BLOGS

Exception to Fundamental Rights under Article 33 of the Indian Constitution

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Introduction

Article 33 of the Indian Constitution serves as a crucial exception to the fundamental rights conferred by Part III of the Constitution. It delineates the scope within which the Parliament can restrict or abrogate the application of these fundamental rights to certain categories of individuals, primarily for reasons of national security and public order.

This exception is particularly significant as it allows the state to maintain discipline and ensure the proper functioning of certain critical services without the encumbrance of constitutional rights that might otherwise impede these functions.

Article 33 states:

“Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,

(a) the members of the Armed Forces; or

(b) the members of the Forces charged with the maintenance of public order; or

(c) persons employed in any bureau or other organization established by the State for purposes of intelligence or counter-intelligence; or

(d) persons employed in or in connection with the telecommunication systems set up for the purposes of any Force, bureau, or organization referred to in clauses (a) to (c), be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them”.

This provision effectively limits the fundamental rights guaranteed under Part III of the Constitution for specific groups of people, such as the right to equality (Article 14), the right to freedom of speech and expression (Article 19), and the right to life and personal liberty (Article 21), if the Parliament deems it necessary for maintaining discipline and carrying out the duties

assigned to these groups.

Article 13(2) of the Constitution provides that “the State shall not make any law which takes away or abridges the rights conferred by this Part, and any law made in contravention of this clause shall be void”.

However, Article 33 operates as an exception to this general prohibition. Because Article 33 specifically empowers the Parliament to make laws that would otherwise be considered to infringe upon fundamental rights, Article 13(2) cannot challenge the laws made under Article 33.

Categories of Persons Affected by Article 33

1. Armed Forces Members: This includes all personnel from the Army, Navy, and Air Force. The rationale behind this is to maintain discipline while ensuring the military’s readiness and effectiveness. The nature of their duties necessitates certain restrictions on their rights.
2. Forces charged with maintaining public order: This typically includes police forces and paramilitary forces such as the Central Reserve Police Force (CRPF) and Border Security Force (BSF). Maintaining public order often requires a level of discipline and operational secrecy that might necessitate restrictions on certain freedoms.
3. Intelligence Agencies: This article also covers individuals working for organisations like the Research and Analysis Wing (RAW), the Central Bureau of Investigation (CBI), and the Intelligence Bureau (IB). The secrecy and sensitivity of their work, which often involves national security, justify the need for imposing restrictions on their fundamental rights.

The object of the restrictions under Article 33 of the Indian Constitution is to ensure the proper discharge of duties and the maintenance of discipline among members of the armed forces, forces charged with the maintenance of public order, intelligence agencies, and telecommunication personnel connected with these forces.

Judicial Interpretation

The judiciary has upheld the constitutionality of laws made under Article 33 on several occasions. For example, in **Ram Swarup v. Union of India**, the Supreme Court of India recognized the necessity of restricting certain fundamental rights to maintain the discipline and operational efficiency of the armed forces.

The Supreme Court in this case opined that the Indian Constitution includes Article 33 as a necessary provision to prevent the unfettered application of fundamental rights from compromising the operational effectiveness and discipline of critical security and intelligence services.

The need to maintain national security, public order, and the efficient functioning of vital state services balances this significant exception to the rights guaranteed under Part III.

Enforcement of Fundamental Rights Against Private Persons

The Indian judiciary has repeatedly ruled that if private individuals or entities violate citizens' rights, we can enforce fundamental rights against them. Several landmark cases illustrate this principle:

1. Indian Council for Enviro-Legal Action vs. Union of India: In this case, the Supreme Court established the right to issue a writ against private individuals who violate citizens' fundamental rights.This ruling was significant because it extended the reach of fundamental rights beyond state actions, holding private individuals and corporations accountable for violations that affect the public's fundamental rights. The case involved the Indian Council for Enviro-Legal Action and the Union of India.
2. Delhi Judicial Services Association vs. State of Gujarat: The Supreme Court convicted seven police officers for criminal contempt of court through a writ under Article 32. This case underscored the court's authority to use its writ jurisdiction to address serious violations of fundamental rights, even by state actors.The judgment emphasized that the judiciary has the power to act decisively against those who undermine the fundamental rights of individuals, including through criminal contempt proceedings.
3. M.K. Sharma vs. Bharat Electronics Limited: In this case, the Supreme Court ordered compensation for employees who became ill due to radiation exposure from X-rays during their job.The court's decision highlighted the duty of employers, whether private or public, to ensure a safe working environment and uphold the fundamental right to health and safety. This case illustrated the application of fundamental rights to employment conditions, holding employers accountable for neglecting worker safety.

Article 33 and its Implications

Article 33 specifically allows the Parliament to modify the application of fundamental rights to ensure discipline and proper discharge of duties among certain categories of individuals.

This includes members of the armed forces, police forces, intelligence agencies, and associated telecommunication personnel. The rationale behind this provision is that the unique nature of their duties often necessitates restrictions on certain rights to maintain order, secrecy, and discipline.

However, while Article 33 allows for the restriction of fundamental rights for these individuals, it does not completely abrogate them. The modifications must be reasonable and necessary to ensure the effective functioning of these services. The judiciary has the authority to review such restrictions to ensure they do not exceed what is necessary for maintaining discipline and fulfilling duties.

Judicial Oversight and Accountability

The Indian judiciary plays a critical role in ensuring that restrictions under Article 33 do not become arbitrary or excessive. Even in cases of restricting fundamental rights, courts have consistently upheld the principle of providing adequate safeguards and accountability mechanisms to prevent abuse. The cases discussed above demonstrate the judiciary's commitment to protecting fundamental rights, whether the violations are by private persons or state actors.

Conclusion

While Article 33 provides for necessary restrictions on certain individuals' fundamental rights to maintain discipline and ensure the effective discharge of duties, the judiciary remains vigilant in upholding the essence of these rights.

The judiciary's broader interpretation and application of constitutional protections, reflected in the enforcement of fundamental rights against private individuals in various landmark cases, ensures accountability for all individuals, whether state actors or private entities, for violations of these fundamental rights.