
MARTIAL LAW VIS-A-VIS MILITARY LAW

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Abstract

The term Military Law and Martial Law are frequently use by the people. Both term expressed distinct meaning. Martial Law means a kind a of government headed supreme army authority and subsequently civil authority is automatically suspended to Act. The term Military Law means, a law which govern, regulate and control the conduct of soldiers and look after the Administration and Welfare. Thus Martial Law is a kind of Government; whereas Military Law is a code of law by which Military personnel are control and regulated. Military Law applies on the personnel subject to the Army Navy and Air Force.

Keywords: Martial Law, Impose, Extensive, Protest, disobedience, typical, curfew, seizures, insurrection, deprivation, random, internment, warfare, invasion, rebellion, integrity, foster, subject.

Introduction:

"Speak softly and carry a big stick"

Martial Law 'Roosevelt'

Martial Law is the imposition of military rule by military authorities over designated regions on an emergency basis.

Martial Law is usually imposed on a temporary basis when the civilian government is failed to function effectively (e.g. maintain order or security or provide essential services). When there are extensive riots and protest, or when the disobedience of law became widespread.

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Typically, the imposition of martial Law accompanied curfew, the suspension of civil law, civil rights, habeas corpus, and application or extension of military law or justice to civilian.

In martial Law, the military gained all the powers of state, including dissolving the parliament and suspending the constitution¹.

Martial Law is an extreme and rare measure used to control the society during war or period of civil unrest for chaos. According to Supreme Court, there is no precise meaning. Certain civil liberties may be suspended, such as right to be free from unreachable searches and seizures, freedom of association and freedom of movement, and the right of habeas Corpus may be suspended.

Martial Law may be declared by the Congress or the parliament [under article 1 section 8 clause 15 of the Constitution, Congress has the power, to provide for calling forth the militia to execute the law of the union. Suppress insurrection and repel invasion. Article 2 clause 1 of the Constitution declares that the president shall be commander in chief of the army and Navy of the United States, when called into the actual service to the United States.

Neither constitutional provision includes a direct reference to the Supreme Court has interpreted both to allow the declaration of martial Law by the president or Congress.

On the state level, a governor may declare martial Law within her or his own states. The power to do so usually is granted in the state constitution.

Congress has never declared a martial Law. However, at the outset of civil war in 1861, congress ratified most of the martial Law measures declared by Abraham Lincoln it's martial Law declaration gave the union military forces the authority to arrest person and conduct trials.

After 80 years, of imposition of martial Law, on 7 Dec, 1947². High Court was more tolerant to Civil right deprivation under martial law³.

The court justice justified the random internment (imprisonment) of more than 1,10,000 Japanese American during the war.

Martial Law:

A system of complete control by a country's military or all activities including civilians, in a theoretical and war zone, or during period of emergency caused by disaster such as an earthquake or flood with the military commander having dictatorial powers, in the United States martial Law must be ordered by the president as commander-in-chief and must be limited to the duration of the warfare or emergency. It cannot results in long term denial of constitutional rights such as habeas corpus.

Martial Law/ emergency powers:

1. Martial law is defined as military rule authority imposed on a civilian population when the civil authorities cannot maintain law and order as in time of war or during an emergency.
2. Declaration of martial Law means your rights are suspended and it is government by decree. Your constitutional rights may no longer apply. This could mean a state of National emergency.
3. People can be arrested and imprisoned indefinitely without charges for freedom of speech and freedom of assembly can be suspended and censorship of the media is imposed.

Causes:

1. "Identify" requirement off emergencies.
2. "Assess" the capability of the country industrial and technological base.
3. "Be Prepare" to ensure the availability of critical resources in time of national threat.
4. "Improve the efficiency" of the industrial base to support National defence.
5. "Foster cooperation" between commercial and defence sections.

President Theodore Roosevelt's famous saying "speak softly and carry a big stick".

Martial Law is employed as common law right of crown and its subordinate to repel force particularly in case of invasion insurrection or riot and to take such exceptional measures which may be necessary for restoration of peace.

Centre duty to protect the states⁴

1. To protect every state against external aggression and internal disturbance, and
2. To ensure that the govt. of every state is carried on in accordance with the provision of constitution
 - External aggression
 - Internal aggression

American : Martial Law declared in America by Congress⁵

Sec. 199 of the Australian Constitution⁶

Centre shall protect every state against invasion.

Martial Law means "Law and order strictly and enforced by the army.

For e.g., when ordinary civil law has broken down during the war, revolution etc." (Chamber 21st century dictionary).

1. Military Law : Deals with
 - Discipline, and
 - Administration, of Military personnel
2. Martial Law means the suspension of ordinary law and the government of a country or parts thereof by military tribunals.
3. In other words military proclaimed martial law when civil courts cannot enter upon even enquiry as to the validity of such proclamation. These occasions are as follows :
 - During invasion or rebellion or in expectation there of
 - Suspension of hostilities or for the maintenance of good order within its territory.

- Execution of Mangal Pandey of "34th Bengal Native Infantry at Barraekpur on 8 April, 1857".
- 7, 8 and 40 battalion consisting about 3000 men, revolted on 27th July 1857 and desists with army and ammunition to join the force of Kunwar Singh of Ara.
- At "Sagauly" small military station in Bihar.
- Major Holmes, an officer-in-charge proclaimed a martial law 30th July 1857.

Martial Law

Definition:

1. Martial law is defined as military rule authorities imposed on civilian population, when the civil authority cannot maintain law and order, as in time of war or during an emergency.
2. Declaration of martial Law means your right are suspended and it is government by decree. Your Constitutional rights may no longer apply. This could mean a state of National Emergency.
3. People can be arrested and imprisoned indefinite without charges.
4. Freedom of speech, freedom of assembly can be suspended and censorship of the media is imposed.

Causes :

1. Unity or integrity of nation.
1. 2. Identify requirement of the nation at the time of emergency.
2. "Assess" the capability of the country industrial and technological base.
3. Be Prepare to ensure the availability of critical resources in time of national threat.
4. Improve the efficiency of the industrial base to support National defence.
5. Foster cooperation between commercial and defence sections.

Distinction of Martial Law between America and India

America	India
1. Article 1, Section 8, Clause 15 by congress empowers to call the militia to execute law of the union and suppress the insurrection and repel invasion.	Under article 355 of President of India * To protect every state against external aggression and internal disturbance
2. Article 2, Clause 1 President shall be commander in chief of Army Navy and Air force.	To ensure that the government of every state is carried on in accordance with the provision of constitution <ul style="list-style-type: none">• external aggression• internal disturbance.
3. Governor may also declare the martial Law in his/her state.	President of India may declare National Emergency under Art 325, State Emergency under Art 356 and Financial Emergency under Art 360.

Relevant provisions and cases

Australia u/s 119 of Australian Constitution.

Case: *Hira Bayashi v/s United States (1943)*

High Court was more tolerated of civil rights deprivation under martial Law

Case: *Korematsu v/s United States (1944)*

The court justified the random interment imprisonment of more than 10,000 Japanese during the war.

Case: *Duncan v/s Kahanamotsu (1946)*

Martial Law is an external and rare measure used to control the society during war or period of civil unrest or chaos.

Martial Law: Government by the military authorities when the normal machinery of government has broken down via result of invasion civil war, or large states insurrection. The martial Law should not be confused with military law.

Conclusion:

Martial Law is essential as it is used to protect the civilians or people residing over the place. It protects us from the external aggression, war or armed rebellions etc. After all, the society can uplift only when it protects by a great and strong Army or military.

References:

1. Duncan v/s Kahanamotsu (327 u/s 304; SS 1946)
2. Hira Bayashi v/s United States 1943
3. Korematsu v/s United States 1944
4. Art 355 Constitution of India.
5. Art 1 Section 8 Clause 15 of American Constitution.
6. Section 199 of the Australian Constitution.