Kingdom law otherwise than by virtue of section two of this Act, and the expression "United Kingdom law" means the law of the United Kingdom or any part thereof.

(2) For the purposes of this Act a member of a force of any country which (by whatever name called) is in the nature of a reserve or auxiliary force shall be deemed to be a member of that country's forces so long as, but only so long as, he is called into actual service (by whatever expression described) or is called out for training; and any reference in this Act to a person's becoming a member of a country's forces shall be construed accordingly.

(3) References in any provision of this Act to the appropriate authority of a country are references to such authority as may be appointed by the Government of that country for the purposes of that provision.

(4) References in this Act to the presence of any forces in the United Kingdom at any time shall be construed as including references to their being at that time in transit to the United Kingdom.

(5) In this Act, unless the context otherwise requires, any reference to an enactment shall be construed as a reference to that enactment as amended by or under any other enactment, and in this sub-section the expression "enactment" includes an enactment of the Parliament of Northern Ireland.

(6) Any power conferred by the foregoing provisions of this Act to make an Order in Council or order shall be construed as including a power, exercisable in the like manner, to vary or revoke the Order in Council or order; and an Order in Council varying or revoking an Order under sub-section (2) of section one of this Act may contain such transitional provisions as appear to Her Majesty in Council-expedient in consequence of the variation or revocation.

18. Repeals.- There are hereby repealed-

(a) sections one to three of the Visiting Forces (British Commonwealth) Act, 1933, and sub-section (1) of section five of that Act; and

(b) the Allied Forces Act, 1940, and the United States of America (Visiting Forces) Act, 1942
:

Provided that (without prejudice to the provisions of section thirty-eight of the Interpretation Act, 1889) where immediately before the commencement of this section a person was imprisoned or detained in pursuance of any provision of those Acts or of any Order in Council made thereunder, the said repeal shall not affect the operation of any such provision in relation to his continued imprisonment or, detention:

19. Short title and commencement-(1) This Act may be cited as the Visiting Forces Act, 1952.

(2) This Act shall come into operation on such date as Her Majesty may by Order in Council appoint and different dates may be appointed in relation to different provisions of this act.

NOTE

The Act came into force on the 12th June, 1954 [s.I. 1956, No. 633 (C,5)].

SCHEDULE

Offences referred to in Section 3

1. In the application of section three of this Act to England and Wales and to Northern Ireland, the expression "offence against the person" means any of the following offences, that is to say :-

(a) murder, manslaughter, rape, buggery and assault; and

(b) any offence not falling within the foregoing sub-paragraph, an offence punishable under any of the following enactments ;

(i) the offences against the Person Act, 1861, except section fifty seven thereof (which relates to bigamy);

(ii) *(Repealed)*;

(iii) *(Repealed)*;

(iv) section eighty-nine of the Mental Health Act (Northern Ireland), 1948 (which relate respectively to certain offences against mentally defective females);

(v) section twenty-three of the Larceny Act, 1916 (which relates to robbery);

(vi) section one to five and section eleven of the Children and Young Persons Act, 1933, and section eleven, twelve, fourteen, fifteen, sixteen and twenty-one of the Children and Young Persons Act (Northern Ireland), 1950;

(vii) the Infanticide Act, 1938 and the Infanticide Act (Northern Ireland), 1939; and

(viii) sections two to twenty-eight of the Sexual Offences Act, 1956.

2. In the application of the said section three to Scotland, the expression "offence against the person" means any of the following offences, that is to say :

(a) murder, culpable homicide, rape, robbery, assault, incest, sodomy, lewd, indecent and libidinous practices, procuring abortion abduction, cruel, and unnatural treatment of persons, threats to murder or to injure persons; and

(b) any offence not falling within the last foregoing sub-paragraph, being an offence punishable under any of the following enactments:

(i) the Criminal Law Amendment Act, 1885;

(ii) section forty-six of the Mental Deficiency and Lunacy (Scotland) Act, 1913 (which relates to certain offences against mentally defective females); and

(iii) sections twelve to sixteen and twenty-two of the , Children and Young Persons (Scotland) Act, 1937.

3. In the application of the said section three to England and Wales and to Northern Ireland, the expression "offence against property" means any offence punishable under any of the following enactments, that is to say :

(a) the Larceny Act, 1861;

(b) the Malicious Damage Act, 1861;

(c) section thirteen of the Debtors- Act, 1869, and section thirteen of the Debtors Act (Ireland), 1872 (which relate respectively to the obtaining of credit by false pretences and to certain frauds on creditors);

(d) the Falsification of Accounts Act, 1875

(e) the Larceny Act, 1916, except section twenty-three thereof; and

(f) section twenty-eight of the Road Traffic Act, 1930, and section four of the Motor Vehicles and Road Traffic Act (Northern Ireland), 1930 (which relate respectively to the biking of a motor vehicle without the owner's consent).

4. In the application of the said section three to Scotland, the expression "offence against property" means any of the following offences that is to say:

(a) theft, housebreaking with intent to steal, (opening; lockfast places with intent to steal, reset, plagium, breach of trust and embezzlement, falsehood, fraud and wilful imposition, threats to extort money or with intent to extort money, and malicious mischief; and

(b) any offence under section twenty-eight of the Road, Traffic Act, 1930.

EXTRACTS FORM

THE VISITING FORCES (APPLICATION OF LAW)

ORDER, 1954

STATUTORY INSTRUMENT No. 635 OF 1954.

1. Citation and commencement.-(I) This Order may be cited as the Visiting Forces (Application of Law) Order 1954.

(2) This Order shall come into operation at the expiration of thirty days beginning with the day on which it is made.

NOTE

This Order was made on 13th May, 1954 and it has come into operation With effect from 12th June, 1954.

2. Interpretation.- (1) The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

(2) Except where the context otherwise requires, any reference in this order to any enactment is a reference thereto as amended by any other enactment and includes a reference thereto as applied *by* or incorporated with any other enactment.

3. Application of Order-(I) The visiting forces to which this Order applies are those of Canada, Australia, New Zealand, the Union of South Africa, India, Pakistan, Ceylon, the United States of America, France, Belgium, Norway, the Netherlands, Luxembourg, Turkey, Greece, Denmark, Portugal and Italy, and the expression "visiting force" shall be construed accordingly.

(2) The provisions of this Order shall be without prejudice to any enactment or rule of law which applies in relation to any such force as aforesaid as part of Her Majesty's forces.

12. Witnesses before service courts, custody and detention of prisoners, etc.-(I) The provisions of the Fourth Schedule to this Order shall have effect with respect to the attendance and conduct of witness required for the purposes of the service courts of visiting forces, the privileges of such witnesses and courts, and the administration of oaths therein.

(2) The provisions of the Fifth Schedule to this Order shall have effect with respect to the custody, detention and treatment of persons sentenced by such courts to imprisonment or detention.

13. Penalties for inducing or assisting desertion etc.-Section 192 of the Army Act, 1955, (which provides for the punishment of persons who procure or persuade members of the regular forces to desert or to absent themselves without leave, or who commit certain other offences connected with desertion or absence without leave), shall have effect as if any reference therein to an officer, warrant officer non-commissioned officer or soldier of the regular forces included a reference to a member of a visiting force.

* * * *

FOURTH SCHEDULE

Provisions relating to service courts of

Visiting forces

1. Civilian witnesses.-Subject to the provisions of this Schedule any person required as a witness for the purpose of a service court of a visiting force (not being a person subject to the Naval Discipline Act, to military law or to air-force law, or a person subject to the jurisdiction of a service court of visiting force under sub-section (2) of section 2 of the Visiting Forces Act, 1952, may be summoned or ordered to attend the court by any officer of the home forces who would have power to summon him to attend if the service court were a court-martial held in pursuance of the Naval Discipline Act, the Army Act, 1955, or the Air Force Act, 1955.

2. An officer shall not issue a summons or order for the attendance of any person as a witness under the foregoing paragraph unless it appears to him that it is reasonably practicable to procure that person's attendance and that provision for the reasonable expenses of his attendance has been or will be made.

3. In relation to a person summoned or ordered to attend a service court under paragraph I of this Schedule, section 101 of the Army Act, 1955 (which relates to offences by civilians in relation to court-martial), shall apply as if for any reference to a court-martial there were substitute a reference to the service court.

4. Service witnesses.-Any person required as a witness for the purposes of a service court of a visiting force, being a person subject to the Naval Discipline Act, to military law or to air-force law, may in accordance with arrangements made in that behalf between the service authorities of the visiting force and the admiralty, the Army Council or the Air Council, as the case may be, be ordered to attend that court by the proper naval, military or air-force authority.

5. In relation to a person ordered to attend a service court under the last foregoing paragraph, being a person subject to military law or to air-force law, sub-section (1) of section 57 of the Army Act, 1955, or of the Air Force Act, 1955, as the case may be (which relates to misconduct at courts-martial) shall apply as if for the references in paragraphs (a) to (f.) to a court-martial" there were substituted references to the service court, and as if the words "other than the court in relation to which the offence was committed" were omitted.

6. In relation to a person ordered to attend as aforesaid, being a person subject to the Naval Discipline Act, that Act shall have effect as if for section 66 there were substituted the provisions of sub-section (1) of section 57 of the Army Act, 1955, and as if in that sub-section the modifications specified in the last foregoing paragraph had been made, and in addition:

- (a) for the words "military law" there were substituted the words "this Act"; and
- (b) for the words from "to imprisonment" to "by this Act" there were substituted the words "to dismissal from Her Majesty's service, or such other punishment as is mentioned in this Act"

7. General Provisions.-A witness before a service court of a visiting force or any other person whose duty it is to attend on or before such a court shall be entitled to the same immunities and privileges as a witness before the High Court in England.

8. (I) For the purpose of sub-section (1) of section 57 of the Army Act, 1955, or the Air Force Act, 1955, and of section 101 of the Army Act, 1955, as applied by virtue of this Schedule to proceedings before a service court of a visiting force, the expressions "duly required" and "lawfully required" shall be construed as if the service court were a court-martial held in pursuance of the Naval Discipline Act, the Army Act, 1955, or the Air Force Act, 1955 as the case may be, and subject to any rule of law with respect to Crown privilege.

(2) Without prejudice to the generality of the foregoing subparagraph, nothing in this Schedule shall compel any person to give or produce any evidence which he could not lawfully be compelled to give or produce in any court of criminal jurisdiction in England.

9. Any enactment or rule of law with respect to privilege in proceedings for defamation shall apply in relation to a service court of a visiting force as it applies in relation to a court-martial held in pursuance of the Naval Discipline Act, the Army Act, 1955, or the Air Force Act, 1955.

10. Any oath required to be taken for the purposes of a service court of a visiting force may be administered by the person authorised in that behalf under the service law of the sending country

FIFTH SCHEDULE

Custody, detention and treatment of persons sentenced by service court of visiting forces

1. A member of a visiting force who is sentenced by a service court of a visiting force to any form of imprisonment may, under the "authority" of the Admiralty or a Secretary of State, be detained temporarily, or for the whole or any part of his sentence, in any prison or establishment in which a person sentenced to imprisonment by a court-martial under the Naval Discipline Act, the Army Act, 1955, or the Air Force Act, 1955, may be detained, or in naval, military or air-force custody.

2. A member of visiting force who is sentenced by a service court of a visiting force to detention, may under the authority of the Admiralty or a Secretary of State, be detained temporarily or for the whole or any part of his sentence, in any naval, military or air force establishment in which a person sentenced to detention by a court-martial under the Naval Discipline Act, the Army Act, 1955, or the Air Force Act, 1955, may be detained, or in naval, military or air force custody.

3. Where such a person as is mentioned in paragraph (b) of sub-section (2) of section 2 of the Visiting Force Act, 1952 (that is to say a person subject to the service law of the country in question otherwise than as a member of that country's forces who is not a citizen of the United Kingdom and Colonies nor ordinarily resident in the United kingdom) is sentenced by a service court of a visiting force to any form of imprisonment, he may under the authority of the Admiralty or a Secretary of State, be detained temporarily, or during the whole or any part of his sentence, in any civil prison, or in naval military, air force or civil custody.

4. The Admiralty, the Army Council and the Air Council may make arrangements with the service authorities of any visiting force as to the reception from those authorities of persons to be detained under this Schedule and their return to those authorities, and as to the circumstances in which any such persons are to be released.

5. The provisions of any enactment with respect to the treatment of persons detained in prisons or other establishments mentioned in the foregoing provisions of this Schedule (including any such provisions relating to unsoundness of mind) shall apply-

(a) in relation to any person detained in pursuance of this Schedule in a civil prison, as if he were a person sentenced by a court of the United Kingdom to imprisonment for the like term as the term of the sentence of the service court;

(b) in relation to a person sentenced by a service court to any form of imprisonment and detained as aforesaid in any naval, military or air force establishment, as if he were a person sentenced by a court-martial held in pursuance of the Naval Discipline Act, the Army Act, 1955 or the Air force Act, 1955, as the case may be, to imprisonment for the like term as the term of the sentence of the service court;

(c) in relation to a person sentenced by a service court to detention and detained as aforesaid in any naval, military or air force establishment, as if he were a person sentenced by a court-martial held in pursuance of the Naval Discipline Act, the Army Act, 1955, or the Air Force Act, 1955, as the case may be, to detention for the like term as the term of the sentence of the service court

6. (1) Section 186 of the Army Act, 1955 (which relates to the arrest of deserters and absentees without leave), shall in the United Kingdom apply in relation to a person authorised to be detained in pursuance of this Schedule who is at large in circumstances which, in the case of a member of the home forces, would amount to illegal absence from those forces, as it applies in relation to an officer, warrant officer, non-commissioned officer or soldier of the regular forces who has deserted or is absent without leave.

(2) Sections 187, 188' and 190 of the Army Act, 1955 (which make provision as to the delivery into military custody of persons illegally absent from the regular forces), shall in the United Kingdom apply as if any person authorised to be detained in pursuance of this Schedule were a member of the regular forces illegally absent there from and, as so applying, shall have effect as if-

(a) any reference to military custody included a reference to naval or air force custody; and

(b) in sub-section (3) of the said section 187 for the words "and if satisfied" to "absence without leave" there were substituted the words "and if satisfied that he is a person authorised to be detained in pursuance of the Fifth schedule to the visiting Forces (Application of Law) Order, 1954".

THE NAVAL DISCIPLINE (COMMONWEALTH NAVIES

ORDER, 1959

Her Majesty, in pursuance of the powers conferred upon Her by sub-section (1) of section 116 of the Naval Discipline Act, 1957, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

1. Each of the naval forces specified in the first column of the Schedule; to this Order and raised by the Commonwealth countries specified opposite thereto in the second column the said Schedule shall be subject to the Naval Discipline Act, 1957 so far as it relates to the offences of desertion or absence without leave and to arrest, trial and punishment of persons who have committed or are suspected of having committed either of the said offences:

2. This Order may be cited as the Naval Discipline (commonwealth Navies) Order, 1959, and shall come into operation on the twenty-seventh day of November, 1959.

SCHEDULE

<i>Naval Force</i>	<i>Commonwealth Country</i>
Royal Australian Navy	...Commonwealth of Australia.
Royal Ceylon Navy	... Ceylon.
Ghana Navy	... Ghana.

Note;-This Order has since been amended to include the following:

<i>Naval Force</i>	<i>Commonwealth</i>	<i>Amending Order</i>	<i>Operative date</i>
	<i>Country</i>		
Pakistan Navy	Pakistan..	The Naval Discipline (Commonwealth Navies)Amendment order 1961	30th March, 1961.
Indian Navy	India	The Naval Discipline (Commonwealth Navies)(Amendment No 2) order 1961	2nd October, 1961
Bangladesh Navy	Bangladesh	-	19 Jul 1983

NOTE

Section 116 reproduced below of the (U.K.) Naval Discipline Act, 1957, empowers Her Majesty by Order in Council to direct that members of any naval force of a Commonwealth country or raised by any colony shall be subject to that Act so far as it relates to the offences of desertion or absence without leave and to the arrest, trial and punishment of persons who have committed or are suspected of committing either of these offences:

116. Application to deserters, etc., Commonwealth and colonial naval forces.(1) Without prejudice to the foregoing, provisions of this Part of Act, Her Majesty may by Order in Council direct that members of any naval force of a Commonwealth country or raised by any colony shall be subject to this Act so far as it relates to the offences of desertion or absence without leave and to the arrest, trial and punishment of persons who have committed or are suspected of having committed either of the said offences.

(2) Where any Order in Council is made under this section in relation to members of a naval force, references in section forty-seven and in Part III of this Act to Her Majesty's naval force shall include references to that force.

**GOVERNMENT OF THE PEOPLE'S REPUBLIC
OF BANGLADESH**

MINISTRY OF DEFENCE

Defence Division

NOTIFICATION

Dhaka, the 19th July 1983

No. S.R.O. 274-L/83.-Whereas it is expedient to provide for administration of oath or affirmation to the commissioned officers of the Defence Services;

Now, therefore, in pursuance of the Proclamation of the 24th March, 1982, and in exercise of all powers enabling him in that behalf, the Chief Martial Law Administrator is pleased to make and issue the following Warrant:

THE DEFENCE SERVICES (COMMISSIONED OFFICERS)

OATHS WARRANT, 1983

1. Short title and commencement.-(1) This Warrant may be called the Defence Services (Commissioned Officers) Oaths Warrant, 1983.

(2) It shall come into force at once,

2. Definitions-In this Warrant, unless there is anything repugnant in the subject or context,

(a) "Chief of Staff" means

(i) in relation to the Bangladesh Army, including its Reserves and Auxiliary Forces, the Chief of Army Staff;

(ii) in relation to the Bangladesh Navy, including its Reserves and Auxiliary Forces, the Chief of Naval Staff; and

(iii) in relation to the Bangladesh Air Force, including its Reserves and Auxiliary Forces, the Chief of Air Staff;

(b) "Defence Services" means the regular Army, Navy and Air Force, and includes all Reserve and Auxiliary Forces thereof.

3. Persons to whom oath or affirmation is to be administered. An oath or affirmation shall be administered-

(a) to every commissioned officer serving in the Defence Services on the coming into force of this Warrant;

(b) to every cadet who, after successful completion of training in any of the institutions of the Defence Service is to be commissioned -as an officer.

(c) to every person to be commissioned as an officer in the Defence Services without undergoing training in any such institution as aforesaid;

(d) to every officer on any retired or emergency list of officers of the Defence Services when ordered on any duty or service for which as such officer he is liable;

(e) to every officer belonging to any Reserve or Auxiliary of the Defence Service when called up for training or for military service (including active service); and

(f) upon his return to military duty, to every officer who has been seconded for civil service in a civil department.

4. Mode of administering oath or affirmation.-(I) Save as provided in sub-paragraphs (2) and (3), an oath or affirmation shall be administered by the commanding officer, or by any officer authorised by the commanding officer in this behalf in the other form given in Schedule I appended to this Warrant, or in such other form as the officer administering it considers to be in accordance with the religion of the person to whom the oath or affirmation is to be administered or is otherwise binding on his conscience.

(2) In the case of a Chief of Staff, the oath or affirmation shall be administered *by* the President of Bangladesh in the other *form* given in Schedule II to this Warrant.

(3) In the case of officers other than the Chief of Staff serving in the Defence Services on the coming into force of this Warrant, the oath or affirmation shall be administered *by* the Chief of Staff concerned, or by such officer or officers as may be authorised *by* him in this behalf in the form given in Schedule I.

(4) The alternative form of oath or affirmation an officer administering it may devise under sub-paragraph (1) shall contain a promise that the person to whom the oath or affirmation is administered will be faithful to Bangladesh and its Constitution and bear true allegiance to the President of Bangladesh, and will honestly and faithfully serve in the Defence Services and will go wherever he is ordered *by* land, air or sea, and will observe and obey all commands of any officer set over him, even to the peril of his life.

(5) The oath or affirmation shall be administered with all convenient speed after it has become due.

(6) The person to whom the oath or affirmation is administered shall also sign the oath or affirmation in confirmation of the same having been administered to him, and such confirmation shall be authenticated by the signature of the officer administering the oath or affirmation.

5. Power to lay down ceremonial procedure, etc.- The Chief of Staff concerned may lay down the procedure relating to the ceremony or parade at which oaths or affirmation may be administered, and the mode of their administration, and other matters connected therewith.

6. Repetition of oath.-(1) Where an oath or affirmation has been administered to an officer or cadet under paragraph 3 no oath or affirmation under this Warrant shall be administered to him there after except where the form of oath or affirmation given in the Schedules is altered, modified or substituted, in which case such officer or cadet shall be required to take a fresh oath or affirmation in the altered, modified or substituted form.

(2) The provision *of* sub-paragraph (1) shall not apply to the Chief of Staff.

7. The Armed Forces (Commissioned Officers) Oaths Warrant, 1961 is hereby *repealed*.

FIRST APPENDIX

I.FORM OF OATH OR AFFIRMATION

II. CERTIFICATE OF ATTESTATION

(Reproduced in the notes to rule 7)

SECOND APPENDIX

I. FORM OF SPECIAL REPORT UNDER SECTION 90(3)

OF THE ORDINANCE: *(See Rule 44)*

II. FORM FOR USE AT SUMMARY DISPOSAL OF

OFFICERS UNDER RULE 121.

III. FORM OF PUNISHMENT WARRANT

UNDER RULE 106.

IV. FORM OF REPORT OF ARREST AND TRIAL BY CIVIL

POWER UNDER RULE 257 (5).

(Reproduced in the notes to the relevant rules,.)

THIRD APPENDIX

FORMS OF CHARGES

I. COMMENCEMENT OF CHARGE SHEET

II. STATEMENT OF OFFENCE:

(Reproduced at the beginning of Chapter VI

Offences of the N. Ordinance.)

FOURTH APPENDIX

I. FORMS AS TO COURT-MARTIAL

II. FORMS OF SUMMONS TO WITNESSES.

III. FORMS OF OATH AND AFFIRMATION.

I. FORMS AS TO COURT-MARTIAL

A. FORM FOR APPLICATION FOR A COURT-MARTIAL.

(Reproduced in the notes to rule 50.)

B. FORM FOR ASSEMBLY OF COURT-MARTIAL.

No.1 Form of order for the assembly of a General or District Court-Martial.

(Reproduced in the notes to rule 131.)

No.2. Form of order for the assembly or a Summary General

Court-Martial.

(Reproduced in form D below as "Combined

Form for Assembly and proceedings)

No.3 Declaration for suspension, of-Rules.

(Reproduced in the .notes to134.)

C. FORM OF PROCEEDINGS OF A GENERAL (OR DISTRICT) COURT-MARTIAL

(**Instruction** :-This form is to be used as a general guide; the actual record may depart from the form in numerous particulars. Some of the variations are set out below.)

Proceedings of a Court-Martial, held at.....on the
.....day of19..... by order
of.....dated the..... day
of.....19.....

President.....(rank, name, ship/establishment).

Members.....(rank, name, ship/establishment).

Judge-Advocate.....

Trial of..... (No, rank, name, branch, ship/establishment).

(**Instruction** :-All documents relating to the court, or the matters before it, which are intended to form part of the proceedings (such as an order respecting exigencies of the service, or a letter answering any question referred to the convening officer), at whatever Period of the trial they are received, should be read in open court, marked so as to identify them signed by the president/(judge-advocate), and attached to the proceedings.)

The order convening the court, the charge-sheet and the summary of evidence are laid before the court.

The court satisfy themselves that.....is not able to serve

owing to.....(her insert reason).

..... (rank, name etc. of the spare member) takes his place as a member of the court.

The court satisfy themselves as provided by rules 135 and 136.

[Note :-Before certifying that the court have satisfied themselves as provided by rules 135 and 136 the president shall in every case where a board of inquiry has been held respecting a matter on which charge against the accused is founded, insert an asterisk after the words "rules 135 and 136", and enter in red ink and sign a foot-note at the bottom of the first page of the proceedings to the following effect :

"I have satisfied myself that none of the officers detailed as members of this court has previously served upon any board of inquiry respecting the matters forming the subject of the charge(s) before this court-martial".]

(Signature of the President).

The accused is brought before the court.

(Rank, name etc.).....appears as
Prosecutor.

(Rank, name etc.).....appears as
Counsel(Defending

Officer.)

(NOTE :-State legal qualifications, if any, of the Prosecutor and Counsel/(Defending
Officer).)

At. hours the trial commences.

The order convening the court is read and is marked. signed

by the President/(Judge-Advocate) and attached to the proceedings.

The names of the president and members of the court are read over in the hearing of the accused,
and they severally answer to their names.

Question by the President to the accused-

"Do you object to be tried by me as president, or by any of the officers whose names you have
heard read over?

Answer by the accused:

"No"/(yes.see variation below).

(*Instruction:-*The questions are to be numbered throughout consecutively in a single series.
The letters 'Q' and 'A' on the margin may stand for 'Question' and 'Answer' respectively.)

VARIATIONS

Answer :- I object to.....

*Question :-*Do you object to any other person?

(This question must be repeated until all the objections are ascertained).

Answer :-(If the president is objected to, that objection will be dealt with first, otherwise the objection to the junior officer will be disposed of first.)

Objection to the president

Question :- What is your objection to me as president?

Answer :- The accused in support of his objection to the president makes the following statement: (set out) and calls.....

who states :-(set out).

The court is closed to consider the objection.

Decision: The court disallow the objection.

The court is re-opened, and the above decision is made known to the accused.

or

Decision: The court allow the objection

The court is re-opened, and the above decision is made known to the accused, and the court adjourn.

Objection to Member

Question:- What is your objection to.(the junior member objected to)?

Answer :- (The accused in support of his objection to..... Mattes the following statement :- (set out), and calls.....who states: (set out). .

The court is closed to consider the objection.

Decision: The court disallows the objection.

The court is re-opened, and the above decision is made known to the accused.

or

Decision: The court allow the objection.

The court is re-opened and the above decision is made known to the accused.

.....retires.

Fresh member(rank, name, ship/establishment) take his place as a member of the court.

(Note :-This only applies where there are spare members of the court, otherwise the court must adjourn.)

He appears to the court to be eligible and not disqualified to serve on this court-martial.

Question: Do you object to tried by(the fresh member)?

Answer: -(If he objects,) the objection ",will be dealt with in the same manner as the former objection.).

Question: What is you objection to.....right(right(the next junior of officers Objected to)?

(This option will be dealt within the same manner as the former objection.)

The court adjourn for the purpose fresh members being appointed.

or

The court is of the opinion that in the interests of justice and for the good of the service, it is inexpedient to adjourn for the purpose of fresh members being appointed, because(here state the reasons).

(NOTE :--The court must bear in mind the necessity of the legal minimum number required by section 99 (1) of the Ordinance.)

Athours on the court resume their proceedings, and an order appointing another president (or fresh officers) is read, marked, and attached to the proceedings.

The court satisfy themselves with respect to such fresh president or officers as provided by rule 136.

(NOTE :-The procedure as to challenging fresh president or and the procedure if any objection is allowed, will be the same as above.)

The president and members of the court, constituted after the above proceeding are as follows :

PRESIDENT

Rank Name Branch
..... Ship/

(Establishment)

MEMBERS

Rank Name
Branch.....

(Establishment).....

The president, members, and judge advocate (if any) are duly sworn or affirmed (also any officers under instruction).

Instruction:- The witnesses if in court, other than the Prosecutor, should be ordered out of the court at this stage of the proceedings.

Question: Do you object to as interpreter?

Answer.

Question :-Do you object to as short hand writer?

Answer

Instructions:- (1) In case of objection the same procedure will be (allowed as in the case of an objection to a member of the court.

(2) The interpreter and short-hand writer should be now sworn/(affirmed). If a member of the court is appointed, interpreter, he must take the interpreter's oath/(affirmation) in addition to the oath/(affirmation) administered to him as a member of the court.

CHARGE-SHEET

The charge-sheet is signed by the president/(judge-advocate), marked. and annexed to the proceedings.

The accused is arraigned upon each charge in the above mentioned charge sheet.

Question:- Are you guilty or not guilty of (first) charge against you, which you have heard read over?

Answer :-

Instruction :-(1) Where there is more than one charge upon which the accused is arraigned; the foregoing question, will be asked after each charge (whether alternative or not) is read, the number of the charge being stated.

(2) If the accused pleads guilty to any charge the provisions of rule 14(;-)(2) must be complied with, and the fact that they have been complied with must be recorded. Where there are 'alternative charges and the accused pleads guilty to the less serious charge the court, if they, decide to proceed upon the more serious charge, will enter the plea as recorded:

"The court proceed as though the accused had not pleaded guilty to any charge".

VARIATIONS

The accused objects to the charge on the, ground that. (set out).

"The court is closed to consider their decision.

The court disallow the objection (or, the court allows the objection, and agree to report to convening authority).The court is re-opened, and the above decision is made known to the accused. The-court proceeds with the trial (or adjourn).

Amendment to charge

The court being satisfied that the name (or description) of the accused is.and not as stated in the charge-sheet, amend the charge-sheet accordingly.

or

The court being satisfied that the word(s). in the charge-sheet in respect of the.....charge(s) is (are) attributable to (a) clerical

error(s) for word(s)..amend the charge-sheet accordingly.

or

The court being satisfied that there is a mistake in the charge-sheet' attributable to omission, amend the charge-sheet so as to correct that mistake.

or

The court before they close for consideration of their finding on the charge consider that in the interests of justice, the following addition to (or omission from or alteration in) the charge is required namelyand adjourn to report their opinion to the convening authority; (rule 143(2)).

Plea to the jurisdiction (rule 144).

The accused pleads to the general jurisdiction of the Court on the ground that. (set out).

Question :-Do you wish to produce any evidence in support of your plea ?

Answer :

[Witnesses are examined on oath/(affirmation)] The court is closed to consider their decision.

Decision :- The court :

(a) over-rule the plea and decide to proceed with the trial; or

(b) allow the plea and decide to report to the convening authority and adjourn; or

(c) are-in doubt as to the validity of the plea and decide to refer the matter to the convening authority and adjourn; (or make the following special decision and decide to proceed with the trial).

The court is re-opened and the above decision is made known to the accused. The court proceed with the trial (or adjourn).

Plea in bar of trial (rule 145).

The accused besides the plea of guilty (or not guilty) offers a plea in bar of trial.

Question:-What are the grounds of your plea ?

Answer:

Question :-Do you wish to 9811 any evidence in support of your plea ?

Answer:.....

Instruction :-Witnesses if any are examined etc. on oath or affirmation. The examination of witnesses called by the accused and of any witnesses called be the prosecutor in reply, will proceed" as directed below in the case of witnesses to the facts at the trial. The prosecutor will be entitled to reply after all the evidence is given.

The court is closed to consider their decision.

The court allow the plea and resolve to adjourn (or, to proceed with the trial on another charge).

.....Or

The court over-rule the plea.

The court is re-opened, and the above decision is made known to the accused.

The court adjourn (or, proceed with the trial on another charge), (or proceed with the trial).

Refusal to plead (rule 146 (1)).

As the accused does' not plead intelligibly (or, refuses to plead) to the charge, the court enter a plea of not guilty.

Insanity N.O. Section 123 (1)

The court find that the accused (Norank
..... namebranch
.....ship/establishment/.....)is, by reason of unsoundness of
mind, incapable of making his defence.

Signed atthisday of
.....19.....

(Judge-Advocate)

President.

PROCEEDINGS ON PLEA OF GUILTY

The accused having pleaded guilty to the charge the provisions of sub-rule (2) of rule 146 are here complied with.

The court having been re-opened, the accused is again brought before it, and the charge(s) to which he has pleaded guilty is/(are) read to him again.

To be struck out in case no plea of "not guilty" has been proceeded with.)

The accused, (No, rank....., name, ship/
establishment) is found guilty of the charge/(all the charges);

Or

The accused.....(No , etc) is found guilty of the.....charge, and is found not guilty of the charge.

(Instruction :-If the trial proceeds upon any charge to which there is a plea of Dot guilty, the court will not proceed upon the record of the plea of guilty, until after the finding on that other charge: *see* rule 147 (1), and in that case the court will be re-opened and the charge on which the record is guilty must be read to the accused again.

The accused may, in accordance with rule- -147 (2) make any statement he wishes in reference to the charge.

The summary of evidence is read, marked. signed by the president and attached to the proceedings.

(Instruction :-If there is no summary of evidence, sufficient evidence to enable the court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet as on it plea of not guilty.)

Question :- Do you wish to make any statement in mitigation of punishment?

.. . . . [see rule 147 (3)].

Answer :-
.....

The accused in mitigation of punishment says(Or, if the statement is in writing, hands in a written statement; which is read, marked, signed by the president (judge-advocate), and attached to the Proceedings).

(Instruction:-If the statement of the accused is not in writing the material portions of the oral statement should be taken down in the first person and as nearly as possible in his own words. If counsel or defending officer addresses the court on behalf of the accused the material portions of his address should be recorded.

In any case any matter which is requested by or on behalf of the accused to be recorded, should be recorded and care must be taken, whether a request *is* made ,or not, to record every point brought forward in mitigation or punishment.)

VARIATIONS

Alteration of plea (rule 147 (4)).

The court being satisfied from the statement of the accused (or the summary of evidence or otherwise), that the accused did not understand the effect of the, plea of guilty, enter in the proceedings:-

The court consider that the accused does not understand the effect of his plea of guilty, after the record, and enter a plea of "Not Guilty"

(Instruction :-The court will then proceed in respect of this charge as on a plea of not guilty).

Witnesses for defence on plea of guilty [rule 147 (6)]

The court give permission to the accused to call witnesses to prove his above statement that.
..... (Specify the statement to be proved).

(Instruction :- The examination etc., of witnesses called in pursuance of this permission will proceed in the same manner as 0/1 a plea of not guilty.)

Question :- Do you wish to call any witnesses as to character?

Answer :-.....

(Instruction The examination etc., of witnesses as to character will proceed as in the case of a :- witness giving evidence as to the facts of the case).

PROCEEDINGS ON PLEA OF NOT GUILTY

Question :- Do you wish to apply for adjournment on the ground that any of the rules relating to procedure before the trial have not been complied with, and that you have been prejudiced thereby ,or on the ground that you have not had sufficient opportunity for preparing your defence? (see rule 149 (a)).

Answer

.....
.....

(Instruction :- The question will only be asked if, the accused pleads 'not guilty to one or more of the charges. If the accused desires to make an application for adjournment the court will hear any statement or evidence which he may desire to adduce in support 'thereof, and any statement of the prosecutor or evidence in answer thereto. Such statement or evidence will be recorded, together with the decision of the court on a separate piece of paper attached to the proceedings and signed by the president, or the judge-advocate ,if any.)

The prosecutor makes an opening address, (or hands in a written address, which is read, marked , signed by the president/(judge-advocate) and attached to the proceedings.

(Instruction ;- Where the address of the prosecutor is not in writing, the court should record so much as appears to them material, and the record should be attached to the proceedings).

The prosecutor proceeds to call witnesses.

First
witness.....(No.....,rank.....ame.....
.....

for prosecution, ship etc. being duly sworn/affirmed) is
examined by the prosecutor :-

.....

Cross-examined by the accused/(by I counsel. or ,defending officers) :

.....

Re-examined by the prosecutor :

.....

Questioned by the court:

.....

(Instruction :- (1) The fact that rule 212 (2), (3) and (5) has been complied with
must be recorded at the conclusion of the evidence, of each witness.

(2) If the accused, or his counsel, or the defending officer declines to cross-
examine a witness that fact must be recorded.)

VARIATIONS

Postponement of cross-examination [rules 206 and 213 (2)].

The court at the request of the accused allow ,the' Cross-examination of the witness to be postponed.

Objection to evidence or procedure (rule 183)

The accused/(counsel, or defending officer)/or, (the prosecutor) objects to the following question on the ground that :-

The court is closed to consider their decision.

The court over-rule/(allow) the objection, and the court is re-opened and the decision announced.
The court proceed with the trial.

Explanation or correction of evidence [rule 212 (2)] ,

The witness, on his evidence being read to him, makes the following explanation or correction:-

..... (set out)
.....

Examined by the prosecutor as to the above explanation or correction:-

.....

Examined by (or on behalf of the accused as to the above explanation or correction :-

.....

Or

The prosecutor and/or the accused (or counselor defending officer) declines to examine him respecting the above explanation or correction.

Second witness(No.....,rank.....name..... for prosecution
....., ship etc.) being duly sworn/(affirmed) is examined by the prosecutor :

NOTE ;-(The examination etc., of this and every other witness proceeds as in the case of the first witness);

VARIATION

Extended sitting of the court [rule 177 (2)]

The court think it expedient to continue to sit after six in the afternoon on the ground :-
.....(set out).

ADJOURNMENT

At.....hours the court adjourn until hours on the.....
.day of19

SECOND DAY

On the.....day of.....19.....at hours, the court reassemble pursuant to adjournment.

Present the same members (and judge advocate) as on the day of19.....

(Instructions :-)(1) If upon re-assembly member is absent, and his absence will reduce the court below the legal minimum, and-it appears to the members present that the absent member, cannot attend within a reasonable time, the president or senior member present will thereupon report the case to the convening authority.

(2) If either the president or the judge-advocate is absent, and cannot attend within a reasonable time, the court will adjourn, and the president or senior member present will thereupon report the case to the convening authority., (See rule 179).

ABSENCE OF MEMBER

... .. (Rank.., name....., ship etc), being absent, a medical certificate (or letter, as the case may be) is produced, read, marked.....and attached to the proceedings.

The court adjourn, until.....

or

There being present.....members (not less than the legal minimum) the trial is proceeded with.

An order bearing date, appointing. to act as judge advocate in the place of.....is read, marked....., signed by the president and attached to the proceedings.

The new judge advocate is duly sworn(affirmed).

The trial is proceeded with..

Examination/(cross-examination))of.....is continued..

THE PROSECUTION IS CLOSED

DEFENCE

Question:- Do you wish to make a statement?

Answer :- No/(Yes).

The accused in his defence says (or, hands in a written statement, which is read, marked.. ..
.signed by the' president (judge-advocate) and attached to the proceedings,

(*Instruction :-*(1) If the statement of the accused is not in writing, the material portion should be taken down in the first person and as nearly as possible in his own words.

(2) Any matter which is requested by or on behalf of the accused to be recorded, should be recorded and care must be taken, whether a request is made or not, to record every point brought forward in the defence or in mitigation of punishment.

(3) The accused shall not be sworn or affirmed and no question shall be put to him by the court or by any other person.)

Question :- Do you intend to call any witnesses to the facts of the case ?

Answer :-

Question :- Do you intend to call witnesses as to character?

Answer :-

(Instruction :-(1) Where the accused does not call witness as to the fact, of the case but wishes to produce witnesses as to character only, the evidence of such witnesses shall be recorded on a separate sheet in the same manner as that of witnesses to the fact. The court will then follow " the provisions of clauses (d) and (e) of rule 151 respecting the order of addresses.

(2) All addresses by the prosecutor, counselor defending officer, whether recorded by the court or handed in writing win be attached to the proceedings in the order which they are made. Written addresses will be read in open court, marked and signed by the president judge-advocate.

VARIATION

Adjournment to prepare defence

The court at the request of the accused/(counsel/defending officer) adjourn until.....in order to enable him to prepare his defence.

(Where the accused calls witnesses for the facts of the case):-

The counsel/(defending officer) makes an opening address (or hands in written address which is read, _____, marked....., signed by the president/(judge-advocate) and attached to the proceedings.

Where the address of the counsel/(defending officer) is not in writing the attached to court shall record so much as appears to them material, and the attached record shall be the proceedings.

The counsel/(defending officer) proceeds to call witnesses.

(The evidence of defence witnesses will be recorded on a separate sheet).

Pint witness for(No....., rank.....,
name.....

the defence ship/(establishment), being duly sworn/

(affirmed)is examined by the accused/(counsel for defending officer) :-

.....

Cross-examined by the prosecutor:.....

Re-examined by the accused/(counsel/defending officer) :-

.....

Questioned by the court :-

(**Instruction:** -(1) The fact that rule 212 (2), (3) and (5) has been complied with
must be recorded at the conclusion of the evidence of each witness.

(2) If the prosecutor declines to cross-examine that fact must be recorded.

(3) The evidence of witnesses to character, if any, shall be taken in the same manner as witnesses to the facts.)

VARIATIONS

Recalling witnesses (rule 215)

(1) At the request of the prosecutor (*or* of the accused);.....

(No....., rank....., name..... ship etc.) is recalled and examined on his former oath/(affirmation) through the president/(judge-advocate) and states as follows:-

.....

or

(2) The prosecutor with leave of the court calls/(recalls)..... (No....., name....., Rank....., ship etc.), for the purpose of rebutting a material statement made by..... a witness for the defence. The witness being duly sworn/(affirmed) on his former oath/(affirmation) being examined by the prosecutor states as follows :-

..... (set out with any cross-examination, re-examination etc.)

or

(3) The prosecutor calls (or recalls) in reply to the witness(es) as to character called by the accused..... The witness being duly sworn/(affirmed) on his former oath/(affirmation), being examined by the prosecutor states as follows :-

.....(set out with any cross-examination, re-examination etc.)

or

(4) The court in accordance with rule 215 (4) calls (or recalls)..... who being duly sworn/(affirmed) on his former oath/(affirmation) states in reply to the president (or judge-advocate) as follows:-

*(Instructions:-*In (1), (2) and (3) witnesses must be called or recalled before the closing address of or on behalf of the accused In (4) witnesses may be called by the court at any time before the finding; in this case the accused or counsel or defending officer should be given the opportunity of asking further questions through the court.)

ADJOURNMENT TO PREPARE ADDRESSES, ETC.

The court at the request of the accused/(counsel/defending officer adjourn until..... to enable the accused/(counsel/defending officer) to prepare his address

The Court, at the request of the prosecutor adjourn until. to enable the prosecutor to prepare his reply.

The court at the request of the judge-advocate adjourns until
enable him to prepare his summing-up

The accused/(counsel or defending officer) makes the following closing address (or hands in a written closing address), which is read, marked..... signed by the president/(judge-advocate) and attached to the proceedings.

Or

The accused/counsel or (defending officer) declines to make a closing address.

The prosecutor makes the following reply (or hands in a written closing address), which is read, marked, signed by the president/(judge advocate) and attached to the proceedings.

Or

The prosecutor declines to reply.

SUMMING UP

The judge-advocate makes the following summing up (or, if the summing up is in writing, hands in a written summing up, which is read, marked signed by the president and attached to the proceedings.

Or

The judge-advocate and the court think a summing up unnecessary.

The occasion when the prosecutor's closing address must precede that of
(Instruction:- (1) the accused/(counsel or defending officer) is given in rule 151.

Where the address or the prosecutor/(counsel or defending officer) is not in writing, the court should record as much as appears to them material, and so much as the prosecutor/(counsel or (2) defending officer) requires to be recorded.

Care must be taken, whether a request is made or not, to record every point brought forward in the defence or in mitigation of punishment.

If the address of the accused is not in writing and is delivered by himself, the material portions should be taken down in the first person, and as nearly as possible in his own words.)

FINDING

The court is closed for the consideration of the finding.

The judge-advocate, if any, retires.

(1) Acquittal on all charges

The court find that the accused..... (No....., rank..... name.....ship..... /establishment)..... is not guilty of the charge/(or all the charges)/ (and honourably acquit him of the same).

Signed at..... this..... day of
.....19

(Judge-Advocate).

President.

(2) Acquittal on some but not

all charges.

.....is not guilty of the..... charge(s) /(and honourably acquit him of the same), but is guilty of the..... charge(s).

(3) Conviction on all charges

..... is guilty of the charge/(or, all the charges).

(4) Special findings

(a)..... is guilty of the charge(s) and guilty of the..... charge with the exception of the words..... (for, with the exception that..... (set out).....).

or

(b)..... is not guilty of (desertion) but is guilty of (absence without leave).

(Instructions:-Any special finding permitted by rule 155 will be framed as far as possible in accordance with (a).

Any special finding allowed by sections 112 or 113 of the Ordinance may be expressed in accordance with (b).

(5) Reference to confirming authority

Rule 155 (3)

The court find as regards the right charge that the accused did (set out facts which the court find to be proved); but doubt whether the facts proved show the accused to be guilty of the offence charged, or of the offence of..... (any of the offences of which the accused might under the Ordinance legally be found guilty on the charge as laid). They therefore refer to the confirming authority for opinion, and adjourn.

Or Rule 155 (7)

(NOTE:-This applies only to alternative charges)

The court find that the accused did (set out such particulars of the charge as the court find to be proved); but doubt whether such facts constitute in law the offence stated in the charge or in the charge.

They therefore refer to the confirming authority for an opinion, and adjourn

(in either case)

The court re-assemble on the..... day
of.....19.....

The opinion of the confirming authority is read, marked signed by the president and attached to the proceedings.

The court now find the accused..... (No....., rank.....,name..... ,
ship/establishment) is(the findings to be recorded in the usual manner).

Signed at thisday
of.....19.....
(Judge-Advocate). (President).

(6) insanity (rule 217)

The court find that the accused..... (No rank....., name, ship/establishment) committed the acts/(act) alleged as constituting the offence(s), but by reason of unsoundness) of mind, was incapable of knowing the nature of those acts/(that act);

Or

but by reason of unsoundness of mind, was incapable of knowing that those acts were wrong/(that act was wrong)/(or, contrary to law).

Signed at..... this day of19.....

(Judge-Advocate).

(President).

PROCEEDINGS ON CONVICTION

(Before sentence)

Evidence of character.

..... (No, rank Name ship etc.) is duly sworn/(affirmed).

Questioned by the president:

What record have you to produce in proof of former convictions against the accused and of his character and particulars of service?

Answer:

I produce a statement certified under the hand of the officer having custody of the service (or other official) records.

The statement is read, markedright, signed by the president/ (judge-advocate), and attached to the proceedings.

Question:-Is the accused the person named in the statement you have heard read?

Answer: -.....

Question:-Have you compared the contents of the above statement with the service (or other official) records?

Answer: -.....

Question:-Are they true extracts from the service (or other official) records, and is the statement of entries in the conduct sheet a fair and true summary of those entries?

Answer: -.....

Cross-examined by the accused (or by counsel/defending officer).....

Re-examined

Or

(The accused declines to cross-examine this witness).

If any evidence other than documentary, is given the fact that rule 212(2), (3)
(Instructions:-(1) and (5) have been complied with must be recorded.

Any further question may be put and any evidence produced which the court require as to
any point respecting the character and service of the accused on which the court desire to
(2) have information for the purpose of their sentence.

At the request of the accused or by the direction of the court the service or other official
books or in the certified copy of the material entries therein must be produced for the
(3) purpose of comparison with the statement.

The accused is entitled to call the attention of the court to any entries in the service or other
official books or in the certified copy above mentioned and to show that they are inconsistent
(4) with the statement.)

Question:-Do you wish to address the court on the evidence as to character and particulars of
service and in mitigation of punishment?

Answer: -right.(The accused (or counsel/defending officer) hands in a written address,
which is read, marked....., signed by the president/(judge-advocate), and attached to
the proceedings.)

The court is closed for the consideration of the sentence-.

SENTENCE

(Instruction: - The provisions of sections 80 and 81 of the Ordinance must be carefully attended
to by the court in passing sentence.)

The court sentence the accused(No, rank, name, ship/(establishment) :-

(Instruction: - The sentence is to be marginally noted in every case).

(a) to suffer death by being hanged by the neck - Death
until he be

or

to suffer death by being shot to death.

(b) to suffer rigorous imprisonment for..... years, - Rigorous imprisonment.
(or. months or days).

(c) to suffer simple imprisonment for years, - Simple imprisonment.
(or, months or days)

(d) to be dismissed from the service. - Dismissal.

(e) to undergo detention for years, - Detention.
(or, months or days).

(f) to take rank and precedence as if his appointment - Forfeiture of
seniority of rank

to rank of bore date or to take precedence
in the rank held by him, as if his name had appeared
..... (a specified number of) places lower in the Navy List:

(g) to forfeit(years/months/days)/time Forfeiture of time for promotion to the rank of..... promotion.

(in case of subordinate officers only).

(h) to be reduced to the rank of - Disranking.

or

leftleftto be reduced to (a lower rank).

(i) to put under stoppages of pay and allowances - Penal deduction

until he has made good the sum of.....in

..... respect of.....

or

until he has made good the value of the following articles (state the articles and the value of each article).

(j) to be severely reprimanded; - Severe reprimand.

or

to be reprimanded. Reprimand.

RECOMMENDATION TO MERCY

The court recommend the accused to mercy on the ground that Signed at
....., this day of19.....

Judge-Advocate).

(president).

REVISION

At on the day of.....19....., at..... hours, the court re-assemble by
order offor the purpose of reconsidering their (finding and/or sentence).

Present the same members as on the

(*Instruction:-* If a member is absent and the absence will reduce the court below the
required minimum, or if he is the president; and it appears to the members present
that such absent member cannot attend within a reasonable time, the president, or in
his absence, the senior member present, shall thereupon report the case to the
convening officer.)

The letter (order or memorandum) directing the re-assembly of the court for the revision and
giving reasons of the confirming authority for requiring a revision of the finding/(finding and
sentence)/(of sentence) is read, marked signed by the president/(judge-advocate) and
attached to the proceedings.

If the confirming officer so orders, additional evidence may. be taken on revision
(*Instruction:-* See section 133 of the Ordinance.)

REVISED FINDING:-

The court having attentively-considered the observations of the confirming authority, and the whole of the proceedings:-

(a) do now revoke their finding and sentence, and find and sentence the accused to
.....

or

(b) do now revoke their sentence, and now sentence the accused to
.....

or

(c) do now respectfully adhere to their sentence/(or, finding and sentence).

Signed at..... This day of
.....19.....

(Judge-Advocate).

(President).

(Note:-The judge-advocate shall not be present during the consideration of the finding).

CONFIRMATION

(i) Confirmed.

or

Confirmed. I direct that the sentence of imprisonment shall be carried force prison)/(or, in a
(ii) military in naval custody).

or

(iii) I confirm the finding and sentence of the court but mitigate/(remit, or, commute) the
sentence to.....

or

(iv) I vary the sentence so that it shall be as follows:-.....

and confirm the finding and sentence as so varied.

or

(Where it is necessary to confirm the special finding on several alternative charges):-

I confirm the finding(s) on andcharges and I confirm the special
(v) finding relating to the and
charges, and declare that the finding amounts to a finding of guilty on the and
.....charges. I confirm the sentence but mitigate/(remit. or, commute) the sentence to
.....

or

(Where the confirming officer desires partly to reserve his confirmation) :

I confirm the finding of the court on the..... and..... charges, and
reserve for confirmation by superior authority the finding on the.....
(vi) and..... charges and the sentence.

or

(vii) I confirm the finding of the court. but reserve the sentence for confirmation by superior authority.

or

(viii) I confirm the finding of the court and sentence of the court as

to....., and reserve the sentence so far as it for confirmation by superior authority

(Where the finding is not confirmed) :

(ix) Not confirmed

or

(Where a plea in bar of trial had been offered under rule 145):

The finding of the court that the plea in bar of trial is proved/(or, not proved) is
(x) confirmed (or, not confirmed).

or

(Where the court find that the accused is of unsound mind and consequently 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 that it was wrong or contrary to law):-

(xi) Confirmed/(or, not Confirmed).

Signed at..... this..... day of
.....19....

(Signature of confirming officer).

*(Instruction:-*Any remark of the confirming officer should be separate from, and form no part of the proceedings.)

PROMULGATION

Promulgated and extracts taken at this day
of..... 19.....

Signature of officer in charge of Documents.

(Instruction:- Proceedings which are not confirmed must be promulgated).

D.FORM FOR .ASSEMBLY AND PROCEEDINGS OF A SUMMARY GENERAL COURT-MARTIAL

(a) Order convening the court

At....., this day of, 19.... (in cases falling under clause (a)a of sub-section (1) of section 98):-

WHEREAS it appears to me, the undersigned, an officer empowered in this behalf by virtue of clause (a) of sub-section (1) of section 98 of the Navy Ordinance, 1961 :-

or

(in cases falling under clause (b) of sub-section (1) of section 98):-

WHEREAS it appears to me, the undersigned, an officer now in command ofbeing a flotilla/(or, a squadron) of the Bangladesh Navy, on active service :-

.....

that the person(s) named in the annexed schedule, and being subject to the Navy Ordinance, 1961, has/(have) committed the offence(s) in the said schedule mentioned; (and whereas I am of the opinion that it is not practicable with due regard to discipline and the exigencies of the service that the said offence (s) should be tried by a general or district court-martial);

I hereby convene a summary general court-martial to try the said
person(s), and to consist of officers hereunder detailed :-

President.....

Members.....

Judge-Advocate (if any).....

(to be inserted only in cases falling under clause (b) of section 98 (1).)

Signature of convening officer

(b) Certificate of President as to proceedings

I certify that the above court assembled at..... on the..... day of....., 19....., and duly tried the person(s) named in the schedule, and that the plea, finding and sentence in the case of (each)such person were as stated in the third and fourth columns of that schedule.

I also certify that the members of the court, the judge-advocate, the witnesses, the interpreter, and the officers under instruction (if any) were duly sworn/(or affirmed).

Signed at....., this....., day of.....19.....

Signature of the President

(c) Confirmation

I have dealt with the finding(s) and sentence(s) in the manner stated in the last column of the said schedule, and subject to what I have stated, I hereby confirm the above finding(s) and sentence(s).

*I direct that
the accused be
not committed
to
prison/(custody)
until further orders. *see* section 156 of the Ordinance.

*(to be struck out, if inapplicable.) Signature of confirming officer.

(d) Promulgation

Promulgated and extracts taken at..... this.....day of....., 19.....

Signature of officer incharge of Document

SCHEDULE

Date.....

No., rank, name, and ship/establishment of the accused'	Offence charged	Plea	Finding, and sentence (if convicted)*	How dealt with by confirming officer

(Signature)..... President

(Signature).

Convening Officer.

*(Recommendation to mercy, if any, to be inserted in this column.)

**E.FORM OF STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE
OF THE ACCUSED**

(Reproduced in the notes to rule 50)

III. FORMS OF SUMMONS TO WITNESSES

(a) In the case of a summary of evidence

(Reproduced in the notes to rule 50.)

(b) In the case of a court-martial (section 116

of the Ordinance.)

(Reproduced in the notes to rule 208.)

III. FORMS OF OATHS AND AFFIRMATION

(Reproduced in the notes to rule 140.)

FIFTH APENDIX
WARRANTS UNDER SECTIONS 143, 144, 145 AND
148 OF THE NAVY ORDINANCE, 1961

NOTE

The forms given in this appendix are to be amended, as necessary, to suit the requirements of each case: (*see* **Rule 4**).

FORM A.

WARRANT under section 145 (1) of the Navy Ordinance, 1961, for commitment for safe custody to civil prison a person subject to the Ordinance, sentenced to DEATH.

To

The Superintendent of the..... Prison

WHEREAS..... (No., rank, name) of

B.N.S..... was by a general/(summary general) court-martial held at..... convicted of the offence of.....;

AND WHEREAS the said general/(summary general) court-martial on the..... day of..... 19..... passed the sentence of death upon the said..... (name);

AND WHEREAS the said sentence has been duly confirmed by..... (name and description of confirming authority) as required by law.

This is to require and authorise you, the said Superintendent, to receive and hold the said..... (name) into your custody in the said prison as by law is required, together with this warrant, until such time as a further warrant in respect of the said..... (name) shall be issued to you; and for so doing this shall be your warrant.

Given under my hand at.....this
the.....day of.....
19.....

(Signature)

Commanding Officer.

(Or other officer mentioned in rule 245).

FORM B.

WARRANT under section 145 (1) of the Navy Ordinance, 1961, for obtaining a person sentenced to death from the custody of the civil prison.

To

The Superintendent of the.....Prison.

WHEREAS..... (No., rank, name,) late of B.N.S..... having been sentenced to suffer death on the..... day of..... 19.... by a general or (summary general) court-martial held at..... is held in the said prison under a warrant issued by.....;

AND WHEREAS the said sentence having been duly confirmed by..... (name and description of confirming authority) as required by law, an order to carry out) the said sentence has been issued to me..... (name and description of the officer to whom the order is issued);

This is to require and authorize you) to deliver forthwith the said..... (name) to the officer (or master chief petty officer, chief petty officer or petty officer) bringing this warrant.....

Given under my hand at..... this the..... day of..... 19.....

(Signature)

(Officer to whom the order is issued).

**Enter name or designation of the officer who signed the original warrant.

FORM C

ORDER" FOR CARRYING OUT A SENTENCE OF DEATH

TO

The Officer In-Charge.....(military/naval/air force) Detention Barracks
at.....

WHEREAS..... (No., rank, name) of B.N.S..... was by a general (summary
general) court-martial held at..... convicted of the offence of *.....*

AND WHEREAS the said general (summary general) court-martial on the..... day
of..... 19..... passed the following sentence upon the said..... (name), that is to
say..... (sentenced to be entered in full):.....

AND WHEREAS the said sentence has been duly confirmed by..... (name and
description of confirming authority) as required by law.

This is to require and authorise you to receive the said..... (name) into your custody
together with this order and there carry the aforesaid sentence of death into execution according
to law, and for so doing this shall be your authority.

The sentence shall be executed on the.....day of..... 19..... ..at
.....hours,at....., (place of execution)

Given under my hand at.....this the.....day of.....19.....

(Signature)
Confirming Officer

(Or; other officer mentioned in rule 245).

*If there are several offences, state all of them. The offence should be stated in the words of the charge, on which the accused was convicted, but if modified by the finding, as so modified.

† Enter the date on which the original sentence was signed.

†† Enter any general or special instructions.

FORM D

WARRANT for use when the sentence of a person under sentence of death and committed to custody in a civil prison, is commuted to a sentence of imprisonment to be served in the same prison; (section 145 of the-Navy Ordinance, 1961).

To

The _____ Superintendent _____ of
the.....Prison.

WHEREAS.....(No., rank, name) late of B.N.S..... is held in
the.....prison under a warrant issued
by.....(name and designation of officer who signed the original
warrant) in pursuance of a sentence of death passed upon him by general (summary general)
court-martial held at.....on.....;

AND WHEREAS.....(name and designation of authority commuting the sentence) has in the
exercise of the power conferred upon him by the Navy Ordinance, 1961, passed the following
order regarding the aforesaid sentence;

that _____ is _____ to _____ say:
.....

(order _____ to _____ be _____ set _____ out _____ in
full).....

This is to require and authorise you to keep the said. (name) in your custody
together with this warrant, and there to carry into execution the punishment of imprisonment
under the said order according to law ; and for so doing this shall be your warrant. And this is
further to require and authorise you to return to me the original warrant of commitment in lieu
whereof this warrant is issued.

The period of such imprisonment will reckon from.....(Enter date on which the
original sentence was signed).

Given under my hand at.....this theday
of.....19.....

(Signature)
Commanding Officer

FORM E

WARRANT for use when a person who, after having been sentenced to death, has been committed to custody in a civil prison is to be delivered into naval custody (for purpose other than carrying out the sentence of death); (Section 145, Navy Ordinance, 1961).

To,

The Superintendent of the.....Prison.

WHEREAS..... (No, rank, name) of B.N.S.....is held in the.....prison in pursuance of a sentence of death passed upon him by a
general (summary general) court-martial held
at.....on.....:

AND WHEREAS.....(name and designation of authority issuing order).....has in the exercise of the power conferred upon him by the Navy Ordinance, 1961, passed the following order regarding the afore said sentence, that is to say.....(order to be set out in full).....

This is to require and authorise you to forthwith deliver the said.....(name).....to the officer/(or Master Chief Petty officer, chief petty officer or petty officer) bringing this warrant, and for your so doing this shall be your sufficient warrant.

Given under my band at.....this the.....day
of.....19.....

(Signature)
Commanding Officer,

FORM F

WARRANT for use when person who, after having been sentenced to death, has been committed to custody in a civil prison, is to be released in accordance with orders made under the Navy Ordinance, 1961.

To

The Superintendent of the.....Prison.

WHEREAS.....(No., rank, name) late of B.N.S.....

.....is held *in* the prison under a warrant issued by.....

.....(name or designation of officer who signed the original warrant) in pursuance of a sentence of death passed upon him by a general (summary general) court-martial held at.....on.....;

AND WHEREAS.....(name and designation of authority issuing order) has in the exercise of the power conferred upon him by the Navy Ordinance, 1961, passed the following order regarding the aforesaid sentence, that is to say;.....(order to be set out in full).....

This is to require and authorise you to forthwith release the said..... (name) from your custody, unless he is liable to be detained for some other cause; and for your so releasing him this shall be your sufficient warrant.

Given under my hand at.....this the.....day of.....19

(Signature)

Commanding Officer.

FORM G

WARRANT of commitment for use when prisoner is sentenced to be undergone in a civil a rigorous or simple imprisonment which is to prison: (Section 143, Navy Ordinance, 1961)
To

The Superintendent of the..... prison.

WHEREAS at a.....* court-martial held at.....on the.....day of.....19

(No; rank, name) of B.N.S. was duly convicted of.....**

AND WHEREAS the said.....* court-martial on the.....

day of19.....passed the following sentence upon the said.....(name) that is to say.(sentence) to be entered in full, but without signature).

AND WHEREAS the sentence has been duly confirmed by..... (name and designation of confirming authority) as required by law.

This is to require and authorise you to receive the said.....(name) into, your custody together with this warrant and there to carry the aforesaid sentence of rigorous (or, simple) imprisonment into execution according to law and for so doing this shall be by your warrant.

The sentence has effect from (Enter date upon which the original sentence was signed).

Given under my hand at.....this the.....day of. 19.

(Signature)
Commanding Officer
(Or, other officer mentioned in rule 245)

*General, District or Summary-General.

** If there are several offences, state all of them. An offence should be stated in the words of the charge on which the said person was convicted, but if modified by the finding, as so modified.

† Add, if necessary, with a remission of.

FORM H

WARRANT of commitment for use when a prisoner is sentenced to imprisonment which is to be undergone in a military, naval or air force prison: (Section 143, Navy Ordinance, 1961).

To

The Officer in charge Military, (Naval or Air Force) Prison a (name of such prison).

WHEREAS at a.....* court-martial held aton the day
of.....19.....(No: rank, name) of B. N. S was duly convicted
of.....,**

AND WHEREAS the said.....* court-martial on the..... day
of.....19.....passed the following sentence upon the said.....
(name), that is to say..... (sentence to be entered in full, but without signature);

AND WHEREAS the said sentence has been duly confirmed by.....(name and designation
of confirming authority) as required by law.

This is to require and authorise you to receive the said..... (name) into your custody together
with this warrant and there to carry the aforesaid sentence of imprisonment into execution
according to law, and for so doing this shall be your warrant.

The sentence has effect from. (Enter date upon which the original sentence was
signed).

Given under my hand at.. .. this the.. day of
.....19.. ..

Commanding Officer
(Or, other officer mentioned in rule 245)

* General, District or Summary-General.

** The offence is to be briefly stated here, as "desertion" "theft" "receiving stolen property"
"fraud" "disobedience of lawful command" or as the case may be.

† Add, if necessary, with a remission of.

FORM I

WARRANT for use when a sentence of imprisonment is varied by superior authority; (Section 148, Navy Ordinance, 1961).

To

The Superintendent of the..... Prison.

WHEREAS.....(No., rank; name) late of B.N.S.....

.....is confined in the. prison under a warrant issued by.
..... (name and designation of officer who signed the original warrant), in pursuance of a
sentence of.....*passed upon him by a.....**court-martial held
at.....on.....

AND WHEREAS.....(name and designation of authority varying the sentence) has in
the exercise of the powers conferred upon him by the Navy Ordinance, 1961, passed the
following order regarding the aforesaid sentence, that is to say.. (order to be
set out in full).

This is to require and authorise you to keep the said. (name) in your custody
together with this warrant and there to carry into execution the punishment of rigorous (or,
simple) imprisonment under the said order according to law, and for so doing this shall be your
warrant. The period of such imprisonment shall reckon from the (Enter date upon which the
original sentence was signed).

Given under my hand at.....this the.....day of
.....19.....

Commanding Officer,
(Or, other officer mentioned in rule 245

*Enter original sentence. If this was reduced by the confirming officer or other superior authority
the sentence should be entered thus: "2 years' rigorous imprisonment reduced by the confirming
officer to 1 year"

**General, District or Summary-General.

FORM J

WARRANT for use when a prisoner is pardoned or his trial set aside, or when the whole sentence or the unexpired portion thereof, is remitted; (Section 148, Navy Ordinance, 1961).

To

The Superintendent of the.....Prison.

The Officer in Charge Military/Naval/Air Force Detention Barracks.

WHEREAS (No., rank, name) late of B.N.S..... is confined in the
.....prison (detention barracks) under a warrant issued by(name and
designation of officer who signed the original warrant) in pursuance of a sentence
of.....*passed upon him by a ** court-martial held at.. . . . ,

AND WHEREAS.....*has, in the exercise of the powers conferred upon him by the
Navy Ordinance, 1961, passed the following order regarding the aforesaid sentence, that is to
say.....(order to

be set out in full).

This is to require and authorize you to forthwith discharge the said (name) from your
custody, unless he is liable to be detained for some other cause; and for your so discharging him
this shall be your sufficient warrant.

Given under my hand at.. . . . this the.. . . . day of.....19.....

Commanding Officer,

(Or, other officer mentioned in rule 245)

*Enter original sentence. If this was reduced by the confirming officer or other superior authority the sentence should be entered thus: "2 years rigorous imprisonment reduced by confirming officer to 1 year".

**General, District or Summary-General.

*Name and designation of authority pardoning the prisoner, mitigating the sentence or setting aside the trial.

FORM K

WARRANT for use when prisoner is to be delivered into Military, Naval or Air Force custody:
(sec. 146, Navy Ordinance, 1961.)

To

The Superintendent of the..... Prison.

WHEREAS.....(No., rank, name) late of B.N.S. is confined in the.
. prison under a warrant issued by.(enter name and designation of officer who signed the
original warrant) in pursuance of a sentence of.....*passed upon him by
a.....**court-martial held at.....on.....

AND WHEREAS.. ..(name and designation of authority passing the order) has in the
exercise of the powers conferred upon him by the Navy Ordinance, 1961, passed the following
order regarding the aforesaid sentence, that is to say (order to be set out in full).

This is to require and authorize you to forthwith deliver the said.(name) to the
officer (or, MCPO, chief petty officer, or petty officer) bringing this warrant,

Given under my hand at this the.....day of19.....

Commanding Officer,

(Or, other officer mentioned in rule 245).

*Enter original sentence,. If this was reduced by the confirming officer or other superior authority the sentence should be entered thus: "2 years" rigorous imprisonment reduced by confirming officer to 1 'year".

**General, District or Summary-General.

FORM L

WARRANT of commitment of person guilty of contempt of court-martial when a fine is imposed: [Sec. 95(2) of the Navy Ordinance, 1961, and Sec. 480 of the Code of Criminal Procedure, 1898].

To

The Superintendent of the right right.....Prison.

WHEREAS at a..... *court-martial held on this day at. (name and description of the offender) in the presence (or, view) of the court, committed wilful contempt;

right rightAnd WHEREAS for such contempt the said..... (name of offender) has been adjudged by the court to pay a fine of Taka. or, in default to suffer simple imprisonment for the space of (state the number of months or days);

This is to require and authorize you, the Superintendent of the said jail to receive the said.....(name of offender) into your custody, together with this warrant, and him to safely keep in the said jail for the said period of..... (term of imprisonment) unless the fine is sooner paid, and on receipt thereof, forthwith to set him at liberty, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand at. this the..... day of.
19.....

(Signature)
President,
*.....court-

martial.

*General, District or Summary-General.

FORM M

WARRANT OF ARREST

((Reproduced in the notes in rule 62).)

SIXTH APPENDIX

FORMS OF COURT-MARTIAL WARRANTS

1. WARRA for convening and confirming General –Court Martial under the Navy Ordinance, 1961.

To

The Officer, not being under the rank of Captain, commanding.

WHEREAS I am empowered by section 96 of the Navy Ordinance 1961 (herein referred to as the said Ordinance) to direct any warrant to any prescribed officer of the Bangladesh Navy,

under my command giving him an authority to convene general court-martial for the trial under the said Ordinance of any person under the command of such last mentioned officer who is subject to the said Ordinance and also to execute in respect of the proceedings of such court-martial the power of confirming the findings or sentences thereof in accordance with the said Ordinance and with such restrictions reservations or conditions as I may think fit.

Now THEREFORE, in exercise of the said powers I do hereby authorize and empower you (or the officer on whom your command may devolve during your absence not under the rank of Captain) from time to time as occasion may require to convene general court-martial, for the trial in accordance with the said Ordinance and the rules made there under of any person under your command who is subject to the said Ordinance and is charged with any offence mentioned in the said Ordinance and is liable to be tried by a general court-martial.

AND I do hereby empower you (or the officer on whom your command may devolve during your absence not under the rank of Captain) to receive the proceedings of such court-martial and confirm the findings and sentences thereof and to exercise as respects these courts and the persons tried by them the powers created by the said Ordinance in the confirming officer in such manner as may be best for the good of the service.

PROVIDED always that if by the sentence of any general court-martial an officer has been sentenced to suffer death, imprisonment, or to be dismissed from the service or any sailor has been sentenced to suffer death or imprisonment for more than two years you shall in such case as also in the case of any other general court-martial in which you shall think fit so to do withhold confirmation and transmit the proceedings to me;

AND for so doing this shall be as well to you as to all others whom it may concern a sufficient warrant.

Given under my hand at.. . . . this the.....day of..
.. 19..

(Signature)
Chief of the Naval Staff
Bangladesh Navy.

II. WARRANT for convening and confirming District Court-Martial under the Navy Ordinance 1961.

To

The Officer not being under the rank of Lieutenant Commander, commanding
.....

WHEREAS I am empowered by section 97 of the Navy Ordinance 1961 (hereinafter referred to as the said Ordinance) to direct any warrant to any prescribed officer of the Bangladesh Navy under my command giving him as authority to convene district court-martial for the trial under the Ordinance of any person under the command of such last mentioned officer who is subject to the said Ordinance and also to execute in respect of the proceedings of such court-martial the power of confirming the findings or sentences thereof in accordance with the said Ordinance and with such restrictions reservations of conditions as I may think fit;

Now THEREFORE, in exercise of the said powers, I do hereby authorize and empower you (or the officer on whom your command may devolve during your absence not under the rank of Lieutenant Commander) from time to time as occasion may require to convene district court-martial for the trial in accordance with the said ordinance and the rules made there under of any person under your command who is subject to the said Ordinance and is charged with any offence mentioned in the said Ordinance and is liable to be tried by a district court-martial.

AND I do hereby empower you (or the officer on whom your command may devolve during your absence not under the rank of Lieutenant Commander) to receive the proceedings of such court-martial and confirm the findings and sentences thereof and to exercise as respects these courts and the persons tried by them, the powers created by the said Ordinance in the confirming officer, in such manner as may be best for the good of the service;

AND for so doing, this shall be, as well to you as to all others whom it may concern. a sufficient warrant.

Given under my hand at.....this the.....day
of.....19.....

(Signature)

Chief of the Naval Staff

Bangladesh Navy

SEVENTH APPENDIX

PRESCRIBED FORM OF NOTICE UNDER CLAUSE(2) OF

SECTION 169 OF THE NAVY ORDINANCE,

1961

(Reproduced in the notes to the relevant section).

EIGHT APPENDIX

PRESCRIBED FORM OF ENROLMENT

Under Section 69 of the

Navy Ordinance, 1961

ENROLMENT FORM

F (SP) - 1

IN

BANGLADESH NAVY

Town/Village

Union Name & Number Police Station
District.

4. What are your educational qualification? 4.
.....

5. Are you submitting any educational
Certificate?
If so give details.

6. (a) Are
you a
citizen of
Bangladesh 6. (a)
by birth, descent, migration or
naturalization?

(b) Have you are a citizen by migration (b).....

or naturalization :

(i) Have
you been
registered
as (i).....
a citizen of Bangladesh or do
you claim exemption from
registration?

(ii) What is the date of your (ii).....

arrival in Bangladesh 7

(iii) What was the place of your (iii).....

birth and the address of your

permanent place of residence

before arrival in Bangladesh?

7. What is your religion, caste and tribe? 7.....

8. What is your permanent address in Bangladesh?

(a) Village/Mohalla 8. (a)

(b) Union name & number (b)

(c) Post Office (c)

(d) Thana/Upazila (d)

(e) pargana or Tehsil (e)

(f) District (f)

9. (a) Are you married? 9. (a).....

(b) If so, (i) When? (Date) (b) (i)

(ii) Nationality of wife? (ii)

Note :-Candidates who are married are not eligible for enrolment as Boys or Apprentices, nor are they permitted to marry until attaining man's sailor. Candidates who are married to or have entered into a promise of marriage with a person who is not a citizen of Bangladesh are also not eligible for enrolment.

(c) Are
you aware
that
throughout
your term
of Naval (c).....

Service you are not permitted to marry, or enter into a promise of marriage with, a person who is not a citizen of Bangladesh, and that otherwise disciplinary action (including dismissal from (Service) will be taken against you?

10. What is the name of your;

(a) Next of kin. (Wife, if married)

(b) Relationship.

(c) His or her full address.

10.(a).....

(b).....

(c).....

11. Give the names and addresses of two 11. responsible persons from whom your character may be verified:

(1) Name

Full Address

(2) Name.....

Full Address.....

12. Do

you

now

belong

to any

of the

armed 12.....

forces of Bangladesh, or their Reserves,
or the Police force, or any other force
raised or maintained in Bangladesh?

13. Have you ever served in any forces named in question 12 above, or

similar forces of any other country, if so,

(i) What was your last unit?

(i)

(ii) What was the reason for termination
of your services? Produce your
other certificate of

(ii)

discharge or
termination of service.

14. (a)

Are

you

now in

receipt

of or

have 14.(a).....

you ever received a disability or
other pension, gratuity, retaining
fee, bounty, from the Government
or any foreign Government?

(b) If so, give details.

(b)

15. (a) Do you desire your former service

15. (a).....

as
declared
by you
to be
reckoned
towards
any
benefit
in pay,
pension

or gratuity or any other benefit,
if the same be admissible under the rules ?

(b) If
so, are
you
willing
to

refund (b).....
the you)
in accordance with the current rules ?

pension, gratuity, etc. (declared by

16. Are
you at
present
employed
in civil

16.....
capacity by the Government? If so, can you
furnish written permission to leave your
employment?

(N. B.-If permission has been accorded, attach it and mention it.)

17. Are you indentured as an apprentice?

17.....

(NOTE ; -If the answer is "Yes" the recruit should not be accepted unless written permission to join Bangladesh Navy is produced from the company to which he is indentured.)

18. Have
you ever
been
arrested,
prosecuted.

18.
convicted, bound over, interned, externed,

or otherwise dealt with under any law or
rules in force in Bangladesh or in any other
country? If so, state particulars.

19. Are you aware that, during your service,

you are not permitted to belong to or to

subscribe in aid of, any political party,

association or movement?

19.

20. Are you willing to be vaccinated, re-vacci-
nated and inoculated or re-inoculated ?

20.

21. Are
you
willing
to serve
overseas
in any
part of the world and go wherever order,

by land, sea or air, and not to allow any

caste usage to interfere with your Naval

duty?

21.

22. Are you prepared to eat food cooked in

a common galley (cook house) in which
food is cooked for all communities by
cooks of any religion?

22.

(NOTE :- Meat supplied will be "halal" in messing organized by the Bangladesh Navy.)

23. Are you aware that all advancements
(promotions) in the Bangladesh Navy are
subject to vacancies even though a candidate
may be fully qualified in all respects
for advancement?

23.

24. Do
you
understand
that
throughout
your

24.

period of Naval Service, apart from your
professional duties, you will be required to
clean. all parts of your ship of establishment
except latrines, and that you will be required
to wait upon yourself and others at meal times,
clean your own eating utensils, wash your own
clothes and make your own bed ?

(NOTE :-Cleaning means sweeping, scrubbing, washing, wiping of decks (floors), mess and
other furniture, etc., polishing metal work, chipping, painting, _etc.)

25. Are you aware that on enrolment you
will be subject to the Navy Ordinance,
1961, and the rules, regulations, instructions
and orders made or issued there under and
in force from time to time?

25.

26. Are you willing to be enrolled in the
Bangladesh Navy?

26.

27. * Are you willing to serve in the

27.

Branch?

or

*Are you willing to serve in any
Branch for which you may be found
suitable by the competent
naval authority?
(*Delete whichever is not applicable.)

28.

Are

you

aware

that

neither

you

nor

28.

your parents or other relations will be
entitled to request for the
change of your Branch.

RECRUIT'S DECLARATION

I.....son ofdo

solemnly declare and affirm that the answers given by me to the questions in the above enrolment form are true and correct. I understand that if they are found to be false, I shall be liable to be punished under sections 69 of the Navy Ordinance, 1961.

2. I do hereby agree to be enrolled as a....., from....., 19.. .., and undertake to .serve honestly and faithfully as a Sailor in the Bangladesh Navy for a period of **years calculated from the date of my attaining the age of 17 years or the date of completion of my probationary period, which-ever be later, provided my services are so long required.

[Note:- (Insert 'Artificer Apprentice', 'Boy' or 'Direct entry man' as applicable.) ** (Insert EIGHTEEN for Artificer Apprentice and TWELVE for the others).]

3. I understand that I will not be entitled to be discharged on expiry of my term of engagement:

- (a) if war is imminent or existing; or
- (b) if the strength of the Branch of service to which I belong is five percent or more below its sanctioned strength or will be so on my discharge; or

(c) if agree to re-engage in accordance with the regulations.

4. I further understand that in the event of my deserting, the period between the date of desertion and that of apprehension or surrender shall not be taken into account in determining the length of service rendered by me.

5. I also understand that on expiry of my term of engagement or re-engagement, I shall be liable to be transferred to the Bangladesh Naval Fleet Reserve for such period and for such purposes as may be specified in the regulations.

6. Witness my hand at.. .. this.. .. day of.....19.....

Witnesses :

.....

Recruit's signature in full

- 1.
(Signature and rank of Enrolling Officer.)
- 2.

Designation. §

Full Address.

§ Place of enrolment.

†† Date of enrolment.

The witness should be a responsible person *e. g.* a Magistrate, a Gazetted Officer, Principal of a college, Headmaster of a school, Tehsildar, a Police Officer, etc., and must personally know the individuals whose signatures he attests. He must be able to vouch for the relationship or identify (in the case of legal guardian) of the person who affixes his signature
§ of thumb impression on the above certificate.

FORM OF CONSENT

I, son of....., do hereby solemnly declare and affirm that my son/wardhas my permission to be enrolled for service in the Bangladesh Navy as herein before stated in the enrolment form. I further certify that the answers given by my son/ward to the questions in the above enrolment form are true and, correct.

Father/Mother/Legal Guardian's
Signature in full.

Place

Full Address.....

Date. 19

.....

Witnesses :-

1.

(Signature and rank of Enrolling Officer).

2.

Designation.*

Full Address.

*The witness should be a responsible person *e.g.* Magistrate, a Gazetted Officer, Principal of a College, Headmaster of a School, a Tehsildar, a Police Officer, etc., and must personally know the individuals whose signatures he attests. He must be able to vouch for the relationship or identity (in the case of legal guardian) of the person who affixes his signature or thus impression on the above certificate

CERTIFICATE OF ENROLING OFFICER

The conditions of-enrolment were read and explained to the above mentioned son of by me (or in my presence). After cautioning him that if he made any false answer to any of the questions in the enrolment form he shall be liable to be punished under section 69 of the Navy ordinance 1961. I have put the above questions to him and his answer to each question has been duly entered. I am satisfied that he fully understands all the questions put to him and agrees to the conditions of enrolment, as mentioned in his declaration. Signed at.....this the.....day of.....

19.....

(Signature and rank of
Enrolling Officer)

(Delete whichever is not applicable.)

§ Place of enrolment,

S Date of enrolment.

