



Human Rights Boon or Curse on Armed Forces

The idea for the protection for human rights and fundamental freedoms was conceived in the Atlantic Charter (1941) and in the declaration of the United Nations (1942). When the founders of the United Nations met at a San Francisco Conference in 1945 to draft the charter of the United Nations, and the Universal Declaration of Human Rights was introduced in front of the world. India was a signatory to the declaration. The Indian Constitution adopted by the Constituent Assembly on December 26, 1949, which came into force from January 26, 1950 was greatly influenced by the declaration.

Human beings are rational beings. They by virtue of their being human possess certain basic and inalienable rights which is commonly known as Human Rights.

Part 3 of the Indian Constitution contains a long list of fundamental rights. This chapter of the constitution of India has very well been described as a MAGNA CARTA of India. The aim of having declaration of fundamental rights is that certain elementary, such as, right to life, liberty, freedom of speech, freedom of faith and so on, should be regarded as inviolable under all conditions and that the shifting majority in legislature of the country should not have a free hand in interfering with these fundamental rights. Fundamental rights were deemed essential to protect the rights and liabilities of the people against the encroachment of the power delegated by them to their Government. All these fundamental rights are available for both CITIZENS and NON-CITIZENS without any discrimination by the constitution. But are these available in equal measure and to the same extent to the Indian Soldiers. Our Army is protecting us from external powers and wars. Armed forces are the major power of our country but what is the place of our Indian Armed Forces in our statutes? Are soldiers treated the same as an individual citizen? Do they have any other special rights? Is there any limitation imposed by the constitution over the rights of Armed forces?

Like every Indian Citizen the members of every Armed force are entitled for fundamental rights. But it is also essential to know that there are certain restrictions on fundamental rights of members of the armed force.

Restrictions on Fundamental Rights Members of Armed Forces

Article 33 of the Indian Constitution is an exception to the fundamental rights conferred by part 3 of the constitution. This article empowers the parliament to restrict or abrogate by law fundamental rights in the application to:

- (a) The members of the armed force or
- (b) The forces charged with the maintenance of public order. The 50th amendment act amended Article 33 and extended its scope by including two more categories of persons connected with the armed forces whose fundamental rights could be restricted by the Parliament by law.
- (c) Persons employed in any bureau or other organisations established by the state for the purpose of intelligence and
- (d) Persons employed in the connection with the tele-communication system set up for the purpose of armed force, bureau or organisation referred to in clause (a) to (c) of Article 33.

The object of this restriction under this article is to ensure the proper discharge of their duties and maintenance of discipline amongst them.

This article is an exception to the operation of article 13, clause (2) which prohibits taking away or abridgment of the right guaranteed by part 3 of the constitution. Hence, a law passed under Article 33 cannot be challenged under article 13,(2).

The power under Article 33 is only exercisable by Parliament and not by state Legislatures.

Restriction of fundamental rights while Martial Law is in force in any area-

Article 34 provides that notwithstanding anything in the foregoing provisions of this part, Parliament may by law indemnify any person in the service of the Union or of a state or any other person in respect of any act done by him for the maintenance or restoration of order in any area where Martial Laws was in force. The indemnity validates any sentence passed, punishment inflicted, forfeiture ordered or other act done under Martial Laws in such area. It offers an indemnity to members of armed forces of those (civil authorities or police) connected with maintenance or restoration of order within India for all acts done within an area where Martial Law is in force. So an act of indemnity passed by Parliament cannot be challenged on the ground that it violated fundamental rights.

This power of parliament is, however, subject to two restrictions: (1) the act must be done for the maintenance of restoration of order, and (2) Martial Law was in force in the area where the act was done.

WHAT IS MARTIAL LAW?

Martial Law is defined as meaning the suspension of ordinary law and the government of the country or part of it by Military Tribunals. It must be clearly distinguished from Military Law, and from the Martial Law which forms parts of laws and usages of war. The term “Martial Laws” is sometimes used as meaning the common law right of the Crown to repel force in the case of insurrections, invasions or riot and to make such exceptional measures as may be necessary for the purpose of restoring peace and order. This power is necessary, otherwise any act done during such time by executive or military authorities in pursuance of maintaining or restoring order can be challenged in ordinary courts of law when peace is restored. There is no express provision in the Indian constitution which confers power on the executive to declare any area within territory of India.

In the **Habeas Corpus case (AIR 1976)** the supreme court has distinguished the presidential order under article 259 (1) and the martial laws which may be declared under article 34A presidential order under article 359(1) according to supreme court “ordinarily have a range and effect throughout the country than the existence of Martial Laws in any particular part of the country. But declaration of Martial Laws does not automatically deprive the court to issue the writ of Habeas Corpus or other process for the protection of the individual’s life and liberty. The court can examine the legality of the action of military or executive authorities on the ground of MALA FIDE. If courts are to be prevented from exercising such power during Martial Laws, this could be done only by Presidential order issued under article 359(1) and in no other way.

In the case of **Secretary Ministry of defence VS Babita Puniya**, it is concluded that though the members of armed forces enjoy the same fundamental rights as an ordinary citizen of India, yet under the certain restrictions imposed upon them by the virtue of legislations enacted by the Parliament under the Article 33 and 34 of the Indian Constitution.

From the above discussion we can clearly say that the members of armed forces are the citizens of India and treated as a Citizen or entitled for all the fundamental rights but there are certain but very important restrictions imposed by the constitution. In this way we can say that Human rights are a boon for the Armed Forces. Now, the question will arise: can Human rights be a curse over the Armed Forces? The answer is YES. How let us discuss.

Complaints of Violation of Human Rights by Members of the Armed Forces

The National Human Rights Commission (NHRC) is the major authority dealing with expression of human rights stating that human rights means the rights relating to life, liberty, equality, and dignity of the individuals guaranteed by the constitution or embodied in the international covenant and enforceable by courts in India.

Armed forces including the Navy, the Army, the Air force and any other armed forces are exempted from the purview of the commission. Members of the Border security force BSF and other paramilitary units shall also be outside the investigatory purview of the commission. The Human Rights Act lays down that the commission shall adopt the procedure while dealing with complaints of violation of human rights by the members of armed forces as provided under Section 19 which lays down under para 1 (a) that it may, either on its own motion or on receipt of petition, seek a report from the central government. After the receipt of the report, it may either not proceed with the complaints or as in the case may be, make its recommendations to that government. The central government shall inform commission of the action on the recommendations within three months or such further times as the commission allows. The commission shall publish its report together with its recommendations made to the central government and the action taken by the government on such recommendations. The present system of enquiry by the forces and punishment of the guilty persons has been working satisfactory and, in view of this, it is felt that there is no need at the present stage to change the procedure that already been spelt out in the protection of Human Rights Act, 1993 for dealing with Armed forces.

The commission is of the view that the government is fully aware that section 19 of the act, as presently worded, prevents the commission from itself initiating an inquiry into, or investigating, the violation of human rights in armed forces and this position has been widely criticised both at home and abroad. The commission has stated that it considers the present system unsatisfactory and the existing definition of armed forces which includes not only the naval, military, and armed forces but also any other armed forces of the union is excessively wide. The general laws of our legislature which is applied to every person who is in the territory of India are not applied over the Armed forces to make them separated for the general people. Our armed forces are our protectors, that's why this is the duty of the government to protect their rights.

The Parliament also enacted various laws such as Army Act (1950), Navy Act(1950),Air Force Act (1950), Police Forces (restriction of rights)Act, which restricts some of their rights but as a citizen of India they have all the fundamental rights, but there are certain limitations over their rights which includes all persons subject to the Army Act,1950 or the Navy Act, 1957 or the Air Force Act,1950.

In the case of **Union of India VS Ld. Cdr. Annie Nagaraja**, the supreme court held that some of the provisions of forside special acts, which affect the fundamental rights on the basis of gender bias and equal opportunity of employment,have been ruled out in the case.

Conclusion

The statutory laws of our country like India Penal Code,1860, excludes its jurisdiction in cases of mutiny and desertion of officers, soldiers, sailors or airmen in the service of the government of India which are punishable under any act or the provisions of any special or local law. Mutiny and desertion needed to be tackled separately. The code shall not affect the provisions of any act punishing mutiny and desertion in the Army, Navy, or Air Force.

The Human Rights in no doubt is a boon for the Armed Forces just like any other citizen of India, but restrictions and limitations of the Constitution sometimes made it a curse.

