

# Letter to the Editor

## LEGAL SYSTEM IN THE ARMED FORCES

I must commend Wing Commander UC Jha for his erudite and analytical critique on the deficiencies in the legal system of Indian Armed Forces.

According to him, many features of our legal system are archaic and not in consonance with the demands of natural justice. For example, there is no provision of granting bail in our legal system; the officers constituting the court martial panel possess no formal legal knowledge, and summary court martials dispense justice arbitrarily without giving the accused any opportunity to defend themselves.

Yet he has not told the whole story, particularly about the arbitrary nature of military legal system. He has not talked of summary powers legally conferred on a commanding officer. Here, even the pretence of detailing a 'friend of the accused' as in a summary court martial is dispensed with. The commanding officer is the defendant, prosecutor and judge all combined in one, and his judgement is final and binding, not subject to any review. He is also at liberty to use his powers 'indiscreetly and unjustly'; for the same offence, he may leave a man with a warning and punish the other more severely than the gravity of the offence would dictate. Worse, he maintains no record of the proceeding except endorsing the 'punishment awarded' in the offence report.

These summary punishments have a far-reaching adverse effect on the future of other ranks. One single 'red-ink entry' may extinguish a promising career and four such entries during the entire service could result in termination of service. And there is no appeal against such 'blatant disregard' of justice; all these actions have legal sanction. The commanding officer is not the only one vested with such arbitrary powers. In operations, senior commanders can deprive officers of their acting ranks and remove incompetent commanders from their command 'with immediate effect'. They can also award recordable censure to the officers that could destroy their careers. And once again, they need not explain their actions. Agreed, some of these actions come under the sphere of 'administrative action' but that is only an euphemism for 'punishment'.

Isn't all this unfair and unreasonable, and against the tenets of justice? Yet, there is not a whimper of protest from our legal experts on such arbitrary application of legal powers. Why should the ambit of reforming the military legal system be restricted only to the court martials and not extend to the revision of summary powers bestowed on various commanders? Why should these powers not be subjected to similar microscopic examination? Why should a GOC or a brigade commander not be permitted to seek redress from the court of law before being relieved of his command for inapt handling of operational tasks? Why should a company commander, ostensibly charged with vacillation while leading his men in attack, not be permitted to argue his case before an impartial body before being told to 'put in his papers' for voluntary retirement?

Why should a man who comes late from leave or who is found sleeping on duty not be permitted to plead his case through a defence counsellor at summary disposal of his case by the commanding officer?

It is obvious that we cannot have pure, unalloyed justice in the armed forces by refining the provisions of court martials alone; we will have to, in addition, severely curtail and subject to review summary and administrative powers of various commanders. It is another thing that such a move to decontaminate the legal system will almost 'kill' the discipline and culture of the armed forces. I am certain no one, including the legal puritans, would like this to happen. We can thus conclude that no military legal system can work effectively without careful and judicious inclusion of 'arbitrariness' in its inherent structure. So if the imperfect works and works well, isn't it imprudent to crave for the perfect?

It is also irrelevant to compare our legal system with that of the other countries because of the radical differences in our history, traditions, culture, social milieu and security requirements. Moreover, these countries have a highly credible, competent and responsive judicial system that ensures dispensation of justice with the same promptitude and sense of urgency as the military courts. One wished that one could say the same thing about the legal system in our country.

The trouble with our legal experts is that they weigh everything in cold logic. They fail to see that the armed forces are not just a conglomeration of men and women; they are vibrant, cohesive institutions with an unique culture of patriotism, commitment to duty and esprit de corps. There is a strong bond of mutual trust and respect between the men and the officers. Any changes in the military legal system that militate against the inviolability of this bond should be rejected outright without giving a second thought. And the men in uniform should have the last word on it. Undue emphasis on legal rights can only sow the seeds of mutual suspicion between the officers and the men - an early but dangerous symptom of institutional disintegration. This idea is not to be pooh-poohed lightly. It needs to be debated seriously.

It is not to suggest that there is nothing wrong with our legal system. But we cannot leave its review to the legal pundits alone. Just as we know 'nothing' about law, they also do not know much about the armed forces. All their proposals should be minutely scrutinised by a panel of selected serving and retired officers with proven reputation for competence, integrity and, more importantly, for their undying dedication to their own service. Lastly, any recommendation that tampers with the basic structure of the military legal system should not be entertained.

Remember, it is this very 'defective' system that has, over the decades, contributed substantially towards enhancing the discipline, combat worthiness and glory of the armed forces.

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# Leadership\*

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It is unusual for the Army to offer one of its official publications for a book review, but I am glad that it has done so in this case. The book itself is unusual as well, in that it attempts (perhaps for the first time in an official publication) to incorporate spiritual philosophies into the concept of military motivation and leadership, something about which the army is understandably gun-shy in its efforts to appear hyper-correct in the present environment. Religion has always been acknowledged as perhaps the greatest single military motivator, and has always been extensively exploited by our traditional opponents through fundamentalist interpretations of religious dogma. For the Indian Army, the spiritual assets of our diverse and varied cultures contain rich sources of military motivation for soldiers of a secular republic, which have generally remained unexplored. These should be utilised. But to achieve synergy of the various inspirations from different religions into a composite motivational doctrine, with the requisite emotional content, to spur soldiers in combat, will nevertheless remain a great intellectual challenge. I am additionally glad, therefore, that with this publication the Army has managed to overcome its fear of the dark.

The publication is in two parts – the first dealing with development of individual leadership, the second with higher command. The central theme is the "Mahavakya" - the Eternal Truth - "TO BE : TO DO: TO SEE: TO TELL", a philosophy of leadership whose core rests on the timeless principle of "tyaga" or selfless renunciation, (taken from many scriptures, notably the *Bhagvad Gita*) which is uniquely essential and applicable to the military leader, much more so than to leadership in any other form of human activity. To the uninitiated, the enunciation of the theme appears somewhat cryptically hyperbolic at first glance, but as expanded further in the book, it is really a kind of acronym, a check list if you like, for the essential qualities demanded of a military leader. Mahavakya encompasses the aspects of character and knowledge, style of leadership, and the methods of leadership, but to bear fruit, it must first be imbibed and understood fully by the mature practitioner and, more importantly, explained clearly to the neophyte. Prominently allied to it is the thematic presentation of "The Universal Inner Structure of Good Leaders", a structured behavioural model prescribed for development of leadership through a sustained regimen of practical activity comprising basically of three facets, each of which have been quantified – self development exercises, professional self study, and systemised self-

\*Leadership. (Shimla : Headquarters Army Training Command, 2004), 254p, Rs. 125.00, ISBN 81-87583-08-8.

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introspection. Indeed the formalised methodology of leadership training is one of the important lessons the publication seeks to convey. The book also expounds the factor of spirituality in the development of character. It is a term apt to be misunderstood and sometimes misapplied in the military context, because it is generally associated with religion. To the soldier, spirituality essentially pertains to faith, which can be both in his personal perception of God as a source of strength and comfort particularly in adversity or, more pertinently, to belief in a cause-comrades, regiment and more generally the nation.

The book is dedicated to the officers of the Indian Army who have sacrificed their lives in battle living up to the credo of the Indian Military Academy. But it is also well to remember that the leadership span in the Army extends seamlessly over the entire spectrum of command, with its sharpest edge at the juniormost level where battles are actually fought and who play critical roles at various levels, especially in these times of officer shortages. Future editions of this book (or others) could specifically address application of the "Mahavakya" theme to this echelon as well.

Which brings me to another issue inextricably connected with motivation in the Indian Army, its unique regimental system. It is essentially a British legacy, now totally Indianised, and gives the combat arms, the sharp edge of the Army, their basic emotional identity and cohesion and is the foundation of *esprit-de-corps*. It has long withstood the test of battle and adversity, but nevertheless remains categorised by region, religion and class. Perhaps the time has now come, when, without disturbing the existing system, intensive professional study and analysis of alternate systems of military motivation require to be undertaken, and their benefits studied and grafted onto the existing doctrine. The ideal model for the Indian Army would be the Azad Hind Fauj of Netaji Subhash Chandra Bose, a totally indigenous "all class" military entity created during our freedom movement, which even today continues to exercise a powerful emotional appeal to all sections of the Indian society, regardless of religion, caste or region including within the Armed Forces. I think the Indian Army would benefit greatly from the effort.

If the Army is to seriously put its new doctrine of "Leadership" into practice, the main challenge as always, would be in implementation of the process of self development and improvement of its officer cadre (as well as JCO/NCO's). Where will the process commence - from the National Defence Academy, or even earlier at the Rashtriya Indian Military College (RIMC) and the various Sainik Schools? How will continuity be maintained thereafter? Will the Navy and the Air Force accept the publication? Is there a requirement for such a theme to be developed at an inter-Services level, possibly under the aegis of the Integrated Defence Staff? These and many other questions do not have answers yet, but will have to be found sooner or later. The earlier the better. Until that time, the Army should progress implementation of leadership training based on the ARTRAC publication as early as possible.