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ARTICLE 33 AND THE CONSTITUTIONAL STATUS OF SOLDIERS' RIGHTS IN INDIA: HISTORY, JURISPRUDENCE, AND THE CASE FOR REFORM

Panchal Ronakkumar Kanubhai

(LL.M.) 2025-26, Gujarat National Law University, Gandhinagar

Abstract

Article 33 of the Indian Constitution allows Parliament to modify or restrict the fundamental rights of members of the armed forces and other agencies connected with national security and public order. In practice, this enables the government and authorities to curtail the civil rights of soldiers and certain public servants. Historically, the Supreme Court and the High Courts have adopted a broad and deferential interpretation, effectively permitting wide waivers of rights. This paper traces Article 33 from its colonial British origins to its incorporation by the Constituent Assembly. It further analyses decisions of the High Courts and the Supreme Court, including Lt. Col. Prithi Pal Singh Bedi and The Secretary, Ministry of Defence v. Babita Puniya, among others. Through this critical examination, the paper identifies gaps in the protection of soldiers' rights and the limited judicial scrutiny of restrictions imposed under Article 33. The study also compares the position in the United States and the United Kingdom, where courts and laws have adopted a more balanced approach between military discipline and individual rights. In its central part, It argues that Article 33 and its interpretation should be reconsidered through the lens of the proportionality test and stronger judicial review. Undoubtedly, it is necessary to impose reasonable restrictions on the constitutional rights of soldiers, but such restrictions must have a rational nexus with military operations and with matters relating to national security and public order.

Introduction

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Article 33 is unique in Part III of the Indian Constitution, as it explicitly allows Parliament to restrict or even abrogate fundamental rights for members of the armed forces, paramilitary forces, and intelligence services. It provides that:

> *"Parliament may, by law, determine to what extent any of the rights conferred by [Part III] shall, in their application to… the members of the Armed Forces… or forces charged with the maintenance of public order… be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them."*

This extraordinary article was inserted almost without debate into the Constitution (a minor wording amendment was made on 9 December 1948).[1] It essentially reflected the framers' view that military effectiveness and discipline justified special treatment. The framers continued the old colonial structure, built on rigid control and fragmented identities.

However, Parliament has used Article 33 in a very broad manner and enacted multiple legislations such as the Army Act, 1950[2], the Air Force Act, 1950[3], and the Navy Act, 1957[4], which permit wide restrictions on Articles 14, 19, and 21. Even the courts have shown extreme deference to these enactments, effectively leaving soldiers with no effective constitutional remedy.

If we look at foreign countries whose systems we inherited, they have introduced progressive reforms and adopted a more balanced approach. For instance, in the USA, courts accept that soldiers' rights can be limited due to the "special needs" of the military (Parker v. Levy), but still apply constitutional scrutiny. In the UK, the armed forces are subject to the European Convention on Human Rights, which allows only narrow derogations. In India, however, the position has not changed much, and the Supreme Court has continued to rely on outdated jurisprudence and interpretations of Article 33. For example, in November 2025, the Court upheld the dismissal of an officer who refused to enter a Sikh temple, invoking Article 33.

The author argues that Article 33 has become overbroad and dangerous for constitutionalism. It is suggested that, whether by interpretation or amendment, the following principles must be

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[1] Constitution of India 1950, art 33 (as summarised on *Constitution of India*), online: *Constitution of India* https://www.constitutionofindia.net/articles/article-33-power-of-parliament-to-modify-the-rights-conferred-by-this-part-in-their-application-to-forces-etc/ accessed 19 January 2026

[2] Army Act 1950

[3] Air Force Act 1950

[4] Navy Act 1957

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incorporated into Article 33: application of the proportionality test, meaningful judicial review, and parliamentary oversight.

Historical Evolution of Article 33

Article 33 traces its origin to Draft Article 26 of 1948 and was adopted on 9 December 1948 in the following terms:

> *"Parliament may, by law, determine to what extent any of the rights conferred by Part III shall, in their application to (a) the members of the Armed Forces; (b) the members of the forces charged with the maintenance of public order; (c) persons employed in any bureau or organisation for intelligence or counter-intelligence; or (d) persons employed in, or in connection with, the telecommunication systems set up for any such force, bureau or organisation be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.*[5]"

The Constitution-makers were conscious that no rigid rule could be incorporated in the Constitution and that a degree of flexibility was necessary. At the same time, they proceeded on the assumption that the military could not function like a civilian institution and that discipline, hierarchy, and national security would inevitably require curtailment of individual liberty. In other words, Article 33 reflected an old colonial idea: in the army, discipline prevails over individual freedom.

Colonial military policies were deliberately designed to segregate soldiers on the basis of religion, caste, and community, with the primary objective of preventing a repetition of events such as the Mutiny of 1857 and of avoiding unity among troops. Independent India largely retained this structure, though it was rebranded through the rhetoric of "Unity in Diversity" and multi-faith rituals and parades. Beneath this symbolism, however, the underlying ideology remained that the State could legally suppress individual conscience and identity in the name of military cohesion and discipline.

Article 33 constitutionalised this approach and, in effect, delegated wide and largely unchecked power. It does not specify which fundamental rights may be restricted, does not limit the extent of such restrictions, and does not incorporate any test of proportionality. Further, the Supreme

[5] Constitution of India 1950, art 33

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Court has expanded its scope by holding that Parliament may impose even blanket restrictions through military legislation, which are then deemed to be implicitly justified under Article 33. Courts have thus declined to insist on a right-by-right justification. In essence, the prevailing constitutional philosophy is that by voluntarily entering the armed forces, a person accepts that his fundamental rights may be subordinated to the imperatives of discipline.

Key Judicial Pronouncements and Legal Interpretations

As discussed above, over the decades India's courts have grappled with Article 33 in dozens of cases. This chapter focuses on how Indian courts have consistently upheld broad legislative power, effectively insulating military laws from constitutional challenge.

In Ram Sarup v. Union of India (1964), a Constitution Bench held that:

> *"Each and every provision" of the Army Act is a law made by Parliament, and if it "tends to affect" any fundamental right, Parliament is deemed to have exercised its power under Article 33 to modify that right."*[6]

In other words, the Court held that no provision of the Army Act could be struck down as violative of Part III; any inconsistency would be presumed to be authorised by Article 33. The Court also rejected the argument that the scope of restrictions was confined only to Section 21 of the Army Act. In effect, Ram Sarup declared that Article 33 immunises all military laws made by Parliament, including the rules, regulations, and orders framed thereunder.

This approach was reiterated in Lt. Col. Prithi Pal Singh Bedi v. Union of India (1982). The Court observed that:

> *"Article 33 ... does not obligate that Parliament must specifically adumbrate each fundamental right enshrined in Part III and to specify in the law the degree of restriction or total abrogation of each right. That would be reading into Article 33 a requirement which it does not enjoin*."[7]

The Court thus rejected the contention that Parliament must expressly specify which rights are being curtailed, holding that to insist on such a requirement "would be reading into Article 33 something which it does not enjoin." The underlying assumption was that so long as a measure

[6] *Ram Sarup v Union of India* AIR 1965 SC 247
[7] L*t Col Prithi Pal Singh Bedi v Union of India* (1982) 3 SCC 140

could be linked to "proper discharge of duties and maintenance of discipline," military law would prevail.

Subsequently, in R. Vishwan v. Union of India (1983), where the Court was asked to determine whether Section 21 of the Army Act could be applied to GREF members, the Court held that:

> *"Having regard to the varying requirement of army discipline and the need for flexibility in this sensitive area, it would be inexpedient to insist that Parliament itself should determine what particular restrictions should be imposed… The Constitution makers… empowered Parliament to determine the permissible extent… so that within such permissible extent… any appropriate authority authorised by Parliament may restrict or abrogate any such Fundamental Rights."*[8]

In other words, the court allowed the executive to exercise the same discretion that the constitution makers had delegated to Parliament. Instead of striking down Section 21 for delegating essential functions to the executive, the court widened the scope of Section 21.

In Ex-Major N.R. Ajwani v. Union of India (1994), the Court attempted a more nuanced reading. It noted that Article 33 reflects the Constitution-makers' concern that no more restrictions should be placed on the rights of armed forces personnel than are absolutely necessary for discipline and efficiency. At the same time, however, it emphasised the need for executive flexibility in military matters, thereby diluting the earlier caution. Ajwani also held that procedural guarantees under Article 21 do not apply in the same manner to court-martial proceedings, which are governed by the procedure prescribed under the Army Act.[9]

Notably, even in Bedi, Justice Desai had sounded a warning that courts must balance two competing interests: the necessity of discipline for national security on the one hand, and the denial of those fundamental rights that are "inseparable adjuncts of civilised life" on the other. This suggested an awareness that military necessity cannot wholly eclipse constitutional freedoms.

More recent judgments, however, reveal inconsistency. In Union of India v. L.D. Balam Singh, the Supreme Court asked whether Article 33 "denudes an Army personnel of every constitutional privilege." The Court answered in the negative, holding that soldiers do not form

[8] *R Viswan & Ors v Union of India & Ors* (Supreme Court of India, 6 May 1983) (1983) 3 SCC 401
[9] *Ex. Major N.R. Ajwani & Ors v Union of India & Ors* (Delhi High Court, Full Bench, 8 July 1994) 55 DLT 217

a separate class outside the Constitution and remain citizens entitled to fundamental rights.[10] Any restriction, it held, must bear a rational nexus with the purposes stated in Article 33.

A similar approach was adopted in Babita Puniya, where women officers challenged the denial of permanent commission. The Union argued that Article 33 shielded the Army Act from scrutiny under Article 14. The Court rejected this, holding that any abridgement of rights must be "by law" and "necessary for ensuring the proper discharge of duties and the maintenance of discipline."[11] Justice Chandrachud emphasised that Parliament cannot invoke Article 33 to justify arbitrary limitations; only those meeting the test of necessity and proportionality are permissible.[12]

Yet this progressive line has not been consistently followed. In November 2025, the Supreme Court dismissed the petition of an army officer terminated for refusing to participate in religious rituals during weekly religious parades, for which proceedings under Section 41 of the Army Act were initiated. Although such orders arguably had no rational nexus with discipline or operational efficiency, the Court characterised the conduct as "gross indiscipline," thereby extending Article 33 well beyond its textual limits.[13]

In 2016, a similar application was filed before the supreme court, in which the applicant sought permission to keep a beard on religious grounds protected under Article 25 of the Constitution.[14] The Court, however, dismissed the application, holding that Regulation 425(b) of the Army Regulations, 1964 does not permit the wearing of a beard unless it is recognised by the Army authorities.[15] The case raises the same fundamental issue: if the exercise of personal liberty does not cause any disturbance to military operations or activities, what is the justification for imposing such arbitrary restrictions?

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[10] *Union of India & Ors v L D Balam Singh* (2002) 9 SCC 73
[11] *The Secretary, Ministry of Defence v Babita Puniya & Ors* (2020) 7 SCC 469
[12] Gautam Bhatia, 'Gender Equality in the Armed Forces' (Constitutional Law and Philosophy, 20 March 2020) https://indconlawphil.wordpress.com/2020/03/20/gender-equality-in-the-armed-forces/ accessed 19 January 2026
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[14] Gautam Bhatia, *The Supreme Court's Muslim Beard Judgment: A Missed Opportunity* (*Constitutional Law and Philosophy*, 16 December 2016) https://indconlawphil.wordpress.com/2016/12/16/the-supreme-courts-muslim-beard-judgment-a-missed-opportunity/ accessed 19 January 2026
[15] Army Regulations 1964, reg 425(b)

Further, summary court-martial proceedings under Sections 116–120 of the Army Act continue to operate.[16] In such trials, the commanding officer acts as both prosecutor and judge, violating basic principles of a fair trial, including an independent adjudicator and separation of functions. The accused is denied legal representation and may be sentenced to imprisonment with minimal appellate safeguards.[17] These provisions, introduced during the colonial period to prevent uprisings such as the Mutiny of 1857, continue to survive in independent India, notwithstanding the constitutional commitment to due process and justice.[18]

In sum, Indian jurisprudence has historically treated Article 33 as conferring near-absolute latitude on Parliament: any conflict between military law and fundamental rights is resolved in favour of the former. Courts have routinely held that Army Act provisions are immune from Part III scrutiny and that service conditions fall within the pleasure doctrine under Article 310, excluding the protections of Article 311.[19] Although some recent decisions reflect a more rights-oriented approach, the dominant, textually rigid interpretation of Article 33 continues to prevail.

Comparative Analysis: USA and UK

Before delving into the discussion on reforms, the author considers it important to examine how other countries have addressed this issue, particularly the United States and the United Kingdom. Both countries face the same tension: how to protect service members' rights without undermining military effectiveness and security. Yet their solutions differ significantly from India's.

In the United States, military personnel are governed by the Uniform Code of Military Justice (UCMJ), a comprehensive federal law enacted by Congress.[20] Service members technically retain many constitutional rights, but courts recognise that these rights may be "applied differently" in the military context because of its unique requirements.

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[16] Army Act 1950, ss 116–120
[17] Aanchal Dahiya & Hari Mudgil, *Time to Court Martial the Summary Court Martial* (*LiveLaw*, 23 April 2020) https://www.livelaw.in/columns/time-to-court-martial-the-summary-court-martial-155656 accessed 19 January 2026
[18] Jyoti Chatterjee, *Constitutionality of Summary Court Martial Proceedings with Lesser Due Process* (Research paper, Department of Law, WBNUJS, Kolkata) https://www.academia.edu/73147473/Constitutionality_of_Summary_Court_Martial_Proceedings_with_Lesser_Due_Process accessed 19 January 2026.
[19] Constitution of India 1950, arts 310–311
[20] Uniform Code of Military Justice 1950 (10 USC §§ 801–946)

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For instance, in Parker v. Levy (1974), the US Supreme Court upheld the court-martial of an army doctor who had encouraged insubordination, observing that:

> "The military is a distinctive environment that revolves around the importance of obedience and discipline." Even a "generous interpretation" of the First Amendment did not protect an officer who urged troops to refuse combat orders."[21]

In Levy, the Court famously held that the "demands of military necessity are superior to individual constitutional rights in the military setting." In dissent, however, Justice Douglas cautioned that the majority had shown excessive deference to military opinion. In this sense, the US follows a form of constitutional reasoning similar to that adopted in India.

However, the United States provides a far more robust legislative framework that ensures meaningful procedural protections for soldiers. Service members have access to courts and may raise constitutional claims, which are scrutinised by judges, albeit under relaxed standards. Court-martial procedures incorporate substantial safeguards, and in certain cases service members may also seek relief before federal courts. In sum, the US model adopts a pragmatic approach, with the civil judiciary generally stepping back from core disciplinary matters while still ensuring basic rights.

By contrast, the United Kingdom, whose legal system India inherited, has moved away from the older colonial model. The UK now subjects its armed forces to the general civil law and to human rights standards. The system is bound by the European Convention on Human Rights (ECHR)[22], as incorporated through the Human Rights Act[23]. A House of Commons research briefing has noted that:

> "*UK armed forces personnel… are required to abide by the human rights standards set out by the ECHR as implemented in the UK Human Rights Act," and that when deployed domestically or within Europe they are treated as "agents of the state" subject to ordinary civil and criminal law*."[24]

This means that British service members can approach courts and invoke protections such as the right to life, liberty, family life, and freedom from discrimination before civilian forums.

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[21] *Parker v Levy* 417 US 733 (1974)
[22] European Convention on Human Rights 1950
[23] Human Rights Act 1998
[24] *UK Armed Forces Personnel and the Legal Framework for Future Operations* (Written evidence from the Humanitarian Intervention Centre, House of Commons Defence Committee, Session 2013-14, 7 January 2014) https://publications.parliament.uk/pa/cm201314/cmselect/cmdfence/writev/futureops/law13.htm accessed 19 January 2026.

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Although limited restrictions may be imposed during wartime, these are expressly regulated. Unlike India's Article 33, the UK Constitution does not contain any blanket provision authorising wholesale curtailment of fundamental rights. Moreover, the UK Parliament periodically every five years reviews the Armed Forces Act and makes necessary changes to service rules and regulations. While the Act provides a comprehensive disciplinary framework, compliance with human rights conventions remains justiciable.

In summary, both the US and the UK acknowledge the necessity of discipline and cohesion within the armed forces, but they balance this with clear rules grounded in proportionality and reasonableness. The US Constitution empowers Congress to regulate the military extensively, a power that has been exercised in a largely pragmatic and rights-sensitive manner. The UK, on the other hand, treats soldiers largely as ordinary citizens under the law, subject only to limited and clearly defined restrictions. By contrast, India's Article 33 permits a priori restrictions and presumes broad authorisation. Neither the US nor the UK follows such a model; instead, their systems treat limitations on soldiers' rights as narrow exceptions to the general guarantee of constitutional freedoms.

Arguments for Reforms

As highlighted above, India's military laws have largely been insulated from constitutional scrutiny because Article 33 has been given a rigid and overly textual interpretation. Most constitutional concerns stem from this approach, which effectively grants Parliament and the executive a free hand in enacting legislation, framing rules and regulations, and issuing orders. In this central part of the paper, the author proposes the following reforms, which should be incorporated either through constitutional interpretation or by amendment.

Lack of Proportionality test

Although the text of Article 33 nominally limits restrictions by the explicit words "ensures proper discharge of duties and maintenance of discipline," the courts have seldom enforced this limitation. As examined above, the judiciary has consistently shown deference and has allowed arbitrary laws to prevail over the constitutional rights of soldiers.

In some of its judgments, the Supreme Court has recognised that merely because a person has joined a government department, he cannot be deprived of his constitutional rights and must be treated with dignity. This becomes even more necessary when soldiers are prohibited from

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forming lawful associations, which ordinarily help individuals raise their grievances before appropriate forums.

By recognising these inherent freedoms, the State provides every soldier with a meaningful opportunity to express himself and to interact with fellow troops, thereby contributing to military cohesion and unity. Indian jurisprudence must acknowledge that before being a soldier, a person is a human being who is entitled to dignity and respect.

The laws imposed upon him must therefore be reasonable and proportional. Under the guise of maintaining discipline, he should not be compelled to follow rules, regulations, and orders that have no rational connection with the restrictions contemplated under Article 33. While incorporating this provision, the Constitution-makers relied on the wisdom of Parliament to enact meaningful and effective legislation that would balance the freedom of soldiers with the need for discipline within the organisation.

However, as shown above, Parliament and the executive have misused these provisions and have denied even basic constitutional guarantees such as a fair trial, due process of law, and proportional punishment. At this stage, it becomes the constitutional duty of the Supreme Court to discharge its role and to incorporate the proportionality test, as the Constitution-makers intended. Further, to remove lingering ambiguities, Parliament, in exercise of its constituent power, must amend Article 33 by introducing necessary clarifications.

Stronger Judicial Review

The current Article 33 does not textually restrict constitutional courts from reviewing parliamentary legislation or executive actions. However, historically, the judiciary has mostly practiced deference in this regard. The author argues that under Articles 14 and 21 of the Indian Constitution, the courts have a constitutional duty to intervene when procedural laws fail to provide basic safeguards. Even though Article 33 grants Parliament extraordinary power in this respect, it does not limit the scope of judicial review.

This can be meaningfully implemented by widening the jurisdiction of the Armed Forces Tribunal and the High Courts. Courts exercising writ jurisdiction must carefully examine the facts and the law and balance the competing interests, rather than deferring to other authorities. The precedents set in earlier judgments, such as Ajwani, must be re-examined and modified to provide meaningful substantive rights, including access to justice.

Policy and Oversight

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No law can be effectively implemented if there is no accountability mechanism. Military laws and the restrictions placed thereunder are seldom discussed in public discourse. Even executive actions and regulations made under Section 21 of the Army Act are usually passed without much discussion in Parliament, whereas civilians' fundamental rights and the restrictions on them are debated at length. The modifications contemplated under Article 33 are supposed to be imposed by law alone; however, the present system does not even meaningfully consult lawmakers.

India can learn from the UK model, where Parliament periodically reviews the Armed Forces Act and the regulations framed under it. Additionally, committees such as a Joint Committee on Defence must be constituted, which would continuously supervise executive actions and make recommendations to Parliament. The aim of these policy reforms and oversight mechanisms should be to ensure that "military necessity" is not declared without parliamentary debate.

In short, the Constitution itself mandates that restrictions must be necessary and must bear a rational nexus with the objectives sought to be achieved. This can be ensured through ordinary means such as sound judicial interpretation, robust judicial review, and continuous legislative oversight.

Conclusion

Article 33 sits at the heart of a classic democratic dilemma: how to reconcile soldiers' constitutional rights with the extreme discipline demanded by national defence. Historically, Indian courts have adopted very orthodox and colonial interpretations and have denied army personnel even basic legal remedies. The cases examined above show that Article 33 has been misinterpreted and continues to perpetuate its old British colonial origins.

Even the present cases follow the same outdated doctrine of military discipline and cohesion. From denying religious freedom to ensuring a fair trial, the courts have failed to fulfil their constitutional duties. In these facts and circumstances, the present study examines foreign jurisprudence and concludes that reforms are the need of the hour. The proposed reforms include strict adoption of the proportionality test, a stronger form of judicial review, and enhanced parliamentary oversight.

By implementing these reforms, India can honour the sacrifices of its armed forces without relinquishing constitutional ideals. The proposed changes would bring Indian military law

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closer to the democratic standards of the United States and the United Kingdom, ensuring that the rule of law even in uniform is not an empty promise.

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