

Border Security Force Act, 1968

Chapter IX - Execution of Sentence, Pardons, Remissions, Etc.

In awarding a sentence of death, a Security Force Court shall, in its discretion direct the offender shall suffer death by being hanged by the neck until he be dead, or shall suffer death by being shot to death.

Section 120 - Commencement of sentence of imprisonment

Whenever any person is sentenced by a Security Force Court under this Act to imprisonment, the term of his sentence shall, whether it has been revised or not, be reckoned to commence on the day on which the original proceedings were signed by the presiding officer, or in the case of a Summary Security Force Court, by the court.

Section 121 - Execution of sentence of imprisonment

(1) Whenever any sentence of imprisonment is passed under this Act by a Security Force Court or whenever any sentence of death is commuted to imprisonment, the confirming officer or in case of a Summary Security Force Court the officer holding the court or such other officer as may be prescribed shall, save as otherwise provided in sub-sections (3) and (4) direct that the sentence shall be carried out by confinement in a civil prison.

(2) When a direction has been made under sub-section (1) the Commandant of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer in charge of the prison in which such person is to be confined and shall arrange for his despatch to such prison with the warrant.

(3) In the case of a sentence of imprisonment for a period not exceeding three months and passed under this Act by a Security Force Court, the appropriate officer under subsection (1) may direct that the sentence shall be carried out by confinement in Force custody instead of in a civil prison.

(4) On active duty, a sentence of imprisonment may be carried out by confinement in such place as the Deputy Inspector-General within whose command the person sentenced is serving or any prescribed officer, may from time to time appoint.

Section 121A - Period of Custody undergone by a person to be set-off against the imprisonment

¹[121A. Period of Custody undergone by a person to be set-off against the imprisonment

When any person subject to this Act is sentenced by a security force court of fine, the period spent by him in civil of force custody during investigation, inquiry of trial of the same case, and before the date of order of such sentence, shall be set off against the term of imprisonment imposed upon him, and the liability of such person to undergo imprisonment on such order of sentence shall be restricted to the remainder, if any, of the term of imprisonment imposed upon him.]

1. Inserted by Act 35 of 2000, section 2 (w.e.f. 1-9-2000).

Section 122 - Temporary custody of offender

Where a sentence of imprisonment is directed to be under-gone in a civil prison the offender may be kept in Force custody or in any other fit place, till such time as it is possible to send him to a civil prison.

Section 123 - Execution of sentence of imprisonment in special cases

Whenever, in the opinion of an officer not below the rank of Deputy Inspector-General within whose command the trial is held, any sentence or portion of a sentence of imprisonment cannot for special reasons, conveniently be carried out in Force custody in accordance with the provisions of section 121, such officer may direct that such sentence or portion of sentence shall be carried out by confinement in any civil prison or other fit place.

Section 124 - Conveyance of prisoner from place to place

A person under sentence of imprisonment may during his conveyance from place to place, or when on board ship, aircraft, or otherwise, be subjected to such restraint as is necessary for his safe conduct and removal.

Section 125 - Communication of certain orders to prison officers

Whenever an order is duly made under this Act setting aside or varying any sentence, order or warrant under which any person is confined in a civil prison, a warrant in accordance with such order shall be forwarded by the officer making the order or his staff officer or such other person as may be prescribed, to the officer in charge of the prison in which such

person is confined.

Section 126 - Execution of sentence of fine

When a sentence of fine is imposed by a Security Force Court under section 46, a copy of such sentence signed and certified by the confirming officer, or where no confirmation is required, by the officer holding the trial may be sent to any magistrate in India, and such magistrate shall there upon cause the fine to be recovered in accordance with the provisions of the Code of Criminal Procedure, 1898 (5 of 1898), as if it were a sentence of fine imposed by such magistrate.

Section 127 - Informality or error in the order or warrant

Whenever any person is sentenced to imprisonment under this Act, and is undergoing the sentence in any place or manner in which he might be confined under a lawful order or warrant in pursuance of this Act, the confinement of such person shall not be deemed to be illegal only by reason of informality or error in, or as respects, the order, warrant or other document, or the authority by which, or in pursuance whereof such person was brought into, or, is confined in any such place, and any such order, warrant or document may be amended accordingly.

Section 128 - Pardon and remission

When any person subject to this Act has been convicted by a Security Force Court of any offence, the Central Government or the Director-General or, in the case of a sentence, which he could have confirmed or which did not require confirmation, an officer not below the rank of Deputy Inspector-General within whose command such person at the time of conviction was serving, or the prescribed officer may,—

- (a) either with or without conditions which the person sentenced accepts, pardon the person or remit the whole or any part of the punishment awarded; or
 - (b) mitigate the punishment awarded; or
 - (c) commute such punishment for any less punishment or punishments mentioned in this Act;
 - (d) either with or without conditions which the person sentenced accepts, release the person on parole.
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Section 129 - Cancellation of conditional pardon, release on parole or remission

(1) If any condition on which a person has been pardoned or released on parole or a punishment has been remitted is, in the opinion of the authority which granted the pardon, release or remission, not fulfilled, such authority may cancel the pardon, release or remission, and thereupon the sentence of the court shall be carried into effect as if such pardon, release or remission had not been granted.

(2) A person whose sentence of imprisonment is carried into effect under the provisions of sub-section (1) shall undergo only the unexpired portion of his sentence.

Section 130 - Suspension of sentence of imprisonment

(1) Where a person subject to this Act is sentenced by a Security Force Court to imprisonment, the Central Government, the Director-General or any officer empowered to convene a General Security Force Court may suspend the sentence whether or not the offender has already been committed to prison or to Force custody.

(2) The authority or officer specified in sub-section (1) may, in the case of an offender so sentenced direct that until the orders of such authority or officer have been obtained the offender shall not be committed to prison or to Force custody.

(3) The powers conferred by sub-sections (1) and (2) may be exercised in the case of any such sentence which has been confirmed, reduced or commuted.

Section 131 - Orders pending suspension

(1) Where the sentence referred to in section 130 is imposed by a Security Force Court other than a Summary Security Force Court the confirming officer may, when confirming the sentence, direct that the offender be not committed to prison or to Force custody until the orders of the authority or officer specified in section 130, have been obtained.

(2) Where a sentence of imprisonment is imposed by a Summary Security Force Court, the officer holding the trial or the officer authorised to approve of the sentence under subsection (2) of section 114 may make the direction referred to in sub-section (1).

Section 132 - Release on suspension

Where a sentence is suspended under section 130, the offender shall forthwith be released from custody.

Section 133 - Computation of period of suspension

Any period during which the sentence is under suspension shall be reckoned as part of the term of such sentence.

Section 134 - Order after suspension

The authority or officer specified in section 130 may, at any time while a sentence is suspended, order--

- (a) that the offender be committed to undergo the unexpired portion of the sentence; or
 - (b) that the sentence be remitted.
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Section 135 - Reconsideration of case after suspension

(1) Where a sentence has been suspended, the case may at any time, and shall at intervals of not more than four months, be reconsidered by the authority or officer specified in section 130, or by any officer not below the rank of a Deputy Inspector-General duly authorised by the authority or officer specified in section 130.

(2) Where on such reconsideration by the officer so authorised it appears to him that the conduct of offender since his conviction has been such as to justify a remission of the sentence, he shall refer the matter to the authority or officer specified in section 130.

Section 136 - Fresh sentence after suspension

Where an offender, while a sentence on him is suspended under this Act, is sentenced for any other offence, then--

- (a) if the further sentence is also suspended under this Act, the two sentences shall run concurrently;
 - (b) if the further sentence is for a period of three months or more and is not suspended under this Act, the offender shall also be committed to prison or Force custody for the unexpired portion of the previous sentence, but both sentences shall run concurrently; and
 - (c) if the further sentence is for a period of less than three months and is not suspended under this Act, the offender shall be so committed on that sentence only, and the previous sentence shall, subject to any order which may be passed under section 134 or section 135 continue to be suspended.
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Section 137 - Scope of power of suspension

The powers conferred by sections 130 and 134 shall be in addition to, and not in derogation of, the power of mitigation, remission and commutation.

Section 138 - Effect of suspension and remission on dismissal

(1) Where in addition to any other sentence the punishment of dismissal has been awarded by a Security Force Court, and such other sentence is suspended under section 130, then, such dismissal shall not take effect until so ordered by the authority or officer specified in section 130.

(2) If such other sentence is remitted under section 134, the punishment of dismissal shall also be remitted.
