
MILITARY DISCIPLINE VERSUS CONSTITUTIONAL RIGHTS IN A TRANSFORMATIVE DEMOCRACY: A CRITICAL ANALYSIS OF INDIA'S UNREFORMED MILITARY JUSTICE SYSTEM

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ABSTRACT

India's legal framework has undergone substantial transformation since independence through the repeal and modernization of several colonial-era legislations. Recent reforms, including the enactment of the *Bharatiya Nyaya Sanhita, 2023 (BNS)*, *Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)*, and the *Bharatiya Sakshya Adhinyam, 2023 (BSA)*, reflect the constitutional vision of a progressive and rights-oriented legal system. However, despite seventy-seven years of democratic and constitutional evolution, India's military justice system continues to operate largely within a legal structure derived from colonial principles embodied in the *Army Act, 1950* and related military legislations.

This paper critically examines the conflict between military discipline and constitutional rights within India's unreformed military justice framework. While strict discipline and obedience remain essential for operational efficiency and national security, the continued reliance on rigid military laws raises important concerns regarding procedural fairness, judicial oversight, transparency, and the protection of fundamental rights. The study further evaluates whether existing military laws are capable of addressing the complexities of contemporary warfare, including cyber operations, counter-insurgency measures, and evolving international human rights standards. Through constitutional analysis and comparative references to reforms adopted in jurisdictions such as the United Kingdom and the United States, the paper argues for calibrated reforms that preserve military effectiveness while ensuring constitutional accountability. It concludes that military discipline and constitutionalism are not mutually exclusive and that a balanced reform-oriented approach is necessary in a transformative democracy like India.

Keywords: Military Justice System, Army Act 1950, Constitutionalism, Military Discipline, Colonial Legacy.

I. INTRODUCTION

The armed forces constitute one of the most significant institutions of the Indian State, entrusted with the responsibility of safeguarding national sovereignty, territorial integrity, and internal security. The effectiveness of any military establishment fundamentally depends upon discipline, obedience, hierarchy, and operational cohesion. Unlike civilian institutions, the armed forces function within a highly structured command system where compliance with orders and maintenance of discipline are considered indispensable for operational success and national security. Consequently, military personnel are governed by a separate legal framework designed to preserve institutional order and ensure swift disciplinary control.¹

India's military justice system primarily operates through legislations such as the *Army Act, 1950*, the *Air Force Act, 1950*, and the *Navy Act, 1957*, which collectively regulate the conduct, discipline, and adjudication mechanisms applicable to armed forces personnel.² Although enacted after independence, these legislations substantially retained the structure, philosophy, and disciplinary orientation of colonial military laws introduced during British rule.³ The military justice framework inherited from the colonial administration was principally intended to maintain strict control over armed personnel and ensure unquestioned obedience to authority. As a result, the system evolved around the doctrine of military exceptionalism, where discipline often received precedence over individual rights and procedural safeguards.⁴

Over the past seventy-seven years, India has witnessed remarkable constitutional, social, and legal transformation. Several colonial-era laws governing criminal justice and public administration have either been repealed or comprehensively reformed to align with democratic values and constitutional principles. The replacement of the *Indian Penal Code, 1860* with the *Bharatiya Nyaya Sanhita, 2023*, the substitution of the *Code of Criminal Procedure, 1973* with the *Bharatiya Nagarik Suraksha Sanhita, 2023*, and the enactment of the *Bharatiya Sakshya Adhinyam, 2023* reflect India's continuing effort to modernize its legal system and distance itself from colonial legal structures.⁵ These reforms signify a broader constitutional commitment toward due process, transparency, accountability, and the protection of individual

¹ O. Hood Phillips & Paul Jackson, *Constitutional and Administrative Law* 421 (Sweet & Maxwell, London, 8th edn., 2001).

² The Army Act, 1950; The Air Force Act, 1950; The Navy Act, 1957.

³ K. Roy, "The British Indian Army: Discipline and the Law" (2000) 64(2) *Journal of Military History* 337.

⁴ V. Nair, "Military Justice: Discipline versus Rights" (2019) 5(1) *Armed Forces Law Journal* 89.

⁵ The Bharatiya Nyaya Sanhita, 2023; The Bharatiya Nagarik Suraksha Sanhita, 2023; The Bharatiya Sakshya Adhinyam, 2023.

rights.

However, despite these extensive legislative developments, military laws in India have remained comparatively static. The existing military justice system continues to emphasize rigid disciplinary structures, restricted procedural safeguards, and limited judicial oversight. Courts-martial and military adjudicatory mechanisms function separately from the ordinary judicial system and often operate under standards that differ significantly from civilian criminal jurisprudence.⁶ While such exceptional treatment is frequently justified on grounds of national security and operational necessity, it raises important constitutional concerns regarding fairness, accountability, and compatibility with modern democratic principles.

The tension between military discipline and constitutional rights has therefore emerged as a significant legal and institutional issue in contemporary India. On one hand, the armed forces require a disciplined and efficient structure capable of responding to rapidly evolving security challenges. On the other hand, India's constitutional framework guarantees fundamental rights, procedural fairness, and protection against arbitrary exercise of power.⁷ The continuing reliance on largely unreformed military laws creates an important question regarding whether the current legal framework adequately balances the demands of military necessity with the constitutional values of justice, equality, and individual dignity.

This paper critically examines India's military justice system within the broader framework of constitutionalism and democratic governance. It analyses the historical foundations of military law, the constitutional basis of military exceptionalism under Article 33, and the challenges posed by static military laws in a rapidly transforming legal environment. The study further evaluates whether meaningful reforms are necessary to reconcile military discipline with constitutional accountability in a modern democratic republic.

II. COLONIAL LEGACY AND STRUCTURE OF INDIA'S MILITARY JUSTICE SYSTEM

A. Evolution of Military Laws in India

India's military justice system traces its origins to the colonial administration established by

⁶ R. Kapoor, "Military Law and Human Rights in India" (2018) 9(3) *Journal of Indian Law and Society* 207.

⁷ INDIA CONST. arts. 14 & 21.

the British East India Company. During the colonial period, military laws were primarily designed to ensure discipline, obedience, and loyalty within the armed forces serving British imperial interests.⁸ The British administration viewed strict military control as essential for maintaining colonial authority, particularly after the Revolt of 1857, which exposed the dangers of indiscipline and dissent within the armed forces. Consequently, military regulations increasingly emphasized centralized command, summary punishments, and rigid disciplinary mechanisms.⁹

The enactment of the *Indian Army Act, 1911* marked a significant step in consolidating military laws in colonial India. The legislation institutionalized courts-martial, strengthened the authority of commanding officers, and created a separate system of military adjudication distinct from ordinary civilian courts.¹⁰ The underlying objective of the colonial military justice framework was not merely administrative efficiency but the preservation of imperial control through unquestioned obedience and strict hierarchical discipline.

Following independence in 1947, India retained much of the existing military legal structure due to concerns relating to national security, institutional continuity, and operational stability during the transitional period.¹¹ This resulted in the enactment of the *Army Act, 1950*, which substantially preserved the framework and disciplinary philosophy of the colonial military justice system. Similar legislative structures were adopted under the *Air Force Act, 1950* and the *Navy Act, 1957*. Although these laws were enacted within a constitutional democracy, they continued to embody several colonial characteristics, particularly in relation to military discipline, adjudication procedures, and executive control over justice administration.¹²

Unlike civilian criminal law, which has undergone extensive reform and constitutional reinterpretation over the decades, military laws have remained comparatively static. Even after major legislative transformations in India's criminal justice system through enactments such as the *Bharatiya Nyaya Sanhita, 2023* and the *Bharatiya Nagarik Suraksha Sanhita, 2023*, the foundational structure of military justice has witnessed limited substantive reform.¹³ This continuing reliance on colonial-era disciplinary principles reflects the persistence of military

⁸ K. Roy, *Military Manpower, Armies and Warfare in South Asia* 214 (Routledge, London, 2013).

⁹ T.R. Holmes, *A History of the Indian Mutiny* 389 (W.H. Allen & Co., London, 5th edn., 1898).

¹⁰ The Indian Army Act, 1911.

¹¹ A. Deshpande, "Reforming Military Law in India: A Legislative History" (2018) 42 *Law and Society Review* 71.

¹² R. Sinha, "Colonial Shadows in Indian Military Law" (2019) 28(1) *Indian Legal Studies Quarterly* 45.

¹³ The Bharatiya Nyaya Sanhita, 2023; The Bharatiya Nagarik Suraksha Sanhita, 2023.

exceptionalism within India's legal framework.

B. Structural Features of the Military Justice System

The military justice system in India operates as a specialized legal mechanism separate from the ordinary judicial structure. Courts-martial constitute the primary adjudicatory bodies responsible for trying offences committed by military personnel under the relevant service laws.¹⁴ Depending upon the nature and gravity of offences, different forms of courts-martial may be convened, including General Courts-Martial, District Courts-Martial, and Summary General Courts-Martial.

One of the defining characteristics of military justice is the central role played by the chain of command. Commanding officers possess substantial disciplinary authority and often exercise significant influence over investigative and adjudicatory processes.¹⁵ While such concentration of authority is defended on grounds of operational efficiency and institutional discipline, it simultaneously raises concerns regarding impartiality, independence, and procedural fairness.

Another distinctive feature of military law is the restricted applicability of ordinary constitutional and procedural safeguards available within civilian criminal jurisprudence. Military proceedings frequently involve limitations on legal representation, restricted appellate remedies, and expedited trial procedures intended to preserve discipline and operational readiness.¹⁶ Although the establishment of the Armed Forces Tribunal through the *Armed Forces Tribunal Act, 2007* introduced an institutional mechanism for adjudicating service-related disputes and appeals, concerns regarding accessibility, independence, and judicial oversight continue to persist.¹⁷

C. Continuing Colonial Characteristics in Contemporary Military Law

Despite India's transformation into a constitutional democracy committed to the rule of law and individual liberties, several colonial characteristics continue to shape the military justice system. The enduring emphasis on unquestioned obedience, centralized authority, and

¹⁴ The Army Act, 1950, ss. 108-127.

¹⁵ V. Nair, "Military Justice: Discipline versus Rights" (2019) 5(1) *Armed Forces Law Journal* 89.

¹⁶ R. Kapoor, "Military Law and Human Rights in India" (2018) 9(3) *Journal of Indian Law and Society* 207.

¹⁷ The Armed Forces Tribunal Act, 2007.

disciplinary rigidity reflects the colonial origins of military governance.¹⁸

The doctrine of military exceptionalism has often been invoked to justify the existence of a separate legal framework for armed forces personnel. However, excessive insulation of military justice from ordinary constitutional scrutiny creates the risk of institutional opacity and reduced accountability.¹⁹ The limited scope of judicial intervention in courts-martial proceedings and the continued preference for executive dominance within military adjudication mechanisms further reinforce these concerns.

In contemporary constitutional democracies, military discipline is increasingly expected to coexist with principles of fairness, transparency, and human rights protection. India's continuing reliance on largely unreformed military laws therefore raises important questions regarding whether the present legal framework adequately reflects the constitutional aspirations of a modern democratic republic.

III. CONSTITUTIONAL RIGHTS VERSUS MILITARY DISCIPLINE

A. Constitutional Basis of Military Exceptionalism

The Indian Constitution recognizes the distinctive nature of military service and permits limited restrictions on the fundamental rights of armed forces personnel in the interest of discipline and national security. Article 33 of the Constitution empowers Parliament to modify or restrict the application of fundamental rights to members of the armed forces so as to ensure the proper discharge of their duties and the maintenance of discipline.²⁰ The provision reflects the constitutional acknowledgment that military institutions operate under conditions substantially different from ordinary civilian administration.

However, Article 33 does not completely exclude the armed forces from constitutional protection. Rather, it permits only those restrictions that are necessary for maintaining discipline and operational effectiveness.²¹ The Supreme Court has repeatedly emphasized that members of the armed forces remain citizens of India and continue to possess constitutional protections, subject only to reasonable limitations imposed by law.²² Thus, military discipline

¹⁸ K. Roy, "The British Indian Army: Discipline and the Law" (2000) 64(2) *Journal of Military History* 337.

¹⁹ S. Patel, "Static Laws in a Dynamic Society: The Indian Military Context" (2021) 57 *Law & Society Review* 48.

²⁰ INDIA CONST. art. 33.

²¹ H.M. Seervai, *Constitutional Law of India* 1367 (Universal Law Publishing, New Delhi, 4th edn., 1996).

²² *Lt. Col. Prithi Pal Singh Bedi v. Union of India*, (1982) 3 SCC 140.

cannot function outside the broader framework of constitutional governance.

The doctrine of military exceptionalism historically developed from the belief that armed forces require a distinct legal system insulated from ordinary civilian procedures. In India, this doctrine continues to influence military adjudication through specialized courts-martial, summary proceedings, and extensive command authority.²³ While such exceptional arrangements may be justified by operational necessity, excessive insulation from constitutional scrutiny risks undermining procedural fairness and accountability.

B. Military Discipline and National Security

Discipline forms the foundation of military effectiveness. Unlike civilian institutions, armed forces personnel are required to function in highly volatile and life-threatening environments where hesitation, disobedience, or breakdown of command may jeopardize national security and operational success.²⁴ For this reason, military laws prioritize obedience, efficiency, and institutional cohesion.

The Supreme Court in *R. Viswan v. Union of India* observed that the armed forces constitute a disciplined force where strict standards of conduct are essential for maintaining national security.²⁵ Similarly, courts have consistently recognized that military law cannot be equated entirely with civilian criminal jurisprudence because of the unique responsibilities entrusted to the armed forces.²⁶

Nevertheless, the requirement of discipline does not automatically justify unrestricted executive authority or denial of procedural safeguards. Democratic constitutionalism requires that even exceptional institutions remain subject to the rule of law.²⁷ The challenge therefore lies in balancing military necessity with constitutional protections in a manner that preserves both institutional discipline and individual dignity.

C. Constitutional Concerns within the Military Justice System

One of the principal criticisms of India's military justice framework relates to limitations on

²³ V. Nair, "Military Justice: Discipline versus Rights" (2019) 5(1) *Armed Forces Law Journal* 89.

²⁴ O. Hood Phillips & Paul Jackson, *Constitutional and Administrative Law* 427 (Sweet & Maxwell, London, 8th edn., 2001).

²⁵ *R. Viswan v. Union of India*, (1983) 3 SCC 401.

²⁶ *Union of India v. Charanjit S. Gill*, (2000) 5 SCC 742.

²⁷ A.V. Dicey, *Introduction to the Study of the Law of the Constitution* 188 (Macmillan, London, 10th edn., 1959).

procedural fairness and judicial oversight. Courts-martial are conducted within the military hierarchy and often remain influenced by command structures.²⁸ Critics argue that such arrangements create a risk of institutional bias and weaken the independence generally associated with judicial proceedings.

Concerns have also been raised regarding restricted access to legal representation, summary trial procedures, and limited appellate mechanisms available to military personnel.²⁹ Unlike civilian criminal trials, military adjudication frequently prioritizes speed and discipline over elaborate procedural safeguards. While operational efficiency may require procedural flexibility in certain situations, excessive deviation from constitutional standards may conflict with Articles 14 and 21 of the Constitution.³⁰

In *Lt. Col. Prithi Pal Singh Bedi v. Union of India*, the Supreme Court acknowledged the necessity of military discipline but simultaneously emphasized that military justice must remain consistent with constitutional principles of fairness and reasonableness.³¹ The Court observed that even within specialized military institutions, arbitrary exercise of power cannot be permitted in a constitutional democracy governed by the rule of law.

The establishment of the Armed Forces Tribunal through the *Armed Forces Tribunal Act, 2007* represented an attempt to strengthen judicial review and institutional accountability within military administration.³² However, debates continue regarding the effectiveness of the Tribunal in ensuring independent oversight, particularly because constitutional courts continue to exercise limited intervention in military matters.

D. Reconciling Discipline with Constitutionalism

The relationship between military discipline and constitutional rights should not be viewed as inherently adversarial. Modern constitutional democracies increasingly recognize that effective armed forces and protection of individual rights can coexist within a balanced legal framework.³³ Countries such as the United Kingdom, Canada, and the United States have

²⁸ R. Kapoor, "Military Law and Human Rights in India" (2018) 9(3) *Journal of Indian Law and Society* 207.

²⁹ A. Kumar, "Courts-Martial and Procedural Fairness in India" (2020) 12 *Indian Journal of Constitutional Studies* 94.

³⁰ INDIA CONST. arts. 14 & 21.

³¹ *Lt. Col. Prithi Pal Singh Bedi v. Union of India*, (1982) 3 SCC 140.

³² The Armed Forces Tribunal Act, 2007.

³³ Eugene R. Fidell, *Military Justice: A Very Short Introduction* 74 (Oxford University Press, Oxford, 2016).

introduced reforms aimed at enhancing transparency, procedural safeguards, and judicial accountability within military justice systems without compromising operational effectiveness.³⁴

India's military justice framework therefore requires a calibrated approach that preserves discipline while ensuring compliance with constitutional standards of fairness and accountability. In a transformative democracy committed to the rule of law, military institutions cannot remain permanently insulated from evolving constitutional values and human rights jurisprudence.

IV. CHALLENGES OF STATIC MILITARY LAWS IN CONTEMPORARY INDIA

A. Human Rights and Procedural Concerns

The continued operation of colonial-era military laws within a modern constitutional democracy has generated increasing concerns regarding procedural fairness and protection of individual rights. Although military discipline remains indispensable for operational effectiveness, the legal framework governing armed forces personnel cannot remain entirely detached from constitutional principles of justice and accountability.³⁵ The existence of a separate adjudicatory structure through courts-martial has often raised questions regarding impartiality, transparency, and adequacy of procedural safeguards available to service members.

One of the principal criticisms of the military justice system relates to the concentration of disciplinary and adjudicatory authority within the chain of command. Commanding officers exercise substantial influence over investigation, prosecution, and disciplinary proceedings, thereby creating the possibility of institutional bias.³⁶ Unlike civilian criminal courts, where judicial independence constitutes a foundational principle, military adjudication frequently operates within a hierarchical command structure designed primarily to preserve discipline rather than adjudicatory neutrality.

Concerns have also emerged regarding the limited procedural protections available to military

³⁴ R. Thompson, "Military Law Reform: A Comparative Perspective" (2019) 12 *Journal of Comparative Military Law* 301.

³⁵ H.M. Seervai, *Constitutional Law of India* 1369 (Universal Law Publishing, New Delhi, 4th edn., 1996).

³⁶ R. Kapoor, "Military Law and Human Rights in India" (2018) 9(3) *Journal of Indian Law and Society* 207.

personnel during courts-martial proceedings. Summary trials, restrictions on independent legal representation, and limited avenues of appeal have often been criticized as inconsistent with broader constitutional guarantees under Articles 14 and 21 of the Constitution.³⁷ While military law necessarily requires procedural flexibility in exceptional operational circumstances, excessive restrictions on fair trial safeguards risk undermining confidence within the institution itself.

The Supreme Court has repeatedly emphasized that military justice must remain compatible with constitutional principles. In *Lt. Col. Prithi Pal Singh Bedi v. Union of India*, the Court observed that members of the armed forces are not excluded from constitutional protection merely because they serve within a disciplined institution.³⁸ Similarly, in *Union of India v. Charanjit S. Gill*, the Court reiterated that military tribunals and disciplinary authorities remain subject to constitutional scrutiny.³⁹ These judicial observations demonstrate that military necessity cannot entirely override the constitutional commitment to fairness and non-arbitrariness.

B. Challenges of Modern Warfare and Emerging Threats

The changing nature of warfare has further exposed the limitations of India's static military legal framework. Contemporary security threats increasingly involve cyber warfare, artificial intelligence, hybrid conflict, transnational terrorism, and information warfare, all of which differ substantially from conventional military engagements contemplated during the drafting of earlier military laws.⁴⁰ Existing legislations such as the *Army Act, 1950* were enacted in a vastly different strategic environment and therefore contain limited guidance regarding legal accountability in technologically advanced combat scenarios.

Cyber operations, in particular, present unique legal challenges because they blur traditional distinctions between combatants and non-combatants, military targets and civilian infrastructure, and domestic and international conflict zones.⁴¹ Questions concerning jurisdiction, attribution of attacks, rules of engagement, and command responsibility remain

³⁷ INDIA CONST. arts. 14 & 21.

³⁸ *Lt. Col. Prithi Pal Singh Bedi v. Union of India*, (1982) 3 SCC 140.

³⁹ *Union of India v. Charanjit S. Gill*, (2000) 5 SCC 742.

⁴⁰ Lawrence Freedman, *The Future of War: A History* 287 (Penguin Books, London, 2017).

⁴¹ Michael N. Schmitt (ed.), *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations* 3 (Cambridge University Press, Cambridge, 2017).

inadequately addressed within India's present military legal framework. Similarly, counter-insurgency and anti-terror operations often involve prolonged deployment in civilian-populated regions, creating recurring tensions between military operations and civilian rights.

The Armed Forces (Special Powers) Act, 1958 (AFSPA) has frequently become the focal point of debates concerning military accountability and human rights protection. Critics argue that broad operational powers combined with limited prosecutorial accountability may contribute to allegations of excesses and institutional opacity.⁴² Although the legislation has consistently been defended on grounds of national security and operational necessity, debates surrounding AFSPA reflect broader concerns regarding the relationship between military authority and constitutional accountability within conflict regions.

C. Civil-Military Relations and Democratic Accountability

In constitutional democracies, the legitimacy of military institutions depends not only upon operational capability but also upon public trust and adherence to the rule of law. Static military laws that appear insulated from evolving constitutional standards may gradually weaken democratic confidence in military adjudication mechanisms.⁴³ The absence of transparent accountability structures can create perceptions that military institutions function beyond ordinary constitutional scrutiny.

At the same time, excessive civilian interference in military affairs may adversely affect operational efficiency and institutional autonomy. The challenge therefore lies in maintaining an appropriate balance between military independence and democratic oversight. Modern constitutional systems increasingly recognize that accountability and discipline are not mutually exclusive objectives.⁴⁴ Effective armed forces require both operational efficiency and institutional legitimacy derived from adherence to constitutional values.

Consequently, the persistence of largely unreformed military laws in India raises important concerns regarding whether the current legal framework adequately reflects the constitutional aspirations of a democratic republic committed to justice, transparency, and human dignity. As India continues to modernize its broader legal system, the question of reforming military justice

⁴² *Naga People's Movement of Human Rights v. Union of India*, (1998) 2 SCC 109.

⁴³ A.V. Dicey, *Introduction to the Study of the Law of the Constitution* 193 (Macmillan, London, 10th edn., 1959).

⁴⁴ Eugene R. Fidell, *Military Justice: A Very Short Introduction* 82 (Oxford University Press, Oxford, 2016).

is likely to assume increasing constitutional and institutional significance.

V. COMPARATIVE PERSPECTIVES AND THE NEED FOR REFORM IN INDIA'S MILITARY JUSTICE SYSTEM

A. Military Justice Reforms in Comparative Jurisdictions

Modern constitutional democracies have increasingly attempted to reconcile military discipline with constitutional accountability by introducing procedural safeguards and independent oversight mechanisms within military justice systems. While the armed forces continue to function under specialized legal frameworks, several jurisdictions have recognized that military necessity cannot permanently justify insulation from evolving standards of fairness and human rights protection.⁴⁵

In the United Kingdom, substantial reforms were introduced through the *Armed Forces Act, 2006*, which consolidated the separate service laws governing the Army, Navy, and Air Force into a unified military justice system.⁴⁶ The legislation strengthened procedural safeguards, enhanced appellate review mechanisms, and expanded the role of independent judicial authorities in courts-martial proceedings. Importantly, these reforms emerged partly in response to decisions of the European Court of Human Rights, which emphasized the need for greater judicial independence within military adjudication.⁴⁷

Similarly, the United States has continuously revised its military justice framework under the *Uniform Code of Military Justice (UCMJ)* to address concerns regarding due process and institutional accountability. Reforms introduced through the Military Justice Act of 2016 expanded procedural protections for accused personnel, improved victims' rights, and modernized evidentiary procedures within courts-martial.⁴⁸ Although military discipline remains central to the American armed forces, increasing emphasis has been placed upon transparency and judicial oversight.

Canada and Australia have also undertaken significant reforms aimed at balancing military efficiency with constitutional protections. In *R. v. Généreux*, the Supreme Court of Canada held

⁴⁵ Eugene R. Fidell, *Military Justice: A Very Short Introduction* 61 (Oxford University Press, Oxford, 2016).

⁴⁶ Armed Forces Act, 2006 (UK).

⁴⁷ *Findlay v. United Kingdom*, (1997) 24 EHRR 221.

⁴⁸ David A. Schlueter, *Military Criminal Justice: Practice and Procedure* 47 (LexisNexis, New York, 9th edn., 2021).

that military tribunals must satisfy basic standards of independence and impartiality consistent with constitutional principles.⁴⁹ Following judicial criticism, Canada introduced structural reforms to strengthen judicial independence within military courts. Australia similarly adopted reforms enhancing civilian oversight and appellate review within its military justice system.⁵⁰

These comparative developments demonstrate that modernization of military law does not necessarily weaken military discipline or operational effectiveness. Rather, reforms have generally sought to enhance institutional legitimacy while preserving command efficiency and national security objectives.

B. Need for Reform within the Indian Military Justice Framework

India's military justice system continues to function substantially within a framework designed during a colonial period characterized by imperial priorities and centralized executive control. While certain amendments and institutional developments such as the establishment of the Armed Forces Tribunal have been introduced, the core disciplinary structure remains largely unchanged.⁵¹

The persistence of rigid procedural mechanisms and limited judicial oversight has generated increasing concern regarding compatibility with constitutional values and contemporary standards of justice. In particular, questions continue to arise regarding the independence of courts-martial, adequacy of appellate remedies, and concentration of disciplinary authority within the chain of command.⁵² As India modernizes its broader legal framework through reforms in criminal and constitutional law, the relative stagnation of military justice appears increasingly difficult to justify.

The need for reform becomes even more significant in light of emerging security challenges and evolving human rights jurisprudence. Contemporary military operations frequently involve complex interactions between military personnel and civilian populations in areas affected by insurgency, terrorism, and internal conflict. Consequently, military accountability and procedural fairness assume greater constitutional significance in maintaining public trust and

⁴⁹ *R. v. Généreux*, [1992] 1 SCR 259 (Supreme Court of Canada).

⁵⁰ R. McLaughlin, "Reforming Australian Military Justice" (2010) 33(1) *University of New South Wales Law Journal* 7.

⁵¹ The Armed Forces Tribunal Act, 2007.

⁵² R. Kapoor, "Military Law and Human Rights in India" (2018) 9(3) *Journal of Indian Law and Society* 207.

democratic legitimacy.⁵³

Reform does not necessarily require dismantling the distinct character of military justice. Rather, the objective should be to develop a balanced framework capable of preserving discipline while strengthening fairness, transparency, and institutional accountability. Several reforms may therefore be considered, including greater judicial independence within courts-martial, expanded appellate review, enhanced access to legal representation, and periodic legislative review of military laws.⁵⁴

C. Towards a Constitutionally Compatible Military Justice System

The Indian Constitution does not envision military institutions functioning outside constitutional governance. Article 33 permits reasonable restrictions on fundamental rights in the interest of discipline, but it does not authorize complete exclusion from constitutional scrutiny.⁵⁵ Consequently, military law must evolve in a manner consistent with democratic accountability and the rule of law.

A modern military justice system should therefore seek to balance operational necessity with constitutional protections. Discipline and constitutionalism cannot be viewed as mutually exclusive principles. On the contrary, institutional legitimacy within democratic societies increasingly depends upon adherence to standards of fairness, transparency, and accountability.⁵⁶

India's continuing legal transformation provides an appropriate opportunity to reconsider the structure and functioning of military justice within the broader constitutional framework. Just as colonial criminal laws have recently been replaced through enactments such as the *Bharatiya Nyaya Sanhita, 2023* and the *Bharatiya Nagarik Suraksha Sanhita, 2023*, meaningful examination of military legal reform has also become necessary. A calibrated and institutionally sensitive reform process may ultimately strengthen both military effectiveness and constitutional governance in contemporary India.

⁵³ Upendra Baxi, *The Future of Human Rights* 154 (Oxford University Press, New Delhi, 3rd edn., 2008).

⁵⁴ A. Kumar, "Courts-Martial and Procedural Fairness in India" (2020) 12 *Indian Journal of Constitutional Studies* 94.

⁵⁵ INDIA CONST. art. 33.

⁵⁶ A.V. Dicey, *Introduction to the Study of the Law of the Constitution* 188 (Macmillan, London, 10th edn., 1959).

VI. CONCLUSION

India's military justice system represents one of the few areas of law that has remained substantially rooted in colonial-era legal philosophy despite the country's broader constitutional and legislative transformation. Over the past seventy-seven years, India has undertaken extensive legal reforms aimed at replacing colonial structures with laws better aligned to democratic governance, constitutional morality, and procedural fairness. The recent enactment of the *Bharatiya Nyaya Sanhita, 2023*, the *Bharatiya Nagarik Suraksha Sanhita, 2023*, and the *Bharatiya Sakshya Adhinyam, 2023* reflects this continuing effort to modernize the legal system and strengthen constitutional accountability.⁵⁷ However, military laws continue to operate largely within a framework designed during colonial administration, where institutional control and rigid discipline were prioritized over individual rights and judicial safeguards.

This paper has examined the continuing tension between military discipline and constitutional rights within India's unreformed military justice system. While the importance of discipline, hierarchy, and operational efficiency within the armed forces cannot be denied, the persistence of static legal structures raises significant constitutional concerns. The concentration of disciplinary authority within the chain of command, limitations on procedural safeguards, restricted judicial oversight, and the continuing influence of military exceptionalism create challenges for a constitutional democracy committed to equality, fairness, and the rule of law.⁵⁸

The study also demonstrates that contemporary warfare and evolving security threats have exposed the limitations of traditional military legal frameworks. Cyber warfare, counter-insurgency operations, and technologically advanced military engagements require legal mechanisms capable of addressing modern operational realities while maintaining accountability and adherence to constitutional principles. Comparative experiences from jurisdictions such as the United Kingdom, the United States, and Canada further indicate that reforming military justice systems does not necessarily weaken military discipline or national security. Rather, carefully designed reforms can strengthen institutional legitimacy and public confidence without compromising operational effectiveness.⁵⁹

⁵⁷ The *Bharatiya Nyaya Sanhita, 2023*; The *Bharatiya Nagarik Suraksha Sanhita, 2023*; The *Bharatiya Sakshya Adhinyam, 2023*.

⁵⁸ *Lt. Col. Prithi Pal Singh Bedi v. Union of India*, (1982) 3 SCC 140.

⁵⁹ Eugene R. Fidell, *Military Justice: A Very Short Introduction* 82 (Oxford University Press, Oxford, 2016).

Ultimately, the relationship between military discipline and constitutionalism should not be viewed as contradictory. Democratic governance requires even specialized institutions such as the armed forces to function within the broader framework of constitutional accountability. India's military justice system therefore requires a calibrated reform process that preserves operational discipline while incorporating greater transparency, procedural fairness, and judicial independence. A modern constitutional democracy cannot indefinitely rely upon colonial legal structures in matters directly affecting individual rights and institutional justice. Meaningful reform of military law is thus not merely a legal necessity but an essential step toward harmonizing national security with constitutional values in contemporary India.