



# drishti

## The Big Picture - Human Rights of Security Forces

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The Supreme Court has agreed to examine and hear a petition that seeks for the formulation of a policy to safeguard the rights of armed forces personnel on what all could come under their ambit while discharging their duties in case of facing an unruly mob or individuals who attack them while performing their military duty.

The petitioners have cited various instances of violence against Armed Forces personnel including stone pelting in Kashmir. The contention raised by the petitioners also seeks to examine if the cases must also be registered against the perpetrators of such violence.

The Supreme Court has also sought views of the Central government, Union Ministry of Defence, Jammu and Kashmir government and the National Human Rights Commission on the same.

## Arguments in Favour

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- Wearing Uniforms does not take away the human rights of the Armed Forces' Personnel. A soldier is as much human as anybody else.
- Armed Forces' Personnel is also citizens of India and their basic rights should also be protected.
- Some countries like China, Israel allow the use of firearms against stone pelters or armed civilians.
- Many-a-times, it is seen that the human rights of a soldier get violated by a mob when he is performing his legitimate duty.
- Death of soldier Rajendra Singh because of stone pelting in Kashmir is an example.
- Soldiers are unable to defend their own human rights i.e. they cannot retaliate by fire, because of the fear of FIR that can be filed against them for the violation of human rights.
- It has been seen that states generally go in favor of civilian than that of a soldier.

## Disagreements

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- It is difficult to examine the reason behind the action taken by security personnel in his self-defense.
- Laws in India provide enough protection to soldiers.
- Under Armed Forces Special Powers Act (AFSPA), in an area that is proclaimed as "disturbed", an officer of the armed forces has a power to fire upon or use other kinds of force even if it causes death, against the person who is acting against law or order, after giving due warning. Also, he is provided with legal immunity for his actions i.e. no prosecution, suit or any other legal proceeding can be initiated against him while acting under the law.
- Section 321 of The Code of Criminal Procedure, 1973 clearly states that one can withdraw FIR, only with the permission of the court.

## Way Forward

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- A clear cut policy on the rights and duties of security forces while facing an unruly mob can be a solution.
- Armed Forces' Personnel acts in the name of the government, so it is the duty of the government to protect them. Also, society needs to be made aware regarding the fact that those who protect the nation are also humans.
- Effective implementation of the law is required to make those feel safe who make the entire nation feel safe.

Drishti Input

### **Constitutional Provisions**

Article 13 of the Indian Constitution guarantees fundamental rights to every citizen. It prohibits the Parliament and the state legislatures from making laws that “may take away or abridge the fundamental rights” guaranteed to the citizens of the country.

Fundamental Rights:

- Right to equality
- Right to freedom
- Right against exploitation
- Right to freedom of religion
- Cultural and educational rights
- Right to constitutional remedies.

Article 33 is an exception to the Fundamental Rights in the Indian Constitution. It empowers the Parliament to restrict or abrogate the application of the fundamental rights in relation to Armed Forces, Paramilitary Forces, Police, Persons employed in intelligence or counterintelligence services, and communication systems set up for the said organizations.

Some acts such as the Army Act 1950, Navy Act 1957, Air Forces Act 1950 have been enacted as per this article only. These acts restrict rights such as freedom of speech and expression, freedom of assembly, and freedom to form associations and unions.