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COMMAND AND STAFF TRAINING INSTITUTE
BANGLADESH AIR FORCE



Individual Staff Studies Programme (ISSP)

PROFESSIONAL SUBJET-2 : AIR FORCE LAW
PHASE-16 : PART-II

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PROFESSIONAL SUBJECT-2 : AIR FORCE LAW
PHASE-16 : PART-II

First Edition : Oct 2011

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Approved vide Air HQ/10066/Air Trg/Vol-46/64A dt 18 Jan 2011.

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PHASE-16 : PART-II
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SUBJ : PROFESSIONAL SUBJECT-2 AIR FORCE LAW

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INTRODUCTION TO THE PHASE

Purpose of the Phase

1. This Phase Note is made for the officers of the Legal Branch. It has been prepared in a way that it can cater your needs for dealing the day to day legal affairs of Bangladesh Air Force. As and when it is required you will have to deal with the legal matters and consequently, you may be asked to advise the concerned authorities on law matters. Study of this Phase Note will put you in convenient position in such cases. This Phase Note comprises topic-1 to 8. Judicious study of the Note will make you well conversant on law matters. You are advised to study also Salient features on Code of Criminal Procedure, Short introduction on Penal Code, Rules of Evidence in Military Justice System, Practical knowledge on Law of Contract and Drafting different MOU and deed of Agreements, Handling procedure of Civil Cases in BAF, Introduction on Operational Law, Applicable laws for the Military Forces and Family Laws etc.

TOPIC-1

RULES OF EVIDENCE IN MILITARY JUSTICE SYSTEM

Introduction

1. In Military Justice System is nothing but a criminal trial. Therefore, there is a need for knowing the nature of evidences to be used in any investigation or for trial purposes. These evidences are not exactly related to the Evidence Act, 1872. Some of them are exclusively service matter, knowledge and guidance while the procedures of collecting these evidences are entirely follow the provisions of Evidence Act, 1872. However, the specialty of the Rules of Evidence in Military Justice System are elaborately discussed in the subsequent paragraphs.

Rules of Evidence Applicable to Court-Martial

2. Section 131 of the Air Force Act lays down that "subject to the provisions of this Act", the rules of evidence in proceedings before courts-martial shall be the same as those which are followed in criminal courts. These rules are embodied in the Evidence Act, 1872 (reproduced in Part III of this Manual). The special provisions subject to which the Evidence Act has thus been made applicable to courts-martial are contained in Section 132 and Sections 138 to 142 of the Act. As it is known that the Evidence Act is mainly based on the English law of evidence, but modified to suit local conditions.

What Must be Proved

3. **Charge must be Proved.** As a general rule, every charge alleges, or ought to allege that the person charged can be convicted, if proved beyond doubt. The reason for the rule is the unfairness of requiring a person to meet a charge for which he is not prepared. Exceptions will be found not to conflict with this reason. In trial, the accused, having been charged with the more serious, is allowed to be convicted of the less serious offence.

4. **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 surplus age. In some cases, as in charges against a sentry for sleeping on his post, 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 they are empowered by rule 96 (4) of Air Force Act 1957 to record a special finding instead of a finding of "Not guilty".

Arrangement of the Evidence Act

5. **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:

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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 minds 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 what proof, that is, who is to give it, and how it is to be given. 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 except where it is otherwise provided; if not, it is inadmissible.

6. **Facts in Issue.** In a court-martial or criminal trial the facts which are "in issue" 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.

Facts in Issue and Relevant Facts

7. **What Evidence is Admissible.** To "consider what facts are "relevant", the Evidence Act answers this question by examining 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 from elsewhere in the Act, or by some other provision of law.

8. **Circumstantial Evidence .** Facts which are "relevant" or which are otherwise specially admitted constitute what is sometimes called "circumstantial evidence". 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. In that sit in very many cases reliance must be placed on 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.

9. 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

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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 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 reproducing the following illustration:

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

10. 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 relationship between these facts and the fact sought to be established that the accused committed the murder, as all the facts are perfectly consistent with his innocence.

Relevant Facts

Facts Forming Part of one Transaction

11. 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.

12. 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.

13. Again, 'A' is accused of causing a mutiny in the Air Force 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.

14. **Facts which are Occasion, 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 persons 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 non-commissioned officer whom an airman is accused of striking.

Facts Showing Motive or Preparation

15. Facts which show or constitute a motive or preparation for a fact in issue or relevant fact are themselves relevant, 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, 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.

16. 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 complaint is the subject of proceedings. The English law only allows such evidence in cases of rape and similar offences, but our law is wide enough to cover other crimes, e.g. robbery, causing hurt, etc.

Distinction Between a Statement and a Complaint

17. A distinction is to be marked, however, between a bare statement of the fact of 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 some one 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.

18. 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.

Act of Conspirators

19. 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 charge of mutiny or exciting mutiny, evidence of this kind may, after such 'prima facie' proof, be received against a particular prisoner.

20. **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 the 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 Dhaka 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 Dhaka that it was most improbable he could get there and back, a strong point in his favour will have been established.

Facts Showing State of Mind or Body

21. 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 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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 after wards or that he published or disseminated copies of the letter set forth as disrespectful in the charge.

27. **Facts Showing Intention.** Facts which show whether an act was intentional or accident by indicating the existence of series of acts of which it formed part are relevant.

28. **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.

Admissions and Confessions

Rules as to Admissions

29. 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.

Confession

30. 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 condition. These conditions will now be considered.

31. A confession must either admit in terms of the offence, or at any rate substantially all the facts which constitute the offence. A confession must relate to the particular crime with which the accused is charged. A confessional statement not recorded in accordance with the procedure laid down in the Section is inadmissible in evidence and cannot be proved orally by the Magistrate or by the production of the memorandum made by him.

Confession only Admissible Against Person Who makes It

32. 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 implicated 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.

33. The confession may have been made at any time 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 be "taken into consideration" 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:

- a. 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.

- b. 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.

Confession must be Voluntary

34. 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.

35. 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.

36. A confession does not cease to be voluntary merely because it appears to have been caused by 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 in consequence of threat that if the prisoner confessed he should be allowed to see his wife, would be admissible in evidence.

37. **Confession Obtained by Fraud, etc.** It is, of course, improper to endeavour 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.

38. **Confession voluntary if made after Removal of Impression.** 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. Thus, 'A' is accused of an Air Force 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.

Confession to Police Officers

39. Two provisions which are peculiar to Bangladesh law may be mentioned here:

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

- b. 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.

40. **Whole Confession must be given in Evidence.** If a confession is given in evidence, the whole of it must be given, and not merely the parts disadvantageous to the accused person.

Confession made on Oath in Previous Proceedings

41. 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.

42. 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 person when charged before his commanding officer, or at the taking of a summary of evidence.

43. The proceedings of a board of inquiry, or statement made at a board of inquiry, cannot be used as evidence against a person subject to the Air Force Act before a court-martial, unless the court-martial is one for the trial of such person for willfully giving false evidence before the board of inquiry.

At What Stage Confession can be Recorded

44. A confession must be recorded in the course of an investigation and must be before the commencement of the inquiry or the trial. Confession should be recorded in open court in day time and necessary warning should be given to the accused and after production sufficient time for reflection should be given to him before he is asked to make statement and should assure him that he is absolutely out of police influence.

45. Once the **approver** has accepted a tender of pardon he stands on the same footing as any other with the exception that he is liable to forfeit his tender of pardon if he does not comply with the conditions on which the tender was made. He may be examined like other witnesses.

46. A confession made by the approvers are not substantive evidence but may be used only for the purpose of contradicting or corroborating their depositions in court. Statement of approver must satisfy two essentials: (i) that he took part in the crime and (ii) that he is corroborated in material particulars as regards the participation of each of the accused. In case of a confession duly recorded under Section 164, the presumption is that the confession was freely made.

47. The Judicial Magistrate should ask some questions as to why he is making the confession; is he sorry for his crime or has somebody told him that he will gain something by his confession. On the perusal of the Section we find the following defects in the present problem.

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- a. **Hand-cuff on.** A confession in order to be admissible in evidence must be made voluntarily and without pressure. The accused should have given some time to remain in force atmosphere before recording his confession.
- b. **Presence of Police Officer.** A statement or confession will not be admissible if the police officer is present at the time of making the statement. A police officer is not allowed to stay during the time of making the statement and also not allowed to make any question.

Competency of Witnesses

48. 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:

- a. Tender years.
- b. Extreme old age.
- c. Disease of mind or body.
- d. Any other cause of the same kind.

Burden of Proof

Meaning of the Burden of Proof

49. 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.

50. The burden of proof is concerned with this latter question of sufficiency of evidence. This question of sufficiency of evidence, or of what is sometimes called satisfactory evidence, gives rise to three questions:

- a. What facts must be proved in order to establish the guilt of the accused?
- b. By whom must these facts be proved?
- c. What degree of proof is required?

51. **The Particulars of the Offence must normally 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.

Part of Such Matters Proved

52. 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.

53. The first question is whether the facts which have been proved in them 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.

54. 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 is entitled in certain cases to find the accused guilty of the offence which has been actually proved.

55. 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 the victim but he did so under grave and sudden provocation.

Onus of Proof on Prosecution

56. **By Whom the Facts Must be Proved.** The onus of proof is dictated by two rules, namely:

- a. Every man is presumed to be innocent until he is proved to be guilty,
- b. The person who alleges a fact must prove it whether the allegation is couched in affirmative or negative terms.

57. 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. Generally, it is the duty of the prosecution to prove each and every ingredient in the crime with which the accused is charged.

58. **Shifting of the Burden.** It is often said that where the prosecution has 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. If the accused demands that he is innocent of the said allegation of the proof given by the prosecution then the onus of proof shifts to the accused and he has to produce evidence in his favour.

59. **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 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 explained 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.

60. **Matters Peculiarly within the Knowledge of the Accused.** There are, however, some cases in which the law takes notice that acts may be peculiarly within the knowledge of the accused. The reason for this is that it is impossible for the prosecution to produce evidence of facts which only the accused knows. Whilst the prosecution is under a duty to prove its case, 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.

Degree of Proof Required.

61. **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. In general sense it can be described that the offence shall be proved without reasonable doubt.

62. **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.

63. **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 prosecution proven 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.

Types of Evidences

Oral Evidence

64. All facts must be proved by oral or documentary evidence. Oral evidence means statements made to the court by witnesses. All facts, except the contents of documents, may be proved by oral evidence which must in all cases be direct, that is to say-

- a. If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;
- b. If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;
- c. 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;

d. 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.

65. **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.

66. **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.

Documentary Evidence

67. Documentary evidence means the production of documents for the inspection of the court. 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.

68. 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, or whatever it is, on which they are inscribed, e.g. 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.

69. **Primary Evidence.** Primary evidence is the production of the document itself for the inspection of the court, or if it is one of 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 example, 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.

70. **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.

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.

71. **Secondary Evidence, When Given.** Secondary evidence may be given of the existence, condition or contents of a document in the following cases:

- a. When the original is shown or appears to be in the possession or power of:
 - (1) The opposite party.
 - (2) any person out of reach or not subject to process of the court,
 - (3) any person legally bound to produce it, and when, after due notice (see Section 66 of the evidence Act), such person does not produce it, any kind of secondary evidence may be given.
- b. When the existence, etc. of the original have been admitted in writing by the party against whom it is to be proved, the written admission is admissible as secondary evidence.

72. When the original has been destroyed or lost, or 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 may be given.

- a. When the original is of such a nature as not to be easily movable, any kind of secondary evidence may be given.
- b. 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.
- c. 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.

73. **Nature of Secondary Evidence.** Besides certified copies secondary evidence of a private document given at a court-martial will generally take one of the following forms:

- a. Copies made from the original by a mechanical process which ensures accuracy (e.g. photography) and copies compared with such copies.
- b. Copies made from or compared with original.
- c. Oral accounts of contents of a document given by persons who have seen it.

74. **Public Documents.** The following are Public documents :

- a. Those which form the acts or records of the Acts:
 - (1) Of the sovereign authority,
 - (2) Of official bodies and tribunals, and
 - (3) Of public officers, legislative, judicial and executive.

- b. Public records kept in Bangladesh of private documents.

75. **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" is the only Secondary evidence admissible.

76. **Provisions as to Extracts and Copies of Certain Documents.** Under the special provisions of the Air Force Act 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.

Examination of Witnesses

77. **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. It is 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 docu, it is legally admissible and properly put in evidence.
- g. That any witnesses called are legally competent to give evidence.
- f. That no document or other thing is used for the purposes of the trial which has not been properly put in.
- h. That any document with which a witness proposes to refresh his memory is legally admissible for the purpose.
- j. That the examination of witnesses is fairly and properly conducted.

78. **How Examination of Witnesses is conducted.** 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.

Leading Questions

79. 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".

80. 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".

Test of What are Leading Questions

81. 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.

82. 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 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.

83. **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 recognizes it" and "Whether he saw anything done with 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.

Hostile Witness

84. 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".

85. 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 failed, 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 were a witness called by the other side.

Rules as to Cross-Examination

86. 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:

- a. To test his veracity,
- b. To discover who he is and what is his position in life, or
- c. To shake his credit by injuring his character.

87. A witness may be cross-examined as to previous statements 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. 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.

88. 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 summary, is not consistent with the evidence given by him at the investigation before the commanding officer.

89. If the person cross-examining, intends to adduce evidence contradicting the evidence given by the witness, he should put to 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.

90. 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 his right of asking questions tending merely to discredit is qualified in the case of trials. Under 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.

Injurious Questions:

91. 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.

b. If the imputation which relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, if the witness on the matter to which he testifies.

c. 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 this evidence.

d. The court may, if it sees or draws from the witness's refusal to answer, the inference that the answer if given would be unfavourable.

92. **Exclusion of Evidence to Contradict Answers to Questions.** 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:

a. When the witness is asked whether he has been previously convicted and denies it, evidence of his previous conviction may be given.

b. 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.

Impeaching Credit of Witnesses

93. 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 the witness, believe him to be unworthy of credit. Such persons 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.

94. 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.

95. **Corroboration of Witnesses.** In order to corroborate the testimony of a witness as to a relevant fact he may be asked questions as to any other circumstances which he observed at or near the time or place at which that fact occurred.

96. **Former Statements by Witness.** In order to corroborate the testimony of a witness, any former statements made by witness may be proved relating to the fact:

- a. To any one, at or about the time when the fact took place, or
- b. At any time, before an authority legally competent to investigate the fact;

97. 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.

98. **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.

99. **Questions by Court.** After the re-examination of a witness is closed, the court often asks 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 they 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.

Refreshing Memory

100. 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

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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 him within the time aforesaid if, when he read it, he knew it to be correct.

101. 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. 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.

Notes Referred to are not Evidence of them

102. 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.

103. 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.

TOPIC-2

HANDLING PROCEDURE OF CIVIL CASES IN BAF

The Essential Aspects and Steps of a Civil Suit

1. In BAF, civil cases are more than that of criminal cases triable by the Court of Criminal. Therefore, it is important to have a clear idea about the handling aspects of the civil matters. The essential aspects and steps of a Civil Suit is discussed in the subsequent paragraphs.

Filing the Suit and Acceptance of Complaint

2. The civil suit starts with the accepting of complaint by the court. The 'Sherestadar' or in his absence any designated officer accept the complaint on behalf of the court and allot a number on the order sheet of the court. For example; Civil Case No. 534/2010. This means it is a case of that court instituted in 2010 and number is 534.

3. Then the 'Sherestadar' separate the court order sheet and fix the court seal on it and return to the person/advocate who will submit before the court. The advocate attached the case number with other necessary papers to be submitted along with the complaint. When it was submitted to the court, the 'Sherestadar' shall record the complaint in the Filing Register-12 (called as Suit Register) on the same day (the day of filing the case).

4. Then the 'Sherestadar' examine the complaint and certify after being ensure whether the pleader fix required amount of stamp on the complaint. If he find that insufficient stamp has been fixed, he will highlight that information on the complaint to fix it within next 21 days. Thereby, the case was filed properly before the court.

Return or Rejection of a Complaint

5. If the 'Sherestadar' is satisfied that a complaint is to be return or rejected, he will inform explain the reason to the Judge of the respective court for such decision. Then the Judge shall take action as per applicable law. If for any reason the complaint is considered to be not acceptable by the court, it may be again submitted before the court within 21 days.

Issue of Summon

6. The next step of a civil case is issue of summon. It can be issued in two ways; (a) by the court executants and (b) through the court 'Sherestadar' by post. The following documents are to be sent with the summon:

- a. The complaint of the case.
- b. All the papers of the plaintiff which justifies his arguments
- c. The Vokalotnama
- d. The execution order (court fees to issue summon against the defendant)

7. If the defendant accept the suit papers, it will presume that he has directly served to him. When the court executants shall go to deliver the summon, he will take signature or thump impression from the two local impartial person or elite. In general, the summon is issued to a person personally. But in his absence, it can be issued to any legally empowered representative. If there is no legal empowered representative available, it is to be issued to any adult male family member of the individual. A servant can not be considered as a family member (Order No. 5, Rule 12 and 15 of CPC).

8. If there the defendant or his legally empowered representative or if there is no adult male family member is not available to accept the summon, the same is to be hanged on outer wall of the defendant's resident or in any other convenient open place (Order No. 5, Rule 17 of CPC). In this case, the court executants shall take signature or thump impression from the two local impartial person or elite.

9. It is not appropriate to issue the summon by fixing or hanging it on the wall for temporary absence of the defendant. If there is a possibility to received the summon by the defendant in his resident, then steps can be taken to issue it directly to the defendant in his house. If the court executants can not deliver the summon to the defendant and if it is returned undelivered, before two days of hearing of the case by the court, the 'Nazir' shall take prompt and shortest possible time to submit the same summon before the trial court.

10. If the summon is issued by post it shall be considered as delivered after a lapse of one month through the acknowledgement slip. If there more than one defendant, every one shall be issued with a separate summon. A summon shall be executed through the 'Nezarat' of the respective district.

Submission of Reply

11. The defendant shall submit the written reply of the plaint to the court before the first hearing date or even before or with the approval of the court within two months time (Order 8, Rule 1 of CPC). If the defendant failed to submit the written reply within the permitted time, there shall be an ex parte hearing date by the court. But if the summon/notice is not issued as per the provisions of Section 80 of CPC, the Govt shall get three months time to submit the written reply. If the defendant relies on any documents he has to submit those with his replies.

No case Hearing

12. If it is appeared on the first hearing date of the case that there was no dispute between the parties on the suit, the case shall be decided promptly. In this circumstance, there is no scope for the court to adjourn the case.

Preparing the Issue of the Case and Persuasion

13. The court shall prepare the issue of the case within 15 days from the day of first hearing or on the day of submission of written reply (as the case may be, order No. 14, Rule 1 of CPC). The issue shall be prepared on the disputed matter to be considered by the court during its trial.

Persuasion under Section 30

14. This session was kept to determine by the court whether there is any matter for persuasion under section 30, at this stage of the trial matter. At this stage, the plaintiff or defendant can serve written question to each other. But it must be done after 10 days of preparing the issue by the court. One party can submit the same question to another party once (Order No. 11, Rule 1 of CPC). The opposite party shall submit the reply of the question through affidavit (Order No. 11, Rule 8 of CPC).

Fixation of Final Hearing

15. The final hearing date is to be fixed after 120 days of preparation of issue by the court (Order No. 14, Rule 8 of CPC)

Final Hearing

16. The hearing of the case shall be finished within 120 days from the date of start of (PH) final hearing (Order No.18, rule 19 of CPC). At the time of final hearing (FPH) phase, the Judge shall record/collect the statement, cross-examine, accept the any documents and hear the argument of the parties.

Announcement of Judgment

17. The judgment shall be announced taking 07 days time from the date of concluding hearing of the case by the court (Order no. 20, rule 11 of CPC).

Passing Court Decree

18. The decree shall be passed within 07 days of announcement of the judgement (Order No. 20, Rule 5 of CPC).

Conclusion

19. In addition to the above aspects and steps, at any stage of the suit both the parties can apply to the court for consideration of the following aspects:

- a. Application for amendment of plaint.
- b. Submission of supplementary or amended reply.
- c. Application for interim/temporary injunction.
- d. Application for viewing the place
- e. Application for local inquiry through court order.
- f. The contesting parties can solve the dispute amicably at any stage of the suit after it is being filed. This may be with or without the intervention of the court as per section 89 (a) of CPC commonly known as ADR.

Commander's responsibility in monitoring BAF cases

20. BAF is handling a good number of different natures of civil cases filed by the various category of people. The cases are like; land dispute, Admin Tribunal case, Writ case, etc. To deal with such cases in support of Air Force interests BAF mainly depend on the assistance of Govt Pleader, Attorney General office or Govt Solicitor.

21. Whenever any civil case is instituted by any person or organization against the BAF interest or involved any BAF official(s) as Respondent(s), the respective Dte/Base/Unit are to take appropriate measures to uphold the Air Force interests. If BAF institute any Civil or Criminal case against any person or organization, the policy guidelines issued by the Air HQ shall be followed. In the subsequent paragraphs, the steps and measures for "Handling the Civil Cases" (outside and inside the court) are enumerated. The following measures are to be taken outside the court:

- a. On receipt or collection of court order sheet or complaints, the respective office shall furnish a possible para-wise reply. In such reply, the necessary annex/exhibit(s) may be attached.
- b. Once the concerned office prepare the the para-wise reply, it shall be forwarded to the other Respondent (if any) including JAG Br for vetting. As it is done the Respondent shall furnish "Vokalot Nama" , Affidavit-in-opposition and letter of authority.
- c. The concerned officer shall detail suitable person for execution of Affidavit before the appropriate official of the court. Then all papers relating to the case shall be submitted to the court (as per Court instruction) or to the MOD for onward submission to Solicitor Wing and AG office, as applicable.
- d. In the hearing stage, the concerned office shall/may engage civil lawyer to pursue the case. This pleader shall be in addition to the GP/DAG/PP.

22. To facilitate the effective hearing of the case, the following measures shall be helpful:

- a. Inform the GP or PP/ Deputy Attorney General (DAG)/ Assistant Attorney General (AAG) for urgent hearing, if required.
- b. Constantly Monitor/pursue the case through GP/PP/AG office.
- c. Assist the court with nec papers/document through GP/PP/DAG/AAG.
- d. Collect court order sheet /cert copy of judgment/court order, when applicable.
- e. Process appeal before the appropriate court of law, if required.

23. The concerned office is required to adhere to the following guidelines in respect of any civil or criminal cases:

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- a. When a case is filed before the higher/lower Court or Administrative Tribunal related to BAF interest, there should be a dedicated file for each of the case. This will help the concerned office to identify and locate the particular case for any subsequent persuasion and monitoring.
- b. The concerned office shall prepare necessary copies of para-wise reply for each case and forward required numbers of copies to JAG Br for vetting. In case of writ petition/case, the concern office shall collect the Court order and attached with the papers.
- c. After vetting, the JAG Br or the concerned office shall forward the reply to the respective Court or Solicitor Wing of the Govt through Ministry of Defence (MOD), as applicable.
- d. If any case is required to be disposed of speedily, the concerned office may discussed the issue with the concerned GP/DAG or PP for expedient hearing of the case. The authority of MOD may also be utilized for such speedy hearing of any case.

24. The concerned office shall detail a legal officer or any suitable officer as a '**Tadbirkar**' for constant monitoring of each case. He will take necessary steps as early as possible to finalize the pending case and to give any guidelines to the authority relating to the case. He shall submit necessary papers/document and procure witness(s) as per the demand of the court as well as appointed pleader/DAG/AAG.

25. It is not mandatory to furnish reply of any legal notice or notice demand justice sent by any person or organization. But when such notice is received, the concerned office may consult with the GP/PP/DAG or JAG Br. In any case, if the court declares the judgment against BAF interest, it should be immediately notified to the JAG Br for onward dispatch to MOD and meanwhile, the respective office shall process the case for appeal before the appropriate court in consultation with JAG Br.

Violation of the Court Order and Contempt Case

26. You have got the rule and stay against respondents. You might notice or your client may complain to you that some of the respondents are doing something in violation of the court order. In at case, it would be your first duty to send a legal notice to that person who is acting in breach of the court order. If you find that they are still performing their work in violation of the court order, you may file a contempt case. However, you must remember that you cannot file a contempt case against one whom you did not make a party in the Writ Petition/ Case. This is because if someone is not a party to Writ Petition, the court order cannot affect that person. The only you can do is to issue a legal notice to that person for taking appropriate course of action. However, you can give legal notice to the government officer who are parties to the Write Petition and who are persons of authority of those persons doing acts in violation of court order.

Persuasion

27. This session was kept to determine by the court whether there is any matter for persuasion under Section 30, at this stage of the trial matter. At this stage, the plaintiff or

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defendant can serve written question to each other. But it must be done after 10 days of preparing the issue by the court. One party can submit the same question to another party once (Order No. 11, Rule 1 of CPC). The opposite party shall submit the reply of the question through affidavit (Order No. 11, Rule 8 of CPC).

Legal Assistance

28. A personal problem, no matter how small, is important to the person who has it and distracts his concerted attention from his job. Left alone, problems usually develop into disciplinary problems. BAF expects of its people unquestioned obedience, unswerving loyalty, and complete devotion to duty. In return it has many responsibilities, one of which is in the area of day to day living. This encompasses not only curative advice, but preventive advice.

29. Although not all problems can be solved, the JAG Branch and Base/Unit legal officers can provide a constant advice to eradicate ignorance of the law and against panic in the face of personal difficulties. This legal assistance limited to protects and enhance their morale and promotes their welfare by educating them with personal legal rights and responsibilities.

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- c. The concerned officer shall detail suitable person for execution of Affidavit before the appropriate official of the court. Then all papers relating to the case shall be submitted to the court (as per Court instruction) or to the MOD for onward submission to Solicitor Wing and AG office, as applicable.
- d. In the hearing stage, the concerned office shall/may engage civil lawyer to pursue the case. This pleader shall be in addition to the GP/DAG/PP.

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32. To facilitate the effective hearing of the case, the following measures shall be helpful:

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33. The concerned office is required to adhere to the following guidelines in respect of any civil or criminal cases:

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- b. The concerned office shall prepare necessary copies of para-wise reply for each case and forward required numbers of copies to JAG Br for vetting. In case of writ petition/case, the concern office shall collect the Court order and attached with the papers.
- c. After vetting, the JAG Br or the concerned office shall forward the reply to the respective Court or Solicitor Wing of the Govt through Ministry of Defence (MOD), as applicable.
- d. If any case is required to be disposed of speedily, the concerned office may discussed the issue with the concerned GP/DAG or PP for expedient hearing of the case. The authority of MOD may also be utilized for such speedy hearing of any case.

34. The concerned office shall detail a legal officer or any suitable officer for constant monitoring of each case. He will take necessary steps as early as possible to finalize the pending case and to give any guidelines to the authority relating to the case. He shall submit necessary papers/document and procure witness(s) as per the demand of the court as well as appointed pleader/DAG/AAG.

35. It is not mandatory to furnish reply of any legal notice or notice demand justice sent by any person or organization. But when such notice is received, the concerned office may consult with the GP/PP/DAG or JAG Br. In any case, if the court declares the judgment against BAF interest, it should be immediately notified to the JAG Br for onward dispatch to MOD and meanwhile, the respective office shall process the case for appeal before the appropriate court in consultation with JAG Br.

RESTRICTED

Draft Reply of a Petition/Complaint

EXAMPLE OF A PETITION (CRIMINAL REVISION)

DISTRICT-KHULNA

IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(CRIMINAL REVISIONAL JURISDICTION)

CRIMINAL REVISION CASE NO. OF 2005

IN THE MATTER OF :

An application under Section 439 read with Section 435 of the Code of Criminal Procedure.

AND

IN THE MATTER OF :

Mamunur Rahman Rana, son of Hasan Ali of Village Mia Para, Police Station and District: Khulna. **Convict-Petitioner (In Jail)**

-Versus-

The State **Opposite Party**

IN THE MATTER OF :

Judgment and Order dated 11.01.2003 passed by Khandaker Hasib Uddin Ahmed. Additional Sessions Judge, 3rd Court, Khulna in Appeal No. 143/02 appealed from Judgment and Order of conviction dated 4.7.2002 passed by T.R.N. Mustakul Hoque, Practice and Procedure in the Supreme Court Mohanagar Speedy Trial Court of First Class Magistrate, Khulna arising out of Speed of Trial G.R. Case No. 03 of 2002' corresponding to Khulna Police Station Case No. 30 dated 22.5.2002 under Section 4 of Law and Order Disruption of Crimes (Speedy Trial) Act, 2002 and thereby sentencing the petitioner and another to suffer rigorous imprisonment for four (4) years and to pay fine of Tk. 50007- in default to suffer imprisonment for six (6) months more.

To:

Mr. Justice Syed J.R. Mudassir Husain, the Hon'ble Chief Justice of Bangladesh and his companion Justices of the said Hon'ble Court.

The humble petition on behalf of the convict petitioner above named most respectfully-

SHEWETH:

1. That the prosecution case in brief, is that, one Kislu Zomaddar, son of late Abdul Jalil Zomaddar, Vill: Rajeshawar, Thana: Khalishpur, Dist: Khulna.

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2. Sharankhola, Bagerhat, residing at Munshi Para 2nd Lane (Anwara Monjeel) P.S. and District Khulna, being informant lodged an F.I.R. dated 22.05.2002 with the Khulna Police Station alleging, inter alia, that the informant and his brother-in-law Md. Lutfar Rahman, S/O- used to live at residence of Munsipara, Khulna. About 20/25 days ago and on many occasions before that accused persons Anwar Hossain Liton and Mamunur Rahman Mamun and their associates Bappy came to Munsipara 2nd Lane (Anwara Monjeel) and illegally demanded Tk. 5,00,000.00 (Taka Five Lac). They also demanded the amount over phone.

3. That the informant's brother-in-law informed those accused persons that it would not be possible for him to give amount demanded. As a result those accused persons reduced the demand amount to Tk. 1,00,000.00 (Taka One Lac) and demanded to be paid within a week failing which all the members of the family of the informant would be killed. The informant's brother-in-law informed the matter to the Officer-in-Charge of Khulna Police Station dated 20.04.02 over telephone.

4. April. 2002 the accused persons came again to the house of the informant's brother-in-law's house and demanded money. On such demand the informant's brother-in-law asked for some more time. The accused persons went away threatening that all family members would be killed. This was also informed to the police of the Khulna Thana. Having been frightened all family members left the house for Sharankhola leaving the informant in charge of the house. On 22.05.05 at about 8 am the accused persons came to the informant's house and told him to make money ready within two hours.

5. That the informant then informed the matter to the police and the police came & took position near the house. At about 9 am the accused persons & one Bappy came in 02 motorcycle; they left the cycle in front of the house and went to 4th floor & demanded money to the informant. In the meantime police surrounded them & caught the accused persons. As a result of which the instant case was started.

6. That on the basis of the said allegation. Khulna Police Station Case No. 30 dated 22.5.2002 under Section-4 of Law and Order Disruption of Crimes (Speedy Trial) Act, 2002 was started against three F.I.R. named accused persons.

The certified copy of the F.I.R is hereto annexed and marked as ANNEXURE-'A'

7. That thereafter, Khulna Police took up the matter for investigation and having completed investigation submitted Charge Sheet No. 148 dated 31.5.2002 under Section 4(1) of Law and Order Disruption of Crimes (Speedy Trial) Act. 2002, against the present petitioner and others.

The certified copy of the charge sheet is hereto annexed and marked as ANNEXURE-'B'

8. That after submission of the Charge sheet as the case was ready for trial, the record of the case was transmitted in the Court learned Metropolitan Speedy Trial Court. Khulna for trial and the case was numbered as Speedy Trial Case No. 3 of 2002.

9. That the Court framed charge against the petitioner under Section 4 of the Law and Order Disruption of Crimes (Speedy Trial) Act, 2002 and the accused petitioner pleaded not guilty and claimed to be tried and at the time of trial, prosecution examined as many as four (4) witnesses and the defence examined ten (10) witnesses.

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10. That the learned Trial Court on conclusion of trial convicted the petitioner dated 04.07.2002 under Section 4 of the Law and Order Disruption of Crimes (Speedy Trial) Act, 2002 and thereby sentenced him to suffer rigorous imprisonment for four (4) years and to pay fine of Tk. 5000/- in default to suffer imprisonment for six (6) months more.

The certified copy of the judgment is hereto annexed and marked as ANNEXURE - 'C'.

11. That the petitioner filed an appeal before the 3rd Additional Sessions Judge's Court, Khulna under Section 12 of the Law and Order Disruption of Crimes (Speedy Trial) Act, 2002. The learned judge after considering the evidence rejected the appeal and confirmed the judgment and sentence of the trial court and as such the petitioner has since 22.05.2002 been serving the sentence.

The certified copy of the judgment in appeal is hereto annexed & marked as ANNEXURE - 'D'

12. That it is humbly submitted that the law under which the petitioner was tried and sentence is no longer in force. The Law and Order Disruption of Crimes (Speedy Trial) Act, 2002 was repealed it is specifically stated in sub section (2) of Section 1 of the Act that this Act will remain in force only for two years after its enforcement. As such with the expiration of the Act all -proceedings against a person should ipso facto terminate.

13. That it is humbly submitted that the judgment and order of conviction confirmed by the Appellate Court and passed by the trial court is bad in law as well as on facts and circumstances of the case and the learned Court misdirected himself to come to an erroneous finding of conviction and sentence and also the learned Court failed to consider the prosecution and defence case side by side and without considering the serious contradiction in the evidence as well as on the material on record, the learned Court most illegally and arbitrarily passed the impugned order which is an abuse of the process of the court and is liable to be set aside.

14. That it is humbly submitted that the judgment and order of conviction and sentence confirmed by the appellate court and passed by the learned trial Court against the accused petitioner is bad in law and the learned Court failed to consider the evidence and materials on record and most illegally and arbitrarily passed the impugned order on the basis of one sided prosecution story which creates serious doubt in the impugned order of conviction and sentence and as such the same is liable to be set aside for the ends of justice.

15. That it is stated that the learned Court failed to consider the very fact that out often prosecution witnesses none of them are independent witnesses and as such the judgment and order of conviction and sentence is not at all tenable in the eye of law and is liable to be set aside for the ends of justice.

16. That it is submitted that the petitioner has served the most part of the sentence and his sentence is to expire on 04.07.2006. Because the petitioner has served most part of the sentence and because a large family is dependent on his income, he should be set free for the ends of justice.

RESTRICTED

17. That it is humbly submitted that the petitioner is a law abiding citizen of the country and got every respect towards the court of justice and the petitioner finding no other alternative remedies begs to prefer this application under Section 439 read with Section 435 of the Code of Criminal Procedure before this Hon'ble Court on the following amongst other-

GROUND:

I. For that the impugned judgment and order of conviction passed by the learned Speedy Trial Court, Khulna and the Appellate Court convicting and sentencing the petitioner is bad in law as well as on the facts and circumstances of the case and is liable to be set aside for the ends of justice.

II. For that the law under which the petitioner was tried and sentence is no longer in force. The Law and Order Disruption of Crimes (Speedy Trial) Act, 2002 was passed for a temporary period, it is specifically stated in sub-Section (2) of Section 1 of the Act that this Act will remain in force only for two years after its enforcement. As such with the expiration of an Act all proceedings against a person should ipso facto terminate.

III. For the judgment and order of conviction passed by the trial court is bad in law as well as on facts and circumstances of the case and the learned Court misdirected himself to come to an erroneous finding of conviction and sentence and also the learned Court failed to consider the prosecution and defence case side by side and without considering the serious contradiction in the evidence as well as on the material on record, the learned Court most illegally and arbitrarily passed the impugned order which is an abuse of the process of the court and is liable to be set aside.

IV. For that the learned Tribunal erred in law and on facts in convicting and sentencing the petitioner and in as much as he failed to notice that there is no credible evidence on record and also failed to consider the prosecution and defence case side by side as such the impugned judgment is liable to be set aside by this Hon'ble Court.

V. For that the learned Court failed to consider the very fact that out of often prosecution witnesses none of them are independent witnesses and as such the judgment and order of conviction and sentence is not at all tenable in the eye of law and is liable to be set aside for the ends of justice.

VI. Wherefore, it is most humbly prayed that your Lordships would graciously be pleased to call for the records, issue a Rule calling upon the Opposite Party to show cause as to why Judgment and Order dated 11.01.2003 passed by Khandaker Hasib Udin Ahmed, Additional Sessions Judge, 3rd Court Khulna in Appeal No. 143/02 and 161/02 appealed from Judgment and Order of conviction dated 4.7.2002 passed by T.R.M. Mustakul Hoque, Mohanagar Speedy Trial Court of First Class Magistrate, Khulna arising out of Speedy Trial G.R. Case No. 03 of 2002 corresponding to Khulna Police Station Case No. 30 Dated 22.5.2002 under Section 4 of Law and Order Disruption of Crimes (Speedy Trial) Act, 2002 and thereby sentencing the petitioner and another should not be set aside and after hearing the parties cause shown, if any, be pleased to make the Rule absolute and or to pass such other or further order or orders as to your Lordships may seem fit and proper under the facts and circumstances of the case.

RESTRICTED

AND

Pending hearing of the Rule, the petitioner may be released on bail and realization of fine may kindly be stayed.

AFFIDAVIT

I, Md. Kamrul Islam, son of Md. Abdur Rob Haoladar of 69/J Pathapath (2nd Floor), Green Road, Dhaka-1205, aged about 21 years, by faith Muslim, by occupation service, by nationality Bangladesh by birth, do hereby solemnly affirm and say as follows:

1. That I am the tadbirkar on behalf of the petitioner in this case and as such am fully conversant with the facts and circumstances of the case.
2. That the statements made above are true to my knowledge and belief.
Prepared in my office

Md. Abdul Halim
Advocate

Solemnly affirmed before me by the said deponent on this the..... day of..... 2002.

Deponent

The deponent is known to me and identified by me

Md. Abdul Halim
Advocate

Commissioner of Affidavits
Court Division, Dhaka

* Supreme Court of Bangladesh High

RESTRICTED

Draft reply of a petition/complaint

EXAMPLE OF AFFIDAVIT-IN-OPPOSITION

The Government side or respondents will submit affidavit-in-opposition. A copy of the same will be supplied to you as advocate of the petitioner. Once you get the copy, you make your tier legal research to counter the legal points made in the affidavit-in-opposition. This you will need while you will be in the main hearing (called rule hearing) in which the court either make the rule absolute or discharge the same. Following is a sample of an affidavit-in-opposition:

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION (SPECIAL ORIGINAL JURISDICTION)**

WRIT PETITION NO. 7284 OF 2003

IN THE MATTER OF:

Mahmudul Hoque (Mahmud), Address**Petitioner**

-VERSUS-

Sectionretary, Civil Aviation, Tourism and Biman, Government of the Peoples' Republic of Bangladesh & others**Respondents**

AFFIDAVIT-IN-OPPOSITION ON BEHALF OF THE RESPONDENT No. 4-8:

1. Md. Shafiquil Islam, son of late Motahar Ali, aged about 41 years, by faith Muslim, by profession service, by nationality Bangladeshi by birth, do hereby solemnly affirm and say as follows:-

2. That I am representing the respondents being the authorized officer and dealing with the relevant file and as such being acquainted with the facts and circumstances of the case and I am competent and authorized to swear this affidavit.

3. That a copy of this petition has been served upon the respondents and as being the concerned officer I have gone through the same and have understood the contents thereof, I have been advised to controvert those statements which are necessary for disposal of this writ petition and the statement which have not been specifically admitted herein after shall be deemed to have denied by the Respondents.

4. That the statements made in paragraph No. 1 of the writ petition are matters of record and as such do not require any comments by respondents. However the petitioner has put to strict proof thereof.

5. That the statements made in paragraph No.2 of the writ petition are matters of record and as such do not require any comments by the respondents. However, the petitioner has put to strict proof thereof.

6. That the statement make in paragraph No. 3 of the writ petition are matters of record and as such do not require any comments by the respondents. However, the petitioner has put to strict proof thereof.

RESTRICTED

7. That the statements made in paragraph No. 4 of the writ petition are admitted except that the show cause notice was issued to the petitioner illegally by the respondents. It is submitted that the show cause notice was served as per the Bangladesh Siman Corporation Employees (Service) Regulations, 1979.

8. That the petitioner who was a duty cabin crew in the flight BG-012 dated 24.02.2003 carried in his luggage huge amount of medicine and cosmetic materials worth of Tk. 2,30,800. While the flight arrived at the Zia International Airport, these medicine and cosmetic articles were found by the Customs officials by searching the luggage of the petitioner.

9. That the petitioner as a duty Cabin Crew does not have any authority to carry such a huge amount of medicine and cosmetics without valid documents and without previous declaration which came under the definition of 'misconduct' under Rule 55 of the Bangladesh Biman Corporation Employees (Service) Regulations, 1979 the respondents had legal duties to issue a show cause notice with temporary suspension order as per Rule 58 of the as per the Regu, 1979.

10. That the statements made in paragraph No. 5 of the writ petition are admitted. It is submitted that the reply given by the petitioner against the show cause notice being not acceptable to the respondents the petitioner was put under disciplinary proceedings by way of serving charge sheet dated 17.06.2003 as per the Service Regulations 1974.

11. That the statements made in paragraph no. 6 of the writ petition are admitted except the fact that the allegations in the charge were malafide, intentional and motivated. The petitioner having been found with prohibited category of medicine and cosmetic materials in his luggage which were carried without the permission of the respondents or the proper authority, the petitioner's action was in breach of the Service Regulations 1979.

12. That the petitioner's actions came under the definition of 'misconduct' as defined in Regulations 55 (2) (b) (g) (h) (x) (zd) (zj) and as such charge sheet following proper show cause notice was served against the petitioner dated 17.06.2003. Moreover, separate and distinct allegations in the other two incidents were brought against the petitioners among which carrying cigarettes in the UK without proper authority is similar to the present allegation of carrying drugs without authority which shows that the petitioner is in violation of the Service Regulations of the Respondents and should take the consequences.

13. That the statements made in paragraph No.7 of the writ petition are admitted. It is submitted that the reply by the petitioner dated 30.06.2003 was not acceptable to the respondents and as such the respondents proceeded with the following stage of the departmental proceedings by way of investigation.

14. That the statements made in paragraph no. 8 of the writ petition are denied as not being true. It is submitted that the whole inquiry process was conducted as per law following proper procedure and the petitioner was given proper opportunity to make his self-defence which is clear from the inquiry report dated 26.07.2003.

15. That the statements made in paragraph 9 of the writ petition are denied as being misleading. It is submitted that the statements quoted in paragraph 9 of the writ petition from the inquiry report are scattered and incoherent part of the report which on their own do not tell the substance of the report.

RESTRICTED

16. The inquiry report dated 26.07.2003 comes with conclusive opinion that the allegation of misconduct brought under Regulations 55(1)(b) and 55(2)(b) (g)(h)(zd)(zj) against the petitioner has been proved beyond reasonable doubt. Further, the quoted abstract in paragraph No. 9 from the inquiry report suggests the petitioner is not involved in illegal trafficking, however, it did not hinder making the defendant liable for misconduct as per the different provisions of the Service Regulations.

17. That the statements made in paragraph 10 of the writ petition are admitted.

18. That the statements made in paragraph No. 11 of the writ petition are denied as being not true. It is submitted that the petitioner was given show cause notice with temporary dismissal from the job dated 19.04.2003 as required under clause 58 of the Bangladesh Biman Corporation Employees (Service) Regulations 1979; that thereafter the reply of the petitioner dated 21.04.2003 was considered by the respondents but was not found acceptable and as such a formal charge was framed by the respondents on 17.06.2003 against the petitioner which set all the specific charges of misconduct under Clause 55 (1) (b) and 55 (2) (b) (g) (h) (zd) (zj).

19. That this formal charge framing was followed by the reply of the petitioner dated 30.06.2003. That thereafter a letter dated 30.06.2003 by the respondents was forwarded to the petitioner informing him the time and place of the hearing to be held on the charge.

20. That thereafter charge hearing in the form of investigation was held; the petitioner was examined and was given all opportunity for his self-defence; that after the examination the investigation officer made its report dated 26.07.2003 finding the petitioner guilty of misconduct. Thereafter the petitioner was served Second show cause notice dated 13.08.2003 by the respondents, however, the petitioner failed to reply the Second show cause notice and accordingly he was dismissed from his job vide letter dated 04.09.2003.

“Copies of the reply of the petitioner dated 30.06.2003, the letters of the Respondent informing him of the time and place of inquiry dated 30.06.2003 and the Second Show Cause Notice dated 13.08.2003 are annexed herewith and marked as ANNEXURE-T, '2' and '3'”.

21. That the statements made in paragraph No. 12 of the writ petition are denied. It is submitted that the petitioner was dismissed after all departmental proceedings were followed according to law and giving the petitioner every opportunity of self defence and only when the allegations brought against the petitioner were proved.

22. That the statements made in paragraph No. 13 are matters of record and as such the respondents do not require making any comments. However, the petitioner is put to strict proof thereof. It is submitted that the so-called grievance petition of the petitioner is not as per the Service Regulation of Biman and as such not acceptable to the Respondent no. 4.

23. That statements made in para No. 14 are matters of record & as such the respondents do not require making any comments. However, the petitioner is put to strict proof thereof.

24. That the statements made in paragraph No. 15 of writ petition are denied as being not true. It is submitted that the inquiry procedure was strictly followed as per law and the examination of the witnesses and the self-defence of the petitioner was followed according to law & the Svc Regu.

RESTRICTED

25. That the statements made in paragraph No. 16 of writ petition are denied as being not true.

26. That it is submitted that petitioner has no right to get any remedy from this Honorable Bench. The petitioner's remedy lies in the administrative tribunal. It is submitted that Section 4 of the Administrative Tribunals Act 1980 is very clear with regard to jurisdiction:

"An administrative Tribunal shall have exclusive jurisdiction to hear and determine applications made by any persons in the service in the Republic or of any statutory public authority in respect of the terms and conditions of his service....."

27. That in view of above provisions of law the petitioner's application is not maintainable.

28. That under the above facts and circumstances of the present case, the Rule as issued by this Hon'ble Court is liable to be discharged and the order of stay as passed with the rule shall also be vacated with cost against the petitioner.

29. That the statement made above are true to the best of my knowledge and belief.

Prepared in my Office.

Abdul Jalil
Advocate

Deponent
The deponent is known

Solemnly affirmed before me by the said deponent on this The March 2004. in the Supreme Court Premises at about ——am/pm.

Commissioner of Affidavits, Supreme Court of Bangladesh, High Court Division, Dhaka.
to me and identified by me

Abdul Jalil
Advocate

TOPIC-3

**PRACTICAL KNOWLEDGE ON LAW OF CONTRACT AND DRAFTING
DIFFERENT MOU AND DEED OF AGREEMENTS**

Concepts, Definition & Objectives of Contract

1. The Contract Act, 1872 is the main source of law regulating contracts in our law. It determines the circumstances in which promise made by the parties to a contract shall be legally binding on them. All of us enter into a number of contracts everyday knowingly or unknowingly. Each contract creates some right & duties upon the contracting parties.

Concepts of Contract

2. A proposal or an offer when accepted is a promise. A promise and every set of promises forming the consideration for each offer is an agreement. An agreement if made with free consent of parties, competent to make for a lawful consideration and with a lawful object is a contract. Thus, a contract is an agreement, expressed or implied, enforceable by law between two or more competent parties, to do or not to do a particular thing.

3. All contracts are agreements, but not all agreements are contracts. Contract or Agreement has the enforceability by legal process. Enforceability implies a capability of being enforced by the process of law. Lacking this attribute includes illegal unlawful agreements it may lack consideration or be without consent of the party or may be opposed to public policy.

Essential Elements of a Contract

4. According to Section 10 of the Contract Act, "All agreements are contracts, if they are made by the free consent of the parties, competent to contract, for a lawful consideration with a lawful object, and not hereby expressly to be void." Essential Elements of a Valid Contract are:

- a. **Proper Offer and Acceptance.** There must be an agreement based on a lawful offer made by person to another and lawful acceptance of that offer made by the latter.
- b. **Lawful Consideration.** An agreement to form a valid contract should be supported by consideration. Consideration means "something in return". It can be cash, kind, an act or abstinence. It can be past, present or future. However, consideration should be real and lawful.
- c. **Competent to Contract or Capacity to make Contract.** In order to make a valid contract the parties to it must be competent to make contact.
- d. **Free Consent.** To constitute a valid contract there must be free and genuine consent of the parties to the contract. It should not be obtained by misrepresentation, fraud, coercion, undue influence or mistake.

- e. **Lawful Object and Agreement.** The object of the agreement must not be illegal or unlawful.
- f. **Agreement not Declared Void or Illegal.** Agreements which have been expressly declared void or illegal by law are not enforceable at law; hence does not constitute a valid contract.
- g. Intention to Create Legal Relationships.
- h. Certainty, Possibility of Performance.
- j. Legal Formalities.

Objectives of Contract.

5. The goals of procurement contract function in any organization is to make available the required equipment/material/works/services of the right quality, in right quantity and at the right price, so as to reach the specified place at the right time, after giving equal opportunities of bidding to all the competent tenders.

6. The lowest technically acceptable and commercially responsive offer of a bidder, who meets the standard of technical capability and financial resources fulfilling the contractual conditions should be recommended for the contract. Contract management enables the buyer to appreciate the intricacies which benefit his firm and in avoiding unscrupulous parties from duping his organization.

Offer and Acceptance

7. The most important feature of a contract is that one party makes an offer for an arrangement that another accepts. This can be called a concurrence of wills of two or more parties. Offer and acceptance does not always need to be expressed orally or in writing. An implied contract is one in which some of the terms are not expressed in words. This can take two forms. A contract which is implied in fact is one in which the circumstances imply that parties have reached an agreement even though they have not done so expressly.

8. For example, by going to a doctor for a checkup, a patient agrees that he will pay a fair price for the service. If one refuses to pay after being examined, the patient has breached a contract implied in fact. A contract which is implied in law is also called a quasi-contract, because it is not in fact a contract; rather, it is a means for the courts to remedy situations in which one party would be unjustly enriched were he or she not required to compensate the other.

Concept of Offer in Contract

9. Proposal is defined under section 2(a) of the Contract Act, 1872 as "when one person signifies to another his willingness to do or to abstain from doing anything with a view to obtain the assent of that other to such act or abstinence, he is said to make a proposal/offer". Thus, for a valid offer, the party making it must express his willingness to do or not to do something. But mere expression of willingness does not constitute an offer.

10. An offer should be made to obtain the assent of the other. The offer should be communicated to the offeree and it should not contain a term the non compliance of which would amount to acceptance. Classification of Offers are as follows:

- a. General Offer- Which is made to public in general.
- b. Special Offer- Which is made to a definite person.
- c. Cross Offer- Exchange of identical offer in ignorance of each other.
- d. Counter Offer- Modification and Variation of Original offer.
- e. Standing, Open or Continuing Offer- Which is open for a specific period of time.

11. The offer must be distinguished from an invitation to offer. Invitation to offer An invitation to offer is only a circulation of an offer, it is an attempt to induce offers and precedes a definite offer. Acceptance of an invitation to an offer does not result contract and only an offer emerges in the process of negotiation. A statement made by a person who does not intend to bound by it but, intends to further act, is an invitation to offer.

Revocation of Offer in a Contract

12. A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposal, but not afterwards. An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards. A proposal is revoked:

- a. By communication of notice of revocation by proposal to the other party;
- b. B the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance;
- c. By the failure of the acceptor to fulfill a condition precedent to acceptance; or
- d. By the death or insanity of the proposal, if the fact of the death or insanity comes to the knowledge of the acceptor before acceptance.

13. **Acceptance.** According to Section 2(b) of the Contract Act, 1872, "When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted." Rules of acceptance are as follows:

- a. Acceptance must be absolute and unqualified.
- b. Communicated to offer or
- c. Acceptance must be in the mode prescribed.
- d. Acceptance must be given within a reasonable time before the offer lapses.
- e. Acceptance by the way of conduct.
- f. Mere silence is no acceptance.

Offer and Acceptance

14. **Tender.** A tender is an offer by intending person (contractors) to the tender inviting authority indicating that they have understood the work to be carried out and are willing to carry it out as per general directives given in the tender paper for a consideration (in monetary or some other terms). It is a set of promises and counter-promises. This offer becomes binding when it is accepted in a form which is acceptable to both parties and acceptance is legally complete against both parties.

Consideration

15. A consideration is one of the essential elements of a valid contract, an absence of which renders an agreement void. It is defined as some right, interest, profit or benefit accruing to one party or some forbearance, determine loss of responsibility given suffered or undertaken by the other. It is a price, for which the promise of other is bought. It is regarded as the equivalent or return given or suffered y one for the act or promise of the other. In order to constitute a valid agreement, considerations must be present even thought its adequacy is immaterial.

Contents of Contract

Pre-Qualification

16. Tender in this system where the equipment has to be custom-built to meet specific requirements or to work at minimum capacity pre-qualification tenders are invited calling designers and manufactures/suppliers who can design/manufacture and where necessary install the equipment and commission it after conducting the appropriate tests.

17. The tenders are expected to give the details of their technical capabilities, design experience and after sales service capabilities their financial and administrative back ground their past experience in the line, etc so that the department can screen the tenders and register those who are competent to supply install and commission the equipment. Tenders are invited only from the registered firms.

18. It should be noted here that installation by the contractor/supplier is optional and where he is not responsible for the installation he may be required to supervise installation by the departmental employees to enable the latter to gain experience and knowledge, which will be useful in the subsequent operation and maintenance and repair thereof. There is also a warranty for the equipment that the respective sub-equipment/sub-assemblies reaches certain minimum capacities and be compatible with the capacity of the entire equipment when all the sub-systems are operating.

Limited Tender.

19. With the advancement of technology more and more sophisticated equipment are being manufactured but the number of manufacturers is limited. While the purpose for which it is required or its end use is the same the design and technology used by each manufacture of the equipment could be different. Its size, shape consumption of energy maintainability and warranty period allowed etc could be different. As all such equipment in not standardized in dimensions and components/parts except in terms of the purpose or the out put, the real competition is limited.

20. Again after sales service and the performance of similar equipment by other users are important factors for taking purchases decisions. The recurring expenditure in maintaining them may be different either because larger number of employees is required to operate it or the frequency of break-down or shut downs.

21. In order to avoid spurious competition and encourage genuine and fair competition among all the competent manufactures, it is desirable to register such firms after an adequate survey of their capability & invite limited tenders only from the registered firms.

Tenders of Proprietary/Patented Items.

22. Invitation of tenders for the quotations from the manufactures for property or patented materials equipment may be followed in respect of those items of equipment which are proprietary or patented and for which equivalent substitutes are not available. It may also be that spare parts and sub-assemblies may have to be bought from the same manufacturer by virtue of the fact that his equipment is installed. This applies to X-ray equipment computers audio-video equipollents vehicles, their spare parts, radio equipment etc.

23. In such cases, the general tender inquiry may be made at the beginning of the year seeking the supply of components or spare parts or sub-assemblies from the sole manufactures for purchases during the course of the year. They may be asked either to quote separate rates or to quote discounts on their published price lists (in vogue from time to time) for supply from their own depots or from stockiest, dealers, etc.

24. **Open Tender.** The open tender system i.e. invitation to tender by public advertisement should be used as a general rule and must be adopted. In all case of open tender it is essential that wide publicity is given to the tender notification.

25. **Earnest Money Deposit.** It is essential to take Earnest Money Deposit (EMD) with every tender as a safeguard against a tendered backing out after submitting it. Generally each department fixes a limit purchases beyond which amount require EMD to be deposited.

26. **Forfeiture of Earnest Money of Tender.** Where the tender is bound by the condition that if they default in terms of their undertaking given in the tender, they would be liable to have their deposit of earnest money forfeited and they cannot invoke.

27. **Acceptance of Offer.** A simple contract is constituted by an offer made by one party and accepted by the offer. The acceptance of an offer must be unequivocal and must be communicated to the offer if it is to be a concluded contract. An acceptance may be made either expressly by words or writing of impliedly by conduct, always provided that, the acceptance corresponds to the mode of acceptance contemplated by the offer. A conditional acceptance, which fails to comply with the requirements of the offer, is not a valid acceptance.

Awarding the Contract.

28. A contract results when an offer is made by one party and accepted by the other. After the competitive bid proposals are received from the contractors and found to be

responsive, the employer after careful study and evaluation of the bids identifies the contractor to whom the project will be awarded. Customarily the work is awarded to the lowest responsive bidder. The term lowest responsive bidder has been held to mean the lowest bidder whose offer best responds, as for quality fitness and capacity to the particular requirement of the proposed work.

29. On publicly financed projects, allotment of work to the lowest responsive tender is almost mandatory. In the case of public contract the laws give awarding bodies, the discretionary powers to find which contract is the lowest responsive bidder and such discretion is not interfered with by the courts in the absence of fraud collusion or bad faith.

30 The letter of acceptance should not introduce any new matter or question compared to the tender and any further mutually accepted matter. The acceptance letter should give a brief reference to the work to be executed, the amount of offer, the rates and the prices contained in the bill of quantities. Sometimes a Letter of intent is issued in simplest form, which intended to accept the tender. A letter of intent is in fact intimation to the contractor only and it does not set up legal relationship.

Delay in Contract

31. Delay in contracts, especially in construction contract is fairly common. Delay means has over-run, either beyond the completion date as stipulated in the contract or as per extended date agreed to. There is a feeling that contractors gain due to delay and the owner loses. This is not so. In all the cases, the delay is costly for both the parties. For the owner, delay means loss of revenue efficiency and if public works are delayed it means that the particular facility required for public good is not available.

32. Even for the contractor, the delay is not profitable. Delay means higher overheads because of longer construction period, and normally higher costs of material and labour due to inflationary pressures. Moreover, his working capital is tied up so that he cannot pursue other projects. Thus, in a delay, there are no winners but to cut losses, there is an attempt by the party to shift more of the cost to the other party. There are generally four types of delay:

- a. Delay caused by owner or his agents.
- b. Delay caused by contractor or his subcontractor.
- c. Both the contractual parties are responsible.
- d. Both parties are not responsible.

33. In the case of the owner or his agent causing delay, the language of the contract in the typical contract form "no damage for delay" clause protects owner from damages. However, where the owner has been guilty of interference with the progress of the work, or has committed contractual breach, the contractor may be able to recover damages caused by the owner due to delay.

34. It is obvious that if the contractor or his agent causes injury or damage to the owner, due to delay, he will be liable and the contract will not offer any protection to the contractor due to delay. Where the delay is caused by forces beyond the control of either of the party to the contract, then it is generally decided that each party shall bear the damage appropriately.

35. **Time.** Almost all contracts specify a date for performance. A failure to meet the date is a fundamental breach or not depends on the terms of contract. When there is a fundamental breach, there would be a presumed intention no longer to be bound. Where the time is not the essence of the contract, then the injured party has his remedy in damages but nothing more.

36. **Force Majeure Clause.** This refers to the fact that an overwhelming force may have effect upon a contract performance. The effect of impossibility or illegality of performance in this sense is to discharge further performance. Temporary impossibilities suspend the obligations of the parties. Covering force Majeure in contractual language is limited. This list includes act of God, war, enemies action, seizure, riots, mutiny, tsunami, earthquake, natural calamities, Govt restrictions, natural deterioration in weight due to inherent defects, fire, explosion or any unforeseen risk, beyond the control of the parties.

37. **Breach of Contract.** Breach of contract is a legal concept in which a binding agreement or bargained-for exchange is not honored by one or more of the parties to the contract by non-performance or interference with the other party's performance. Breach of Contract may be classified as fol:

a. **Minor Breach.** A minor breach, a partial breach or an immaterial breach, is that breach of contract that is less significant than a material breach and that gives the aggrieved party a right to damages, but does not usually excuse that party from performance.

b. **Material Breach.** A material breach or substantial breach of contract, usually excuse the aggrieved party from further performance and affording it the right to sue for damages.

c. **Fundamental Breach.** A fundamental breach is a breach so fundamental that it permits the aggrieved party to terminate performance of the contract, in addition to entitling that party to sue for damages.

d. **Anticipatory Breach.** A breach by anticipatory repudiation is an unequivocal indication that the party will not perform when performance is due, or a situation in which future non-performance is inevitable. An anticipatory breach gives the non-breaching party the option to treat such a breach as immediate, and, if repudiatory, to terminate the contract and sue for damages (without waiting for the breach to actually take place).

Failure to Render or to offer Performance

38. In determining whether a failure to render or to offer performance is material, the following circumstances are significant:

a. The extent to which the injured party will be deprived of the benefit which he reasonably expected.

b. The extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived.

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- c. The extent to which the party failing to perform or to offer to perform will suffer forfeiture.
- d. The likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances.
- e. The extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.

Essential Elements of a valid Agreement or Contract

39. The courts have recognized certain elements as being essential for the valid agreement or contract failing which it is called void. These are:

- a. The written contract begins with a statement of date.
- b. The names of the parties and their places of residence with detailed addresses given.
- c. A lawful offer accepted unconditionally, mutual acceptance of the concerned parties of offer is defined as a meeting of minds.
- d. The offer is made with an intention to contract and beyond the stage of bargaining/preliminary negotiation stage.
- e. The offer must be completed in all the materials terms in order that a court may determine the intent of costs to the parties.
- f. The offer must include names of parties, subject matter, price, quantity, time and place of performance.
- g. An offer is not effective until the offer has receive it from the offer or his agent.
- h. The parties to the contract must have the capacity to enter into contract:
 - (1) A minor without completing 18 years.
 - (2) A lunatic of unsound mind.
 - (3) An undercharged insolvent that has been adjudged as insolvent.
 - (4) An enemy, alien or citizen of enemy nation.
 - (5) Person disqualified specifically for a specific contract.
 - (6) Intoxicated persons are expressly disqualified for the purpose of entering into a contract.

Additional Elements of an Agreement or Contract

40. The additional elements of an Agreement or Contract are outlined below:
- a. Consent of the parties to the agreement.
 - b. A lawful object.
 - c. Presence of consideration.
 - d. It must be in writing whenever the law so requires.
 - e. It must have been duly attested or registered if required law.
 - f. It must not be void in any respect which shall render unenforceable.
 - g. Consequences of breach of contract.
 - h. Risk in storage.
 - j. Advance samples.
 - k. Risk of loss or damage to buyers property.
 - l. Packing transportation insurance and delivery.
 - m. Progress reports and monitoring all aspects covered in contract.
 - n. Consignees right of rejections and replacement of substandard work.
 - p. An agreement must be free from vagueness which may render it unascertainable for performance.
 - q. An agreement must not be to do an impossible thing but must be capable of being performed.
 - r. Assistance to contractor in the form of material finance or other resources and payment schedule.
 - s. Once a valid agreement is constituted it can be use for performance as stipulate in the contract.

Termination of Contract

41. Ordinarily a contract is terminated when both parties have performed their obligations under the agreement when the contract has been executed and the payment is made in full. Under the following consideration, like:

- a. Difficulty in performance.
- b. Commercial impossibility
- c. Both parties agree to waive their fights and obligations at a specific time.
- d. A new contract replaces the original one.
- e. A new party is added to the substituted agreement.
- f. One party pays a negotiated amount to the other to be released from its remaining obligations under a contract.

- g. The contract is terminated by breach and the injuring party becomes liable for damages incurred by its failure to perform.

Memorandum of Understanding (MOU)

42. A MOU is a document describing a bilateral or multilateral agreement between parties. It expresses a convergence of will between the parties, indicating an intended common line of action. It is often used in cases where parties either do not imply a legal commitment or in situations where the parties cannot create a legally enforceable agreement. It is a more formal alternative to a gentlemen's agreement.

43. In some cases depending on the exact wording, MOUs can have the binding power of a contract. As a matter of law, contracts do not need to be labeled as such to be legally binding whether or not a document constitutes a binding contract depends only on the presence or absence of well-defined legal elements in the text proper of the document. For example, a binding contract typically must contain mutual consideration (legally enforceable obligations of the parties) and its formation must take place free of fraud, duress, lack of age or mental capacity, etc.

44. In private U.S. law, MOU is a common synonym for a letter of intent. Many companies and Govt agencies use MOUs to define a relationship between departments, agencies or closely held companies. In the United Kingdom, such an MOU is often called a concordat. In international relations, MOUs fall under the broad category of treaties and should be registered in the United Nations treaty database. In practice and in spite of the United Nations' Legal Section insistence that registration be done to avoid 'secret diplomacy,' MOUs are sometimes kept confidential.

45. As a matter of law, the title of MOU does not necessarily mean the document is binding or not binding under international law. To determine whether or not a particular MOU is meant to be a legally binding document i.e. a treaty, one needs to examine the intent of the parties as well as the position of the signatories. A careful analysis of the wording will also clarify the exact nature of the document.

Advantages of MOU.

46. One advantage of MOUs over more formal instruments is that, because obligations under international law may be avoided. MOU can be put into effect in most countries without requiring parliamentary approval. Hence, MOUs are often used to modify and adapt existing treaties, in which case these MOUs have factual treaty status.

47. The decision concerning ratification, however, is determined by the parties' internal law and depends to a large degree on the subject agreed upon. MOUs that are kept confidential (i.e. not registered with the UN) cannot be enforced before any UN organ, and it may be concluded that no obligations under international law have been created.

Deed of Agreement

48. A deed is a signed and legal instrument in writing which used to grant a right. Deeds have historically been part of the broader category of instruments under seal, requiring only the affixing of a common seal to render them valid. Today, however, deeds are instruments in solemn form which require the author's signature and, depending upon the jurisdiction, either notarization or a number of attesting witnesses. In some places, deeds are also referred to as agreements under seal, contracts by deed, or specialties. A specialty is a contract under seal (bond, legal mortgage, debt secured by writing under seal) and formerly ranked in priority above a simple contract in the administration of a decedent's estate for paying off liabilities, especially since specialties have a 12 year limitation period, twice that of a simple contract. They are often used by lawyers when a very formal document is required.

49. Deeds can be described as contract-like as they require the mutual agreement of more than one person. Deeds can therefore, be distinguished from covenants, which, being also under seal, are unilateral promises. However, a deed differs from a simple contract in that it is enforceable without consideration, in some jurisdictions has a liability limitation period of double that of a contract, and allows for a third party beneficiary to enforce an undertaking in the deed, thereby overcoming the doctrine of privacy. In its narrowest sense, a deed is any formal document that confirms or transfers interest or right of ownership (title) to an asset from one person to another, often using a description of its metes and bounds, e.g., conveyances, transfers, mortgages, charges, or leases; these are known as deeds of title (title-deeds). Traditionally and under common law, to be valid and enforceable, a deed must fulfill several requirements, these are:

- a. It must state on its face it is a deed, using wording like "This Deed..." or "executed as a deed".
- b. It must indicate that the instrument itself conveys some privilege or thing to someone. This is indicated by using the word hereby or the phrase by these presents in the clause indicating the gift.
- c. The grantor must have the legal ability to grant the thing or privilege.
- d. The grantee must have the legal capacity to receive it.
- e. It must be executed by the grantor in presence of the prescribed number of witnesses, known as instrument witnesses or be notarized.

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- f. A seal must be affixed to it. Originally, affixing seals made persons parties to the deed and signatures were optional, but most jurisdictions made seals outdated, and now the grantor and either witnesses signatures or notarization are primary.
- g. It must be delivered to and accepted by the grantee.
- h. It should be properly acknowledged before a competent officer, most often a notary public.

TOPIC-4

SHORT INTRODUCTION ON PENAL CODE

Salient Features of Offences under Penal Code

1. **Culpable homicide.** As per section 299 whoever causes the death of a human being by doing an act :

- a. With the intention of causing death, or
- b. With the intention of causing such bodily injury as is likely to cause death, or
- c. With the knowledge that he is likely by such act to 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 it 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.
Section-299

2. **Murder.** As per section 300, without some exceptions, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing:

- a. death, or
- b. If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or
- c. If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or
- d. If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

3. **Exception.** Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident

4. The above exception is subject to the following provisos:

- a. That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.
- b. That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.
- c. That the provocation is not given by anything done in the lawful exercise of the right of private defense.

Explanation.- Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

5. **Rape.** A man is said to commit "rape" that has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:

- a. Against her will.
- b. Without her consent.
- c. With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.
- d. With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
- e. With or without her consent, when she is under fourteen years of age.

6. But there is an exception, where sexual intercourse by a man with his wife, the wife not being under thirteen years of age, is not rape. In the explanation it may be mentioned that 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. It is immaterial whether there was an emission of semen or not.

7. **Consent when valid.** A consideration of Section 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.

8. **Caution as to evidence in cases of alleged rape.** A word of caution regarding charges 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 shelf 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.

9. **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 passions 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.

10. **Adultery.** Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punished as an abettor.

11. **Hurt and Grievous Hurt.** Whoever causes bodily pain, disease or infirmity to any person is said to cause Hurt, and if that hurt is one of the graver kinds (Specified in Section 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 any one, 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".

12. **Criminal Force.** The Sections of the Penal Code which deal with these crimes are chiefly of interest to officers as defining the offences described in Section 40 (a) of the Air Force Act. The definition of force in the Penal Code 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".

13. **Assault.** Whoever makes any gesture or preparation:

- a. Intending to cause any one to apprehend that the person making the gesture, etc. is about to use criminal force to him or
- b. 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.

14. **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.

15. **Theft.** Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft. It can only be committed in respect of movable property which is in the possession of someone.

16. **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 Section 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.

17. **Property must be in Possession of Someone.** 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 any one, 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 any one finding it is bound to assume that it belongs to him.

18. **Possession through Another.** Property in the possession of a person's wife, clerk or servant, on that person's account is in that 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 someone to whom he has entrusted it and from whom he can demand it unconditionally whenever he pleases. 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 servant will be theft.

19. **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.

20. **Criminal Breach of Trust.** Criminal breach of trust is defined in Section 405 of the Penal Code, from which it will be seen that the offence consists in 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 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 shop man who can dispose of his master's stock, but must hand over to the latter the price he receives for it.

21. **Cheating** The term is defined in Section 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 o 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 at to his detriment.

22. It is important to distinguish between a transfer of "possession" only, and a transfer of "property" in the goods taken. 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 amount to cheating.

23. **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".

24. **House-breaking, etc.** The aggravated kinds of criminal trespass contained in the Penal Code are:

- | | |
|------------------------------------|---------------------------|
| a. House-trespass | b. Lurking house-trespass |
| c. Lurking house-trespass by night | d. House-breaking |
| e. House-breaking by night | |

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

26. **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.

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

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

28. **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 Section 141 of the Penal Code. 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.

29. **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.

30. **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. 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 severe 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.

31. **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.

32. **Extortion.** Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to give donation or subscription of any kind or to deliver] to any person any property or valuable Security or anything signed or sealed which may be converted into a valuable Security, commits "extortion".

33. **Public Nuisance.** A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, dangers or annoyance to persons who may have occasion to use any public right. A common nuisance is not excused on the ground that it causes some convenience or advantage.

TOPIC-5

SALIENT FEATURES ON CODE OF CRIMINAL PROCEDURE

Definitions of Different Terms

1. The definition of different terms of the Criminal Procedures code (Cr PC) provides in section 4. The following words and expressions have the following meanings in the Cr PC, unless a different intention appears from the subject or context:

a. **Advocate.** Advocate means an advocate or a mukhtar authorized under any law for the time being in force to practice in any such Court and includes any other person appointed with the permission of the Court to act such proceeding.

b. **Attorney General.** Attorney General means the Attorney General of Bangladesh. It includes Additional Attorney General, Deputy Attorney General or Assistant Attorney General for Bangladesh, or a Government advocate or such officer as the Government may, from time to time, appoint in this behalf.

c. **Bailable Offences & Non-Bailable Offences.** “Bail” means release of a person from legal custody. A bailable offence is an offence where bail can be claimed as a matter of right. Bailable offences are generally regarded as less grave and serious than non-bailable offences. The term “non-bailable” offence means any offence other than the bailable one. A yard stick has been laid down for the classification of offences against other laws. This is as follows:

(1) The offence is to be treated as “bailable” which are described as bailable in the second schedule of the Cr PC and bailable under any other law for the time being in force.

(2) The offences, other than the bailable are the non-bailable offences.

d. **Charge.** A charge is the precise formulation of the specific accusation made against a person, who is entitled to know its nature at the earliest stage.

e. **Cognizable Offence.** Cognizable offence and cognizable case means a case or an offence which a police officer may, in accordance with the Second schedule or under any law for the time being in force, arrest without warrant.

f. **Complaint.** Complaint means the allegation made orally or in writing to a Magistrate that some person whether known or unknown, has committed an offence, but it does not include the report of a police officer.

g. **High Court Division.** High Court Division means the High Court Division for criminal appeal or revision.

h. **Inquiry.** Inquiry includes every inquiry other than a trial conducted under this Code by a Magistrate or Court.

j. **Investigation.** Investigation includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by Magistrate in this behalf.

k. **Judicial Proceeding.** Judicial Proceeding includes any proceeding in the course of which evidence is or may be legally taken on oath. It includes the whole proceeding from the filing of the complaint; until the decision of the Court comprises inquiry and trial but not investigation.

l. **Non-cognizable offence.** Non-cognizable offence means an offence and non-cognizable case means a case in which a police officer may not arrest without warrant.

m. **Offence.** Offence means any act or omission made punishable by any law for the time being in force. It includes any act in respect of which a complaint may be made under section 20 of the Cattle-Trespass Act 1871.

n. **Place.** Place includes also a house, building, tent and vessel.

p. **Police station.** Police station means any post or place declared, generally or specially by the government to be a police station and include any local area specified by the government in this behalf.

q. **Public Prosecutor.** Public Prosecutor means any person appointed under section 492 of Cr PC. The duty of a public prosecutor is to represent not the police but the government and his duty should be discharged by him fairly and fearlessly and with a full sense of the responsibility that attaches to his position.

2. **Trial of Offences under Penal Code.** All offences under the Penal Code, shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions herein after contained. Subject to the other provisions of this code any offence under the Penal Code may be tried:

- a. By the High Court Division, or
- b. By the Court of Sessions, or
- c. By the Court of Metropolitan Magistrate or Magistrate of the first or Second class.

3. **Trial of Offences against other Laws.** All offences, under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. The Magistrate cannot impose a sentence which is in excess of his powers even under special law.

4. **Public when to Assist Magistrates and Police.** Every person is bound to assist a Magistrate or Police Officer reasonably demanding his aid, whether within or without the Metropolitan aerals:

- a. In the taking or preventing the escape of any other person whom such Magistrate or Police Officer is authorized to arrest.
- b. In the prevention or suppression of a breach of the peace, or in the prevention of any injury attempted to be committed to any railway, canal, telegraph or public property.

5. Omission to Assist Public Servant when Bound by Law to Give Assistance.

Whoever intentionally omits to give such assistance shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred taka or with both. If such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred taka, or with both.

6. Aid to Person other than Police Officer, Executing Warrant. When a warrant is directed to a person than a Police-officer, any other person may aid in the execution of such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

Arrest of Persons

7. Arrest and imprisonment both are legal processes which take away personal liberty otherwise recognized as a fundamental right and guaranteed as such to all persons. The object of arrest is to bring a person before a Court or officers of law. An arrest is the restraint of the personal liberty.

8. Arrest How Made. As per section 46, Arrest is made by touching or confining the body of a person which may not be done if he submits himself to custody by word or action. Force may be used if necessary in making arrest but he cannot be killed if he is not accused of an offence punishable with death or imprisonment for life. There can be no arrest without touching unless there is submission to custody by word or action. But manual detention is not necessary to constitute arrest, but in case he refuses to submit custody then confinement may be necessary.

9. Search of Place Entered by Person Sought to be Arrested. If any person acting under a warrant of arrest, or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, the person residing in, or being in charge of, such place, shall, on the demand of such person acting as aforesaid or such police-officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

Procedure Where Ingress not Obtainable

10. It shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police-officer to enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or

of any other person, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance. Provided that, if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested who, according to custom, does not appear in public such person or police officer shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw and shall afford her very reasonable facility for withdrawing, and may then break open the apartment and enter it.

11. Power to Break Open Doors and Windows for the Purposes or Liberation. Any police-officer or other person authorized to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

12. Search of Arrested Person. A police officer may search a person arrested by him, and place in safe custody all articles, other than necessary wearing-apparel, found upon himself, whenever such person is arrested:

- a. Under a warrant which does not provide for the taking of bail,
- b. Under a warrant which provides for the taking of bail but the person arrested cannot furnish bail.
- c. Without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail, the officer making the arrest or, when the arrest is made by a private person.

13. Mode of Searching Woman. Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman, with strict regard to decency.

14. Power to Seize Offensive Weapons. The officer or other person making any arrest under this code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the Court or officer before which or whom the officer or person making the arrest is required by this Code to produce the person arrested.

15. When Police May Arrest Without Warrant. Any police-officer may, without an order from a Magistrate and without a warrant, arrest:

- a. Any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or reasonable suspicion exists of his having been so concerned;
- b. Any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking;
- c. Any person who has been proclaimed as an offender either under this code or by order of the Government;

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- d. Any person in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing;
- e. Any person who obstructs a police-officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody;
- f. Any person reasonably suspected of being a deserter from Bangladesh Army, Navy or Air Force;
- g. Any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having concerned in, any act committed at any place out of Bangladesh, which if committed in Bangladesh, would have been punishable as an offence, and for which he is, under any law relating to extradition or otherwise, liable to be apprehended or detained in custody in Bangladesh;
- h. Any released convict committing a breach of any rule made under Section 565 of Cr PC.
- j. Any person for whose arrest a requisition has been received from another police-officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears there from that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

16. Arrest by Private Person and Procedure on Such Arrest. Any private person may arrest any person who in his view commits a non-bailable and cognizable offence, or any proclaimed offender, and without unnecessary delay, shall make over any person so arrested to a police-officer, or, in the absence of a police-officer take such person or cause him to be taken in custody to the nearest police-station. If there is reason to believe that such person comes under the provisions of Section 54, a police officer shall re-arrest him. If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a police-officer to give his name and residence gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of Section 57. If there is no sufficient reason to believe that he has committed any offence, he shall be at once released.

17. Person Arrested to be taken Before Magistrate or Officer-in-Charge of Police Station. A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station.

18. Person Arrested not to be Detained More Than Twenty Four Hours. No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not in the absence of a special order of a Magistrate under Section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

19. **Power, on Escape, to Pursue and Retake.** If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in Bangladesh.

Summons

20. Summons is the document that officially starts a lawsuit. It must be in a form prescribed by the law governing procedure in the court involved, and it must be properly served on, or delivered to, the defendant. Thus, it is a document issued from the officer of Court of justice calling upon the person to whom it is directed to attend before a Judge or officer of law. Every summons shall be in writing in duplicate, signed and sealed by the presiding officer of the Court issuing it. It must state in clear terms the title of the Court, the place at which, the day, and time of the day when, the attendance of the person summoned is required. It must also contain an instruction to the person summoned that he is not to leave the Court without leave, and if the case in which he has been summoned is adjourned without ascertaining the date to which it is adjourned.

21. **Summons How Served.** The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons. Every person on whom a summons is so served shall if so required by the serving officer, sign a receipt therefore on the back of the other duplicate. Service of a summons on an incorporated company or other body corporate may be affected by serving it on the Secretary, local manager or other principal officer of the corporation or by registered post letter addressed to the chief officer of the corporation in "Bangladesh". In such case the service shall be deemed to have been affected when the letter would arrive in ordinary course of post

22. **Service When Person Summoned cannot be Found.** Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family, or, in a Metropolitan area, with his servant residing with him; and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefore on the back of the other duplicate.

23. **Procedure When Service cannot be Affected as Before Provided.** If service in the manner mentioned in Sections 69 and 70 cannot by the exercise of due diligence be affected, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides, and thereupon the summons shall be deemed to have been duly served.

24. **Service on Servant of Republic.** Where the person summoned is in the active service of the Republic, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in manner provided by Section 69, and shall return it to the Court under his signature with the endorsement required by that Section. Such signature shall be evidence of due service.

25. **Service of Summons Outside Local Limits.** When a Court desires that summons issued by it shall be served at any place outside the local limits of its

jurisdiction, it shall ordinarily send such summons in duplicate to a Magistrate within the local limits of whose jurisdiction the person summoned resides.

26. Proof of Service in such Cases, and When Serving Officer not Present. When a summons issued by a Court is served outside the local limits of its jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in manner provided by Section 69 or Section 70) by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made there in shall be deemed to be correct unless and until the contrary is proved. The affidavit mentioned in this Section may be attached to the duplicate of the summons and returned to the Court.

27. Summons to Produce Documents or Other Thing. Whenever any Court or in any place beyond the limits of the metropolitan area of Chittagong and Dhaka, any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such court may issued a summons, or such officer a written order, to be person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

28. Any person required under this Section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same. Nothing in this Section shall be deemed to affect the Evidence Act, 1872, Sections 123 and 124, or to apply to a letter post card, telegram or other document or any parcel or thing in the custody of the postal or telegraph authorities.

29. Punishment. Whoever, being legally bound to produce or deliver up any document to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred taka, or with both;

30. Procedure as to Letters and Telegrams. If any document, parcel or thing in such custody is, in the opinion of any Deputy Commissioner, Chief Metropolitan Magistrate, High Court Division or Court of Session, wanted for the purpose of any investigation, inquiry, trial or other proceeding under this Code, such Magistrate or Court may require the Postal or Telegraph authorities, as the case may be, to deliver such document, parcel or thing to such person as such Magistrate or Court directs. If any such document, parcel, or thing is, in the opinion of any other Magistrate, or of any Commissioner of Police or District Superintendent of Police, wanted for any such purpose, he may require the postal or telegraph department, as the case may be, to cause search to be made for and to detain such document, parcel or thing pending the orders of any such Deputy Commissioner, Chief Metropolitan Magistrate or Court.

31. Unlawful Assembly It is unlawful to assemble for the purpose of starting a riot or breaching the peace, or when such an assembly reasonably could be expected to cause a riot or endanger the public. The right of law enforcement to require disbursement

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of such an assembly is part of the "police powers" of the state, but the dangers of riot or breach of peace are subjective and decided on the spot by police officers or other public officials. The basis of the offense of unlawful assembly is the intent with which the individuals assemble. The members of the assembled group must have in mind a fixed purpose to perform an illegal act. The time when the intent is formed is immaterial, and it does not matter whether the purpose of the group is lawful or unlawful if they intend to carry out that purpose in a way that is likely to precipitate a breach of the peace.

32. An assembly of five or more persons is designated an unlawful assembly, if the common object of the persons composing that assembly is:

- a. To overawe by criminal force, or show of criminal force the Government or Parliament or any public servant in the exercise of the lawful power of such public servant, or
- b. To resist the execution of any law, or any legal process or
- c. To commit any mischief or criminal trespass, or other offence; or
- d. By means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right, or
- e. By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do or to omit to do what he is legally entitled to do.

33. **Assembly to Disperse on Command of Magistrate or Police-Officer.** Any Magistrate or officer in charge of a police station may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly. Disobeying the command to disperse is punishable under Section 145 and 151 of the Penal Code.

34. **Use of Civil Force to Disperse.** If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer-in-charge of a police station may proceed to disperse such assembly by force and may require the assistance of any male person, not being an officer or soldier, sailor or airman of armed forces of Bangladesh, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law.

35. **Use of Military Force.** 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 or the police commissioner in a Metropolitan Area may cause it to be dispersed by military force.

36. **Duty of Officer Commanding in Troops Required by Magistrate to Disperse Assembly.** When a Magistrate or the police commissioner determines to disperse any

such assembly by military force, he may require any soldier in the Bangladesh Army to disperse such assembly by military force, and to arrest and confine such persons forming part of it as the Magistrate or the police commissioner 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. 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.

37. Power of Commissioned Military Officers to Disperse Assembly. 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; but 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.

38. Protection Against Prosecution. 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 130; and
- d. No inferior officer, or soldier or airman in the armed forces doing any act in obedience to any order which he was bound to obey.

Shall be deemed to have thereby committed an offence; Provided that no such prosecution shall be instituted in any Criminal Court against any officer of soldier, sailor or airman in the armed forces except with the sanction of the Government.

Information to the Police and Their Powers to Investigate

39. Information in Cognizable Cases. Every information relating to the commission of a cognizable offence if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such informant, whether given in writing or reduced to writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Government may prescribe in this behalf.

40. Information in Non-cognizable Cases.

- a. When information is given to an officer in charge of a police-station of the commission within the limits of such station of a non-cognizable offence, he shall enter in a book to be kept as aforesaid the substance of such information and refer the information to the Magistrate.
- b. No police-officer shall investigate a non-cognizable case without the order of a magistrate of the first or Second class having power to try such case or send the same for trial.
- c. Any police-office receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police-station may exercise in a cognizable case.

41. Investigation into cognizable cases.

- a. Any officer in charge of a police-station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial.
- b. No proceeding of a police-officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this Section to investigate.
- c. Any Magistrate empowered under Section 190 may order such an investigation as mentioned above.

42. Procedure where Cognizable Offence Suspected.

- a. If, from information received or otherwise, an officer in charge of a police-station has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate, he shall forthwith send a report of the same to Magistrate empowered to take cognizance of such offence upon a police-report, and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the Government may, by general or special order, prescribe in this behalf to proceed to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender: Provided as follows:
 - (1) when any information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police-station need not proceed in person or depute a subordinate officer to make an investigation on the spot;
 - (2) if it appears to the officer in charge of a police-station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

b. In each of the cases mentioned in clauses (a) and (b) of the proviso the sub-Section (1), the officer in charge of the police-station shall state in his said report his reasons for not fully complying with the requirements of that sub-Section, and in the case mentioned in clause (b), such officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the Government, the fact that he will not investigate the case or cause it to be investigated.

43. Reports under Section 157 how Submitted.

a. Every report sent to a Magistrate under Section 157 shall, if the Government so directs, be submitted through such superior officer of police as the Government by general or special order appoints in that behalf.

b. Such superior officer may give such instructions to the officer in charge of the police-station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate.

44. Power to hold Investigation of Preliminary Inquiry. Such Magistrate, on receiving such report, may direct an investigation or, if he thinks fit at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry into, or otherwise to dispose of, the case in manner provided in this Code.

45. Police-officer's Power to require Attendance of Witnesses. Any police officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the circumstances of the case; and such person shall attend as so required.

46. Examination of Witnesses by Police.

a. Any police-officer making an investigation under this Chapter or any police-officer not below such rank as the Government may, by general or special order, prescribe in this behalf; acting on the requisition of such officer may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

b. Such person shall be bound to answer all questions relating to such case put to him by such officer, other than questions and answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

c. The police-officer may reduce into writing any statement made to him in the course of an examination under this Section, and if he does so he shall make a separate record of the statement of each such person whose statement he records.

47. Statements to Police not to be Signed; use of such Statements in Evidence.

a. No statement made by any person to a police officer in the course of an investigation under this Chapter shall, if reduced into writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police-diary or otherwise, or any part of such statement or record, be used for any purpose (save as hereinafter provided) at any inquiry or trial in respect of any offence under investigation at the time when such statement was made: Provided that, when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, the Court shall on the request of the accused, refer to such writing and direct 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 in the manner prescribed by Section 145 of the Evidence Act, 1872. When any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination: Provided further that, if the Court is of the opinion that any part of any such statement is not relevant to the subject-matter of the inquiry or trial or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interests, it shall record such opinion (but not the reasons therefore) and shall exclude such part from the copy of the statement furnished to the accused.

b. Nothing in this Section shall be deemed to apply to any statement falling within the provisions of Section 32, clause (I), of the Evidence Act, 1872 or to affect the provisions of Section 27 of that Act.

48. No Inducement to be Offered.

a. No police-officer or other person in authority shall offer or make, or cause to be offered or made any such inducement, threat or promise as is mentioned in Section 24 of Evidence Act, 1872.

b. But no police-officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this Chapter any statement which he may be disposed to make of his own free will.

49. Power to Record Statement and Confessions.

a. Any Metropolitan Magistrate, any Magistrate of the first class and any Magistrate of the Second class specially empowered in this behalf by the Government may, if he is not a police officer, record any statement or confession made to him in the course of an investigation under this Chapter or at any time afterwards before the commencement of the inquiry or trial.

b. Such statements shall be recorded in such of the manners hereinafter prescribed for recording evidence as is, in his opinion, best fitted for the circumstances of the case. Such confessions shall be recorded and signed in the manner provided in Section 364, and such statements or confessions shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

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c. A Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make confession and that if he does so it may be used as evidence against him and no magistrate shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily; and, when he records any confession, he shall make a memorandum at the foot of such record to the following effect:

“I have explained to (name) that he is not bound to make a confession and that, if he does so any confession he may this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him”. After making such declaration, the recording magistrate should sign at the foot.

50. **Explanation.** It is not necessary that the Magistrate receiving and recording a confession or statement should be a Magistrate having jurisdiction in the case.

51. **Information.**

a. Whenever an officer in charge of a police-station or a police-officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorized to investigate may be found in any place within the limits of the police station of which he is in charge, or to which he is attached, and that such thing cannot in this opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station. As per Section 142 no such officer shall search, or cause search to be made, for anything which is in the custody of a bank or banker as defined in the Bankers' Books, Evidence Act, 1891 (XVII of 1891), and relates, or might disclose any information which relates, to the bank account of any person except,

(1) for the purpose of investigating an offence under Sections 403, 406, 408 and 409 and Sections 421 to 424 (both inclusive) of the Penal Code) with the prior permission in writing of a Sessions Judge; and

(2) in other cases, with the prior permission in writing of the High Court Division.

b. A Police-officer proceeding under para 55 (a) shall, if practicable, conduct the search in person.

c. If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may after recording in writing his reasons for so doing require any officer subordinate to him to make the search, and he shall deliver to the subordinate officer an order in writing specifying the place to be searched and, so far as possible, the thing for which search is to be made; and such subordinate officer may thereupon search for such thing in such place.

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d. The provisions of this Code as to search warrants and the general provisions as to searches contained in Section 102 and Section 103 shall, so far as may be, apply to a search under this Section.

e. Copies of any record made under para 55 (a) or 55(c) shall forthwith be sent to the nearest Magistrate empowered to take cognizance of the offence and the owner or occupier of the place searched shall on application be furnished with a copy of the same by the Magistrate: Provided that he shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost.

52. When Officer in Charge of Police -station may Require Another to Issue Search Warrant.

a. An Officer in charge of a police-station or a police-officer not being below the rank of sub-inspector making an investigation may require an officer in charge of another police-station, whether in the same or a different district, to cause a search to be made in any place, in any case in which the former officer might cause such search to be made, within the limits of his own station.

b. Such officer, on being so required, shall proceed according to the provisions of Section 165, and shall forward the thing found, if any, to the officer at whose request the search was made.

c. Whenever there is reason to believe that the delay occasioned by requiring an officer in charge of another police-station to cause a search to be made under para 56(a) might result in evidence of the commission of an offence being concealed or destroyed, it shall be lawful for an officer in charge of a police-station making an investigation under this Chapter to search, or cause to be searched, any place in the limits of another police-station, in accordance with the provisions of Section 165, as if such place were within the limits of his own station.

d. Any officer conducting a search under para 56(c) shall forthwith send notice of the search to the officer in charge of the police-station within the limits of which such place is situated, and shall also send with such notice a copy of the list (if any) prepared under Section 103, and shall also send to the nearest Magistrate empowered to take cognizance of the offence copies of the records referred to in para 56(a) & (c).

e. The owner or occupier of the place searched shall, on application, be furnished with a copy of any record sent to the Magistrate under para 56(d): Provided that he shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of cost.

53. Procedure when Investigation Cannot be Completed in Twenty Four Hours.

a. Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 61, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police-station or the police officer making the investigation if he is not below the rank of sub-inspector shall

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forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

b. The Magistrate to whom an accused person is forwarded under this Section may, whether he has or has not jurisdiction to try the case, from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole. If he has not jurisdiction to try the case or send it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction: Provided that no Magistrate of the third class, and no Magistrate of the Second class not specially empowered in this behalf by the Government shall authorise detention in the custody of the police.

c. A Magistrate authorizing under this Section detention in the custody of the police shall record his reasons for so doing.

d. If such order is given by a Magistrate other than the Chief Metropolitan Magistrate, District Magistrate or Sub-Divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom is immediately subordinate.

e. If the investigation is not concluded within one hundred and twenty days from the date of receipt of the information relating to the commission of the offence or the order of the Magistrate for such investigation.

f. The Magistrate empowered to take cognizance of such offence or making the order for investigation may, if the offence to which the investigation relates is not punishable with death, imprisonment for life or imprisonment exceeding ten years, release the accused on bail to the satisfaction of such Magistrate; and

g. The Court of Session may, if the offence to which the investigation relates is punishable with death, imprisonment for life or imprisonment exceeding ten years, release the accused on bail to the satisfaction of such Court: Provided that if an accused is not released on bail under this sub-Section, the Magistrate or, as the case may be, the Court of Session shall record the reasons for it: Provided further that in cases in which sanction of appropriate authority is required to be obtained under the provisions of the relevant law for prosecution of the accused, the time taken for obtaining such sanction shall be excluded from the period specified in this sub-Section.

54. **Explanation.** The time taken for obtaining sanction shall commence from the day the case, with all necessary documents, is submitted for consideration of the appropriate authority and be deemed to end on the day of the receipt of the sanction order of the authority.

55. **Report of Investigation by Subordinate Police-officer.** When any subordinate Police-officer has made any investigation under this Chapter, he shall report the result of such investigation to the Officer-in-Charge of the Police-station.

56. **Release of Accused when Evidence Deficient.** If, upon an investigation under this Chapter, it appears to the Officer-in-Charge of the police-station or to the Police-officer making the investigation that there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear if and when so required, before a Magistrate empowered to taken cognizance of the offence on a police report and to try the accused or send him for trial.

57. **Case to be sent to Magistrate when Evidence is Sufficient.**

a. If, upon an investigation under this Chapter, it appears to the Officer-in-charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police-report and to try the accused or send him for trial, if the offence is bailable and the accused is able to give Security, shall take Security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

b. When the officer in charge of a police-station forwards an accused person to a Magistrate or takes Security for his appearance before such Magistrate under this

Section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant (if any) and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate as thereby directed and procedure or give evidence (as the case may be) in the matter of the charge against the accused.

c. If the Court of the Chief Metropolitan Magistrate, District Magistrate or Sub-divisional Magistrate is mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice or such reference is given to such complainant or persons.

58. **Complainants and Witness not to be Required to Accompany police- officer.**

a. No complainant or witness on his way to the Court of the Magistrate shall be required to accompany as police-officer, or shall be subjected to unnecessary restraint or inconvenience, or required to give any Security for his appearance other than his own bond: Provided that, if any complainant or witness refuses to attend or to execute a bond as directed in Section 170, the officer in charge of the police-station may forward him in custody to the Magistrate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed.

b. Notwithstanding anything contained in para 62 (a), it shall be the responsibility of the police-officer to ensure that the complainant or the witness appears before the Court at the time of hearing of the case.

59. Diary of Proceedings in Investigation.

a. Every police-officer making an investigation under this Chapter shall day by day enter his proceeding in the investigation in a diary setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

b. Any Criminal Court may send for the police-diaries of a case under inquiry or trial in such Court and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court: but, if they are used by the police-officer who made them, to refresh his memory, or if the Court uses them for the purpose of contradicting such police-officer, the provisions of the Evidence Act, 1872, Section 161 or Section 145, as the case may be, shall apply.

60. Report of Police-Officer.

a. Every investigation under this Chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the police-station shall-

(1) forward to a Magistrate empowered to take cognizance of the offence on a police-report, in the form prescribed by the Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused (if arrested) has been forwarded in custody or has been released on his bond, and, if so, whether with or without sureties.

(2) communicate in such manner as may be prescribed by the Government, the action taken by him to the person, if any, by whom what information relating to the commission of the offence was first given.

b. Where a superior officer of police has been appointed under Section 158, the report shall, in any cases in which the Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police-station to make further investigation.

c. Whenever it appears from a report forwarded under this Section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit. When such report is in respect of a case to which Section 170 applies, the police-officer shall forward to the Magistrate along with the report-

(1) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(2) the statements recorded under sub-Section (3) of Section 161 of all the persons whom the prosecution proposes to examine as its witness. Nothing in this Section shall be deemed to preclude further investigation in respect of an offence after a report has been forwarded to the Magistrate and where, upon such investigation, the officer in charge of the police-station, obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed.

d. A copy of any report forwarded under this Section shall on application be furnished to the accused before the commencement of the inquiry or trial: Provided that the same shall be paid for unless the Magistrate for some special reason thinks fit to furnish it free of cost.

TOPIC-6

INTRODUCTION ON OPERATIONAL LAW

Customary International Law and the UN Charter

1. If a specific human right falls within the category of customary international law, it should be considered a “fundamental” human right. As such, it is binding on our forces during operations. This is because customary international law is considered part of National. Human rights law operates to regulate the way state actors (in this case the Bangladesh Armed Forces) treat all humans equally. As such, a “human right” is considered to have risen to the status of customary international law wherever deal with human beings. A violation of human rights considered customary international law. Therefore, it is the customary international law status of certain human rights that renders respect for such human rights a legal obligation on the part of Bangladesh forces conducting operations. But some of the customary International law may be reflected in treaties and further ratified by the Bangladesh. The three most pervasive human rights treaties, Bangladesh have ratified are:

- a. The Covenant on Civil and Political Rights
- b. The Covenant on Economic, Social and Cultural Rights.
- c. The Refugee Convention and Refugee Protocol.

2. The certain fundamental human rights fall within the category of customary international law, and a state violates international law when, as a matter of policy, it practices, encourages, or condones any of the following:

- a. Genocide.
- b. Slavery or slave trade.
- c. Murder or causing the disappearance of individuals.
- d. Torture or other cruel, inhuman, or degrading treatment or punishment.
- e. Prolonged arbitrary detention.
- f. Systematic racial discrimination.
- g. A consistent pattern of gross violations of internationally recognized human rights.

Universal Declaration of Human Rights

3. **Article 1** All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

4. **Article 2** Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinctions of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

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Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

5. **Article 3.** Everyone has the right to life, liberty and the security of person.

6. **Article 4.** No one shall be held in slavery or servitude, slavery and the slave trade shall be prohibited in all their forms.

7. **Article 5.** No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

8. **Article 6.** Everyone has the right to recognition everywhere as a person before the law.

9. **Article 7**

a. All are equal before the law and are entitled without any discrimination to equal protection of the law.

b. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

10. **Article 8.** Everyone has the right to effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

11. **Article 9.** No one shall be subjected to arbitrary arrest, detention or exile.

12. **Article 10.** Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

13. **Article 11**

a. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in public trial at which he has had all the guarantees necessary for his defence.

b. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

14. **Article 12**

a. No one shall be subjected to arbitrary interference with his privacy, family, home, correspondence, nor to attacks upon his honour and reputation.

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b. Everyone has the right to the protection of the law against such interference or attacks.

15. **Article 13**

a. Everyone has the right to freedom of movement and residence within the borders of each state.

b. Everyone has the right to leave any country, including his own, and to return to his country.

16. **Article 14** Everyone has the right to seek and to enjoy in other countries asylum from per persecution. This right may not be invoked in the case of prosecutions genuinely arising from nonpolitical crimes or from acts contrary to the purposes and principles of the United Nations.

17. **Article 15** Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

18. **Article 16**

a. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

b. Marriage shall be entered into only with the free and full consent of the intending spouses. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

19. **Article 17** Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property.

20. **Article 18** Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

21. **Article 19.** Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

22. **Article 20**

a. Everyone has the right to freedom of peaceful assembly and association.

b. No one may be compelled to belong to an association.

23. **Article 21**

a. Everyone has the right to take part in the government of his country, directly or through freely chosen representative.

b. Everyone has the right of equal access to public service in his country.

c. The will of the people shall be the basis of the authority of government; this will be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

24. **Article 22.** Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social, and cultural rights indispensable for his dignity and the free development of his personality.

25. **Article 23**

a. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

b. Everyone, without any discrimination, has the right to equal pay for equal work.

c. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

d. Everyone has the right to form and to join trade unions for the protection of his interests.

26. **Article 24.** Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

27. **Article 25**

a. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

b. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

28. **Article 26**

a. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

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b. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

c. Parents have a prior right to choose the kind of education that shall be given to their children.

29. **Article 27**

a. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

b. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

30. **Article 28.** Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

31. **Article 29**

a. Everyone has duties to the community in which alone the free and full development of his personality is possible.

b. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of Securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

c. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

32. **Article 30.** Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

International Humanitarian law

33. International humanitarian law (IHL), often referred to as the laws of war, the laws and customs of war or the law of armed conflict, is the legal corpus "comprised of the Geneva Conventions and the Hague Conventions, as well as subsequent treaties, case law, and customary international law. It defines the conduct and responsibilities of belligerent nations, neutral nations and individuals engaged in warfare, in relation to each other and to protected persons, usually meaning civilians.

34. The law is mandatory for nations bound by the appropriate treaties. There are also other customary unwritten rules of war, many of which were explored at the Nuremberg

War Trials. By extension, they also define both the permissive rights of these powers as well as prohibitions on their conduct when dealing with irregular forces and non-signatories.

Law of Armed Conflict

35. The Law of War provides rights and assigns responsibilities. This topic will summarize key law of war provisions for military personnel and commanders in the conduct of operations in both international and non-international armed conflicts. It will be discuss about the purposes and basic principles of the Law of War, its application in armed conflict, the legal sources of the law, the conduct of hostilities, treatment of protected persons, military occupation of enemy territory, neutrality, and compliance and enforcement measures.

36. **Definition.** The law of war is defined as “that part of international law that regulates the conduct of armed hostilities. It often is termed the law of armed conflict.” The law of war encompasses all international law for the conduct of hostilities binding on the United States or its individual citizens, including treaties and international agreements to which the United States is a party, and applicable customary international law.

37. **Purposes and basic Principles of the Law of War.** The fundamental purposes of the law of war are humanitarian and functional in nature. The humanitarian purposes include:

- a. Protecting both combatants & noncombatants from unnecessary suffering;
- b. Safeguarding the fundamental human rights of persons who fall into the hands of the enemy; and
- c. Facilitating the restoration of peace.

38. The functional purposes include:

- a. Ensuring good order and discipline;
- b. Fighting in a disciplined manner consistent with national values; and
- c. Maintaining domestic and international public support.

39. **Application of the Law of War.** The Law of War applies to all cases of declared war or any other armed conflicts. This threshold is codified in common article 2 of the Geneva Conventions. The 1977 Protocol Additional to the 1949 Geneva Conventions has expanded this scope of application to include certain wars of “national liberation” for States Parties to that convention. In peace operations, the question frequently arises whether the Law of War applies to those operations. The issue is less applicability of the law of war as such but complete applicability of particular treaties.

40. Legal framework of the Law of War is as follows:

- a. Customary International Law

- b. Hague Conventions
- c. Geneva Conventions of 1949
- d. Geneva Protocols I and II of 1977
- e. Treaties
- f. Regulations.

41. The principles of the Law of the War are described below:

- a. **Military Necessity.** Targeting not prohibited by LOW and of a military advantage.
- b. **Military Objective.** Persons, places or objects that make an effective contribution to military action.
- c. **Humanity or Unnecessary Suffering.** Minimize unnecessary suffering incidental injury to people and collateral damage to property.
- d. **Proportionality.** Loss of life and damage to property incidental to attacks must not be excessive in relation to the concrete and direct military advantage expected to be gained.
- e. **Discrimination or Distinction.** Discriminate or distinguish between **combatants** and **non-combatants**; military objectives and protected people/protected places.

42. **Sources of the Law of War.** The Law of The Hague regulates “methods and means” of warfare—prohibitions against using certain weapons such as poison; humanitarian concerns such as warning the civilian population before a bombardment, and the law of belligerent occupation (particularly with respect to property). The Geneva Conventions of 1949 protect “Victims” of war such as wounded and sick, shipwrecked at sea, prisoners of war, and civilians.

43. **Conduct of Hostilities.** Generally, military personnel engaging in hostilities in an armed conflict on behalf of a party to the conflict. Combatants are lawful targets unless “out of combat,” that is, wounded, sick or shipwrecked and no longer resisting, or captured. The lawful combatants as defined:

- a. Is entitled to carry out attacks on enemy military personnel and equipment;
- b. May be the subject of lawful attack by enemy military personnel;
- c. Bears no criminal responsibility for killing or injuring enemy military personnel or civilians taking an active part in hostilities, or for causing damage or destruction to property, provided his or her acts have been in compliance with the law of war;
- d. May be tried for breaches of the law of war;

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- e. May only be punished for breaches of the law of war as a result of a fair and regular trial;
- f. If captured, must be treated humanely; and
- g. If captured, is entitled to prisoner of war status.

44. Under the Geneva Conventions criteria, the combatants include: the regular armed forces of a State Party to the conflict; militia, volunteer corps, and organized resistance movements belonging to a State Party to the conflict that are under responsible command, wear a fixed distinctive sign recognizable at a distance, carry their arms openly, and abide by the laws of war; and members of armed forces of a government not recognized by a detaining authority or occupying power. This list is a summary, but is not intended to be comprehensive or complete.

45. The unprivileged belligerents may include spies, saboteurs, or civilians who are participating in the hostilities or who otherwise engage in unauthorized attacks or other combatant acts. The unprivileged belligerents are not entitled to prisoner of war status, and may be prosecuted under the domestic law of the captor.

Geneva Conventions

46. The **Geneva Conventions** comprise four treaties and three additional protocols that set the standards in international law for humanitarian treatment of the victims of war. The singular term *Geneva Convention* refers to the agreements of 1949, negotiated in the aftermath of World War II, updating the terms of the first three treaties and adding a fourth treaty. The language is extensive, with articles defining the basic rights of those captured during a military conflict, establishing protections for the wounded and addressing protections for civilians in and around a war zone. The Geneva Conventions comprise rules that apply in times of armed conflict and seek to protect people who are not or are no longer taking part in hostilities, for example: wounded or sick fighters, prisoners of war, civilians, medical and religious personnel

47. The **Geneva Conventions** are the result of a process that developed in a number of stages between 1864 and 1949 which focused on the protection of civilians and those who can no longer fight in an armed conflict. As a result of World War II, all four conventions were revised based on previous revisions and partly on some of the 1907 Hague Conventions and readopted by the international community in 1949. Later conferences have added provisions prohibiting certain methods of warfare and addressing issues of civil wars. The Geneva Conventions are:

- a. First Geneva Convention For the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (first adopted in 1864, last revision in 1949)
- b. Second Geneva Convention For the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (first adopted in 1949, successor of the 1907 Hague Convention X)

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- c. Third Geneva Convention Relative to the Treatment of Prisoners of War (first adopted in 1929, last revision in 1949)
- d. Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War (first adopted in 1949, based on parts of the 1907 Hague Convention IV)

48. In addition, there are three additional amendment protocols to the Geneva Convention; those are:

- a. Protocol I (1977): Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts. As of 12 January 2007 it had been ratified by 167 countries.
- b. Protocol II (1977): Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts. As of 12 January 2007 it had been ratified by 163 countries.
- c. Protocol III (2005): Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem. As of June 2007 it had been ratified by 17 countries and signed but not yet ratified by an additional 68 countries.

49. While the Geneva Conventions of 1949 can be seen as the result of a process which began in 1864, today, they have "achieved universal participation with 194 parties." This means that they apply to almost any international armed conflict.

50. **Common Article 2 Relating to International Armed Conflicts** This article states that the Geneva Conventions apply to all cases of *international* conflict, where at least one of the warring nations have ratified the Conventions. Primarily:

- a. The Conventions apply to all cases of declared war between signatory nations. This is the original sense of applicability, which predates the 1949 version.
- b. The Conventions apply to all cases of armed conflict between two or more signatory nations, even in the absence of a declaration of war. This language was added in 1949 to accommodate situations that have all the characteristics of war without the existence of a formal declaration of war, such as a police action.
- c. The Conventions apply to a signatory nation even if the opposing nation is not a signatory, but only if the opposing nation "accepts and applies the provisions" of the Conventions.

51. Article 1 of Protocol I further clarifies that armed conflict against colonial domination and foreign occupation also qualifies as an *international* conflict. When the criteria of international conflict have been met, the full protections of the Conventions are considered to apply.

52. **Common Article 3 relating to Non-International Armed Conflict.** This article states that the certain minimum rules of war also apply to armed conflicts that are not of an international character, but that are contained within the boundaries of a single country. The applicability of this article rests on the interpretation of the term *armed conflict*. For example it would apply to conflicts between the Government and rebel forces, or between two rebel forces, or to other conflicts that have all the characteristics of war but that are carried out within the confines of a single country. A handful of individuals attacking a police station would not be considered an armed conflict subject to this article, but only subject to the laws of the country in question.

53. The provisions of the entire Geneva Convention are not applicable in this situation, but only a limited list of provisions contained within the language of Article 3, and additionally within the language of Protocol II. The rationale for the limitation is that many articles would otherwise conflict with the rights of a Sovereign State. In summary:

- a. Persons taking no active part in hostilities should be treated humanely (including military persons who have ceased to be active as a result of sickness, injury, or detention).
- b. The wounded and sick shall be collected and cared for and treated with respect.

International Committee of the Red Cross

54. The International Red Cross and Red Crescent Movement is an international humanitarian movement worldwide which was founded to protect human life and health, to ensure respect for all human beings, and to prevent and alleviate human suffering, without any discrimination based on nationality, race, sex, religious beliefs, class or political opinions. The movement consists of several distinct organizations independent from each other with common basic principles, objectives, symbols, statutes, etc and those are:

- a. The International Committee of the Red Cross (ICRC) is a private humanitarian institution founded in 1863 in Geneva, Switzerland, by Henry Dunant. Its committee has a unique authority under international humanitarian law to protect the life and dignity of the victims of international and internal armed conflicts.
- b. The International Federation of Red Cross and Red Crescent Societies (IFRC) was founded in 1919 and today it coordinates activities between 186 National Red Cross and Red Crescent Societies within the Movement. On an international level, the Federation leads and organizes, in close cooperation with the National Societies, relief assistance missions responding to large-scale emergencies.
- c. National Red Cross and Red Crescent Societies exist in nearly every country in the world. Each entity works in its home country according to the principles of international humanitarian law and the statutes of the international Movement. Depending on their specific circumstances and capacities, National

Societies can take on additional humanitarian tasks that are not directly defined by international humanitarian law or the mandates of the international Movement.

55. **Organization of the Movement** The International Conference, 1965 in Vienna adopted seven basic principles which should be shared by all parts of the Movement, and they were added to the official statutes of the Movement in 1986. Those are:

- | | |
|----------------------|-----------------|
| a. Humanity | b. Impartiality |
| c. Neutrality | d. Independence |
| e. Voluntary Service | f. Unity |
| g. Universality | |

56. The International Red Cross and Red Crescent Conference, which occurs once every four years, is the highest institutional body of the Movement. It gathers delegations from all of the national societies as well as from the ICRC, the Federation and the signatory states to the Geneva Conventions. In between the conferences, the Standing Commission acts as the supreme body and supervise implementation of and compliance with the resolutions of the conference. In addition, the Standing Commission coordinates the cooperation between the ICRC and the Federation. It consists of two representatives from the ICRC (including its president), two from the Federation (including its president), and five individuals who are elected by the International Conference. The Standing Commission convenes every six months on average. Moreover, a convention of the Council of Delegates of the Movement takes place every two years in the course of the conferences of the General Assemblies of the Federation. The Council of Delegates plans and coordinates joint activities for the Movement.

57. The official mission of the ICRC as an impartial, neutral, and independent organization is to stand for the protection of the life and dignity of victims of international and internal armed conflicts. According to the 1997 Seville Agreement, it is the "Lead Agency" of the Movement in conflicts. The core tasks of the Committee, which are derived from the Geneva Conventions and its own statutes, are the following:

- a. To monitor compliance of warring parties with the Geneva Conventions
- b. To organize nursing and care for those who are wounded on the battlefield
- c. To supervise the treatment of prisoners of war
- d. To help with the search for missing persons in an armed conflict.
- e. To organize protection and care for civil populations
- f. To arbitrate between warring parties in an armed conflict

58. **Legal Status and Organization** The ICRC is headquartered in the Swiss city of Geneva and has external offices in about 80 countries. It has about 12,000 staff members worldwide, about 800 of them working in its Geneva headquarters, 1,200 expatriates with about half of them serving as delegates managing its international missions and the other half being specialists like doctors, agronomists, engineers or interpreters, and about 10,000 members of individual national societies working on site. Contrary to popular belief, the ICRC is not a non-governmental organization in the most

common sense of the term, nor is it an international organization. As it limits its members (a process called cooptation) to Swiss nationals only, it does not have a policy of open and unrestricted membership for individuals like other legally defined NGOs. The word "international" in its name does not refer to its membership but to the worldwide scope of its activities as defined by the Geneva Conventions. The ICRC has special privileges and legal immunities in many countries, based on national law in these countries or through agreements between the Committee and respective national governments. According to Swiss law, the ICRC is defined as a private association. According to its statutes it consists of 15 to 25 Swiss-citizen members, which it coopts for a period of four years. There is no limit to the number of terms an individual member can have although a three-quarters majority of all members is required for re-election after the third term.

Rules of Engagement (ROE)

59. **Definition of ROE.** ROE are directives issued by competent military authority to delineate the circumstances and limitations under which its own naval, ground, and air forces will initiate and/or continue combat engagement with other forces encountered.

60. **Purposes of ROE.** As a practical matter, ROE perform three functions:

- a. Provide guidance from the Strategic Command Authority to deployed units on the use of force.
- b. Act as a control mechanism for the transition from peacetime to combat.
- c. Provide a mechanism to facilitate planning. ROE provide a framework that encompasses national policy goals, mission requirements, and the rule of law.

61. Rules of Engagement (ROE) are the primary tools used to regulate the use of force, and thereby serve as one of the cornerstones of the Operational Law discipline. The legal factors which serve as a foundation for ROE, that is, customary and conventional law principles regarding the right of self defense and the laws of war, are varied and complex. They do not, however, stand alone: non-legal issues, such as political objectives and military mission limitations, also play an essential role in the construction and application of ROE. The legal officer can play a significant role in their preparation, dissemination, and training. Notwithstanding the import of their role, judge advocates must understand that, ultimately, ROE are the commander's rules and that those rules must be implemented by the soldier, sailor, airman, or marine who executes the mission.

62. In order to ensure that ROE are legally and tactically sound, versatile, understandable, and easily executed, both the legal officer and operators must understand the full breadth of policy, legal, and mission concerns they embrace, and collaborate closely in their development, training, and implementation. The legal officer must become familiar with mission and operational concepts, force and weapons systems capabilities and constraints, battlefield operating systems, and the Joint Operations Planning and Execution System. Operators must familiarize themselves with the international and domestic legal limitations on the use of force and the laws of armed conflict. Above all, legal officer and operators must talk the same language to provide effective ROE to the fighting forces.

63. **Political Purposes.** ROE ensure that national policy and objectives are reflected in the action of commanders in the field, particularly under circumstances in which communication with higher authority is not possible. For example, in reflecting national political and diplomatic purposes, the ROE may restrict the engagement of certain targets, or the use of particular weapons systems, out of a desire not to antagonize the enemy, tilt world opinion in a particular direction, or as a positive limit on the escalation of hostilities. Falling within the array of political concerns are such issues as the influence of international public opinion, particularly how it is affected by media coverage of a specific operation, the effect of host country law, and the status of forces agreements.

64. **Military Purposes.** ROE provide parameters within which the commander must operate in order to accomplish his assigned mission:

- a. ROE provide a ceiling on operations and ensure that our actions do not trigger undesired escalation, i.e., forcing a potential opponent into a "self defense" response.
- b. ROE may regulate a commander's capability to influence a military action by granting or withholding the authority to use particular weapons systems by vesting or restricting authority to use certain types of weapons or tactics.
- c. ROE may also reemphasize the scope of a mission. Units deployed overseas for training exercises may be limited to use of force only in self defense, reinforcing the training rather than combat nature of the mission

65. **Legal Purposes.** ROE provide restraints on a commander's action consistent with both domestic and international law and may, under certain circumstances, impose greater restrictions on action than those required by the law. For many contemporary missions, particularly peace keeping operations, the mission is stated in a document such as a UN Security Council Resolution, e.g., UNSCR 940 in Haiti or UNSCR 1031 in Bosnia. These Security Council Resolutions also detail the scope of force authorized to accomplish the purpose stated therein. Commanders must therefore be intimately familiar with the legal bases for their mission. The commander may issue ROE to reinforce principles of the law of war, such as prohibitions on the destruction of religious or cultural property, and minimization of injury to civilians and civilian property.

66. **Role of the Legal Officer.** The legal officer at all levels plays an important role in the ROE process.

Memoranda of Understanding (MOUs)

67. **International.** International MOUs are agreements between two Sovereign State regarding their relationship. SOFAs are a specific type of MOU dealing with the presence of Bangladesh forces abroad. MOUs, however, can address a very broad range of subjects from the very complex to those with a very narrow focus. Despite their subject matter sometimes being regarded as "insignificant," MOUs are legally binding agreements unless specifically defined as being only "political" in nature.

68. MOUs can be used to establish a legal and operational framework for nearly any type of

activity. Typical MOUs address matters such as over flight of airspace, use of ship or airport facilities, utilization of local labour forces or providing assistance in the event of natural disasters. International MOUs are developed at the diplomatic level with input provided by the interested parties.

69. Executive Agreements and Diplomatic Notes are types of international MOUs. These agreements are concluded under the authority granted to the National Parliament by the Constitution, a statute or treaty provision. Inter-Agency Agreements can also be established in the international arena between counterpart agencies. All such agreements, however, are made after consultation with the Ministry of Foreign Affairs. Although some agreements are regarded as minor, they may still be needed to be ratified by the National Parliament just like a treaty.

70. **National.** National MOUs are those agreements developed between domestic agencies. They are developed primarily to simplify day to day operations and help prevent conflict as agencies carry out their mission.

Status of Forces Agreements

71. SOFA's are agreements that prescribe the legal status of military personnel they are in the territory of a friendly state. A SOFA does not, by itself, authorize the presence of forces or the operational activities of those forces. SOFAs are generally broken down into three types, the Administrative, Technical Staff, the mini-SOFA and the full SOFA.

- a. Administrative and Technical Staff (A&T): For joint military humanitarian relief efforts, or presence of only few personnel.
- b. Mini-SOFA: Incorporates only key elements of a full SOFA, treats passport and visa requirements, criminal and civil jurisdiction, claims, customs and taxation.

72. Full SOFA

- a. Is usually reserved for when military bases or installation are located on host country territory and are used by a country.
- b. Typically large numbers of personnel and possibly dependents spend a significant amount of time in the host country as a wide range of support in areas such as postal service, local national labor, and possibly military shopping establishments.

Negotiating an International MOU or SOFA

73. It can be developed at Diplomatic or Defense Department level. Each MOU or SOFA is treated separately and authority to negotiate a MOU or SOFA can only be delegated in limited circumstances.

- a. Authority to negotiate and sign agreements regarding Administrative and Technical status can be and usually is delegated to the Ambassador at a particular country.
- b. Authority to negotiate mm extensive agreements, such as mini or full SOFAs, is usually delegated out of concern for overlapping or contradictory measures being implemented at lower levels due to a lack of ability to coordinate efforts on what are typically broad issues.

74. Because each MOU or SOFA is treated separately, ongoing coordination of each negotiation is required so that all affected personnel have input to the final agreement. It should also be understood that negotiations require commitment of time.

Who Conducts Negotiations of an MOU or SOFA?

75. Personnel from within the Ministries of the Government or Foreign Ministries some time Armed Forces Division, are specially selected to serve as negotiators for a particular MOU or SOFA. Individuals are selected based on their knowledge about the country being worked with, their position within the organization, and their skill as a negotiator. Experience has shown that it is also better to have the person selected as Chief Negotiator be an individual who is based in his or her home nation. This allows greater access to other interested agencies and prevents the possibility of undue pressure being exerted on the negotiator because he resides in the nation he or she is negotiating with.

76. The Chief Negotiator has a support team of pers from all interested depts. The individuals providing support should be at a high enough level in their agency to seek and obtain a coordinated position from their respective department quickly and, like the Chief Negotiator, have some knowledge of the country being negotiated with. It is important that the Chief Negotiator ensure that other agencies within his or her government are made aware of pending or ongoing negotiations. Depending on the scope of the agreement being n seemingly unrelated agencies may be interested the negotiation.

77. Some examples of parties that might have inter negotiation of a SOFA would be: Commerce De regarding the importation of goods; the Department of Labor, regarding the use of contract workers overseas; the Environmental Protection Agency, regarding environmental consequences of Bangladesh operations abroad, etc.

Where is Negotiations Conducted?

78. It may appear preferable to conduct negotiations in your own. Because, it allows immediate access to leadership and key negotiators which increases your flexibility. If, however, you require that negotiations only be held in your country, you run the risk of being confronted with inflexibility in the negotiation process because your counterpart is unable to access his or her leadership when necessary. Usually, a mix of locations works best.

Content of MOU or SOFA

79. The content of a MOU or SOFA will vary depending on the type or scope agreement contemplated. Experience has revealed, however, that certain are usually dealt with in the majority of agreements. MOUs and SOFAs provide a legal framework for diplomatic and operational relationships between and within sovereign governments. While situation can be completely addressed in such agreements, the basic parameters of the relationship can be established, thereby reducing the potential for conflicts between two or more sovereigns or agencies. The following items are usually included in any type of MOU or SOFA:

- a. **Definitions.** In particular, definitions that identify the personnel who will or will not be covered by the agreement must be as specific as possible.
- b. **Provisions Regarding Law and Sovereignty.** These provisions of respect for local law and pledge the visiting nation to take all measures within their authority to ensure compliance. Also, it is typically required that visiting personnel refrain from all political activity. The following provisions are usually found in A&Ts, mini-SOFA and full SOFAs:

- a. **Entry and Departure Procedures.** Usually, passport and visa requirements are eliminated or substantially reduced for military personnel. The applicability of immigration/emigration inspections is also addressed.
- b. **Carrying of Weapons.** When and where carrying weapons will be permitted. Particular scenarios such as training exercises, natural disasters, or other circumstances that might require carrying weapons of base should be detailed.
- c. **Criminal Jurisdiction.** The division or sharing of jurisdiction should be explained in absolute terms whenever possible. On duty and off-duty distinctions are often made giving rise to the need for additional definitions regarding duty status.
- d. **Civil Jurisdiction.** Typically seeks immunity for civil liability for matters arising out of the performance of official duties.
- e. **Claims.** Procedures for adjudicating claims against the visiting government based on acts or omissions of their personnel are detailed, along with formulas for computing damages in potentially foreseeable circumstances.
- f. **Duties, Taxes and other Charges.** Exemption from application of customary fees is sought for visiting personnel. This area also usually deals with the transfer of property purchased or obtained without customary charges by qualified personnel to non-qualified personnel.

80. The following provisions are usually found only in full SOFAs:

- a. **Wearing of Military Uniforms.** When and where visiting personnel can wear their uniform and whether there will be any on/off facility distinctions.
- b. **Arrest and Service of Process.** Detailing how, when and where a service member can be arrested or given notice of proceedings within the military installation.
- c. **Personal Property.** Because a SOFA anticipates a large preset significant duration, provisions must be made regarding the importation of a service member's personal property.
- d. **Personal tax Exemption.** Whether income tax, property tax conditions for exemption from some or all must be addressed.
- e. **Use of Transportation.** This Section can pertain to the use vehicles and personal vehicles. Use restrictions and fees normally pertain must be addressed for any type of conveyance air, land or sea.
- f. **Currency Restrictions.** Limitations on the type and amount of transferred in and out of the country are focused on. Also addressed be provisions regarding contractor services and payment or exchange formulas.

APPLICABLE LAWS FOR THE MILITARY FORCES

The Tolls (Army and Air Force) Act, 1901

1. **Definitions.** In section 2 of this Act, unless there is anything repugnant in the subject or context,—

a. The expression "authorized followers" means persons other than officers, soldiers or airmen, who are employed by, or are in the service of, the Forces or Corps concerned, or are in the service of any officer, soldier or airman of such Forces or corps ;

b. "Carriage" means a vehicle for carriage or haulage other than one specially constructed for use on rails;

c. "Ferry" includes every bridge and other thing which is a ferry within the meaning of any enactment authorising the levy of tolls on ferries, but does not include any ferry or other thing which is included in the definition of "railway" in Section 3 of the Railways Act, 1890 ;

d. The expressions "the Bangladesh Army" and "the Bangladesh Air Force" include the Reserves, respectively, of the Bangladesh Army and the Bangladesh Air Force, when subject to military or air force law, as the case may be ;

e. "Horse" includes a mule and any beast of whatever description which is used for burden or draught or for carrying persons;

f. The expression "Irregular Corps" means any force raised and maintained in Bangladesh under the authority of the Government or any other force which may be specified in this behalf by a notification published in the official Gazette ;

g. The expression "Bangladesh Reserve Force" means the forces constituted under the Army and Air Force (Reserves) Act, 1950 ;

h. "Landing-place" includes a pier, wharf, quay, jetty and a stage, whether fixed or floating;

(1) "Public authority" means the Government, or a local authority.

(2) "Tolls" includes duties, dues, rates, rents, fees and charges, but does not include customs duties levied under the Traiff Act 1934. octroi duties or town duties on the import of goods, or fares paid for the conveyance of passengers on a tramway.

2. **Exemptions from Tolls.** The following persons and property shall be exempted from payment of any tolls on embarking or disembarking, or on being shipped

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or landed, from or upon any landing-place, or in passing along or over any turnpike or other road or bridge, or on being carried by means of any ferry:

- a. All officers, soldiers and airmen of the Bangladesh Army and Bangladesh Air Force or any Irregular Corps.
- b. All officers, soldiers and airman of the Bangladesh Reserve Forces when proceeding from their place of residence on being called out for service, training, or muster or when proceeding back to their place of residence after such service, training or muster.
- c. All authorised followers of the Bangladesh Army and Bangladesh Air Force, any Irregular Corps.
- d. All members of the families of officers, soldiers, airmen or authorised followers of the Bangladesh Army and Bangladesh Air Force, or any Irregular Corps, when accompanying any body of troops, or any officer, soldier, airman or authorised follower thereof on duty or on the march.
- e. All prisoners under military or air force escort.
- f. The carriages, horses, and baggage, and the persons (if any) employed in driving the carriages or in carrying the baggage, of any persons exempted under any of the foregoing clauses, when such carriages, horses, baggage, or persons accompany the persons so exempted under the circumstances mentioned in those clauses respectively.
- g. All carriages and horses belonging to the Government or employed in military or air force service and all persons in charge of or accompanying the same, when conveying any such persons as hereinbefore in this Section mentioned, or when conveying baggage or stores, or when returning unladen from conveying such persons, baggage or stores.
- h. All carriages and horses, when moving under the orders of military or air-force authority for the purpose of being employed in military or air force service.
- j. All animals accompanying any body of troops which are intended to be slaughtered for food or kept for any purpose connected with the provisioning of such troops.
- k. All persons in charge of any carriage, horse or animal exempted under any of the foregoing clauses when accompanying the same under the circumstances mentioned in those clauses respectively;

Provided that nothing in this Section shall exempt any boats, barges or other vessels employed in conveying the said persons or property along any canal from payment of tolls in like manner as other boats, barges and vessels.

3. Tolls on Vessels Transporting Troops Baggage, etc. of Troops Embarked or Disembarked.

- a. No tolls shall be leviable by any local authority in respect of:
- (1) Any vessel employed by the Government solely for the transport of troops, or
 - (2) The horses, baggage or other effects of any troops embarking or disembarking at any port, or
 - (3) Carriages belonging to the Government or employed in military or air-force service embarking or disembarking at any port.
- b. In respect of all such vessels or troops, their families, their horses, baggage and their effects, or any such carriages as aforesaid, the local authority concerned shall, in addition to its duties in the embarking and disembarking of the same, perform and supply all such reasonable services and accommodation as may, from time to time, be required by the Government and shall receive payment for all such services and accommodation on such terms and for such periods as may, from time to time, be determined by the Government in consultation with such local authority.

4. Penalty. Any person who demands and receives any toll in contravention of the provisions of Section 3 or Section 4 shall be punishable with fine which may extend to fifty taka.

5. Compensation. If any owner or lessee, or any Company, railway administration or local authority claims compensation for any loss alleged to have been incurred owing to the operation of this Act, the claim shall be submitted to the Government.

The Tolls(Army and Air Force) Rules, 1957

6. Presentation of Pass for Examination from Tolls. Save as hereinafter otherwise provided in rule 3, where exemption from payment of tolls is claimed under the Tolls (Army and Air Force) Act, (II of 1901), in respect of any person or body of persons or any property, a pass in the form annexed to these rules, shall be presented on the demand of the person authorised to demand the tolls.

7. Exemption from Production of pass.

- a. No passes shall be required in the case of:
- (1) Officers, soldiers and airmen of the Bangladesh Army and Bangladesh Air Force or any irregular Corps.
 - (2) Officers, soldiers and airmen of the Bangladesh Reserve Force in uniform, when proceeding from their place of residence, on being called out for service, training or Muster or when returning to their place of residence after such service, training or muster.

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- (3) Authorized followers of:
 - (i) The Bangladesh Army and Bangladesh Air Force,
 - (ii) Any irregular Corps, when they accompany any body of such Forces or corps on the march;
- (4) Members of the families of officers, soldiers, airmen or authorised followers of:—
 - (i) the Bangladesh Army, or the Bangladesh Air Force.
 - (ii) Any Irregular Corps, when accompanying any body of troops, on duty or on the march;
- (5) Prisoners under military or air force escort in uniform;
- (6) The carriages, horses and baggage, and the persons (if any) employed in driving the carriages or in carrying the baggage of any persons exempted under any of the foregoing clauses, when such carriages, horses, baggage, or persons accompany the persons so exempted under the circumstances mentioned in those clauses, respectively;
- (7) Carriages and horses belonging to the Government or employed in military or air force service and all persons in charge of or accompanying the same when conveying any such persons as hereinbefore in this rule mentioned, or when conveying baggage or stores;
 - (i) Animals accompanying any body of troops which are intended to be slaughtered for food or kept for any purpose connected with the provisioning of such troops; and
- (8) Persons in charge of any carriage, horse or animal exempted under any of the foregoing clauses when accompanying the same under the circumstances mentioned in those clauses, respectively.

b. No passes shall be required in the case of officers of the Bangladesh Army, or the Bangladesh Air Force or any Irregular Corps,

Provided that the officer so traveling shall furnish in writing to the person authorised to demand toll his name, rank and a statement that he is traveling on duty.

8. Signing of Passes. Every pass shall be signed by the commanding officer of the regiment, corps, unit or detachment concerned, or by a base staff officer.

The Soldiers(Litigation) Act, 1925

9. Definitions (Section-2) In this Act, unless there is anything repugnant in the subject or context:

- a. "Court" means a Civil or Revenue Court ;
- b. "Soldier" means any person subject to the Army Act, 1952 or the Air Force Act, 1953
- c. "Prescribed" means prescribed by rules made under this Act; and
- d. "Proceeding" includes any suit, appeal or application.

10. **Circumstances in which a Soldier shall be Deemed to be Serving under Special conditions.** For the purposes of this Act, a soldier shall be deemed to be or, as the case may be, to have been serving:

- a. **Under Special Conditions.** When he is or has been serving under war conditions, or overseas, or with any unit the headquarters of which are situated at any place which is more than fifty miles distant by road from the nearest railway station;
- b. **Under War Conditions.** When he is or has been, at any time during the continuance of any hostilities declared by the Government by notification in the official Gazette to constitute a state of war for the purposes of this Act or at any time during a period of six months thereafter,—
 - (1) Serving out of Bangladesh,
 - (2) Under orders to proceed on field service,
 - (3) Serving with any unit which is for the time being mobilized, or
 - (4) serving under conditions which, in the opinion of the prescribed authority, preclude him from obtaining leave of absence to enable him to attend a Court as a party to any proceeding, or when he is or has been at any other time serving under conditions service under which has been declared by the Government by notification in the official Gazette to be serving under war conditions; and
- c. **Overseas.** When he is or has been serving in any place outside Bangladesh the journey between which and Bangladesh is ordinarily undertaken wholly or in part by sea.

11. **Particulars to be furnished in Complaints, Applications or Appeals to Court.** If any person presenting any complaint, application or appeal to any court has reason to believe that any adverse party is a soldier who is serving under special conditions, he shall state the fact in his complaint, application or appeal.

12. **Power of Collector to intervene in Case of Unrepresented Soldier.** If any Collector has reason to believe that any soldier, who ordinarily resides or has property in his district and who is a party to any proceeding pending before any Court, is unable to appear therein, the Collector may certify the facts in the prescribed manner to the Court.

13. Notice to be Given in case of Unrepresented Soldier.

a. If a Collector has certified under Section 5, or if the Court has reason to believe, that a soldier who is a party to any proceeding pending before it, is unable to appear therein, and if the soldier is not represented by any person duly authorised to appear, plead or act on his behalf, the Court shall suspend the proceeding, and shall give notice thereof in the prescribed manner to the prescribed authority. Provided that the Court may refrain from suspending the proceeding and issuing the notice if—

(1) The proceeding is a suit, appeal or application instituted or made by the soldier, alone or conjointly with others with the object of enforcing a right of pre-emption, or

(2) The interests of the soldier in the proceeding are, in the opinion of the Court, either identical with those of any other party to the proceeding or adequately represented by such other party or merely of a formal nature.

b. If it appears to the Court before which any proceeding is pending that a soldier though not a party to the proceeding is materially concerned in the outcome of the proceeding, and that his interests are likely to be prejudiced by his inability to attend, the Court may suspend the proceeding and shall give notice thereof in the prescribed manner to the prescribed authority.

14. Postponement of Proceedings. If, on receipt of a notice under Section 6, the prescribed authority certifies in the prescribed manner to the Court in which the proceeding is pending that the soldier in respect of whom the notice was given is serving under special conditions, and that a postponement of the proceeding in respect of the soldier is necessary in the interests of justice, the Court shall thereupon postpone the proceeding in respect of the soldier for the prescribed period, or, if no period has been prescribed, for such period as it thinks fit.

15. Court may proceed when no Certificate Received. If, after issue of a notice under Section 6, the prescribed authority either certifies that the soldier is not serving under special conditions or that such postponement is not necessary, or fails to certify, in the case of a soldier resident in the district in which the Court is situate, within two months or, in any other case, within three months from the date of the issue of the notice that such postponement is necessary, the Court may, if it thinks fit, continue the proceeding.

16. Postponement of Proceedings Against Soldier on Leave. When any document purporting to be signed by the Commanding Officer of a soldier who is a party to any proceeding is produced by or on behalf of the soldier before the Court in which the proceeding is pending and is to the effect that the soldier :

a. Is on leave of absence for a period not exceeding two months, and is on the expiration of his leave to proceed on service under special conditions, or

- b. Is on sick leave for a period not exceeding three months, and is on the expiration of his leave to rejoin his unit with a view to proceeding on service under special conditions,

the proceeding in respect of such soldier may, in any case such as is referred to in the proviso to sub-Section (i) of Section 6 and shall, in any other case, be postponed in the manner provided in Section 7.

17. Power to Set Aside Decrees and Orders Passed Against a Soldier Serving under War or Special Conditions.

a. In any proceeding before a Court in which a decree or order has been passed against any soldier whilst he was serving under any special conditions, the soldier, or, if he is dead, his legal representative may apply to the Court which passed the decree or order for an order to set aside the same, and, if the Court, after giving an opportunity to the opposite party of being heard, is satisfied that the interests of justice require that the decree or order should be set aside as against the soldier, the Court shall, subject to such conditions, if any, as it thinks fit to impose, make an order accordingly.

b. The period of limitation for an application under sub para-(a) shall be ninety days from the date of the decree or order, or, where the summons or notice was not duly served on the soldier in the proceeding in which the decree or order was passed, from the date on which the applicant had knowledge of the decree or order; and the provisions of Section 5 of the Limitation Act, 1908, shall apply to such applications.

c. When the decree or order in respect of which an application under sub para (a) is made is of such a nature that it cannot be set aside as against the soldier only, it may be set aside as against all or any of the parties against whom it has been made.

d. Where a Court sets aside a decree or order under this Section it shall appoint a day for proceeding with the suit, appeal or application, as the case may be.

18. Modification of Law of Limitation Where Soldier or His Legal Representative is a party. In computing the period of limitation prescribed by sub-Section (2) of Section 10 of this Act, the Limitation Act, 1908 or any other law for the time being in force, for any suit, appeal or application to a Court, any party to which is or has been a soldier or is the legal representative of a soldier, the period during which the soldier has been serving under any special conditions, and, if the soldier has died while so serving, the period from the date of his death to the date on which official intimation thereof was sent to his next-of-kin by the authorities in Bangladesh, shall be excluded provided that this Section shall not apply in the case of any suit, appeal or application instituted or made with the object of enforcing a right of pre-emption except where the said right accrues in such circumstances, and is in respect of agricultural land and village immovable property situated in any such area, as the Government may, by notification in the official Gazette, specify in this behalf.

19. **Power of Court to Refer Questions to Prescribed Authorities.** If any Court is in doubt whether, for the purposes of Section 10 or Section 11, a soldier is or was at any particular time serving under special conditions, or has died while so serving, or as to the date of such death or as to the date on which official intimation of such death was sent to his next-of-kin by the authorities in Bangladesh, the Court may refer the point for the decision of the prescribed authority, and the certificate of that authority shall be conclusive evidence on the point.

20. **Rule-making Power.** The Government after consulting the Supreme Court concerned, may, by notification in the official Gazette, make rules to provide for all or any of the following matters, namely:

- a. The manner and form in which any notice or certificate under this Act shall be given.
- b. The period for which proceedings or any class of proceedings shall be postponed under Section 7.
- c. The persons who shall be the prescribed authorities for the purposes of this Act.
- d. Any other matter which is to be or may be prescribed; and
- e. Generally, any matters incidental to the purposes of this Act.

The Soldiers (Litigation) Rules, 1938

21. **Definition.**

- a. In these rules, “the Act” means the Soldiers (Litigation) Act, 1925 (IV of 1925).
- b. All words used herein and defined in the Act shall be deemed to have the meanings respectively attributed to them by the Act.

22. The prescribed authority for the purposes of sub-clause (iv) of clause (b) of section 3 and sections 6, 7 and 8, of the Act shall be the Officer Commanding the unit or the Depot of the unit to which the soldier belongs (Rule 3).

23. The certificate given by a Collector under section 5 of the Act shall be in Form A of the Schedule (Rule 4).

24. The notice given by the Court under section 6 of the Act shall be in Form B of the Schedule and shall be sent to the prescribed authority care of (Rule 5):

- a. in the case of a person subject to the Army Act, 1952, the General Officer Commanding the division or the Commander of the L of C Area or Sub-Area in which the Court is situated, and

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b. in the case of a person subject to the Air Force Act, 1953, the Chief of Air Staff, Bangladesh Air Force, and the certificate of the prescribed authority under section 7 of Act, shall be in Form C of the Schedule.

25. If at any time it appears to the prescribed authority that the circumstances in which he certified to the Court under section 7 of the Act that a postponement of the proceedings was necessary in the interests of justice, no longer exist, he shall forthwith certify to the Court to that effect in Form D of the Schedule (Rule 6).

26. On receipt of a certificate from the prescribed authority under section 7 of the Act that a postponement of the proceedings is necessary in the interests of justice, the Court shall postpone the proceedings until the receipt of a certificate in Form D from the prescribed authority, or until the soldier is represented in the proceedings by some person duly authorized to appear, plead or act in his behalf (Rule 7):

27. The prescribed authority for the purposes of section 12 of the Act shall be (Rule 8):

a. in the case of a person subject to the Army Act, 1952, the General Officer Commanding the division or the Commander of the L of C Area or Sub-Area in which the Court is situated, and

b. in the case of a person subject to the Air Force Act, 1953, the Chief of Air Staff, Bangladesh Air Force.

The Armed Forces(Emergency Duties) Act, 1947

28. Emergency Duties of Armed Forces.

a. The Government may, by notification in the official Gazette, declare any specified service to be a service of vital importance to the community: Provided that such notification shall remain in force for one month in the first instance, but may be extended, from time to time, by a like notification.

b. Upon a declaration being made under sub-Section (i) and until it is rescinded, it shall be the duty of every person subject to the _____ Army Act, 1952, (XXXIX of 1952) Air Force Act, 1953 (VI of 1953) and the Navy Ordinance, 1961 (XXXV-of 1961) , to obey any command given by any superior officer in relation to employment upon or in connection with the service specified in the declaration; and every such command shall be deemed to be a lawful command with in the meaning and for the purposes of the said Acts, or Ordinance.

Army and Air Force Reserves Act, 1950

29. **Definition.** In this Act, unless there is anything repugnant in the subject or context: "Prescribed" means prescribed by rules made under this Act. "Reserves" means the Reserves of the Bangladeshi Army or of the Bangladesh Air Force. "Reservist" means a member of the Reserves.

30 **Liability of Reservists to Military or Air Force Law.** An army reservist shall be subject to Army Act, 1952, and the rules and regulations made thereunder and an Air Force reservist shall be subject to the Air Force Act, 1953, and the rules and regulations made thereunder, in such manner and to such extent as may be prescribed, such manner and to such extent as may be prescribed.

31. **Extent of Liability for Service.** A reservist shall be liable to serve without the limits of Bangladesh as well as within those limits.

32. **Power to Make Rules**

- a. The Government may make rules to carry out the purposes of this Act.
- b. In particular and without prejudice, to the generality of the foregoing power such rules may:
 - (1) Provide for the constitution of, and the appointment or transfer of any person as a reservist to, the reserves.
 - (2) Prescribe the service obligations to which reservists shall be liable.
 - (3) Prescribe periodical training for any category of reservists.
 - (4) Provide for and regulate the pay and allowances of reservists.
 - (5) Prescribe the authorities by whom and the conditions subject to which the services of reservists may be terminated.
 - (6) Provide for and regulate the gratuities or compensation, if any, to be paid to reservists or any category of reservists, or to any dependents of reservists; and
 - (7) Provide for any other matter which under this Act is to be or may be prescribed.
- c. All rules made under this Act shall be published in the official Gazette and on such publication shall have effect as if enacted in this Act.

33. **Power to make Regulations.** The Government may make regulations for all or any of the purposes of this Act, other than those specified in Section 6.

Air Force Reserves Rules, 1967

34. **Definitions.** In these rules, unless there is anything repugnant in the subject or context,

- a. "Act" means the Army and Air Force Reserves Act, 1950 -.
- b. "Air Force" has the same meaning as in the Air Force Act, 1953 (VI of 1953);
- c. "Chief of Air Staff" means the Chief of Air Staff, Bangladesh Air Force;
- d. "Officer Commanding", in relation to reservists not embodied, means—

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(1). in respect of officers, the Officer Commanding Personnel Despatch Centre, and

(2). in respect of Master Warrant Officer or Warrant Officer and Airman the officer in Charge, B.A.F. Records.

e. "Bangladesh Air Force Regular Reserve" means officers, master warrant officers, warrant officers and airmen of the Bangladesh Air Force Regular Reserve.

f. "Bangladesh Air Force Volunteer Reserve" means officers, master warrant officers, warrant officer* and airmen of the Bangladesh Air Force Regular Reserve

g. "Regulations" means the regulations made by the Government under Section 7 of the Act.

h. "Reservist" means an officer, warrant officer or airman belonging to the Bangladesh Air Force Regular Reserve or the Bangladesh Air Force Volunteer Reserve.

j. "Training Year" means a calendar year.

k. "Warrant Officer" includes Master Warrant Officer.

35. Liability to Air Force law.

a. A reservist shall be subject to Air Force Act, 1953 (VI of 1953), and the rules and regulations made thereunder when called up for service with the Air Force or for training.

b. For the purpose of sub-rule (1), i.e. sub para (a) subjection to the Air Force Act, 1953 (VI of 1953), or the rules and regulations thereunder shall commence from the date on which a reservist is required to report himself, for Air Force service or for training, to the authority and at the place specified in the orders.

c. Notwithstanding anything contained in Section 106 of the Air Force Act, 1953 (VI of 1953), shall not be necessary to assemble a board of inquiry under that Section merely because a reservist has failed to attend for service for training, though the Officer Commanding may, at his discretion, order such a board of inquiry where necessary.

36. Precedence and Status.

a. Officers:

(1). On being called up for training, reservist officers shall take precedence below all serving officers of the same rank, but take seniority amongst themselves from the dates they were commissioned in the Air Force.

(2). On being recalled for Air Force service, reservist officers shall take seniority in the rank for which recalled, from the dates they were commissioned in the Air Force, retarded by the period they have served in the reserves.

b. **Warrant Officers and Airmen:**

(1) On being called up for training reservist warrant officers and airmen shall take precedence in their respective ranks below warrant officers and airmen, as the case may be, of the Air Force, but shall take seniority amongst themselves according to the dates of their first appointment or promotion to the rank held by them.

(2) On being recalled for Air Force service, reservist warrant officers and airmen shall take seniority in the rank in which recalled from the date of their first appointment or promotion to the rank held by them, retarded by the period they have served in the reserves.

37. **Address.** A reservist shall report any permanent change of his address to his Officer Commanding.

38. **Reservist not to Leave Bangladesh except with Permission.** No reservist shall leave Bangladesh except with the permission in writing, in the case of an officer, of the Air Secretary, Air Headquarters and, in the case of a reservist other than an officer, of his Officer Commanding. This permission will not normally be refused except in cases where the reservist officers, warrant officers or airmen concerned are likely to be recalled to Air Force service or called up for training. If a reservist officer, warrant officer or airman leaves the country without prior permission of the competent authority, his retaining fee or bounty shall be stopped.

39. **Employment with Foreign Government or Foreign Agency.** No reservist shall seek or take up employment of a foreign Government or foreign agency without the previous permission in writing of the Government.

40. **Pay Admissible on Disability Contracted During Training.** Where a reservist suffers a physical disability during training which is duly reported to his Officer Commanding and certified by a service medical officer as attributable to such training he shall continue to be entitled to pay and allowances admissible under the rules until the conclusion of the period of training for which he was called up provided that a reservist who is confined to a military or a civil hospital on account of such disability after the conclusion of such training may be granted pay, at the discretion of the Government, for any period not exceeding four months from the date on which he reported for training.

41. **Pay for Journey Period.** A reservist when called up for training or service with the Air Force shall receive pay and allowances for the entire period spent by him on journey from the place of residence to the place of training or duty and back, provided that such a reservist has no entitlement to pay for the journey period from any other source, Government or private. Before the pay for journey period is admitted, the paying officer will satisfy himself as regards the fulfillment of the condition and about the time actually spent on journey.

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42. **Accommodation, etc.** A reservist called up for service or training shall be entitled to such accommodation and such other concessions as are admissible to a person of the same trade and holding the same rank in the Air Force.

43. **Termination of Service.**

a. The Government may terminate the service of any reservist at any time for inefficiency, misconduct, on medical grounds or for any other service reasons.

b. The Chief of Air Staff or any principal staff officer empowered by him in writing in this behalf may terminate the service of any reservist, other than an officer, at any time, for inefficiency, misconduct or on medical grounds.

c. The termination of an officer's services under this rule shall be notified in the official Gazette.

44. **Retirement of Reservist Officers.** The retirement of a reservist officer:

a. On attaining the age limit for retention;

b. On compassionate grounds before attaining the age limit;

c. On medical grounds on the recommendation of an invaliding board; or

d. On ceasing to reside in Bangladesh shall be authorized by the Government and notified in the official Gazette provided that a reservist officer shall not be retired from the service under clause (a) or clause (b) during an emergency or if an emergency is imminent.

45. **Discharge.** The causes of discharge of persons other than officers, the authorities empowered to authorize their discharge and the special instructions to be observed in each case are set out in the following table, but any power conferred by this rule on any authority may be exercised by the higher authority or by the Government.

Category	Cause of Discharge Competent to authorise discharge	Authority to authorise discharge	Special Instructions, if any.
Warrant officer and airman of the Bangladesh Air Force Regular Reserve and Warrant officer and airman of the Bangladesh Air Force Reserve.	(i) On completion of his reserve liability.	Commanding Officer.	The Commanding Officer may refuse a discharge under this item during an emergency or if an emergency is imminent.

Any Principal Staff Officer authorised by the Chief of Air Staff in writing in this behalf:

- a. Before completing term of his reserve liability at his own request on obtaining permanent civil employment.
- b. Before completing term of his reserve liability on compassionate ground or any other reason.
- c. On medical ground.
- d. All other causes of discharge.

46. A reservist who has failed to attend at any place when required to do so, shall intimate the cause of his failure to his Officer Commanding. If the failure is due to medical unfitness, he shall attend at an Air Force bases for medical examination (Rule-14).

47. **Forfeiture of Pay and Allowances.** A reservist who fails to attend at a place on the date on which required to do so, shall be liable, at the discretion of his Officer Commanding to forfeit all or a portion of arrears of pay and allowances due to him; in determining the amount of such forfeiture regard shall be had to the length and cause of the reservist's absence, which shall be deemed to continue until the reservist is apprehended or had satisfied his Officer Commanding by surrender or otherwise that he is unable to fulfill his obligations as a reservist.

Right to information Act, 2010

48. Authority and Information Providing Unit

- a. Any organization/institution constituted in accordance with the Constitution of People's Republic of Bangladesh;
- b. Any ministry, division or office constituted under the Rules of Business as given in Article 55(6) of the Constitution;
- c. Any statutory body or institution established by or under any Act;
- d. Any private organization or institution runs on government funding or with help from the government exchequer;
- e. Any private organization or institution runs on foreign funding;
- f. Any organizations or institution that undertakes public functions in accordance with any contract made on behalf of the Government or made with any public organization or institution;
- g. Any other organization or institution as may be notified by the Government in the official gazette from time to time.

49. **The Information Providing Units include:**

- a. The head office, divisional office, regional office, district office or sub-district (*upazila*) office of any department, directorate or office attached to or under any ministry, division or office of the government;
- b. The head office, divisional office, regional office, district office or sub-district (*upazila*) office of an authority.

50. **Third Party.** Third Party is any other party associated with the information sought, other than requester applying for information or the authority providing the information.

51. **Information Means.** According to the Act, information is in relation to an authority's constitution, structure and official activities and includes any: memo, book, design, map, contract, data, log book, order, notification, document, sample, letter, report, accounts statement, project proposal, photograph, audio, video, drawing, film, any instrument prepared through electronic process, machine readable documents and any other documentary material regardless of its physical form or characteristics. Information does not include office note sheet or photocopies of note sheets.

52. **Right to Information.** Every citizen has a right to information from the Authority and the Authority shall on demand from a citizen be bound to provide information.

53. **What is not open.** Publication or providing certain types of information is not mandatory. None of the authorities will be obliged to give the citizens the following information:

- a. Information disclosure of which would be a threat to the Security, integrity and sovereignty of Bangladesh;
- b. Information related to any foreign policy, the disclosure of which would lead to harming existing relationships with any foreign state, or international institution or any regional bloc or organization;
- c. Information received in confidence from a foreign government;
- d. Information related to commercial or business confidence, copyright or intellectual property right, the disclosure of which would harm the intellectual property rights of any third party;
- e. Information the disclosure of which would either benefit or harm an individual or institution, such as:
 - (1) any advance information regarding income tax, customs, VAT and law relating to excise, budget or change in the tax rate;
 - (2) any advance information regarding changes related to exchange rate and interest rate ;

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- (3) any advance information regarding the management and supervision of financial institutions including banks;
- f. Information the disclosure of which would obstruct the enforcement of law or incite any offence;
- g. Information the disclosure of which would endanger the Security of the people or would impede the due judicial process of a pending case;
- h. Information the disclosure of which would harm the privacy of the personal life of an individual;
- j. Information, the disclosure of which would endanger the life or physical safety of any person;
- k. Information given in confidence by a person to help a law enforcement institution;
- l. Information related to any matter pending in any court of law and which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
- m. Information related to any matter which is under investigation whose disclosure might impede the investigation process;
- n. Information, the disclosure of which would affect any criminal investigation process and the arrest and prosecution of the offenders;
- p. Information, which according to law is liable to be published only for a specified time period;
- q. Information obtained through technical or scientific experiments which is expedient to be kept Secret for strategic and commercial reasons;
- r. Information related to any purchase processes before it is complete or before any decision is taken regarding the purchase or the processes involved;
- s. Information whose release may lead to breach of privileges of National Parliament (Jatiya Sansad);
- t. Information regarding any person which is to be kept in confidence by law;
- u. Advance information regarding question papers of an examination or the marks obtained;
- v. Documents including summaries to be placed before the Cabinet or as the case may be, in the meetings of the Council of Advisors and information relating to deliberations and decisions made, provided that the decisions of the Cabinet or the Council of Advisors, the reasons and material basis upon which the decisions were taken shall be made public,

Provided as per this Section if information is not to be disclosed then the related authority must take prior approval from the Information Commission.

54. **Partial Disclosure.** Partial access to information contained in records covered by the clause where information is not mandatory for publication, is allowed. A portion of the information requested can be separated from the portion that is not mandatory for publication and be given to the applicant.

55. **Who are Excluded.** The following organizations and institutions involved with national Security and intelligence as mentioned in the schedule shall not be covered by the RTI Act:

- a. National Security Intelligence (NSI)
- b. Directorate General of Forces Intelligence (DGFI)
- c. Defence Intelligence Units
- d. Criminal Investigation Department (CID), Bangladesh Police
- e. Special Security Force (SSF)
- f. Intelligence Cell of the National Board of Revenue
- g. Special Branch, Bangladesh Police
- h. Intelligence Cell of Rapid Action Battalion (RAB)

The number of institutions mentioned in the list above can be decreased or increased by the Government by amending the schedule in consultation with the Information Commission from time to time by notification published in the government gazette. Information relating to corruption and human rights must be given. If a request for such information is received, then the concerned organization or institution must give the information, subject to the approval of the Information Commission within 30 days from the date of receiving the request.

56. **Authority's Duties.**

- a. To maintain information in a catalogued and indexed form and preserve it in an appropriate manner.
- b. Each authority shall computerize all information that can be computerized within a reasonable time limit and connect them through a country-wide network to facilitate access to information;
- c. Each authority shall follow the guidelines and directives as given by the Information Commission for the maintenance and management of information;
- d. Each authority shall prepare, publish and publicise a list of information that will be given free of cost based on the directives of the Information Commission (s. 8(6)).

57. Information Disclosure by Authorities. Each authority has to publish and publicise all information in an indexed manner which is easily accessible to the citizens regarding any decision taken, proceeding or activity executed or proposed. In disclosing this information, no authority shall conceal or limit access to any information. Each authority must publish a report each year which will contain the following information:

- a. The particulars of an authority's organizational framework, functions and duties and responsibilities of its officers and employees and the description of decision-making processes;
- b. List of all laws, acts, ordinances, rules, regulations, notifications, directives, and manuals etc. of authorities and classification of all information available with the authorities.
- c. Description of the terms and conditions under which any person can obtain from an authority, license, permit, grant, allocation, consent, approval or the description of any other facilities and description of such terms and conditions, that require the authority to make transactions or enter into agreements with him;
- d. Description of all facilities in order to ensure the right to information of the citizens and the name, designation, address, and where applicable fax number and e-mail address of the Responsible Officer.

If an authority frames any important policy or takes any important decisions, then it must disclose these and if necessary, explain the reasons and causes in support of these policies and decisions. Reports prepared by an Authority under this Section shall be made available for public inspection free of charge and copies shall be kept for sale at a nominal price. All publications made by an authority shall be made easily available to the public at a reasonable price. The authorities shall publish and publicise matters of public interest through press releases or any other method. The Information Commission through regulations shall lay down guidelines and directives to be followed by the authorities to publish, publicise and obtain information.

58. Responsible Officer

- a. One Responsible Officer must be nominated within 60 days from the notification of the Act by each authority established before and after the enactment of this Act for each "Information providing unit". Also, all offices created by authorities after the notification of the Act must nominate one Responsible Officer in each office as well as in each of the newly created "Information providing units".
- b. Each authority shall inform the Information Commission, the names, designations, addresses and where applicable the fax numbers and e-mail addresses of the Responsible Officers within 15 days from the date of appointment.
- c. Any other officer whose support is sought by the Responsible Officer while discharging his/her duty shall be bound to extend necessary help.

d. Any other officer, whose assistance has been sought by the Responsible Officer, shall render all assistance, and for the purposes of any contravention of the provisions of this Act, such other officer shall be treated as the Responsible Officer.

59. Duties of Responsible Officer

a. The Responsible Officer should provide assistance to an applicant who is seriously disabled to access records and also provide assistance in case of inspection;

b. Must inform the applicant the reasons for failing to provide the requested information within 10 working days;

c. In case the information sought is available with the Responsible Officer then he shall fix a reasonable price of that information and request the applicant to pay the amount within 5 working days;

d. If information sought has been supplied by third party or is treated as confidential by the third party, then the Responsible Officer must give written notice to the latter within 5 days of receiving the information request for written or oral opinion. The Responsible Officer shall take its representation into consideration and make a decision in respect of providing information to the applicant.

60. Application Procedure

a. Apply in writing or electronically or by e-mail to the Responsible Officer;

b. In the application, the following information must be given:

c. Name, address, and where applicable fax number and e-mail address of the applicant;

d. Correct and clear description of the information sought;

e. Any other useful and related information that might help in locating the requested information;

f. Description of the method by which information is sought, namely by inspecting, taking photo copies, taking notes or any other approved method.

g. The information request can be made either in the form printed by the authority or in the prescribed format. However, if the forms are not printed or are not easily available or the format has not been prescribed, then the application can be written on a plain white paper by giving all the information mentioned above or can be sent through electronically or by e-mail;

h. The applicant will have to pay reasonable fees as may be prescribed by the Responsible Officer;

j. The government may in consultation with the Information Commission prescribe the application fees and if necessary the cost of information by notification in the official gazette. The government may also exempt an individual or class of individuals or any other class from paying the fees.

61. Procedure and Time Limits for Providing Information

a. Responsible Officer shall provide information within 20 working days from the date of receipt of application;

b. In case more than one “information providing unit” or authority is involved with the information requested, then information shall be given in 30 working days from the date of application;

c. In case the Responsible Officer rejects a request, then he must inform the applicant the decision and reasons for rejection within 10 working days from the date of application;

d. In case basic information concerning any person’s life or death, arrest and release from jail is sought then it must be given within 24 hours from receiving the request;

e. In case the requested information is available with the Responsible Officer then he must calculate the reasonable fee and inform the applicant to pay the fees within 5 working days. The fees for printed publications, information in electronic format or photocopies or print outs shall not be more than the actual costs;

f. No action on application within the specified time limits of 20 and 30 working days and 24 hours as mentioned above is a deemed refusal.

62. Appellate Authority and Appeals Mechanism.

a. In case of the “information providing unit” the appellate authority is the administrative head of its immediate superior office. In case the unit does not have a superior office, then the appellate authority is the administrative head of that unit.

b. If any person is not given information within the time period specified in Section 9 or is aggrieved by the decision of the Responsible Officer, then he/she can appeal before the appellate authority within the next 30 days from receiving the decision or after the expiry of the time period;

c. If the appellate authority is satisfied that the appellant for justifiable reasons could not submit the appeal within the specified time period of 30 days then he may accept the appeal even after the expiry of that time;

d. The Appellate Authority shall within 15 days from the date of receiving the appeal:

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- (1). Direct the concerned Responsible Officer to provide the requested information; or
- (2). Reject the appeal if it not fit for acceptance.

e. In case the Responsible Officer is directed to provide the information by the appellate authority, then he must provide the information within the time specified in Section 9 to the appellant.

63 Complaints Mechanism. Any person for the following reasons may submit a complaint with the Information Commission:

- a. As given in Section 13 (1) i.e:
 - (1). Non-appointment of a Responsible Officer by an authority or refusal to accept applications for information;
 - (2). Refusal upon request for any information;
 - (3). Not being given either a response or the information requested within the specified time period as given in the Act;
 - (4). If the complainant is asked to pay a fee or is compelled to pay an amount of fee which he/she thinks are unreasonable;
 - (5). If the complainant feels that the information given is incomplete, false or misleading; and
 - (6). In respect of any other matter relating to requesting or obtaining information under this Act.
- b. If the person is aggrieved by the decision on his appeal under Section 24;
- c. If the person does not get the information from the Responsible Officer within the time limits specified i.e. 20 days (if information is sought from one unit), 30 days (if information is sought from more than one unit or authority) and 24 hours (information related to life and death or arrest and release from jail). In case of point a) given above, a complaint can be filed with the Information Commission any time and in case of points b) and c) the complaint can be filed within 30 days from the date of getting a decision or as the case may be. If the Information Commission is satisfied that the complainant could not file the complaint due to reasonable causes within the specified time period, then the Commission can receive the complaint even after the expiry of the time period.
- d. On the basis of a complaint, or if the Information Commission is satisfied that any authority or Responsible Officer has failed to carry out any function then the Commission has been given the powers to take action against the authority or the Responsible Officer;
- e. The Chief Information Commissioner or if the responsibility is delegated to an Information Commissioner has the power to enquire into any complaints received. After the completion of the enquiry a decision-paper regarding the complaint shall be prepared within 30 days from receiving the complaint. This paper has to be presented before the Information Commission in the next meeting where the decision will be taken;

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- f. During the enquiry, any authority or the Responsible Officer against whose decision, the complaint is being made will be given a reasonable opportunity to be heard;
- g. In case a third party is involved in the case of a complaint, then the third party will be given an opportunity to present his opinion;
- h. Ordinarily the Information Commission shall take 45 days to dispose off a complaint from the date on which the complaint is received. However, in certain cases, the time could be extended if required, to complete the enquiry and depositions of the witnesses. However, the time limit for disposing a complaint shall not exceed more than 75 days including the extended time;
- j. While taking a decision on a complaint, the Information Commission shall have the following powers:
 - k. To direct the authority or the Responsible Officer to take the following steps:
 - (1). To provide the requested information in a specified particular manner;
 - (2). To appoint Responsible Officers;
 - (3). To publish any special information or special class of information;
 - (4). To bring necessary changes in the procedures followed by the authority with regard to preservation, management or publication of information. To impart better training on right to information for officers of Authorities;
 - (5). To provide compensation to the complainant for any loss or other detriment suffered;
 - l. To impose Penalty as provided in the Act;
 - m. To uphold decisions of the authorities;
 - n. To reject complaints;
 - p. Re-classification of information by the authorities;
 - q. To interpret any matters relating to nature, classification, preservation, publication and supply of information as per the Act. The decisions of the Information Commission in cases of complaints shall be binding on all concerned. The decisions of the Information Commission shall be communicated to all parties in writing. The Information Commission shall through procedures prescribed in the regulations, take other steps in disposing complaints.

64. **Representation before the Information Commission.** The parties to a complaint may present their statements before the Commission either personally or through a lawyer.

The Family Court Rules, 1985

1. **Definitions.** In these rules, unless there is anything repugnant in the subject or context:
 - a. "Form" means a Form annexed to these rules.
 - b. "Ordinance" means the Family Courts Ordinance, 1985 (XVIII of 1985).
2. **Register of Suits.** When a plaint had been presented to a Family Court, its particulars shall be entered in a register.
3. **Register of Appeals.** When an appeal has been presented to the Court of the District Judge, its particulars shall be entered in a register to be kept in Form B.
4. **Form of Decree.** In every suit under the Ordinance, on passing the judgment, a decree shall be drawn up in Form C and shall be signed by the Presiding Judge; and the decree shall bear the seal of the Family Court.
5. **Form of Receipt of Fine.** Whenever any fine is paid under Section 18 or Section 19 of the Ordinance or money or property deposited with or realised by the Family Court under the Ordinance, a receipt shall be given in Form D which shall be serially numbered and the counter foil thereof shall be kept in the Family Court
6. **Register of Fine, etc.** All fines, moneys or property deposited or realised and disbursed by the Family Court shall be entered in a register.
7. **Notice to the Party.** Where the Family Court receives any amount payable to a party it shall cause a notice thereof to be served on the party entitled to receive it and shall pay the amount to the party concerned within seven days of his applying therefor.
8. **Records and Registers of the Family Court.** The records of the Family Court, including its registers, shall be preserved for such period as is provided under the rules of the Supreme Court applicable to Civil Courts.
9. **Records and Their Inspection.**
 - (a) The Family Court shall, on the application of any party to a dispute, allow inspection of the records of the Family court relating to the dispute on payment of a fee of forty paisha.
 - (b) On the application of any party to a suit, certified copies of the judgment, decree or order or other proceedings or entry in any register maintained under these rules or of any portion thereof shall be supplied on payment of a fee calculated at the rate of forty paisha for one hundred and fifty words or part thereof.

10. Seal of the Family Court.

(a) There shall be kept in the office of every Family Court a seal of the Court which shall be circular in shape and shall have thereon the inscription 'Family Court' and the name of place.

(b) The seal on the Court shall be used on all summons, orders, decrees, copies and other documents issued under the Ordinance or those rules.

The Muslim Family Laws Ordinance, 1961

11. Definition. In this Ordinance, unless there is anything repugnant in the subject or context.—

a. "Arbitration Council" means a body consisting of the Chairman and a representative of each of the parties to a matter dealt with in this Ordinance. Provided that where any party fails to nominate a representative within the prescribed time, the body formed without such representative shall be the Arbitration Council.

b. "Chairman means-

- (1) The Chairman of the Union Parishad.
- (2) The Chairman of the Paurashava.
- (3) The Mayor or Administrator of the City Corporation.
- (4) The person appointed by the Government in the Cantonment areas to discharge the functions of Chairman under this Ordinance.

12. Succession. In the event of the death of any son or daughter of the propositus before the opening of succession, the children of such son or daughter, if any, living at the* lime the succession opens, shall per stripe receive a share equivalent to the share which such son or daughter,, as the case may be, would have received if alive.

13. Polygamy.

a. No man, during the subsistence of an existing marriage, shall, except with the previous permission in writing of the Arbitration Council, contract another marriage, nor shall any such marriage contracted without such permission be registered.

b. An application for permission under sub-para (a) shall be submitted to the Chairman in the prescribed manner, together with the prescribed fee, and shall state the reasons for the proposed marriage, and whether the consent of the existing wife or wives has been obtained thereto.

c. On receipt of the application, the Chairman shall ask the applicant and his existing wife or wives each to nominate a representative, and the Arbitration Council so constituted may, if satisfied that the proposed marriage is necessary and just, grant, subject to such conditions if any, as may be deemed fit, the permission applied for.

d. In deciding the application, the Arbitration Council shall record its reasons for the decision, and any party may, in the prescribed manner, within the prescribed period, and on payment of the prescribed fee, prefer an application for revision to the Assistant Judge concerned and his decision shall be final and shall not be called in question in any court.

e. Any man who contracts another marriage without the permission of the Arbitration Council shall:

(1) Pay immediately the entire amount of the dower whether prompt or deferred, due to the existing wife or wives, which amount, if not so paid, shall be re-coverable as arrears of land revenue; and

(2). On conviction upon complaint be punishable with simple imprisonment which may extend to one year, or with fine which may extend to ten thousand taka or with both.

14. Talaq.

a. Any man who wishes to divorce his wife shall, as soon as may be after the pronouncement of talaq in any form whatsoever, give the Chairman notice in writing of his having done so, and shall supply a copy thereof to the wife.

b. Whoever contravenes the provisions of sub-para (a) shall be punishable with simple imprisonment for a term which may extend to one year or with fine which may extend to ten thousand taka or with both.

c. Save as provided in sub-para (e), a talaq, unless revoked earlier, expressly or otherwise, shall not be effective until the expiration of ninety days from the day on which notice under sub para (a) is delivered to the Chairman.

d. Within thirty days of the receipt of notice under sub-para (a), the Chairman shall constitute an Arbitration Council for the purpose of bringing about a reconciliation between the parties, and the Arbitration Council shall take all steps necessary to bring about such reconciliation.

e. If the wife be pregnant at the time talaq is pronounced, talaq shall not be effective until the period mentioned in sub-para (c) or the pregnancy, whichever be later, ends.

f. Nothing shall debar a wife whose marriage has been terminated by talaq effective under this Section from re-marrying the same husband, without an intervening marriage with a third person, unless such termination is for the third time so effective.

15. Dissolution of Marriage Otherwise than by Talaq. Where the right to divorce has been duly delegated to the wife and she wishes to exercise that right, or where any of the parties to a marriage wishes to dissolve the marriage otherwise than by talaq, the provisions of Section 7 shall, mutatis mutandis and so far as applicable, apply. A wife can exercise her right to divorce for her husband's nonpayment of prompt dower, if the same is stipulated in the Kabinnama.

16. Maintenance.

a. If any husband fails to maintain his wife adequately, or where there are more wives than one, fails to maintain them equitably, the wife, or all or any of the wives, may in addition to seeking, any other legal remedy available, apply to the Chairman who shall constitute an Arbitration Council to determine the matter, and the Arbitration Council may issue certificate specifying the amount which shall be paid as maintenance by the husband.

b. A husband or wife may, in the prescribed manner, within the prescribed period, and on payment of the prescribed fee, prefer an application for revision of the certificate to the Assistant Judge concerned and his decision shall be final and shall not be called in question in any court.

c. Any amount payable under Sub-para (a) or (b) if not paid in due time, shall be recoverable as arrears of land revenue.

17. Dower. Where no details about the mode of payment of dower are specified in the nikahnama, or the marriage contract, the entire amount of the dower shall be prescribed to be payable on demand. Dower is not a gratuity but a right. Relinquishment of dower not out of free will, husband is bound to pay it. Wife may refuse to live with the husband if prompt dower is not paid.

18. Powers to Make Rules.

a. The Government may make rules to carry into effect the purposes of this Ordinance.

b. In making rules under this Section, the Government may provide that a breach of any of the rules shall be punishable with simple imprisonment which may.

c. Rules made under this Section shall be published in the official Gazette and shall thereupon have effect as if enacted in this Ordinance.

The Child Marriage Restraint Act, 1929

19. Definition. In this Act, unless there is anything repugnant in the subject or context,—

a. "Child" means a person who, if a male, is under twenty one years of age and if a female is under eighteen years of age.

b. "Child marriage" means a marriage to which either of the contracting parties is a child.

c. "Contracting party" to a marriage means either of the parties whose marriage is or is about to be thereby solemnized.

d. "Minor" means a person who, if a male, is under twenty one years of age and if a female, is under eighteen years of age.

20. **Punishment for Male Adult Above Twenty One Years of Age or Female Adult Above Eighteen Years of Age Marrying a Child.** Whoever, being a male above twenty one years of age or being a female above eighteen years of age contracts a child marriage shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand Taka or with both.

21. **Punishment for Solemnising a Child Marriage.** Whoever performs conducts or directs any child shall be punishable with simple imprisonment, which may extend to one month, or with fine, which may extend to one thousand Taka or with both, unless he proves that he had reason to believe that the marriage was not a child marriage.

22. **Punishment for Parent or Guardian Concerned in a Child Marriage.** If a minor contracts a child marriage, any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnized, or negligently fails to prevent it from being solemnized, shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand taka, or with both, provided that no woman shall be punishable with imprisonment.

23. **Jurisdiction Under This Act.** Notwithstanding anything contained in Section 190 of the Code of Criminal Procedure, 1898, no court other than that of a magistrate of the first class shall take cognizance of, or try. any offence under this Act.

24. **Mode of taking Cognizance of Offences.** No Court shall take cognizance of any offence under this Act except on a complaint made by the Union parishad, or if there is no Union Parishad or Paurashava or City Corporation in the area, by such authority as the Government may in this behalf prescribe and such cognizance shall in no case be taken after the expiry of one year from the date on which the offence is alleged to have been committed.

25. **Preliminary Inquiries into Offences under this Act.** The Court taking cognizance of an offence under this Act shall, unless it dismisses the complaint under Section 203 of Code of Criminal Procedure, 1898, either itself make an inquiry under Section 202 of that Code, or direct a Magistrate of the First Class subordinate to it to make such inquiry.

26. **Power to issue Injunction Prohibiting Marriage in Contravention of this Act.**

a. Notwithstanding anything to the contrary contained in this Act. the Court may, if satisfied from information laid before it through a complaint or otherwise that a child marriage in contravention of this Act has been arranged or is about to be solemnized, issue an injunction against any of the persons concerned prohibiting such marriage.

b. No injunction as mentioned shall be issued against any person unless the court has previously given notice to such person, and has afforded him an opportunity to show cause against the issue of the injunction.

- c. The Court may either on its own motion or on the application of any person aggrieved, annul or alter any order made for this purpose.
- d. Where such an application is received, the Court shall afford the applicant an early opportunity of appearing before it either in person or by pleader; and if the Court rejects the application wholly or in part, it shall record in writing its reasons for so doing.
- e. Whoever knowing that an injunction has been issued against the person concerned, disobeys such "injunction shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to one thousand Taka, or with both, provided that no woman shall be punishable with imprisonment.

Muslim Marriages and Divorces (Registration) Act, 1974

- 27. **Registration of Marriages.** Notwithstanding any thing contained in any law, custom or usages, every marriage solemnized under muslim law shall be registered in accordance with the provisions of this Act.
- 28. **Nikah Registrar.** For the purpose of registration of marriages under this Act the Govt shall grant licenses to the persons, to be called Nikah Registrars, as it may deem necessary and area wise. Mentionable that not more than one nikah registrar shall be licensed for any one area.
- 29. **Marriages not Solemnized by Nikah Registrars to be Reported to Them (Section-5).** Every marriage not solemnized by the Nikah Registrar shall for purpose of registration under this Act be reported to him by the person who has solemnized such marriage. Whoever contravenes this provisions shall be punishable with simple imprisonment for a term of maximum three months or with fine upto 500 taka or with both.
- 30. **Registration of Divorces.** A Nikah Registrar may registrar divorce affected under Muslim Law within his jurisdiction on application being made to him for such registration. An application registration for divorce shall be made orally by the person who has affected the divorce. However a Nikah Registrar shall not register a divorce of Talaq-i- tafweez except on the production of a document registered under Registration Act, 1908. Where the Nikah Registrar refuses to register a divorce, the person or persons who applied for such registration may, within thirty days of such refusal, prefer an appeal to the Registrar and the order passed by the Registrar on such appeal shall be final.
- 31. **Manner of Registration.** The Nikah Registrar shall register a marriage or divorce in such manner as may be prescribed.
- 32. **Registers (Section-8).** Every Nikah Registrar shall maintain separate registers for marriages and divorces. All entries in each register shall be numbered in a consecutive series, a fresh series being commenced at the beginning of each year.

33. **Copies of Entries to be Given to the Parents.** On completion of the registration of any marriage or divorce the Nikah Registrar shall deliver to the parties concerned an attested copy of the entries in the register and no charge shall be made for such copy.

34. **Superintendence and Control.** Every Nikah Registrar shall perform the duties of his office under the superintendence and control of the Registrar. The Inspector-General of Registration shall exercise a general superintendence over offices of all Nikah Registrars.

35. **Custody of Registers.** Every Nikah Registrar shall keep safely each register maintained by him under until the same is filled and shall then or earlier if he leaves the district or ceases to hold a license, make over the same to the Registrar for safe custody.

36. **Inspection of Registers.** Any person may, on payment of the prescribed fee, if any, inspect at the office of the Nikah Registrar or of the Registrar any register kept in such office or obtain a copy of any entry therein.

Women and Child Repression Restrain Act, 2000 (Nari O Shishu Nirzaton Domon Ain, 2000)

37. **Definitions.** In this Act unless there is anything repugnant in the subject or context-

- a. "Offence" means any offences punishable under this act.
- b. "Kidnapping" means compels any one to move from one place to another place forcefully on by provoking or inducing on by threatening.
- c. "Confinement" means restrains anybody to any places without his/her consent.
- d. "Tribunal" means any tribunal formed under this act.
- e. "Rape" means the definition of rape sec 375 of penal code 1860 (Act of XLV of 1860)
- f. "New Born Baby" means child under fourth days of age.
- g. "Women" means women of any ages.
- h. "Ransom" means financial benefit or benefit by other means.
- j. "Criminal procedure" means code of Criminal procedure 1898 (Act V of 1898)
- k. "Child" means any one of less than 16 years.

38. Punishment for Offences Committed by Inflammable Objects, etc

a. Whoever does any act with the intention of thereby causing death or attempts by any flammable, poisonous or harmful elements that person shall be punished with death or by life imprisonment and more with fine of one lac taka.

b. Whoever, does any act with the intention of thereby causing hurt to any child on woman by throwing any inflammable, poisonous or harmful elements and thereby damaged vision and hearing or damaged any parts or artery of the body or damaged any parts of body of any woman or child.

(1) The punishment will be death or by life time imprisonment and more with fine of one lac taka if such act cause damage of vision & heavy or any damage of sexual organs.

(2) The punishment will not be more than fourteen and not less than seven years of rigorous punishment and more with fine of fifty thousand taka in case of causing damage of any part of body.

c. Whoever, throws or attempts to throw any flammable, harmful or poisonous elements, through does not cause any physical or mental damage to the child or woman, shall be punished with minimum three years not more than seven years rigorous imprisonment and more with fine of fifty thousand taka.

39. Punishment of Trafficking Woman, etc.

a. Whoever, conveys any women from outside of Bangladesh or send the women abroad with intent to engage her in prostitution or any immoral or unlawful activities or buy or sell or hire any women or handed over for any kind of torture or confined her with any one of the said intention, shall be punished by death or life time imprisonment or minimum ten years or not more than twenty years rigorous imprisonment and mere with fine.

b. Whoever hands over any women to another prostitute or to any brothel or caretaker or manager of the brothel with intent to engage her in prostitution shall be liable to be punished as mentioned in clause "3 (a)".

c. Any manager on caretaker of a brothel takes any women from another person or hire or takes her liability, it will be assumed that he has taken that women with intent to engage her in prostitution and shall be liable for the offence and punished as mentioned in clause 3 (a).

40. Punishment for Child Trafficking, etc

a. Whoever conveys any child from outside Bangladesh for any illegal or unlawful intent or send or buy or sell or keeps under his custody for such intention shall be punished with death or by life time imprisonment and with more fines.

b. Whoever theft any body from any Hospital, Nursing home, Clinic, Child or Mother home shall be liable and punished under clause 4 (a).

41. **Punishment for Kidnapping Women & Child.** Whoever kidnaps any women or child with other intention mentioned in clause 2 shall be punished with life time imprisonment or minimum fourteen year Rigorous Imprisonment or more with fine.

42. **Punishment of Exacting Ransom.** Whoever confines any women or child for exacting ransom (Section - 8) shall be punished by death or by life time imprisonment or more with fine.

43. **Punishment of Rape**

a. If any person rapes any women or child shall be punished by lifetime rigorous imprisonment and in addition with fine.

b. If death causes to any women or child as a consequence of rape or any such activities, the offender shall be punished with death or life time imprisonment and more with fine of one lac taka.

c. If death causes to any women or child or she gets injured as a consequence of rape by more than one person or by a group, then each of the members of that group shall be punished with death or life time imprisonment and more with fine of one lac taka.

d. Whoever in case of any women or child -

a. Attempts to kill or hurt after rape shall be punished by lifetime imprisonment and more with fine.

b. Attempts to rape, maximum ten years and not less than five years rigorous imprisonment and more with fine.

e. If any woman is raped during police custody by the concern persons or by any person who is liable for that incident, all of them or the concerned person shall be punished with maximum ten years not less than five years of rigorous imprisonment and more fine with ten thousand taka.

44. **Punishment of Inducing to Commit Suicide.** If a women commits suicide for a consequence of any act by a person against her will and which is out rage of her modesty the person, whoever seducing such, shall be punished with maximum ten years and minimum five years of rigorous imprisonment and with more fine.

45. **Punishment of Sexual Harassment.** Whoever unlawfully harass any women by touch her, doing sexual intercourse or touch sexual organs or any part of body of a women willfully to fulfill his sexual desire shall be punished by maximum ten minimum three years of rigorous imprisonment and with more fine.

46. **Punishment of Causing Death for Dowry.** Whoever directly responsible for death or murder or attempt to murder of a women for dowry by her husband, or by husbands father, mother, guardian, relatives or any person of behalf of husband, in that case the husband, husbands father, mother, guardian relative or other person.

a. Shall be punished death for death or life time imprisonment for causing death or attempting murder and fine for both the cases.

b. Shall be punished with life time rigorous imprisonment for causing grievous hurt or maximum twelve and minimum five years rigorous imprisonment and fine for both the cases.

c. Shall be punished with maximum three years and minimum one year rigorous imprisonment for causing simple hurt and fine for both the cases.

47. **Punishment for causing Damage to any Parts of body of a Child.** Whoever involves himself for damaging any parts like hand, leg, eye of a child with intent to sell that organs or engage the child in begging shall be punished by death or by lifetime imprisonment and more fine.

Note: The provisions of the above Law (Nari 'O' Shishu Nirzaton Domon Ain, 2000) have been translated form Bangla since the original code is in Bangla, Students are to consult the original, in case of confirming the accuracy.