
DISCRETION, NOT RIGHT: COMPASSIONATE DISCHARGE AND THE LIMITS OF HUMANITARIAN CONSIDERATION IN INDIAN MILITARY LAW

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Introduction

Indian military law recognises, in principle, that a soldier's obligations to the state are not absolute: a mother's terminal illness, a spouse's disability, or a family's sudden economic collapse can outweigh the state's claim on a person's continued service. This recognition takes concrete form in the mechanism of discharge on compassionate grounds under the Army Rules, 1954, and its parallel provisions for the Navy and Air Force. However, in real-world scenarios, this humanitarian approach is simply a privilege offered by the military and not automatically accessible to any of its soldiers; rather than being an entitlement, one would have to prove their case before the authorities, as well as confronting the absence of legal definitions regarding the meaning of the term “hardship.”

This article argues that the gap between compassionate discharge in draft and compassionate discharge in practice reflects a wider and more troubling development in Indian military law: that while humanitarian concerns are recognised in doctrine, they are structurally subordinate to institutional convenience in practice and only remedied via the slow, individualised and resource-intensive route of Armed Forces Tribunal litigation. This is not a minor administrative matter. This is not some peripheral administrative quirk. It lies between two concurrent claims of the Indian state, to owe special deference and honour to those who serve and that the ordinary constitutional guarantees of fair procedure apply to servicepersons as to any other citizen. Compassionate discharge is the point at which these two claims are tested against each other. The main argument of this article is that the second claim is currently defeated.

Part I: The Legal Architecture of Compassionate Discharge

1.1 Statutory and Regulatory Basis

Rule 13 of the Army Rules, 1954,¹ vests discharge authority in a hierarchy of officers, with the commanding officer typically the first point of decision for personnel below commissioned rank, and superior authorities retaining concurrent or overriding power. Compassionate grounds is one of a number of other discharge categories recognised under the Rules (services no longer required, medical grounds, marriage, misconduct and unsuitability) but have a particular moral register in that list. In contrast to a termination, a compassionate discharge is not held against the personnel discharged on that basis, who still become ex-servicemen and are eligible for all benefits that go along with that, provided all other eligibility criteria are met. This is an important institutional message: the military would like to see compassionate discharge not as evidence of failure in service, but as a dignified way of going out.

The Navy Act, 1957² and the Air Force Act, 1950,³ along with their corresponding service rules, comprise provisions that are markedly similar if viewed from a structural point of view, being implemented with the help of the service-specific instructions, Orders of the Air Force in the case of Indian Air Force and other similar codes in Navy and Army. The three services have no common and officially recognized definition of hardship; Instead, they share a similar institutional structure where the definition is an internal policy matter that is revisited periodically.

1.2 What the Rules Do Not Say

On paper, the compassionate discharge provisions reflect a considered institutional judgment that a soldier's family circumstances can, and sometimes should, override the ordinary presumption in favour of continued service. What the Rules conspicuously do not do is define hardship with any precision, or specify a threshold at which a family circumstance becomes sufficiently severe to warrant release. This is left to policy circulars issued periodically by service headquarters, which are neither uniform across the three services nor, in most cases, easily accessible to the serving personnel whose applications depend on satisfying them.

¹ Army Rules, 1954, r. 13 (India).

² Navy Act, 1957, No. 62, Acts of Parliament, 1957 (India).

³ Air Force Act, 1950, No. 45, Acts of Parliament, 1950 (India).

This gap is not a simple one. In the area of normal administrative law, when a statute, or a rule provides a benefit dependent upon a criterion standard, those people in the courts and administration generally make use of legislative explanation, judicial precedent, or, at least, published constant procedure in the department for giving effect to that standard. In the compassionate discharge context, none of these three exists in a form accessible to the applicant at the point of decision. The outcome, evident in a great deal of court disputes and legal consultation platforms employed by active service members and their relatives, is a consistent trend: a member of army requests for compassion discharge due to a sick parent or an incapacitated partner, their request is denied in a blunt letter indicating that application is “without convincing and strong justification or merit,” and the soldier receives no clear basis on which they could initially judge their case or question the refusal.

1.3 The Ex-Servicemen Status Question

It is important to highlight one organizational aspect that demonstrates how even when the compassionate release mechanism operates the way it was meant to work, it still suffers from institutional logic, not exclusively from humanitarian considerations. The compassionate release is granted to individuals who are released from their jobs on a compassionate basis and not for misconduct, as opposed to individuals who may have received termination on ground of misbehavior, still qualify for ex-serviceman status as long as they comply with the definition of ex-servicemen applicable at the moment of their termination. The fact that this status is preserved for compassionate discharges reflects an institutional acknowledgment that leaving service for family hardship is not a mark against the soldier. But the same institutional structure that grants this dignity in the outcome withholds a comparable dignity in the process, the soldier is trusted to have been honourable in leaving, but is not trusted, at the application stage, to have accurately assessed the severity of their own family's crisis without extensive, burdensome proof.

Part II: The Burden-of-Proof Problem

2.1 What the Soldier Must Show

The structural feature that does the most damage to compassionate discharge as a meaningful humanitarian channel is the placement of the evidentiary burden. A soldier has to demonstrate that the present hardship exists and that the only way out of the situation is to discharge. There

are some complications in proving hardship due to the necessity to obtain documents from various institutions, both military and civilian, plus a soldier's absence from the family member he is trying to help. Thus, the burden for a soldier regarding the provision of the necessity of discharge is significant because a soldier must prove with the help of documents that there is no other solution to the problem (no leave or compassionate post).

This structure has an appropriate bureaucratic explanation: a standing army cannot work if hardship claims become a common way of avoiding the disliked posting or unpopular conditions of service and "no adequate alternative" requirement serves as a legitimate filter against such risk in theory. Each organization providing humanitarian exceptions for obligations, be it university medical withdrawals, civil service compassionate transfers, or even family hardship provisions in civilian law, has implemented a similar type of filter.

2.2 The Practical Effect: Deflection to Lesser Remedies

The "no alternative" requisite means that, in practice, the genuine hardship claims are usually diverted to lesser options, like compassionate posting, leave extension, or relocating a member to a unit closer to the member's home state, which allow the member to remain in the service while addressing only some aspects of the existing family needs because the discharge journey is intended to be the last occasion rather than an effective option. Commonly given to soldiers who are dealing with this system, the advice emphasizes the necessity of exhausting leave and posting requests since it is believed that discharge application will mostly be dismissed if it is filed without having taken these priority steps.

This leads to an interesting twist. A cure made specifically for critical situations is provided that instead assumes that severity on its own is not enough, and stress has to be demonstrated as such. For example, for a family that has to manage a parent with a worsening condition, having to prove exhaustion can mean long months between breaks and interim assignments before any application can be processed, which means that the condition can remain without any meaningful response for extensive periods of time.

2.3 Documentary and Bureaucratic Friction

Beyond the substantive standard, soldiers face acute practical difficulty in compiling the documentation the process demands. The claim for a documented hardship usually involves

the facilities of the civil hospitals for medical confirmation, which has to be confirmed again via the military establishments, compliance of the family member status in relation to the soldier together with proof of the finance source and the attachment of the local civil authorities' report, while the soldier is positioned hundreds or thousands of kilometers away from the family. The application process also brings implications for family members, who have to deal with this bureaucratic red tape without the soldier's presence along with the fact that the discharge may be necessitated directly by the very need for engagement in the process. This paradox is worth paying attention to because it exposes the ironic inconsistency that the process of establishing a reasonable ground for discharge through bureaucracy results in significant suffering faced by the family itself, which has to cope with red tape in the moment when it is least possible to provide significant contribution for passing through it.

Part III: Judicial and Tribunal Review, Present but Narrow

3.1 The Formal Availability of Review

Compassionate discharge refusals are, in principle, reviewable, first by the Armed Forces Tribunal under the Armed Forces Tribunal Act, 2007,⁴ and, since the Supreme Court's restoration of Article 226⁵ jurisdiction over AFT orders (overruling its own 2015 position in *Union of India v. Major General Shri Kant Sharma*,⁶ which had barred High Court review of AFT decisions), potentially by the High Courts as well where a fundamental rights question is engaged. The Court's reasoning in restoring this jurisdiction is instructive: it held that where there is a denial of a fundamental right under Part III of the Constitution, or a jurisdictional error, the High Court's supervisory jurisdiction under Article 226 remains available notwithstanding the existence of a specialised tribunal. This confirms, at the level of principle, that compassionate discharge decisions, to the extent they implicate Article 21's⁷ guarantee of a fair and reasonable procedure, are not meant to be insulated from constitutional scrutiny merely because they arise within a military administrative process.

3.2 What Tribunal Review Actually Catches

Nevertheless, in reality, tribunal case law regarding discharge decisions is more likely to

⁴ Armed Forces Tribunal Act, 2007, No. 55, Acts of Parliament, 2007 (India).

⁵ India const. art. 226.

⁶ *Union of India v. Maj. Gen. Shri Kant Sharma*, (2015) 6 SCC 773.

⁷ India const. art. 21.

intervene in cases which do not question the hardship assessment itself, but rather where there are errors in procedure. The present trend can be observed in tribunal decisions made in a group of cases where the discharges were done on medical grounds, which is a closely related group of cases to hardships: tribunals quashed the discharge orders that were issued “blindly,” without the necessity of obtaining the opinion of the medical commission; it can be said that when it comes to discharges on medical grounds no serviceman can be discharged (or, logically speaking, denied a discharge) on medical grounds without any procedural issues. In one such matter, a tribunal bench went so far as to impose a personal fine on the officers responsible for the flawed decision, alongside reinstatement with full consequential benefits, signalling that procedural shortcuts in discharge-adjacent decisions carry a genuine institutional cost when detected.

This is a significant check that should not be minimized since it protects soldiers from their arbitrary or careless decision-making and gives rise to tangible solutions, such as reinstatement and compensation in cases where proper procedures have not been followed. Nonetheless, it is a procedural check by definition and corrects decisions made without implementing the correct procedures. It does not provide clear guidelines about what can be interpreted as proper hardship, nor does it transfer the burden away from the soldier. A tribunal can set aside a discharge refusal that ignored the prescribed process, but it has comparatively little to say about a refusal that followed the process correctly and simply concluded, on the facts, that the hardship did not clear an undefined bar, because there is no defined bar against which the tribunal itself can measure the decision's substantive reasonableness.

3.3 A Parallel from Court-Martial Jurisprudence

The distinction between procedures and substance of releasing a patient is not peculiar only to the process of compassionate release but aligns with the pattern the Supreme Court has seen nearly forty years ago in the apparently different context of court martial trials. In the case of *Lt. Col. Prithi Pal Singh Bedi v. Union of India* (1982),⁸ the Supreme Court dealt with the issue of whether the provisions of the Army Regulation that define the composition and functioning of courts martial were in accordance with the spirit of Article 21 that demands that any procedure followed to deprive a person of his liberty is required to be just and fair in all its

⁸ *Lt. Col. Prithi Pal Singh Bedi v. Union of India*, (1982) 3 SCC 140.

aspects according to the judgment in *Maneka Gandhi v. Union of India*.⁹ While the Court did uphold the rules, it also pointed to the absence of what it called any genuine appellate forum made of non-military civilians capable of evaluating the evidence, analyzing the legal reasoning employed, and considering the legality of the sentence. The Court called this a "glaring lacuna" and suggested the time had come for at least one level of genuinely judicial review.

The correlation with the granting of compassionate discharge sheds light. In both aspects, legal system has tended to ascertain an organizational weakness (lack of truly autonomous, substantively searching mechanism for review), but stops just short of formulating the substantive standard making review meaningful, rather than just procedurally based. The establishment of the Armed Forces Tribunal back in 2007, and restoration of the powers of High Court in 2023 addressed the organization-related concerns raised by the Bedi Court through introduction of additional layers of review. Neither development, however, has yet produced a body of doctrine that tells a commanding officer, in advance, what "hardship" means with enough precision that a soldier can know whether their case is likely to succeed before investing months navigating the application process.

Part IV: A Comparative Glance

4.1 The United States: A More Codified Standard

It may be helpful to look into how similar systems function in various nations not to suggest the adoption of such systems in the military legal framework of India, but to get familiar with gaps in the existing military law in India. The United States Army's administrative separation regulations governing "dependency or hardship" discharge specify, with considerably more precision than their Indian counterpart, the categories of qualifying dependency (death or disability of an immediate family member, for example) and require that the hardship be one that can only be "materially alleviated or eliminated" by the soldier's discharge, a standard structurally similar to India's "no alternative" principle, but codified in a publicly available regulation rather than left to internal, periodically revised circulars. Burden is in the hands of the soldier in the US system as well, but what is different is the amount of advance notice the

⁹ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

soldier is getting concerning the qualification criteria, as the standard is known and fixed as opposed to being open to administrative discretion.¹⁰

This comparison indicates that the central institutional issue, i.e., avoiding making hardship discharge a common way out, does not imply that the standard should be left vague. There is no contradiction between precision and institutional caution; a clear-cut standard can be as binding as an ambiguous one.

4.2 Canada: A Codified Two-Part Test and External Grievance Review

Canada offers a sharper contrast still. According to Administrative Orders and Directives 5049-1,¹¹ "compassionate reasons" for release are specified on the basis of a specific, published two-part conjunctive standard: there must appear to be justification for continued service that constitutes serious prejudice to the member's good health or welfare or to that of his or her immediate family, but, more importantly, must also be the type of prejudice that cannot be rectified in any manner other than release. This is, in substance, the same "no adequate alternative" principle that animates the Indian framework. What differs is that the Canadian test is stated once, in a public policy instrument, in language precise enough that a member and their advisor can test a given fact pattern against it before ever filing an application, rather than inferring the standard, after the fact, from the outcome of a rejected claim.

Equally significant is what happens when a release decision is contested. Canada has established a unique Military Grievances External Review Committee that is completely independent of the chain of command. The committee regularly assesses contested determination regarding the items of release and issues detailed case-by-case findings. Grievance case summaries dealing with contested release items, including disputes over whether a member was properly assigned a voluntary-release rather than a medical or compulsory-release designation, show the Committee weighing the underlying factual record on its merits and recommending redress where the designation does not fit the facts. This is indeed the material review with results which Part III of this article argues is not present in the Indian tribunal's handling of compassionate discharge refusals: the external institution willing

¹⁰ U.S. Dep't of the Army, Army Reg. 635-200, Active Duty Enlisted Administrative Separations ch. 6 (2025).

¹¹ Canada, Dep't of Nat'l Def., Defence Administrative Orders and Directives 5049-1, Obligatory Service (2018), <https://www.canada.ca/...> (last visited July 22, 2026).

to inquire not just about whether the right procedures were followed but whether the correct characterization of the case of the soldier was reached.

4.3 Germany: Accommodation Before Exit

Germany's Bundeswehr offers a different institutional philosophy again, one worth including precisely because it does not organise the problem around discharge at all. German military family policy operates on a presumption that the service should adapt around the family crisis rather than the soldier exiting to address it: a nationwide network of family assistance centres and deployment-linked family support points provides direct assistance to service members' households, and superiors are placed under an explicit, codified obligation, set out in the Bundeswehr's own manual on reconciling family life and service, to consider a service member's family and relationship needs when implementing duty requirements, rather than treating those needs as the member's problem to solve through a separate application process. Where hardship does require an extended absence, the German system routes it primarily through paid or supported leave mechanisms, including caregiver leave arrangements that provide an interest-free loan covering a substantial share of lost income, rather than treating leave as a stopgap on the way to an eventual, harder-to-obtain discharge.¹²

The German model does not necessarily mean its perfectness in all aspects since it requires an individual tolerance institutional capacity, which is hard for the significantly more numerous forces to accomplish as well. Nevertheless, the German model proves to be a perfect means of comparison. According to the German model, the answer to the dilemma when the family situation is in contradiction with the service is not a discharge test but rather the obligation to adapt the service terms first, with discharge being the last option. Compared to the German model, the problem with the Indian model lies not only in the vagueness of its discharge model but also in its functioning in terms of being the only way to cope with an issue when leave is over, with no other service-adjusting methods available.

4.4 What This Suggests for India

The three comparisons presented together imply that the American model shows that a

¹² Bundeswehr, Manual on the Compatibility of Family Life and Service in the Armed Forces (Handbuch zur Vereinbarkeit von Familie und Dienst in den Streitkräften), Bundeswehr.de, <https://www.bundeswehr.de/en/about-bundeswehr/identity-of-the-bundeswehr/equal-opportunities/family-life-and-service-bundeswehr> (last visited July 22, 2026).

restrictive standard can still be precise, the Canadian model shows that a precise standard can be accompanied by a genuinely substance-testing external review, and the German model proves that discharge does not necessarily have to be the main humanitarian mechanism, as the institution can create ways to accommodate needs and support income.

It is important to know that India does not have to adopt any model directly. However, it clarifies that the Indian context does not suffer from unreasonable requirements imposed on soldiers trying to obtain compassionate release, and the conservatism in this sphere is justified, taking into account that the use of a standing army requires it. The challenge is that the requirements are not clear beforehand, are unequal in all three types of armed forces, do not imply any substance-testing review, and do not provide any intermediate accommodation mechanisms which can decrease the need for a soldier to choose between continuing service and managing a family problem at all.

Part V: Why This Matters as a Rights Question, Not Only a Policy Question

It could be considered that all of the preceding points are about the design of administrative policy, a matter of special service headquarters improving their instructions rather than any matter that has constitutional implications. However, this narrowed interpretation overlooks the true importance of the issue at hand. The framework for compassionate discharge affects Article 21 in a manner that is often camouflaged due to the nature of the deprivation which does not fall in the conventional definition of liberty deprivation (as in cases of arrest or detention); in the case of a serviceman being kept in service due to a valid family hardship, the serviceman doesn't just lose liberty in a legal sense. They are being kept, by the continuing operation of an employment relationship they cannot unilaterally exit, from addressing a hardship that the institution has already conceded, by creating the compassionate discharge category at all, can be serious enough to warrant release in an appropriate case.

The lack of an established standard does not eliminate this conclusion; it only makes it more complicated to justify because there is no specific criterion for evaluating the fairness of the refusal. This is precisely the procedural defect that the "just, fair and reasonable" standard from *Maneka Gandhi*, which was taken by the *Beni* Court into the realm of military law, was meant to protect against: the legal process purports to give a remedy but carries out its operation in a manner that renders the remedy practically useless does not fulfill the state's duty under Article 21.

5.1 The Comparison to Compassionate Leave

The comparison with compassionate leave is significant in this case and should be elaborated on in more detail. Leave provisions are seldom denied in practice since all these provisions need nothing more than the requirement of being proved justified temporarily, and after that it does not matter whether a soldier undergoes discharge or is given military leave for some time. Discharge is viewed as the last option; therefore, the approach is established in a way that implies institutional distrust towards this option in principle even in cases where the authority approves such discharge based on some facts about the hardship of the soldier but the authority does not really contest it.

This discrepancy causes significant discomfort for practical application. Soldiers facing troubles with their families are forced to go through repeated procedures of applying for leave instead of getting it once in a dignified manner because it is effortless to obtain military leave if compared to the application for a discharge.

Tribunal case law bears this asymmetry out with some precision. In *Union of India v. Ex Rifleman Abdul Rashid War* (2025),¹³ the underlying dispute concerned a soldier who had overstayed leave; the Armed Forces Tribunal found that his service record disclosed no serious misconduct and that the reasons given for the overstay appeared genuine, and on that basis modified what had been a dismissal into the lesser penalty of discharge with consequential benefits. Nonetheless, the Jammu and Kashmir and Ladakh High Court overturned the order, ruling that the powers of the judicial authority to sit in review over court-martial decisions are limited, and any interference is permissible only in rare cases where the punishment is unusually disproportionate or absurd. The at least noteworthy aspect of the story (despite the fact that this was indeed the reversal of the Tribunal's decision) is that during the first instance hearing, the Tribunal considered the count of unauthorized leave properly accepted as a reason for demonstrating sympathy towards the soldier and justifying the reduction of the punishment as appropriate. Thus, one could say that the judgment of the High Court proves that the compassionate review is very unstable even in cases where the Tribunal initially demonstrates willingness to practice this form of judicial relief.

¹³ *Union of India v. Ex Rfn. Abdul Rashid War*, WP(C) No. 1709 of 2024 (J&K & Ladakh HC, Nov. 3, 2025).

On the contrary, *Ex Sgt. Md. Azam Ansari v. Union of India*,¹⁴ an Air Force Tribunal case in which the applicant's repeated requests for release on personal and compassionate grounds were rejected by the competent authority owing to the operational importance of his trades and his strength in terms of manpower. The Tribunal, while dismissing the applicant's plea, set out the principles for determining a case of this nature in the most deferential language possible: a court exercising its supervisory powers should not interfere with a decision simply because it finds that decision undesirable. In fact, interferences should only be made in exceptional cases exhibiting manifest injustice or irrationality from the record, and in highlighting the asymmetry this paper has been showing so far, that a court ought not to interfere "merely on compassionate grounds."

Read together, the two cases map the leave-versus-discharge divide almost exactly onto a difference in judicial posture. Where the claim is for leave, or where a punishment is later characterised as disproportionate to an already-established set of facts, tribunals have shown themselves willing to substitute their own assessment of fairness for the institution's. Where the claim is for discharge on compassionate grounds in the first instance, the prevailing doctrine treats the underlying compassionate claim itself as a matter for near-total institutional discretion, reviewable only for perversity, and expressly not reviewable for whether compassion, on the merits, was warranted. The soldier does not merely face a harder factual case to prove; he faces a fundamentally different, and considerably higher, standard of review once his claim is one for discharge rather than leave.

5.2 A Gendered Dimension Worth Naming

This is one aspect that should be highlighted, however briefly: women in the armed services, whose numbers have increased significantly as a result of expansions of eligibility for permanent commissions, have been shown to bear the burden of family impediments involving aged parents, children and ill mates. The kind of regime that makes humanitarian discharge a complicated, slow-moving and unpredictable affair establishes a burden that, even if the Rules themselves seem non-discriminatory, will impose most costs on women being engaged in balancing their caregiving duties with their professional duties. While this is not the primary argument of the article, any proposal for comprehensive reform must consider this aspect.

¹⁴ *Ex Sgt. Md. Azam Ansari v. Union of India*, O.A. No. 74 of 2012 (Armed Forces Tribunal).

Part VI: Toward a Clearer Framework

A more reliable framework would not necessitate giving up the "no alternative" principle, which, as mentioned earlier, fulfills a real and valid institutional function to stop the compassionate discharges from becoming an ordinary avenue of discharge. Instead, it will need three specific amendments.

Firstly, there should be a published, nation-wide definition of what is understood as hardship category qualifications, which could be something that resembles the American hardship and dependency description referred to above so that military representatives can have the chance to assess the feasibility of the application of hardship before spending months on an application process requiring great effort and skills. While this does not mean that there should be no case-by-case application of judgment, there is a need to create conditions in which the process of judging hardship could be predictable and stable.

Then, the second requirement is the shift of the burden of proof. When a soldier has already proved the case of hardship using different medical and other documents, the proof is that there is a specific remedy that could be applied instead of requiring the soldier to demonstrate that there is no other solution to a problem.

Third, tribunal willingness to review the substantive adequacy of a hardship determination, not only the procedural correctness of how it was reached, extending to the discharge context the same fairness standard the higher judiciary has already been willing to apply, in a different setting, to the proportionality of court-martial sentencing in cases like *Ranjit Thakur v. Union of India*.¹⁵ If a punishment can be reviewed for whether it is disproportionate to the offence, there is no obvious doctrinal reason a discharge refusal could not be reviewed for whether it is disproportionate to the hardship shown.

Each of the three changes can actually be carried out without the need for changes in existing laws; the new service orders and a transformation in the way tribunals work can lead to these changes being implemented thus making this reform truly workable.

¹⁵ *Ranjit Thakur v. Union of India*, (1987) 4 SCC 611.

Conclusion

In India, the principle of compassion discharge is one of the few instances where military law, by way of a policy of the army, acknowledges the fact that the responsibilities of military personnel should give way to their responsibilities toward family and relatives. It may be pointed out here that this recognition is not accompanied by any procedure enabling soldiers to apply for the benefit contained in this clause. Instead, there is in existence merely a concessionary and discretionary provision based on an unclear standard of eligibility that places an impossible burden on the least capable of discharging it.

In the legal field, there have been instances where the courts have shown a greater readiness to demand accountability. There have been previous demands for review in relation to the Bedi case and proportionality in the Ranjit Thakur judgment. Sadly, the act of compassionate discharge has not been discussed in an equally compassionate manner yet. That is why until the criteria are defined and the burden might be adjusted, the institution of compassionate discharge will still be viewed more as something that is going to be done for a person rather than some legal right.