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**COMMAND AND STAFF TRAINING INSTITUTE
BANGLADESH AIR FORCE**



Individual Staff Studies Programme (ISSP)

Legal Studies-1
Phase-7 : Part-I

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LEGAL STUDIES - 1
PHASE-7 : PART-I

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INTRODUCTION TO THE PHASE

Purpose of the Phase

This Phase Note is made for the officers of the BAF. 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 legal matters. Study of this Phase note will put you in convenient position in such cases. This Phase Note comprised topic-1 to 5. (Comparatively simpler topics have been allotted to Part-I candidates and harder topics have been allotted to Part-II students). Judicious study of the Note will make you well conversant on legal matters. You are advised to study also Manual of Introduction to Air Force Law, Commission & Enrolment and Condition of svc, Air Force Offences and Civil Offences, Arrest & Custody and Service privileges & restriction and charges.

TOPIC -1

INTRODUCTION TO AIR FORCE LAW

Definition of Law

1. The law is the body of principles recognized and applied by the state in the administration of justice. Or, more shortly “The law consists of the rules recognized and acted on in courts of Justice”. Law is the reason and opinion of the society and is created by the society to meet the needs of the society for its orderly existence and it grows with the growth of the society. The existence of law presupposes a community.
2. Generally speaking, law means any rule of action imposed upon men by some authority which enforce obedience to it. It is a command which obliges a ;person or persons to a course of conduct.

Classification of Law

3. The following are the broad classification of law:
 - a. Colonial Law.
 - b. Executive Law.
 - c. Judicial Law.
 - d. Municipal law.
 - e. Autonomous Law.
4. The Civil law may again be sub-divided into two parts which may be distinguished as General Law and Special Law. General Law consists of ordinary law of the land. The chief forms of special law are:
 - a. Local Law/Domestic Law.
 - b. The Foreign Law.
 - c. Autonomic Law.
 - d. Prize Law.
 - e. Military Law.

Air Force Law

5. Air Force Law is a special law. Members of Air Force (AF) are subject Air Force Law and Law of the country as well. As ordinary citizens, they remain subject to the civil law of the country, but as service personnel, they become subject to a purely military code, which in the case of Air Force is termed ‘Air Force Law’ and it is statutory law.

Object of Air Force Law

6. The object of Air Force law is two fold:
 - a. To provide for the maintenance of discipline among Air Force personnel.
 - b. To provide for administrative matters, such as terms of service, enlistment, dismissal and discharge.

Application of the Air Force Act, 1953

7. Sections 2 to 3A- Persons who become subject to the Air Force Act under clauses (a) to (c) of section 2 remain so subject until duly retired, discharged, released, removed or dismissed from the service. Those who belong to Bangladesh Army or Bangladesh Navy become subject to the Act under clause (e) when seconded for service with the Air Force to such content and subject to such conditions as the Government may direct. Such persons remain subject to the Act during the period of their secondment to the Air Force. Section 3-A empowers the Government to direct by order in writing that persons belonging to Bangladesh Air Force may be seconded to Bangladesh Army or Bangladesh Navy under such conditions as may be specified by regulations.

8. Section 5 of the Act enables the provision of the Act to be applied by any other force that the Government may raise and maintain in Bangladesh, but which does not form part of the regular Bangladesh Air Force. Section 6 enables the Government by direct, by notification, that any person or class of persons subject to the Act under clause (d) of section 2, shall be so subject as officers, master warrant officers, warrant officers, or non-commissioned officers. The effect of such a notification is that those who hold rank as officers, MWO, SWO, WO and non-commissioned officers must, in their relation to air force law, be treated in the same way as those, who hold corresponding ranks in Bangladesh Air Force, for instance, a civil official who hold ranks as an officer can be tried by an air force tribunal inferior to a general or a field general court-martial. Section 7 describes the officer, who may exercise the powers of a "Commanding Officer", in respect of persons who become subject to the Act under clause (d) of section 2. Section 8 provides for the discipline and administration of air force personnel, who might be serving, whether within or without Bangladesh, under an officer who is not subject to this Act. The section empowers the Government to prescribe the officer who, in respect of such personnel, may exercise the powers of a commanding officer. Section 9 is designed to prevent any legal difficulties arising from the usage of the service relating to the delegation of the authority by one officer to another. Section 10 empowers the Government to declare, by notification, that any person or class of persons subject to the Act shall, with reference to any area in which they may be serving or with reference to any provision of the Act or of any other law for the time being in force, be deemed to be on active service within the meaning of this Act. Such a declaration may be made notwithstanding the fact that the circumstances mentioned in the definition of the term "Active Service" in clause (i) of section 4 are not applicable.

Out Lines of Air Force Act and Air Force Act Rules

9. Air Force Act was passed by the Legislature to provide for maintenance of discipline among air force personnel and administrative matters, such as terms of service, enlistment, dismissal and discharge. The Air Force Act Rules were made by the Government to carry into effect the provisions of the Act. In case, rule conflicts with any provision of the Act, the statutory provision must prevail.

10. A sound knowledge of Air Force Law must be based upon a study of the Act itself and it is therefore desirable at this stage to give a short outline of the Act and Rules.

11. Air Force Act may be understood by studying the index. It will be noted that there are 17 chapters to the Act, divide into 206 sections.

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12. Air Force Act Rules are made by the Government, which are 222 in number. Section 202 of Air Force Act authorizes Government to make Rules. Their scope can best be grasped by examining their titles.

13. The Officers and Airmen of Bangladesh Air Force can make profitable use of the following manual, pamphlets and notes :

- a. Manual of BAF Law
- b. Law Pamphlet No 5
- c. Notes on Air Force Law.
- d. AFO-111 Series.

14. A breakdown of sections of Air Force Act is as follows:

- a. Section 1 : Short title and commencement.
- b. Section 2 : Persons subject to the Act.
- c. Section 3 : Termination of application of the Act.
- d. Section 4 : Definitions of certain terms used in the Act.
- e. Section 5-9 : Special provisions for the application of the Act.
- f. Section 10 : Power to declare persons to be on active service.
- g. Sections 11-17 : Commissions and enrolment.
- h. Sections 18-24 : Conditions of service.
- j. Sections 25-33 : Service privileges.
- k. Sections 34-70 : Offences.
- l. Section 71 : Civil offences not triable by courts-martial.
- m. Sections 73-89 : Punishments.
 - (1) Section 73 : Punishments awardable by courts-martial.
 - (2) Section 75 : Combination of punishments in a sentence of court-martial.
 - (3) Section 77 : Field punishment.
 - (4) Section 81 : Punishment otherwise than by courts-martial.
- p. Sections 90-100 : Penal deductions.

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- q. Sections 101-107 : Arrest and proceedings before trial.
 - (1) Section 101 : Custody of offenders.
 - (2) Section 105 : Capture of deserters.
 - (3) Section 107 : Inquiry into absence without leave.
- r. Sections 108-125 : Kinds, constitution, jurisdiction and powers of court - martial.
- s. Sections 126-150 : Procedure of Court-Martial.
- t. Sections 151-162 : Confirmation and Revision of findings and sentences of court-martial.
- u. Sections 163-176 : Execution of sentences of courts-martial.
- v. Sections 177-188 : Pardons, remissions and suspension of punishments of courts-martial.
- w. Sections 189-201 : Property of deceased p, deserters and lunatics.
- x. Section 202 : Empowers the Government to make rules for the purpose of carrying into effect the provisions of the Act.

15. A breakdown of the Rules of Air Force Act Rules is as follows:

- a. Rules 1-8 : Preliminary.
- b. Rules 9-11 : Enrolment and attestation.
- c. Rules 12-27 : Dismissal, removal, termination of commission, released retirement of officers.
- d. Rules 28-31 : Retirement, release, discharge, etc of MWO, WO and persons enrolled under the Act.
- e. Rules 32-34 : Reductions and reclassifications.
- f. Rules 35-37 : Members of political organizations and communications to the press.
- g. Rules 38-65 : Deal with the investigation of punishments and remand for trial by court- martial.
- h. Rules 66-162 : Amplify and detail the provisions of the Act with regarded to procedure of general and district courts-martial.

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- j. Rules 163-181 : Deal with field general court-martial
- k. Rules 182-186 : Deal with execution of sentence awarded by courts-martial.
- l. Rules 187-190 : Deal with field punishment.
- m. Rules 191-192 : Deal with Boards of Inquiry.
- n. Rules 193-21 : Provide for the appointment of a committee of adjustment and the procedure to be followed.
- p. Rules 212-222 : Define the prescribed authorities referred to under various sections of the act.

Persons Subject to this Act

16. The following persons shall be subject to this Act wherever they may be, namely :-
- a. officers, master warrant officers, senior warrant officers and warrant officers of the Air Force;
 - b. persons enrolled under the Air Force Act, 1953.
 - c. persons belonging to the Bangladesh Air Force Reserves when call upon to serve in the circumstances prescribed by rules made under section 6 of the Air Force Reserves Act, 1950 (XLVII of 1950) ;
 - d. persons not otherwise subject to Air Force law who on active service, in camp, on the march, or at any frontier post specified by the Government, by notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany to any portion of the Air Force;
 - (1) persons not otherwise subject to Air Force law who are accused of -
 - (a) Seducing or attempting to seduce any person subject to this Act from his duty or allegiance to Government, or
 - (b) Having committed, in relation to any work of defence, arsenal, naval, military or air force establishment or base, ship or aircraft, or otherwise in relation to the naval military or air force affairs of Bangladesh an offence under the Official Secrets Act, 1923 ;
 - e. to such extent and subject to such conditions as the Government may direct, persons subject to the Army Act, 1952 (XXXIX of 1952), or the Navy Ordinance, 1961 (XXXV of 1961), when seconded for service with the Air Force.

Definitions of Different Important Terms Related to Air Force Act

17. In this Act, unless the context otherwise requires:-
- a. “Active Service” According to section 4 of the Air Force Act, 1953 “Active Service” means the person who:
 - (1). is attached to, or forms part of, a force which is engaged in operations against an enemy, or
 - (2). is engaged in Air Force operations in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or
 - (3). is attached to, or forms part of, a force which is in military occupation of any foreign country ;
 - b. “ aircraft” means aeroplanes, balloons, kite balloons airships gliders or other machines for flying ;
 - c. “aircraft material” means any engines fittings guns gear instruments or apparatus for use in connection with aircraft and other substance used for providing motive power for planes ;
 - d. “Air Forces means” officers, master warrant officers, senior warrant officers, warrant officers and airmen who by their commission junior commission terms of enrolment or otherwise are liable to render continuously for a term air force service to Bangladesh in every part of the world or any specified part of the world, including persons belonging to the Bangladesh Air force reserves when called up for training or exercise or into actual service.
 - e. “Air Force custody” means the arrest or confinement of a person according to the usages of the service and includes military or naval custody.
 - f. “Air Force law” means the law enacted by Air Force Act and the rules made there under and includes the usages of the service;
 - g. “Air Force reward” includes nay gratuity or annuity for long service or good conduct, badge pay or pension and any other Air Force pecuniary reward ;
 - h. “Airman” means any subject to this Act other than an officer or a master warrant officer or a warrant officer;
 - j. “Air officer” means any officer of the Air Force above the rank of Group Captain;
 - k. “Civil offence” means an offence which is triable by a criminal court;
 - l. “Civil prison” means any jail or place used for the detention of any criminal prisoner under the Prisons Act 1894 (IX of 1894), or under any other law for the time being in force;
 - m. “Chief of Air Staff” means the Officer Commanding-in-Chief the Air Force ;

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- n. “Commanding officer” used in relation to a person subject to this Act, means the officer prescribed as commanding officer for the purpose of all or any of the provisions of this Act, or in the absence of any such prescription, the officer for the time being in command of the unit or detachment to which such person belongs or is attached ;
- p. “Court-martial” means a court-martial held under Air Force Act, 1953.
- q. “Criminal court” means a court of ordinary criminal justice in any part of Bangladesh or established elsewhere by the authority of the Government ;
- r. “Enemy” includes all armed mutineers, armed rebels, armed rioters, pirates and any person in arms against whom it is the duty of any person subject to naval, military or air force law to act ;
- s. “The Armed Forces” means the regular Army, Navy and Air Force or any part or parts of any one or more of them;
- t. “Judge Advocate General” means a persons appointed as such by the Commander-in-Chief to give advice on matters relating to Air Force law and to perform such other duties of a legal character as may arise in connection therewith ;
- u. “master warrant officer” means a person commissioned, gazetted or in pay as a master warrant officer of the Air Force and includes an acting master warrant office, and a master warrant officer of the Bangladesh Air Force Volunteer Reserve who is for the time being subject to this Act “
- v. “Non-commissioned officer” means a person holding a “non-commissioned rank or an acting “non-commissioned rank in the Air Force, and includes any person holding a “non-commissioned rank or an acting “non-commissioned rank in the Bangladesh Air Force Volunteer Reserve when subject to this to this Act ;
- w. “Offence“ means any act or omission punishable under this Act, and includes a civil offence, as herein before defined ;
- x. “Officer” means a person commissioned Gazetted or in the pay as an officer in the Air Force and includes :-
- (1) an officer of the Bangladesh Air Force, Army or the Bangladesh Air Force Volunteer Reserve who is for the time being subject to this Act; and
 - (2) an officer of the Bangladesh Army or the Bangladesh Navy when serving under the prescribed conditions, but does not include a junior commissioned officer, master warrant officer, warrant officer, petty officer or non-commissioned officer;

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y. “provost-martial” means a person appointed as such under this Act and includes any of his deputies or assistants or any other person legally exercising authority under him or on his behalf ;

z. “superior officer” when used in relation to a person subject to this Act includes a master warrant officer, a senior warrant officer, a warrant officer and a non-commissioned officer, and as regards persons serving under such conditions as may be prescribed, an officer, junior commissioned officer master warrant officer warrant officer petty officer and non-commissioned officer of the regular Army or the Navy;

aa. “unit” includes:-

(1) any body of officers and airmen or of officers, master warrant officers, warrant officers and airmen for which a separate authorised establishment exists ;

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

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

ab. “Warrant officer” means a person commissioned, gazetted or in pay as a warrant officer of the Air Force and includes an acting warrant officer and a warrant officer of the Bangladesh Air Force volunteer Reserve who is for the time being subject to this Act ;

TOPIC-2

COMMISSIONS & ENROLMENT AND CONDITION OF SERVICE

Grant of Commission

1. The President may grant to such person as he thinks fit a commission as an officer or a junior commission as a master warrant officer or senior warrant officer or a warrant officer of the Air Force.
2. No person who is not a citizen of Bangladesh shall, except with the consent of the Government signified in writing be granted a commission or junior commissioned or be enrolled in the Air Force.

Procedure before enrolling officer

3. Upon the appearance before the prescribed enrolling officer of any person desirous of being enrolled the enrolling officer shall read and explain to him or cause to be read and explained to him in his presence the conditions of the service. The enrolling officer shall put to him the questions set forth in the prescribed form of enrolment and shall after having cautioned him that if he makes a false answer to any such question he will be liable to punishment under this Act.
4. Making a false answer at the time of enrolment to certain questions set forth in the prescribed enrolment form is an offence punishable under section 44 of the Act. Every one who is enrolled in BAF becomes subject to the Act. Enrolment is, therefore, made a definite act recorded in a formal document, the enrolment paper which is itself made legal evidence of the facts stated in it (section 139) and which shows clearly all the conditions of the bargain which the enrolled person has made with the state. The term attestation is applied to the administration to the enrolled person of the oath or affirmation of allegiance and fidelity. It forms no part of the process of enrolment and this oath or affirmation is administered only to combatants and certain higher classes of non-combatants. The ceremony takes place when the candidate is fit for duty or has completed the requisite period of training, etc as prescribed in rule 10 and confers on the person admitted to it a certain status and the privilege of not being ordinarily dischargeable without reference to the Chief of Air Staff or any Principal Staff Officer empowered by him in writing in this behalf (rule 31).
5. The enrolment paper referred to above contain an official record of the bargain made with the enrolled person on behalf of the state and the conditions of that bargain cannot be altered except with the consent of the person concerned. An instance of such consent is when a man on being trained in special duties agrees to serve for a longer period than that for which he is originally engaged. Such a variation of the conditions of service is, therefore, recorded on the man's enrolment paper and is signed. The fact of attestation is in each case recorded on the man's enrolment paper and is signed by him. No separate attestation document is required for the classes who are attested. The fact of attestation is in each case recorded on the enrolment paper and authenticated by the signature of the attesting officer.

Mode of Enrolment

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

Validity of Enrolment

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

8. An airman may claim his discharge within three months of his enrolment but his legal status as an enrolled person remains unaffected until he is duly discharged notwithstanding any irregularity or illegality in his enrolment if for a space of three months he has been in receipt of pay as an enrolled person.

Persons to be Attested

9. The following person shall be attested namely:-

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

10. Attestation involves no further liabilities beyond those assumed at enrolment but confers upon the attested person certain privileges. It is reserved for combatants and such higher classes of non-combatant and such higher classes of non-combatants as the Government considers deserving of being treated in a similar manner to combatants. The discharge of an attested person can as a rule only be authorized by the higher air force authorities while that of an enrolled person who has not been attested (e.g a trainee) can be authorized by his commanding officer. See rule 31 and note 3 to section 13.

Mode of Attestation

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

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

13. The fact of an enrolled person having taken the oath or affirmation directed by this section to be taken shall be entered on his enrolment paper, and authenticated by the signature of the officer administering the oath or affirmation. The proper authority to attest a person subject to this act is generally his immediate commanding office who should do so in the ceremonial manner here indicated.

Dismissal, Removal, Retirement, etc of BAF Officers

14. **Dismissal.** Rule 15 of the Air Force Act Rules provides that the president may at any time dismiss from the service an officer without assigning any reason. It is a recognition and continuation of the same principle of supremacy that has been embodied in section 18 of the Act, to wit, that all person subject to the Act shall hold office during the pleasure of the Head of the State, that is, the President. Where the Head of the State enjoys such absolute supremacy vis-a-vis a commissioned officer, it would be illogical to expect him to give explanations for his decision; to do so would be tantamount to a circumscription of his powers. However, the pleasure of the President has been the subject of numerous judicial pronouncements. It must not be imagined that the power to dismiss or remove a public servant from the service is absolute and unfettered. Every power, if not controlled by a statutory provision is in the last resort subject to fundamental principles of justice and fair play needs modification to provide natural justice.

15. The dismissal of an officer must be approved by the President before the issue of orders.

16. **Termination of Commission.** According to rule 16 of Air Force Act Rules, an officer shall be liable to have his commission terminated at any time during the first year of service if his retention is not considered desirable in any respect,

17. In every case, commission of an officer is liable to be terminated within the first year of his service if his retention in service is not considered desirable due to any reason. It would be both politic and just to allow an officer whose retention in service is no longer considered desirable an opportunity to explain the circumstances appearing against him and to clear his position if possible and with that end in view the officer should be informed categorically of the grounds alleged against him. No hard and fast rules of procedure are necessary to elicit his explanation dictates of natural justice will be satisfied if an opportunity is afforded to the officer to vindicate himself.

18. **Removal from Service.** As per rule 17 of Air Force Act Rules, an officer shall be liable to be removed from the service at any time for misconduct. This provision should be invoked only if an officer has been proved to be guilty of misconduct which is not deemed to be of such a consequence as to merit dismissal under rule 15 or trial by a court martial. Since the officer will forfeit all claims to pension gratuities, etc. on removal it would be only equitable to allow him the same opportunity of vindicating his position. Apart from the considerations of expediency such a course of action would appear to be consistent as a preliminary step with the principles of natural justice.

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19. Dismissal and removal involve the forfeiture of claim to any pension or gratuity which may have been earned. Termination of commission release or retirement does not involve such forfeiture.

20. **Compulsory Resignation.** Rule 18 of Air Force Act Rules describes the provision of compulsory resignation or retirement of an officer. As per rule 18(1) the Government may in its discretion call upon an officer to resign his commission as an alternative to removal under rule 17. If the officer fails to submit a formal application to resign within the time specified by the Government he may be removed from the service.

21. An element of misconduct though not of such a serious nature as to entail removal is visualized in the situation which would lead to a compulsory resignation. A decision under this provision amounts to a recognition of some redeeming feature in the case and is purely a gesture of graciousness on the part of the Government who do not find themselves in a position to retain the officer and yet wish to save him from any future embarrassment. It must be noted however that two conditions must be satisfied before an officer's services can be dispensed with under this provision namely that the final decision of termination of services is taken by the Government exercising its discretion and secondly a date or period must be specified by which the application to resign is to be submitted. If the officer fails to submit the application the Government may have to take recourse to the harsher remedy of removal.

22. **Compulsory retirement.** As per rule 18(2) of the Act Rules, the officer who has not been guilty of misconduct necessitating his removal under rule 17 may at any time be called upon by the government to retire on grounds of unsuitability, incapacity inefficiency or for any other reason should the circumstances in the opinion of the government so require. If the officer fails to submit a formal application to retire his retirement may be effected compulsorily without such an application.

23. This provision contemplates compulsory retirement of an officer for reasons other than misconduct or culpability of even a minor degree in other words the retirement is more or less for administrative reasons. Once the government has come to the conclusion that the officer has outlived his utility, he is given the choice to go out voluntarily. If the officer defaults in the officer in this case notwithstanding his failure to submit the application does not suffer financially he is allowed the benefit of whatever he has earned till the last day of his service.

24. It would be both politic and just to allow an officer whose retention in service is no longer considered desirable for administrative reasons an opportunity to explain the circumstances appearing against him and to clear his position if possible and with that end in view the officer should be informed categorically of the grounds alleged against him to elicit his explanation and to fulfill the requirement of natural justice. The appropriate authority shall mention a specific date or period in the letter to submit the application to retire from service.

25. **Retirement for Medical Unfitness.** As per rule 19 an officer may be retired at any time on account of medical unfitness. An officer of the General Duties Branch who is at any time found permanently unfit for flying duties though fit for ground duties shall if the Government considers that he cannot suitably be retained in the service for ground duties, retire. Wherever the rules authorize or make, it a responsibility of the Government to decide something. No other authority or individual subordinate to it, can give a decision in the matter; to do so would deprive the decision of its validity and legality.

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26. **Voluntary Retirement and Resignation.** According to rule 20 an officer cannot claim as a matter of right to resign his commission. Resignations or voluntary retirements shall only be permitted subject to the exigencies of the service.

27. **Application to Retire.** An officer who wishes to retire or resign his commission must submit his application through the commanding officer. In making the application the officer should give his reasons in full so as to enable the Government to arrive at a decision. In forwarding the application the Commanding Officer shall certify that the application is not submitted on account of any misconduct on the part of the officer. If the application is the result of misconduct or of any thing affecting the officer's honour or character as a gentleman the Commanding Officer in his forwarding letter shall state all the circumstances and particulars and shall obtain the officer's signature to any adverse report which he makes. The Commanding Officer shall also state whether there are any outstanding claims local or other against the officer and whether there is any objection to the resignation or application for voluntary retirement being accepted.

28. Retiring ages for officers holding permanent commissions:

a. The normal retiring ages and service limit for officers holding permanent commission shall be as follows:

GENERAL DUTIES BRANCH:

<u>Rank</u>	<u>Service Limit</u>	<u>Retiring age</u>
Squadron Leader and below	20	44
Wing Commander	22	47
Group Captain	23	50
Air Commodore	25	52
Air Vice Marshal	26	54

GROUND DUTIES BRANCHES EXCEPT S D EDUCATION AND S D LEGAL

<u>Rank</u>	<u>Service Limit</u>	<u>Retiring age</u>
Squadron Leader and below	23	47
Wing Commander	25	50
Group Captain	26	53
Air Commodore	28	55
Air Vice Marshal	30	57

S D EDUCATION AND S D LEGAL BRANCHES

<u>Rank</u>	<u>Service Limit</u>	<u>Retiring age</u>
Squadron Leader and below	25	52
Wing Commander	27	54
Group Captain	28	55

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Provided that an officer shall, unless exercises option under sub-rule (3) (a) of this rule, on completion of the service limit, retire from service on completion of the retiring age.

b. The tenure in the appointment of the Chief of Air Staff will continue to be governed by SRO No- 235-L/81/2C-S-1/81/D-1, dated 8-7-81, SRO No- 391-L/82/2C-S-1/81/D-1, dated 24-11-82 and SRO No- 491-L/84, dated 12-11-1984 of the Ministry of defence.

c. Clarification to implement the provisions of sub-rule (1):

(1) An officer intending to retire from service on completion of service limit specified in sub-rule (1) may exercise his option by serving a notice of his intention in writing to the government at least six months prior to the date of such completion. The option once exercise, shall be irrevocable subject to acceptance thereof by the government.

(2) The Chief of Air Staff may, if he his satisfied that an officer who has completed the service limit but not opted for retirement, should be retire from service, in the public interest, recommend to the Government for considering the case of such officer for retirement.

d. An officer of the rank of Group Captain and above will not be permitted to retire voluntarily, unless deemed expedient by the Government.

e. The Government may, at any time, suspend or limit retirement under this rule in the public interest.

f. **Right of Government to retire any Officer :** Notwithstanding any other provisions of these Rules, the Government may retire any officer at any time without assigning any reason whatsoever.

Dismissal, Removal or Reduction by Chief of Air Staff or other Officers

29. Section 20 of the Act authorizes Chief of Air Staff or other Officers as mentioned below to remove from the service or to reduce to rank or reclassify any airman at any time:

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

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

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

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

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- e. On active service, an officer commanding the Air Forces in the field may reduce to a lower rank or to the ranks any non-commissioned officer under his command.
- f. The exercise of any powers under this section shall be subject to the other provisions contained in this Act and the rules and regulations made there under.

Retirement, Release or Discharge

30. As per section 21 of the Act any person subject to this Act may be retired released or discharged from the service by such authority and in such manner as may be prescribed. According to the pronouncement of this section authorities empowered to authorize retirement release or discharge of persons other than officers have been prescribed in rule 31 of Air Force Act Rules.

31. The authorities specified in column 3 of the table below shall be the authorities competent in respect of the persons specified in column 1 and for the causes and manners specified in columns 2 and 4 respectively to authorize the retirement release or discharge of persons subject to the act otherwise than as officers. Any powers conferred by this rule on any authority may be exercised by any higher authority -

class	cause of retirement	authority competent to authorize retirement release or discharge	Special Instructions
1	2	3	4
Warrant Officer and Master Warrant Officer	Retirement release and all other causes of discharge	Chief of Air Staff or any principle staff office empowered by him in writing in this behalf	
Person enrolled under the Act who have been attested	(i) At his own request on fulfilling the conditions of his enrolment	Officer Commanding Record Office	To be carried out in accordance with the conditions of enrolment and with section 23 of the act and rule 28
	(ii) At his own request before fulfilling the conditions of his enrolment	Chief of Air Staff or any principal officer empowered by him in writing in this behalf.	The Chief of Air Staff or any principal staff officer empowered by him in this behalf will exercise this power only when he is satisfied as to the bona fides of the application and that the strength of the trade in which the airman is employed will not thereby be unduly reduced.
	(a) On compassionate grounds	-	

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Person enrolled under the Act who have been attested

(b) for any other reason		
(iii) Having been found medically unfit for further service	Officer Commanding Record Office	To be carried out only on the recommendation of an invading board
(iv) At his own request with a view to transfer to the pension establishment	Chief of Air Staff or any principal officer empowered by him in writing in this behalf.	To be carried out in accordance with the conditions of enrolment section 23 of the act and rule 28.
(v) On transfer to the pension establishment or on discharge with gratuity otherwise than at his own request or under clause (iii)	Chief of Air Staff or any principal officer empowered by him in writing in this behalf.	
(vi) Having been found inefficient in his rank or trade and being unwilling to accept reduction or remustering	Chief of Air Staff or any principal officer empowered by him in writing in this behalf.	A person enrolled under the act reported as inefficient will as far as vacancies allow be permitted to re-muster and/or accept reduction in any rank and trade for which he is reported as suitable. If no such vacancy exists or if he declined to accept such re-mustering or reduction he will be discharged under this clause. Gratuity or pension earned will be admissible.
(vii) His service being no longer required	Chief of Air Staff or any principal officer empowered by him in writing in this behalf.	Inter alia discharge due to reduction in establishment or to reorganization will be carried out under this clause.
(viii) On appointment to a commission or cadet ship	Officer Commanding Record Office	
(ix) For disciplinary reasons		
(a) Having been convicted by a court martial.	Chief of Air Staff or any principal officer empowered by him in writing in this behalf.	A person enrolled under the act will not be discharged under this heading unless the circumstances are such as to justify his removal from the service. When therefore such a person has been convicted of
(b) Having been convicted by a Civil Court of an offence		

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Person enrolled under the Act who have not been attested

	involving moral turpitude		an offence not of a serious nature and his retention in the service is not deemed desirable he should be discharged under clause (vii).
(c) For misconduct	Chief of Air Staff or any principal officer empowered by him in writing in this behalf.	(a) A person enrolled under the act will not be discharged under this heading unless the misconduct is of such a nature as to justify his removal from the service.	
		(b) A person enrolled under the act who is recommended for discharge on account of a conviction by civil court for an offence which does not involve moral turpitude but which is considered serious may be discharged under this clause.	
(x) All other cause of discharge	Chief of Air Staff or any principal officer empowered by him in writing in this behalf.	Applicable to persons enrolled under the act who can not be discharged under any other clause.	
(xi) Unlikely to make an efficient airman	Commanding Officer	Applicable to persons enrolled under the act undergoing training for a trade or a class of employment	
(xii) At this own request before fulfilling the conditions of his enrolment	Chief of Air Staff or any principal officer empowered by him in writing in this behalf.	The Chief of Air Staff or any air or other office empowered by him in this behalf will exercise this power only when he is satisfied as to the bona fides of the application and that the strength of the trade will not thereby be unduly reduced.	
(xiii) All other causes of Commanding Officer discharge	Commanding Officer	Applicable to persons enrolled under the act who cannot be discharged under clause (xi) and (xii).	

32. **Certificate on Termination of Service.** As per section 22 of the Act every junior commissioned officer or enrolled person who is dismissed removed discharged or released from the service shall be furnished by his commanding officer with a certificate setting forth:

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

The Discharge Certificate required to be issued under this section may be furnished to the person concerned either by personal delivery to him or by its transmission by registered post to such person. In the case of a person sentenced to imprisonment which is carried out in a civil prison it should be sent to the Superintendent of the civil prison in which the person is confined for delivery to the person.

33. **Reduction and Reclassification by Order under Section 20 of the Act.** Rule 32 of Air Force Act Rules prescribes the provisions of reduction and reclassification as under:

- a. The Chief of Air Staff or any officer empowered by the government in this behalf may reduce any non commissioned officer to any lower grade or to a lower or to the ranks for misconduct inefficiency or unsuitability.
- b. The Chief of Air Staff or any officer empowered by the government in this behalf may reduce an airman other than a non commissioned officer to a lower class in the ranks for inefficiency.
- c. On active service an officer commanding the Air Forces in the field may reduce any non commissioned officer under his command to a lower grade or to a lower rank or to the ranks for misconduct inefficiency or unsuitability.
- d. An airman reduced under sub-rules (1) (2) and (3) shall not be reduced to a rank or classification actually or relatively lower than the rank or classification in which he was originally enrolled.
- e. Reduction for inefficiency shall normally be to the rank immediately below that held. In exceptional circumstances reduction by more than one step may be ordered but this power shall be exercised by the chief of air staff only.
- f. An order for reduction or reclassification shall state whether such reduction or reclassification is for misconduct or inefficiency or unsuitability and when reduction is to the ranks the class in the ranks to which the airman is reduced. The order shall also state the date from which the reduction or reclassification is to take effect.

Letter Of Reproof, Displeasure and Warning

34. Occasions may arise when for certain reasons it is decided not to initiate disciplinary action under the BAF Act or take severe administrative action against an officer for a lapse of conduct or dereliction of duty. It has therefore been decided that in such cases the officer concerned will either be reproofed in writing or a letter of displeasure or warning will be issued to him. The occasions when such letters will be issued are as under:

- a. **Letter of Reproof.** In case a lapse of conduct or dereliction of duty is not of such a serious nature as to merit disciplinary action under the Bangladesh Air Force Act or that for certain reasons it is decided not to initiate any action under the Act or take severe administrative action, the officer concerned will be administered a reproof in writing.
- b. **Letter of Displeasure.** In cases where a lapse or dereliction of duty does not amount to an offence, a letter of displeasure will be issued to the officer held responsible.
- c. **Letter of Warning.** In cases where the lapse is of a very minor nature or that an act or omission on the part of an officer is considered likely to have led to some loss or damage to the state or breach of rules, a letter of warning will be issued. The sole purpose of this type of letter is to forewarn an officer to bring about the desired improvement.

35. The above mentioned letters will be issued and personally signed by one of the officers designated as under:

- a. Chief of Air Staff, Bangladesh Air Force.
- b. Principal Staff Officers at Air Headquarters.
- c. Commanding Officer Bases/Base Commanders.

36. The letter will be addressed to the officer concerned and copies sent as under:

a. **Letters issued by Air Headquarters.**

- (1) One copy to the Officer Commanding Base concerned for the officer's personal file.
- (2) One copy to the Air Secretary for filing in the Officer's Confidential Record.

b. **Letters issued by Officers Commanding Bases.**

- (1) One copy to the personal file of the officer at the base.
- (2) One copy to the Air Secretary for filing in the Officer's Confidential Record.

37. Letter of Warning/Displeasure/Re-proof issued to an officer will be treated as having expired if the officer is not punished under Sec-73 or 86 of the Air Force Act 1953 or is not issued with any such letter within the period stipulated below following the issue of the last letter of warning/displeasure/re-proof:

- | | | |
|----|-----------------------|----------|
| a. | Warning Letter | 02 years |
| b. | Letter of Displeasure | 03 years |
| c. | Letter of Re-proof | 04 years |

38. At the expiry of a particular letter, Air Secy's Branch will "X" mark over the letter of Warning/Displeasure/Re-proof Keeping the letter legible and also inform the parent unit of the individual officer. On receipt of such information Bases/Units will "X" mark the letter in the same manner.

TOPIC-3
AIR FORCE OFFENCES & CIVIL OFFENCES

Introduction

1. An offence means any act or omission punishable under the Act and includes a civil offence. Chapter VI of the Bangladesh Air Force Act classifies under various heads and defines the Air Force and civil offences. The principle of classification adopted in the arrangement of offences is that offences of a similar character are grouped together and the groups have been arranged in the following order which emphasises their relative Air Force importance. Service offences' have been detailed in Sections 34 to 70:

a. **Service Offences.**

- (1) Offences in relation to the enemy (Sec 34 & 35).
- (2) Offences punishable more severely on active service than at other times (Sec 36).
- (3) Mutiny (Sec 37).
- (4) Desertion and absence without leave (Sec 38 & 39).
- (5) Striking or threatening superior officer (Sec 40).
- (6) Disobedience and insubordination (Sec 41 & 42).
- (7) Fraudulent Enrollment and other connected offences (Sec 43 & 44).
- (8) Unbecoming conduct (Sec 45).
- (9) Ill-treating a subordinate (Sec 47).
- (10) Intoxication (Sec 48).
- (11) Offences in relation to persons in custody (Sec 49-51).
- (12) Offences in respect of property (Sec 52-55).
- (13) False accusation (Sec 56).
- (14) Falsifying official documents and false declaration (Sec 57).
- (15) Signing in blank and failure to report (Sec 58).
- (16) Offences relating to court martial (Sec 59).
- (17) False Evidence (Sec 60).
- (18) Unlawful detention of Pay (Sec 61).
- (19) Offences in relation to aircraft and flying (Sec 62-64).
- (20) Act, or omissions prejudicial to good order and air force discipline (Sec 65).
- (21) Miscellaneous offences (Sec 66).
- (22) Attempt and abatement of offences (Sec 67-70).

b. **Civil Offences.**

- (1) Offences tribal by court-martial (Sec 71).
- (2) Offences not tribal by court-martial (Sec 72).

2. It must be remembered that chapter IV of the Penal Code (General Exceptions) applies to offences under special laws, such as the Air Force Act as well. The definitions of all these offences must, therefore, be read as subject to the above "General Exceptions." Thus if an airman is charged under Section 42(b) with striking a NCO and proved that he only did so in the exercise of his right of private defence, he will be entitled to an acquittal (S 96). Similarly if a person charged with any offence under the Air Force Act is proved to have committed the offence while incapable, by reason of insanity or involuntary intoxication, of knowing the nature of his act or that it was either wrong or contrary to law, he is entitled to the benefit of Section 84 or 85 of the Bangladesh Penal Code as the case may be, and cannot be punished for what he has done.

Offences Punishable More Severely on Active Service than at Other Time (Sec 36)

3. The offences in section 36 are punishable with long imprisonment if committed on active service and if committed not on active service with short imprisonment.

Mutiny (Sec 37)

4. 'Mutiny' means a combination of two or more persons to resist or induce others to resist lawful authority in the armed forces of Bangladesh or to disobey such authority in such circumstances as to make the disobedience subversive of discipline or to impede the performance of any duty or service in the armed forces.

5. It is to be noted that a person can commit the offence of mutiny in respect of any of the Military, Naval or Air Force of Bangladesh.

6. In framing a charge under section 37, the specific acts or commissions relied upon as constituting mutiny must be set out in the particulars.

7. A charge for mutiny should be reserved for the gravest cases of collective insubordination. Where there is no evidence of a combined design to resist authority the charge should be framed under Section 40 or 41.

Desertion and Absence without Leave (Sec 38-39)

8. The difference between desertion and absence without leave is that in the former the offender intends never to return to the service or to avoid some particular important duty; in the latter he intends to return to the service. The intention is the gist of the offence.

9. A person charged with desertion may be found guilty of attempting to desert or of being absent without leave and a person charged with an attempt to desert may be found guilty of being absent without leave (Section 137).

Striking or Threatening Superior Officer (Sec 40)

10. The various offences under this head include:

- a. Use of criminal force to or assault upon a superior officer.
- b. Use of threatening language to such officer.
- c. Use of insubordinate language to such officer.

11. If any of the above offences is committed while the superior officer is in the execution of his office or on active service the offender is liable to be punished with long imprisonment but in other cases with short imprisonment.

12. "Using criminal force" means using force intentionally to a person, without that person's consent, in order to the committing of any offence, or intending or knowing it to be likely that the use of such force will cause injury, fear or annoyance to the person to whom the force is used .

13. An "assault" means making any gesture or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person (S 351 BPC). But the person making the preparation or gesture must be or apparently be, in a position to put it into effect. Thus the man who points a loaded rifle at another is guilty of assault, he would also be guilty of assault if he pointed on unloaded rifle at another person and that person did not know that the rifle was not loaded. But a prisoner behind the bars of a cell who raised his fist or stick at a person outside whom he could not reach would not be guilty of assault. Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make these gestures or preparation amount to an assault.

14. To attempt to use criminal force is to make an attempt which is entirely unsuccessful. Thus to throw a stone at another which misses him is to attempt to use criminal force.

15. The dividing line between an attempt to use criminal force and assault is not always clear.

16. Charges under this sections postulate that the accused knew that the person to whom he used, or attempted to use, criminal force or whom he assaulted or used threatening or insubordinate language was his superior officer, Evidence to this effect must invariably be given.

Disobedience and Insubordination (Sec 41-42)

17. The gravity of disobeying a superior officer depend largely upon the circumstances. A civilian cannot give a "lawful command" under section 41(2) to an airman employed under him; but it may well be the airman's duty as such to do the act indicated, and if so, he may be charged for "act prejudicial to good order and air force discipline".

18. **Lawful Command.** The command must be a specific command to an individual ie it must be capable of individual execution by the person to whom it is addressed and justified by air force as well as by civil law, and usage. The command must relate to Air Force duty, that is disobedience to it must tend to impede, delay or prevent an air force proceeding. The disobedience must have reference to the time at which the command is to be obeyed.

19. **“General Local or other Others.”** These orders mean standing orders or other orders having a continuous operation.

Fraudulent Enrollment and other Connected Offences (Sec 43 &44)

20. If an offender is charged for this offence, he may be tried either in his original service or in that into which he has fraudulently enrolled himself. It will be noticed that the offence under S 43 can be committed by a person who belongs to the air force and enrolls himself again in it.

21. If false answers are given to two or more questions in the enrollment paper, each false answer constitutes a separate offence.

Unbecoming Conduct (Sec 45)

22. Unbecoming conduct may be either of a service or a social character. This section applied to officers and warrant officers only.

Disgraceful Conducts (Sec 46)

23. Malingering, feigning or producing disease or infirmity; willful maiming with intent to render unfit for service, aggravating disease or infirmity or delaying its cure, and disgraceful conduct of a cruel, indecent or unnatural kind are all constituted as offences under Section 46.

24. Serious sexual offences such as rape or sodomy should not be charged under this section but as civil offences.

III-Treating a Subordinate (Sec 47)

25. This offence can be committed by officers, warrant officer or non-commissioned officers as against persons subject to the act who are there subordinates in rank or position. This section is not applicable to airmen below the rank of non-commissioned officer.

Intoxication (Sec 48)

26. “State of intoxication” is not defined anywhere but the proper meaning to be attributed to it is what through the intoxicating effect of liquor or drugs the accused was unfit to be entrusted with his duty. It includes intoxication from the effects of opium or any similar drugs as well as from liquor. Witnesses cannot just say the accused was drunk, they must give their reasons for saying so, eg speech, gait, conduct etc.

27. If the offence is committed on duty or on active service, the statement of offence must be prefixed by “when on active service” “while on duty” as the case may be. The nature of the duty must be specified in the particulars.

28. Intoxication is not an excuse for another crime unless:

a. The accused is, at the time of doing the act, by reason of intoxication incapable of knowing the nature of the act or that what he is doing is either wrong or contrary to law, provided that the thing which intoxicated him was administered to him without his knowledge or against his will (S 85 BPC), or

b. In cases where an act done is not an offence unless done with a particular knowledge or intent, a person will not be liable if he was involuntarily intoxicated (S 86 BPC).

Offences in Relation to Persons in Custody (Sec 49 - 51)

29. Under Section 49, a guard commander who releases willfully or otherwise, a person committed to his charge or allows a person in his custody to escape is liable to be sentenced to long imprisonment if he acted willfully or to short imprisonment if the offence was not wilful. Section 50 deals with various offences in connection with irregular arrests or confinement whilst section 51 makes it an offence for a person in lawful custody to escape or attempt to escape. All these offences can be committed by any person subject to air force law.

Offences in Relation to Property (Sec 52-55)

30. Section 52 deals with offences of theft, embezzlement dishonest misappropriation and receiving stolen property. These offences must be in respect of public property or that of any Military, Naval, or Air Force Mess, band or institution or of any person subject to Military. Naval or Air Force Law or serving with or attached to the Air Force. It also deals with offences of destroying or endangering public property and of doing anything with intent to defraud.

31. **Theft, Receiving and Retaining.** Section 378 of Bangladesh Penal Code defines theft as, 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”. An essential element of receiving is theft by some person other than the accused. Accused must be shown to have known that the property in question is stolen property.

32. **Dishonest Misappropriation and Conversion.** Both these imply that the original possession by the offender was lawful. There must have been prior to the misappropriation some form of entrustment. The property may be converted by the offender to his own use or to that of any other person.

33. **Extortion and Corruption (Sec 53).** This section deals with extortion and unauthorized exaction of money, provisions or service. Extortion is defined in Section 383 of Bangladesh Penal Code that “whoever intentionally puts any person in fear or any injury to that person, or to any other and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security of anything signed or sealed which may be converted into a valuable security, commits extortion.”

34. **Making away with Equipment and Injury to Property.** Section 54 makes it an offence to make away with arms, ammunition etc being the property of the Government, issued to the offender for his use or entrusted to him, or losing any of those things by neglect or selling, pawning, destroying or defacing them. Section 55 makes it an offence to destroy or damage any of the property mentioned in Section 54 or kill, injure, make away with or ill-treat or lose any animal entrusted to the offender.

False Accusations (Sec 56)

35. Section 56 of the Act deals with the offences of making false accusations against any person subject to the Act or of making a complaint containing false aspersions on the character of such person or of willfully suppressing material facts in any such complaint.

Offences Relating to Courts-Martial (Sec 59)

36. Section 59 contains important provisions as to the failure of persons subject to air force law to attend courts-martial as witnesses after being duly summoned or ordered to attend and as to their refusal to be sworn as witnesses or to produce documents in their possession or to answer questions to which a court-martial may legally require an answer. These offences are not tribal by the court before which the offence is committed. This section also deals with the offence of contempt of court-martial by the use of insulting or threatening language or by the interruption or disturbance of the proceedings of such court.

False Evidence (Sec 60)

37. Section 60 deals with the willful giving of false evidence by persons subject to the Act when giving evidence before a court-martial.

Unlawful Detention of Pay (Sec 61)

38. This offence can be committed by officers, warrant officers and non-commissioned officer only and can be in respect of the pay only of a person subject to the Act.

Offences in Relation to Air-craft and flying (Sec 62-63)

39. Section 62 and 63 deal with offences which are peculiar to, or of special importance to an air force. It includes offences such as, willfully or negligently damaging, destroying or losing any service aircraft or aircraft material; any act or neglect likely to cause such damage, etc, any act or neglect in flying or in the use of aircraft or in relation to any aircraft or aircraft material which causes or is likely to cause loss of life or bodily injury : or signing a certificate in relation to an aircraft or aircraft material without ensuring its accuracy or indulging in unauthorized law flying or dangerous flying.

40. Section 64 makes the disobedience of the lawful command of captain of aircraft a specific offence and punishable with long imprisonment.

Acts and Omissions Prejudicial to Good Order and Air Force Discipline (Sec 65)

41. No person subject to the act is to be charged under this section for an offence which is a specific offence under any other provision of the Act, although the conviction of a person so charged is not necessarily invalidated. If it is reasonably clear that a man if guilty of anything is guilty of one of the more serious offence, specifically mentioned in other sections, a commanding officer should not arrogate jurisdiction to himself by preferring a charge under this section.

42. The following are a few instances of offences that could be charged under this section:

- a. Improperly using service transport and petrol for private purpose.
- b. Improperly using or obtaining railway warrants.
- c. Improperly obtaining 'concession vouchers'.
- d. Being in improper possession of public property or of property belonging to an officer or comrade.

Miscellaneous Offences (Sec 66)

43. This section deals with a number of miscellaneous offences which speak of themselves. Note that attempting to commit and doing an act towards the commission of such offence is a service crime.

Attempt and Abatement of Offences (Sec 67-70)

44. **Attempt.** A person who attempts to commit an offence or to cause such offence to be committed and in such attempt does any act towards the commission of the offence is criminally responsible even though the attempt is unsuccessful. A mere intention to commit an offence unaccompanied by acts will not amount to an actual "Attempt", nor will acts themselves if they are merely preparatory to the commission of the offence. A mixes poison with food which remains in A's possession; the mere mixing with food is not an attempt to murder by poison. Some act must be done which is more than an intention or preparation and which is a real step toward the commission of the offence. Thus if A had placed the food on B's table, or delivered it to B's servants to place it on B's table he would have been guilty of an attempt to murder.

45. **Abatement.** A person may make himself responsible for the crime of another by instigating, conspiring with, or intentionally aiding the actual criminal in one of the ways described in S 107 and 108 of the Bangladesh Penal Code. The punishment provided for abutment of offences that have been committed under section 69 of the Act is the punishment assigned to the Air Force offence abetted. In the case of an abatement of an offence punishable with death and not committed, the offender is punishable with long imprisonment (S 69). While in the case of an offence punishable with imprisonment and not committed, the offender is liable to suffer imprisonment for a period one-half of the longest term provided for that offence.

Civil Offences (Sec 71)

46. A “Civil Offence” for the purpose of the Air Force Act means an offence which is tried by a criminal court.

47. A court-martial can try all civil offences committed anywhere by a person subject to the Act except the offence mentioned in the following paragraphs :

48. Civil Offences not Tried by Court-Martial (Sec 72)

a. Cases of Murder or culpable homicide not amounting to murder of a person not subject to Military, Naval and Air Force law, or

b. Cases of rape in relation to such a person.

49. A court-martial has jurisdiction even over these offences if (a) they are committed on active service or (b) at any place outside Bangladesh or (c) at a frontier post specified by the Government.

50. Most of the civil offences as defined in para 48 above and tried by courts martial are included in the Bangladesh Penal Code, but a few eg the offences against the Bangladesh Official Secrets Act are created by special status. It should be noted that words and expressions defined in Bangladesh Penal Code have, when used in the Bangladesh Air Force Act (Unless defined in the Act), the meanings, attributed to them by the Code. Thus, whenever ‘theft’ ‘assault’, or ‘house-breaking’ are mentioned in the Air Force Act the offence so defined in the Penal Code is intended. Also all the penal sections of the former act are subject to the “General Exceptions” of the latter. For “General Exceptions” Sections 76 and 106 of the Bangladesh Penal Code may be studied.

Important Sections Of Penal Code

51. **Culpable Homicide (Sec-299).** Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

52. **Murder (Sec-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 offender knows that the act is likely to cause death, or the 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.

53. **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 cause the death of any other person by mistake or accident

54. 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.

55. **Rape (Section-375).** A man is said to commit "rape" who 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.

56. But there is an exception, where sexual intercourse by a man with his own 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. Whether there was an emission of semen or not is immaterial.

Adultery (Sec-497). 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.

57. **Criminal Force (Sec-350).** Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

58. **Assault (Sec-351).** Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation.- Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

59. **Kidnapping (Sec- 359, 360 & 361).** Kidnapping is of two kinds: kidnapping from Bangladesh, and kidnapping from lawful guardianship. Whoever conveys any person beyond the limits of Bangladesh without the consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from Bangladesh. On the other hand, whoever takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

60. **Abduction (Sec-362).** Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

61. **Theft (Sec-378).** 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.

62. **Extortion (Sec-383).** 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 ²[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".

63. **Cheating (sec 415).** 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.

64. It is important to distinguish between a transfer of "possession" only, and a transfer of "property" in the goods taken; if A by false pretences induces B to give him possession only of an article, and if he so induces B to transfer to him not only the possession of, but also the property in, the article, this is, "cheating". The deception may be made in any way, either by words, by writing, or by conduct and a promise as to future conduct not intended to be kept amount to cheating.

65. **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".

66. **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

67. 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.

68. **Public Nuisance (Sec-268).** 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.

69. **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.

70. **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.

71. **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.

72. **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.

73. **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.

74. **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.

TOPIC-4

ARREST AND CUSTODY

Introduction

1. Whenever any person subject to the Air Force Act is charged with an offence, he may be taken into Air Force custody which means his arrest or confinement according to the usages of the Service (Air Force Act Sec 4(v), but such a course is by no means obligatory. Air Force custody includes military or naval custody. If the offence is not serious it may be investigated and disposed of without placing the offender in arrest.

Type of Arrest

2. Arrest is of two types:

- a. Close Arrest.
- b. Open Arrest.

Note: When the nature of arrest is not specified as either of the above, the term arrest means close arrest.

Purpose of Arrest - Close or Open

3. The purpose of arrest is to :

- a. Prevent the offender from perpetuating further crimes either by repeating the crime as a habitual criminal, completing an unfinished crime or committing fresh crimes to cover up a crime previously committed.
- b. Secure the body of the offender for trial, in case the person is likely to abscond or is likely to be avenged upon or be caused bodily harm by the aggrieved party.
- c. Deter any effort of the offender to tamper with prosecution evidence.

Power of Arrest

4. Any person subject to the Act who is charged with an offence under the Act may be placed under arrest by any superior officer(Air Force Act Sec 101). The term "superior officer", as defined in Air Force Act 4 (xxix) means an officer, MWO, WO, JWO or NCO of the BAF who is superior to another person of the BAF.

5. An exception to the above rule is that an officer may order into Air Force custody any officer who is engaged in a quarrel, affray or disorder though he may be of a higher rank (Air Force Act Sec 101(3)). The junior should note that this step is resorted to only as an extreme measure. This provision does not extend to NCOs.

6. It is to be realized that the power to arrest does not include power to release from arrest.

Duties of Provost Marshal

7. The duties of Provost Marshal and their staff of all the three services are to take charge of persons confined for any offence, to preserve good order and discipline and to prevent breaches of discipline (Air Force Act Sec 107). Provost Marshal includes those appointed under the Army Act or Naval Ordinance.

When an Officer to be placed Under Arrest

8. An officer may be placed in arrest without previous investigation but not ordinarily until his Commanding Officer (CO) has satisfied himself that it will be necessary to proceed with the case and to report it to a superior authority. A CO must place in arrest an officer against whom he has either:

- a. Preferred a charge or
- b. Ordered a Summary of Evidence.

9. An officer is put under arrest either directly by an officer who orders it, or more generally, by some subordinate carrying out his orders, ie by the adjutant of the unit when the arrest is ordered by the CO. The officer placed under arrest should be informed in writing of the nature of the arrest. If a person other than the CO places an officer under arrest he should immediately report the matter to the CO and submit to the CO a written statement signed by himself, of the alleged offence. Any charge in the nature of arrest should be notified to the officer in writing.

Initial Report

10. Immediately an officer is placed in arrest the unit should dispatch a confidential signal to Air Secy's Branch giving the following details :

- a. Rank (Substantive and acting where applicable), initials, name, personal number and branch.
- b. Nature of arrest and date.
- c. Brief particulars of the charges.

11. Charges in arrest including Release Without Prejudice to Re-arrest are also to be reported as above.

Restrictions - Close Arrest

12. An officer under close arrest will :

- a. Be placed under an escort of the same rank, preferably senior.
- b. Not be permitted to leave his quarters or tent except to take such exercise under supervision as the medical officer considers necessary.

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- c. Not be required to perform any duty other than such duties as may be necessary to relieve him of the charge of any cash, equipment, stores, accounts or office which he may have on his charge or for which he is responsible. If, by error, or in emergency he has been ordered to perform any duty, he is not thereby absolved from liability to be proceeded against for the offence for which he is under arrest. On active service, however, an offender may be ordered to bear arms, attend parades and perform all his ordinary duties, provided that care is taken to ensure that he is called upon to perform no duties in addition to those performed by individuals who are not in arrest.
- d. Not bear arms except by the order of his CO in an emergency.
- e. Not consume any alcoholic drinks or other intoxicants.
- f. Have all his meals in his room of confinement and not use his own or any other mess premises whatsoever.
- g. Not appear in any place or public resort.
- h. Not appear outside his tent or quarters dressed otherwise than in uniform.
- j. Any other restrictions imposed by base through Base Standing Orders.

Restrictions - Open Arrest

13. An officer under open arrest may:
- a. Be ordered by his CO to carry out such duties as may be necessary in the course of his training, or such part of his ordinary duties as his CO may consider advisable that he should perform.
 - b. Take exercise at stated periods within defined limits, which will usually be the precincts of his barracks or camp of his unit.
 - c. Under strict orders as to his conduct be directed to proceed from one station to another or be permitted to leave his station for a particular purpose.
 - d. Any other restrictions imposed by base through Base Standing Orders.

Release from Arrest

14. It is not desirable, except when it appears that the arrest has been made through error, that an officer should be released from arrest by the officer who ordered the arrest, without the sanction of superior authority.
15. An officer has no right to demand a court-martial upon himself, or after he has been released, to persist in considering himself under restraint of arrest or to refuse to return to duty.

When a JCO and NCO Placed in Arrest

16. A MWO, SWO, WO or NCO charged with a serious offence will be placed in arrest forthwith, but if the offence alleged appears not to be serious, it may be investigated and disposed of without previous arrest.

Action Taken by Arresting Authority

17. The authority placing a MWO, SWO, WO or NCO under arrest should :
- a. Inform the MWO, SWO, WO or NCO of the fact, giving reasons and stating whether the arrest is close or open.
 - b. Immediately report the matter to the Adjutant or in his absence to the Orderly Officer.
 - c. Submit a written statement signed by himself giving full particulars of the alleged offence to the Adjutant.

Restrictions: Close Arrest

18. A MWO, SWO, WO or NCO of the same rank as the accused and preferably senior in that rank is to be detailed as escort. Written orders on the same lines as in paragraphs 17 and 18 above are to be given to the escort.

19. Other conditions governing close arrest of MWOS, WOs and NCOs are the same as for officers.

Restrictions: Open Arrest

20. If a MWO, SWO, WO or NCO is a member of the SNCOs mess he may be allowed to have his meals there Corporals will be supplied with meals from the Airmen's Mess.

21. Other conditions governing the open arrest of MWO, SWO, WO or NCO are the same as for officers.

When Placed in Arrest

22. An aircraftsman charged with a serious offence will be placed in arrest on the commission or discovery of the offence, but if the offence alleged appears not to be serious it may be investigated and disposed of without previous arrest. He will not be placed in close arrest for offences unaccompanied by intoxication, violence or insubordination, unless confinement is necessary to ensure his safe custody or for the maintenance of discipline.

23. An aircraftsman who disobeys an order distinctly given or resists the authority of a superior officer will be police in close arrest without altercation and the fact immediately reported to his subordinate commander or to the Adjutant. When a superior officer has to place an aircraftsman in close arrest, he will obtain the assistance of one or more airmen to conduct the offender to the guard room and will himself avoid coming in contact with the offender.

RESTRICTED

24. An aircraftsman who is intoxicated will be placed in close arrest, along, if possible, in a detention room. He may be deprived of his boots except when the weather is cold and he is likely to suffer in consequence. He will be visited and his condition ascertained at least every two hours by a NCO of the guard and an escort. Should any symptoms of serious illness be observed, a medical officer will forthwith be sent for. Because it is the responsibility of the prosecution to prove the intoxicated aircraftsman will not be put through any drill or tested for the purpose of ascertaining his condition. He will not be brought before an officer for investigation of the charge until he is perfectly sober.

25. When an airman makes a confession of desertion or of having committed an offence in relation to enrolment and the investigation cannot immediately be completed, he need not be placed in arrest pending inquiry. But if at the time of confession or subsequently he is charged with any other offence, he may be placed in arrest and the investigation and trial may proceed for that offence independently of the confession.

Action by Person Placing Aircraftsman under Arrest

26. The following action should be taken :

- a. Inform him that he is under arrest giving reasons for arrest and specifying the nature of arrest. Take down his particulars.
- b. If placing under close arrest, arrange his to be escorted to the guard room. If no escort is hand by or if placing under open arrest, ask him to report to the Guard Room.
- c. Inform the Guard Room of the arrest.
- d. Deliver a written and signed account containing material points of the alleged offence to the Guard Commander, if possible, at the time of placing the accused in arrest or in any case, within 48 hours of that time or, Make an oral report to the Guard Commander at the time of committal giving the nature of the charge to be made and then within 48 hours of that time deliver a written and signed account of the offence. In either case the written statement can be made either on a plain sheet of paper or on F-252.

Restrictions : Close Arrest

27. An aircraftsman in close arrest will be placed in confinement under charge of a guard, picket, patrol, sentry or member of the service police and will be searched and deprived of knives, other weapons and any article that he can use as a missile during the investigation or trial. A receipt containing the list of articles so removed will be given to the offender.

28. An airman in close arrest will be allowed his bedding and will take sufficient exercise for the preservation of his health.

29. An offender is close arrest will not bear arms except by order of his CO in an emergency.

Restrictions: Open Arrest

30. An aircraftsman in open arrest will not quit his barracks until his case has been disposed of, but he will attend parades. Ordinarily he will not be required to perform any duty. He may, however, be ordered by his CO to carry out such duties as may be necessary in the course of his training or such part of his ordinary duties as his CO may consider advisable that he should perform. He will not consume any alcoholic drinks.

Raising Delay Report under Section 103 of the Act

31. Section 103 of the Act provides that whenever any person subject to the Act has been taken into air force custody (otherwise than on active service) and remains in such custody for a longer period than 8 days without a court-martial for his trial being ordered to assemble, a special report giving reasons for the delay shall be made by his commanding officer in the manner prescribed in rule 45. A similar report must be forwarded every 8 days until a court-martial is assembled or the person is released from custody. The prescribed form on which the special report required under section 103 has to be made is given in the Third Appendix to the Rules.

32. The special reports are to be submitted to the officer who would be responsible for convening a court-martial for the trial of the accused. They must be submitted notwithstanding that the person in custody is in hospital or whatever the cause of the delay.

33. It is the duty of the convening officer to satisfy himself:

- a. That continued custody is necessary, and
- b. of the reasons for delay in bringing the accused to trial.

34. It is an offence under section 50(a) of the Act, for a person subject to the Act, unnecessarily to detain a person in arrest or confinement without bringing him to trial or to fail to bring his case before the proper authority for investigation.

35. **Close arrest not to exceed 90 days without permission from higher authority**

An accused is not to be held in close arrest for more than 90 consecutive days without a court-martial being convened and assembled for his trial unless the officer who would be responsible for convening the court-martial directs in writing that he is not to be released from close arrest.

36. **Action by civil courts in case of prolonged close arrest.** It should always be remembered that it is the right of every person detained, whether by order of the Government or by any one else, to apply to the High Court and demand either that he be dealt with according to law or that he be set at liberty. This power has been given by the Legislature to the High Courts so as to safeguard the liberty of the subject against excesses of the Executive and against an abuse of power. Thus if an officer, master warrant officer, warrant officer or airman had been held in arrest awaiting trial for so unreasonable a period that the High Court thought there was oppression, it might order his release and admit him to bail.

37. **Arrest by Provost and Police - Air Force Act Sec 107**

a. An airman who is a member of the Bangladesh air Force Police is empowered to arrest and take into custody any person (other than an officer) subject to the Air force Act. An officer is to be placed under arrest only under orders of any officer of the Provost Branch. A Master Warrant Officer or Warrant Officer or Junior Warrant Officer will not however, be placed under arrest except under the orders of a Warrant Officer of the BAF Police or an officer. The BAF Police Officer or Warrant Officer ordering such arrest need not necessarily be senior to the Officer or Warrant Officer, respectively, ordered to be arrested. The implication is that a Police NCO can detain or arrest NCOs up to and including the rank of Sergeant. However, unless the circumstances are of sufficiently grave in nature, recourse to the power of arrest should not be made. The Police NCOs should exercise their finer judgment before arresting an airman senior to them.

b. It is the duty of all Air Force personnel who are suspected by an AF Policeman on duty to have committed an offence to furnish, on demand by the Policeman, full particulars or their Identity Cards and to accompany him to the office of the Assistant Provost Marshal/Deputy Assistant Provost Marshal. Refusal or failure on the part of the person suspected to furnish the particulars aforesaid or otherwise to assist the policeman in the due discharge of his duties will render him liable to be proceeded against for violation of good order and Air force discipline.

c. The highest standards of propriety and courtesy will be observed in bringing about the arrest and custody, and the arrest will be effected tactfully and unobtrusively and in a manner ensuring the least publicity.

d. BAF Policemen are empowered to apprehend a deserter or absentee from the Armed Force and for that purpose to arrest and take into custody such deserters or absentees.

e. It is the duty of all Service personnel to assist an BAF Policeman in the execution of his duties, if such assistance is requisitioned.

Reciprocal Powers - Air Force and Military Police

38. The reciprocal powers of the BAF and Military Police are:

a. All ranks of the BAF will give their number, rank, name and unit to any army Provost Officer, or any member of the Military Police when called upon to do so.

b. Where Army Provost personnel are available they should always be called upon to deal with members of their own service.

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- c. In the absence of Army Provost personnel, army personnel should not be taken into Air Force custody unless they behave in a violent and dangerous manner when they will be committing a civil offence. In such cases the offender will be handed over, at the earliest opportunity, to the Army Authorities together with a full report of the circumstances leading to the arrest.
- d. Charges will not be preferred against army personnel but only a full report submitted.
- e. Under Section 54 Cr PC a police officer can arrest without warrant for cognizable offences.

Arrest by Civil Authorities

39. Whenever a person subject to the Act who is accused of an offence under the Act is within the jurisdiction of any Magistrate or Police Officer such Magistrate or Police Officer shall aid in the apprehension and delivery to Air Force custody of such person upon written application to that effect signed by the CO of the accused (Air Force Act Sec 105).

40. Whenever any person subject to the Act duties, his CO shall give written information of the desertion to such civil authorities as, in his opinion, will afford assistance towards the capture of the deserter and such authorities shall thereupon take steps for the apprehension of the said deserter as though the arrest were ordered under a warrant issued by a Magistrate. The deserter when apprehended shall be transferred to Air Force custody with all convenient speed (Air Force Act Sec 106 (1)).

42. A police officer, not below the rank of officer-in-charge of a police station may arrest without warrant any person reasonably believed to be subject to AF Act and believed to be a deserter or traveling without authority. He shall, however, ` such arrested person before the nearest magistrate to be dealt with according to law (Air Force Act Sec 106(2)).

TOPIC - 5

SERVICE PRIVILEGES AND RESTRICTION

Legal Status Officers, JCOs and Airmen

1. A Person who joins the Bangladesh Air Force, whether as an officer, master warrant officer, warrant officer or as an airman, does not cease to be a citizen. His official character is super-imposed upon his civil character and does not obliterate it. At the same time it has been found necessary or desirable to modify in certain minor respects his status as a civilian in some cases by imposing restrictions and in others by conferring immunities and privileges. The position of an offr, JCOs and airmen in respect of criminal and civil matters may differ considering the situation, which are as under:

a. **Under the Criminal Law.** So far as the criminal law is concerned, the position of an officer, master warrant officer, warrant officer or an airman is the same as that of a civilian. If he commits an offence against the ordinary criminal law he can be tried and punished by the civil courts just like a civilian, subject, however, to the privilege given by section 123 of the Act to the prescribed air force authority to claim him for trial by court martial (unless the offence is one of those mentioned in section 72 of the Act and committed in circumstances which exclude trial by court martial).

b. **In Civil Matters.** In the case of civil rights, duties and liabilities there is a greater difference between the position of a person subject to air force law and that of an ordinary citizen. Certain privileges are granted to the former under sections 25 to 32 of the Air Force Act, while as to others section 33 lays down that the rights and privileges specified in the said sections shall be in addition to any others conferred on the service personnel of the Army, Navy and Air Force generally by any other law for the time being in force.

Privileges under the Air Force Act, 1953

2. **Pay and Allowances Protected.** The most important privilege conferred by the Air Force Act is that by section 25. The pay and allowances of every person subject to the Act are protedted from any deductions other than those authorised by or under that Act or any other Act are given in section 90 and 91 and those prescribed by the Government in Rule 212.

3. **Remedy of Persons Aggrieved.** Sections 26 and 27 of the Act provide statutory remedies to airmen, warrant officers, master warrant officers and officers respectively, who deem themselves wronged by any superior office. All complaints or applications or redress of grievances, (other than those against convictions by courts martial) are authorised under these sections of the Act.

4. **Immunities from attachment and arrest.** Sections 28 to 30 grant immunities to persons subject to the Act in respect of attachment of their pay, allowances, arms, cloths, equipment, accoutrements and other necessities, in satisfaction of any decree or order passed by any civil or revenue court or revenue officer. Even no person subject to this Act shall so long as he belongs to the Air Force be liable to be arrested for debt under any process issued by or by the authority of any civil or revenue court or revenue officer. Similarly members of a court martial, witnesses and others attending the court on duty, are immune or returning from the court martial. All the privileges mentioned in this paragraph are extended by section 31 of the Act, to persons belonging to the Air Force Reserve when called out for, or engaged in or returning from training or service.

5. **Priority in Respect of Litigation.** If a person subject to air force law has a suit or other proceedings pending in a civil court, he is entitled, under section 32 of the Act to claim priority for the disposal of his case. On presentation of a certificate, either personally, or through some one else, from his commanding officer that he has either been granted leave of absence, or has applied for leave, for the purpose of prosecuting or defending any such suit or proceedings, the court is bound to arrange, so far as may be possible, for the hearing and final disposal of the case within the period of leave so granted or applied for. No fee is payable to the court in respect of the presentation of any such certificate or of any application for priority for the hearing of the case.

Privileges under Other Statutes

6. **Pension Protected.** All Government pensions, which include air force pension, are protected from attachment in the execution of the decrees of civil courts.

7. **Civil Suits.** The code of civil procedure, 1908 order xxviii provides that an officer or airman, actually serving in that capacity, who is a party to a suit and cannot obtain leave of absence may authorise any person to sue or defend in his stead. This authority is to be in writing and be signed in the presence of his commanding officer.

8. **Exemption from Court Fees in Certain Cases.** Section 19 (1) of the court fees Act, 1870, exempts a power of attorney to institute or defend a suit when executed by an officer, master warrant officer, warrant officer, non-commissioned officer or private, from any court fees normally payable on such a document when executed by a civilian.

9. **Special Protection in Respect of Civil and Revenue Litigation, whilst serving under war Conditions.** The Soldiers (Litigation) Act, 1923, gives special protection to persons subject to air force law, whilst serving under war conditions, in respect of civil and revenue litigation. (For full text of the Soldiers (Litigation) Act, and the Rules made there under, see part III of the Manual).

10. **Receipts for pay and Allowances Need not be Stamped.** The Stamp Act, 1899, Schedule I exempts from stamp duty receipts for pay and allowances given by non-commissioned officers and airmen when serving in such capacity.

11. **Exemption from tolls when on duty.** The Tolls (Army and Air Force) Act, 1901 All officers and airmen on duty as well as their authorised followers, families (including the families of such followers), horses, baggage and transport are exempt from all tolls, except certain tolls for the transit of barges etc, along canals. This concession also extends to reservists on being called up for, or when returning to their homes after, training or service, and to their horses and baggage.

Restrictions on Conduct under Air Force Act and Air Force Act Rules

12. Section 24 of the Act empowers the Government to restrict certain fundamental rights which may be guaranteed by the constitution to such extent as may be specified by the rules made under the act. With the prescribed authority certain fundamental rights of the air force personnel have been modified under rules 35 to 37 of the Air Force Act Rules, 1957, which are enumerated below:

13. **Trade or Labour Unions.** No person subject to the act shall be a member of or be associated in any way with any trade union or labour union, or any class of trade or labour unions. In normal circumstances this curtailment of liberty is applicable only to those who are subject to the act however when the Government exercises its powers granted by section 2(d) of the Act and issues a notification in that behalf all those civilians who accompany or are employed by or are in the service of or are followers of or accompany any portion of the air force also become subject to the act and will have to discontinue their association membership etc, of trade and labour unions if they belonged to any such organization before the said notification.

14. Political and other Activities

a. A person subject to the act shall not speak or appear on the platform at or take active part in any meeting or demonstration held for party or political purposes or belong to or join or subscribe in aid of any political organization or party.

b. A person subject to the act shall not issue an address to electors or in any other manner publicly announce himself or allow himself to be announced as a candidate or a prospective candidate for election for any constituency to the parliament or any other local or public body or to act as a member on a candidates election committee or in any way actively prosecute a candidates interests.

15. **Communication to the Press, etc.** No person subject to the act shall publish in any form whatever or communicate directly or indirectly to the press or to any broadcasting organization any service information or his views on any service subject or publish or cause to be published any book or letter or article whether purporting to be fiction or fact or produce or present plays speeches lectures gramophone records films or broadcasts which in any way deal with service subjects without prior permission of the chief of air staff or any other officer specified by him in this behalf.

Remedies of Aggrieved Officers

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

17. It is a custom of the service to forward every complaint through the commanding officer of the unit and an officer would not be justified in deviating from this course unless the commanding officer should refuse or unreasonably delay to forward it. In such a case an officer on addressing himself directly to higher authority should apprise his commanding officer of his doing so and should observe in the channel of approach to the Government each intermediate gradation of command. Although the complaint is to the Government the intermediate authority is not debarred from expressing his own view of the case and such an expressing opinion may even in some cases suffice to render further steps unnecessary.

Remedies of Aggrieved JCOs and airmen

18. Any JCO or airman who deems himself wronged by any superior or other officer may if not attached to a unit or detachment complain to the officer under whose command or order he is serving and may if attached to a unit or detachment complain to the officer commanding the same.

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

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

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

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

23. Complaints may be made respecting any matter but can be made by an individual only. Joint or collective or anonymous petitions or representations of any kind are forbidden but if made should not if well founded be treated as mutinous where it is plain that the only object of those making the complaint cannot legitimately be preferred to a superior officer except in the regular course defined by this section. It is only where the immediate superior can be made to higher authority. The officer in question ought to be informed of the application being made to his superior.

24. The proper treatment of complaints and grievances of a service or personal nature is of the utmost importance. A grievance real or imaginary which is not dealt with promptly and correctly leads to dissatisfaction and the lowering of morale and reflects adversely on the officers concerned. Nothing could be more harmful to the service than

the feeling that a serviceman's rights to complain to the prescribed rights to complain to the prescribed authority with a view to obtaining justice can be denied by the administrative authorities by withholding such applications.

25. A false accusation or false statement made in preferring a complaint under this section is punishable under section 56(b) but the mere fact that a complaint appears to be baseless, or even frivolous does not render the maker liable to punishment. As to the repetition of baseless complaints or the submission of complaints in disrespectful language see notes to section 65.

26. A petition from a person who considers himself aggrieved by any order passed by a court-martial or by any finding or sentence of such court does not fall within the scope of this section. such petitions must be dealt with under the provision of section 160. Before confirmation, an aggrieved person may present a petition to the confirming authority who may take such steps as may be considered necessary to satisfy itself as to the correctness, legality or propriety of the order passed or as to the regularity of any proceeding to which the order relates. After confirmation a petition may be submitted to the Government or the Chief of Air Staff who have power under sections 161 to annul the proceedings of any court-martial on the ground that they are illegal or unjust.

Fundamental Rights under Constitution

27. **Article 27: Equality before law.** All citizens are equal before law and are entitled to equal protection of law.

28. **Article 28: Discrimination on grounds of religion, etc**

a. The State shall not discriminate against any citizen on grounds only of religion, race caste, sex or place of birth.

b. Women shall have equal rights with men in all spheres of the State and of public life.

c. No citizen shall, on grounds only of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort, or admission to any educational institution.

c. Nothing in this article shall prevent the State from making special provision in favour of women or children or for the advancement of any backward section of citizens.

29. **Article 29: Equality of opportunity in public employment**

a. There shall be equality of opportunity for all citizens in respect of employment or office in the service of the Republic.

b. No citizen shall, on grounds only of religion, race, caste, sex or place of birth, be ineligible for, or discriminated against in respect of, any employment or office in the service of the Republic.

c. Nothing in this article shall prevent the State from –

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(1) Making special provision in favour of any backward section of citizens for the purpose of securing their adequate representation in the service of the Republic;

(2) Giving effect to any law which makes provision for reserving appointments relating to any religious or denominational institution to persons of that religion or denomination;

(3) Reserving for members of one sex any class of employment or office on the ground that it is considered by its nature to be unsuited to members of the opposite sex.

30. **Article 30: Prohibition of foreign titles, etc.** No citizen shall, without the prior approval of the President, accept any title, honour, award or decoration from any foreign state.

31. **Article 31: Right to protection of law.** To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.

32. **Article 32: Protection of right to life and personal liberty.** No person shall be deprived of life or personal liberty save in accordance with law.

33. **Article 33: Safeguards as to arrest and detention**

a. No person who is arrested shall be detained in custody without being informed, as soon as may be of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.

b. Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

c. Nothing in clauses (a) and (b) shall apply to any person-

(1) Who for the time being is an enemy alien; or

(2) Who is arrested or detained under any law providing for preventive detention.

d. No law providing for preventive detention shall authorise the detention of a person for a period exceeding six months unless an Advisory Board consisting of three persons, of whom two shall be persons who are, or have been, or are qualified to be appointed as, Judges of the Supreme Court and the other shall be a person who is a senior officer in the service of the Republic, has, after affording him an opportunity of being heard in person, reported before the expiration of the said period of six months that there is, in its opinion, sufficient cause for such detention.

e. When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon

as may be, communicate to such person the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order.

f. Parliament may by law prescribe the procedure to be followed by an Advisory Board in an inquiry under clause (d)

34. **Article 34: Prohibition of forced labour**

a. All forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

b. Nothing in this article shall apply to compulsory labour.

(1) by persons undergoing lawful punishment for a criminal offence; or

(2) required by any law for public purpose.

35. **Article 35: Protection in respect of trial and punishment**

a. No person shall be convicted to any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than, or different from that which might have been inflicted under the law in force at the time of the commission of the offence.

b. No person shall be prosecuted and punished for the same offence more than once.

c. Every person accused of a criminal offence shall have the right to a speedy and public trial by an independent and impartial court or tribunal established by law.

d. No person accused of any offence shall be compelled to be a witness against himself.

e. No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.

f. Nothing in clause (c) or clause (e) shall affect the operation of any existing law which prescribes any punishment or procedure for trial.

36. **Article 36: Freedom of movement.** Subject to any reasonable restrictions imposed by law in the public interest, every citizen shall have the right to move freely throughout Bangladesh, to reside and settle in any place therein and to leave and re-enter Bangladesh.

37. **Article 37: Freedom of assembly.** Every citizen shall have the right to assemble and to participate in public meetings and processions peacefully and without arms, subject to any reasonable restrictions imposed by law in the interests of public order or health.

38. **Article 38: Freedom of association.** Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interests of morality or public order;

39. **Article 39: Freedom of thought and Conscience, and of Speech**

- a. Freedom of thought and conscience is guaranteed.
- b. Subject to any reasonable restrictions imposed by law in the interests of the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offense-
 - (1) The right of every citizen of freedom of speech and expression; and
 - (2) Freedom of the press, are guaranteed.

40. **Article 40: Freedom of Profession or Occupation** Subject to any restrictions imposed by law, every citizen possessing such qualifications, if any, as may be prescribed by law in relation to his profession, occupation, trade or business shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business.

41. **Article 41: Freedom of Religion**

- a. Subject to law, public order and morality-
 - (1) Every citizen has the right to profess, practice or propagate any religion;
 - (2) Every religious community or denomination has the right to establish, maintain and manage its religious institutions.
- b. No person attending any educational institution shall be required to receive religious instruction, or to take part in or to attend any religious ceremony or worship, if that instruction, ceremony or worship relates to a religion other than his own.

42. **Article 42: Rights to Property.** Subject to any restrictions imposed by law, every citizen shall have the right to acquire, hold, transfer or otherwise dispose of property, and no property shall be compulsorily acquired, nationalised or requisitioned save by authority of law.

43. **Article 43: Protection of Home and Correspondence.** Every citizen shall have the right, subject to any reasonable restrictions imposed by law in the interests of the security of the State, public order, public morality or public health-

- a. to be secured in his home against entry, search and seizure; and
- b. to the privacy of his correspondence and other means of communication.

44. **Article 44: Enforcement of Fundamental Rights.** The enforcement of the rights conferred by the constitution is guaranteed under article 102.

45. **Article 45: Modification of Rights in Respect of Disciplinary.** Nothing of Part-III of the constitution shall apply to any provision of a disciplinary law relating to members of a disciplined force, being a provision limited to the purpose of ensuring the proper discharge of their duties or the maintenance of discipline in that force.