

Human Rights in the Indian Armed Forces: An Analysis of Article 33 by U.C. Jha and Sanghamitra Choudhury, New Delhi: Vij Books India Pvt. Ltd, 2019, pp. 378, INR 1,250

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The armed forces are one of the most powerful tools to ensure safety and security of the state from external aggressions. This duty may call upon armed forces personnel to undertake missions with a very high risk to life. To motivate a human being to perform the allocated duty even at the peril of his/her life is an art that armed forces across the globe have mastered. For sustaining such a high level of motivation and to undertake missions in a very organised fashion, military discipline is a key attribute. Like all facets of human grouping, the armed forces too have a share of erring individuals who may jeopardise the entire mission and subvert the institution. In order to deal with such individuals, the armed forces have special acts, rules and regulations that ensure quick disposal of disciplinary cases, thus containing the damage. In order to make this process timely and effective, the rights of armed forces personnel are curtailed. However, armed forces personnel are state citizens also and are entitled to all the rights enjoyed by the citizenry. Therefore, to overcome this dichotomy, the authors of the Indian Constitution incorporated Article 33, which allows the Indian Parliament to modify the rights conferred to the members of the armed forces, forces charged with the maintenance of public order, intelligence and counterintelligence organisations and communication providers for these special classes.

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The application of Article 33, its interpretation and limitations imposed by the Army Act, the Navy Act and the Air Force Act in consonance with Article 33 are debated by U.C. Jha and Sanghamitra Choudhury in their book, *Human Rights in the Indian Armed Forces: An Analysis of Article 33*.

The book consists of four chapters as well as an introduction and a conclusion. The first chapter covers how the conditions of service may impinge on the fundamental rights of the armed forces personnel. The second chapter deals primarily with principles of natural justice and how the disposal of disciplinary cases in the armed forces are not ideally suited to follow this universal principle. Chapter three gives details of judicial interpretation of the rights of a member of armed forces, as interpreted by various courts over the last seven decades of independent India. The fourth chapter explains the model followed by various countries to achieve a balance between discipline in the armed forces and rights of individuals. The book also contains two annexures that feature debates on Article 33 in the Constituent Assembly in 1948 and Lok Sabha in 1984 and a total of 13 judicial cases related to this article spanning 1962–2017.

Do soldiers have fundamental rights and human rights? The answer to this question will obviously be, 'Yes', but followed by certain conditions that are imposed by the state to ensure an effective military. Where does one draw the line between fundamental rights, human rights and soldiering? The book debates various relevant aspects related to this issue, including the right to life, right against forced labour, working and living conditions, ex gratia lump sum, right to association, corruption, and right to promotion. Like every citizen, soldiers too have a right to life. Even in a meticulously planned military operation, some soldiers may lose their lives. An aircraft system malfunction or a battery explosion in a submarine may result in multiple deaths. Does this mean that the soldiers' right to life has been violated? Of course not, as these are attendant risks that the individuals were aware of upon joining the armed forces. Looking at such incidents and accidents through a legal prism of fundamental rights has obvious limitations. The same limitation would apply in case a soldier, during his leave, is kidnapped from his home and killed. While the book makes a compulsive argument for the retention of fundamental rights of the soldiers, it falls short in delineating it from professional risks.

At the same time, it is prudent for the organisation to ensure the availability of suitable information, intelligence and equipment to the soldiers to undertake the assigned mission. Can a state absolve itself of a human rights violation by sending soldiers to glaciated mountains for border defence without requisite clothing? Under such circumstances, should soldiers follow the order and head to the border or take a plea for violation of the right to life? In an emergent situation, a soldier's duty is to guard the border, but when the same situation prevails for decades it definitely needs a review of institutional responsibility for violation of fundamental rights of the soldiers. A similar weakness exists in the argument for a standardised and higher ex gratia amount to the martyred soldiers. The ex gratia amount is not to put a value on the life of a soldier but to support those who have been left behind and as a mark of respect for the departed soldier. Like all economic activities, this amount is also based on balancing resources with commitments. The Delhi government gives Rs 1 crore ex gratia for soldiers, but the same may not be possible in states with limited revenue. This does not mean that value of soldiers from Delhi is higher than that of a state with low revenue. Indeed, such inequality cannot be put under judicial scrutiny in the context of fundamental or human rights. Yes, a rational approach is required by all stakeholders to ensure the semblance of equality.

'Justice delayed is justice denied' is an often-heard adage. The Indian judicial system has failed India in providing timely justice, with a plethora of cases pending at each level of the judiciary. Expeditious disposal of cases is important in the case of the armed forces where a majority of missions are time sensitive. A delay in disposal can not only adversely impact on individual effectiveness but may also lead to mission failures. The costs may be exorbitant at the national level. However, such express disposal of cases leads to certain compromises on rights of the individual involved. So, a balance needs to be achieved between these two facets wherein the individuals are provided with a fair and just opportunity and the decision maker moves in an unbiased manner. In a hierarchical structure like the armed forces, interlinked future prospects of all individuals involved in the entire process to complete a disciplinary proceeding make the entire process a farce, and often in violation of the principle of natural justice.

With interesting cases listed from the Supreme Court and the High Courts about the interpretation of Article 33 and its applicability for the armed forces in India, the book brings home the point that the Army

Act 1950, the Navy Act 1957, and the Air Force Act 1950 need to take cognisance of evolving societies and rights of members of the armed forces. Recognising the validity of these three Acts, the Supreme Court has often urged for bringing in changes to this antiquated system (p. 81), to be fair, just and transparent without undue command influence. In fact, certain provisions such as plea bargaining and advantage of set-off, available to Indian citizens, are yet to be made applicable to the members of Indian Armed Forces. While judiciary refrains from directly intervening in the internal justice deliverance process of the armed forces, even the Parliament has shied away from discussing this subject. The result of this lackadaisical approach is that armed forces personnel are often denied just and fair opportunities within the system for remedial of their grievances. Setting up of the Armed Forces Tribunal, with limited powers, has only changed the process but not the outcome.

The book is structured ideally with all cases related to Article 33 given in detail in the annexure, and their relevant extracts covered, along with the narration to support the arguments. A comparative analysis of models followed in various countries on this issue makes an interesting read. However, the book is silent on the process followed in countries with the largest standing militaries—China and Russia. A discussion of the system followed in these countries would have given a comparative perspective and possible alternatives.

The book is an interesting collation and provides a 360-degree perspective of a significant aspect of the Indian Armed Forces. It fills a major gap in legal studies as it is first of its kind dealing exclusively with Article 33, with all parliamentary debates and legal cases organised systematically in a single narration. It exhorts the Parliament, the judiciary as well as the armed forces to reinterpret the spirit behind Article 33 in the current context and make the justice deliverance system in the armed force fair, just and transparent. With a detailed historic background and judicial cases, this is an apt backgrounder for legislative and judicial functionaries. The book is a must-read for all personnel of the Indian Armed Forces so that they know and understand the legality, meaning and interpretation of human rights. A reduction in the use of legal lexicon for easy understanding by the armed forces personnel who are not legally trained would have been appropriate. Notwithstanding this limitation, the book will help the armed forces to focus on its internal management of human and fundamental rights and that will have an obvious fall out on their engagement with the external environment.