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Permanent Commission of Women in Indian Army – Issues of Equality and Discrimination

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ABSTRACT

Permanent Commission in its literal sense means "a career in the Army until you retire". Women officers could not previously have permanent roles in the Army and had to join through the SSC route, which lasted up to 14 years. After last year's judgment of SC, they are now entitled to serve permanently when their commission is completed. The Supreme Court of India (SC) ruled in the landmark case of Ministry of Defence v. Babita Puniya & Ors in February 2020 that women were qualified for Permanent Commission and commanding positions in the Indian Army on par with their male counterparts. ²Their victory ensures that female officers will be able to serve in all 10 branches of the Army on a permanent basis. But even now, there is a glass ceiling for women officers to enter combat forces and other 8 branches.

However, being legally eligible for a PC does not mean that the road to being granted one is smooth. A year and a half into the verdict, as per data released by the Indian Army, only 45% of eligible female officers had been granted PC comparatively to 90% of male officers were cleared for PC. ³This shows the evident resistance to women officers from the central Government and the Indian Army. The ground reality of armed forces is the main reason behind the Army and central Government taking such an orthodox and conservative stand. Army men who were previously taught to kill their femininities are suddenly asked to accommodate the women as their superior. Inevitably, the transition towards equality for women in the forces will be far from frictionless.

This paper tries to present the repercussions of the Supreme Court's judgment on women's ranks, pension, and opportunities in the Indian Army, with further examination of new institutional obstacles they have to overcome to be permanently commissioned. This research also aims to determine whether the policy of the Centre and the Indian Army in this regard is violative of the right to equality and lacks reasonable ground for discrimination.

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² Secretary, Ministry of Defence Vs. Babita Puniya & Ors, (2020) SC 73, pp 44.

³ Krishnadas Rajagopal, *Permanent commission: women Army officers move Supreme Court*, <https://www.thehindu.com/news/national/permanent-commission-women-army-officers-move-supreme-court/article33172022.ece>

I. WOMEN IN INDIAN ARMY: HISTORICAL BACKGROUND

India has a rich history of women in the armed forces starting from the "Rani of Jhansi" regiment of INA to recent the induction of Avani Chaturvedi as the first woman combat pilot. However, their journey has not been an easy one as they have had to overcome many barriers, from seeking permanent commissions to striving for combat positions.

The British Army during Second World War decided to begin recruiting women in India for suitable hands in support duties. Consequently, the Women's Royal Indian Naval Service began permitting women to occupy shore-based positions, allowing more men to be deployed to sea. On July 12 1943, Bose formed the all-women "Rani of Jhansi" regiment, which broke the popular alignment of army services with masculine character; however, it was only in the early 1990s that all three services opened their doors to women. ⁴Indian Army began inducting women in 1992 into the officer cadre. The scheme initially allowed for a five-year service period, which was revised to 14 years through SSC (Short Service Commission). In the Short Service Commission, women were employed for a period ranging from five to 14 years only and could not rise above the rank of Lt Colonel, but now SC judgment in the case of *Ministry of Defence v. Babita Puniya & Ors* paved the way for female officers to be eligible for PC.⁵

However, being legally eligible for a PC does not mean that the road for women in the armed forces to achieve equal opportunities and treatment in the Army is smooth. As per figures, at present, women constitute barely 2.5 to 7% of the officer cadre. In the Indian Army, there are just 1,100 women officers out of a total of 35,377; in the Indian Air Force, there are 750 women out of 10,760 officers; and in the navy, there are 300 women out of 7,394 officers.⁶

II. PERMANENT COMMISSION: A REMEDY TO INSTITUTIONAL DISCRIMINATION?

The Supreme Court of India (SC) ruled in the landmark case of *Ministry of Defence v. Babita Puniya & Ors* in February 2020 that women were qualified for Permanent Commission and commanding positions in the Indian Army on par with their male counterparts. Their victory ensures that female officers will be able to serve in all 10 branches of the Army on a permanent basis. But even now glass ceiling is there for women officers to enter combat forces and many obstacles to achieving equal opportunity and treatment in the armed forces.

⁴ Adrija Roychowdhury, WOMEN IN INDIA'S ARMED FORCES CONTINUE TO BATTLE PREJUDICE DESPITE MODEST VICTORIES – THE DIPLOMAT (2020), <https://thediplomat.com/2020/09/women-in-indias-armed-forces-continue-to-battle-prejudice-despite-modest-victories/> (last visited Oct 15, 2021).

⁵ *Supra* 2

⁶ P. Chowdhry, Women in the Army, ECONOMIC AND POLITICAL WEEKLY, 45(31), 18–20. <http://www.jstor.org/stable/20764357>

Traditionally, those admitted under SSC have traditionally served for up to 10 years, after which they can opt out or serve for another four years, finishing their tenure.⁷ However, before this landmark judgment of SC in Feb 2020, even after completing the term of SSC, male officers were eligible for PC. On the other hand, female officers were denied this route. SSC is the only way for women to join the Army, which is in striking contrast to how males have typically entered the organization. The PC path is used by the vast majority of males who enter the military. This was clear institutional discrimination in the sense that the majority of these are high school or college recruits who are given more job stability and opportunities than women who have served for more than a decade. SC, in the case of Babita puniya & Ors, recognized this institutional sexism and said that "Army as an instrumentality of the State, differentiates between women and men, the burden falls squarely on the Army to justify such differentiation with reason. It must explain in discharging its burden as to why women across the board should not be considered for any criteria or command appointments."⁸

Supreme Court's judgment of granting PC has a huge impact on ranks, pension, and opportunities given to women officers in the Indian Army. A direct consequence of a lady officer's limited employment period was that she used to miss out on many courses and higher ranks, which was detrimental for the officer both economically and also in regards to the status and opportunities but now women officers can get prestigious roles such as that of Colonel, Brigadier, Major General, etc. An equal opportunity not only in terms of career progress but also in job security will be provided through permanent commission. Aside from the possibility of employment stability, PC provides women with the opportunity to receive a pension and other retirement benefits, which were previously exclusively accessible to male officers. Hence, we conclude that this judgment granting PC to women officers somehow gives relief to women from this institutional sexism, but it can't be regarded as a remedy to Institutional Discrimination as various discriminatory policies of the Indian Army still remain untouched by this judgment.

For instance, SC, in this judgment, refrained from commenting on the exclusion of women from combat forces by saying that it is a matter of policy is not the subject matter of contest in the present appeals. Though SC previously accepted the fact that exclusion of women from combat forces is a clear violation of the right to equality and against constitutional morality, it deliberately left this decision for policymakers. As civilians, we can find arguments presented

⁷ Suman M & Mrinal Mohanty, Women in the Armed Forces: Misconceptions and Facts, 25(1) INDIAN DEFENCE REVIEW 1-8, (2018).

⁸ (67) pp. 51, *Supra* 2

by the Army and central Government justifying the discrimination, baseless and vague, but they are based on the ground reality of armed forces. Army men who were previously taught to kill their femininities are suddenly asked to accommodate the women as their superior. Inevitably, the transition towards equality for women in the forces will be far from frictionless, but on the other hand, not granting equality to women in the whole sense will amount to discrimination.

III. ISSUES IN LIGHT OF THE INDIAN CONSTITUTION

1) **Article 33 ceased to apply** (In the context of *Ministry of defence vs Babita Punia & Ors*)

The Union of India and the Indian Army tried to challenge the validity of various petitions seeking equality in the grant of commission by contending that provisions of the Army Act are protected under Article 33. Article 33 of the Constitution empowers Parliament to determine by law to what extent the fundamental rights conferred by Part III of the Constitution should be restricted or abrogated in their application to members of the Armed Forces. This power is with Parliament in order to ensure proper discharge of their duties and the maintenance of discipline among them.⁹ Also, another argument justifying the discrimination was that Section 12 of the Army Act gives power to President to grant commission; hence no mandamus can be issued from the court.¹⁰

Though Supreme Court recognized judicial limitations, it set aside this argument by stating that "the present situation had come due to the non-implementation of the binding directions of Delhi High Court by Union Government and non-intervention would be an injustice for respondents." Even though SC, in this case, intervened, it can be concluded that Article 33 is one of the obstacles before women officers in the way of achieving equal opportunities as it gives scope to the State to discriminate against the female officers in the armed forces.¹¹

2) **Right to Equality and Equality of opportunity in public employment**

The principle underlying the guarantee of Article 14 is not that the same rules of law should apply to all persons within the Indian Territory; it only means Equal laws would have to be applied to all in the same circumstances, and there should be no discrimination between individuals.¹² Hence, denying consequential benefits to female officers, including promotion

⁹ R. Viswan v. Union of India, (1983) 3 SCC 401

¹⁰ Sec 12 of Army act, 1950: No women are eligible in regular army rather they can be appointed as a staff member.

¹¹ Article 33 of Indian Constitution: Power of parliament to modify the rights conferred by this part in their application etc

¹² M. P. JAIN, INDIAN CONSTITUTIONAL LAW, pp. 938, (6th ed. 2011).

and financial benefits in parity with male counterparts, is clearly a violation of the right to equality under Article 14 of the Indian Constitution.

Right to Equality and Equality of opportunity in public employment ensures that the Government doesn't act arbitrarily as it functions within the constitutional framework. However, such an absolute bar on women seeking criteria or command appointments is not only amounting to discrimination based on gender but also a denial of equal opportunity of employment and to these women. Hence, this could be regarded as a gross violation of Articles 14, 16, and 21 of the Indian Constitution to accept a situation where such women officers are deprived of permanent commission while their male counterparts are being granted permanent service.

3) Right to Rationality

Article 14 brings with it the right to rationality, allowing for differentiation between two classes, but the differentiation must be based on rational reasons. Blanket ban restrictions on women seeking criteria or command appointments are inconsistent with the right to rationality guaranteed under Article 14. The State had no rational ground to substantiate the differentiation other than deeply rooted stereotypical differentiation of masculinity and femininity that the women belong to the weaker section and taking up the task in the Army will be too arduous for them.¹³ Differentiating against the women officers on the basis of gender and without any reasonable ground is not only violative of the right to rationality but also detrimental to the dignity of the members of the Indian Army who have been employed to achieve the mission of national security.¹⁴

IV. CONCLUSION

The State must, of course, adopt a line and say that any kind of inequality, based on gender, caste etc., needs to be eradicated but that such eradication has to be a gradual process, especially in the critical matter concerning national security. Rather than outright forbidding women from employment in some branches of armed forces, the Government should concentrate on finding ways to mitigate the unintended consequences of gender disparities. It is the responsibility of the State to create secure environments in which women may freely execute their duties in line with the requirements of their profession.

The judgment in the case of *Babita puniya & Ors* clearly shows how the union has tried to differentiate between its officers based solely on the irrational grounds of biological factors

¹³ Lt Col Nitisha vs. Union of India, LL (2021) SC 181

¹⁴ *Id.*

while continuing to reinforce the stereotype that women are weaker than men. Article 39 of India's Constitution directs the State to work towards ensuring that men and women have equal access to an adequate means of livelihood. It will be against the spirit of the constitution to discriminate against the women officers in the armed forces without any rationale. Constitution does not envisage a nation wherein the state authorities will be forced to provide the fundamental rights by the judiciary, rather being 'a parens patriae' State, the State should respect these rights so that the individual can enjoy his or her life with dignity. As rightly pointed out by SC in the case of Ministry of Defence v. Babita Puniya & Ors,

*"Seventy years after the birth of a post-colonial independent state, there is still a need for change in attitudes and mindsets to recognize the commitment to the values of the Constitution."*¹⁵

¹⁵ (53) pp.39, *Supra* 2

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