



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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## Why the Law needs to Intervene to Counter Gender Discrimination in Indian Armed Forces

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*Received 25 June 2022; Accepted 17 July 2022; Published 19 July 2022*

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*The Supreme Court recently issued the much-needed and anticipated decision on the inclusion of women in military forces. Since 2003, the matter had been pending in court, and the verdict came in 2020. In addition to allowing women a position in combat troops, the decision effectively underlines the denial of equal opportunity in their current roles for advancement to higher ranks. The Supreme Court has issued several decisions in recent years to address various instances of gender discrimination in Indian society and to defend the right to equality, and the current case is compatible with such decisions. This article focuses on the court case's development and the verdict's effects on future generations and the Army. Recent instances of discrimination against people of both sexes make it clear how societal prejudices have stifled injustice in society. They also emphasize the necessity for changes to the sexist policies that are already in place.*

**Keywords:** *gender discrimination, sexism, social injustice, systemic injustice.*

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### INTRODUCTION

Indian Military is considered the fourth most powerful military power after the US, Russia, and China. The strength of the army is around 1.4 million, of which only 0.54% are women. This number is slightly better in Air Force and Navy which is 1.08% and 6.5% respectively.

<sup>1</sup>The percentage is not surprising given the number of stereotypes that are attached to women and the profession they ought to be in. The recruitment process into Army is voluntary, which means that every citizen has the right to apply for it. They should not be discriminated against based on sex, caste, race, etc. Yet the process discriminates against women. By establishing a gender-neutral admissions procedure for the Army, the recent court rulings gave women much-needed relief. Some parts of the Center's response were unsatisfactory since it was mostly based on widely held gender stereotypes and prejudices. The Court correctly rejected these justifications and decided in favor of women. It is important that these reforms occur in all spheres of society as the nation works toward gender equality. The world situation is also shifting toward the enlistment of more women in the armed forces. It is thought that such inclusion would give women more political power. When issuing certain significant rulings on the selection procedure for the Indian Armed Forces, the courts had a similar viewpoint.

## HISTORY

The role of women in the Army dates back to British Raj when they were admitted to the Indian Military Nursing Service in 1888. They played an important role in World War I which led to the formation of the Woman's Auxiliary Corps. This allowed women to serve in the accounting, communication, and administration sectors. Noor Inayat Khan from this corp acquired a legendary status for serving in World War II. The Azad Hind Fauj, constituted by Netaji Subash Chandra Bose, had an exclusive regiment for women, called Rani of Jhansi regiment, for battling Imperial Japanese Forces. After the Independence, the Indian Army, Navy, and Air Force started inducting short service commission officers in 1992 for non-medical positions. . They were dispatched for a time of five years in specifically picked streams like Army Education Corps, Corps of Signals, Intelligence Corps, and Corps of Engineers.

Recruits under the Women Special Entry Scheme (WSES) had a more limited pre-commission preparing period than their male partners who were charged under the Short Service Commission (SSC) scheme. In 2006, the WSES scheme was supplanted by the SSC scheme,

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<sup>1</sup> Lalita Panicker, 'Needed: Gender inclusivity in the Indian armed forces' (*Hindustan Times*, 24 July 2021) <<https://www.hindustantimes.com/opinion/needed-gender-inclusivity-in-the-indian-armed-forces-101627137975587.html>> accessed 22 June 2022

which reached out to women. They were admitted for a time of 10 years, extendable as long as 14 years. Serving WSES officials were given the choice to move to the new SSC scheme or to go on under the past WSES. They were to be, in any case, confined to jobs in streams determined before – which rejected battle arms like infantry and defensively covered corps. In 2008, women were allowed to be admitted to permanent commissions in the legal and education corps. In 2007, India provided the All Female Formed Police Unit(FFPU) for a peacekeeping mission in Liberia. Later in 2019, India's first engagement team was sent to Congo. Despite sending such missions for UN peacekeeping, India is yet to form legislation to admit women into domestic military forces.

### **REASONS BEHIND DISCRIMINATION**

The opponents of allowing women into military forces give some of the following arguments:

- They believe that society is not ready to accept women out of their homes, combating for their country. They are meant to stay behind and look after their family.
- Women are not physically strong enough to withstand the harsh training given by Army. Moreover, they are considered emotionally weak to stay away from their home and family for a long period.
- There is a fear of female officers becoming captive by enemies. And since the nation associates its honor with women, it would threaten the overall morality of the nation.
- Many soldiers come from villages and might not be comfortable with women being in superior positions and giving them orders.
- It is believed that men make better soldiers due to their inherent traits of being rough and aggressive. Women are not considered to be biologically competent enough to make rational decisions.

All the above arguments have their roots in gender stereotypes and the patriarchal structure of society. Women have had to struggle for workplace rights over the years, and the Indian Armed Forces are no different. Women have to suffer without any reason and fault of their

own and have become victims of systemic and indirect discrimination. Such arguments have their reasoning in societal norms. These norms need to change with changing times.

## **ROLE OF JUDICIARY**

The Army provides two ways for joining, one is through a Permanent Commission(PC) and the other is through a Short Service Commission(SSC). A PC indicates that an officer will remain in the Indian Armed Forces till retirement, whereas SSC indicates that their career will be of limited duration. The SSC typically inducts officers for a 14-year term of service. The officers have three choices after ten years. In contrast to SSC, which is currently for 10 years and can be extended by four additional years for a total of 14 years, PC permits an officer to stay in the Army until retirement. They have the choice of choosing a PC, declining one, or getting a 4-year extension. During these additional four years, they are free to leave at any moment. The choice of choosing a PC is, however, not granted to female officers which are discriminatory. This issue led to the filing of many litigations against this policy, with the contention that it infringes the Right to Equality.

The Supreme Court has recently given many judgments that have paved the way for gender equality. The Sabarimala case and decriminalization of homosexuality in the Navtej Singh Johar case have established the wide ambit of equality before the law. The Court has recognized the nuances of sexism that prevails in society. And the rulings related to PC and SSC in the Indian armed forces are a welcome step. The legal conflict pits the government's right to restrict women's employment in the Army against the violation of "Equality of Opportunity" that would result from such restrictions due to gender discrimination. A PIL was submitted to the Delhi High Court in 2003 by a lawyer named Babita Puniya asking for the Army to offer women SSC officers permanent commissions (PC). On October 16, 2006, Major Leena Gurav filed a second writ case, mainly to contest the terms and conditions of service imposed by circulars earlier that year and to request PC for female officers.

The Judge Advocate General (JAG) department and the Army Education Corps SSC women officers would receive PC prospectively, according to a Defence Ministry regulation from September 2008. (AEC). Major Sandhya Yadav and others contested this circular in front of the

Delhi High Court on the grounds that it only provided PC prospectively and in a limited number of defined streams. The Delhi High Court clubbed together with 2003, 2006, and 2008 challenges in 2010. The Court ordered the Centre to grant PC to everyone who opted for it and had not been granted. This was challenged by the Centre in the Supreme Court.

The Centre gave the following arguments challenging the order of the High Court.

- The Centre argued that the government must consider the inherent risks associated with the duties of Army officers, as well as the unfavorable service conditions that don't include privacy in conflict or insurgency zones or in any other field, as well as maternity and child care issues that are always related to women.
- The Army must "manage WOs in soft postings with required infrastructure, not involving hazardous responsibilities with the regular positions with the other women in the station," according to the Union Government's submission. The Army must accommodate spouse postings, "extended absences because of maternity leave, child care leave," and other circumstances, that "compromise the legitimate dues of male officers."
- The Union of India expanded on these submissions in a Written Note by once more mentioning "pregnancy, parenting, and home commitments," physical differences, the "peculiar dynamics" of all-male groups, and hygiene-related concerns.
- It was suggested that because border regions lack very basic and minimal facilities, it is not advisable to station female officers there for reasons of hygienic conditions and habitat.
- The union-appointed committee that looked at cadre concerns in the armed forces advocated for a thin permanent cadre of officers that was supported by an improved support cadre. Therefore, entry into the Permanent Commissions via SSC will destabilize the Army's organizational framework.

These arguments were rejected by the Supreme Court in *Secretary, Ministry of Defence v Babita Puniya & Ors.*,<sup>2</sup> in 2019 because they are "based on sex stereotypes predicated on beliefs about socially ascribed roles of gender which discriminate against women," according to the court. Additionally, it has been stated that this simply serves to "emphasize the need for a mindset shift to bring about true equality in the Army."<sup>3</sup> This 17-year legal battle came to an end when the Supreme Court issued a regulation to the Union Government regarding the granting of PC to female officers and subsequent action was taken to allow all women the right to be on the same level as their male colleagues.

The most important and far-reaching part of the ruling is that it has also lifted the restriction that women officers could only hold staff positions. In other words, women officers will be able to hold all command positions on an equal basis with men officers, opening up opportunities for them to advance to higher ranks. If women officers had solely served in staff positions, they would not have advanced past the rank of Colonel. On September 8, 2021, the Centre delivered the Supreme Court the "good news" that it had decided to let women enroll in the National Defense Academy (NDA), which had hitherto been a male-only recruiting ground for the armed forces.<sup>4</sup> A writ petition was filed in 2018 by Indian Professional Nurses Association (IPNA) in Delhi High Court seeking to fill positions in the Military Nursing Services (MNS). In October 2018, the Court remarked that this was gender discrimination, just the other way around.<sup>5</sup>

In May 2022, an application by the Indian Professional Nurses Association to stay a central government advertisement inviting "female candidates (only)" to "join military nursing service" was given notice by a bench led by Acting Chief Justice Vipin Sanghi. The respondent

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<sup>2</sup> *Secretary, Ministry of Defence v Babita Puniya & Ors.*, (2011) Civil Appeal Nos. 9367-9369/2011

<sup>3</sup> Sushant Singh, 'Explained: What Supreme Court said on women in Army' (*The Indian Express*, 18 February 2020) <<https://indianexpress.com/article/explained/women-in-army-what-supreme-court-said-6273177/>> accessed 24 June 2022

<sup>4</sup> Krishnadas Rajagopal, 'Women will be allowed to enter National Defence Academy, Centre informs SC' (*The Hindu*, 18 September 2021) <<https://www.thehindu.com/news/national/armed-forces-have-decided-to-induction-of-females-in-nda-centre-tells-sc/article36354892.ece>> accessed 23 June 2022

<sup>5</sup> 'Not appointing men in Army's nursing corps akin to 'gender discrimination', says Delhi High Court' (*Scroll*, 19 October 2018) <<https://scroll.in/latest/897549/not-appointing-men-in-armys-nursing-corps-akin-to-gender-discrimination-says-delhi-high-court>> accessed 24 June 2022

was given six weeks to submit a response.<sup>6</sup> The judgment of this case is indeed awaited by many, for it would set an important precedent for coming generations.

### ANALYSIS OF RECENT CASES

Even though the policies are subject to judicial review, professional military judgment has the final say in executive decisions regarding the induction, employment, and retirement of women in the armed forces. The Centre needs to steer clear of its stereotypes and gender norms and openly accept the decision of the apex court. In a written response to a Rajya Sabha question in 2018, Minister of State for Defence Subhash Bhamre stated that women make up 3.80% of the Army's workforce, 13.9% of the Air Force's workforce, and 6% of the Navy's workforce.<sup>7</sup> This is a good increase in the participation of women wanting to join the Army, enough to show their interest in this field. However, the top military and political leadership will be responsible for the larger change that must occur in the culture, standards, and values of the Army's rank and file. Just because an official cannot imagine a woman giving him orders or being his superior, women cannot be denied their basic rights. The Court has very well affirmed that the regulations regarding admission should be impartial, their recruitment will automatically depend on their capabilities.

In terms of gender parity, the world is likewise undergoing transformation. India could take some lessons from countries like Israel, the US, Germany, and Australia which employ female soldiers in combat positions. Hence, it is obvious that the notion that women are incapable of holding such jobs is founded on a skewed understanding of gender roles. The court's rulings have brought us up to date with the times. Since women are still not permitted in combat units like the infantry, armored corps, etc., there is a need for further reforms. The current issue in the Delhi High Court over the hiring of male nurses is an indication that sexism affects men as well as women. Such laws were initially created as a result of the gender roles that society has

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<sup>6</sup> 'Delhi HC seeks Centre's stand on plea against only women nurses in military' (*The Print*, 23 May 2022) <<https://theprint.in/india/delhi-hc-seeks-centres-stand-on-plea-against-only-women-nurses-in-military/967962/>> accessed 24 June 2022

<sup>7</sup> 'Women to comprise 20% of military police after graded induction: Nirmala Sitharaman' (*The Tribune*, 18 January 2019) <<https://www.tribuneindia.com/news/archive/nation/women-to-comprise-20-of-military-police-after-graded-induction-nirmala-sitharaman-715756>> accessed 24 June 2022

assigned to each gender. If the Court rules in favor of the male nurses, social justice would gain another victory.

## CONCLUSION

Since the British Raj, gender parity in India has advanced significantly. The fundamental rights of Indian citizens were safeguarded by the Constitution. The right to equality is one of the most significant rights. Although there have been numerous instances of its infringement, our courts have made every effort to uphold this right. However, some laws go against this fundamental right because of the era in which they were created. These statutes exhibit the stereotyped beliefs of their authors. And for this reason, the Constitution's Article 13<sup>8</sup> and the government's ability to change the Constitution are two crucial instruments for safeguarding social justice. These have frequently shielded the citizens from severe injustice.

In one such case, the nation's women recently won their 17-year legal struggle against sexist regulations that barred them from joining the Indian Armed Forces. The case primarily focused on the Center's resistance to changing the laws and the Court's willingness to maintain the rights guaranteed by Article 14<sup>9</sup>. It is inappropriate to maintain the laws that Colonial authorities established today. The law must adapt to the changing times and acknowledge them. Although it could take some time if the principles are followed correctly, a change in society's mentality would eventually occur. Therefore, the law must step in and take the necessary action to ensure that gender balance prevails in the Indian Armed Forces.

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<sup>8</sup> Constitution of India, 1950, art.13

<sup>9</sup> Constitution of India, 1950, art.14