

## BOOK REVIEW

HUMAN RIGHTS IN THE INDIAN ARMED FORCES: AN ANALYSIS OF ARTICLE 33, by U. C. Jha and Sanghamitra Choudhury, (Vij Books India Pvt Ltd, New Delhi, 2019), pp. 378+xii, Price ₹ 1250\-

The Constitution of India guarantees the essential human rights in the form of the Fundamental Rights (Part III) to every citizen in the country. Article 32 gives the judiciary the power to protect the people's fundamental rights from any undue encroachment by any organ of the State. Article 33 of the Constitution, however, constitutes an exception to the Fundamental Rights. It empowers the Parliament to restrict or abrogate the fundamental rights of certain categories of government servants so as to ensure the proper discharge of their duties and the maintenance of duties amongst them. Besides the three wings of the armed forces, these rights have been abrogated in respect of members of the paramilitary forces and central and the state police forces. In view of the above provision, the discussions on the fundamental rights of the nearly 1.5 million members of the armed forces have been sparing in India.

This publication by Dr. Jha and Dr. Sanghamitra Choudhury is perhaps the first attempt in India which takes the need to examine the fundamental rights of the members of the armed forces. Some of the relevant questions raised by the authors are: Can the rights contained in international human rights treaties to which India is a party, be denied to the members of the armed forces, even if they do not have any impact on their discipline or performance of duty? Are the members of the armed forces entitled to enjoy the Fundamental Rights subject to the limitations imposed by Article 33? Can they be denied every right contained in Part III/IV of the Constitution for the sake of maintenance of discipline and proper performance of duty? While analyzing the above questions, the authors have investigated the issues relating to the right to a fair trial, living and working conditions, the system of grievance redress, summary systems courts martial, and finally whether there a need to redefine the rights and duties of military personnel in India?

This book has six chapters. The first chapter examines the position of the armed forces under the Constitution, the restrictions on the fundamental rights of the members of the armed forces under Article 33, and its relation to the military legal system. The second chapter discusses the conditions of service in the military which have a direct bearing on the fundamental rights of armed forces personnel. While quoting few recent incidents from the military the authors argue whether the death of a soldier in certain circumstances would amount to human rights violations and whether the next-of-kin of the deceased could prefer a claim against the government for human rights violations? In support of the argument, the authors have analyzed recent decision of the European Court of the Human Rights (p. 21-22). The authors have also argued

that the members of the armed forces be allowed certain rights relating to forming associations to deal collectively with matters affecting their living and working conditions. In author's view it would enhance military discipline and increase efficiency in the armed forces.

Not known to many, the armed forces are still governed by antiquated and outmoded legal system that has hardly been altered since the Mutiny Acts. The third chapter brings out the shortcomings of the Indian military legal system. The right to a fair trial is a fundamental safeguard to ensure that individuals are protected from unlawful or arbitrary deprivation of their human rights and freedoms. Some of the recommendations made in this regard are: the processing of grievance petitions in a just and democratic environment; providing effective legal aid a military person during pre-trial, trial and post-trial stages; abolition of Victorian-era summary systems of court martial; making military-judiciary independent of command structure; removal of unlawful command influence over court martial; and incorporation of plea-bargaining in the military legal system. In view of the authors such reforms would not go against the spirit of Article 33 of the Constitution.

In chapter four, the decisions of the Supreme Court in cases relating to Article 33 have been critically analyzed. The authors comment, "In India, the judicial activism in the sphere of human rights has generally steered clear of the conditions of service of aggrieved military personnel as well as to the justice delivered by the ad hoc tribunals." Chapter five briefly examines the constitutional restrictions on the "Fundamental Rights" in a few democracies which includes Australia, Belgium, Denmark, France, Germany, Malaysia, The Netherlands, Spain, South Africa, the United Kingdom, the US, as well as the South Asian countries. In the concluding chapter the authors comment that the laws relating to the armed forces have remained static and needs to be changed keeping in view the changes effected by other democratic countries. Further, the government must redefine the rights and duties of military personnel to ensure that the military as an employer is capable of attracting and retaining the best talent. This book also contains the text of the Constitutional Assembly debates and the text of the Supreme Court decisions in cases relating to Article 33.

*Human Rights in the Indian Armed Forces: An Analysis of Article 33* by Wg Cdr (Dr) U C Jha and Dr Sanghamitra Chowdhury is a valuable contribution to the field of military and human rights studies in India. This book is a straightforward approach to the 'grey issues' of the existing military legal system in India and is aimed at all those who are involved in promoting, protecting, and enforcing the rights of not only the members of the armed forces, but also the paramilitary and police forces engaged in the security of the country.

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