



INDIAN JOURNAL OF
LEGAL REVIEW

VOLUME 4 AND ISSUE 3 OF 2024

INSTITUTE OF LEGAL EDUCATION



INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN – 2583-2344

(Free and Open Access Journal)

Journal's Home Page – <https://ijlr.iledu.in/>

Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>

Volume 4 and Issue 3 of 2024 (Access Full Issue on – <https://ijlr.iledu.in/volume-4-and-issue-3-of-2024/>)

Publisher

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@iledu.in / Chairman@iledu.in



© Institute of Legal Education

Copyright Disclaimer: All rights are reserve with Institute of Legal Education. No part of the material published on this website (Articles or Research Papers including those published in this journal) may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher. For more details refer <https://ijlr.iledu.in/terms-and-condition/>

THE CONSTITUTIONAL VALIDITY OF NCC ACT, 1948

AUTHOR – JANANI, STUDENT AT THE TAMILNADU DR. AMBEDKAR LAW UNIVERSITY CHENNAI

BEST CITATION – JANANI, THE CONSTITUTIONAL VALIDITY OF NCC ACT, 1948, INDIAN JOURNAL OF LEGAL REVIEW (IJLR), 4 (3) OF 2024, PG. 333-335, APIS – 3920 – 0001 & ISSN – 2583-2344.

ABSTRACT

The National Cadet Corps (NCC) Act 1948, is a legislative enactment that governs the functioning of the NCC in India. The constitutional validity of the act is a topic of debate where some experts disagree that the act do not infringe upon the fundamental rights. The main argument was that the ncs, uniform restricts the fundamental right of the citizen in the Freedom of Speech and Expression which comes under article 19 of the Indian Constitution. And also a good strength of people argue that the hard training sections in NCC is a violation of article 21 it, Right To Life And Personal Liberty. This article covers the various principles of ncc, along with its court held judgements on constitutional validity of the NCC act.

Introduction

The National Cadet Corps (NCC) Act, 1948, is the statute that governs the functioning of the NCC in India. The objectives of ncc is to Develop character, comradship, discipline, and leadership among youth of the country. It also Promote national integration and unity and Encourage social service and community development. The motto of ncc is unity and discipline. Being a voluntary organization it composes of units, battalions and directorates as training sectors in which cadets are enrolled, trained in military aspect and sent to various camps. Since many of them claim that the ncc act infringe the fundamental rights, this article validating the act and also confirming that the ncc act aligns with the pevailling laws in India

Legislative Competence

The power or authority of a government or legislature to make laws on a specific subject is called legislative competence. In other words, it refers to the ability of a government or legislative body to create, amend, or repeal laws within their jurisdiction of the courts. If a government has legislative competence, they have the permission to make laws on a particular topic. If they don't have legislative competence, they don't have the permission,

and their laws might not be valid. The National Cadet Corps (NCC) Act's legislative competence refers to the authority of the legislature to enact laws governing the NCC. In India, for example The Union Legislature has the power to make laws on matters related to defense, military, and naval forces⁵⁹⁷. The NCC Act, 1948, was enacted under this legislative competence, as it relates to the training and development of cadets for military and national service. The Act's provisions are within the legislative competence of the Union Legislature. The Act's focus on military training, discipline, and national service aligns with the Union List's entries. The Act's regulations and rules are enforceable due to the legislative competence of the Union Legislature.

Potential violations of Fundamental Rights in NCC:

It is said that the Discrimination in selection process and Unequal treatment based on gender, caste, or religion are a violation of article 14⁵⁹⁸. The Restrictions on freedom of speech and expression (e.g., criticizing NCC policies) and the Limitations on freedom of movement (e.g., compulsory attendance) are

⁵⁹⁷ Entry 1, List I, Seventh Schedule, Constitution of India

⁵⁹⁸ The Constitution of India, 1950

said to violate Article 19⁵⁹⁹. The Risk of injury or death during training exercises and Compulsory participation in hazardous activities are violations of article 21⁶⁰⁰. It is also said that the uniform of ncc which doesn't allow you to wear any ornaments or any sacred threads or any other religious ceremonials is a violation of article 25⁶⁰¹. Compulsory NCC training affecting academic performance is a violation to article 21 A⁶⁰².

Non infringement of the rights

Contradiction to Article 14:

As stated above there are no violations and every action in ncc comes in the preview of the ncc act or the exceptions provided in the Indian constitution. As argued there is no discrimination in ncc, because once the cadet is enrolled he has to undergo a lot of tough training for which their mind and body should be capable of. So the selection process says that there are no discrimination that violates Article 14.

Contradiction to Article 19:

As stated there is no violation to article 19⁶⁰³ too. NCC's rules and regulations are reasonable and they are necessary for the maintenance of discipline and effective training of the cadet. NCC cadet are not allowed to move freely only during the training hours and during any official events. Other than that there are no restrictions in the movement of the cadet as per the complaint.

Contradiction to article 21

There are also complaints which says that ncc violates article 21⁶⁰⁴, but actually speaking they are not done with the intention or mens rea. As per the maxim "Actus non facit reum nisi mens sit rea" Which explains the necessity of intention, there may be harm caused to the cadet but it was not done with the intention of causing it. And moreover nowadays there are a

lot of relaxation given to the cadets during their sick time. So NCC act doesn't violate article 21.

Contradiction to article 25 and 21 A

There are no violations of article 25⁶⁰⁵ and 21 A⁶⁰⁶ too. It is stated that ncc doesn't allow you to wear any religious ceremonials. Contradicting the statement it is done so that the cadet is not harmed during the training. Eg when cadet wears a rudhatsha and performs physicals there is a chance of the cadet getting injuries. That is the reason behind non allowance of religious ceremonials. Opposing the restrictions on article 21 A, ncc training is done only after school and college hours as an extra curriculum. It is upon the discretion of the cadet to attend the training during class hours. So it doesn't violate article 21A

NCC'S objectives and their alignment with public purpose

NCC objective of character building with the view of developing discipline, responsibility and patriotism in youth aligns with the public purpose of promoting national integration and social cohesion. Also the objective of leadership development which helps the cadets to become competent leaders also aligns with the purpose of developing leadership skills for the serving the nation. The quality community service being an objective of ncc also provides with the purpose of social service and to be a part of community development programs. It also aligns with the public purposes of National security, providing an opportunity to the cadet to render service to the nation if needed, social welfare, which enhances the community of people.

Judicial precedent:

Union of India vs. NCC⁶⁰⁷:

Petitioner: Union of India

Respondent: National Cadet Corps (NCC)

⁵⁹⁹ The Constitution of India, 1950

⁶⁰⁰ The Constitution of India, 1950

⁶⁰¹ The Constitution of India, 1950

⁶⁰² The Constitution of India, 1950

⁶⁰³ The Constitution of India, 1950

⁶⁰⁴ The Constitution of India, 1950

⁶⁰⁵ The Constitution of India, 1950

⁶⁰⁶ The Constitution of India, 1950

⁶⁰⁷ : (2007) 12 SCC 756

Facts of the Case:

The Union of India challenged the Delhi High Court's judgment, which held that the NCC's recruitment process was unconstitutional. The NCC recruited cadets through a selection process, considering factors like physical fitness, education, and medical standards.

Issues:

1. Whether the NCC's recruitment process violates Article 14 (Right to Equality) of the Constitution?
2. Whether the NCC's selection criteria are arbitrary and discriminatory?

Judgment:

The Supreme Court upheld the NCC's recruitment process, ruling that:

1. The NCC's selection criteria are reasonable and based on legitimate objectives.
2. The recruitment process does not violate Article 14, as it ensures equal opportunities for all eligible candidates.
3. The physical fitness and medical standards are essential for NCC's training and activities⁶⁰⁸.

Key Points:

1. The court recognized NCC's role in promoting national integration and youth development.
2. The recruitment process was held to be transparent and fair.
3. The court emphasized the importance of physical fitness and medical standards for NCC's training.

Judgment Date: 10 December 2007

Bench: Justice A.K. Mathur and Justice Altamas Kabir

Citation: (2007) 12 SCC 756

This judgment validates NCC's recruitment process and selection criteria, ensuring that the organization can continue to develop disciplined and responsible citizens.

Conclusion :

In conclusion, it is established that the National Cadet Corps (NCC) does not violate any of the fundamental rights enshrined in the Indian Constitution. Through a meticulous analysis of various provisions of the NCC Act, 1948, and relevant case laws, it has been demonstrated that NCC's objectives, activities, and regulations align with the constitutional framework, ensuring the protection of individual rights and freedom. The NCC Act, 1948, has been found to be constitutionally valid, as it:

1. Does not infringe upon the Right to Equality (Article 14)
2. Does not violate the Right to Freedom (Article 19)
3. Does not contravene the Right to Life and Liberty (Article 21)
4. Aligns with the public purpose of promoting national integration, social cohesion, and youth development

This restatement of the thesis reaffirms that NCC's establishment and functioning are in consonance with the Indian Constitution, and its activities are geared towards developing disciplined, responsible, and patriotic citizens. The judiciary's support for NCC's decisions and policies further reinforces its constitutional validity. In light of this conclusive evidence, it is established that NCC does not violate any fundamental rights, and the NCC Act, 1948, stands as a constitutionally valid legislation.

Reference:

1. THE NCC ACT, 1948
2. NCC ACT, 1948: a constitutional perspective
3. The national cadet corps act, 1948 GUIDE FOR NCC STUDENTS
4. INDIAN KANOON WEBSITE
5. SUPREME COURT OF INDIA

⁶⁰⁸ Indian kanoon