

Army Act, 2063 (2006)

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Amendment,

Republic Strengthening and Some Nepal

2066.10.7

Laws Amendment Act, 2066 (2010)¹

(21 Jan. 2010)

Act Number 7 of the Year 2063 (2006)

An Act to provide for the Amendment and Unification of the Laws relating to Nepal Army

Preamble: Whereas, the sovereignty of Nepal is inherent in the people of Nepal as the result of the historical peoples movement and the source of sovereign authority is vested in the people of Nepal;

Whereas, it is expedient to amend and consolidate the prevailing laws relating to the establishment, arrangement, control, use and mobilization of the Nepal Army for making the Nepal Army accountable to the people of Nepal;

Now, therefore, be it enacted by the House of Representatives in the First year of the issuance of the Declaration of the House of Representatives, 2063.

¹ This Act came into force on 15 *Jestha* 2065, "*Prasasti*" and the word "Kingdom" has been deleted.

Chapter -1

Preliminary

1. **Short title and commencement:** (1) This Act shall be called the "Army Act, 2063 (2006)".

(2) This Act shall come into force immediately.

2. **Definitions:** In this Act, unless the subject or context otherwise requires:

- (a) "Nepal Army" means the collective organization of the persons recruited in the Nepalese Army under this Act or any part thereof.
- (b) "Force" means an organized form or group formed with a particular objective by the Government of Nepal within the Nepal Army.
- (c) "Engagement in military operation" means any of the following:
 - (1) Working as a part of or in affiliation with the Nepal Army during engaged in an operation against an enemy,
 - (2) Engagement in an military operation in a territory or area controlled by an enemy in whole or in part, or working as a part of or affiliated with the Nepal Army moving towards such territory or area,
 - (3) Engagement as a part of or affiliation with the Nepal Army which is taken hostage by the Military of a foreign country, or
 - (4) Involvement in the maintenance of internal security as a part of or affiliated with the Nepal Army engaged against any individual or group who are conducting or are suspected or conduct destructive or violent activities with or without arms.

- (5) Declaration as "engagement in military operation" by the Government of Nepal in accordance with Section 135.
- (d) "Chief of the Army Staff" means the Chief of the army staff of the Nepal Army appointed as referred to in Section 8.
- (e) "Officer" means an officer of the Nepal Army above the rank of Junior Commissioned Officer (*Padik*), and this term also includes similar officers of the reserve force (*Jageda Bal*).
- (f) "Junior Commissioned Officer" means *Subedar*-Major, *Subedar* and *Jamdar*, and this term also includes similar rank of the reserve forces.
- (g) "Commanding Officer" means any of the following officers:
- (1) the head of the Unit, Sub-unit, or
 - (2) the officer who commands the *Tukadi* of the Unit or Sub-unit during the period of deployment respectively, or
 - (3) the Commanding Officer of any Corps (*Chamu*), Detachment Department in respect to the person under Clause (b) of Sub-section (1) of Section 3 who is affiliated therein,
 - (4) the officer who is nominated or designated by the officer who commands the force in which the person is currently working at the time when one has no involvement elsewhere in Sub-clause (3).
 - (5) the officer who commands the concerned force if no officer has been designated or nominated in accordance with Sub-clause (4).
- (h) "Non-commissioned Officer (*Billadar*)" means Corporal (*Hudda*), Corporal (*Amaldar*), Lance Sergeant (*Pyuth*), and this term also

includes the person of similar rank of an organized force established for a particular purpose.

- (i) "Corps (*Chamu*)" means the separate Unit specified as a corps within the Nepal Army.
- (j) "Division (*Pritana*)" means a separate Unit specified as a "Division" within the Nepal Army.
- (k) "Brigade (*Bahini*)" means a separate Unit specified as a "brigade" within the Nepal Army.
- (l) "Battalion (*Gan*)" means a separate Unit specified as "Battalion" within the Nepal Army.
- (m) "Commander (*Pati*)" means the position from officer to non-commissioned officer.
- (n) "Immediate Senior officer" means the senior officer closet in rank, and for this purpose this term also includes Junior Commissioned Officer (*Padik barg*) and Non-commissioned Officer (*Billadar*).
- (o) "Offence" means the act defined as offence pursuant to Chapter-7.
- (p) "Enemy" means an armed mutineer, armed person who committed treason, armed person involved in disorder or armed dacoit and any armed person who is subject to action by a person to whom this Act is applicable.
- (q) "Court Martial" means the General Court Martial, Summary General Court Martial, District Court Martial, `Summary Court Martial pursuant to Section 67 and Special Court Martial pursuant to Section 119.
- (r) "Committee" means Military Welfare Fund Operation and Management Committee as referred to in Section 29.

- (s) "Welfare acts" means acts of providing insurance, medical treatment, health, scholarship, residence, operating canteens for the welfare of incumbent (serving) and ex-military (retired) personnel and their families, and this term also includes establishing schools and universities and operating them.
- (t) "Welfare planning" means income generating acts which support welfare acts and this term also includes infrastructure and service oriented projects, financial institutions and providing loans or investing shares as prescribed in the industrial profession.

Provided that, such an investment shall not be made as a promoter (*Prabardhak*).

- (u) "Income generating acts" means acts of generating income for the purpose of supporting the welfare acts by investing in an institution after obtaining permission in accordance with prevailing law.
- (v) "Chief of Military Police" shall means the Chief of Military Police appointed pursuant to Section 78 and this term also includes a person who exercise power, under his/her supervision, in accordance with law on his/her behalf.
- (w) "Judge Advocate General Department (*Prad Viwak*)" means the person who is represents the Court Martial as the Judge Advocate General pursuant to Section 81.
- (x) "Other court" means other courts constituted in accordance with prevailing laws except the Court Martial.
- (y) "Departmental action" means the departmental action to be imposed pursuant to Section 105.

- (z) "Prison" means a prison in accordance with prevailing laws relating to prison and this term also includes a military prison pursuant to Section 136.
- (aa) "Order" means an order issued by an authorized officer pursuant to this Act and Rules framed thereunder.
- (bb) "Prescribed" or "as prescribed" means prescribed or as prescribed pursuant to this Act and Rules framed thereunder.

3. Persons under the jurisdiction of this Act: (1) The following persons shall be under the jurisdiction of this Act:

- (a) Persons recruited in the Nepal Army under this Act;
- (b) Other persons assigned for some acts, or persons in the service of the Nepal Army staying in a camp or in a march for military operation, or staying in an area declared by the Government of Nepal as a military operation zone; or civilian persons who assist the works of Nepal Army,
- (c) Persons selected for recruitment in the Nepal Army.

(2) A person pursuant to Clause (b) of Sub-section (1) shall be considered to have been under the command of the commanding officer of his/her department, formation or unit.

(3) If a person pursuant to Clause (b) of Sub-section (1) is not engaged under the command of a commanding officer of any department, formation or unit, he/she shall fall under the command of an officer who is designated or nominated by the commanding officer of the force in which he/she is currently engaged for the time being, or of a commanding officer of the concerned force if such officer is not designated or nominated.

(4) The commanding officer shall not depute a person pursuant to Clause (b) of Sub-section (1) under the command of a junior officer in a circumstance where the senior officer is available.

(5) If the person pursuant to Clause (b) of Sub-section (1) commits an offence outside the territory of Nepal, the jurisdiction of this Act shall prevail.

(6) An offence committed by the person pursuant to Clause (b) of Sub-section (1) against the citizen of a country in which he/she has been deployed in a peacekeeping mission of the United Nations shall fall under the jurisdiction of other courts.

Chapter-2

Establishment and Arrangement of Nepal Army

4. Establishment and arrangement of the Nepal Army: (1) The Nepal Army shall be established for the protection and Defence of the independence, sovereignty, territorial integrity and national unity of the state of Nepal.

(2) The Nepal Army at the time of commencement of this Act shall be deemed to have been established in accordance with this Act.

(3) The arrangement of the Nepal Army shall be regulated in accordance with this Act and the Rules framed thereunder and other matters shall be dealt with in accordance with the instructions issued by the Government of Nepal.

5. ²

² Repealed by Republic Strengthening and Some Nepal Laws Amendment Act, 2066.

6. National Defence Council: (1) ³

(2) ⁴

(3) In addition to the functions ⁵as referred to in the Interim Constitution of Nepal, 2063 (2007), the functions, duties and powers of the National Defence Council shall be as follows:

- (a) To make policies, plans and programmes relating to ⁶mobilization, operation and use of the Nepal Army and submit the same to the Government of Nepal,
- (b) To submit recommendations relating to the number and organizational structure of the Nepal Army,
- (c) To make necessary advice to the Government of Nepal relating to the management of the Nepal Army,
- (d) To submit necessary advice to the Government of Nepal relating to the management of arms, weapons and other military equipment of the Nepal Army,
- (e) To perform other acts as prescribed.

(4) The Secretary at the Ministry of Defence shall perform as the Secretary of the National Defence Council. In his/her absence, an officer as designated by the Prime Minister shall perform this function.

(5) There shall be a Secretariat within the Ministry of Defence to carry out the acts and proceedings of the National Defence Council. Other arrangements of the Secretariat shall be as prescribed.

³ Omitted by Republic Strengthening and Some Nepal Laws Amendment Act, 2066.

⁴ Omitted by Republic Strengthening and Some Nepal Laws Amendment Act, 2066.

⁵ Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066.

⁶ Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066.

(6) The procedures of the meetings of the National Defence Council shall be as determined by the National Defence Council itself.

7. **Organizational Structure**: (1) The composition of the Nepal Army shall be inclusive and it shall have national characters.

(2) The Government of Nepal shall make necessary policies, plans and programmes for the implementation of the provisions of Sub-section (1).

(3) The organizational structure and number of positions in the Nepalese Army shall be as determined by the Government of Nepal.

Provided that, there shall be only one position of General (*Maharathi*) and the same General (*Maharathi*) shall be appointed for the post of the Chief of Army Staff.

(4) In the organization of the Nepal Army there shall be a Chief of Army Staff and other positions as referred to in Schedule-1.

Chapter-3

Appointment, Functions, Duties and Powers of

Chief of Army Staff

8. **Chief of Army Staff**:⁷ (1) The President shall appoint Chief of Army staff on the recommendation of the Council of Ministers. The President shall provide him/her the insignia (*Darjani Chinha*).

(2) The Chief of Army Staff shall be the Chief of the Nepal Army.

(3) In a case of vacancy of the post of the Chief of Army Staff due to leave or any reasons, the Senior Officer of the Nepalese Army as

⁷ Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066.

designated ⁸by the President on the recommendation of the Council of Ministers shall be the Acting Chief of Army Staff and perform the duties of the post.

9. **Accountability to the Government of Nepal:** (1) The Chief of Army Staff shall be accountable to the Government of Nepal for the functions to be carried out and duties to be performed by him/her.

(2) The Chief of Army Staff shall, before assuming the office, take an oath of office in a format as referred to in Schedule-2 before the ⁹President.

10. **Functions, duties and powers of the chief of Army Staff:** (1) The functions and duties of the Chief of Army Staff shall be to manage the Nepal Army, subject to the directions of the Government of Nepal and prevailing laws.

(2) The Chief of Army Staff shall submit an annual report relating to the management of the Nepal Army to the Government of Nepal every year within the month of *Baishakh* (Around April-May), and the Government of Nepal shall present such annual report to the ¹⁰Legislature-Parliament and the State Affairs Committee shall discuss on the report.

(3) Other functions, duties and powers of the Chief of the Army Staff shall be as referred to in this Act and as prescribed in the Rules framed thereunder.

11. **Age bar and tenure of office:** (1) The Chief of Army Staff shall hold office until the age of Sixty One years.

⁸ Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066.

⁹ Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066.

¹⁰ Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066.

(2) The term of office of the Chief of Army Staff shall be Three years subject to the provision pursuant to Sub-section (1).

(3) Notwithstanding anything contained in Sub-section (2), ¹¹the President on the recommendation of the Council of Ministers may, if deems necessary, remove the Chief of Army Staff before the completion of such tenure. He or she shall be given an opportunity to defend him/herself, prior to such removal.

(4) The Chief of Army Staff who is holding office at the time of commencement of this Act shall continue his/her office subject to the provision pursuant to Sub-section (2).

Chapte-4

Appointment and Terms and Conditions of Service

- 12. Appointment and fulfillment of vacancy:** (1) A Recruitment Committee presided by the Chairperson of the Public Service Commission or a member of the Commission as designated by the Public Service Commission to recommend the officer level vacant post; and including a representative nominated by the Public Service Commission as a member to recommend for the vacant posts lower than officer rank of the Nepal Army, shall be formed as prescribed.

Provided that, no provision of this Section shall bar for taking examinations other than those examinations under the supervision of a representative nominated by the Chairperson of the Public Service Commission after completion of written examination conducted by the Committee as referred to in Sub-section (1).

¹¹ Inserted by Republic Strengthening and Some Nepal Laws Amendment Act, 2066.

(2) Other functions, duties and powers of the Recruitment Committee formed pursuant to Sub-section (2) shall be as prescribed.

(3) Other arrangements regarding the recruitment shall be as prescribed.

(4) The qualifications required for the appointment to different posts (rank) of the Nepal Army shall be as prescribed.

13. Ineligibility (Disqualifications): (1) The following persons shall be deemed ineligible for appointment to the posts of the Nepal Army:

- (a) Who is not a citizen of Nepal,
- (b) Who is convicted by a court of a criminal offence involving moral turpitude,
- (c) Who is removed from the service for being disqualified for government service in the future,
- (d) Who is convicted in an offence of violating human rights,
- (e) Who does not have the qualifications as referred to in Sub-section (4) of Section 12.

(2) Nothing contained in Clause (a) of Sub-section (1) shall be deemed to have prevented the Government of Nepal from receiving technical and expert services from non-Nepalese citizens for a short term.

14. Appointing Authority: Government of Nepal shall, on the recommendation of the Recruitment Committee pursuant to Section 12, appoint in the Officer level ranks and the prescribed official shall appoint in other levels.

15. **Commission**: The Minister for Defence shall, subject to the provisions of this Act and the Rules framed thereunder, Commission the qualified officer of the Nepal Army.
16. **Oath**: A person appointed to a post of the Nepal Army shall take an oath as referred to in Schedule-2.
17. **Tenure of office**: (1) Except otherwise provided in Section 11, the age bar of officers of the Nepal Army shall be as referred to in Schedule-3.
- (2) The tenure of office of the officers of the Nepal Army shall be as referred to in Schedule-4 subject to the provision of Sub-section (1).
- (3) Notwithstanding anything contained in Sub-section (2), the Government of Nepal may extend the tenure of office of the officers as referred to in Schedule-5, on the recommendation of the Chief of Army Staff, for being his/her service necessary along with the reasonable grounds and reasons that an officer is physically capable (fit) even after contributing a long service to the Nepal Army.
18. **Removing from the service and demotion from the rank**: (1) Government of Nepal may remove or dismiss a person serving in the Nepal Army from the service.
- (2) The Commander-in-Chief may demote to a lower grade or rank or remove from the service to a person serving in Nepal Army other than an officer.
- (3) The Commander of Corps (*Chamu*), Division (*Pritana*) or Brigade (*Bahini*) or a commander of an equivalent rank or an officer vested with equivalent authority may remove from service and demote to a lower rank to a person under his/her command except to an officer or junior commissioned officer.

(4) The commanding officer of a Unit or Sub-unit may remove from service or demote to the lower rank to a Sergeant (*Hudda*) and other personnel of lower rank who are under his/her command.

(5) The powers conferred by this Section shall be exercised subject to this Act or the Rules framed thereunder.

(6) While taking action in accordance with this Section, an opportunity shall be provided for the defense.

(7) The commanding officer shall provide a certificate which includes the details as prescribed, if a person who falls under the jurisdiction of this Act and is removed or is to be removed from the service.

19. Restriction on establishing and operating organization or association: (1) A person who falls under the jurisdiction of this Act shall not do the following acts:

- (a) To establish, operate, accept membership or assist to a union, association or organization, or participate in a programme organized by such union, association or organization.
- (b) To participate or deliver speech to any assembly or to participate in any demonstration organized by any person or groups for a political or other similar purpose.
- (c) To publish a leaflet, pamphlet or similar documents.

(2) Notwithstanding anything contained in Clause (a) of Sub-section (1), nothing shall be deemed to prevent a person who falls under the jurisdiction of this Act from assisting a religious, social, cultural and entertainment union, association or organization or participating in a

programme of such union, association or organization upon receiving an approval of the Government of Nepal and subject to the provision of this Act.

- 20. Training and Induction:** (1) A person to be included in the organization of the Nepal Army shall be provided trainings and inductions on topics including military education, ethics, physical exercise, human rights and international humanitarian law.

(2) The arrangements of trainings and inductions pursuant to Sub-section (1) shall be as prescribed.

- 21. Promotion, leave and other terms and conditions of services:** The appointment, promotion, leave and other terms and conditions of service and facilities of the Nepal Army shall be as prescribed.

Chapter-5

Privileges and Immunities

- 22. Protecting the acts performed during the discharge of duties:** If, someone suffers death or loss while a person under the jurisdiction of this Act is committing an act in the course of discharging his/her duties in good faith, no case shall be filed against such person in any court.

Provided that, any of the offences as referred to in Sections 62 and 66 shall not be deemed to be an offence committed in the course of discharging duties in food faith.

Explanation: For the purposes of this Section, "committing any act, in the course of discharging duties", means an act committed during the performance of duties and it includes any action taken for internal security or self-defence, including flag march, patrolling and sentry (*Chapate*) duty.

23. Immunity from arrest: (1) The chairperson or member of Court Martial or Judge Advocate General Department or a person related to the proceeding to the Court Martial, legal counsel, attorney (*waris*) or witness attending in accordance with the summons issued by the Court Martial, shall not be arrested on the order of any court or quasi-judicial authority at the time of entering into or returning from the Court Marital.

(2) If the information of arrest is received pursuant to Sub-section (1), the Court Martial may request the concerned authority to release such person immediately.

(3) If, a person under the jurisdiction of this Act engaged in military proceedings, shall not be detained as per the judgment, decision or order of any court or Quasi-judicial Authority, for a loan to be paid by him/her.

(4) If an information of arrest, who is not to be arrested pursuant to Sub-section (1), is received the Court or Quasi-judicial Authority it shall release such person immediately.

24. Not to Freeze or forfeit: Except the Court Martial, no arms, clothes, military supplies, animal, vehicle and goods including salary, allowance of a person under the jurisdiction of this Act, used in the course of discharging the duties shall be freezed or forfeited, in full or partial, by the decision, verdict or order of any other Court or Quasi-judicial Authority.

25. Immunity and privilege of the reserve force: A person belonging to the reserve force shall have all the privileges and facilities as referred to in Sub-section (3) of Section 23 and 24 while coming into and returning from training or service when called by the Government of Nepal or serving in the job.

26. Priority in the cases: (1) If a case has been registered in a any court or office in which a person serving in the Nepal Army is a party, and he/she is

present to the court or office with the approval of his/her leave by the concerned authority and if he/she submits an application to the court or office requesting disposal of case before the end of his/her leave attaching the leave approval letter and details of a case, the concerned court or office shall list it in a priority hearing and order to finalize it before the end of his/her leave.

(2) No fee shall be required for the application to be submitted as referred to in Sub-section (1).

(3) If the disposal of a case cannot be made before the end of his/her leave, the court or office shall inform the same.

(4) If a question is raised about a leave approving authority, the decision of the Division Commander (*Pritanapti*) or Brigadie Commander (*Bahinipati*) or officer of the same rank shall be final.

27. Complaint regarding any sufferings or injustice: (1) If an officer under the jurisdiction of this Act is caused injustice on any matter by the commanding officer or any senior officer, he/she may complain against such grievance to his/her commanding officer.

(2) If a person is not satisfied with the decision made by the commanding officer or Commander (*Pati*) to the complaint pursuant to Sub-section (1), he/she may file an application to the Chief of Army Staff.

(3) A person below the rank of officer may file such a complaint to the concerned Commander (*Pati*).

(4) If a complaint as referred to in Sub-section (3) is not heard by the Commander (*Pati*), a complaint may be filed to the commanding officer and if it is also not heard by the commanding officer or one is not satisfied with such decision, a complaint may be filed to the superior officer than the commanding officer; and if such complaint received, the commanding

officer shall provide a receipt thereof to the complainant and forward it to the senior level. If the commanding officer fails to forward such complaint to the senior level, he/she shall be liable for a disciplinary action.

(5) If a complaint is received pursuant to Sub-sections (1) and (4), the complaint hearing authority shall examine the complaint and resolve the problem, and shall forward the complaint to the superior level if so required.

(6) If a complaint has to be filed against a person who hears a complaint, it shall be filed to the officer superior to such officer.

(7) The decision made by the Chief of Army Staff on a complaint as referred to in this Section shall be final.

(8) The procedures for the hearing shall be as prescribed.

(9) The Government of Nepal, if it deems reasonable, may review the decision made pursuant to this Section.

28. No effect on facilities entitled in accordance with existing laws:

The facilities to be received as referred to in this Chapter shall not be affected by other facilities received pursuant to the prevailing laws.

Chapter-6

Army Welfare Fund

29. Establishment and operation of welfare fund: (1) A welfare fund may be established for the welfare of incumbent and ex-personnel of the Nepal Army and their families.

(2) The following amounts shall be credited to the Fund as referred to in Sub-section (1):

- (a) The amounts deducted in the prescribed percentage from the fund received for rendering service by the Nepal Army while deployed in peace keeping missions in any part of the world on the request of the United Nations Organizations,
- (b) The amounts saved from meeting the cost of welfare activities which are conducted from the interest of the fund deposited in various Banks and financial institutions,
- (c) The income amounts received from the investment on welfare activities as prescribed.
- (d) The amounts deposited as the principal amount in various banks and financial institution from *Aashad* 2032 B.S. to the date of commencement of this Act and the interest received from those amounts.
- (e) The movable and immovable property of the institutions prescribed by the Army Headquarters and amounts increased therefrom.
- (f) The movable and immovable property being used by the Nepal Army and amounts increased therefrom.

(3) There shall be a Seven member Army Welfare Fund Operation and Management Committee as following, to operate the welfare fund pursuant to Sub-section (1) comprising:-

- (a) Chief of Army Staff Chairperson
- (b) Two persons nominated by the Patron Member
from amongst the serving and ex-

military officers

- (c) Two persons nominated by the Chief of Army Staff from amongst the serving and ex-military officers Member
- (d) Representative from the Ministry of Finance (gazetted first class officer) Member
- (e) Representative from the Ministry of Defence (gazetted first class officer) Member

(4) There shall be a Welfare Planning Directorate in the Army Headquarters to assist the daily functions of the Committee. The functions, duties and powers of the Directorate shall be as prescribed.

(5) The amount as accumulated in the Fund pursuant to Sub-section (2) shall be expended for the welfare of serving and ex-personnel of the Nepal Army and their families.

Explanation: For the purpose of this Section "family" means husband or wife, son, daughter and mother and father; as well as mother-in-law and father-in-law in the case of female employees; whom the retired or incumbent employee of the Nepal Army is responsible for taking care,

30. Patron of the welfare fund: The Prime Minister shall be the patron and the Minister of Defence shall be the joint patron of the fund.

31. Functions, duties and powers of the Committee: The functions, duties and powers of the Committee shall be as follows:

- (a) To formulate, implement, coordinate and monitor on welfare activities, income generating activities as prescribed and welfare planning,

- (b) To carry out welfare activities as required to the family of the Army personnel who were killed or seriously injured (*Angabhanga*) at the time engaging in the military activities,
- (c) To reduce, increase or remove facilities and concessions under the welfare acts,
- (d) To formulate and implement the procedures and guidelines relating to the welfare activities, income generating activities and welfare planning as required,
- (e) To carry out welfare activities on the land and physical infrastructures of the Nepal Army upon entering into the agreement with the Army Headquarters,
- (f) To form administrative, financial and technical unit for welfare activities, income generating activities and welfare planning, to appoint necessary human resource for such unit and prescribe their terms of service and remuneration as per necessity,
- (g) To appoint experts for the effective implementation of the welfare activities, income generating activities and welfare planning, and prescribe the terms of service and remuneration,
- (h) To depute military personnel as per necessity for the security where welfare activities, income generating activities and welfare planning are launched,
- (i) To receive, purchase, rent, use and sell movable and immovable property subject to this Act,
- (j) To carry out other functions as prescribed.

32. Account of fund and audit: (1) An account of daily income and expenditure of the fund shall be maintained in accordance with prevailing law and the internal audit of the fund shall be made as prescribed by the committee.

(2) The final audit of the fund shall be made by the office of the Auditor General.

33. Submission of annual report: The Committee shall submit a report including income, expenditure and progress details to the patron, and provide a copy of it to the State Affairs Committee of the legislature every year.

34. Delegation of powers: The Committee may delegate some of its powers conferred on it pursuant to this Chapter to the Welfare Planning Directorate as per necessity.

35. Situations for depriving from facilities and concessions: (1) In the following circumstances the serving and ex-military personnel and their families may be deprived fully or partially of their entitlement to facilities and concessions relating to programmes conducted under the welfare activities:

- (a) If acts detrimental to the Nepal Army are proved to have been committed,
- (b) If acts contrary to the Constitution and this Act is proved to have been committed,
- (c) If the misuse of facilities and concessions entitled in pursuant to this Chapter is proved to have been committed,
- (d) If a penalty is imposed on an offence against state.

(2) Notwithstanding anything contained in Sub-section (1), only the serving or ex-military personnel or their family member who has committed an act referred to in ¹²Sub-section (1) shall be deprived of the entitlement of facilities and concessions relating to programmes conducted under the welfare activities.

- 36. Other arrangements:** Other arrangements regarding the use, operation and management of the Army Welfare Fund shall be as prescribed.

Chapter-7

Offences

- 37. To be deemed to have committed an offence:** If a person under the jurisdiction of this Act commits any of the acts as referred to in Sections 38 to 65, it shall be considered to have committed an offence in accordance with this Act.
- 38. Enemy related offences:** To commit any of the following acts shall be deemed as an enemy related offence:
- (a) To abandon the garrison, fort, post or a place assigned for guard entrusted for securing or to handover (give up) the same cowardly to the enemy or to inspire or compel to any commanding officer or other person to do so,
 - (b) To give up arms, ammunitions or equipment before the enemy shamelessly, or behave in a way that reflects a cowardly behaviour,

¹² Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066.

- (c) To propagate propaganda with a view to undermining the morale or terrorizing the garrison, camp or platoon during a war or military operation,
- (d) To exchange any correspondence or confidential information traitorously with any other person or enemy raising arms against Nepal, or in committing any other such act,
- (e) To help, directly or indirectly, the enemy by supplying arms, ammunition, explosives, cash, equipment or any other goods, or
- (f) To act to undermine the Nepal Army or any of its force or wing,
- (g) To raise a cease-fire flag before the enemy upon acting in a treacherous or cowardly manner,
- (h) To knowingly work together with a detained enemy or provide assistance to an enemy,
- (i) To provide shelter or protect any enemy who is not a prisoner of war,
- (j) To sleep or consume narcotic or alcoholic substance at the post or on the sentry duty during the time of a war or terror,
- (k) To knowingly compel or inspire any person under the jurisdiction of this Act with an intention not to take action against the enemy or to cause any obstruction or to discourage,
- (l) To desert without approving the leave from the leaving his commanding officer or to leave post, guard, picket, patrol or part at the time when military an operation is underway without being duly replaced or leave sanctioned.

39. Mutiny: To commit any of the following acts shall be deemed to be mutiny offence:

- (a) To be involved in the mutiny,
- (b) To stage or make arrangements for staging a mutiny together with a person belonging to the Nepal Army or with any other force assisting it, or instigate others or conspire for the same,
- (c) Not to attempt to, as far as possible, stop a mutiny when one is present at the place of a mutiny,
- (d) To fail to report to the commanding officer or any other superior officer who has the knowledge regarding the intention of the mutiny or where there is appropriate reason to believe that someone is intending or conspiring to stage the mutiny,
- (e) To deviate oneself or any other person from patriotism and duty, or to cause to incite or to cause any other person to deviate from patriotism or duty.

40. Enemy-related other offences: The commission of any of the following acts shall be deemed to be an enemy related offence:

- (a) To become a prisoner of an enemy failing to remain alert with due care in advance or failing to obey the orders or due to being negligent to the duties; or not to get back even though there were a possibility to get back after being the prisoner of the enemy,
- (b) To engage oneself in correspondence or exchange intelligence in any manner with the enemy without an appropriate authority, or not to knowingly report immediately to a commanding officer or other superior officer the information in relation to such activities, or
- (c) To raise a cease-fire flag without an appropriate authority.

41. Offences against military operation: To commit any of the following acts shall be deemed to be an offence against military operation:

- (a) To forcefully act against a security guard or sentry, or causing them to do so,
- (b) To enter into a building (house) or place with the intention of looting,
- (c) To sleep or use narcotic or alcoholic substance while on duty at the post as a sentry,
- (d) To leave (give up) guard, picket, patrol or post without the permission of a superior officer,
- (e) To intentionally or negligently give signals or information to cause terror in the camp, garrison or quarters, or to spread unnecessary discouraging or terrorizing propaganda therein,
- (f) To divulge any information about watch words and countersigns to any unauthorized person, or knowingly provide false or different parole or signals to an authorized person.

42. Desertion-related offences: (1) To commit any of the following acts shall be deemed to be an offence desertion:

- (a) To desert from service after an order of military operation or after the start of such an operation,
- (b) To desert from service except for the conditions as referred to in Clause (a),
- (c) To knowingly provide shelter to any person under the jurisdiction of this Act who is deserting the service,

- (d) To knowingly provide benefit, help or assistance to a deserter,
- (e) To fail to immediately inform a superior officer or any higher ranking officer who has knowledge of any person under the jurisdiction of this Act is deserting or about to desert the service, or not to arrest him/her even so authorized,
- (f) Not to diligently search for and arrest a deserter,
- (g) Not to take necessary action despite the knowledge of desertion,
- (h) To desert from the barracks, camp, or quarter.

(2) If a person who has been confirmed absent without leave does not report himself/herself or not found, he or she shall be considered to be a deserter.

43. Offence of allowing someone in custody to escape: Releasing an individual in custody without proper authority or without reasonable grounds for release while on guard, picket, patrol, command of post or during duty; or not taking a prisoner to be taken into custody or not taking one's turn at duty shall be considered an offence of allowing someone in custody to escape.

44. Offence relating to assault or intimidation: To commit any of the following acts shall be deemed an offence of assault or intimidation:

- (a) To threaten a superior officer,
- (b) To assault or use criminal force against a superior officer,
- (c) Not to respect the dignity of a superior officer by speaking in an undermining way or treat him/her in a degrading manner.

45. Defiance related offence: The commission of any of the following acts shall be deemed a defiance related offence:

- (a) To knowingly defy a legal order issued through oral (verbal), written, signal or any other manner by an authority or an officer under the jurisdiction of this Act or by a superior officer during the official work;
- (b) To show negligence to obey the general, local or any other type of order issued by a superior officer.

46. Offences related to loss or damage to property: To commit any of the following acts shall be deemed an offence of loss or damage of property:

- (a) To cause loss or damage to the property as referred to in Clause (a) of Section 41 or the property of a military institution or any person under the jurisdiction of this Act, or any person working for the Nepal Army or of any other person involved in the Nepal Army,
- (b) To set fire or cause loss or damage to government property,
- (c) To mistreat, cause injury, kill, take away or loss any animal which is in his/her custody.

47. Offences relating to forgery or falsifying particulars: To commit any of the following acts shall be deemed an offence of forgery or falsifying particulars:

- (a) If a person whose duty is to confirm the authenticity of a report, account, description, certificate or any other document prepared or signed by an authorized person examines it fraudulently, or certifies a false content of such document to submit as a true one with an intention of deceit or becomes accomplice in such an act,

- (b) If, in the course of certifying a document as referred to in Clause (a), someone does not write knowingly the matter to be written to deceive someone else or becomes an accomplice to such act,
- (c) If someone knowingly distorts, conceals, takes away or leaves blank, with an intention of causing loss or deceit to someone else, any document for which one has the responsibility to protect or must submit when required,
- (d) If someone knowingly makes any false declaration who has a duty to keep such an information,
- (e) If someone having knowledge about or having reasonable grounds to believe on the fact that there are false particulars on any statement, document or record, writes or causes to write false particulars of one's own or somebody else on memoranda or statements which allows for the receipt of pension, allowances, other facilities, or special provisions.

48. Offence related to obstruction or use of criminal force: To commit any of the following acts shall be deemed to be an offence of opposition and obstruction or use of criminal force:

- (a) To disobey the order concerning one's arrest even when given by a lower ranking officer, in the case of being involved in any quarrel, riot or disturbance; or to attack such an officer who gave order of such arrest, or to use criminal force against a high ranking officer,
- (b) To use force or attack a person who has been placed in one's custody pursuant to the law, irrespective of whether this Act is applicable to that person or not, or whether that person is a higher ranking officer or not;

- (c) To oppose or obstruct the person or escort whose duty is to arrest or take one into custody,
- (d) To obstruct the Chief of the Military Police, or his/her authorized representative while engaged in the legal discharge of duties, or not to extend cooperation, when requested, in the discharge of his/her duty,
- (e) To use criminal force or assault any person who supplies goods or rations to the Nepal Army.

49. Offence against property: The commission of any of the following acts shall be deemed an offence relating to property:

- (a) To use the public or governmental property, mess or band of Nepal Army in private interest or use the property of any army or of any person under the jurisdiction of this Act with *mala fide* intent or misappropriating it or stealing or taking them in possession fraudulently and with *male fide* intent,
- (b) To fraudulently receive or keep such property knowingly or having reasonable grounds to believe that it is related with the commission of crime as referred to in Clause (a).
- (c) To damage or cause loss to governmental property under one's own custody.

50. Offences regarding cheating or coercion: To commit any of the following acts shall be deemed to be an offence of cheating and coercion:

- (a) To commit any act with an intent of cheating, causing undue benefit or a loss to any other person,
- (b) To obtain forcibly or under coercion cash or goods of any other person or force someone in to labour without authority.

51. Offences of desertion with arms and other things or their misuse:

The commission of any of the following acts shall be deemed an offence of desertion with arms and other things or their misuse:-

- (a) To escape along with arms and ammunition, supplies, equipment, tools, clothes or any other governmental property obtained by oneself or put into custody or become an accomplice in such escape;
- (b) To lose any property as referred to in Clause (a);
- (c) To deface, destroy sell or mortgage any medal or decoration granted to him/her.

52. Offence against discipline and code of conduct: To commit of any of the following acts shall be deemed an offence against discipline and code of conduct:

- (a) To consume drugs;
- (b) To behave in a hostile or unpredictable manner, demonstrate reprehensible character or behave in a cruel manner;
- (c) To create one's own physical weakness or disease;
- (d) To pretend to be suffering from any disease or weakness, while being healthy; or to deliberately prolong or increase the severity of disease or not to allow healing;
- (e) To cause injury to oneself or to any other person with an intention of causing disqualification for the service;
- (f) To mistreat by using criminal force by an officer, junior commanding officer or non-commanding officer to a person under the jurisdiction of this Act while stating that one is of a lower rank;
- (g) Not to complete any act that maintains order or military discipline or to commit any act against order or military discipline;

- (h) To use alcoholic substances;
- (i) Not to behave in a manner suitable to the post;
- (j) To establish or operate an association or organization in contravention to Section 19 or in taking part in such activities;
- (k) To use any army personnel on any acts other than acts regarding the discharge of duties in accordance with this Act or Rules framed hereunder.

53. Offences related to certification of incomplete document: To commit any of the following acts shall be deemed to be an offence of certification of incomplete document:

- (a) To certify in a blank space to deceive anybody else by a person who has a duty to prepare or certify a document relating to salary, weapon, cartridge, goods, equipment, cloths, food items; miscellaneous goods and stores, or record of government property.
- (b) To refuse to prepare or send a report or details or not to prepare or send with negligence by a person who has a duty to do the same.

54. Offence related to false statements or details: If a person under the jurisdiction of this Act, after taking oath before the Military Court, records false statements or details; or if there is no ground to believe that such statement or detail given or believed to be false are true; shall be considered an offence related to false statements or details.

55. Offence of taking appointment by means of lying: To commit any of the following acts shall be deemed to be an offence of taking appointment by means of lying:

- (a) To take appointment in his/her usual Corps (*Chamu*) or Department or any other Corps (*Chamu*) or Department without fulfilling the

conditions needed for one's recruitment or without being duly relieved of one's duty from one's Corps or Department,

- (b) To be involved in the act of recruiting any person in any wing of the Nepal army while knowing that there are circumstances in which the person is suspected of having committed a crime under this Act or there are grounds to believe that such circumstance exist,
- (c) If it is proved that one has intentionally provided false information on the application for recruitment,
- (d) To submit fake or false certificate for recruitment, promotion, training or any other purpose of the service.

56. Offence of escaping from custody: Escaping from custody while being in legal custody shall be deemed committing an offence escaping from custody.

57. Offences of false allegation: To commit any of the following acts shall be deemed to be an offences of false allegation:

- (a) To make a false allegation knowingly against any person to whom this Act is applicable or having sufficient reason to believe that the charge was false; or
- (b) To lodge a complaint or give false statement pursuant to Section 27 knowingly or having sufficient reason to believe that the statement is false, in a manner that could damage the character of a person whom this Act is applicable or to conceal the actual facts related thereto which are in his/her knowledge.

58. Offences of absence without leave: To commit any of the following acts shall be deemed to be an offence of absence without leave:

- (a) To be absent without approving a leave,

- (b) To remain absent beyond the period of leave without sufficient reason,
- (c) To fail, without sufficient reason, to join his/her formation, unit or any organ thereof immediately upon receiving a notice from an appropriate authority about the order issued for his/her formation or unit or any organ thereof to take military actions,
- (d) To remain absent from the place fixed for his/her duty or physical exercise (*Byayam*) or from the parade in the given time,
- (e) To leaving the parade or march line without the permission of his/her superior authority or without sufficient cause,
- (f) To remain present at any fixed place outside or restricted place as prescribed through any orders of general, local or other nature, or at any prohibited place, at a time of being stationed in a camp, garrison or any other place, without obtaining a pass or a written permission from his/her immediate superior officer,
- (g) To remain absent at any school (Training Institute) at a time when an order has been issued to attend school, without obtaining leave from an immediate superior officer or without appropriate reasons thereof.

59. Offences related to court martial: To commit of any of the following acts shall be deemed to be an offence related to Court Martial:

- (a) Not to be appeared before the court martial as an witness without any appropriate reasons even a legal summons or order has been issued,
- (b) To refuse to take an oath before court martial ,
- (c) To refuse to abide by an order to submit or handover any document in one's custody to the court martial,

- (d) To refuse to answer a question asked in accordance with law as an witness,
 - (e) To show disrespect or commit contempt of the court martial by causing hindrance or obstruction or speaking threatening sentence therein,
 - (f) To ignore the execution of the decision or order of court martial.
- 60. Offence of freezing salary illegally:** A person, who is responsible for paying salaries, if refuses to pay or freezes illegally the salary of any person to whom this Act is applicable, instead of paying in due time, it shall be deemed to have committed an offence of freezing salary illegally.
- 61. Offence related to irregular (illegal) arrest or detention:** To commit any of the following acts shall be deemed to be an offence related to irregular (illegal) arrest or detention:
- (a) To arrest or hold a person in to detention without producing him/her before the concerned officer for investigation or to delay investigation without any reason,
 - (b) Not to produce a person along with appropriate reasons to keep a person into custody immediately or as soon as possible or within Twenty Four Hours at any cost before the officer who has the authority to keep a person into military custody or of the Judge-advocate General, without any reasonable cause.
- 62. Special provisions relating to offences of corruption, theft, torture and disappearance:** (1) To commit any acts which are defined as an

offence of corruption, theft, torture and disappearance by prevailing law shall be deemed to have been committed the offence of corruption, theft, torture and disappearance.

(2) There shall be a committee comprising of the following persons to conduct an investigation and inquiry into the offences provided in Sub-section (1):

- (a) Deputy Attorney General as designated by the Government of Nepal Chairperson
- (b) Chief of legal section of the Ministry of Defence Member
- (c) Representative of Judge Advocate General Department not below the rank of Major (*Senani*) Member.

(3) The representative referred to in Clause (c) of Sub-section (2) shall be a person who is not concerned with to the Court Martial of the concerned case.

(4) The original jurisdiction to hear and dispose of the case as referred to in Sub-section (1) shall be on the Special Court Martial formed pursuant to Sub-section (1) of Section 119.

(5) The committee formed pursuant to Sub-section (2) shall have the power equivalent to the power conferred on by prevailing laws to an investigating and inquiry officer in respect to those cases.

63. Miscellaneous Offences: (1) To commit any of the following acts shall be deemed miscellaneous offences:

- (a) To misbehave, beat or trouble by any other means by a person in command of any post or march to a person in

his/her command; or commit hooliganism in a public place; or trespass; or not submit a petition made for compensation before the concerned authority for having caused damage by trespassing; or not to cause to provide compensation,

- (b) to disturb the sacredness of a religious place or knowingly disrespect the religion of any other person by any other means or to cause disrespect to religious sentiments,
- (c) To carry arms or ammunitions by a soldier below the rank of junior commissioned officer (*Jamdar*), weapons or explosives when not on duty, without the order of the concerned authority around the camp or cantonment or when going to the city or market or return therefrom;
- (d) To receive or accept to receive, bribe or any other benefit for causing recruitment or promotion to any person, directly or indirectly, into the Nepal Army or in approving leave or for giving the impression of any other benefit,
- (e) To cause any loss or damage to the body or property of any citizen or inhabitant of the country where he/she is serving.

(2) Except otherwise provided in Sub-section (1), to commit any prohibited act other than the offence those referred to in this Chapter by a non-commissioned officer or any lower ranking soldier during military operations, it shall be considered a miscellaneous offence.

- 64. Attempt:** To attempt to commit an offence as referred to in this Chapter or any act for such purpose shall be deemed an attempt to commit such an offence.
- 65. Inducement:** To induce to commit any offence as referred to in this Chapter shall be deemed an inducement to commit such an offence.
- 66. Offences under other Laws:** (1) In a case a person under the jurisdiction of this Act commits any offence as referred to in Sections 38 to 65 and except in a that condition such an offence is committed by any military personnel against any other military personnel, if the person under the purview of this Act commits any of the following offences such a lawsuit shall fall under the jurisdiction of other courts:
- (a) Homicide,
 - (b) Rape.
- (2) If the agency or investigating officer conducting an investigation and inquiry issues an order to handover the accused (alleged person) involved in the offence as referred to in Sub-section (1), the commanding officer or Commander (*Pati*) or concerned officer shall hand him/her to the agency or officer issuing such order. The retirement or desertion of a person shall not bar to conduct an investigation and take action in accordance with law.
- (3) The person who comes under the jurisdiction of this Act is being investigated fallings under the jurisdiction of other court shall *ipso facto* be suspended during the period of his/her custody and until the final decision if a case so lodged.
- (4) Even if an investigation into an offence under the jurisdiction of other courts is started in respect to a person under the jurisdiction of this Act, nothing in this Section shall be a bar to form a court of inquiry and

conduct an investigation and take necessary action on the offence that falls under this Act.

Chapter-8

Formation and Jurisdiction of Court Martial

67. Formation of Court Martial: (1) For the purpose of the trial and disposal of a case related to the offence as referred to in Chapter-7, the court martial shall be formed as following:

- (a) The General Court Martial consisting Five officers as One General (*Rathibrinda*), Two Colonel (*Mahasenani*) or Lieutenant Colonel (*Pramukh Senani*) and Two Majors (*Senani*).
- (b) The Summary General Court Martial comprised of Three officers including at least Two officers of the rank of Major (*Senani*).
- (c) The District Court Martial comprised of Three officers as officers completed Three years of the term of Commissioner.
- (d) The Summary Court Martial comprised of One officer who commands the Department, Formation or Unit of the Nepal Army.

(2) There shall be at least One officer who is a law graduate to the extent available, in the Court Martial as referred to Clause (a) and (b).

(3) For the purpose of assisting the proceeding of the Summary Court Martial, there shall be Two Officers or Two Junior Commissioned Officers (*Padik*) or One from each rank.

(4) The Court Martial shall not proceed with or hear the case if the Court Martial, lacks the number of persons therein as referred to in Sub-section (1).

68. Jurisdiction of Court Martial: The jurisdiction of the Court Martial shall, except on the cases as referred to in Sections 62 and 66, be as following:

- (a) The power of trial, hearing and adjudicating and imposing penalty upon disposal of a case of an offence committed by a person under the jurisdiction of this Act shall be with the General Court Martial and Summary General Court Martial.
- (b) The power of trial, hearing, adjudication and imposing penalty upon disposal of a case of an offence, in which maximum Two years' imprisonment may be imposed, committed by a person under the jurisdiction of this Act except a person of the rank of officer or Junior Commissioned Officer shall be with the District Court Martial.
- (c) Subject to the provisions mentioned in the following Sub-clauses, the power of trial, hearing, adjudication and imposing penalty upon disposal of a case of an offence, committed by the person under the jurisdiction of this Act except a person of the rank of officer or Junior Commissioned Officer shall be with the Summary Court Martial.
 - (i) A case for which One year imprisonment may be imposed, if the Court Martial is convened by the officer of the rank of Lieutenant Colonel (*Pramukh Senani*) or senior to him/her,

- (ii) A case in which Six months imprisonment may be imposed, if the Court Martial is convened by an officer of the rank below Lieutenant Colonel (*Pramukh Senani*).

69. Decision to proceed a case in Court Martial or other court: (1) If there is a dispute regarding the filing of a case under the jurisdiction of this Act whether with the Court Martial or other Courts, it shall be filed with other courts.

(2) If a case is to be filed to another court, the accused shall be suspended from service and handed over to court where the case has been registered.

70. Save from double jeopardy: Any person under the jurisdiction of this Act, after being subjected to trial, hearing and adjudication of an offence as referred in from Section 38 to Section 65 of this Act by the Court Martial or other court, or after being subjected to departmental action, shall not be subjected an action again for the same offence.

71. Limitation to file a case: (1) Except those offences as referred to in Sections 39, 42, 46, 49, 55, 56, and 62, no case shall be filed before the Court Martial for an offence after than Three years from the date of cause of action.

(2) When calculating the time period for the purpose of Sub-section (1), the period of being held as a prisoner of war or of having been within the territory of the enemy or of having absconded without arrest after committing an offence shall not be included.

72. Liable to prosecution: (1) A person who commits an offence while he/she was under the jurisdiction of this Act, he/she may be held in a military custody and subjected to trial even such person is does not fail under the jurisdiction of this Act.

(2) Notwithstanding anything contained in Sub-section (1), except as provided in the offence as referred to in Sections 39, 42, or 55, no case may be initiated after the expiry of Six months when his/her applicability of this Act ceases.

(3) After the imposition of imprisonment by a Court Martial on a person to whom this Act is applicable, even if such person is removed or dismissed from the service of the Nepal Army or the applicability of this Act ceases in respect to him/her in any way, this Act shall remain applicable to such person until the completion of the penalty imposed on him/her and such penalty may be implemented.

73. Authority to convene Court Martial: (1) The following officers shall have authority to convene a Court Martial:

- (a) Unless otherwise directed (ordered) by the Government of Nepal, the Chief of Army Staff or an officer authorized by him shall convene the General Court Martial,
- (b) Unless otherwise directed (ordered) by the Government of Nepal, the following officers shall convene the Summary General Court Marital:
 - (i) The officer who is authorized by the Chief of Army Staff,
 - (ii) The officer who is engaged in a military operation or a person authorized by him,
 - (iii) The officer who commands any unit engaged in a military operation who decides that is not practical to try a case by the General Court

Martial taking into consideration Army disciplines and necessity.

- (c) The officer who is authorized to convene the General Court Martial in accordance with Clause (a) or an officer authorized by him shall convene the District Court Martial,
- (d) The commanding officer of a Department, Formation or Unit of Nepal Army shall convene the Summary Court Martial.

(2) The Court Martial Convening Officer shall convene the Court Martial within Thirty days of the date of the cause of convening.

(3) While authorizing as referred to in Clause (a) and (b) of Sub-section (1), the authority may lay down conditions as required.

Chapter-9

Investigation, Inquiry and Registration of a case

74. To hold in military custody: (1) If a person, who comes under the jurisdiction of this Act is an accused of an offence as referred to in Chapter-7, he or she may be held in military custody.

(2) An accused of an offence may be ordered to be held in military custody by any officer whose rank is senior to him or her.

(3) Notwithstanding anything contained in Sub-section (2), a person who is engaged in a quarrel, rioting or causing disturbances may be ordered to hold in military custody by a junior officer even the accused is in a senior rank.

(4) If a person is alleged to have committed an offence outside the jurisdiction of this Act and is subjected to the jurisdiction of other court,

and it is necessary to be held him or her in custody to a proceedings for the period of investigation to prosecution, he/she shall be suspended from service and may be held in military custody or police custody as per the order of the court. If his/her presence in court is necessary, he or she shall be produced by the relevant military officer.

Provided that, he or she shall not be held in military custody after the filing of a case.

(5) One shall be produced before the Court Martial if he or she is to be prosecuted in a Court Martial and to other court if he or she is to be prosecuted in the other court.

75. Responsibility of the commanding officer during custody: (1) If the commanding officer receives a report that a person under his/her command has been held in custody, he/she shall make arrangements not to hold him/her in custody exceeding the period of Twenty Four hours without an investigation except the time to be taken for journey.

(2) Notwithstanding anything contained in Sub-section (1), if there is a situation that the same (Twenty Four hours provision) is not possible due to lack of public transportation services, he/she may be held in custody for a reasonable period.

(3) The commanding officer shall forward all the details of the person who is being held in custody exceeding Twenty Four hours, and reports with reasons, to the Chief of Army Staff or the Judge Advocate General (*Prad Viwak*).

(4) If it is necessary to hold a person who is not engaged in a military operation for more than Eight days due to the failure to issue an order to convene the Court Martial for the proceeding of his/her case, the commanding officer shall submit reports along with reasons for such delays

to the officer prescribed by Sub-section (3) every Eight days until the formation of a Court Martial or the release of the accused.

(5) For the purpose of this Section, the calculation of Twenty Four hours shall not include the period of public holidays.

- 76. Request to arrest:** (1) If it is necessary for the commanding officer to arrest a person alleged to have committed an offence he/she may request the Chief District Officer of the district where the alleged person resides, and if the Chief District Officer receives such a request, he/she shall arrest (cause to) the alleged person and hand him/her over to the concerned officer.

(2) The commanding officer of the Formation, Unit, Sub-unit to which a deserted person belongs may request the Chief District Officer to arrest him/her, mentioning his/her personal details, and if the concerned officer receives such request, he/she shall arrest such deserting person and hand him/her over to the concerned officer.

(3) Notwithstanding anything contained in Sub-section (1) or (2), if a police officer has reasonable cause to believe that a person has absconded or deserted his/her job upon committing an offence, he/she may arrest such person without an arrest warrant and shall forward him/her to the Chief District Officer for necessary action.

- 77. Inquiry as to absence without leave:** If a person to whom this Act is applicable remains absent for more than Thirty days without permission, a court of inquiry shall be formed as soon as possible. The officer of court of inquiry, while conducting an inquiry after taking an oath, shall conduct enquiries whether or not the person is absent without approval of leave or without reasonable cause of leave, and shall also inquire whether property, arms, ammunition, equipment, instruments, clothes or other items under

his/her custody is intact or not, and make a decision accordingly. The commanding officer shall record the content of such decision to the record book of the Court Martial of the relevant Division or Corps.

- 78. Chief of Military Police:** (1) Unless otherwise instructed (ordered) by the Government of Nepal, the Chief of Army Staff or any officer designated by him or her may appoint a Chief of Military Police.

(2) It shall be the main duty of the Chief of Military Police to take under his/her custody persons held in detention in consideration of any offence committed by them, maintain order and discipline in the Army and prevent violation of order or discipline by persons who are joining to or serving in the Nepal Army.

(3) The Chief of Military Police may arrest a person who has committed an offence or is accused (suspect) of committing an offence, at any time for appearing before the trial, and he/she shall execute the penalty imposed by a Court Martial or any officer exercising the powers to order for departmental action.

Chapter-10

Procedures of Court Martial

- 79. Duty station and bench of Court Martial:** (1) The Court Martial may establish a duty station at any place inside or outside of Nepal during the proceeding of the case.

(2) Except in situations to protect national security, public order and rights of victims, the Court Martial shall normally sit in open session.

- 80. Chairperson of Court Martial:** (1) The senior officer amongst the officers of a Court Martial shall chair the Court Martial.

(2) If the senior officer who chairs the Court Martial is absent, the second in seniority shall, subject to the provisions of Section 67, chair the Court Martial.

81. Presence of Judge Advocate General (*Prad Viwak*): (1) The Judge Advocate General (*Prad Viwak*) or the *Prad* (Law) Officer assigned or designated by him/her shall be present in every General Court Martial, Summary General Court Martial and District Court Martial as the *Prad Viwak*.

(2) If a person who is accused of an offence submits a request for his/her defence to designate a *Prad* Officer of his/her choice in a Court Martial to the Defence Section of the *Prad Viwak*, the *Prad Viwak* shall assign a *Prad* Officer accordingly. The *Prad* Officer shall defend him/her in the Court Martial if he/she is so assigned.

82. Objection may be raised: (1) After the submission of case to a Court Martial for trial, the name of the chairperson and members of the Court Martial shall be read to the accused, and he/she shall be asked whether he/she has any objection regarding the Chairperson or any other member or not.

(2) If the accused raises any objection regarding the Chairperson or any other member, the court shall keep records of the reasons thereof and the reply made by the Chairperson and such other member. The Chairperson or members not so objected shall discuss on such objection and shall make a decision in the absence of the Chairperson and member so objected.

(3) If at least Fifty percent of members agree with the objection, the seat of the Chairperson and member so objected shall be vacated. The vacant seat shall be filled by nominating another officer, and the procedures

of objection as referred to in Sub-section (1) shall also apply to such a new Chairperson or member.

(4) After completion of procedures of objection as referred to in Sub-section (1) and (2), the Court Martial shall begin with the trial of a case.

83. Oath: Before the beginning of a trial, the Chairperson, members and the *Prad Viwak* shall take oath in the manner as prescribed.

84. Procedures for decision making: (1) The Court Martial shall make decisions on the basis of a majority vote. In the case of a tie, the decision shall go in favour of the accused.

Provided that, the following matters shall be decided as follows:

(a) To render a penalty of life sentence along with confiscation of entire property by the General Court Martial it shall require at least a Two Thirds majority vote.

(b) To render a penalty of life sentence along with confiscation of entire property by the Summary General Court Martial it shall require unanimous vote.

(2) Notwithstanding anything contained in Sub-section (1), the opinion supported by the Chairperson shall prevail on the procedural matters other than the imposition of penalty and rendering of the judgment.

(3) In the course determining the penalty (sentencing) by the Court Martial, the *Prad Viwak* present before the Court Martial or his/her representative may give a separate opinion.

(4) In the course of investigation and hearing of a case which falls under the jurisdiction of a Court Martial, the rights regarding criminal

justice shall be protected and sufficient opportunity to produce evidence in defence shall also be granted.

85. Taking judicial notice: The Court Martial may take judicial notice that the military matters are within the general knowledge of the Chairperson and members.

86. Summoning: (1) The officer convening the Court Martial or the Chairperson of the Court Martial or the *Prad Viwak* or the commanding officer of the accused may issue a summons to the concerned persons to produce any document or any other item, and to attend at the place and in the time as prescribed for recording the statement as a witness.

(2) If it is necessary to cause to produce any particular document or any item that is in the possession of a witness, such a matter shall be mentioned in the summons *per se*.

(3) If a witness is a person under the jurisdiction of this Act, the summons shall be dispatched to the commanding officer and such officer shall cause to serve the summons to the concerned person.

(4) If it is known that a witness is under the jurisdiction of Chief District Officer, the summons to such witness shall be dispatched to the Chief District officer and he/she shall cause to serve the summons to the witness.

(5) Every person who has to record his/her statement in the Court Martial shall take an oath, as prescribed, before recording his/her statement.

87. Sealed questionnaire (*Banda Sawal*): (1) If the Court Martial believes that the summoning of a particular witness may cause delays, does not seem cost effective, or causes difficulties unnecessarily, it may issue an order to the *Prad Viwak* allowing him/her to ask sealed questions (*Banda Sawal*).

(2) After receiving an order as referred to in Sub-section (1) the *Prad Viwak* may request to the Chief District Officer to serve the sealed questions to the witness within his/her jurisdiction, and upon receiving such request, the Chief District Officer shall cause to serve the sealed questions in accordance with the prevailing law.

(3) The Court Martial shall include questions which an accused or his/her legal counsel intends to raise and which are relevant to the case in the sealed questionnaire.

(4) The legal counsel or attorney (*Wares*) and the accused him/herself, if he/she is not into the custody may cross-examine a witness being present before the Chief District Officer.

(5) After completion of recording of the statement in accordance with sealed questionnaire, the sealed questionnaire shall be forwarded to the *Prad Viwak*.

(6) The *Prad Viwak* shall submit the sealed questionnaire received as referred to in Sub-section (5) to the concerned Court Martial. In a case of the dissolution of the Court Martial, it shall be forwarded to the other court which is hearing such case. The Court Martial or other court shall include the sealed questionnaire so received into the file, and the accused or legal practitioner shall be allowed to see the questionnaire.

(7) The Court Martial may postpone the trial of the case until the period needed for dispatching the sealed questionnaire and obtaining the response.

88. Presumption of signature: The signature signed in the course of the proceeding of a case or on any application, certificate, arrest warrant, response or any document by an officer of any rank of the Government of

Nepal, shall be presumed to have been signed by him/herself, unless it is otherwise proved.

89. Documents admissible as an evidence: The information contained in the following documents shall be admissible as an evidence in a case adjudicated by the Court Martial:

- (a) The information contained in the Sheet Role form by the concerned person in the course of appointment,
- (b) Original copy of the Sheet Role form or its certified (attested) photocopy indicating "copy is same as original" and signed by the officer responsible for it,
- (c) Any letter, response or details of any document signed by the Chief of Army staff or an officer prescribed by him regarding the service, removal or termination of service from the Nepal Army,
- (d) Status and rank of *Padik* or any other *Darjani Chhina* registered in the Register of Nepal Army or Army order or published in Nepal Gazette and Army order registered in the Register regarding someone's appointment or matter published in the Nepal Gazette,
- (e) Information contained in the regimental book signed by the commanding officer or an officer responsible for keeping records,
- (f) Information contained in a copy which is attested as "copy is same as original" and signed by the officer responsible for regimental book,
- (g) In case a person to whom this Act is applicable and who is under trial on an offence as referred to in Section 42 and 58, and has surrendered him/herself before any officer or any person to whom this Act is applicable or any camp (organ) of the Nepal Army, or in case such person has been arrested by any officer or any person to

whom this Act is applicable; a certificate signed by such officer, such person or the commanding officer of such camp indicating the place and date of surrender or arrest and his/her dress-up,

- (h) In case a person to whom this Act is applicable and who is under trial on the offence as referred to in Section 42 or 58 has surrendered him/herself during his/her trial before any police officer, in-charge of a police office or in case such person has been arrested by such police officer, information contained in a letter certified and signed by such police officer indicating the place and date of surrender or arrest and his/her dress-up,
- (i) Information contained in the report received from a forensic scientist or forensic laboratory prepared upon request for examination or investigation.

90. Requesting information from governmental authorities: (1) If an accused charged with an offence as referred to in Sections 42 and 58 requests to inquire with an officer of the Government of Nepal regarding the offence or the Court Martial itself finds it appropriate to inquire with such an officer, the Court Martial may request to the officer for such information and adjourn (keep in pending) the case till the response is received.

(2) The information recorded as referred to in Sub-section (1) shall be recognized as good as the statement recorded before the Court Martial.

(3) In case the Court Martial is dissolved before receiving the information as referred to in Sub-section (2) or the Court Martial fails to observe the procedures in accordance with this Section, the officer convening the Court Martial may cancel the trial and issue an order to carry out a re-trial.

91. Previous penalty and character as an evidence: (1) In the course of making a decision regarding a person charged with an offence as referred to in Chapter-6, the Court Martial may collect information on whether such person was previously convicted or not, or whether he/she was subjected to any departmental action or not, and may admit it in the decision as an evidence. For this purpose the Court Martial may take into note of his/her character and previous activities.

(2) A copy may be made of the oral statement recorded pursuant to Sub-section (1) or the information contained in a regimental book or any governmental book, and it shall not be necessary to give prior notice to the accused that the previous conviction or character of accused or his/her previous activities shall be admitted as an evidence.

(3) The Summary Court Martial, if deems reasonable, may keep records of information, without attestation, of the decision if any decision has been made in regards to such person, his character or previous activities.

92. Provisions of Evidence Act, 2031 (1974) to be applicable: The Court Martial, while examining evidence in the course of the trial of an offence pursuant to this Act, shall apply the procedures provided by this Act, and in other matters the procedures provided by the Evidence Act, 2031 (1974) shall be applicable.

93. Defence of mentally abnormal accused: (1) If it is found that a person is unable to defend him/herself due to mental insanity during trial by the Court Martial or he/she committed the alleged act under the circumstances during which he/she was unable to understand the nature of the act and that such act was unreasonable and illegal, the Court Martial shall prepare a memorandum in this regard.

(2) The Chairperson of the Court Martial or investigating officer of the Summary Court Martial shall submit immediately the memorandum prepared pursuant to Sub-section (1) before the approving authority or an official as referred to in Sub-section (3) of Section 115.

(3) In case the approving authority does not approve the verdict of the memorandum received pursuant to Sub-section (2), necessary action may be taken to try the case in the same or another Court Martial.

(4) If the approving authority approves the details of the memorandum submitted by the Summary Court Martial pursuant to Sub-section (2), the approving authority shall issue an order to hold the accused in the custody and shall submit it to the Government of Nepal, Ministry of Defence, for approval.

(5) After receiving the report pursuant to Sub-section (4), the Government of Nepal, Ministry of Defence shall issue an order to hold such person in a mental hospital or in custody in any appropriate safe place.

94. Trial of a mentally abnormal accused: (1) The Chief of the Army, Army Corps, Divisional Headquarters, or the Brigade or any officer on his/her behalf may issue an order to proceed with a case in the same or any other Court Martial on the ground of the report of a doctor stating that the person detained pursuant to Section 92 is able to defend him/herself; or on the ground of a certificate issued by the chief of a mental hospital or prison stating that the such person is able to defend him/herself in a case where the person has been detained in mental hospital or prison. If the charge has been made for an offence under any other prevailing laws except the offence pursuant to this Act, an order may be issued to cause to try the case in other court.

(2) The order issued pursuant to Sub-section (1) shall be forwarded to the Ministry of Defence for its information.

95. A mentally abnormal accused may be released: The Ministry of Defence may release a person who has been held in detention pursuant to Section 93 or held in custody or sent to a mental hospital in case if he/she was not already held in a mental hospital based on the report of the Doctor in respect to a person who was held in detention, or if the chief of the mental hospital or prison recommends his release or a certificate stating that the person might not be harmful to him/herself or anyone else after release.

96. A mentally abnormal accused may be handed over to the successor or guardian: If a successor or guardian of a person held in custody pursuant to Section 93 lodges an application requesting that if he/she be handed over to them for his/her caretaking or responsibility, and if the Ministry of Defence is satisfied that the such a person shall be taken care of, and that he/she will not harm him/herself or others and shall be produced to the prescribed officer on the prescribed date and at the prescribed time, the Ministry of Defence shall hand him/her over to his/her successor or guardian.

97. Auction and management of materials relevant to an offence: (1) The Court Martial shall protect the materials relevant to an offence which is produced to it in the course of a trial of the case.

(2) In case a materials kept for protection pursuant to Sub-section (1) may be decayed or damaged, the Court Martial may issue an order to auction such materials and to deposit such an amount in the governmental account (state treasury).

(3) After completion of the proceeding by a Court Martial, the authority having power to approve a verdict and penalty of such Court Martial or an officer senior to such officer or if a decision of a Court Martial does not need approval for imposing penalty, the Chief of the Army, Corps (*Chamu*), Divisional Headquarters (*Pritana*) or Brigade (*Bahini*) may issue an appropriate order to confiscate, destroy or to return such materials to the person who claims it as a successor or to sell any goods, or documents related to an offence that are received in the court in the course of the trial in a case.

(4) The official issuing an order pursuant to Sub-section (1) shall send a copy of such order to the Chief District Officer of the area where the materials are being located if the case was not tried within the territory of Nepal, and the Chief District Officer shall also cause to perform the acts in accordance with the order.

Explanation: For the purpose of this Section the term "materials" shall include not only the materials held in primary possession or ownership but also materials which have changed their form immediately or after some time and goods obtained through exchange or income made from the sale.

98. Recognitions of the actions of Court Martial: The proceeding conducted by a Court Martial pursuant to this Act shall be recognized as the proceeding of a court.

99. Postponement and dissolution of Court Martial: (1) A Court Martial shall be postponed in the following circumstances:

- (a) If, after the beginning of trial, the number of Chairperson and members determined pursuant to Section 67 decreases,

- (b) If, during the trial, it is impossible to continue the trial because the representative of the *Prad Viwak* or the accused fall sick.

(2) The authority convening the Court Martial may dissolve the Court Martial if it is deemed impossible or unreasonable to continue the Court Martial in view of military necessity or discipline.

(3) If the Court Martial which was postponed pursuant to Sub-section (1) returns to the original position it may be continued.

(4) The Court Martial dissolved for the reasons as referred to in Sub-section (2) may be reconvened and the trial may be continued.

(5) After the completion of all the activities related to decision, the Court Martial shall *ipso facto* be dissolved.

100. Forwarding files: (1) After completion of the trial, proceeding and hearing of the case by a Court Martial except the Summary Court Martial, the file with the decision shall be forwarded to the Judge Advocate General Department (*Prad Viwak*) and the Judge Advocate General Department (*Prad Viwak*) shall examine the file as required and shall forward it to the authority as referred to in Section 108, 109 and 110 for the approval of the decision or opinion.

(2) After completion of the trial, proceeding and hearing, the file along with the decision shall be forwarded to the Judge Advocate General Department (*Prad Viwak*), and the Judge Advocate General Department (*Prad Viwak*) shall make examinations.

(3) In a case of a departmental action pursuant to Section 105, the penalty ordering authority shall forward the attested copy of the file to the authority as referred to in Section 118.

Chapter-11

Penalties

101. Penalties which may be imposed by Court Martial: (1) The Court Martial may impose the following Penalties:

- (a) Life imprisonment along with confiscation of entire property,
- (b) Confiscation of his or her entire share of ancestral property,
- (c) Imprisonment of upto Fourteen years,
- (d) Removing from service without prejudicing eligibility for any governmental service in the future, or dismissing with ineligibility for any governmental service in the future,
- (e) Demotion to a lower rank,
- (f) Freezing of promotion for Five years,
- (g) Deduction of salary and allowances for Three months in case the offence has been committed in the course of military action,
- (h) Freezing of salary and allowances until the recovery of compensation,
- (i) Freezing of salary increments for a period not exceeding Two years,
- (j) Warning (*Nasihah*).

(2) The following penalties shall be imposed for the following offences:

- (a) Life imprisonment along with confiscation of entire property for the commission of offences as referred to in Section 38, 39 or Clause (a) of Sub-section (1) of Section 42.
- (b) A maximum Fourteen years of imprisonment shall be imposed for the commission of the following offences:
 - (1) Offences provided in Section 40,
 - (2) Offences provided in Section 41 and Clause (a) of Section 45 during a military operations,
 - (3) Offences provided in Section 43 or 46 if committed intentionally,
 - (4) Offences provided in Clause (a) or (b) of Section 44 committed against a person while discharging his/her duties during a military operation,
 - (5) Offences provided in Section 47.
- (c) A maximum Ten years of imprisonment shall be imposed for the commission of the following offences:
 - (1) Offences provided in Clauses (a) or (b) of Section 44 committed against a person not during the military operation,
 - (2) Offences provided in Section 48, 49 or 50,
 - (3) Offences provided in Clause (a) of Section 51 or Clause (a) of Section 52.
- (d) The penalty of confiscation of entire property or maximum of Seven years of imprisonment shall be

imposed for the commission of offences provided in Clause (b) of Sub-section (1) of Section 42.

- (e) A maximum of Seven years of imprisonment shall be imposed for the commission of the following offences:
 - (1) Offences provided in Section 41 committed not during military operation,
 - (2) Offences provided in Section 46 that are committed unintentionally,
 - (3) Offences provided in Clauses (b), (c), (d), (e), (f) or (g) of Section 52,
 - (4) Offences provided in Section 43, 54 or 63.
- (f) A maximum of Five years of imprisonment shall be imposed for the commission of the following offences:
 - (1) Offences provided in Clause (c) of Section 44,
 - (2) Offences provided in Clause (a) of Section 45 committed not during the period of a military operation,
 - (3) Offences provided in Clauses (b) or (c) of Section 51 or Sections 45, 56 or 57.
- (g) A maximum Three years of imprisonment shall be imposed for the commission of offences provided in Clauses (c) or (d) of Sub-section (1) of Section 42 or Sections 58, 59 or 60.
- (h) A maximum of Two years of imprisonment shall be imposed for the commission of the following offences:

- (1) Offences provided in Clauses (e), (f), (g) or (h) of Sub-section (1) of Section 42,
 - (2) Offences provided in Clause (b) of Section 45,
 - (3) Offences provided in Clause (h) of Section 52 committed by personnel below the rank of officer while discharging duties during a military operation,
 - (4) Offences provided in Section 43 that are committed unintentionally,
 - (5) Offences provided in Section 61.
- (i) A maximum of Six months imprisonment shall be imposed if a personnel below the rank of officer commits offences provided in Clause (h) of Section 52 except in the period of military operation or while on duty.
 - (j) A person who commits offences provided in Clauses (i) and (j) of Section 52 shall be removed from the service.
 - (k) A person who commits offences provided in Clause (k) of Section 62 shall be barred from Two salary increments or promotion for Two years.
 - (l) A person who attempts to commit such offences as referred to in Chapter-7 or induces another person to commit such offences shall, unless there is specific provision in this Act, be imposed the following penalties:

- (1) A maximum of Fourteen years of imprisonment for attempting to commit an offence for which a penalty of life imprisonment along with confiscation of entire property may be imposed, and half of the maximum (range) imprisonment for other offences which have been attempted,
- (2) Equal penalty for inducement (incitement) to commit an offence as imposed for committing an offence,
- (3) A maximum of Fourteen years of imprisonment for inducement to commit an offence which has not been committed (completed), and half of the maximum (range) punishment for inducement to commit any other offence which had not actually been committed (completed).

(3) If a person who committed an offence provided in Clause (b) of Sub-section (1) of Section 42 has absconded and is not found (traced) or does not produce him/herself within Thirty Five days, his/her partition share to ancestral property shall be frozen from being transacted. If such person does not appear him/herself or could be found through making a search within Three years, his/her partition share to ancestral property shall be confiscated and auctioned, and the money therefrom shall be deposited to the Government Treasury.

(4) After confiscation of partition share to ancestral property, if the offender is found, he/she may be imposed life imprisonment along with confiscation of the entire property.

(5) A person who is dismissed from service and disqualified for any governmental job in future pursuant to Clause (j) of Sub-section (2), shall not be paid his/her remaining salary or allowances and pension which he/she is entitled and other facilities except the money accumulated in his/her provident fund.

102. Addition or reduction of penalty: (1) If a Court Martial convicts an accused of an offence as referred to in Chapter-7, the Court Martial, depending on the degree of penalty or offence mentioned in Sub-section (2) of Section 101, may sentence a lesser penalty amongst the penalties mentioned in Sub-section (1).

(2) If a Court Martial imposes a penalty of removing from service without prejudicing eligibility for any governmental service in the future, or dismisses with ineligibility for any governmental service in the future pursuant to Clause (d) of Sub-section (1) of Section 102, the Court Martial may impose one or more additional penalty as referred to in Clauses (e), (f), (g), (h), (i) or (k) of the same Sub-section.

(3) Before imposing a penalty as referred to in Clauses (a), (b) or (c) of Sub-section (1) of Section 101 to a person of an officer rank, he or she shall be imposed the penalty as referred to in Clause (d) of the same Section.

103. A person accused of an offence may be convicted of other offences: (1) A person who has been accused of the following offences may be convicted and punished for the following offence by a Court Martial:

- (a) A person accused of deserting may be convicted for attempted desertion or absence,

- (b) A person accused of attempted desertion may be convicted for absence,
- (c) A person accused of using criminal force may be convicted for the offence of attacking,
- (d) A person accused of using threats may be convicted for the offence of using disrespectful language,
- (e) A person who is accused of an offence provided in Clause (a) or (b) of Section 49 may be convicted for the offence provided in Clause (c) of the same Section.

(2) If a person is an accused of serious offence which cannot be proved, a Court Martial may convict him/her for a lesser degree offence and punish him/her accordingly.

(3) If a person is accused of an offence provided by this Act, he/she may be convicted and punished for attempting or inducing to commit the same offence even if he/she has not been accused of attempting or inducing to commit such offence.

104. Battlefield penalty: (1) If a person commits an offence provided in Sub-section (2) of Section 63, he or she may be imposed a penalty of detention or fatigue except causing any harm to the body.

(2) If a Sergeant (*Hudda*), Corporal (*Amaldar*) or Lance Corporal (*Pyuth*) is imposed a battlefield penalty, he or she shall be deemed to have been demoted to *Sipahi*.

105. Departmental action: (1) Notwithstanding anything contained in Chapter-8 and this Act, if the person of the following rank who falls under the jurisdiction of this Act commits an offence under this Act, one may, without convening a Court Martial, be subjected, taking into consideration

the gravity of the offence, to the following departmental action by the following officer:

- (a) The commanding officer or the commander of the similar rank or other officer assigned by the Chief of Army Staff upon approval from the Government of Nepal may order one or more than one departmental actions mentioned below against a person who is other than the rank of Officer or Junior Commissioned Officer:

- (1) To hold in military custody upto Thirty days,
- (2) To detain upto Thirty days,
- (3) To detain in a line upto Thirty days,
- (4) To place in additional guard duty or duties,
- (5) To remove the duties being performed by him/her or removing from the acting posts in which he/she is serving,
- (6) Freezing or reduction in the salary or allowances which were awarded for good service, conduct or qualifications,
- (7) Subjecting to warning,
- (8) Subjecting to fine upto an equivalent of Fourteen days payment in a month,
- (9) Freezing of salary or allowances upto the recovery of a loss (compensation),
- (10) Subjecting to Thirty days' battlefield penalty during a military operation,

(11) Subjecting to battlefield penalties.

(b) The Chief of Division (*Pritanapti*) or the Brigadier (*Bahinipati*) or any other *Pati* of the same rank or any other officer assigned by the Chief of Army Staff upon approval from the Government of Nepal may order one or more than one departmental actions mentioned hereunder against an officer who is below the rank of *Senani* or Junior Commissioned Officer (*Padik*):

- (1) Subjecting to ultimatum (*Nasihati*),
- (2) Subjecting to warning (*Chetawani*),
- (3) Freezing of salary upto the recovery of loses,
- (4) Freezing of promotion upto One year,
- (5) Removal of seniority upto One year.

(c) A Major General (*Uparathi*) or an officer of the similar rank or any other officer assigned by the Chief of Army Staff upon approval by the Government of Nepal may order one or more departmental actions mentioned below against a person of the rank of Lieutenant Colonel (*Pramukh Senani*) and officer below to this rank or Non-Commissioned Officers (*Padik*):

- (1) Subjecting to ultimatum (*Nasihati*),
- (2) Subjecting to warning (*Chetawani*),
- (3) Freezing of salary upto the recover of the losses,
- (4) Freezing of promotion upto One year,

(5) Removing (deducting) of seniority upto One year.

(d) The officer assigned by the Chief of Army Staff or the commanding officer upon approval by the Government of Nepal may try an army personnel of the rank of non-commissioned officer (*Padik*) who is accused of an offence under this Act, and he/she may freeze the salary or allowances until the recovery of loss if he/she is convicted.

(2) Prior to the order of departmental action as referred to in Sub-section (1), the concerned accused shall not be denied from the right to file an application for a trial by the Court Martial if he/she so desires.

106. Limit on departmental action: (1) While ordering a penalty provided in Clause (a) of Sub-section (1) of Section 105, the battlefield penalty provided in Sub-clauses (1), (2) and (3) shall not be added to it.

(2) Amongst the penalties provided in Sub-clauses (1), (2), (3) or (4) of Clause (a) of Sub-section (1) of Section 105, if a person is imposed more than one penalty, the penalties provided in Sub-clauses (3) or (4) shall be added only after the completion of penalties provided in Sub-clauses (1) or (2).

(3) If more than one penalty provided in Sub-clauses (1), (2) or (3) of Clause (a) of Sub-section (1) of Section 105 is ordered, the total period of penalties shall not exceed Forty Five days.

(4) Personnel who are below the rank of non-commissioned officer (*Billadar*) shall not be imposed the penalty provided in Sub-clause (7) of Clause (a) of Sub-section (1) of Section 105.

107. Collective fine: (1) If any equipment, arms or ammunition, bullets, parts of arms of any company (*Gulm*) squadron, battery or other such units are lost or stolen, the Chief of Army Staff or Chief of the Corps (*Chamu*), Division (*Pritana*) or Brigade (*Bahini*), upon receiving the report of the Court of Inquiry, may impose a collective penalty on all non-commissioned officers (*Padik*), Sergeants (*Hudda*), Corporals (*Amaldar*), Lance Sergeants (*Pyuth*) of such unit or the persons whom he/she decides responsible thereto.

(2) Such a fine shall be reimbursed proportionately, from the salary of personnel who are so fined.

Chapter-12

Approval of Case and Rehearing (Revision)

108. Approval of the decision of penalty of General Court Martial: The decision or penalty issued by the General Court Martial shall be approved by the Government of Nepal or the officer authorized by Government of Nepal.

109. Approval of the decision or penalty of Summary General Court Martial: The decision or penalty issued by the Summary General Court Martial shall be approved by the person who convened the Court Martial or the senior officer if he/she (who convened the Summary General Court Martial) ordered to submit the decision or penalty to the senior level.

110. Approval of the decision of the District Court Martial: The decision or penalty issued by the District Court Martial shall be approved by the officer who is empowered to convene the General Court Martial or an officer authorized by him/her.

- 111. Procedures applicable in the approval of a case:** For the purpose of approval of a case pursuant to Sections 108, 109 and 110, the Court Martial which decided the case shall prepare, within Seven days from the date of the decision, the full text of decision along with clear grounds and reasons thereof, and shall forward the concerned file for approval within Thirty days. The agency (*Nikaya*) or authority who has an authority for approval shall finalize his/her actions on the files so received within Thirty days from the date of receipt.
- 112. Conditions may be laid down:** While authorizing pursuant to Sections 108 and 110, the authorizing officer may lay down conditions.
- 113. Reduction of penalty:** The officer who is authorized to approve the penalty imposed by the Court Martial may, subject to the conditions laid down pursuant to Section 112, reduce the penalty imposed by the Court Martial or approve a lesser penalty amongst the penalties prescribed in Section 101.
- 114. Rehearing (Revision) of decision or penalty:** (1) The endorsing (approving) officer may give an order to rehear the penalties imposed by the Court Martial.
- (2) If an order is issued pursuant to Sub-section (1), the Court Martial may examine additional evidence and proceed with and adjudicate the case.
- (3) If it is necessary to rehear a case, it shall be reheard by the same officers who issued the previous decision unless they are unable to be present for inevitable reasons.
- (4) If the officer who issued the original decision could not be present, a memorandum indicating the reasons thereto shall be attached to

the file and the members equal to the number who fail to be present shall be added, and the case shall be proceeded.

115. Decision or penalty of Summary Court Martial: (1) The decision or penalty of the Summary Court Martial shall not be approved and it shall be executed immediately.

(2) Notwithstanding anything contained in Sub-section (1), if the case is proceeded by an officer who has served less than Five years, the penalty shall not be executed, except during a military operation, unless approved by the Brigadier (*Bahinipati*) or officer senior to the Brigadier is received.

(3) The decision made or penalty imposed by the Summary Court Martial shall be submitted to the head of Brigade (*Bahinipati*) or Division (*Pritanapati*) or the officer authorized by the Chief of the Army Staff, and such officer shall examine the reality of the case and may nullify or reduce the conviction or penalty.

116. Alteration of decision or penalties: (1) If a penalty of a Court Martial which is approved or a decision or penalty which does not require approval, is not supported by evidence or cannot be recognized for any reason, and the officer who is empowered to reduce penalty pursuant to Section 113 issues a new decision or penalty, the same penalty shall be executed.

Provided that, no new decision or penalty shall be issued or imposed except in the case if the Court Martial questions the jurisdiction in respect to such decision or penalty, or the Court Martial is not satisfied with reasons given in such decision or penalty.

(2) Except if a new decision or penalty is issued pursuant to Sub-section (1), if the penalty issued by the Court Martial which is approved or does not require any approval is not recognized for any reason, the officer

prescribed in Sub-section (1) may, subject to the provisions referred to in the same Sub-section, issue a new penalty as he/she deems reasonable.

(3) The penalty which is imposed pursuant to Sub-sections (1) or (2) shall not exceed the penalty imposed by the Court Martial.

(4) The alteration or imposition of a penalty pursuant to this Section shall take effect as if imposed by a Court Martial.

117. Non-recognition of decision or approval: The decision or penalty issued by the Court Martial except by the Summary Court Martial shall not be recognized unless it is approved.

118. Reviewing order of departmental action: If the order of departmental action is deemed illegal or unjust or excessive, the following officers may review such order and nullify or alter or reduce such penalties.

- (a) Any senior commanding officer in respect to the penalties ordered by the commanding officer,
- (b) The Government of Nepal, Chief of Army Staff or other officer as assigned by the Chief of Army Staff in the case of a penalty imposed by any other officer.

119. Appeal against the decision or order of Court Martial: (1) There shall be an Army Special Court Martial which shall hear appeal against a decision or final order rendered by a General Court Martial and Summary General Court Martial pursuant to Clause (a) of Section 68.

- (a) Judge of an Appellate Court
nominated by Government of Nepal
on the recommendation of the
Judicial Council
 - (b) Secretary of Ministry of Defence
- Chairperson
Member

(c) Chief of *Prad Viwak*

Member

(2) The party aggrieved by the decision or final order rendered by a General Court Martial and Summary General Court Martial pursuant to Clause (a) of Section 68 may file an appeal before the Special Court Martial as referred to in Sub-section (1) within Thirty Five days of the date of such decision or final order.

(3) The Court established pursuant to Sub-section (1) shall have an original jurisdiction to proceed with and adjudicate the case as referred to in Section 62.

(4) An appeal may be filed before the Supreme Court against a decision made pursuant to Sub-section (3) within Thirty Five days of the decision.

(5) The procedures applicable to the original jurisdiction and appellate jurisdiction shall be as prescribed.

(6) The party aggrieved by a decision or final order of the Court Martial regarding offences as referred to in Clauses (b) and (c) of Section 68 may file an appeal before the Chief of Army Staff through the Judge Advocate General Department (*Prad Viwak*) within Thirty Five days of the date of decision or final order.

(7) There shall be an Appeal Hearing Committee which shall proceed with and adjudicate the cases filed pursuant to Sub-section (6):

(a) Brigadier General (*Sahayk Rathi*)
nominated by the Chief of Army
Staff

Chairperson

(b) Colonel (*Mahasenani*) nominated
by the Chief of Army Staff

Member

- (c) Representative of *Prad Viwak*
who was not involved in the Court
Martial of the concerned case Member

(8) The procedures applicable during the proceedings and adjudication of an appeal to the Committee as referred to in Sub-section (7) shall be as prescribed.

Chapter-13

Execution of Penalties

120. Calculation of the period of imprisonment: (1) The term of imprisonment imposed on a person by a Court Martial pursuant to this Act shall be counted from the date he/she is taken into custody irrespective of whether such penalty has been reheard or not, and from the date when the Chairperson signs the penalty in a case of the original proceeding of the case and an officer of Court Martial signs the penalty in a case of the Summary Court Martial.

(2) If a person convicted by a Court Martial for an offence during a military operation is imposed an imprisonment rather a dismissal from the service, and such person could not be sent to the prison for any reason, the prescribed officer may give an instruction assigning him/her to carry out the responsibilities for his/her post.

(3) The period of service performed pursuant to Sub-section (2) shall be counted in the period of imprisonment.

121. Executing the penalty of imprisonment: (1) An officer having authority to approve the penalty imposed on a person convicted by a Court Martial shall issue an order to send him/her in prison to serve the term of

imprisonment or an officer of Court Martial shall issue such order in relation to a person who is convicted by a Summary Court Martial.

(2) Upon receiving an order pursuant to Sub-section (1), the commanding officer of the person subjected to penalty or any other prescribed authority shall send him/her to prison along with a detention letter.

(3) When transferring a prisoner from one place to another, arrangements shall be made to prohibit escape, flee or commission of other undesirable acts.

(4) If a new order is issued in relation to a prisoner replacing the previous order, the officer who so orders shall issue a detention letter accordingly to the concerned prison chief.

(5) Detention shall not be deemed illegal merely on the ground that there is an error in the detention letter or any document thereto or it does not match with the prescribed format or for any other reason in case a person has been held in prison as per the decision imposing imprisonment by the Court Martial.

(6) If an order is issued to hold the convicted person in prison to serve the imprisonment, such a convict may be held in custody at any appropriate place until he/she is sent to the prison.

(7) In case the penalty does not exceed the term of Three months, the officer as referred to Sub-section (1) may issue an order to hold such person in military custody until the completion of term of imprisonment.

(8) During a period of military operation, the term of imprisonment may be served by holding him/her in custody as prescribed by the commanding officer.

(9) No prisoner held in prison pursuant to this Act shall be subjected to any corporal punishment during the period of imprisonment; and no penalty of imprisonment shall be imposed on him/her which is not in accordance with the prevailing law.

(10) If the commanding officer of the Army, Corps (*Chamu*), Division (*Pritana*) or Brigade (*Bahini*) believes that it is not possible to execute any penalty in military prison or military custody, he/she may issue an order to hold the concerned person in any prison.

122. Period to be considered as prisoner of war: For the purpose of Section 131, a person shall be deemed to have remained as a prisoner of war until investigations into his/her conduct pursuant to Section 129 are completed and until the day of his/her dismissal from service in case he/she is dismissed from service on the grounds of his/her conduct after the completion of investigations.

123. Reduction in salaries and allowances: (1) For the purpose of implementing an order of penalty, the salary and allowance of an officer shall be deducted as follows:

- (a) The salary and allowance for the day of his/her absence, except when satisfactory explanations are given to the commanding officer and those explanations are approved by the Government of Nepal,
- (b) The salary and allowances for the period held in custody or on suspension from duty as per the order issued by any Court Martial or other court or any authority who has an authority to issue an order for departmental action,

- (c) The amount of the salary decided to be paid to any person whose salary is illegally frozen or who is refused to be paid,
- (d) The amount required to reimburse the expenses resulting from an order issued by a Court Martial or an authority who has the power to issue an order for departmental action,
- (e) All such salaries and/or allowances subjected to confiscations or freezing pursuant to an order issued by a Court Martial or the Authority who has the power to issue an order for departmental action of confiscation or freezing,
- (f) The amount required to pay the fine imposed by a Court-martial or any other court pursuant to Section 66,
- (g) The amount required to reimburse the property stolen or causing any loss to the property of the Government of Nepal or the Nepal Army which is proved by the investigations conducted pursuant to the Rules which were stolen or damaged due to negligence or mistake of the officer,
- (h) All such salaries and allowances forfeited through an order of the Government of Nepal after the Court of Inquiry formed by the Chief of Army Staff has held that the concerned officer had cooperated with the enemy, or served the enemy while in the custody of the enemy or helped the enemy as per the orders of the

enemy or otherwise, or that he/she had been captured by the enemy for being intentionally negligent while on duty and held under the custody of the enemy, or that he/she had failed to return to his/her side even when he/she could do so after being captured by the enemy,

- (i) The amount to be paid as per the order of the Government of Nepal by the concerned officer for the maintenance of one's wife and/or children, or the amount being paid by the Government as maintenance for such children.

(2) Subject to the provisions of Sub-section (1), the salary and allowances of persons other than officers shall be deducted as follows:

- (a) The salary and allowances payable for each day of absence, desertion, detention as a prisoner of war or while being held in custody by the Court Martial, other courts or an authority who may order for a departmental action or absence resulting from battlefield penalty ordered by a Court Martial or an authority who may order for a departmental action and the salary and allowances payable for each day of absence resulting from detention prior to imprisonment after being convicted of an offence by a Court Martial or other court,
- (b) The salary and allowances payable for the period of detention or suspension from duty on the charge of committing an offence for which the person concerned is subsequently convicted by any Court Martial or

other court or an authority who has power to issue an order for departmental action,

- (c) The salary and allowances payable for each day of hospitalization after falling ill for which the doctor engaged in the treatment issues a certificate to the effect that the person concerned has fallen ill because of action taken by him/her which is deemed to be an offence under this Act,
- (d) The amount of salary and allowances payable for each day of hospitalization as determined by the officer prescribed or authorized by the Government of Nepal after falling ill for which the doctor engaged in the treatment issues a certificate to the effect that the person concerned has fallen ill because of his/her misconduct or negligence,
- (e) All such salaries and allowances as ordered for forfeiture or freezing by a Court Martial or an authority who has power to issue an order for departmental action,
- (f) The salary and allowances payable for each day from the date of dismissal from service in consideration of the conduct of the person concerned to the date of his/her release from the enemy, in case he/she is held as a prisoner of war or in custody by the enemy,
- (g) The amount needed to compensate as determined by his/her commanding officer for the loss or damage or

destruction or unnecessary expenses caused by him/her to any building or asset of the Government of Nepal,

- (h) The amount required to pay the fine imposed by a Court Martial or other Court or any authority who exercises power as referred to in Sections 66, 105 or 107.
- (i) The amount to be paid as per the order of the Government of Nepal by the concerned person for the maintenance of his wife and the children, or the amount being paid by the Government as maintenance for such children.

124. Calculation of period of absence without leave or custody: For the purpose of Clause (a) of Sub-section (2) of Section 114:

- (a) No person shall be deemed to have been detained or remained absent except when he/she has been detained or has remained absent without leave for less than Six hours consecutively on a single day or more than a single day.
- (b) If a person remains absent without leave or is detained for less than a day and thereby fails to discharge his/her military duty, and in case any other person is assigned to discharge such duty, such absence or detention for less than a day shall be treated as absence or detention for a day.
- (c) If a person remains absent without leave or is detained for Twelve or more hours consecutively on any day, the period of such absence or detention, irrespective of its duration, shall be taken as one days' absence or detention.

- (d) If a person remains absent or is detained from before midnight and such absence or detention ends after midnight, the period of such absence or detention shall be taken as one day's absence or detention.

125. Salary and allowances during trial: If a person who falls under jurisdiction of this Act is detained or suspended on any charge, the prescribed authority may, for the purpose of implementing Clause (b) of Sub-section (1) and Clause (b) of Sub-section (2) of Section 123, issue a directive to freeze his/her salary and allowances as prescribed until the disposal of the case.

126. Limits of reduction: Except when the concerned person has been punished with dismissal, all the deductions to be made from his/her salary and allowances according to the provisions contained in Clauses (d), (f), (g), (h) of Sub-section (2) of Section 123 shall not exceed half of his/her salary and allowances for any month.

127. Reduction from amounts other than provident fund and pension: Any amount to be deducted from the salary and allowances of any person pursuant to this Act may be deducted from any other amount payable to the person, except the Army provident fund and pension, without prejudice to any other procedure for collecting such deductions.

128. Reimbursement as if the governmental dues: The concerned Chief District Officer may be requested to reimburse the fine imposed under the proceeding of this Act. The Chief District Officer, if so requested, shall reimburse it in accordance with prevailing laws as if it is a governmental dues and shall forward it to the concerned department.

129. Salary and allowances of a person of war during the inquiry on conduct: If a person who falls under the jurisdiction of this Act becomes a

prisoner of war or captured by the enemy, and in case it becomes necessary under this Act or any other law to investigate his/her conduct during the investigation, the Chief of Army Staff or any officer authorized by the Chief of Army Staff, may issue an order to freeze his/her full or partial salary and allowances until the result of the investigation is revealed.

130. Reductions may be exempted: Any deduction to be made from salaries and allowances pursuant to this Act may be exempted upto the prescribed limit in the manner as prescribed.

131. Arrangement for the dependants of prisoners of war from the money so exempted:

- (a) The salary and allowances of a person, to whom this Act is applicable and who has been held as a prisoner of war, subjected to forfeiture under Clause (h) of Sub-section (1) and Clause (a) of Sub-section (2) of Section 122, if exempted as referred to in Section 130, shall be used for the arrangement of rations and other essential goods and materials for the dependents of such person. If such an arrangement is made, the remaining balance out of the salary and allowances shall be deemed to have been exempted.
- (b) If a person who falls under the jurisdiction of this Act has been held as a prisoner of war or is lost during a military operation, the arrangements for rations and other goods and materials for the dependents of such person shall be made out of his/her salary and allowances.

132. Execution of penalties during the stay outside of Nepal: (1) If the person who has been subjected to a penalty pursuant to this Act is staying outside the territory of Nepal, the penalty may be executed in the country

where he/she is staying or may be brought into Nepal where it shall be executed.

(2) If a person working with the Nepal Army is subjected to removal or has been removed from the service at the time he/she is staying outside of Nepal, he/she may be brought into Nepal.

Chapter-14

Miscellaneous

133. Control and responsibility on arms, ammunition and military equipment: (1) Subject to the provisions as prescribed by the Government of Nepal, the responsibility to control arms, ammunitions and other military equipments shall be in the Chief of Army Staff.

(2) If it is necessary to purchase arms, ammunitions and other military equipments for the Nepal Army, the Chief of Army Staff shall submit the details including justification thereof to the Ministry of Defence. The details so received shall be submitted to the National Defense Council to recommend for the policy decision to be made by the cabinet.

(3) The Chief of Army Staff may issue an order to provide such arms, ammunitions and other military equipments under his/her responsibility in accordance with prevailing laws and instructions issued by the Government of Nepal to any unit of the Nepal Army upon taking control and responsibility for them.

(4) The Chief of Army Staff may handover or rent out, with the approval of the Government of Nepal, the arms, ammunitions and other military equipments of the Nepal Army to the organs (Agencies) other than a unit of the Nepal Army.

(5) The Chief of Army Staff shall submit updated details of arms, ammunitions and other military equipments of the Nepal Army to the Ministry of Defence in every Six months, and in addition to this, the Chief of Army Staff shall have a duty to submit such updated details as demanded by the Ministry of Defence.

(6) The power to grant exemptions for arms and ammunitions used in the works and trainings shall remain with the Chief of Army Staff, except that the power to grant exemptions for arms and ammunitions used for other purposes shall remain with the Ministry of Defence.

134. Salary and benefits to the Chief of Army Staff: (1) The monthly salary of the Chief of Army Staff shall be as prescribed by the Government of Nepal.

(2) The Government of Nepal shall deduct Ten percent amount from the monthly salary of the Chief of Army Staff for the provident fund, and shall add Hundred percent of the deducted sum and deposit to the provident fund.

(3) The Government of Nepal shall arrange appropriate residence to the Chief of Army Staff who has no appropriate residence in Kathmandu.

(4) The Government of Nepal shall arrange motor vehicle for the Chief of Army Staff.

(5) After retirement from the service, the Chief of Army Staff shall be entitled to pensions in accordance with prevailing Rules on pensions of the Nepal Army.

(6) The family members of the joint family of the Chief of Army Staff shall be entitled to a family pension as follows:

- (a) In case the Chief of Army Staff dies during the tenure, the total sum of money (lump sum amount) as determined by the Government of Nepal,
- (b) If he/she dies within Nine years from the date of getting pension as referred to in Sub-section (5), the same amount for the period remaining to meet Nine years.

(7) Notwithstanding anything contained in Sub-sections (5) and (6), a pension or family pension shall not be granted for the period while assuming the duties of Acting Chief of Army Staff.

(8) The Chief of Army staff shall be granted, along with full salary, the following leaves every year:

- (a) Casual leave of Twenty days,
- (b) Home leave of Forty Five days,
- (c) Sick leave of Fifteen days.

(9) Casual leave which is not used within the same year shall not be accumulated for the next year. Home leave shall be accumulated for a period of maximum of Forty Five days and sick leave shall be accumulated for the whole period of the service. The Chief of Army Staff, when retiring, shall receive cash for the period of accumulated home leave and sick leave.

(10) The Chief of Army Staff may grant casual leave him/herself, and home leave and sick leave shall be approved by the Defence Minister.

(11) The Government of Nepal may call the Chief of Army Staff to work before the expiry of the leave period.

135. Declaration of engaged in military operation: The Government of Nepal may declare any person or force under the jurisdiction of this Act as

engaged in military operations wherever they may have been working, or regardless they might have been working under any other Acts.

136. Military prison: The Government of Nepal may prescribe any building, or any portion of a building, which contains humanely physical facilities as a Military prison for the purpose of imprisoning the person to whom the penalty of imprisonment has been rendered by a Court Martial.

137. Applicability of this Act to any other force: (1) The Government of Nepal may establish a separate force for a specific purpose upon publishing a Notification in the Nepal Gazette.

(2) The Government of Nepal, in the Notification published pursuant to Sub-section (1), may issue an order applying any or all Section of this Act either altering or not altering (*mutatis mutandis*), or postponing any Sections for some period and may also prescribe necessary conditions in the same order.

(3) The provisions of Sub-sections (2) may be applicable in respect to the persons as referred to in Clause (b) of Sub-section (1) of Section 3.

(4) The Government of Nepal may deploy army personnel of different ranks working with the Nepal Army to the force established pursuant to Sub-section (1).

138. Officer who exercises powers in a special circumstance: (1) The Government of Nepal may appoint an officer of any Army, Corps, Division and Brigade exercising the power of commanding officer to exercise power over persons to whom this Act is applicable and whose number is bigger than a number of army normally contained in any unit.

(2) While appointing a person as referred to in Sub-section (1) all limitations, exception and conditions the government may assign all the powers or any of the powers or may keep under this Act.

139. Classification and inclusion: (1) The Government of Nepal may classify any person or force of persons as referred to in Section 3 and to whom this Act is applicable into classes of officers, junior commissioned officers (*Padik*) or non commissioned officers (*Billadar*) or include person into one of such classes and cancel the classification.

(2) A person who is not classified into any of the classes of officer, junior commissioned officers (*Padik*) or non commissioned officers (*Billadar*) as referred to in Sub-section (1) he/she shall be deemed to be below the rank of non-commissioned officer.

140. Commission of Inquiry may be formed: (1) The Government of Nepal may form a Commission of Inquiry in accordance with the Commission of Inquiry Act, 2026 (1994) to inquire into a matter of public importance in which a person to whom this Act is applicable is engaged, and submit the report thereof.

(2) The functions, duties, powers and other arrangements of a Commission of Inquiry formed pursuant to Sub-section (2) shall be as provided by the same Act.

141. Delegation of Authority: (1) The Government of Nepal may delegate the power conferred on it in accordance with this Act and Rules framed under this Act to the Chief of Army Staff and subordinate agency or official or any governmental agency or official.

(2) The Government of Nepal may, in extra-ordinary situations, delegate/handover, powers conferred on it or any agency or official in accordance with prevailing laws to the Chief of Army Staff and subordinate unit to him as required.

(3) The power delegated pursuant to Sub-sections (1) and (2) shall not be barred from being resumed, even during the period of delegation, by the Government of Nepal, concerned agency or official by him/herself.

(4) The Chief of Army Staff may delegate the power conferred on him/her pursuant to this Act and prevailing laws to the subordinate agency or official under his/her own responsibility.

142. Instruction may be issued: (1) The Government of Nepal may issue necessary instructions to the Chief of Army Staff to pursue the objectives of this Act as required.

(2) It shall be the duty of the Chief of Army Staff to implement the instructions issued by the Government of Nepal as referred to in Sub-section (1).

143. Powers to frame Rules: (1) The Government of Nepal may frame necessary Rules to meet the objectives of this Act.

(2) Without prejudice to the generality of the powers conferred by Sub-section (1), such Rules may provide for any of the following matters in relation to the Nepal Army:

- (a) Regarding the appointment, leave, promotion, demotion, retirement, dismissal and other conditions of service,
- (b) Regarding immunities and privileges,
- (c) Regarding the operation of the Welfare Fund,
- (d) Regarding the investigation, inquiry, custody of an accused and filing of a case,
- (e) Regarding the formation, dissolution, postponement, continuance, jurisdiction, procedures, approval and

rehearing (revision) of cases, execution of decision or penalties,

- (f) Regarding the determination on the type of battlefield penalty,
- (g) Regarding the formation and procedure of the Court of Inquiry, the method of taking an oath, and recording evidence,
- (h) Regarding the arrangement of assistance to the dependants and its implementation,
- (i) Regarding the write off of the useless and unused goods,
- (j) Regarding the arrangement of the salary, allowances and other amounts of a person who deserts,
- (k) Regarding the administration, supervision, and management of the Army prison and conditions of service of prison officer,
- (l) Regarding security, discipline, special service, work, penalty for offences and exemptions of penalties for prisoners,
- (m) Regarding keeping, using, handling and write off of the arms and ammunitions and other military equipments,
- (n) Regarding write off of the money spend in intelligence, money used from the revolving fund, money used from contingency (*Bhaipari*) fund,
- (o) Regarding entertainment subsidies,

- (p) Regarding actions against a person who deserts,
- (q) Regarding arrangement of military hospitals,
- (r) Regarding military donations and prizes,
- (s) Regarding appointment in the *Prad Viwak*,
- (t) Regarding air transportation and maintenance of aeroplanes,
- (u) Regarding women engaged as parachute folder,
- (v) Regarding defence financial procedure and daily travel allowances,
- (w) Regarding gratuity (*Upadan*), pensions and other benefits,
- (x) Regarding short term services,
- (y) Regarding military nurses,
- (z) Regarding the accounts group,
- (aa) Regarding Military Police,
- (bb) Regarding Army technicians,
- (cc) Regarding appointment of former Army personnel.

144. Repeal and saving: (1) The following Acts are, hereby, repealed:

- (a) Army (Delegation of Authority) Act, 2015.
- (b) Army Act, 2016.
- (c) Functions, duties, powers and conditions of service of the Chief of Army Staff Act, 2016.

(2) Persons of all ranks working with the Nepal Army at the time of commencement of this Act shall be deemed to have been remained in their

respective post and rank of the Nepal Army, and they shall remain in office until the period prescribed by the prevailing law related to the Army.

(3) The acts done and activities performed pursuant to the Acts as referred to in Sub-section (1), shall be deemed to have been done or performed in accordance with this Act.

145. Modifications: The following words in the prevailing laws are modified as following:

- (a) "Nepal Army" instead of Royal Nepal Army.
- (b) "Nepal Army" instead of "Armed Force of His Majesty".

Schedule-1

(Relating to Sub-section (4) of Section 7)

Posts in the Nepal Army

- (a) Chief of Army Staff (*Maharathi*)
- (b) Lieutenant General (*Rathi*)
- (c) Major General (*Uparathi*)
- (d) Brigadier General (*Sahayak Rathi*)
- (e) Colonel (*Mahasenani*)
- (f) Lieutenant Colonel (*Pramukh Senani*)
- (g) Major (*Senani*)
- (h) Captain (*Sahasenani*)
- (i) Lieutenant (*Upasenani*)
- (j) Second Lieutenant (*Sahayak Senani*)
- (k) Chief Warrent Officer (*Subedar Major*)
- (l) Warrent Officer One (*Subedar*)
- (m) Warrent Officer Two (*Jamdar*)
- (n) Sergeant (*Hudda*)
- (o) Corporal (*Amaldar*)
- (p) Lance Corporal (*Pyuth*)
- (q) Soldiers (*Sipahi*)
- (r) Followers

¹³Schedule-2

(Relating to Sub-section (2) of Section 16)

Oath

I,, being fully loyal to the country and the people, do hereby honestly and faithfully promise/ take an oath in the name of god that I, by being fully loyal to the Interim-Constitution of Nepal, 2063 (2007) promulgated upon paying high honour to that the state power and sovereignty of Nepal must be inherent only in Nepali people, shall honestly perform the duties of the post subject to the prevailing laws neither fearing from any one nor taking the side of any one nor being biased against anyone , or having bad faith in, any one and I shall not disclose or hint any matter which I come to know in the performance of my duties in any manner at any time when I hold or cease to hold the Office except in compliance with the prevailing laws.

Date:

Signature

¹³ Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066.

Schedule-3

(Relating to Sub-section (1) of Section 17)

Age bar to the persons serving in Nepal Army

General:

(a)	Chief of Army Staff	-	Sixty One years
(b)	Lieutenant General	-	Fifty Eight years
(c)	Major General	-	Fifty Seven years
(d)	Brigadier General	-	Fifty Six years
(e)	Colonel	-	Fifty Six years
(f)	Lieutenant Colonel	-	Fifty Four years
(g)	Major	-	Fifty Three years
(h)	Captain	-	Fifty Two years
(i)	Lieutenant	-	Fifty One years
(j)	Second Lieutenant	-	Fifty years

Technician:

(a)	Major General	-	Fifty Eight years
(b)	Brigadier General	-	Fifty Eight years
(c)	Colonel	-	Fifty Seven years
(d)	Lieutenant Colonel	-	Fifty Six years
(e)	From Second Lieutenant to Major	-	Fifty Five years

Schedule-4

(Relating to Sub-section (2) of Section 17)

Tenure of the Officers of the Nepal Army

General:

- | | | | |
|-----|------------------------------------|---|--------------|
| (a) | Lieutenant General | - | Two years |
| (b) | Major General | - | Three years |
| (c) | Brigadier General | - | Four years |
| (d) | Colonel | - | Five years |
| (e) | Lieutenant Colonel | - | Five years |
| (f) | Major (Total tenure as an officer) | - | Twenty years |

Technician:

- | | | | |
|-----|--------------------|---|-------------|
| (a) | Major General | - | Three years |
| (b) | Brigadier General | - | Four years |
| (c) | Colonel | - | Five years |
| (d) | Lieutenant Colonel | - | Five years |

Schedule-5

(Relating to Sub-section (3) of Section 17)

Tenure which may be extend of the Officers of Nepal Army

General:

(g)	Lieutenant General	-	One Term of a year
(h)	Major General	-	One Term of Two years
(i)	Brigadier General	-	One Term of Three years
(j)	Colonel	-	One Term of Two years
(k)	Lieutenant Colonel	-	One Term of a year
(l)	Major	-	Five years one term for the first time and Three years one term for the Second time, altogether Eight years

Technician:

(a)	Major General	-	One Term of a year
(b)	Brigadier General	-	One Term of Three years
(c)	Colonel and Lieutenant Colonel	-	One Term of Three years

Note: The Lieutenant Colonel who retires from the First term shall receive pension upon extending the term.