CHAPTER III

INVESTIGATIVE SYSTEM AND SUMMARY TRIALS

A. Under the Military Law in India

_ Arrest and Investigation_

A person subject to the Army Act, who is charged with an offence, may be taken into military custody in accordance with the following provisions of law: -

(a) Any such person may be ordered into military custody by any superior officer.

(b) An officer may order into military custody any officer, though he may be of a higher rank, engaged in quarrel, affray or disorder.

(c) A provost-marshal, which term includes any of his deputies, assistants or any other person legally exercising authority under him or on his behalf, or a provost martial appointed under the Naval or Air Force Law or any other person legally exercising authority under him or on his behalf, may arrest and detain for trial any person subject to the Army Act who commits or is charged with an offence, but an officer cannot be arrest otherwise than on the order of another officer.

(d) A police officer or magistrate may arrest, within his jurisdiction, a person subject to the Army Act who is accused of an offence under the said Act or who is a deserter, on a written request in that behalf of the Commanding Officer of such a person.

(e) Any police officer may arrest without a person reasonably believed to be subject to the Army Act and to be a deserter or travelling without authority.

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1 AA Ss 3 (XIII), 101(1) and RA Para 391.
2 AA S 3(XXIII).
3 AA Ss 3(XX) & 107(4).
4 AA. S. 107(3).
5 AA. Ss. 104 & 105(1).
6 AA. S. 105(2).
Military custody means the arrest or confinement of a person according to the usages of the service, but such a course by no means is obligatory; if the offence is not serious it may be investigated and disposed of without placing the offender under arrest. The arrest of an offender is governed by the following factors:

(a) that he may not abscond and be available to stand his trial;

(b) that he may not do harm to himself.

(c) that he may not tempear with the prosecution evidence or witnesses; and

(d) that the offence involved is serious or the ends of discipline require an immediate arrest to make an example of the offender.

**Nature of arrest – officers**

In the case of an officer, custody means “arrest” – either open or close; but if circumstances require it, he may be placed under the charge of a guard, piquet, patrol, sentry or provost marshal. Whether the arrest is open or close will depend upon the direction of the officer who ordered it. An officer in close arrest is placed in charge of an “escort” consisting of another (if possible, a senior) officer of the same rank. He must not leave his quarter or tent except to take such exercise under supervision as the medical officer thinks necessary. An officer in open arrest may take exercise at stated periods within certain limits, which are usually the precincts of the regimental lines or camp; he must not, however, be out of uniform, or at any place of amusement or public resort, nor must be wear sash, sword, belt, or spurs. An officer placed under arrest should always be informed in writing of the nature of arrest, which will be governed by the circumstances of the case; and any change in the nature of the arrest should be notified in writing to him. An officer (or other person) under arrest may be ordered or permitted to attend as a witness before a court-martial, or before a civil court, to leave his station for some special purpose.

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6 AA. S. 3(XIII).
Arrest when and how ordered

As a rule, a Commanding Officer will not place an officer under arrest without investigation of the complaint or the circumstances tending to criminate him; though cases may occur in which it would be necessary to do so. He should always place under arrest an officer against whom he decides to prefer a charge, and it is his duty to report each case of arrest without unnecessary delay to the proper superior authority.7

An officer is put under arrest either directly by the officer who orders it, or, more generally, by some subordinate carrying out his orders, i.e., by the Adjutant of the unit when the arrest is ordered by the Commanding Officer, and by an officer of the staff when the arrest is ordered by a superior officer, and not through the channel of the Commanding Officer. The order may be verbal or written, the latter as being more formal being the preferable method, except where the offence is committed actually in the presence of the Commanding Officer or the superior officer. On being put in arrest, an officer is deprived of his sword.

The release of an officer under arrest may be ordered by the officer who imposed the arrest, or the superior to whom it may have been reported; but, as a rule, except in cases of obvious error, the release should not be ordered without the sanction of the highest authority to whom the case may have been referred.8 An officer released, except superficially without prejudice to re-arrest will not again be arrested on the same charge unless some new and/or some special circumstances have arisen.

Cases of JCOs and OR

The rules which govern the custody of officers apply also to a Junior Commissioned, Warrant or Non Commissioned Officer (JCO, WO or NCO). If charged with a serious offence, a JCO, WO or NCO will, as a rule, be placed under arrest forthwith; but in case of doubt as to the commission of the

7 AA. S. 102(2) and AR 27(1).
8 RA Para 394.
offence, the arrest may be delayed; and if the offence is not serious, it may be disposed of without previous arrest.

Persons subject to AA under S.2(1)(i) an officer, JCOs, WOs and NCOs may, when charged with an offence, be placed under arrest under the same conditions as persons holding these ranks.

An OR taken into military custody on a charge of having committed an offence is placed either under close arrest or open court. Close arrest in the case of such a person means confinement in charge of a guard, piquet, patrol, sentry or provost marshal. He is not to be placed under close arrest unless confinement is necessary for his safe custody or the maintenance of discipline. For minor offence, such an absence from roll calls and other slight irregularities men are placed under open arrest. A person under open arrest will not quit the regimental 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 duties.10

Performance of duties while in closed arrest

An officer, JCO or WO under arrest will not perform any duty other than personal routine duties as may be necessary to relieve him of the charge of any cash, equipment, stores, accounts or office of which he may have charge or for which he may be responsible. Except on active service, an NCO under close arrest, is not to be required to perform duty other than personal routine duties and such other duties as may be necessary to relieve him from the care of any cash, stores etc for which he is responsible, nor is he permitted to bear arms, except in an emergency by the order of his Commanding Officer, or on the line of march.11

Except in the circumstances mentioned in AA Sec 84(a), when it is proposed to award summarily to an officer, junior commissioned officer or warrant officer, a punishment of forfeiture of seniority or of service for the purpose of promotion, a person subject to the Army Act has no right to

9 RA Para 395(e).
10 RA Para 396(c).
11 RA Para 396(e).
demand a trial by court martial. If he deems himself wronged by the arrest, or otherwise, his remedy is a complaint in the manner prescribed by the Army Act. Every officer whose character or conduct as an officer an gentleman has been charged or arraigned before a civil (criminal) court, may be suspended from duty, in which case he will be placed under the same restrictions as an officer in open arrest and may be permitted to wear plain clothes.

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 issued for carrying out arrest. There are no provisions relating to bail and the offender is required not required to be produced before any magistrate within a period of twenty-four hours of his arrest. Any senior officer is empowered to place under arrest any person subject to the Army Act who is accused of an offence. Corresponding provisions have been enacted in the other service Acts. Similar provision exists in the British Army Act. Order for placing the person under arrest can be oral or written. The person ordering arrest is required under Army Act Section 50(b) to deliver at the time of arrest, or as soon as practicable, and in any case 48-hours thereafter, to the officer or other person into whose custody the person arrested is committed, an account in writing, called charge report, signed by himself, of the offence with which the person so committed is charged. Failure to hand over the written account, is an offence, punishable under the said Section. Notwithstanding the informality with which arrest can be ordered, there are adequate provisions in the Act and the Rules which go to ensure that the powers of ordering arrest and of detaining the arrested person in custody, are not misused.

For the arrest of a deserter, no warrant is actually issued but the deserter is to be arrested as if a warrant had been issued. A deserter can be arrested without any warrant under Section 123 (1) of the Army Act. The

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12 AA Sec 26 & 27.
13 RA Para 346.
14 See Air Force Act, Section 102, The Navy Act Section 84, the BSF Act (Section 57), the NSG Act, Section 55 and the Coast Guard Act, Section 59.
15 See British Army Act, Section 74.
16 See AA Secs 102, 103, Rule 27 and RA Para 391 to 397.
production of warrant or an order is not required under Section 54(1) of the CrPC.

It was held by the Madras High Court in the case of *Sharma SP, Lt Col V Union of India*\(^{17}\) that open arrest is something like bail on certain conditions. In view of Article 33 of the Constitution of India, the exercise of power under the provisions of CrPC, with reference to bail is not applicable to persons subject to the Army Act. The facts of the case were that the officer was indicted on six charges for non-compliance of rules in local purchase of tea and phenyl while serving as Officer Commanding Depot, Madras. Prior to his retirement, the provisions of Section 123 of the AR were invoked; he was taken into and kept under close arrest. The officer was detained in his house with two sentries armed with rifles guarding his house. During night, the door was locked and one of the sentries used to sleep in his room. The officer approached the High Court for ordering the military authorities to release him on bail on bond or guarantee.

In civil law, arrest without a warrant by the civil police is only permissible in certain circumstances.\(^{18}\) In particular, arrest by civil police on suspicion is only lawful if it is reasonably suspected that a cognizable offence has been committed.\(^{19}\) Under Section 101 of the Army Act, 1950, any person who is suspected of or charged with an offence may be ordered into military custody by any superior officer. Unlike at Common law, an arrested person has no remedy if he is not told of the grounds of his arrest.\(^{20}\) A Commanding officer does have a discretion as to whether the arrested person be kept in open or close arrest and as to whether he should be retained in arrest pending trial or not. But, while under the ordinary criminal law, an arrested person can ask a magistrate's Court bail and if refused, he can appeal to the High Court\(^{21}\), a military person arrested by the military authorities has no right to apply for bail to any court. It is entirely

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17 Cri MP No 754 of 1990 (Order dated 06 February 1990).
18 The Criminal Procedure Code, 1973 which specifies in Section 41 nine cases where a police officer can arrest without a warrant.
19 Id; Sec 41 (2).
20 Christie V Leachinsky (1943) A.C. 573.
a matter of discretion for the Commanding Officer or the superior military authority.22

**Investigation by a Court of Inquiry**

A Court of Inquiry is an assembly of officers or officers and Junior Commissioned officers or Warrant officers or non commissioned officers directed to collect evidence and, if so required, to report with regard to any matter which may be referred to them23. It may be assembled by the officer in command of any body of troops, whether belonging to one or more corps24. Though the minimum quorum required for the Court of Inquiry is two members but it should normally consist of three members. The members may belong to any Branch or Department of service. Members of the Court of Inquiry are not required to be administered any oath or affirmation. The Court of Inquiry is required to make a declaration on the recovered Prisoners of War25. The evidence is to be recorded on oath or affirmation when a Court of Inquiry is assembled on a prisoner of war, to inquire into illegal absence under Section 106 or in any other case, when so directed by the officer assembling the court26. When the character or military reputation of a person subject to the Army Act is likely to be affected by the proceedings of a Court of Inquiry i.e, whether he is likely to be subjected to a disciplinary action, or suffer a deduction from his pay or is liable to be censored, in such cases, the Presiding officer of such Court of Inquiry, wherever possible, will be senior in rank and other members at least equivalent in rank to that effect27. In such a case, the Presiding officer must afford full opportunity to such person of being present throughout the inquiry and of making any statement and of giving any evidence he may wish to make or give, and of cross-examining any witness, whose evidence, in his opinion, affects his character or military reputation and of producing any witness in defence of his character or military reputation28. If the person likely to be affected is not present, the Presiding Officer should

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23 AR 177 (1).
24 AR 177 (3).
25 AR 178.
26 AR 181.
27 RA Para 518.
28 AR 180.
enquire as to what steps had been taken to ensure that the person had been notified of the date when the Court of Inquiry would assemble and the nature of the matter to be investigated by the Court. If he is not satisfied with the reasonable steps having been taken to enable the person to be present and exercise his rights under Army Rule 180, he should ensure that the person receives notice and fully understands his rights under the said Rule. If necessary, the Presiding officer may adjourn the Court for the purpose of securing his attendance\textsuperscript{29}. Though, in the first instance, the officer assembling the court is responsible to ensure that the rights provided under Army Rule 180 are not affected, however, the ultimate responsibility for ensuring the exercise of such rights lies with the Presiding Officer of the Court of Inquiry\textsuperscript{30}.

A civilian witness can be ordered to attend the proceedings of a Court of Inquiry\textsuperscript{31}. Similarly, a person subject to military law can be ordered to appear and give evidence at such an inquiry\textsuperscript{32}. Army person subject to the Army Act, who is to be tried by a court martial in respect of any matter or thing which has been reported on by a Court of Inquiry or any person subject to the Army Act whose character or military reputation is, in the opinion of the Chief of the Army Staff, affected by anything in the evidence, before, or in the report of a Court of Inquiry, unless the Chief of the Army Staff, sees reason to order otherwise, are entitled to a copy of the Court of Inquiry proceedings\textsuperscript{33}.

A witness making a false statement at a Court of Inquiry, not on oath/affirmation can be charged of wilfully making a false statement before that inquiry\textsuperscript{34}. If, on the other hand, he/she makes a false statement on oath/affirmation, he can be charged for having committed an offence\textsuperscript{35}.

\textsuperscript{29} Note to AR 180.
\textsuperscript{30} AR 180.
\textsuperscript{31} AA Sec 135.
\textsuperscript{32} AA Sec 141.
\textsuperscript{33} AR 184.
\textsuperscript{34} AR 182 & AA Sec 63.
\textsuperscript{35} AA Sec 60.
When an inquiry is ordered respecting a Prisoner of War, who is still absent, compliance of Army Rule 180 would, apparently, not be necessary\(^{36}\). The officer convening the Court of Inquiry is obliged to direct the court to record their opinion when the Court of Inquiry is on returned Prisoner of War, or when it is on Prisoner of War, who is still absent, or when it is regarding loss or theft of a weapon.

An officer of the Defence Accounts Department may be appointed to assist at a Court of Inquiry assembled in connection with financial irregularities but he shall not sit as a member of the Court\(^{37}\). It is not necessary to hold a Court of Inquiry in all cases. A person may be brought to trial by court-martial after an investigation under Army Rule 22 to 24, without holding a Court of Inquiry. However, in some cases, either the Regulations or the Army Act and Army Rules make it obligatory to hold a Court of Inquiry. Even so, this is not legally necessary before proceeding to convene a court-martial. Evidence given at a Court of Inquiry proceedings, which blamed him can be made use of by the accused at a subsequent proceeding by court-martial against him for the purpose of contradicting the witnesses who give evidence against him at the trial. However, the prosecution cannot use such evidence against the accused. The prosecution cannot use the statements made at a Court of Inquiry proceedings to corroborate at the trial the statements of its own witnesses, but the accused can do so\(^{38}\).

In the case of *Ghuman MPS, Col Vs Union of India*\(^{39}\), with regard to the composition of the Court of Inquiry, it was held that Para 518 of the Regulations for the Army, 1987, Revised Edition is not mandatory in character. The words ‘may’ and ‘as far as possible’ used in the said Para of the Regulations, seem to have been used for giving a discretion to the Army authorities to make a departure where adherence to the said Regulation is not possible. In the Counter affidavit, it had been boldly maintained that adherence to the Regulation was not possible in the given circumstances.

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\(^{36}\) AR 180.
\(^{37}\) RA Para 519.
\(^{38}\) AR 182 and IFA SS. 145&147.
\(^{39}\) J&K High Court SWP No 497 of 1994. Also see Dhillon GS, Lt Col V. Union of India : 1987 Lab IC 1254 (Gauhati) and Gurunam Singh V. Union of India, 1984 Cri LJ 718 (Calcutta).
Therefore, it was held that no violation of the said Regulation had occurred. (Petition was dismissed vide their order dated 27 February 1996).

Court of Inquiry proceedings are not a condition precedent to convening of a Court Martial subsequently. It is only a fact finding body aiming at enabling a Commander (Convening Officer) to know the facts of the case and, more particularly as to whether there exists a prima facie case against a person to the Army Act or otherwise. Even if there is non compliance of Army Rule 180, it will not bar initiation of court martial proceedings.\(^\text{40}\)

**Compliance of Army Rule 180 at the Court of Inquiry proceedings.**

In the case of *Khanna Ranbir Singh, Col V. Union of India*\(^\text{41}\), it was held that once a Court of Inquiry is ordered involving character or military reputation of a person subject to the Army Act, provisions of Army Rule 180 come into play. In the instant case, the character or military reputation of the petitioner was likely to be affected and no one could have known it better than the Respondent No 3, his Commander, who had already brought some of the allegations on record in his warning letter. Therefore, it cannot be said that the safeguards contained in Army Rule 180 were not required to be provided to the petitioner because no specific inquiry was directed against him. Keeping in view the fact that the three Courts of Inquiry were held when he was away on leave and admittedly at his back it becomes easy to hold that the same were held in violation of the mandate of Army Rule 180 and to that extent any action taken pursuant thereto, moreso on administrative level gets vitiated and must be invalidated. (Petition allowed, order dated 31 December 1993).

In a similar case of *Dwivedi RP and others Vs Chief of the Army Staff*\(^\text{42}\), it was held that the provisions of Army Rule 180 are mandatory in

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\(^\text{40}\) Kang JS, Maj V. Union of India, Karnataka WP No 1017/1985. Also see Kang Lt Col V. Union of India; Andhra Pradesh High Court WP No 8167 of 1983, order dated 04 October 1983.

\(^\text{41}\) J&K High Court WP No 1141 of 1991.

\(^\text{42}\) MP High Court WP No 4430 of 1997.
nature and that it is obligatory upon the Court of Inquiry to follow the procedure in case character or military reputation of a person subject to the Army Act is affected by the Court of Inquiry proceedings. Therefore, the application of Rule 180 of The Rules’ shall depend upon if the character or military reputation of the petitioners was affected by holding the Courts of Inquiry. Looking to the nature of the case that the petitioners were being held responsible in each Court of Inquiry proceeding regarding the delivery of diesel, their military reputation was bound to be affected. The Court of Inquiry could have come to the conclusion after holding the Inquiry that the petitioners were guilty of dereliction of their duties. In fact, this was the real conclusion of both the Courts of Inquiry and for this purpose; the petitioners were being court-martialled by holding a General Court-Martial. Subsequently, the findings of the Courts of Inquiry were the foundation of framing the charges against the petitioners under Section 52(f) of the “Act” read with Section 34 of the Indian Penal Code and Section 63 of “the Act”. It is, therefore, difficult to accept the contention of the learned counsel for the Respondent that the Courts of Inquiry by Respondents No 3 & 4 respectively, did not affect the character and military reputation of the petitioners. In fact, they were liable to be charged for committing criminal offence and they were liable to be visited with punishment of imprisonment. Non compliance of Rule 180 of “the Rules” would vitiate the Inquiry. Therefore, recording of Summaries of Evidence and framing charges would be bad in law. The very foundation of framing charges would then disappear. The Presiding Officer of the Court of Inquiry was bound to follow the procedure prescribed by Rule 180 of “the Rules”. The view of this Court was based on principle that even in cases which were in nature of preliminary investigation; the mandatory procedure has to be followed when a person is liable to be charged with an indictable offence. In this connection, it may be remembered that the charges were being framed against the petitioners on the foundation of the reports of two Courts of Inquiry. The very process of framing the charges started on the basis of the reports of two Courts of Inquiry. Thus, the process of framing the charges was intimately connected with the findings of these two Courts of Inquiry. The preliminary investigation in respect of the charges framed against the petitioners was akin to the investigation of Magistrates doing a preliminary
inquiry in respect of a criminal offence. Since, the petitioners were liable to be punished of a criminal offence, then they were entitled to a benefit of Rule 180 of Army Rules 1954, “the Rules” which was of mandatory nature. Therefore, non-compliance of Rule 180 of “the Rules” vitiated the further proceedings of framing of charges as well as holding of a General Court Martial on the basis of those parties (Petition allowed, order dated 03 July 1998).

A Court of Inquiry is primarily a fact-finding body, which is required to collect evidence and to make a report thereon. It is set up whenever an incident occurs of which true and correct is to be ascertained at pre-charged level contemplated by law. Though the Rule does not contain to withhold or deny promotion to him after its approval by the Government of India, the document relating to policy of ‘Special review’ contained in MS Branch circular dated 10 June 1995 is applicable only in case of promotion to the acting Lt Col and acting Col.

In the circumstances, it is concluded that once the petitioner has been approved for promotion by the Government of India, his case could not be treated as a case for special review on account of any drop in performance. Even if proceedings taken against the petitioner were accepted to be valid, mere tendency of such proceedings cannot furnish any grounds for withholding or denial of such promotion to him. It is firmly established that mere tendency of any disciplinary proceedings even on or before the date of consideration for promotion does not disentitle a Government servant from being considered for promotion. (Petition allowed, order dated 31 December 1993).

In the case of *Uppal HS, Lt Col Vs Union of India* that when the petitioner was not afforded an opportunity to prove his allegations, it cannot be said that the allegations were unsubstantiated, unjustified, frivolous or unsupported (petition allowed, order dated 17 March 1989). In another

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43 See Brig (now Maj Gen) Nileendra Kumar & Rekha Chaturvedi: “Law Relating to the Armed Forces in India”, Ed. 1999 Pp 149 to 151. Also see Bansal AK, Col V. Union of India, Delhi High Court, CW No 1990 of 1998 and Nalavade VD V. Corps Commander; 1987 Lab IC-860.  
44 Note 41 supra.  
45 Rajasthan High Court Jodhpur DB Civil WP No 1433 of 1986.
case\textsuperscript{46}, where findings of the Court of Inquiry along with the statements of witnesses were supplied, but, the opinion of the formation commander was not supplied, it was held that non-supply of opinion of the formation commander did not amount to violation of Army Rule 180 and no cause of action arose in such a case amounting to violation of any principle of natural justice. In the cases of \textit{Bedi PPS, Lt Col; Kukreti DP; Capt Chopra CK}\textsuperscript{47}, it had been held by the Apex Court that Court of Inquiry is not obligatory before launching Court-Martial proceedings. The Court of Inquiry is not a sine qua non for the constitution of a Court-Martial.\textsuperscript{48}

\section*{Investigation into illegal absence}

The minimum period after which a Court of Inquiry must be assembled to investigate a case of unauthorised absence from duty is thirty clear days.\textsuperscript{49} While calculating the period of thirty days, the date on which the absence commenced and the date on which the Court assembled must both be excluded.\textsuperscript{50} The record of the declaration of a Court of Inquiry which assembled a day too soon cannot be given in evidence before a Court-martial to prove the charge of desertion/absence without leave.\textsuperscript{51} A man who has been struck of strength as a deserter can be tried for absence without leave if the Commanding Officer is satisfied that the evidence does not justify a charge of desertion\textsuperscript{52}. The record of declaration of such Court of Inquiry is made in the court-martial book of the unit.\textsuperscript{53} The record of the declaration in the court-martial book and a certified true copy thereof (Form IAFD – 918) are both admissible at subsequent Court-martial for illegal absence to establish the commencement of such absence and the time and date thereof, and to establish the list of deficiencies in kit at the time of such absence\textsuperscript{54}. Civilian witnesses can be compelled to attend the

\textsuperscript{46} Thomas YU V. Commandant AOC Centre, Secunderabad; 1982(2) SLR 40(AP).
\textsuperscript{47} AIR 1982 SC 1413, 1983 Cr IJ 647.
\textsuperscript{48} Rai DSC, Maj Gen. GCM, Fort St George, Madras; Madras High Court WP Nos 3067 and 3068 of 1984. Also see Karanjit Singh, Lt Col (Now Major) V. Union of India; Rajasthan High Court, Jaipur, DB Civil WP No 1709/1988 and 3287 of 1987.
\textsuperscript{49} AA Sec 106
\textsuperscript{50} Note 3 to AA Sec 106
\textsuperscript{51} Ibid
\textsuperscript{52} Note 10 to AA Sec 106
\textsuperscript{53} AR 183(3)
\textsuperscript{54} AA Sec 142(3) and (4) and Note 7 to AR 183
Any person subject to the Army Act who is tried by a Court-martial in respect of any matter or thing which has been reported on by a Court of Inquiry, or any person subject to Army Act who character or military reputation is, in the opinion of the Chief of the Army Staff affected by anything in the evidence, before, or in the report of a Court of Inquiry, unless the Chief of the Army Staff sees a reason to order otherwise, is entitled to a copy of the proceedings of a Court of Inquiry. An Officer of the Defence Accounts Department can be detailed as a member of Inquiry. The accused can make use of evidence given at a Court of Inquiry subsequently at his trial by Court-martial.

False Evidence before a Court of Inquiry

If a witness makes a false statement at a Court of Inquiry not on oath or affirmation, it can be used against him upon a charge for wilfully making a false statement before that Court, if he makes a false statement at a Court of Inquiry on oath or affirmation, then he would be liable to be charged for giving false evidence, which will be a more grave charge.

During the investigation, the officer conducting it must be careful not to let fall, before he disposes of the case, any expression of opinion as to the guilt of the accused, or one which might prejudice him at a subsequent trial. It may happen that the officers who have been present at the investigation are detailed as members of the court convened in consequence of it; therefore, nothing should be said or done which might, though unconsciously, bias their judgement beforehand. Conduct Sheets should be examined by the Commanding Officer when, and not before, he has satisfied himself as to the guilt of the accused.

At the stage of investigation under Army Rule 22, a charge does not mean a formal written charge contained in the charge-sheet. It merely means an accusation that a person subject to the Act has committed an
offence. It is not mandatory to give any formal written charge sheet to the accused at the time of hearing.\textsuperscript{60}

Under Army Act Section 135, civil witnesses may be summoned to attend before a CO, if it is considered desirable to procure their attendance by service of summons. Military witnesses can be ordered to attend and need not be formally summoned. Witnesses are not required to be sworn or affirmed under this Rule.

The CO must dismiss the charge if there is no evidence of any offence under the Army Act having been committed or if the accused has been previously convicted or acquitted of the alleged offence or has been summarily dealt with. He may also dismiss the charge if he considers that evidence is doubtful or the case is trivial. No particular time is fixed within which a CO must dispose of a case. However, as a rule, he should decide immediately, unless further evidence is required to complete investigation.

Where in a controversy as to the sufficiency of compliance of Rule 22, it was alleged by the authorities in the counter-affidavit that the Rule was complied with and their contention was corroborated by the record and not countered by the petitioner in the rejoinder, the court held it to be sufficient compliance of the Rule.\textsuperscript{61} It was held in the case of \textit{Lt Col PPS Bedi Vs Union of India}\textsuperscript{62} that compliance of Rules 22 to 24 is not necessary in the case of an officer, unless a request to that effect has been made by the officer. In the case of \textit{Rajbir Singh Vs Union of India}\textsuperscript{63}, it was held that the grievance as to non-compliance of Rule 22 is a question of fact and cannot be gone into a writ petition. Procedure under Rule 22 is mandatory in case of persons other than officers. Non-compliance thereto will vitiate the entire inquiry.\textsuperscript{64}

\textsuperscript{60} Gyan Chand V Union of India 1983 Cr L.J. 1059 (Delhi).
\textsuperscript{61} Malik Raj V Union of India 1983 Cr L.J. 1794 (J&K).
\textsuperscript{62} AIR 1982 SC 1413.
\textsuperscript{63} 1989 Cr L.J. (NOC) 1, Delhi.
\textsuperscript{64} Nh/Sub Avtar Singh V Union of India, 1984 (4) SLR 579 (Delhi).
Commencement of Disciplinary Process by the Commanding Officer vis-à-vis compliance of Army Rule 22

Commencement of investigation by the Commanding officer of the accused under Army Rule 22 is the first step that the Commanding Officer concerned is required to take. This is called the hearing of the charge against the accused. It is a mandatory requirement which the Commanding Officer has to fulfil, violation of which may result in vitiation of the subsequent disciplinary proceedings. Provided that where the charge against the accused arises as result of investigation by Court of Inquiry, wherein Rule 180 has been complied with in respect of the accused, in which case the Commanding Officer may dispense with the procedure provided for in Army Rule 22(1).

Duty of officer conducting investigation

The manner in which the investigation of charge(s) by a Commanding Officer is to be carried out is regulated by Army Rule 22 to 24. This duty requires deliberation and the exercise of temper and judgement, in the interest alike of discipline and justice to the accused. The hearing of the charge has to be done in the presence of the accused. After the nature of the offence charged has been made known to the accused, the witnesses present on the spot who depose to the facts on which the charge is based are examined or heard. The accused must have full liberty to cross-examination. The Commanding Officer, after hearing what is stated against the accused will, if he is of the opinion that no offence at all, or no offence requiring notice, has been made out, at once dismiss the charge65. Otherwise, he must ask the accused what he has to say in his defence, and whether he has any witnesses to call, and will give him full opportunity both of making a statement and supporting it by evidence. The Commanding Officer will then consider whether to dismiss the case, or to deal summarily with it himself, or, if the accused is below the rank of Warrant Officer, to

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65 AR 22(2)
order trial by Summary Court Martial, or to adjourn the case for
the purpose of having the evidence reduced to writing, with a view to trial by
Court-Martial, or when the accused an officer below the rank of Lieutenant
Colonel, or is a Junior Commissioned Officer or a Warrant Officer for
Summary disposal under AA Sections 83 or 84.  
He cannot forthwith hold
a Summary Court Martial, unless the offence is one which a Commanding
officer can try without reference to superior authority, or, if the offence is
one requiring such reference, he certifies that there is grave reason for
immediate action and that such reference cannot be made without
detriment to discipline.  
A Summary of Evidence and charge sheet must
accompany all reference to superior authority.

During the investigation, the officer conducting it must be careful not
be let fall, before he disposes of the case, any expression of opinion as to the
guilt of the accused, or one which might prejudice to him at a subsequent
trial, it may happen that the officer who have been present at the
investigation are detailed as members of the court convened in consequence
of it; therefore, nothing should be said or done which might, though
unconsciously, bias their judgement beforehand. Conduct Sheets should be
examined by the Commanding Officer when, and not before, he has satisfied
himself as to the guilt of the accused.

At the stage of investigation under Army Rule 22, a charge does not
mean a formal written charge contained in the charge-sheet. It merely
means an accusation that a person subject to the Act has committed an
offence. It is not mandatory to give any formal written charge sheet to the
accused at the time of hearing.

Under Army Act Section 135, civil witnesses may be summoned to
attend before a CO, if it is considered desirable to procure their attendance
by service of summons. Military witnesses can be ordered to attend and
need not be formally summoned. Witnesses are not required to be sworn or
affirmed under the Rule.

66 AR 22(3).
67 AA S. 120(2), AR 130.
68 Gyan Chand V Union of India 1983 Cr. L.J. 1059 (Delhi).
The CO must dismiss the charge if there is no evidence of any offence under the Army Act having been committed or if the accused has been previously convicted or acquitted of the alleged offence or has been summarily dealt with. He may also dismiss the charge if he considers that evidence is doubtful or the case is trivial. No particular time is fixed within which a CO must dispose of a case. However, as a rule, he should decide immediately, unless further evidence is required to complete investigation.

Where in a controversy as to the sufficiency of compliance of Rule 22, it was alleged by the authorities in the counter-affidavit that the Rule was complied with and their contention was corroborated by the record and not countered by the petitioner in the rejoinder, the court held it to be sufficient compliance of Rule.\textsuperscript{69} It was held in the case of \textit{Lt Col PPS Bedi Vs Union of India}\textsuperscript{70} that compliance of Rule 22 to 24 is not necessary in the case of an officer, unless a request to that effect has been made by the officer. In the case of \textit{Rajbir Singh Vs Union of India}\textsuperscript{71}, it was held that the grievance as to non-compliance of Rule 22 is a question of fact and cannot be gone into a writ petition. Procedure under Rule 22 is mandatory in case of persons other than officers. Non-compliance thereto will vitiate the entire inquiry.\textsuperscript{72}

\textbf{Variation of charge(s) at the trial}

An interesting point was raised before the Guwahati High Court in the case of \textit{Nb Sub Baleshwar Ram Vs Union of India}. In this case, the charge against the JCO at the preliminary hearing was preferred under Army Act Section 63 while the JCO was tried under Army Act Section 52 (a). After hearing both the parties, the Guwahati High Court set aside the orders of the GCM and the confirming authority on the ground that no hearing was held for an offence under Section 52(a). However, the decision of the High Court was overruled by the Supreme Court in the SLP wherein it was held

\textsuperscript{69} Mulkhen Raj Vs Union of India 1983 Cr. L.J. 1974 (J&K).
\textsuperscript{70} AIR 1982 SC 1413.
\textsuperscript{71} 1989, Cr. L.J. (NOC) 1, Delhi.
\textsuperscript{72} Nb/Sub Avtar Singh Vs Union of India, 1984 (4) SLR 579 (Delhi).
that no prejudice was caused because the hearing on the charge and the trial by GCM were on the same facts73.

**Commencement of trial**

Hearing of charge under Army Rule 22 is analogous to the committal proceedings under the CrPC and it cannot be said that trial by court martial commences on commencement of hearing of charge itself74.

**Effect of Cognisance by Magistrate**

Where a Magistrate has taken cognisance of an offence and has given a finding that there is a case for trying the accused, it is not open to the Army authority to take up proceedings for determining prima facie whether there is substance in the allegation made against the accused75.

At the stage of hearing of charge under Army Rule 22, the Commanding Officer has to hear the charge orally and then directing evidence to be reduced to writing. There is no infraction of Rule 2276.

In the case of an officer, the procedure prescribed in Rules 22 and 23 to be complied with, it is for him to make a request in that behalf. He has to make a two-fold request; firstly, that the investigation shall be done in his presence; and secondly, the Summary of Evidence shall also be drawn in his presence. If there is a request as per Rule 25(1) and in spite of it there is a non-adherence to Rules 22 to 24, then the trial before the General Court Martial would stand vitiated. If the investigation of the charge should not go through the process under Rule 22, a very valuable right to the accused to have the charge dismissed by the Commanding Officer, after hearing of the charge by him as enjoined by Rule 22 (1), will stand completely crippled. The accused has got every right even at the initial stage, as contemplated by Rule 22, to demonstrate that the charges are futile and baseless and they

73 Union of India V Nb Sub Ram Baleshwar Ram, AIR 1990 SC 65, 1990 Cr L.J. 60.
74 Maj Gen ML Yadav V Union of India WP No 301/87 Bombay High Court Order dated 28 April 1987.
76 Trilochan Joshi V UOI, 1983 Cr L.J NOC 109 (Delhi)
require rejection and the case sought to be processed though
deserves dismissal even at this stage, without going through further process
and ultimately before the General Court Martial. Army Rule 22 has been
comprehensively amended since the judgement ibid, which now makes it
mandatory to hear the charge under Army Rule 22, against the officer as
well, exception now being only, as brought out in the foregoing pages where
the charge against the accused arises as a result of investigation by a Court
of Inquiry, wherein the provisions of Army Rule 180 have been complied
with in respect of that charge, that the Commanding Officer concerned may
dispense with the procedure provided for in Sub Rule (1).

In the earlier case on similar issue was that of Lt Col PPS Bedi, in
which it was held by the Apex Court that even if there has been any failure
to comply with Rules 22, 23 and 24, that would not vitiate the trial. In
subsequent cases of Maj GS Sodhi and Lt Col SK Dugga, the
Supreme Court had held that even if there has been failure to comply with
Rules 22, 23 and 24, that would not vitiate the trial.

 Effect of non-compliance of rule

In the case of Ch. Mohd Dar Vs Union of India, it was urged before
the High Court that the court martial proceedings should be quashed for
non-compliance of Rule 23. The court held that the witnesses were
examined and cross examined at the trial in full detail, as such infraction of
the rule is insignificant and the conviction cannot be interfered with on this
ground alone. In case of Lt Col PPS Bedi, it was held by the Apex Court
that compliance of Rule 22, 23 and 24 is not necessary in the case of an
officer, unless there is a specific request from him in this regard. Position
with regard to Rule 22 has undergone much change now after the
amendment of the rule ibid, as brought out above. It was also held by the
court that the rules ibid are not violative of Article 21 of the Constitution.

77 Rat DSC, Maj Gen V GCM, Fort St. George, Madras; Madras High Court WP Nos 3067 and 3068 of
1984 (Order dated 25 April1984). Also Brig (Now Maj Gen) Nilendra Kumar & Rekha Chaturvedi’s
78 AIR 1982 SC 1413, 1982 (2) SLJ 583.
79 Supreme Court WP No 478 of 1989.
80 Supreme Court WP (Cri) No 525 of 1988.
81 1983 Cr.L.J 1899 (J&K).
82 Supra Note 72.
It is felt that minor inconsistencies of infraction of Rules 22 and 23 should not be carried so far away to vitiating the trial proceedings, provided sufficient opportunity was made available to the accused at the trial. After all, it should the justice as a principle point to be considered by the adjudicating body. A due consideration of inept legal qualifications of Commanding Officers while with such case should be kept in view as against the forms of General, Summary General and District Courts Martial, where the Services of a person called Judge Advocate are available. In fact, the said rules are preliminary in nature aimed at establishing and ascertaining as to whether prima facie case exists against the accused or otherwise. Going bookish in case of infraction of any of these rules or may be both, would not be in harmonious relationship with the other provisions of the Act and may result in miscarriage of justice.

Procedure for taking down the Summary of Evidence

On conclusion of the hearing of the charge, the Commanding Officer can exercise one of the options provided for in Army Rule 22 (3). One of such options is to order recording of the Summary of Evidence. When a case is adjourned for the purpose of having the evidence reduced to writing at the adjourned hearing evidence of the witnesses who were present and gave evidence before the Commanding Officer, whether against or for the accused, and if any other person whose evidence appears to be relevant, shall be taken down in writing in the presence and hearing of the accused before the Commanding Officer or such officer as he directs.

When a Commanding Officer adjourns a case for the purpose of having the evidence reduced to writing of all material witnesses (whether called before the commanding officer or not) must be taken down in writing before the Commanding Officer or (as is usually the case) before some officer deputed by him, in the presence of the accused, who must be allowed to cross examine them. The Commanding can, if necessary, issue a summon requiring the attendance of a civilian witness. The witnesses

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83 AR 22(1) & (2).
84 AR 23(6).
cannot be sworn or affirmed. In certain cases, a signed statement of evidence may be accepted e.g., where the attendance of a witness cannot be readily procured. In such a case, the officer taking the summary must certify the reason for accepting a written statement.85

When all the evidence for the prosecution has been taken down, the accused, before he makes any statement, must be formally cautioned in the prescribed words.86 Any statement of the accused will be taken down, but he will not be cross-examined upon it.

Mode of taking Summary of Evidence

Great care is necessary in taking a summary of evidence. The discrepancies not infrequently observable between the statements recorded in the Summary of Evidence and the evidence given before a Court-martial may often be traced rather to the hasty or careless preparation of the summary than to any prevarication or desire to mislead on the part of the witnesses. Moreover, a carelessly prepared summary of evidence may require references between the convening officer and the Commanding Officer of the accused and be a cause of delay in bringing the accused to trial.

Summary Trials for minor offences

One of the options provided for in Army Rule 22 (3) for the Commanding Officer is to dispose of the case under Army Act Section 80 in accordance with the manner and form given in Appendix III to the Manual of Military Law, 1983. When such a case is intended to be put up to the proper military authority for disposal under Army Act Sections 83 or 84, or even in case of Section 85 where the Commanding Officer himself can deal with the case summarily in respect of a Junior Commissioned Officer, a Summary of Evidence is needed to be recorded.

85 AR 23(5)
86 AR 23(3)
Summary trials of NCOs and OR

A Commanding Officer or such other officer as is with the consent of the Central Government, specified by the Chief of the Army Staff may deal with summarily the case of an NCO or OR. An NCO (Non Commissioned Officer) may be awarded one or more of the following punishments under Army Act Section 80:

(a) Extra guards and duties.
(b) Deprivation of a position of the nature of an appointment or of Corps or working pay, and also deprivation of acting rank or reduction to a lower grade of pay.
(c) Forfeiture of good service and good conduct pay.
(d) Severe reprimand or reprimand.
(e) Fine upto 14 days' pay in any one month.
(f) Penal deductions under clause (g) of Section 91.

A Lance Naik, who was holding the appointment at the time of Commission of the offence but who was a Sepoy at the time of the summary award can be awarded the punishments specified in clauses (d), (e), (f), (h) and (i) of Army Act Section 80 i.e, extra guards or duties, deprivation of a position of the nature of an appointment or of Corps or working pay, and in the case of non – commissioned officers, also deprivation of acting rank or reduction to a lower grade of pay ; forfeiture of good service and good conduct pay ; fine upto 14 days pay in any one month and penal deductions under clause (g) of Section 91 of the said Act. In addition, he can also be awarded those punishments specified in Para 443(b) (i) and (ii) of the Regulations for the Army, 1987, Revised Edition.

An OR (Jawan) can, however, be awarded one or more of the punishments given in Section 80 of the Army Act, except the punishment relating to Severe reprimand or reprimand. Clauses (a) to (c) of the said Section relate to imprisonment in military custody upto 28 days, Detention upto 28 days and confinement to the lines upto 28 days.

AA Sec 80 and RA Para 443(a).
The award of rigorous imprisonment and confinement to lines cannot exceed 42 days. Clauses (a) and (c) or (b) and (c) can be combined to attain maximum effect. If punishments at clause (a) and (b) are combined, there will not be any additional effect of such combination since both would run concurrently.

**Restrictions on Powers**

A Commanding Officer, if below field rank, can only award imprisonment or detention up to 07 days only, whereas with regard to other punishments prescribed in Army Act Section 80, he can award to the full extent. However, an officer not less than an officer commanding a Division may empower him to award imprisonment or detention to the full extent.

**Right of appeal and review**

If an NCO or OR considers himself aggrieved by the summary award of his Commanding Officer, he may submit a complaint under Army Action Section 26 to the Brigade or equivalent Commander.

Punishments awarded under Army Act Section 80 may be reviewed by the officer superior in Command to the officer who awarded the punishments. While reviewing the summary punishment, if such officer considers a particular punishment awarded to be illegal, unjust or excessive, he may cancel, vary or remit such punishment and make such directions as he may consider appropriate in the circumstances of the case. The powers of review of a summary award shall normally be exercised within a period of two years from the date of the award.

A Commanding Officer cannot deal with summarily offences punishable under Army Act Sections 34, 37 and 69 of the Army Act. He

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88 AA Sec 81(3) and RA Para 442.
89 AA Sec 81 (2).
90 AR 192(ii).
91 Ibid.
92 MMil, Vol I, Chap III, Para 24
93 RA Para 442.
cannot also dispose of such offences even by a Summary Court Martial without reference to Superior military authority.\textsuperscript{94} He can also not deal a case where he is either a sole witness for the prosecution or one of the witnesses for the prosecution.\textsuperscript{95}

**Summary trials of Officers, JCOs and Warrant Officers (WOs).**

Summary trials of officers, JCOs and WOs can be held under Army Act Sections 83, 84 and 85. While JCOs can be tried under Army Act Section 85 by his Commanding Officer, whereas under Army Act Sections 83 and 84, he can be dealt with by the officers Commanding Brigades/Sub Areas and Division/Areas respectively. In addition to the aforesaid officers, the Chief of the Army Staff has specified certain other officers to exercise powers under these Sections. A Deputy General Officer Commanding of a Divisional Headquarters has been accorded such powers under Army Act Section 83, whereas Chiefs of Staff at Headquarters Commands and Corps have been empowered to award punishments under Army Act Section 84. Such empowerment has also been made by the Chief of the Army Staff with consent of the Central Government with regard to some other officers also. Officers upto the rank of Captain, JCOs and WOs can be tried summarily under Army Act Section 83 and officers below the rank of a Lieutenant Colonel, JCOs and WOs are triable summarily under Army Act Section 84.

**Punishments awardable under Sections 83, 84 and 85**

Under Section 85 of the Army Act, which is only applicable for JCOs, only two punishments awardable are severe reprimand or reprimand and stoppages of pay and allowances. Award of severe reprimand or reprimand cannot be made if the Commanding Officer is not of the rank of Colonel. Stoppages of pay and allowances are awarded only in cases to make good the loss occasioned by the act/omission constituting offence by the accused.

\textsuperscript{94} AA Sec 120 (2) and MML., Vol I, Chap III, Para 19.
\textsuperscript{95} Instruction 4 to IAFSD-901.
Though the punishments awardable under Section 83 of the Army Act are same as above, but these are awardable by an officer commanding a Brigade or equivalent commanders, as mentioned above.

Summary trials under Army Act Section 84 are more severe in nature, by which one or more of punishments stated therein can be awarded. The punishments are forfeiture of seniority, or in the case of any accused, whose promotion depends upon length of service, forfeiture of service for the purpose of promotion for a period not exceeding twelve months, but subject to the right of the accused previous to the award to elect to be tried by a court-martial; severe reprimand or reprimand and stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

The salient points of difference between Sections 83 and 84 are, firstly, the status of the officer empowered to conduct summary trial under Section 84 is generally higher than that of the officer conducting trial under Section 83. Secondly, under Section 84, as we have seen above, the officer conducting summary trial can award a punishment of forfeiture of seniority or forfeiture of service for promotion. This punishment cannot be awarded under Section 83. And, thirdly, an officer of the rank of Major can be summarily tried under Section 84 and not under Section 83.

Attendance of Witnesses at the Summary Trial

For trials under Sections 83 to 85, it is not necessary for the witnesses to attend and give their evidence if the accused consents in writing. All that is necessary is for the Summary of Evidence, to be read in the accused’s presence or the officer dealing with the case informs the accused that he has perused it.

Procedure for Summary Trial

The authority dealing with the case satisfies himself that a copy of the Summary of Evidence and the charge sheet has been delivered to the
accused at least twenty-four hours before the date and time of trial. The charge is read aloud. The accused is required to plead to the charge. The authority dealing with the case asks the accused if he wishes to make a statement. (The oral statement of the accused made in answer to this question will be either recorded or a gist thereof prepared and attached to the proceedings). After hearing anything that the accused may say, the authority dealing with the case, may, if he thinks fit, decide to hear the prosecution witnesses and may adjourn the case for this purpose. In such a case, the authority dealing with the case will allow the accused to question the prosecution witnesses and the hearing will proceed as nearly as may be as if the authority dealing summarily with the case had not decided to dispense with the attendance of witnesses. If at the conclusion of the hearing, the authority dealing summarily with the case considers that the charge should not be dismissed, he is to examine accused's record of service or conduct sheet. If the authority dealing summarily with case decides to dismiss the charge or to make an award which does not involve an option to elect trial by court-martial, he announces his decision. If the authority dealing summarily with the case intends to make an award affecting service for the purpose of promotion or seniority, he must ask the accused, "Do you elect to be tried by Court Martial or will you accept my award?"

When the accused requires the attendance of witnesses at the trial, the procedure is somewhat different. In such a case, the witnesses for the prosecution are called in one by one and give their evidence. The authority dealing summarily with the case asks the accused in each case whether he wishes to question the witness and may question the witness. He also asks the accused if he wishes to make a statement; and he has witnesses to call. The accused, if he wishes, makes a statement and/or calls witnesses. The authority dealing summarily with the case may question anyone who gives evidence. If on conclusion of the hearing, the authority concerned considers

96 AR 26.
97 AA Sec 84(a) and RA Para 444, Appendix ‘K’ and Appendix IV to Ars, Form I, Also See Mehra Suresh Chand, Maj V. UOI, AIR 1991 SC 483, 1991(1) SLR 187.
that the charge should not be dismissed, he is to examine accused’s record of service or conduct sheet.\textsuperscript{98}

\textbf{Review of proceedings.}

In the case of punishments awarded by a Commanding Officer – an officer Superior in Command to such Commanding Officer will be the reviewing authority. Whereas, in the case of punishments awarded by any other authority – the Central Government, the Chief of the Army Staff or any other officer specified by the Chief of the Army Staff.\textsuperscript{93} The Chief of the Army Staff has specified the GOsC of the Corps for the purpose of review of punishments awarded to officers JCOs and WOs under Army Act Sections 83 and 84.\textsuperscript{92}

If any punishment appears to the reviewing authority to be illegal, unjust or excessive, such authority may cancel, vary or remit the punishments and make such other direction as may be appropriate in the circumstances of the case.\textsuperscript{1} The powers of review shall normally be exercised within a period of two years from the date of award of the punishment.\textsuperscript{2}

\textbf{Miscellaneous matters.}

Neither the evidence of a witness is taken on oath at the summary trial nor is the evidence at the Court of Inquiry admissible at it. Giving an option to the accused to elect to be tried by Court martial is mandatory if the authority dealing with the case summarily wishes to award forfeiture of Seniority or Service. If it is not done, the proceedings of such trial under Army Act Section 84 would be void. However, technically, the accused can be retried. Before deciding upon any punishment, the authority concerned must see accused’s record of service. A copy of each of the Summary of Evidence and a charge sheet is given to the accused free of cost at least

\textsuperscript{98} Ibid, Form II.
\textsuperscript{93} AA Sec 88.
\textsuperscript{92} RA Para 442.
\textsuperscript{1} AA Sec 87.
\textsuperscript{2} RA Para 442.
twenty - fours before the Summary trial. Whenever the authority dealing summarily with the case wishes to award forfeiture of Seniority of Service, only one of these punishments can be awarded. A counsel or a defending officer cannot represent the accused at the Summary trial. An officiating incumbent can exercise the Summary powers of the incumbent of the office. For instance, a Brigade Commander officiating as Divisional Commander can award forfeiture of Seniority or forfeiture of Service to a major while trying him summarily under Army Act Section 84.3

The Army Act does not specifically provide for any right of appeal against summary award under Army Act Sections 83 to 85. However, it has been held that whenever a person subject to the Army Act feels aggrieved by his Commanding Officer or other Superior Officer, he may petition under Sections 26 (in case of JCOs and WOs) or 27 (in case of officers) of the Army Act. Hence, petitions against summary awards are submitted under the Sections ibid.4 An illegal punishment must be cancelled or set aside. It can neither be varied nor remitted. A punishment may be held to be ‘unjust’ either because of its severity or on account of peculiar circumstances of the case. The words ‘make such other directions as may be appropriate in the circumstances of the case’ give wide discretion to the Superior military authority. Such authority may also mitigate or commute the punishment or make any other appropriate direction. The officer wishing to exercise powers under clause (a) of Section 88 as Superior military authority must not only be Superior but should also be Superior in command to the Commanding Officer of the accused.

B. **Under the Military Law in the United Kingdom**

--- **Powers to arrest offenders.**

Any person subject to military law found committing an offence against any provision of this Act, or alleged to have committed or reasonably

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3 AA Sec 84 read with RA Para 53.
4 See Maj Gen AC Mangala, Judge Advocate General’s (Retd) book titled, "Commentary on military Law in India", P.106.
suspected of having committed any such offence, may be arrested in accordance with the provisions as given hereunder:-

(a) An officer may be arrested by an officer of the regular forces of superior rank, or if in case engaged in a quarrel or disorder, by such an officer of any rank.

(b) A Warrant Officer, a non commissioned officer or soldier may be arrested by an officer, Warrant officer or non-Commissioned officer of the regular forces:

Provided that a person shall not be arrested by virtue of this sub Section excepting by a person of Superior rank.

A Commanding Officer in U.K may also issue a warrant to the civil police for the arrest of a person suspected of an offence (See Section 190-A of the British Army Act). A police constable may arrest without warrant any person unlawfully at large from a military sentence of imprisonment or detention.\(^5\) Certain additional powers of arrest by civil and military authorities exist over persons suspected of desertion or absence without leave, and the bringing of persons so arrested before courts of summary jurisdiction.\(^6\) In addition, there are circumstances in which a person, arrested under Section 74 as a deserter or absentee, must be brought before a court of summary jurisdiction.\(^7\)

A provost officer, or any officer, warrant officer or soldier may be arrested by an officer of the regular officer of superior rank, or if engaged in a quarrel or disorder, by such an officer of any rank.

\(^{1}\) British Army Act Section 190(b)
\(^{2}\) British Army Act Section 74 and 186.
A warrant officer, non-commissioned officer or soldier may be arrested by an officer, warrant officer or non-commissioned officer of the regular forces.

Provided that a person shall not be arrested by virtue of this Sub-section except by a person of superior rank.

A provost officer, or any officer, warrant officer, non-commissioned officer or person legally exercising authority under a provost officer or on his behalf, may arrest any officer, warrant officer, non-commissioned officer or soldier.

Provided that an officer shall not be arrested by virtue of sub-sections 4 of Section 74 except on the order of another officer.

The power of arrest given to any person by this Section may (subject to provisions of Queen's Regulations), Para 6.004 be exercised either personally or by ordering into arrest the person to be arrested or by giving orders for that person's arrest.

--- Provisions for avoiding delays after arrest.

The allegations against any person subject to military law who is under arrest shall be investigated without unnecessary delay and as soon as may be either proceedings shall be taken for punishing his offence or he shall be released from arrest.

Whenever any person subject to military law, having been taken into military custody, remains under arrest for a longer period than eight days without a court martial for his trial being assembled, a special report on the necessity for further delay shall be made by his Commanding Officer to the prescribed authority in the prescribed manner and a similar report shall be made to the like authority and in a like manner every eight days until a Court martial is assembled or the offence is dealt with summarily or is released from arrest:
Provided that in the case of a person on active service, compliance with Section 75 (2) shall be excused in so far as it is not reasonably practicable having regard to the exigencies of military operations.

**Arrest of deserters and absentees without leave.**

A constable may arrest any person whom he has reasonable cause to suspect of being an officer, warrant officer or non-Commissioned Officer or Soldier of the regular forces who has deserted or is absent without leave.\(^8\)

Where no constable is available, any officer, Warrant Officer or non-Commissioned Officer or Soldier of the regular forces, or any other person, may arrest any person whom he has reasonable cause to suspect as aforesaid.

**Arrest under warrants of Commanding Officers.**

A warrant for the arrest of a person suspected of any offence may be issued by his commanding officer (determined for the purposes of British Army Act Section 196A (1) as if that person had been charged with the offence).

A Warrant under Section 196A shall be addressed to an officer or officers of police, and shall specify the name of the person for whose arrest it is issued and the offences which he is alleged to have committed; and any such warrant may be issued in respect of two or more persons alleged to have committed the same offence, or offences of the same class.

A person arrested under a warrant issued under the said Section shall, as soon as practicable, be delivered into military custody; and there shall be handed over with him a certificate signed by the officer of police who causes him to be delivered into military custody stating the fact, date, time and place of arrest, and whether or not the person arrested was at the

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\(^8\) Section 186 of British Army Act 1955, as amended.
time of arrest wearing the uniform of any of Her Majesty’s military forces. Such certificate will have the evidentiary value of the matters stated therein.

**Charges to be dealt with Summarily or by Court Martial**

After investigation, a charge against an officer below the rank of Lieutenant Colonel or against a Warrant officer may, if an authority has power under the following provisions to deal with it summarily, to be so dealt with by that authority (the appropriate superior authority) in accordance with those provisions.

After investigation, a charge against a non commissioned officer or soldier may be dealt with summarily by his commanding officer, subject to and in accordance with the following provisions.

Any charge not dealt with summarily as aforesaid shall after investigation be remanded for trial by court-martial.

Notwithstanding anything in the foregoing provisions, where:-

(a) the commanding officer has investigated a charge against an officer or a warrant officer, or
(b) the commanding officer has investigated a charge against a non-commissioned officer or soldier which is not one which can be dealt with summarily.

The commanding officer may dismiss the charge if he is of the opinion that it not to be further proceeded with.

References to Section 77 to dealing summarily with a charge are references to the taking by the appropriate superior authority or the commanding officer of the accused, as the case may require, of the following action, that is to say, determining whether the accused is guilty, dismissing

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*S. 77 of Army Act 1955, as amended.*
the charge or recording a finding of guilty, dismissing the charge or recording a finding of guilty accordingly, and awarding punishment.

**Power to stay further proceedings**

Where, in the course of investigating the charge, it appears to the accused’s Commanding Officer that proceedings in respect of the matters to which the charge relates could be, and in the interests of better administration of justice ought to be, taken against the accused otherwise than under this Act, he may stay further proceedings on the charge. This is to enable other proceedings to be taken under the Naval Discipline Act 1957 (NDA), the Air Force Act 1955 (AFA) or before a civil court.

Before exercising any of his powers, a CO may consult higher authority or DAL5.

**Powers of Company Commanders etc.**

Under AA 1955, S.82 (3) and The Army Summary Jurisdiction Regulations, 1972 (ASJR 1972) and Rules 8 and 6, a CO may delegate to subordinate Commanders the power to investigate and deal summarily with certain cases. The CO must formally delegate his powers. It is desirable that it should be done in Unit’s Part I Orders. In order to ensure that there is no misunderstanding it is desirable that the delegation shall be repeated in orders at the beginning of every year.

**Investigation of charges against NCOs and soldiers generally**

Where it is alleged that an NCO or a soldier has committed an offence with which his CO cannot deal summarily, the charge must be investigated under AA Section 1955, Section 76 by the CO himself. A subordinate commander cannot investigate such a charge under Section 76 or dismiss it under Section 74 (4), nor does he have power to stay the further proceedings on the charge. But he should, in accordance with the custom of the service,
inquire into the circumstances of the charge before the CO investigates it in order to ensure that all relevant evidence is available to the CO when he does so.

Unless the CO otherwise directs, a soldier holding local rank will be dealt with in his acting rank, if he holds one, or, if he does not, in his substantive rank.

Subject to what is said in the above sub-paras, charges against the NCOs and soldiers will be dealt with in the following way:

(a) The accused will be brought before the subordinate commander under whose he is and the charge will be read and, if necessary explained to him. He will not, however, be asked to plead to it.

(b) If the charge is one with which the subordinate commander can deal summarily but he thinks that in the circumstances he ought not to deal summarily with it, he will, unless he has reason to believe that the charge is one which he (the subordinate commander) is likely to dismiss, remand the accused to appear before his CO without hearing any evidence.

(c) If he decides to hear evidence, he may hear the whole case and award a punishment, remand for the CO or dismiss the case, or he may at any stage, if he decides that it is not a proper case for him to deal with, remand the accused to appear before his CO. When the accused before the CO, he will read the charge and if necessary explain it. If the accused is a soldier and the charge is one with which the CO can deal summarily, and the CO considers that he may wish to deal with it himself but that if he does so and records a finding of guilty he may wish to award detention for a period exceeding 28 days. The maximum period which Army Act, 1955, Section 78(3), permits him to award is 60 days. In case of award of detention beyond 28 days, extending upto 60 days, the CO will have to follow a special procedure for such cases.
Special procedure in case of extended detention of 60 days

This power of awarding extended detention is only available to a CO, who is not below a field rank\textsuperscript{12}. The essential features of the procedure are as under:

(a) there must be a summary or abstract of evidence and a charge sheet;

(b) the written permission of the higher authority must be obtained;

(c) the accused must not dispute the material facts alleged against him or dispute that those facts constitute offence(s) charged. A special form (AF. B 7112, as prescribed in RP, Sub. 2A.) must be used to record the proceedings. Unless all these conditions are satisfied, the CO must either deal with the charge summarily using his ordinary powers or remand the accused for trial by court martial, in either event, following the normal procedures. The CO must obtain the advice of DALS in such cases.

If the charge is one with which the CO cannot deal summarily or one with which, in the circumstances, he thinks he ought not to deal summarily; he will immediately remand the accused for a summary or abstract of evidence, unless he has reason to believe that he is likely to dismiss the charge.

If it is a charge with which the CO can deal himself and he decides to do so, he will hear the Evidence, unless for some special reason, he requires a summary or abstract of evidence.

After he has received or abstract of evidence, he will have the accused again before him and either remand him for trial by court-martial or deal with him summarily, as is appropriate. The CO may, at any time stay

\textsuperscript{12} Para 22 A, Chap II, MML, Part I, 1979.
further proceedings on the charge to enable the offence to be dealt with under the NDA 1957, AFA 1955 or by the civil Court.

Investigation by subordinate Commanders

Where a subordinate commander investigates a charge against an NCO or a soldier in the circumstances mentioned above, he will inform the accused that he may demand that the evidence be given on oath. If the accused does not demand that the evidence be given on oath the subordinate commander may direct that the evidence is to be given on oath.

The procedure after the charge has been read to the accused will be as follows:-

(a) Each prosecution witness will be called in separately to give his evidence, the accused being entitled to cross-examine, if he wishes to do so. Statements may be read instead of witnesses being called unless the accused requires that the evidence is given orally.

(b) At the conclusion of the prosecution evidence, the accused is to be asked whether he wishes to give evidence on oath or make a statement without being sworn and whether he wishes to call witnesses.

(c) After hearing all the evidence, the subordinate commander should, unless he decides to remand the accused for the CO, consider whether the accused is guilty or not. Unless he decides to dismiss the charge he should neither record nor announce a finding at this stage, but should examine the accused’s conduct sheet and if necessary, ask questions of the accused’s platoon commander regarding the accused’s general conduct in the service before deciding on an appropriate punishment. If either:-
(i) the subordinate commander proposes to award a fine or stoppages, or

(ii) the finding of guilty necessarily involves a forfeiture of pay, i.e. for absence without leave for more than six hours, the subordinate commander must, before announcing or recording a finding, give the accused the option of being tried by court-martial.

(d) If the subordinate Commander considers that his powers are insufficient, or if the accused elects trial by court-martial, the subordinate commander is not to record or announce a finding but is to remand the accused for the CO. The subordinate commander has no power to remand an accused for trial by Court-martial.16

(e) If the subordinate commander considers that his powers of punishment are sufficient, and if the finding or the proposed punishment does not give the accused the right to elect trial by Court-martial, or if it does and the accused does not elect trial, he is then to record the finding.

--- Award by subordinate Commanders ---

The punishments which can be awarded by a subordinate Commander are set out in ASJR, 1972, rule 16.

A subordinate Commander must give an accused the option of trial by court-martial if he considers that the accused is guilty of absence for more than six hours, or if some other person has had to perform a duty as a result of the accused's absence, as pay will be forfeited under PW by virtue of AA. 1955 Sec 145. He must also give the accused this option if he has decided to award the punishment of a fine or stoppages.

16 AA 1955, S. 78(5).
Investigation by COs

Where an officer, WO, NCO or soldier appears before the CO on a charge, the CO will first read and, if necessary, explain the charge to the accused. The next step will depend to some extent on the nature of the charge and the rank of the accused, since these factors govern whether the CO can deal summarily with the charge or not.

(a) Charge(s) which cannot be dealt with summarily by the CO in any event

No charge against an officer or WO can be dealt with by summarily by the CO. Nor can a charge against an NCO or soldier unless it is for one of the offences referred to in ASJR 1972, rule 11. In all such cases, where the CO cannot deal summarily, the purpose of the investigation which is required by AA 1955 to carry out into examine the charge and the evidence including any evidence which the accused may wish to put forward at this stage with a view either to submitting the charge to higher authority for further action or to dismissing it himself under AA 1955, Section 77(4) (or in limited circumstances, to directing trial himself by FGCM under AA 1955, Section 84(2). Thus, there must always be a summary or abstract of evidence when a charge is referred to a higher authority, the next step in such cases will nearly always be for the CO to remand the accused for one or the other. There is nothing, however, to prevent the CO from hearing the evidence himself first, although, of course, he cannot make any finding. But he can then dismiss the charge under AA 1955, Section 77(4), if he is of the opinion that it ought not to be proceeded with. When the Summary or Abstract of Evidence has been prepared, the CO will read and consider it. If it supports other charges, either in addition to or in substitution for the original charge, those other charges may be preferred, and the investigation already carried out in relation to the original charge will be treated as relating also to them. On the other hand, if the CO is of the opinion that the charge ought
not to be further proceeded with, he may dismiss it. He may stay further proceedings, on the charge in appropriate cases. Unless he has dismissed the charge or stayed further proceedings on it, the CO will then proceed in the case of a NCO or soldier to remand him for trial by court-martial and, whatever the accused’s rank, will refer the charge to higher authority unless he has power, and proposes, to direct trial himself by FGCM\(^\text{17}\).

(b) **Charge(s) which can be dealt with summarily by the CO**

If the accused is an NCO or soldier and the charge is for one of the offences referred to in ASJR 1972, rule 11, the CO will investigate the charge and either disposes of it summarily, stay further proceedings on the charge or remand the accused for trial by court-martial\(^\text{18}\).

The CO will investigate the charge by hearing evidence himself or by ordering and considering a summary or abstract of evidence, or by a combination of both. He will not normally remand the accused for a summary or abstract of evidence, however, if he proposes to deal with the case himself, unless the facts appear complicated or the case falls within the ambit of ASJR 1972, rule 11 or it is a case where special procedure is to be followed in order to award extended detention of 60 days or in the event, the accused elects to be tried by court-martial. In these last two circumstances, there must be a summary or abstract before the case is referred to higher authority. Likewise, the evidence must be reduced to writing if the CO does not propose to deal with the charge summarily and decides to remand the accused for trial by court-martial.

In dealing summarily, the CO, having considered the evidence, will decide in his own mind whether or not the accused is guilty of the charge. If he decides that he is not guilty, he will forthwith record the

\(^{17}\) See AA 1955, S 84(2).  
\(^{18}\) See AA 1955, S 77(3).
finding and dismiss the accused. If he considers that the is guilty, he will not record or announce the finding, but will next consider what the proper punishment is, having regard to the accused's record and circumstances on the one hand and his own powers on the other. If the punishment which he proposes to award is such that he is required by AA 1955, S.78(5), to give the accused opportunity to elect trial by court-martial, he will then ask the accused whether he wishes to be tried by court-martial. If the accused does not so elect, the CO will then record a finding of guilty and record and announce the punishment awarded. If the accused does so elect, the CO must adjourn the case in order that Q.R (1975) 6.088b can be complied with, unless he is of the opinion that it is undesirable that the accused should withdraw his election before he is remanded for trial. If the accused elects and does not withdraw, the CO will not record or announce a finding, but will remand the accused for a summary or abstract of evidence if none is in existence at that stage, and will then remand the accused for trial by court-martial when he has considered the summary or abstract. Subject to the restrictions imposed by Q.R. (1975) 6.088, and accused may withdraw an election at any time before the trial begins.

In any case, where the CO is of the opinion that the accused may be tried by court-martial, either because he cannot deal summarily with the charge himself or because it is likely that the accused will elect, the CO will ensure that the accused has, before he is brought before him, been advised by a person subject to military law of his own choice or, failing such choice, by an officer selected by the CO. Similarly, when the CO proposes in the case of a soldier to adopt the special procedure, as brought out above, (RP 11 A) with a view to awarding detention in excess of 28 days, he will, when he remands the accused for a summary or abstract of evidence pursuant to that Rule, appoint an officer to advise the accused.

The CO should ensure that all material witnesses give evidence during his investigation, including where the charge was first by a
subordinate commander, all those who gave evidence before him. Where a subordinate commander investigated a charge with a view to dealing summarily with it himself and the accused elected trial by court-martial, the CO must, first, comply with Q.R. (1975) 6.088(a) and (b), and must then, if the accused does not withdraw his election, order and consider a summary or abstract of evidence before remanding the accused for trial by court-martial. Where, during his investigation, the CO is of the opinion that the charge should be replaced by another, or other charges added, he may replace or add accordingly; and any investigation already carried out in relation to the original charge is treated as relating also to the substituted or additional charge. If he proposes to deal with the case summarily, the CO must ensure that not only the original charge but also any new charge is capable of being dealt with summarily. If a CO finds an accused guilty on a charge with which he cannot, in fact, deal summarily (either because the accused is an officer or WO or because the charge is not for an offence referred to in ASJR 1972 rule 11) the finding will be a legal nullity. Once an award has been made, it cannot be altered by the CO. The CO may, at any time, stay further proceedings on the charge to enable the offence to be dealt with under the NDA 1957, AFA 1955 or by a civil court.

Punishments by COs

The punishments which may be awarded by COs are dealt with in AA 1955, and ASJR rules 12-15. Where a CO is dealing on a single charge with an acting WO or acting NCO, he cannot, if he deprives him of his acting rank, award any other punishment except stoppages. A similar limitation applied where a CO decides to reduce a lance corporal or lance bombardier to the ranks. After a person has been deprived of acting rank, or reduced to a lower acting rank, or reduced to the ranks from the rank of lance corporal or lance bombardier, whether as a punishment under AA 1955 or administratively under Queen’s Regulations, his CO, may not, without permission of higher authority, punish him for an offence committed before such deprivation or reduction. A CO has no power to deal with a substantive
WO, though he can deprive an NCO, who is acting WO of his acting rank, he must give the accused the opportunity to elect trial by court-martial. Similar provisions apply where a CO decides to reduce a lance corporal or lance bombardier to the ranks. A CO may not introduce any system of punishment which is at variance with AA 1955 or AO 10 of 1972 which provides for minor punishments.

**No trial after punishment by CO**

Once the CO has dismissed the charge or has recorded a finding of guilty, an accused cannot be dealt with under AA 1955 for the same offence. A person cannot be dealt with by his CO for an offence of which he has been acquitted or convicted by a court-martial or civil court or for an offence which has been taken into consideration by such courts. The same bar applies to charges which have been dealt with summarily.

**Remand for Summary or Abstract of Evidence**

At any time during the investigation, a CO may, instead of hearing the evidence himself, order either a Summary of Evidence or an abstract made. If the case is to be referred to higher authority, he must have the evidence recorded in writing\(^\text{19}\).

A CO must order a Summary of Evidence to be taken if the maximum punishment for the offence with which the accused is charged is death. A CO must order a Summary of Evidence if in his opinion, the interests of justice render this course necessary. If does not order a Summary of Evidence to be taken, he will direct an abstract of evidence to be made\(^\text{20}\). In certain exceptional circumstances, although the maximum punishment for the offence is death or the accused has asked for a Summary of Evidence to be taken, the taking of a Summary of Evidence may be avoided\(^\text{21}\). If the accused has not already been advised by a person of his own choice, a CO

\(^{19}\) RP 7 (1).

\(^{20}\) Ibid, 7 (2).

\(^{21}\) Ibid, 102.
will, before ordering a Summary to be taken or an abstract made, ensure that the accused is so advised.

Taking of a Summary of Evidence

At the taking of Summary of Evidence, before the officer detailed commences to record the evidence, he should inform the accused that:-

(a) a summary of evidence is about to be taken on charges which have been preferred against him, but that other charges may be preferred as a result of the evidence adduced at the summary;

(b) after the summary of evidence has been taken, it will be considered by the CO and if that officer is of the opinion that the case should be tried by court-martial, the accused will be remanded for trial;

(c) the evidence will be taken an oath/affirmation;

(d) he has the right to cross examine witnesses for the prosecution;

(e) he has the right to call witnesses in defence who may not be questioned by the officer taking summary of evidence or if the attendance of his witnesses cannot, in the opinion of the officer taking the summary be readily procured, to have statements made by those witnesses included in the summary;

(f) he may give evidence or make an unsworn statement, in either event, he cannot be questioned, or he may reserve his defence;

(g) he cannot claim to be represented at the summary.

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22 Q.R (1975) 6.085, 6.089(b) and 6.071 A.
(h) it is intended (if it be the case) to put in written statements of evidence instead of calling the witnesses unless he demands the attendance of the witnesses; and

(j) he is entitled to the copy of summary of evidence not less than twenty-four before his trial or summary disposal by an appropriate superior authority (ASA).

The officer taking the Summary of evidence must ensure that the rules of evidence are strictly complied with; in particular, he will avoid recording "hearsay" evidence and evidence tending to show that the accused has been convicted of other offences; he will not admit any documents which are not admissible in evidence.

The witnesses for the prosecution will be called, sworn and will give their evidence in presence of the accused. The evidence will be recorded in narrative form in the first person. The evidence should be recorded in witness's own words, but where a slang expression is used, it is desirable to record the explanation in the parentheses.

If it is necessary to record the evidence of witnesses through an interpreter, the interpreter should first be sworn by the officer taking the summary and the fact that this has been done should be recorded. It should be indicated in the summary which of the statements of evidence of witnesses have been recorded through the interpreter, who should sign the statements so recorded.

Every endeavour should be made to call witnesses in a chronological order. When a witness has concluded the whole of his evidence-in-chief, the accused may cross examine on any matter which he may think material. The officer taking the summary should avoid advising the accused whether he should or should not put questions to a witness. If the accused in doubt, the taking of the summary should be adjourned to enable the accused to consult the officer who has already advised him. When all cross

examination is concluded, the evidence will be read over to the witness who will sign it. If the accused declines to cross-examine a witness, a record to that effect should be made in the proceedings.

**Witnesses who are not available at the summary**

In the event of a prosecution witness not being able to attend the summary, a written statement of his evidence may be included in the summary, unless the accused demands his attendance for the purpose of cross-examination and the attendance of the witness can be enforced. Where a statement of a witness is thus put in a record should be made in the proceedings and the statement itself attached to the summary. The statement put in should, if possible, be taken by someone who has knowledge of the case so as to ensure that it contains all the evidence necessary that it does not contain inadmissible evidence. If the accused demands the attendance of the witness for the purpose of cross-examination and the witness can be compelled to attend, the summary of evidence cannot be completed until the witness has attended. In certain exceptional circumstances, this attendance can be dispensed with.

The object of this procedure is to avoid delays. If, therefore, a statement of a witness who is on leave at the time of taking of the summary is available, it should be used rather than adjourning the summary until after the return of the witness.

A Statement made by a witness at a Board of Inquiry or a regimental inquiry must not be put in under this rule, but the facts contained in it may form the basis of a fresh statement by the witness. Although the summary of evidence is taken upon oath, statements put in evidence under the proviso to RP 9(b) are not on oath.
Taking of a summary of evidence (defence)

When all the witnesses for the prosecution have been called, the accused should be cautioned in accordance with RP 9(d). The officer taking the summary should not tender any advice to the accused as to whether he should give evidence, make a statement or call witnesses. If the accused is undecided as to what course he should take, the summary should be adjourned to enable him consult the officer who has already advised him under QR 711.

Where the accused elects to make a statement, this should be recorded (on oath if he so demands) verbatim. No questions should be asked to the accused other than to clear up any ambiguity. Before an accused is asked whether he wishes to give evidence, the officer taking the summary, if he is likely to be the prosecutor at the trial, should ensure that another person is present when the accused is cautioned, and, if the accused elects to make a statement or give evidence, during the time he is making that statement or giving evidence, so that this person can produce the statement at any subsequent trial. He should be asked to sign his evidence or statement but he cannot be compelled to do so. If he reserves his defence, a record to that effect should be made.

After the accused has made his statement or given evidence, any witnesses he wishes to call should be called. They will be sworn and their evidence will be recorded in the same way as that of the witnesses for the prosecution. They may not be questioned by the officer taking the summary except for the purpose of removing ambiguities. An accused may call witnesses in defence even if he does not make a statement or give evidence himself. In the event of a defence witness being unable to attend the summary, his evidence may be included in the form of a written statement in exactly the same way as the evidence of a witness for the prosecution witness may be included in similar circumstances. In the case of a defence witnesses, however, no question of the accused’s demanding the attendance of the witness arises because he cannot, in any event, cross examine him.
_ Summoning of witnesses at the Summary_

A witness subject to military law will be ordered to attend the taking of the summary by proper military authority. A witness not subject to military law in the United Kingdom or a colony may be summoned to attend the taking of a summary. In a foreign Country or in a Commonwealth country local arrangements will be made. A witness cannot, however, be summoned for the purpose if this would necessitate his leaving the United Kingdom or the Colony in which he resides.

_ Compliance of RP 9 and additional summary_

When all the evidence has been recorded, the officer taking the summary will give a certificate to the effect that RP 9 has been complied with and that the evidence has been taken down in the presence of the accused. He will sign the record. When it appears to a CO after he has considered the summary of evidence that there is insufficient evidence, he may direct that an additional summary of evidence should be taken. In such a case, the accused must, at the appropriate time during the taking of the summary, be cautioned again and given a further opportunity of giving evidence or making a statement.

_ Remand for trial_

After the summary of evidence has been taken or abstract of evidence made, the accused must be brought before his CO, before the matter is referred to higher authority. The CO may, after considering the summary or abstract of evidence :-

(i) dismiss the charge; or
(ii) in the case of an officer or WO, refer the charge to higher authority; or

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24 RP 91 (1).
26 AA 1955, S. 77 (4).
(iii) in the case of an NCO or soldier, either remand the accused for trial or, if the accused has not elected trial by Court-martial, deal with the charge summarily if he can and in his opinion should so deal with it.

Once the CO has acted under AA 1955, S.77(3), he cannot deal with the charge summarily unless it has been referred back to him under S.78 (6) or, with a direction to dismiss it under S.80. After the CO has acted under AA 1955, S.77 (3), he will sign the charge sheet and forward the application for trial. A soldier, who holds local rank, relinquishes that rank on being remanded for trial by Court-martial. See Q.R (1975) 6.151 (b).

Summary disposal by Appropriate Superior Authority

ASJR 1972, rule 17 prescribes the officers in addition to officers holding GCM warrants who may sit as ASAs. In certain cases, they have limited powers of punishments. Where a CO has remanded a case of an officer below the rank of Lt Col or a WO to higher authority under AA 1955, S. 79(1) that authority or someone on his behalf will consider whether the charge should be made the subject of trial by court-martial or summary disposal. Vide the Section ibid, before a charge is dealt with summarily by an ASA or before trial by court-martial is ordered, advice must have been obtained from DALS\textsuperscript{27}. In considering whether or not trial should be ordered, the higher authority must bear in mind that there are certain offences which cannot be dealt with by ASA and also that in certain circumstances an ASA has limited powers of punishment.

When it is decided that the charge should be disposed of summarily by an ASA, the accused should be asked before the date fixed for the hearing whether he is willing to dispense with the attendance of the witnesses whose evidence is contained in the summary or abstract of evidence, and, if he is so willing, he should sign a certificate to that effect. The accused must have received a copy of the charge sheet and Summary or abstract of evidence (which must include any statement made by the

\textsuperscript{27} See Q.R. (1975) 6.064 and 6.097.
accused under RP 10(2) and any statements of defence witnesses submitted by the accused under RP 10(3) at least 24 hours before the hearing.

Procedure at the hearing:

RP 20 lays down the procedure at the hearing:

(a) The accused will be brought before the ASA and the charge will be read.

(b) If the accused has dispensed with the attendance of witnesses, the summary or abstract of evidence will be read if the accused requires it.

(c) If witnesses are called; they will give their evidence on oath or affirmation. The accused may cross-examine the witnesses.

(d) The oath will be administered by the ASA.

(e) In his defence, the accused may give evidence or make an unsworn statement and, whether or not he has taken either of these courses, call witnesses.

(f) At any time, the charge can be dismissed.

(g) At any time, the ASA may decide to send the accused for trial by court-martial.

(h) After hearing the evidence, the ASA will either:

(i) dismiss the charge; or
(ii) record a finding of guilty; or
(iii) if the finding of guilty will involve a forfeiture of pay or if the punishment which the ASA intends to award is one other
than a severe reprimand or reprimand, he will give the accused an opportunity of electing trial. He will always give a civilian to whom AA 1955, Part II, applies this option.

(i) Where a finding of guilty has been recorded, the ASA will then consider the conduct sheet and award punishment.

(j) Where the accused has elected trial, the ASA will instead of recording a finding of guilty, take steps to bring the accused to trial by court-martial.

**Punishments by ASAs**

AA 1955, S.79(5) provides for the following punishments, which may be one or more of them:

(a) except in the case of a WO, forfeiture of seniority for a specified term or otherwise.

(b) fine,

(c) severe reprimand or reprimand, and

(d) where the offence has occasioned any expense, loss or damage, stoppages provided that the ASA may not award both forfeiture of seniority and a fine.

And provided also that the second proviso to Section 78(3) of this Act shall have effect as respects fine awarded by virtue of this section as it has effect as respects fines awarded by virtue of the said section 78. The second proviso to Section 78 prescribes the fine not to exceed twenty-eight days pay, except in case of an offence under section 70 of the said Act.

**Review of summary findings and awards**

Where an accused has been dealt with summarily either by a CO or by ASA, the finding and award may be reviewed by superior authorities who are

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28 RP 20(f) and Sch 5(2).
the Defence Council, any officer superior in command to the person making the award and certain officers who may be appointed by the Defence Council.

The reviewing authority, if he considers that there has been mistake in law in the proceedings, or a substantial injustice to the accused, may quash the finding and, if he does so, will at the same time quash the award, e.g. where subsequently further evidence comes to light which renders the finding unjustifiable. A reviewing authority may, if :-

(i) the punishment was invalid;
(ii) the punishment was in his opinion too severe; or
(iii) two or more punishments are awarded in combination where they could not validity be so awarded or are, taken together, too severe, either quash the award or substitute a valid punishment. An example of (i) would be if 30 days detention was awarded by a CO and of (ii) if a CO deprived an acting NCO of his acting rank and awarded him a severe reprimand; the finding will not be affected. QR (1975) 6.071A provides that an award by a CO of detention for a period exceeding 28 days must be reviewed within 21 days of the award.

A Commanding Officer may exercise summary jurisdiction over those under his command, and at least since the Army Act 1886 his powers have steadily been increasing. As a result of legislation enacted in 1976, powers to sentence a soldier to detention is increased from an order of 28 to 60 days and a maximum fine that he can impose is increased from 14 to 28 days' pay. The reasons advanced for this transfer of jurisdiction to a commanding officer were that it would result in a speedier disposal of cases and it would reduce the number of courts-martial. Where a CO wishes to invoke these increased sentencing powers given by 1976 Act, he must seek permission of the higher authority.

If the CO intends to award loss of liberty or pay, he is required by law to give an accused soldier the option to elect to be tried by court-martial. It is rare for a soldier to elect trial by court-martial. Soldiers seem to prefer summary disposal. It was held in this case that where the CO failed to offer the plaintiff the chance to elect, this did not invalidate the summary proceedings.

If a soldier does not elect to be tried by court-martial and is found guilty by his CO, there is no appeal to any court, although his case may be reviewed by military authorities. As stated above, the finding or sentence may be quashed or varied where it appears to the military authorities that there is a mistake of law in the proceedings or that anything has occurred in them which would involve substantial injustice to the accused. Summary proceedings involve no legally qualified person although a CO may, and in some cases must, seek guidance from the DALS. An accused soldier is not permitted legal representation at the hearing, the proceedings are not open to the public and the laws of evidence do not apply.

Case-Law on Judicial review of a CO’s Summary Powers

Is there a valid distinction to be drawn between a finding of guilt by a Court-Martial and a summary finding of guilt by a Commanding Officer, so that the former but not the latter may be the subject of judicial review? Such a distinction has been drawn between a board of visitors of a prison (which may adjudicate offences committed by prisoners undergoing sentence), and the governor thereof. In Rv. Hull prison Board of Visitors, ex parte St. Germain, before the Court of Appeal, Lord Justice Mc Gaw was only prepared to admit the possibility of a certiorari issuing to a Board of Visitors’ decision but not to that of the Governor. The distinction, according to his Lordship, was not based on logic but on the view of Lord Goddard, C.J., in ex parte Fry, that it was, “undesirable for the civil courts to interfere with the Commanding Officer’s powers to deal with certain

30 Heddon v Evans, 35 T.L.R. 642 (1919).
31 Army Act, 1955, S 115(3).
disciplinarian offences in the orderly room". Lord Justice Shaw, on the other hand, could not, "find it easy, if at all possible to distinguish between disciplinary proceedings conducted by a Board of Visitors and those carried out by a prison governor", while Lord Justice Waller reserved this question.

It is clear from what so far has been said that it is misleading to describe a CO's functions as being merely to administer discipline\textsuperscript{34}. In a sense, all proceedings within the military legal system attempt to promote discipline. In the Manual of Military Law, a court martial considering a sentence is directed to consider, inter alia, that, "the proper amount of punishment to be inflicted is the least amount by which discipline can be effectively maintained".\textsuperscript{35} Neither the jurisdiction of a court-martial nor that of a commanding officer is limited to purely military offences. By "Military offences" is meant those such as absence without leave which do not exist in the civilian sector. These offences are in contrast with criminal offences charged under S.70, AA 1955, which are also crimes under civilian law. The distinction is the same as that found in American military law. Although, a CO may not be a "Court", he must act fairly and, at least in those cases where a soldier's civil rights are affected judicially.

It is submitted that judicial review would lie in respect of summary disposal by a CO on the same basis as court-martial, and that "policy and good sense" do not compel a contrary conclusion. The powers of a CO differ markedly from those of a prison governor or a chief fire officer; and they have been increased recently by the Parliament in the Armed Forces Act 1976.

There are distinct advantages to the Army in transferring powers from a court-martial to a commanding officer. This is so, however, only until the point is reached that the punishments "become so severe that the rights of the individual outweigh the needs of the services with respect to the maintenance of discipline".\textsuperscript{36} In the American military judicial system, the

\textsuperscript{34} See ex parte St. Germain, 2 All E.R. 198 (1978) (DC), Ex parte Fry, 2 All E.R. 118 (1954) (DC); R v Metropolitan Police Commissioner, ex parte Parker, 2 All E.R. 717 (1953).
\textsuperscript{35} 1, Man. Mil. L. ch. III, para 88 (1972).
\textsuperscript{36} Colonel Harold L. Miller, A Long Look at Article 15, 28 Mil. L. Rev.37, 55(01 April 1965).
commander’s powers of summary or non-judicial punishment are established by Article 15, Uniform Code of Military Justice, codified at 10 USC S. 815 (1976). Colonel Miller now assigned to the army element of the office of the Chairman, Joint Chiefs of Staff, wrote “A Long look at Article 15 as a thesis when he was a member of the 12th career (Graduate) class at The Judge Advocate General’s School, Charlottesville, Va., academic year 1963-64. Readers may also want to examine an article by a student at Columbia University School of Law, Steven E. Asher, “Reforming the Summary Court Martial”37. The Summary Court Martial should not be confused with non-judicial punishment administered by a Commander (CO) under Article 15, UCMJ. Whereas the Summary Court Martial is governed by Articles 16, 20 & 24 UCMJ. The Commander (CO) does not serve as the Summary Court Martial except under very unusual circumstances38. Through summary trials, individual cases are dealt with more expeditiously and this avoids the disturbance to military routine that a court-martial causes. Such evidence as there is suggests that this form of disposal is preferred by both soldiers and commanding officers39.

Reform of the offender, except in those cases where the soldier is to be dismissed from the service, is of utmost importance as an aim in sentencing, since the sentencer also represents the employer, and reform may, it is argued, be better achieved by avoiding court-martial40. Being a discretionary remedy, judicial review of a CO’s decision is unlikely to be successful save in the very exceptional case, and consequently its effect on the maintenance of discipline would be minimal.

An action for damages

If an individual41 (whether a Commanding Officer or indeed members of a court-martial) acts without or in excess of jurisdiction and commits an assault, false imprisonment, or other common law wrong and a soldier’s

38 Article 24(b), UCMJ; 10 U.S.C., S.874 (b) (1976).
39 Heddans V Evans, 35 TLR 642, 648 (1919).
Also see Peter J Rowe, “Military Justice within the Army”, Mil L. Rev, Vol 94, P.118-134.
41 R V Hull Prison Board of Visitors, ex parte St. Germain, 1 All E.R 701, 717, 725 (1979).
"Civil rights" are thereby affected; he will be liable in damages. This is so even though the injury purports to be done in the course of actual military discipline.

In *Jenkins Vs Shelley*[^12], a Chief Petty Officer sued the captain of the ship who had sentenced him to 42 days detention for an offence e.g. disobedience. The plaintiff claimed damages for false imprisonment, alleging that the captain had exceeded his jurisdiction. Justice Hallet found that the defendant had acted within his jurisdiction, and that the plaintiff’s claim therefore failed. He treated *Heddon Vs Evans*[^43] as authority to show that, if the captain had acted outside his jurisdiction, an action for damages would lie. If discipline would be adversely affected by an application for judicial review, a fortiori it would be an action for damages against the CO himself. In the case ibid, it was held that lawsuits in which actions of military authorities have been successfully challenged include *Boyce Vs Bagyliffe*, 1 Camp. 58 (1807), and the cases cited in *Warden Vs Bailey*, 4 Taunt 67, 70, 71, 75 (1811). According to Justice Mc Cardie in *Heddens Vs Evans*, 35 T.L.R. 642 (1919), "Only one tribunal, the House of Lords, is free to hold that an action will lie for the malicious abuse of military authorities (within jurisdiction) without reasonable and probable cause"[^44].

### Summary trial in U.K. Vis-à-vis. European Convention on Human Rights

In the light of the European Court of Human Rights, it would appear that the process of summary disposal by a CO in the British Army may not fully comply with the obligations imposed upon the United Kingdom by the convention. This will not affect, however, the legality in England of the current domestic legislation, since the obligations imposed by the Convention do not apply directly to individuals in national law. Nevertheless, there is clearly a duty upon a state to enact enabling legislation, to bring its national law into line with International agreements.

[^12]: 1, All. E.R. 786 (1936).
[^43]: 35, TLR 642 (1919).
[^44]: Also see Fraser V. Belfour, 34 TLR 502 (HL) (1918); Richards V Naun, 3 All E.R. 812, 815 (1966) (Lord Denning, M.R.); AA 1955, S. 142.
to which it is a party. It is possible to construct at least on academic grounds that the European Convention on Human Rights may conceivably apply to non-judicial punishments and to courts-martial proceedings among United States Forces personnel stationed in the United Kingdom and other Western European Countries. But it seems unlikely that such arguments would be taken seriously either by an American Court-martial or appellate court, or by the European commission or Court of Human Rights, in almost all court-martial cases that arise among the U.S. forces in Europe.

Everyone who is deprived of his liberty is entitled to a supervision of lawfulness by a court. A Commanding Officer is not a Court, and a soldier dealt with by him awarded a sentence of detention (that involves deprivation of liberty)\(^5\) is entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court. It would appear that it is not sufficient to provide a soldier with the right to bring habeas corpus proceedings. Neither would it suffice to argue that he could apply for juridical review, since the High Court's jurisdiction may only be invoked in limited circumstances. Further, Article 5(4) does not use the words "appeal" or "review" and the word "court" is in the singular and not plural, which again suggests that there should be supervision without jurisdictional limits. At present, under the military legal system, there is no such supervising court.

If a CO deals summarily with a criminal offence or a disciplinary offence that is nevertheless of a criminal nature, the requirements of Article 6 will come into play. These requirements are not met by the present procedure. It might here be argued that summary disposal of objectively criminal offences by a CO is not a "public hearing by an independent and impartial tribunal". Clearly, the hearing is not in public. Further, under present law, the only person who can deal with a case is the Commanding Officer of the accused. There is no provision in AA 1955 to deal with the situation, apart from election of trial by court-martial, where the soldier wishes to allege the partiality of his Commanding Officer. Further, lack of legal representation not only prevents there being an 'equality of arms', but

it would appear to fall foul of Article 6(3)(c) of the said convention which provides that everyone has the right to defend himself in person or through legal assistance of his own choosing or, if he has no sufficient means to pay for legal assistance, to be given it free when the interest of justice so require.

The effectiveness of an army as a disciplined body must be weighed against the scrupulous preservation of the rights of those who serve in it. Military discipline must be preserved, and to this end it is vital to permit a CO to deal personally with breaches of discipline by those under his command. But it is also important that those powers are not used arbitrarily or incorrectly, and that the possibilities of judicial intervention are not closed.

C. Under the United States of America

Introduction

In military society, under the Uniform Code of Military Justice, the process of arrest is called apprehension. An alleged offender is apprehended by a person authorised by law or regulation to do so, and is brought before an officer whose duty it is to determine whether or not there exists probable cause for restraint. If there is no probable cause, the officer orders the release of the apprehended person. If probable cause is found to exist, the officer orders the apprehended person either to remain within certain specified limits or to be physically restrained. The term “arrest” is used to describe the moral restraint imposed by officer’s order directing the apprehended person be incarcerated in a place of security or be placed under the control of a guard. The primary purpose of such orders is to ensure that presence of the alleged offender at the time that further proceedings, such as a formal pre trial investigation, or a court-martial, are to be conducted.
Apprehension is the taking into custody of a person. It must be distinguished from the restraint imposed by an order placing a person in a status of arrest or of confinement.

Types of restraint

Restraint may be physical or moral. Where the effectiveness of the restraint depends upon measures taken forcibly to prevent a person's exercise of liberty, it is physical; where it depends upon the cooperation of the restrained person, acting under his obligation to obey the order directing the restraint, it is moral.

Moral restraint may be imposed by proper authority as a judicial or non-judicial punishment, or for the purpose of ensuring the availability of an alleged offender for investigatory or judicial proceedings. In the former cases, when imposed as a punishment, it is termed restriction; in the latter case, arrest. Arrest is defined as the restraint of a person by an order, not imposed as punishment for an offence, directing him to remain within certain specified limits.

Physical restraint may be imposed by proper authority as a judicial or non-judicial punishment, for the purpose of impending serious injury to the person restrained or to others, or for the purpose of ensuring the presence of an alleged offender for investigatory or judicial proceedings. In all these cases, the restraint is termed as confinement, which is defined as the physical restraint of a person. The degree of restraint should be commensurate with the gravity of offence(s) set out in the complaint and with the protection of military and civil community from further conduct of the type specified. The circumstances of each case will govern the type and degree of restraint to be imposed. Only the minimum required under the circumstances is allowed by the law.

46 UCMJ 7(a).
47 UCMJ 9(a).
Apprehension

(a) Authority to Apprehend

The Uniform Code contains items of specific authority and one item of general authority for the apprehension of persons. Specific authority is given to all Commissioned Officers, Warrant Officers, Petty Officers and Non-Commissioned Officers to quell quarrels, frays and disorders amongst persons subject to the Code and to apprehend such persons who take part in them. Specific authority is given to civil law enforcement officers summarily to apprehend deserters from the armed forces and to deliver them into the custody of the armed forces. While a private citizen who is not a law enforcement officer has no specific authority to apprehend a deserter, the provisions of law and regulations authorising payment of a reward for the apprehension and delivery of a deserter, coupled with an official declaration of desertion containing a description of the deserter, a request for his apprehension, and an offer of reward, constitutes sufficient authority for any private citizen to apprehend the deserter.

(b) Release from Apprehension

The power of release of an apprehended person normally resides in the person who made the apprehension; but the power to release from apprehension expires upon delivery of the apprehended person to higher authority. It also resides in the CO of the person apprehended or anyone else legally acting for him or it may be the CO of the military activity to whom the apprehended person has been delivered, or anyone else legally acting for him or it may be the person who, in the particular case, has the duty to determine whether probable cause exists, and the power to order the apprehended person into arrest or confinement. An apprehended person should be retained in custody only for the time required to bring him before the officer whose duty it is to determine whether probable cause exists in his

48 IJCMJ 7(c).
case, or to secure his custody until proper authority, military or civil, may be notified. Unnecessary delay is a punishable offence. 49.

Arrest

Arrest consists of the following elements:

(a) Authority to impose arrest.
(b) Intent to impose arrest.
(c) Understanding on the part of the person ordered into arrest of his arrest status, and
(d) Understanding on the part of the person ordered into arrest of the specific limits within which he is directed to remain.

Under the element which requires understanding of the arrest status, it is essential that the words, “you are ordered into arrest,” or their equivalents be communicated to the person being placed in an arrest status, and that he be cognizant of being ordered into arrest.

Under the element which requires understanding of the specific limits within which he is directed to remain, it is essential that the words which have a definite and concise meaning be used in describing the limits. An order to remain “in the barracks,” or “on the station,” or “on board” (the ship) will ordinarily be sufficiently specific, whereas an order to remain “in the vicinity” or “on deck” will not be sufficient.

Authorities to order into arrest

An enlisted person may be ordered into arrest by:

(a) any commissioned officer; or

49 UCMJ 9(e), House Hearings 906-907. Also see Brigadier General James Snedeker’s book, “Military Justice under the Uniform Code,” PP 51-56. 50 UCMJ 5: 303.
(b) any warrant officer, petty officer, or non-commissioned officer duly authorised by the commanding officer to whose authority the person ordered into arrest is subject\textsuperscript{51}.

A Commissioned officer, a Warrant Officer, or a civilian who is subject to trial under the Uniform Code may be ordered into arrest only by a Commanding officer to whose authority he is subject\textsuperscript{52}.

A Commanding Officer, within the meaning of the rules governing the power to order into arrest, is a commissioned officer who holds a position in official command of a fixed territorial establishment of the armed forces, or a body of organised personnel of the armed forces recognised as a command, and includes a commissioned officer who has a power to appoint a summary court-martial. Such a commanding officer may authorise warrant officers, petty officers, and non-commissioned officers to order into arrest enlisted persons subject to his authority; but he is not permitted to delegate authority to order commissioned officers, warrant officers, or civilians triable under the Uniform Code into arrest. As to the latter, the order must be that of the commanding officer himself, although it may be delivered by another officer.

The order into arrest may be oral or written. It must be the order of a person having authority to issue it, although it may be delivered through other persons subject to the Uniform Code. Any such person may deliver an order of a Commissioned officer placing an enlisted person in an arrest status, whereas only a commissioned officer may be used to deliver an order of a commanding officer placing in an arrest status another commissioned officer, warrant officer, or a civilian.

**Probable Cause**

The exercise of the power to order into arrest is prohibited unless probable cause exists\textsuperscript{53}. Probable cause is not defined in the Uniform Code.

\textsuperscript{51} UCMJ 9 (b).
\textsuperscript{52} UCMJ 9 (c).
\textsuperscript{53} UCMJ 9 (d).
It exists only when there is sufficient known evidence against a person to justify further proceedings against him. To determine this fact, some kind of examination is called for: an examination not of the person against whom a complaint has been made, but of the evidence which has been gathered against him and of its value. Evidence which is being sought but which is not being available during the examination must not be considered. The person against whom the complaint has been made should be heard if he desires voluntarily to make a statement, but he should not be subjected to interrogation for the purpose of obtaining evidence against him. If the examination fails to disclose sufficient evidence of value to indicate probability of guilt, the person should be immediately released from apprehension and if there is sufficient evidence and probable cause exists, then the person may lawfully be ordered into arrest, and must be ordered either into arrest or confinement.

The purpose of such examination is to prevent hasty, malicious, improvident, or oppressive prosecutions; to protect the person against whom the complaint has been made from open and public accusations of crime; to avoid, both for the person involved and for the government, the possible expense and loss of time incidental to a trial by court-martial; to save the person involved and his relatives from the humiliation and anxiety and attend a public prosecution; and to discover whether or not these exists substantial grounds upon which a prosecution may be based. The purpose is not to determine the guilt or innocence of any person at this stage.

**Release from a status of arrest**

The power to release a person from the status of arrest and restore him to duty normally resides in the person who ordered him into arrest but the power to release him from the status of arrest expires upon the submission of the case to higher authority for disposition; the CO of the person ordered into arrest, provided the latter is longer charged with an offence and the military superiors in the chain of command with the CO of

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53 UCMJ 10.
54 Adopted from Rosenberry, J., in Thies V State, 178 Wis. 98, 103, 189 N.W. 539, 541 (1922).
the person ordered into arrest, provided the latter is no longer charged with an offence.

The status of arrest is terminated when a court-martial announces a sentence which includes a period of confinement, because the sentence begins to run at that time, and the accused person is then in a state of confinement. The status of arrest is not affected by a court-martial sentence which does not include a period of confinement or by an acquittal, because the CO must then determine whether the accused is to be held for trial for some other offence.

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**Confinement**

**(a) Nature of Confinement and the authorities to order into confinement**

Confinement is physical restraint, and does not depend upon any cooperation of the person ordered into confinement. It is, therefore, a physical, objective fact, and no understanding by the person confined, either as to his status or as to the rigor of restraint imposed, is required. Incarceration of a person, or the placing of a guard over him, constitutes confinement. It may be imposed by a proper authority as a punishment judicial or non-judicial, or for the purpose of ensuring the presence of an alleged offender for investigatory or judicial proceedings. Commissioned officers who have authority to order into arrest also have authority by law to order into confinement, with the same limitations as to the classes of personnel who may be subjected to the order, and with the same condition precedent relating to the determination of probable cause. Because the authority of warrant officers, petty officers and non-commissioned officers, however, depends upon prior authorisation by the CO of the persons subject to such orders involving physical restraint, it does not follow that the authority to order into arrest carries with it the authority to order into confinement. It is a matter entirely within the discretion of the authorising CO, and he may authorise the issuance of orders into arrest, at the same time withholding authority for the issuance of orders into confinement.
(b) Changing status from arrest to confinement

Arrest differs from confinement only in the nature and degree of the restraint imposed. Persons who have authority to impose both arrest and confinement, when and only when the circumstances of a particular case require, change the status of a person from that of arrest to that of confinement; but they may without any legal limitation change the status at any time from that of confinement, which was imposed for the purpose of insuring the presence of the confined person, to that of arrest.

Release from a status of confinement

A person in a status of confinement may be released by virtue of:

(a) a determination by proper authority that no probable cause now exists;
(b) a change of status to that of arrest;
(c) completion of the term of confinement;
(d) setting aside or commutation of the sentence of confinement;
(e) suspension of the sentence of confinement;
(f) pardon or unconditional remission of the unexpired portion of the term of confinement;
(g) parole or restoration to duty on probation; or
(h) issuance of an order for discharge or release by a federal court.

The power to release a person from a status of confinement and restore him to duty normally resides in the person who ordered him into confinement, but the power to release from a status of confinement expires upon the submission of the case to higher authority for disposition; the CO of the person in confinement, provided the latter is no longer charged with an offence; or the military superiors in chain of command with the CO of the

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55 See UCMJ 9(d) and 10.
person ordered into confinement, provided the latter is no longer charged with an offence\textsuperscript{56}.

**Consequences of arrest and confinement**

Many of the consequences of arrest and confinement depend upon the purpose of the restraint imposed. If the purpose is to ensure the person of the restrained person at investigatory or judicial proceedings, he must be treated with all the consideration due to one who is presumed to be innocent until duly convicted, subject only to such restrictions as may be reasonably designed to prevent escape or injury. A person awaiting a pre trial investigation or a trial must be given every reasonable opportunity to contact counsel. If, on the other hand, the purpose of the restraint is punishment, the punishment is strictly administered, and the treatment that the convicted person receives, while humane, is directed towards his rehabilitation.

**Effects of Apprehension and Restraint**

A status of arrest or confinement is inconsistent with a full duty status. A person under such restraint is a prisoner, either at large or under confinement. Prior to conviction, he is not subject to punishment or penalties except minor punishment for infractions of discipline\textsuperscript{57}. If he is in a status of arrest, while he cannot be required to perform his full military duty, he may be required to participate in non-punitive activities consistent with his status. Thus, he may be required to clean or police his quarters or to take part in routine training of certain kinds. He cannot exercise command or bear arms, however, because these are inconsistent with a status of arrest. He should not be assigned guard duties and must not be required to perform any duties designed as punishment.

When a person is ordered into confinement for any purpose, he must not be confined in immediate association with enemy prisoners or other foreign nationals not members of our armed forces. This means that he may

\textsuperscript{56} ibid.

\textsuperscript{57} UCMJ 13.
be confined in the same guardhouse, bring or prison with such persons, but not in the same cell or other similar enclosure. Segregation is required.

Hard labour without confinement is not an authorised punishment under the Uniform Code, and since it is treated as a punishment, cannot be imposed upon a person who is being restrained prior to conviction even though he is in a status of confinement. The imposition of hard labour is limited to court-martial sentences, which involve confinement not suspended, but the omission of the words “hard labour” in such a sentence does not prevent requiring hard labour as part of the punishment adjudged.

Persons restrained do not forfeit their right to pay and allowances, which become due prior to approval of a court-martial conviction by the Convening Authority. Pay and allowances except those allowances exempted by virtue of statutes, which become due on or after the date of such approval may be forfeited, provided the court-martial sentence includes such forfeiture. The pay of a Commissioned or Warrant Officer, not exceeding a half-month’s pay, may be forfeited as a result of non-judicial punishment imposed by a CO exercising General Court Martial authority. When a Court-Martial sentence includes forfeiture of pay and allowances in addition to confinement, it begins to run from the date the sentence is adjudged by the court-martial, whereas the forfeiture is not effective until the date it is ordered executed\(^58\).

When a person is undergoing a non-judicial punishment of confinement, or confinement on bread and water, and during the term of confinement is transferred or removed to a hospital, hospital ship dispensary, or sickbay, the term of confinement continues to run uninterruptedly.

As to the impounding effects of a person ordered into confinement, obscene literature, when its use as evidence is fulfilled is burned; narcotics, however, are turned over to medical authorities; firearms owned by a person convicted of using them in perpetrating an offence are retained by military

\(^{58}\) UCMJ 57(c).
authorities or transferred to some other government agency. Where gambling is a violation of regulations or orders, and gambling money, the ownership of which cannot be determined, is impounded, the money should be deposited for covering into the Treasury of the United States. When a confined person is released, all non-contraband articles of which he is the owner, and which had been impounded during the period of his confinement, should be returned to him upon his request.

Non Judicial Punishments (Summary Trials)

(a) Purpose

It is the function of the non-judicial punishment to render speedy justice whenever punishment is deemed necessary, unless it is clear that the non-judicial punishment or a summary trial would not meet the ends of justice and discipline. Resort is to had to punishment when non-punitive measures have failed or are inappropriate. This punishment is designed to take care of the minor offences, which are usually susceptible of a summary determination on facts not seriously open to contest. This serves to prevent disruption of the military mission, by allowing disciplinary matters of less serious import to be determined in a manner requiring less time and diversion from more important duties of the personnel involved. This forum also, supplies the machinery for complying with a stated policy of avoiding resort to courts-martial, whenever possible. This may have a salutary effect not only of preserving the accused's service record from unnecessary stigmatisation and thus guarding his future, but also of conserving the time of the personnel who would be required to serve as members of a court-martial.

(b) Minor Offences

The use of non-judicial punishment is limited by law to minor offences\(^{59}\). Whether an offence is minor can be determined by reference to the nature of act(s) committed. An offence is not minor if it involves moral

\(^{59}\) UCMJ 15 (a).
turpitude or if the maximum punishment awardable for the act or omission committed on conviction by court-martial is confinement for one year or more or is the death penalty. Offences such as larceny, forgery, maiming and similar offences based upon misconduct which is wrong in itself involve moral turpitude. The nature and effect of and the punishment provided for the offence of desertion indicates that it is not to be treated as a minor offence. Wilful disobedience of an order given by an NCO or petty officer, absence without leave and escape from confinement may or may not be minor offences, depending upon the circumstances involved.

(c) Authorities for imposing non-judicial punishment

All COs have a statutory power to impose non-judicial punishment unless that power is restricted by regulations prescribed by the President or by limitations placed upon that power by the secretary of the Department to which they belong. For instance, imposition of forfeiture of pay upon an officer can be made only by a commanding officer exercising General Court-Martial jurisdiction over the officer concerned. This applies to all the armed forces. In the Army, Commanding officers below the rank of a major are not authorised to impose reduction to the next inferior grade upon NCOs, as a non-judicial punishment. The term “Commanding Officer” refers to an officer who holds a position in official command of a fixed territorial establishment of the armed forces or of a body of organised personnel of the armed forces recognised as a command. Such a position is usually denominated by the title “Commanding Officer” but it may be denominated by various other titles having the same official connotation, such as Commandant, Commanding General, superintendent or director etc. To have authority to impose non-judicial punishment, a CO may not be the immediate Commanding officer of the person to be punished. A superior in the chain of command to the immediate CO also has authority to impose non-judicial punishment upon any military subordinate of his command. It has been customary for the immediate CO, although he has authority to impose certain non-judicial punishments upon COs and commissioned WOs and WOs of his command, to refer breaches of discipline on the part of such officers to the attention of the superior CO who is authorised to exercise summary court martial jurisdiction. In any case, however, where the CO
with information concerning a breach of discipline lacks jurisdiction to impose the most appropriate non-judicial punishment, he forwards the matter to superior military authority.

(d) Officers in Charge

Officers in charge have statutory authority, in the case of minor offences, to impose on enlisted persons assigned to the unit of which they are in charge, the punishments authorised to be imposed by commanding officers, but only such punishments as may be specifically prescribed by the secretary of the Department concerned. The exercise of such power by officers in charge, therefore, depends upon the affirmative action of the Secretary of the Department. Neither the Army nor the Air Force has a designated officer such as an officer in charge within the meaning of the authority conferred for the imposition of non-judicial punishment, and the term as used in the Coast Guard has a broader meaning than it has in the Navy. In the Navy, the officer in charge is a Commissioned officer or Warrant Officer who holds a position not officially designated as “Commanding Officer”, but who, nevertheless, is in full charge of a particular naval store activity or vessel or a group of small craft. In the Coast Guard, the term is extended to include petty officers in charge of small stations such as lifeboats stations and light stations. The Secretary of the Navy has empowered officers in charge of Navy units to impose any of the non-judicial punishments authorised to be imposed by commanding officers upon petty officers and enlisted persons other than petty officers.

(e) Persons punishable

-- Military personnel. The Uniform Code prescribes that military personnel, upon whom non-judicial punishment may be imposed, must be of the command of the officer imposing such punishment. The Code divides the personnel punishable into two categories; officers and Warrant officers, and second, other military personnel. The Manual of Courts Martial sub divides the second category into non commissioned

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60 UCMJ 15 (e).
officers and petty officers on the one hand and enlisted personnel on the other hand. While such military personnel must be under the command of the officer imposing the punishment, it is not required that they belong to the same armed force as the officer imposing the punishment.

--- Non military personnel. Since existing statutory authority for the imposition of non-judicial punishment covers only punishment imposed upon military personnel, civilians are not subject to such punishment even though they may be subject to the Uniform Code. Persons in a non military status who are subject to the code may be subjected to trial by court-martial or to administrative control.

--- Punishments which may be imposed non judicially (S. 403)

Table of non-judicial punishments. The following table indicates in summary form the punishments authorised to be imposed non-judicially.

<table>
<thead>
<tr>
<th>Punishments</th>
<th>Authorised to be imposed upon</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>Commissioned and Warrant</td>
</tr>
<tr>
<td></td>
<td>officers</td>
</tr>
<tr>
<td></td>
<td>Non Commissioned &amp; Warrant</td>
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<tr>
<td></td>
<td>Petty officers</td>
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<tr>
<td>(a) Admonition or reprimand</td>
<td>Yes</td>
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<tr>
<td></td>
<td>Yes</td>
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<td></td>
<td>Yes</td>
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<tr>
<td>(b) Withholding of privileges</td>
<td>2 Weeks</td>
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<td></td>
<td>2 Weeks</td>
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<td></td>
<td>2 Weeks</td>
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<td>(c) Restriction to limits</td>
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<td></td>
<td>-do-</td>
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<td></td>
<td>-do-</td>
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<tr>
<td>(d) Forfeiture of pay</td>
<td>½ month</td>
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<td>No</td>
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<td></td>
<td>No</td>
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<td></td>
<td>No</td>
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<tr>
<td>(e) Extra duties</td>
<td>No</td>
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<td></td>
<td>2 Weeks</td>
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<td></td>
<td>2 Weeks</td>
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<td>(f) Reduction in grade</td>
<td>No</td>
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<td></td>
<td>Yes</td>
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<td></td>
<td>Yes</td>
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<tr>
<td>(g) Confinement</td>
<td>No</td>
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<td></td>
<td>Yes</td>
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<td></td>
<td>7 days</td>
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<tr>
<td>(h) Confinement on bread and water</td>
<td>No</td>
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<tr>
<td></td>
<td>No</td>
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<tr>
<td></td>
<td>3 days</td>
</tr>
</tbody>
</table>
Right to demand trial (Sec 405) Army and Air Force.

Departmental Regulations applicable to the Army and Air Force prohibit the imposition of non-judicial punishment upon an accused who has demanded trial by court-martial in lieu of such punishment. A demand for trial does not require the preferring of the charges against the offender, but non-judicial punishment may not be imposed while the demand is in effect. Normally upon such demand, a special or summary court-martial is convened. A demand for court-martial must be made prior to the imposition of non-judicial punishment; otherwise it may be ineffective and may be disregarded. An election to accept non-judicial punishment constitutes a waiver of the right to demand trial.

Navy and Coast Guard. No member of the Navy or Coast Guard may demand trial by court-martial in lieu of non-judicial punishment, under Departmental regulations in effect on the effective date of the Uniform Code.

Procedure for imposing punishment (Sec 406)

(a) Army and Air Force. In the Army and Air Force, the Commanding Officer, after making a sufficient informal inquiry or investigation to determine the facts indicating that an offence cognizable by him has been committed by a member of his command, will notify the offender of the nature of the offence as clearly and concisely as possible and will inform him that he proposes to impose non-judicial punishment unless trial by court-martial is demanded. At the same time, he informs the accused that the latter may submit such matters as he desires, whether in mitigation, extenuation or defence. The accused will normally be informed that he is not required to make any statement regarding the offence of which he is accused, and that any statement he makes may be used against him in a trial by court-martial. If the alleged offender is a Commissioned Officer, commissioned Warrant Officer, or Warrant Officer, the notification and information will be in writing, and it may be in
writing in any case. Where it is not in writing, the accused will be given a reasonable time in which to make up his mind whether or not to demand by court-martial with respect to each offence as to which no demand for trial is made, the Commanding Officer may proceed to impose non-judicial punishment. The accused will be notified of the punishment as soon as practicable and at the same time will be informed of his right to appeal (See Sec 407). Such notification is in writing by endorsement, where the original communication was in writing. Where the notification of the non-judicial punishment imposed is not in writing, the immediate CO of the accused is informed of the matter and given the necessary data for the record of punishment. Sec 410 of the UCMJ refers.

(b) Navy and Coast Guard. In the Navy and Coast Guard, the CO normally will inquire at the mast into the facts concerning any minor offence allegedly committed by a member of his command. The accused and the accuser are given an impartial hearing, and the accused is always informed of the nature of the offence alleged and given the warning that he need make no statement, but that if he makes a statement it may be used against him in a trial by court-martial. If the case, upon such investigation, appears to be minor, the CO may impose non-judicial punishment at that time, and inform the accused of his right to appeal. The accused may come to the attention of the CO after a finding of facts has been made by a Court of Inquiry or a board of investigation. Section 1102 (c) refers. Such finding of facts may constitute grounds for imposing non-judicial punishment upon the accused, in which case, the accused is merely brought to the mast and informed of the punishment the CO is imposing and of his right to appeal therefrom. Whenever a CO refers an accusation to a Superior Commander for imposition of a non-judicial punishment, either because of appropriate punishment is within the power of such superior, or because the offenders are commissioned officers,
commissioned WOs or WQs (see sec 402(a)), the report of the facts established at the mast or by Court of Inquiry or Board of Investigation accompanies the reference. If the superior authority to whom the accusation has been referred is satisfied from the facts submitted to him that an offence cognizable by him and within his power of non-judicial punishment has been committed, he may impose the punishment upon the accused. If he does so, he notifies the accused as soon as practicable of the punishment, together with the fact of his right to appeal.

Appeals (Sec 407)

(a) How Made

A person upon whom non-judicial punishment has been imposed who deems his punishment unjust or disproportionate to the offence, may appeal, through proper channels to the next superior officer in the chain of command to the officer who imposed the punishment. Such an appeal is made in writing and includes a brief signed statement of the reasons for regarding the punishment as unjust or disproportionate. The appeal must be forwarded through proper official channels, which means in most cases that it must be delivered to the immediate CO of the accused, who may be the officer who imposed the non-judicial punishment. In such a case, the immediate CO will include with the appeal a copy of the record made in the case (sec 410 refers) and will forward the appeal promptly to the next superior.

(b) How Decided

Upon receiving an appeal from a non-judicial punishment, the superior officer will make his decision promptly. The punishment imposed upon the accused is not automatically suspended during the appeal. But it may, in the discretion of the officer who imposed the punishment and who is forwarding the appeal, be suspended during the appeal. An appeal not made within a reasonable time may be rejected by the superior authority. The superior officer, while passing his order, ordinarily, will hear no
witnesses. His decision is made from the record in the interests of justice. He may modify the punishment, suspend it, or set it aside, but he has no power to increase it or to change it to a different kind of punishment. After having decided the appeal, the superior officer returns the papers through normal channels to the accused with a statement of the disposition of the case and with a direction to return the papers to the immediate CO for filing.

Suspension, Remission and Restoration (Sec 408)

(a) Power to suspend, remit, set aside and restore. The officer who imposed the punishment, his successor in command, and superior authority have power to suspend, set aside or remit any part or amount of the non-judicial punishment and to restore all rights, privileges and property affected. The power to suspend or to remit the unexecuted portion of a non-judicial punishment is exercised liberally, but the power to set aside punishments and to restore rights, privileges and property affected by the unexecuted portion of a punishment is exercised only when the authority considering the case believes that a clear injustice has occurred.

Effect of Non-Judicial Punishment

(a) As a bar to trial. Non-judicial punishment previously imposed for a minor offence may be interposed in bar of trial for the same offence. Although, the imposition of non-judicial punishment is not a conviction and the hearing preceding the imposition of such punishment is not a trial, the punishment is allowed as a bar when the offence with which the accused is charged and held for trial before a court-martial is the same minor offence. Such punishment does not, however, bar a trial for another crime or offence growing out of the same act or omission, and which is not properly punishable with non-judicial punishment.

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61 MCM Para 68(g).
62 UCMJ 15(c).
D. IN OTHER COUNTRIES

(i) RUSSIA

Arrest, Confinement and Summary Powers

It is observed that a very little material is available as to the process of investigation in Russia. It appears that depending upon the gravity of offence committed by an accused person, a person is put into restraint, whether arrest or confinement. It appears that the Commander concerned makes up his mind after the accused is put in arrest, whether disposal by summary trial or by court martial would meet the ends of justice.

The master sergeant of a Company, a battery, a troop, an air group of a ship crew can place a private under simple arrest up to two days. In addition, he has the following powers:

(a) to reprimand;

(b) to deprive of a pass from the barracks, from the area of the unit or from the ship, privates up to three regular passes, sergeants and master sergeant – one regular pass; and

(c) to assign privates to extra detail or work up to three assignments; to assign sergeants and master sergeants to extra detail – one assignment.

The Commander of a platoon shall have the right:

(a) to reprimand;

(b) to deprive of a pass from the barracks or from the area of the unit, privates up to three regular passes, sergeants up to two regular passes;
(c) to assign privates to extra detail up to two assignments or work up to four assignments;

(d) to place under arrest: privates up to three days, sergeants – one day.

The Commander of a Company, battery, troop, flight, ship of the fourth class or independent platoon shall have the right:

(a) to reprimand;

(b) to deprive of a pass from the barracks, from the area of the unit or from the ship: privates up to one month, sergeants and master sergeants up to three regular passes;

(c) to assign privates to extra detail or work up to five assignments;
to assign sergeants and master sergeants to extra detail up to three assignments;

(d) to place privates under simple arrest up to ten days, under simple arrest up to five days, under strict arrest up to two days; a master sergeant or warrant officer under simple arrest up to three days.

The Commander of a battalion, artillery battalion, air group, ship of the third class, the Commander of an independent company, battery or troop, shall have the right :-

(a) to reprimand;

(b) to deprive of a pass from the barracks, from the area of the unit, or from the ship, privates, sergeants or master sergeants up to one month;

(c) to assign privates to extra detail or work up to five assignments;
to assign sergeants and master sergeants to extra detail up to three assignments;
(d) to place privates under simple arrest up to fifteen days, under strict arrest up to seven days; sergeants and master sergeants – under simple arrest up to ten days, under strict arrest up to five days.

Similar powers are vested in the Commander of a regiment, ship of the second class and the Commander of an independent battalion, artillery battalion, or air group, except that they can place privates under simple arrest up to twenty days instead of fifteen days, strict arrest up to fifteen days instead of seven days and sergeants and master sergeants under simple arrest up to twenty days instead of ten days.

The Commander of division, independent or attached brigade, ship of the first class, and independent regiment, shall have, beyond the rights assigned to the commander of a regiment, the right:

(a) to reduce sergeants and master sergeants in regular term service to the rank of private.

(b) to retire to the reserves sergeants and master sergeants in extra term service for the remainder of the term of the service.

The Commander of a Corps, independent division, brigade of ships, the commander of an army, squadron, flotilla, the commander of troops of a military district or army group and the commander of a fleet shall enjoy disciplinary authority to the full extent of the present code with respect to privates, sergeants and master sergeants subordinate to them.63

On disciplinary penalties imposed on Officers, Generals and Admirals

The following penalties may be imposed on officers:

(a) Admonition and Reprimand administered orally or in writing, before an assembly of officers or in the order of the day;

(b) Arrest in quarters with performance of service duties up to twenty days;

(c) Arrest and confinement in the guardhouse up to twenty days;

(d) Warning of inadequate discharge of duty;

(e) Assignment with a demotion in command;

(f) Reduction in military rank.

Officers below the rank of Colonel can be placed under arrest with confinement in the guardhouse by a commander who has authority one grade higher than their immediate commanders. Whereas, Officers of the rank of Colonel and above can be placed under arrest only on the order of the Minister of the Armed Forces of Russia. Generals and Admirals may be awarded the aforesaid penalties except the ones listed at sub-paras (b), (c) and (f).

(a) Procedure for placing servicemen under arrest

1. The placing of privates, sergeants, and master sergeants under arrest shall be entrusted to the master sergeant of the Company (Ship’s Crew). The placing of junior officers under arrest shall be entrusted to the officer of the day of the unit (Ship); and of senior officers, to the Chief of Staff of the unit, or to one of the senior officers designated by the Commander of the unit (Ship). In administrations and institutions an arrest imposed on servicemen shall be carried out by a person designated by the commander who imposed this penalty. In such a case, the placing of officers under arrest shall be entrusted to officers of equal or senior rank.

2. The Warrant for the arrest of privates, sergeants and master sergeants, if the arrest is imposed by the Commanders of the Company (or corresponding sub-division or by a Commander senior to him, shall be signed by the commander of the company) (or corresponding sub-divisions) and in the absence one of the officers of the company; if the arrest is
imposed by one of the officers of the Company or by the master sergeant of the Company (Ship's Crew) the warrant shall be signed by the person imposing the penalty. On the reverse side of the warrant shall be indicated the articles the arrested person is to have on his person. A warrant for the arrest of an officer shall be signed by the officer imposing the penalty or by the Chief of Staff of the unit (Assistant commander of the Ship).

3. Persons who are entrusted with placing a person under arrest are obliged to inquire in advance concerning the presence of free space in the guardhouse and if necessary to require persons to accompany them, or a Convoy.

4. Before placing privates, sergeants and master sergeants under arrest, persons carrying out an arrest shall take away from the arrested person money and state and personal articles which he is not permitted to have in the guardhouse, which they shall send, together with an inventory to the immediate commander of the person arrested. Side arms shall be taken away from officers when arrested with confinement in the guardhouse.

5. Servicemen arrested under disciplinary procedure shall be sent to the unit or garrison guardhouse: privates under convoy; sergeants and master sergeants – accompanied by sergeants or master sergeants; officers by themselves.

6. The procedure for receipt of arrested persons into the guard-house, their confinement, and their release shall consist of the following:

--- Simple arrest --- The arrested persons shall be kept in common cells and sleep on bare plank beds, bread, salt, water, tea and hot food shall be issued to them every day; private under simple arrest shall be sent to work for ten hours a day.
**Strict arrest** - The arrested persons are kept in separate cells and sleep on bare plank beds, bread, salt, water, tea and hot food is issued to them every day.

Privates, sergeants, master sergeants and officers are kept separately during arrest. Officers under arrest are issued bedding for the time set for sleeping. In the absence of a guardhouse or a free space in it, the arrested person are kept in a special room in their unit with a sentinel stationed at the room. The placing of officers in quarters shall be entrusted to their immediate superiors. The commander of an arrested person shall sign the warrant for his arrest and announce to him by whom, for what, and for what period of time he is placed under arrest. Officers placed under arrest are obliged to be on duty in the unit from reveille to retreat. When arriving for duty and when going to quarters, they should present themselves to the officer of the day of the unit (Ship). They are forbidden to be present at meetings or to visit social places of the unit (club, theatre and so forth). After retreat until reveille, they do not have the right to absent themselves from their quarters or to receive visitors.

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**Rights of Commanders to impose Disciplinary Penalties on their Subordinate Officers, Generals, and Admirals**

The Commander of a Company, Battery, Squadron, Flight or Ship of the fourth class shall have the right:

(a) To admonish and reprimand orally;

(b) To place junior officers under arrest with confinement in the guard house—upto two days.

The Commander of a Battalion, Artillery Battalion, Air Group, Ship of the third class, the Commander of an independent company, Battery or Troop, shall have right:

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64 Chapter VI of Discipline Code of the Armed Forces, P.59: Documents on Soviet Military Law and Administration by Harold J Berman and Miroslav Kemer
(a) To admonish and reprimand orally or before an assembly of officers;

(b) To place junior officers under arrest in quarters and arrest with confinement in the guardhouse for five days.

The Commander of a Regiment, Ship of the Second class, the Commander of an Independent Battalion, Artillery Battalion or Air Group, shall have the right:

(a) To admonish and reprimand orally, before an assembly of officers or in the order of the day;

(b) To place under arrest in quarters and under arrest with confinement in the guardhouse, junior officers upto ten days, senior officers upto five days;

(c) To warn of inadequate discharge of duty.

The Commander of a Division, Independent or attached Brigade, Ship of the first class or separate Regiment shall have the right with respect to officers:

(a) To admonish and to reprimand orally, in writing, before an assembly of officers or in the order of the day;

(b) To place under arrest in quarters and under arrest with confinement in the guardhouse, junior officers upto fifteen days, senior officers upto ten days;

(c) To warn of inadequate discharge of duty.

The Commander of a Corps, independent Division, or Brigade of Ships, shall have the right:-
With respect to officers

(a) To admonish and to reprimand orally, in writing, before an assembly of officers or in the order of the day;

(b) To place under arrest in quarters and arrest with confinement in the guardhouse, junior officers upto 20 days, senior officers upto 15 days;

(c) To warn of inadequate discharge of duty;

With respect to generals and admirals to admonish and reprimand orally, in writing, or in the order of the day.

The Commander of an army, Squadron or flotilla shall have the right:

(1) With respect to officers --

(a) to admonish and reprimand orally, in writing, before an assembly of officers or in the order of the day;

(b) To place under arrest in quarters and arrest with confinement in the guardhouse upto 20 days;

(c) To warn of inadequate discharge of duty.

(2) With respect to generals and admirals ---

(a) To admonish and reprimand orally, in writing, or in the order of the day;

(b) To warn of inadequate discharge of duty.

The Commander of the troops of a military district or army group or the Commander of a fleet shall have similar right as above, except that he in addition, will have, with respect to officers a right to assign with a reduction
in official duties commanders of a battalions, commanders of ships of the third class, those corresponding to them and lower.

Deputy Ministers of the Armed Forces of Russia, the Chief of the General Staff of the Armed Forces of Russia, the Commander-in-Chief of the Ground Troops, Military Air Forces and Naval Forces and Commander of the Rear of the Armed Forces of Russia, shall have, beyond the rights of the commander of the troops of a military district or army group, in that he will have the right to reduce by one grade the military rank of officers from Lieutenant Colonels downwards. However, the Minister of the Armed Forces of Russia shall enjoy disciplinary authority to the full extent of the present Code with respect to all servicemen of the Armed Forces of Russia.

Procedure for imposition of disciplinary penalties

Every disciplinary penalty must correspond to the degree of guilt and the importance of the offence committed. In defining the kind and the measure of the penalty there shall be taken into consideration the character of the offence, the circumstances under which it was committed, the previous conduct of the guilty one, and also the length of service and degree of knowledge of the system of service.

When imposing a disciplinary penalty or reminding a subordinate of his obligations, a commander must not lower the personal dignity of the subordinate or permit rudeness.

It is forbidden to impose several penalties for one and the same offence or to combine one penalty with others. It is forbidden also to place a person under arrest in the form of a disciplinary penalty without defining the term of arrest.

The severity of a disciplinary penalty will be increased when the guilty person has committed an offence of the same character more than once; when the offence is committed while carrying out service obligations, or when it results in a substantial breach of order.
A Commander who considers the disciplinary authority assigned to him insufficient in view of the gravity of the offence committed shall apply to the next senior commander for imposition of higher penalty on the guilty person.

A Commander who exceeds the disciplinary authority assigned to him shall bear responsibility for that.

A senior Commander shall not have the right to reverse or decrease a disciplinary penalty imposed by a junior Commander, by reason of the severity of the penalty, if the latter had not exceeded the authority assigned to him.

A senior Commander shall have right to increase a disciplinary penalty, if he finds that the penalty imposed by the junior commander does not correspond to the seriousness of the offence committed.

Every disciplinary penalty must be imposed within five days from the day when the offence committed became known to the commander, and if an investigation or an inquiry is conducted then from the day of its completion.

The imposition of a penalty on a guilty person who is in a drunken condition shall be postponed until he becomes sober, for which purpose he can be placed, if necessary, under preliminary arrest in the guardhouse.

Procedure for Carrying out Disciplinary Penalties

The carrying out of an imposed penalty shall not be suspended when an appeal from it is taken, until instructions of the senior Commander for its reversal are received.

Disciplinary penalties which are imposed shall be announced as follows: to private personally or in formation; to sergeants and master sergeants, personally or before sergeants and master sergeants in formation;
to officers personally, in writing, before an assembly of officers, or in the order of the day.

(ii) FRANCE

Introduction

The juge d'instruction is the pre-trial examining magistrate and constitutes an extremely important link in the French Judicial System. He conducts a preliminary investigation of the case (instruction préparatoire) This serves both as a screening procedure roughly similar to the function of a grand jury under the Anglo-American law and as preliminary preparation for trial, usually conducted by the prosecuting attorney. The juge d'instruction conducts an inquisitorial investigation and is required to seek out the evidence of the alleged crime himself, including interrogation of the accused and essential witnesses. Although an accused is effectively guaranteed certain rights at this stage of the proceedings, the instruction préparatoire usually constitutes a more detailed continuation of the prior investigation initiated by the police. In order to conduct his investigation, the juge d'instruction is vested with broad powers with respect to receiving testimony, inspecting the scene of the alleged crime, conducting searches and seizures and issuing certain warrants. He may further order the accused into pre-trial confinement in serious cases; The jurisdiction of the judge d'instruction with regard to non-military cases is generally set forth in articles 79-84 of the French Code of Penal Procedure (CODE DE PROCEDURE PENALE) (CPP). His authority with regard to military proceedings is contained in articles 122-51.

Pre-trial Proceedings

As in our case, the duty of initiating disciplinary proceedings is vested under the French procedure in the Commanding officer exercising the authority to convene military courts. The Commander of the military judicial district receiving information concerning alleged violation of military law or discipline must initially decide whether to deal with the matter administratively under his disciplinary authority set forth in articles 375 of the French Code, a provision similar to Army Rule 22 of Army Rules, 1954
and articles 15 of the Uniform Code of Military Justice or refer the matter to military judicial authorities for formal disciplinary action. Pursuant to his disciplinary authority, the French military commander may impose punishment consisting of deprivation of liberty not to exceed sixty days. The exact scale of disciplinary punishments is set forth by decree.

In the event, the military Commander determines administrative disciplinary action is inappropriate, he initiates formal disciplinary action by delivering to the government prosecutor (Commissaries du government) an order to institute legal proceedings (order de poursuite). In addition to being the prosecutor, the commissaire due government is now firmly established as legal advisor to the military commander. He presently exercises the authority of the military commander used to hold with regard to determining whether to order the accused into pre-trial confinement now belongs to the government prosecutor. Under the new Code, once the military commander delivers the order to institute legal proceedings, he may not intervene in any subsequent judicial action. The military commander previously had the authority to appeal certain rulings, actions or orders of the pre-trial investigating officer (juge d’instruction).

In the event, a pre-trial investigation (instruction preparatoire) is ordered; the file is transmitted to the examining magistrate (juge d’instruction militaire). One of the most innovations in the new Code is the increase of authority granted to the examining magistrate. With some minor exceptions, he now exercises all the authority of his civilian counterpart. Once given the authority to proceed, the examining magistrate may now extend his investigation to include all related offences and all persons who appear to be implicated. On pain of voiding the entire proceedings, and at the outset of the investigation, the juge d’instruction militaire must advise the accused of his rights, including advice as to the nature of the accusation, the accused’s right to remain silent and his right to counsel,

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65 Code De Justice Militaire (CJM) article 117.
66 CJM art. 124.
67 CJM art. 136.
either retained by or appointed for him. All of the important procedural safeguards are now provided to the military accused.

The examining magistrate is empowered to issue a myriad of orders concerning the case. Among the most important of these orders are dismissal for lack of jurisdiction, a decision not to prosecute due to insufficient evidence of a crime, and release from pre-trial confinement.

There are ordinarily three permanent judicial district courts in each military judicial district, each court having at least one examining magistrate assigned to it. For each judicial district, however, there is only one chamber for the control of pre-trial proceedings. Superimposed above all the examining magistrates is a permanent judicial district, the chamber de controle de l’Instruction is charged with ensuring the rapid march of military justice by monitoring the speed of military pre-trial investigations, ruling on the legality of orders of the juge d’instruction and resolving conflicts between the government prosecutor and the examining magistrate. Although the composition of the chamber for the control of pre-trial proceedings is identical to that of its predecessor (two civilian magistrates and a field-grade officer), its scope of authority is more limited. No longer is there a second stage of pre-trial investigation – the chamber of Control normally enters into the pre-trial proceedings only when there is an appeal taken by the juge d’instruction, the Chamber of Control finally decides the matter and the investigation is immediately resumed. To avoid unnecessary delay, there may be no direct appeal from any decision of the Chamber of Control. In the event of the subsequent trial and conviction, however, the actions of the Chamber de Control de l’instruction may form the basis for an appeal to the cour de Cassation.

68 CJM. Arts 127, 137-38; CPP arts 114, 118.
70 See also CJM, arts. 143-44.
71 CJM art. 183.
One may readily perceive the increase in the speed this reform will provide. Since the second stage of pre-trial investigation has been eliminated and it is no longer necessary for the indicating chamber to refer the case to trial, it is envisioned that great majority of pre-trial investigations will be affected without the intervention of the chamber of Control. In the instances where the chamber is required to act, the provisions specifying for finality will eliminate time-consuming delays at the pre-trial stage of the proceedings.

(iii) CANADA

**Arrest** (Officers and men)

Every person who has committed, is found committing or is suspected to have committed an offence under the National Defence Act (Revised Statutes of Canada 1970) (Hereafter called as the Act) may be placed under arrest. Every person authorised to effect arrest under this Act may use such force as is reasonably necessary for that purpose.

An officer may, without a warrant, in the circumstances mentioned above, arrest or order the arrest of:-

(a) any man ;
(b) any officer of equal or lower rank ; and
(c) any officer of higher rank who is engaged in a quarrel, fray or disorder.

A man may, without a warrant, in the circumstances, as mentioned above, arrest or order the arrest of

(a) any man of lower rank ; and
(b) any man of equal or higher rank who is engaged in a quarrel, fray or disorder.
Every person who is not an officer or man, but who was subject to the Code of Discipline at the time of alleged Commission by him of a service offence, may, without the warrant, be arrested or ordered to be arrested by such person as any Commanding Officer may designate for that purpose.

Such officers and men as are appointed under regulations for the purposes of Section 134 of the Act may,

(a) detain or arrest without a warrant any person who is subject to the Code of Service Discipline, regardless of the rank or status of that purpose, who has committed, is found committing, is suspected of being about to commit, or is suspected of or charged under this Act with having committed a service offence;

(b) (Repealed Chapter 13, S. 73. 1, Statutes of Canada, 1972) ; and

(c) exercise such other powers for carrying out the Code of Service Discipline as are prescribed in Regulations made by the Governor in Council.72

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**Issue of Warrants**

Subject to sub section (2) of section 135 of the said Act, every Commanding Officer, and every officer to whom the power of trying a charge summarily has been delegated under sub-section 141 (4) may by a warrant under his hand, authorise any person to arrest any other person triable under the Code of Service Discipline who has committed, or is suspected of or charged under this Act with having committed a service Offence. An officer authorised to issue a warrant shall not, unless he has certified on the face of the warrant that the exigencies of service so require, issue the warrant authorising the arrest of an officer of rank higher than he himself holds.

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72 Sections 132 to 134 of the National Defence Act (Revised Statutes of Canada 1970) (Referred to as the Act).
On any warrant under this Section (Section 135), the offence in respect of which the warrant is issued shall be stated and the names of more persons than one in respect of the same offence, or several offences of the same nature, may be included. Nothing in Section 135 shall be deemed to be in derogation of the authority that any person, including an officer or man, may have under other Sections of this Act or otherwise under the law of Canada to arrest any other person without a warrant.

Action following arrest

On being arrested, a person may forthwith may be placed in civil custody or service custody. The person arresting him shall, at the time of committing him to custody, deliver him an account in writing, signed by himself along with the reason for his committal to the custody. The person receiving the arrested person in his custody shall, within twenty-four hours, give in writing to the officer or man to whom it is his duty to report, the name of that person and the offence alleged to have been committed by that person and the name and the rank of the person by whom he has been committed to his custody accompanied by an account in writing.73

Limitations in respect of custody

When a person in such custody for a service offence for eight days without a summary trial having been held or a Court-martial for his trial having been ordered to assemble, a report stating the necessity for further delay shall be made by the commanding officer to the authority empowered to convene a court-martial for the trial of that person, and a similar report shall be forwarded in the same manner every eighth day until a summary trial has been held or a court-martial has been ordered to assemble. Every person held in custody in the circumstances as mentioned above, is after he has been so held for a total of twenty-eight days without a summary trial having been held or a Court-martial having been ordered to assemble entitled to send a petition to the Minister or an authority appointed by the Minister for that purpose to be freed from custody or for a deposition of the case, and in any case that person shall be so freed when he has been so free for that period.

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73 Section 136 of the Act, supra.
held for a total of ninety days from the time of his arrest unless the Minister directs otherwise or unless a summary trial has been held or a court-martial is ordered to assemble. A person who has been freed from such custody shall not be subject to arrest for the offence with which he was originally charged except on the written order of the authority having power to convene a court-martial for his trial.\textsuperscript{74}

**Investigation and preliminary Disposition of Charges**

Whenever a charge is laid against a person subject to this Act, alleging that he has committed a service offence, the charge shall forthwith be investigated in accordance with regulations made by the Governor in Council. Where after investigation, the Commanding officer considers that a charge should not be proceeded with, he shall dismiss the charge, but otherwise shall cause it to be proceeded with expeditiously as circumstances permit.\textsuperscript{75}

**Pre-trial investigation by Commanding officer – mandatory**

As in our Country, the pre-trial investigation of the charge(s) against the accused under the Canadian military law is mandatory in nature.

In the case of *Rex V Thompson* (No 1),\textsuperscript{76} a non Commissioned officer in the Canadian Army was arrested on a charge alleging theft of public property and two alternative charges of improper possession of public property. A District Court Martial was convened and heard evidence from the accused on the question of its jurisdiction. The Court ruled that it had jurisdiction to hear the case, and at that point of time, the proceedings were interrupted by the accused’s application to the Ontario High Court for his discharge from custody. Lebel J. examined the relevant provisions of the Army Act and rules of procedure and found that the jurisdiction of a court-martial is conditioned upon a prior hearing of the charge by the Commanding officer in the presence of the accused, followed by Commanding officer exercise of discretion by (a) dismissing the charge, (b)

\textsuperscript{74} Section 137 of the Act ibid.
\textsuperscript{75} Sections 139 & 140 of the Act supra.
\textsuperscript{76} (1946) 4 D.L.R. 579 (Ontario Highcourt).
disposing of the case summarily, (c) referring the case to the proper military authority, or (d) remanding the case for trial by court-martial.\(^77\) He had held that since the required hearing had not been held the court-martial was without jurisdiction and the applicant was entitled to be discharged from the custody. The accused was subsequently transferred to another regiment and rearrested on the same charges, whereupon, he applied to the Ontario High Court for an order of prohibition preventing his new commanding officer from taking further proceedings on the same charges,\(^78\) on which Urquhart J. held that trial by another commanding officer was in order. In 1959, vide Queen's Regulations, art 101. 01 (1) (b) (i), it was laid down that the term 'Commanding Officer' would include the commanding officer of the station or unit in which the accused is present when proceedings against him are taken up under the code of Service Discipline.

### Summary trials by Commanding Officers

A Commanding Officer (CO) may, in his discretion, try an accused person by a summary trial but only if the following conditions are satisfied:

(a) the accused person is either a subordinate officer or a man below the rank of Warrant Officer;

(b) having regard to the gravity of the offence, the CO considers that his power of punishment are adequate;

(c) the CO is not precluded from trying the accused person by reason of his election, under regulations made by the Governor in Council, to be tried by court martial; and

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\(^77\) Supra, footnote 24 at page 587, per Le Bel J., "Indeed, unless there is a hearing of the charge by the officer commanding in the presence of the offender, and the offender is afforded full opportunity to be heard, upon what basis in fact could the officer commanding possibly exercise his discretion? Clearly, the offender must be hard, and in the present case, who can say that if the application had been heard his officer Commanding would not have dismissed the charge?"

\(^78\) Ibid, at PP. 598-599. Rex V Thompson—(2).
Sentences

Subject to the conditions set out in this section and in Part V relating to punishments, a CO at a summary trial may pass a sentence in which any one or more of the following punishments may be included:

(a) detention for a period not exceeding ninety days subject to the following provisions:

(i) if such a punishment is imposed upon a man who is above the rank of private, it shall not be carried into effect unless approved by the approving authority and only to the extent so approved, and.

(ii) if the CO imposes more than thirty days detention, the portion in excess of thirty days shall be effective only if approved by and to the extent approved by the approving authority;

(b) reduction in rank, but it shall be effective only if approved by the approving authority and to the extent approved by the approving authority;

(c) forfeiture of seniority;

(d) severe reprimand;

(e) reprimand;

(f) a fine not exceeding basic pay for one month; and

(g) minor punishments;
Approving authority means an officer not below the rank of brigadier general; or an officer not below the rank of Colonel designated by the Minister as an approving authority for the purposes of Section 141 of the said Code.

**Delegation of summary powers by the CO**

A CO may, subject to regulations made by the Governor in Council and to such extent as the CO deems fit, delegate his powers under this Section to any officer under his command, but an officer to whom powers are so delegated may not be authorised to impose punishments other than the following:

(a) detention not exceeding fourteen days;
(b) severe reprimand;
(c) reprimand;
(d) a fine not exceeding basic pay for fifteen days; and
(e) minor punishments.

Where a CO tries an accused person by summary trial, the evidence shall be taken on oath if the CO so directs or the accused person so requests, and the CO shall inform the accused person of his right so to request.\(^79\)

**Summary trial by superior Commanders**

An officer of or above the rank of brigadier-general, or any other officer prescribed or appointed by the Minister for that purpose as a ‘superior commander’ may in his discretion, try by summary trial an officer below the rank of Lieutenant Colonel or a man above the rank of sergeant, charged with having committed a service offence and the Governor in council may extend the provisions of this Section\(^80\) to cases where the accused person is of the rank of Lieutenant Colonel. A superior commander may, with or without hearing the evidence, dismiss a charge if he considers that it should not be proceeded with; but otherwise shall cause it to be proceeded with as

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79 Section 141 of the Code, supra.
80 Section 142 of the Code, supra.
expeditiously as circumstances permit. Subject to the conditions set out in this section and Part V of the Code relating to punishments, a superior commander at a summary trial may pass a sentence in which any one or more of the following punishments may be included:

(a) forfeiture of seniority;
(b) severe reprimand;
(c) reprimand; and
(d) fine.

A superior Commander shall not try an accused person who, by reason of an election under regulations made by the Governor in Council, is entitled to be tried by court martial. As in the case of summary trial by CO, a superior commander shall have the evidence taken on oath if he so directs or the accused person so requests and the superior commander shall inform the accused person of his right so to request.

We observe that the summary trial provisions are quite akin to the provisions under the Uniform Code of Military Justice and provisions in our Army Act, 1950 with very slight variation in terms of punishments and the persons triable summarily. While under the Army Act, 1950, (Section 80), punishments of rigorous imprisonment and confinement to lines can be awarded, which is not so here. On the contrary, a CO can award a detention up to ninety days, reduction in rank, forfeiture of seniority and a fine up to one month which under the Indian military law can be awarded if the accused person is tried by a forum of Summary Court Martial or above. In addition, the summary trial by a superior commander can be extended to a Lieutenant Colonel, if the Governor in Council so desires.
- **Arrest and disposal of disciplinary cases**

There is not much material available on the Chinese military law. However, a few of the provisions relating to arrest and trials by military courts martial are available in a scant form.

Vide Article 21 of the Regulations promulgated by Presidential Mandate on March 26, 1915 (Revised on April 17, 1918 and August 18, 1921), a military Procurator, gendarme, judicial police officer, or a policeman may arrest a military serviceman who commits a crime. The offender must, after his arrest by a gendarme, judicial police officer or a policeman, be forthwith delivered to a Military procurator or the higher authority of proper rank in charge. The Military Procurator and the superior officer of the proper rank in charge, after taking steps to procure evidence against an offender in a case shall submit such evidence whether in the form of a chattel or of other documents together with a report of investigation to the various authorities in accordance with the following procedure :-

(a) Petition to High Authority, if the commission of an offence in the Provisional criminal code has been recognised.

(b) send it to the superior officer of the offender, if the violation of the Police Regulations has been recognised

(c) If the jurisdiction is recognised as disputable and the offender is a military service-man, he shall be sent to the Military Procurator, who has direct control over such offender; if the offender be a naval man, to the naval procurator, and if the offender be an ordinary person, then the procurator of the District. But a petition shall be submitted to a High Authority for instructions with regard to disposal of an
ordinary person who is a joint offender with a military serviceman.

(d) Petition to the Ministry of War, if the case is one which belongs to the jurisdiction of the High Military Court-martial. 81

In view of the aforesaid, we observe that during investigation by a Court of Inquiry under the Indian military law, there is need to make an officer from the Judge Advocate General’s Department available to them so as to facilitate their investigation in complicated cases. This would not only ensure finalisation of such inquiries in least possible time but would also assist them in their fact-finding mission in a more logical and appropriate manner.

It is felt that provisions regarding hearing of charge under Army Rule should not be held to be ‘mandatory’ but ‘directory’ in nature since irregular or ill-compliance would, in no way, affect the acquisition of jurisdiction of a court-martial82, unless substantial rights of the accused have been violated. Further, the existing provision of AR 22 with regard to dispensation of the said Rule where AR 180 has been complied with at the stage of Court of Inquiry proceedings, does not appear to be a fundamentally sound provision since having no relation as such with the hearing of the charge by the Commanding Officer, needs to be done away with. Further, it has been experienced that no serious consideration is being given to ensure that the pre-trial investigations are completed expeditiously. There is a need to have a monitoring agency to supervise such work so as to ensure expeditious finalisation of case at the pre-trial stage. This kind of work can better be monitored through a Judge Advocate General’s Department officer posted to ‘A’ Branch at a HQ. To lend further credence to Summary of Evidence, it would be better if it is recorded on oath/affirmation. With regard to the summary trials, it is felt that there is a need to extend such provisions up to the rank of ‘Major General’ on the lines of Russian Military law. Recently, in a case of a ‘Major General’, the officer had to be tried by a General Court Martial on a minor offence. This would not only expedite finalisation of such

81 Article 24 of Regulations on Chinese Military Law March 26, 1915, as amended on August 18, 1921.
82 See Humphrey Vs Smith 33, U.S. 695 Sup ct 830 (1949).
cases in lesser time but would also mitigate sufferings of many accused persons since a trial by a Court Martial is always very lengthy. Besides, this would also save expenditure to the State. Like the Junior Commissioned Officers, the Warrant Officers also need to be brought within the ambit of Army Act Section 85, for which an amendment to the said section needs to be provided for. For trials of NCOs and OR under Army Act Section 80, there is no option available with the accused at present to be tried by a court-martial, in case he so desires. This needs to be looked into on the lines of British Army Act 1955, Section 77(3). Similar provisions exists in the U.S.A. as well. Lastly, there needs to be a provision for appeal against the summary awards as well.

**Conclusion.**

Thus we observe that system of summary trials is prevalent in most of military judicial systems of the world to deal with cases, which are of minor nature. While in certain system, more stringent penalties are awarded, whereas in some others, only minor penalties are awarded. We notice that the Russian system is the harshest but in that system we do find some good features as well viz. dealing with cases of all ranks upto Generals, Admirals etc. Under the Anglo American system, including India, not very heavy penalties are awarded. There is a need to include Warrant Officers (WOs) within the ambit of Army act Section 85 so that, like cases of JCOs, they too can be tried summarily for minor offences. There is also a need to at least bring the officers upto the rank of Brigadiers/Colonels within the ambit of summary trial. The trial may be held by an officer of the rank of Lieutenant General (a Corps Commander). In addition, there may be a need to have the system of oath/affirmation be administered to a witness at the pre trial proceedings such as Summary of Evidence, which will lend further sanctity to such proceedings.