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**Border Security Force Act, 1968**

**Chapter VII - Procedure of Security Force Courts**

At every General Security Force Court or Petty Security Force Court, the senior member shall be the Presiding Officer.

**Section 83 - Law Officer**

Every General Security Force Court shall, and every Petty Security Force Court may, be attended by a Law Officer, or if no such officer is available, an officer approved by the Chief Law Officer, or a Law Officer.

**Section 84 - Challenge**

(1) At all trials by a General Security Force Court or by a Petty Security Force Court, as soon as the court is assembled, the names of the presiding officer and members shall be read over to the accused, who shall thereupon be asked whether he objects to being tried by any officer sitting on the court.

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

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

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

**Section 85 - Oaths of member, Law Officer and witness**

(1) An oath or affirmation in the prescribed manner shall be administered to every member of every Security Force Court and to the Law Officer or as the case may be the officer approved under section 83, before the commencement of the trial.

(2) Every person giving evidence before a Security Force Court shall be examined after being duly sworn or affirmed in the prescribed form.

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

**Section 86 - Voting by members**

(1) Subject to the provisions of sub-sections (2) and (3), every decision of a Security Force Court shall be passed by an absolute majority of votes; and where there is an equality of votes on either the finding or the sentence, the decision shall be in favour of the accused.

(2) No sentence of death shall be passed by a General Security Force Court without the concurrence of at least two-thirds of the members of the court.

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

**Section 87 - General rule as to evidence**

The Indian Evidence Act, 1872 (1 of 1872), shall, subject to the provisions of this Act, apply to all proceedings before a Security Force Court.

**Section 88 - Judicial notice**

A Security Force Court may take judicial notice of any matter within the general knowledge of the members as officers of the Force.

**Section 89 - Summoning witnesses**

(1) The convening officer, the presiding officer of a Security Force Court, the Law Officer or, as the case may be, the officer approved under section 83 or the Commandant of the accused person may, by summons under his hand, require the attendance at a time and place to be mentioned in the summons, of any person either to give evidence or to produce any document or other thing.

(2) In the case of a witness who is subject to this Act, the summons shall be sent to his Commandant and such officer shall

serve it upon him accordingly.

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

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

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**Section 90 - Documents exempted from production**

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(1) Nothing in section 89 shall be deemed to affect the operation of sections 123 and 124 of the Indian Evidence Act, 1872(1 of 1872) or to apply to any letter, postcard, telegram or other document in the custody of the postal or telegraph authorities.

(2) If any document in such custody is, in the opinion of any District Magistrate, Chief Presidency Magistrate, High Court or Court of Sessions, wanted for the purpose of any Security Force Court, such magistrate, or court may require the postal or telegraph authorities, as the case may be, to deliver such document to such person as such magistrate, or court may direct.

(3) If any such document is, in the opinion of any other magistrate or of any Commissioner of Police or District Superintendent of Police, wanted for any such purpose, he may require the postal or telegraph authorities, as the case may be, to cause such search to be made for, and to detain such document pending the orders of any such District Magistrate, Chief Presidency Magistrate or High Court or Court of Sessions.

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**Section 91 - Commissions for examination of witnesses**

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(1) Whenever in the course of a trial by a Security Force Court, it appears to the court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, in the circumstances of the case, would be unreasonable, such court may address the Chief Law Officer in order that a commission to take the evidence of such witness may be issued.

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

(3) The magistrate or officer to whom the commission is issued, or, if he is the District Magistrate, he or such Magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is, or shall summon the witness before him and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in the trial of warrant cases under the Code of Criminal Procedure, 1898 (5 of 1898).

(4) When the witness resides in a tribal area or in any place outside India, the commission may be issued in the manner specified in Chapter XL of the Code of Criminal Procedure, 1898 (5 of 1898).

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**Section 92 - Examination of witness on commission**

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(1) The prosecutor and the accused person in any case in which a commission is issued under section 91 may respectively forward any interrogatories in writing which the court may think relevant to the issue, and the Magistrate or officer executing the commission shall examine the witness upon such interrogatories.

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

(3) After a commission issued under section 91 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder to the Chief Law Officer.

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

(5) In every case in which a commission is issued under section 91, the trial may be adjourned for specified time reasonably sufficient for the execution and return of the commission.

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**Section 93 - Conviction of offence not charged**

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(1) A person charged before a Security Force Court with desertion may be found guilty of attempting to desert or of being absent without leave.

(2) A person charged before a Security Force Court with attempting to desert may be found guilty of being absent without leave.

(3) A person charged before a Security Force Court with using criminal force may be found guilty of assault.

(4) A person charged before a Security Force Court with using threatening language may be found guilty of using insubordinate language.

(5) A person charged before a Security Force Court with any one of the offences specified in clauses (a), (b), (c) and (d) of section 30 may be found guilty of any other of these offences with which he might have been charged.

(6) A person charged before a Security Force Court with an offence punishable under section 46 may be found guilty of any other offence of which he might have been found guilty, if the provisions of the Code of Criminal Procedure, 1898 (5 of 1898), were applicable.

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

(8) A person charged before a Security Force Court with any offence under this Act may be found guilty of having attempted or abetted the Commission of that offence, although the attempt or abetment is not separately charged.

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**Section 94 - Presumption as to signatures**

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In any proceeding under this Act, any application, certificate, warrant, reply or other document purporting to be signed by an officer in the service of the Government shall, on production, be presumed to have been duly signed by the person by whom and in the character in which it purports to have been signed, until the contrary is shown.

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**Section 95 - Enrolment paper**

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

(2) The enrolment of such person may be proved by the production of the original or a copy of his enrolment paper purporting to be certified to be a true copy by the officer having the custody of the enrolment paper.

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**Section 96 - Presumption as to certain documents**

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(1) A letter, return or other document respecting the service of any person in, or the dismissal or discharge of any person from, any unit of the Force, or respecting the circumstances of any person not having served in, or belonged to, any unit of the Force, if purporting to be signed by or on behalf of the Central Government or the Director-General, or by any prescribed officer, shall be evidence of the facts stated in such letter, return or other document.

(2) A Border Security Force List or Gazette purporting to be published by authority shall be evidence of the status and rank of the officers, subordinate officers therein mentioned, and of any appointment held by them and of the battalion, unit, or branch of the Force to which they belong.

(3) Where a record is made in any battalion book in pursuance of this Act or of any rules made thereunder or otherwise in the discharge of official duties and purports to be signed by the commandant or by the officer whose duty it is to make such record, such record shall be evidence of the facts therein stated.

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

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

(6) Where any person subject to this Act is being tried on a charge of desertion or of absence without leave and such person has surrendered himself into the custody of, or has been apprehended by, a police officer not below the rank of an officer in charge of a police station, a certificate purporting to be signed by such police officer and stating the fact, date and place of such surrender or apprehension and the manner in which he was dressed shall be evidence of the matters so stated.

(7) Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government upon any matter or thing duly submitted to him for examination or analysis and report, may be used as evidence in any proceeding under this Act.

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**Section 97 - Reference by accused to Government Officer**

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(1) If at any trial for desertion or absence without leave, overstaying leave or not rejoining when warned for service, the accused person states in his defence any sufficient or reasonable excuse for his unauthorised absence, and refers in support thereof to any officer in the service of the Government, or if it appears that any such officer is likely to prove or disprove the said statement in the defence, the court shall address such officer and adjourn the proceedings until his reply is received.

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

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

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**Section 98 - Evidence of previous convictions and general character**

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(1) When any person subject to this Act has been convicted by a Security Force Court of any offence, such Security Force Court may inquire into, and receive, and record evidence of any previous convictions of such person, either by a Security Force Court or by a criminal court, or any previous award of punishment under section 53 or 55, and may further inquire into and record the general character of such person and such other matters as may be prescribed.

(2) Evidence received under this section may be either oral, or in the shape of entries in, or certified extracts from, books of Security Force Courts or other official records; and it shall not be necessary to give notice before trial to the person tried that evidence as to his previous convictions or character will be received.

(3) At a Summary Security Force Court, the officer holding the trial may, if he thinks fit, record any previous convictions against the offender, his general character, and such other matters as may be prescribed, as of his own knowledge instead of requiring them to be proved under the foregoing provisions of this section.

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**Section 99 - Lunacy of accused**

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

(2) The presiding officer of the court, or, in the case of a Summary Security Force Court, the officer holding the trial, shall forthwith report the case to the confirming officer, or to the authority empowered to deal with its finding under section 115, as the case may be.

(3) The confirming officer to whom the case is reported under sub-section (2) may, if he does not confirm the finding, take steps to have the accused person tried by the same or another Security Force Court for the offence with which he was charged.

(4) The authority to whom the finding of a Summary Security Force Court is reported under sub-section (2), and a confirming officer confirming the finding in any case so reported to him shall order the accused person to be kept in custody in the prescribed manner and shall report the case for the orders of the Central Government.

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

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**Section 100 - Subsequent fitness of lunatic accused for trial**

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Where any accused person, having been found by reason of unsoundness of mind to be incapable of making his defence, is in custody or under detention under section 99, any officer prescribed in this behalf, may--

(a) if such person is in custody under sub-section (4) of section 99, on the report of a medical officer that he is capable of making his defence, or

(b) if such person is detained in a jail under sub-section (5) of section 99, on a certificate of the Inspector General of Prisons, and if such person is detained in a lunatic asylum under the said sub-section, on a certificate of any two or more of the visitors of such asylum and if he is detained in any other place under that sub-section, on a certificate of the prescribed authority, that he is capable of making his defence, take steps to have such person tried by the same or another Security Force Court for the offence with which he was originally charged or, if the offence is a civil offence, by a criminal court.

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**Section 101 - Transmission to Central Government of orders under section 100**

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A copy of every order made by an officer under section 100 for the trial of the accused shall forthwith be sent to the Central Government.

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**Section 102 - Release of lunatic accused**

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Where any person is in custody under sub-section (4) of section 99 or under detention under sub-section (5) of that section,--

(a) if such person is in custody under the said sub-section (4), on the report of a medical officer, or

(b) if such person is detained under the said sub-section (5), on a certificate from any of the authorities mentioned in clause (b) of section 100 that in the judgment of such officer or authority such person may be released without danger of his doing injury to himself or to any other person,

the Central Government may order that such person be released or detained in custody, or transferred to a public lunatic asylum if he has not already been sent to such an asylum.

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**Section 103 - Delivery of lunatic accused to relatives**

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Where any relative or friend of any person who is in custody under sub-section (4) of section 99 or under detention under sub-section (5) of that section desires that he should be delivered to his care and custody, the Central Government may, upon application by such relative or friend and, on his giving security to the satisfaction of that Government that the person delivered shall be properly taken care of, and, prevented from doing injury to himself or to any other person, and be produced for the inspection of such officer, and at such times and places, as the Central Government may direct, order such person to be delivered to such relative or friend.

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**Section 104 - Order for custody and disposal of property pending trial**

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When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before a Security Force Court during a trial, the court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the trial, and if the property is

subject to speedy or natural decay may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

**Section 105 - Order for disposal of property regarding which offence is committed**

(1) After the conclusion of a trial before any Security Force Court, the court or the officer confirming the finding or sentence of such Security Force Court, or any authority superior to such officer, or, in the case of a Summary Security Force Court whose finding or sentence does not require confirmation, an officer not below the rank of Deputy Inspector-General within whose command the trial was held, may make such order as it or he thinks fit for the disposal by destruction, confiscation, delivery to any person claiming to be entitled to possession thereof, or otherwise, of any property or document produced before the court or in its custody, or regarding which any offence appears to have been committed or which has been used for the commission of any offence.

(2) Where any order has been made under sub-section (1) in respect of property regarding which an offence appears to have been committed, a copy of such order signed and certified by the authority making the same may, whether the trial was held within India or not, be sent to a magistrate within whose jurisdiction such property for the time being is situated, and such magistrate shall thereupon cause the order to be carried into effect as if it were an order passed by him under the provisions of the Code of Criminal Procedure, 1898 (5 of 1898).

(3) In this section, the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any person, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange whether immediately or otherwise.

**Section 106 - Powers of Security Force Court in relation to proceedings under this Act**

Any trial by a Security Force Court under the provisions of this Act shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Security Force Court shall be deemed to be a court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898 (5 of 1898).