



## **Arrest and custody in Military**

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### **Abstract:-**

Where individual liberty comes into conflict with an interest of the Security of the State, or public order, then the liberty of the individual must give way to the larger interest of the nation<sup>1</sup>.

Whenever any person subject to Military is charged with an offence, he may be taken into custody which means arrest or confinement according to the usages of the Military services, but such a course is by no means obligatory. Military custody included Army, Navy and Air force Custody. If the offence not serious it may be investigated and disposed of without placing the offender under arrest. However no person who is arrested shall be detained in Custody without being informed, as soon as maybe, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal Practitioner of his choice. It is, therefore, Paramount that unless there is very grave reason, which should be spelt out in the order of the competent authority placing the accused under arrest during the trial, the accused should not be placed under arrest. Such order must be right just and fair and not arbitrary fanciful or oppressive; since in our policy, liberty is the rule and custody is an exception<sup>2</sup>.

### **Keywords :-**

Liberty, Security, Conflicts, Custody, Confinement, Obligatory, Practioner, Paramount, Competent authority, arbitrary fanciful, oppressive, exception, apprehension, imprisonment, deliberately, undermine absolved, perpetuating.



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## **Introduction :-**

The method of arresting a person subject to Army Act is informal. Neither the offences are classified as cognizable and non cognizable nor any warrant is issued or required to be issues for carrying out arrest. There are no provisions relating to bail and offender is also not required to be produced before any Magistrate within a Period of Twenty four hours of arrest. Any Senior officer is empowered to place under arrest any person subject to the Army Act who is accused of an offence, order for placing the person under arrest can be oral or written.

## **Types of arrest**

There are two kinds of arrest

- (a) Open arrest and
- (b) Close arrest

## **Open Arrest:-**

When arrest is not desolbed by authority ordering it is as open arrest, it means close arrest.

In open arrest an individual is neither confined to a Prisoner's Cell; nor he is placed under the charge of a guard piquet escort, sentry or Provost Marshal etc. arrested Person's movements are restricted to a certain limited area such as camp or unit lines. No escort will follow him, whenever he comesou of his quarters he is required to be in uniform. He will not attend places of amusement or public assembly. He will not wear his belt, sword and insignia. He shall be out on his honour or parole in an open arrest.



An officer, JCO or WO under open arrest may take exercise at stated periods and within stated limits, which will usually be the precincts of the barracks or lamp of his unit, these limits may be enlarged at the discretion of the OC on the spot. He will not appear outside his quarters or tent dressed otherwise than in uniform<sup>3</sup>

A Person under open arrest will not quit the regiment lines, except on duty; or with special permission until his case is disposed of; but he will attend Parades and may be ordered to perform all the duties<sup>4</sup>.

### **Close Arrest:-**

The rule which govern the custody of officers apply to JCOs, WOs and NCOS also; if charged with a serious offence a JCO, WO or NCO will be, as a rule be placed under arrest forth with; but in case of doubt as to the commission of an offence, the arrest may be delayed, and if the offence is not serious, it may be disposed of without putting him under arrest.

Persons subject to the Army Act under section 2(b)(i) as officers, JCO, WO and NCOs may, when charged with an offence, be placed under arrest. They will be put under the same restrictions as persons holding these ranks<sup>5</sup>

A sepoy under close arrest in the guard detention room will be allowed the use of his bedding, except when charged with intoxication. A Sepoy under close arrest will take sufficient exercise under supervision<sup>6</sup>. He will be deprived of knives, or other weapons<sup>7</sup>.



## **Who may order for Arrest**

The following authorities are competent to arrest a Person subject to Army Act.

- (a) Any superior Officer<sup>8</sup>
- (b) Any officer, whether superior or not when the person, being an officer, is engaged in quarrel, affray or disorder<sup>9</sup>.
- (c) A Police officer or magistrate<sup>10</sup>.
- (d) Authorities receiving report of desertion<sup>11</sup>.
- (e) Any Police officer (in case of a person reasonably believe to be subject to the Army Act and to be a deserter or travelling without authority<sup>12</sup>.
- (f) Civil Police for civil offences under the Powers given to then by Cr.P.C.
- (g) Provost Marshal, which includes Army, Navy and Air force<sup>13</sup>.
- (h) Court-Martial<sup>14</sup>

## **Circumstance when Arrest can be imposed**

Army Act does not make it obligatory to impose arrest in any specific case. Never the less, considering the requirement of justice and discipline arrest may be reasonably imposed in the following cases.

- (a) When an officer is punishable with death, imprisonment for life or imprisonment exceeding seven years
- (b) When considering the nature of offence and requirement if discipline it is necessary to place the offender in arrest
- (c) When the offender deliberately undermines discipline.



- (d) When the offender is of violent disposition
- (e) When the offender is likely to absence himself with a view to avoid trial.
- (f) When the offender is likely to influence witnesses or tamper evidence
- (g) When there is a reasonable apprehension that the offender may harm himself.

### **Arrest by civil authorities**<sup>15</sup>

Whenever any person subject to Army Act, who is accused of any offence is within the jurisdiction of any magistrate or police officer, such magistrate or police officer shall aid in the apprehension and delivery to Military custody of such person upon receipt of a written application to that effect signed by his commanding officer.

### **Performance of duties while under close arrest**

- (a) An officer, JCO or WO under arrest will not perform any duty other than personal routine duties and such duties as may be necessary to relieve him from the charge of any cash, equipment, stores accounts or office of which he may have charge or for which he may be responsible.
- (b) Except on active service, a NCO under arrest or a Sepoy under close arrest, will not be required to perform any duty other than personal routine duties, such for instance, as may be necessary to keep clean his quarters, such for instance, as may be necessary to keep clean his quarters, person, and belonging; also the duties necessary to relieve him from the charge of any cash, equipment, store, Account or office which he may have charge or for which he may be responsible. He will not bear arms, except in an emergency by order of his commanding officer



or on the line of March on active service he may be ordered to bear arms, attend parades and perform all such duties as may be required of him;

- (c) If by error, or in emergency an officer, JCO, WO or NCO under arrest, or a Sepoy under close arrest, has been ordered to perform any duty, he is not thereby absolved from liability to be proceeded against for the offence for which he is under arrest<sup>16</sup>.

### **Period of Arrest**

- (a) Person charged with offences shall not be detained in custody for more than 48 hrs without the charge being investigated<sup>17</sup>.
- (b) If a person has to be detained for more than 8 days except when they are on active service without Court-Martial for his trial being ordered to assemble, a delay report shall be forwarded to an officer empowered to convene a DCM/GCM. Such officer may direct that the accused be released without prejudice to re-arrest or may take up the case with GOC-in-C Command for obtaining permission of Chief of Army Staff or control government for detention of such person beyond two or three months.
- (c) Request for sanction of COAS/ Central government for detention in military custody beyond 2/3 months shall reach Army Headquarters 20 days before the Period of 2/3 months expires.

### **Grant of leave during the period of Arrest :-**

No leave is permissible to the Personnel who are

- (a) Under open arrest  
(b) Suspended from duty



- (c) Attached to other unit in connection with disposal of ordinary cases against them as they are not deemed to be performing any duty. However on extenuating grounds, unit Commander may permit such persons to leave the station.

### **Arrest of women Officers :-**

According to the Provision of Army Act Section 101 and 102 are applicable to women officers, they also to be arrested and kept under close/open arrest like male officers.

No law in its ultimate effect should end up perpetuating the oppression of women personnel's freedom is a fundamental tenet which cannot be compromised in the name of expediency until and unless there is a compelling state Purpose, Heightened level of scrutiny is the normative threshold for judicial review in such cases<sup>18</sup>.

### **Conclusion :-**

Article 22(i) of the constitution of India provides that No Person who is arrested shall be detained in custody without being informed, as soon as may be of the ground for such arrest nor shall be denied the right to consult and to be defended by a legal Practitioner of his choice. It is discretion of the commanding officer to place any person on closed open arrest charged with an offence but he should exercise this power carefully without whim and caprice.

When a person is determined by military authority in arrest his commanding officer shall unless it is impracticable, within forty-eight hours of becoming aware that he is so detained have such person brought before him inform him of the charge against him and begin to investigate it."



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## **Reference**

1. Sunil FulchandSah v/s UOI AIR 2000 SC 102
2. Maneka Gandhi v/s UOI, AIR 1978 SC 597
3. RAC Para 394(d), Para 2 and 6 of chapter III, M.M.L. Vol I
4. RA Para 396(c), Para 7 of Chapter III M.M.L. Vol I
5. Ch III M.M.L, Vol I and RA Para 394(a) to (d)
6. RA Para 395 (c)
7. RA Para 395(b)
8. AA S 101(2)
9. AA S 101(3)
10. AA S 104
11. AA S 105(c)
12. AA S 105(2)
13. AA S 3(XX) and Section 107(3)
14. AR 150(1)
15. AA S 104
16. R.A. Para 396 and Para 8 of Chapter III of M.M.L. Vol I
17. A.A. Section 102

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