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# Right to Equality and Gender Stereotypes in the Indian Army

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ASHWARYA SHARMA<sup>1</sup>

## ABSTRACT

*The right to equality is one of the six fundamental rights enshrined in the Indian Constitution. It talks about equality before the law, the prohibition of any discrimination on the grounds of race, religion, gender, caste, and birthplace. It also includes equality of opportunities. This paper discusses how women paved the way for the fight to be handled fairly in the Indian Army. It discusses how women won the battle against the award of permanent commission in ten streams in the Army and also understands the idea behind the formulation of legislation.*

*It will focus on SECTION 12 of The Army Act 1950, which highlights the ineligibility of females for enrolment or employment and why it calls for immediate amendments. With various cases challenging the provisions of law about the permanent commissions to SSC women officers in all the ten streams and coming up time and again, the constitutional validity of the statute's provisions is looked into, along with a study of army laws for women in various other countries. The current situation calls for appropriate changes to the present law to accommodate contemporary views and ideas of rights and responsibilities and to uphold the concept of assured reproductive choice for our nation's women.*

**Keywords:** *Equal rights, Permanent commission, Women, Army*

## I. INTRODUCTION

*“The highest national goal must be unleashing women’s influence in governance. That is the greatest source of societal energy we have kept corked for half a century.”*

*– Mani Shankar Aiyar*

Throughout human history, warfare has been perceived as the core of masculinity and an all-male activity. Most cultures in the world equate men with warfare and women with peace. Traditionally, men were considered warriors, and women were as beautiful souls who were just housekeepers; the roles were well demarcated. The presence of women on battlefields, amid all this, has been highly noteworthy for decades. Queens in Indian history, such as Rani Lakshmbai (19th century) and Razia Sultana (13th century), have led armies and fought battles. In order to

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<sup>1</sup> Author is a student at School of Law, SVKM's Narsee Monjee Institute of Management Studies, Indore, India.

combat the British, the Rani Lakshmi Bai regiment in the Indian National Army (INA) also formed Subhash Chandra Bose and all women's regiments. The Indian National Army employed 1000 women, who were known as Ranis. Most ranis were trained to fight as soldiers, and nurse training was given to others. Both men and women were dressed in similar uniforms, and the level of training for women was similar to the standards of rigorous training for male soldiers. For tales of their dauntless devotion, the rains considered deserving of national services by colossal persona like Subhash Chandra Bose's remained eternal in legends. Dr Lakshmi Sahgal of the Indian National Army led about 1000 female soldiers recruited against British rule for the Rani of Jhansi Regiment in 1944-45 (Bhattacharya, 2012). Women in armies were not only acceptable from the 14th to 19th centuries but were vital that without the service of women, armies could not have functioned as well. But later, various policies of exclusion were imposed on the position of women throughout the eighteenth century, and at the beginning of the nineteenth century, the last relics of non-military support services and the full exclusion of women were removed. As armies became more professional and officious, they exclusively became predominantly male.

This distinguished line of specific gender task distribution has been combined by developments over the era and has managed to put a wedge into the male-dominated society. The first batch of women officers got commissioned in 1992; now, women still have not been able to break the barrier fully despite breaking the crust and making inroads. Yet with time, they have started to see the bigger canvas and their scope on the same. Readiness for defence is one important aspect that must be considered while considering their options for employability. Viewing their career elements and prospects holistically is important, keeping the ultimate target in mind. Yet a few discriminatory policies, such as their short service commission, fight against exclusion, entry into ranks, etc., need to be reviewed as stated by the government. Before deciding on any such issue, pre-planning and a systematic approach should be the correct approach. A small beginning, however, ensures a greater role for women. To move beyond understanding that genders stereotyping is an obstacle to women's rights to substantive progress in the enforcement of human rights commitments to combat negative stereotypes and wrongful stereotyping would take all of us to give this problem the serious attention it needs, treaty bodies, special procedures, States Parties, civil society, academics and many others.

#### **(A) EXPERIENCE OF WOMEN IN THE INDIAN ARMED FORCES:**

Female officers have been in the armed forces for around 80 years and have served with dignity and distinction. In 1927, the Militia Nursing Service and, after 1943, the Medical Officers System was integrated. With the implementation of the Women's Special Entry Scheme

(WSES), recruitment of women as Special Service Commissioned (SSE) officers in the non-medical system began for a minimum duration of five years, which is currently extendable to fourteen years of fair service.<sup>2</sup> Eligible women must successfully qualify through several assessments and undergo training per commissioning for a 24-week duration at the Officers Training Academy for the Army and its equivalent institutions for the Navy and Air Force. They are inducted into the non-combat wings of the armed forces as short-service commissioned service officers on successful completion of the pre-commissioning training. There are currently 9449 female officers in the Indian army, excluding medical services from the military.<sup>3</sup> In the air force, women are entitled to fill all vacancies in branches of ground duties and transportation and helicopter stream of the flying branches in engineers, signals, military service corps, ordnance, education, intelligence, legal branch and ENE (Corp of electrical and mechanical engineers). In the Indian Navy, since 1992, women have been appointed as officers in the executive branch's education, logistics and legal cadres. Presently, female officers are not posted to serve on the field. Permanent commissioning of women in the branches and cadres of the three services, which do not require direct combat or the prospect of physical confrontation with the enemy, has also been enabled in the path-breaking creation. Permanent commission divisions were given to include Judge Advocate General, Army Education Corps and its Navy and Air Force correspondence divisions, Air Force Account Division and Army Naval Construct.<sup>4</sup>

### **(B) THE ROLE OF WOMEN IN THE ARMED FORCES:**

The role of women in the armed forces (both sociological and occupational) is a result of the interplay of cultural forces (values, norms, beliefs, attitudes) and other factors, such as technological change, demographic trends, occupational structures, labour shortages and the objective of militia production. The Indian Armed Forces have visualised the role of women only in the officer context and in restricted occupational specialities. They are given a restrained commission in battle support weapons and services only. Women are given only an initial compulsory contractual period of five years, excluded to a maximum term of 14 years in the officer system. Women are found in the frame below:

**Army:** Signals, Army Service Corps(ASC), Army Medical Corps(AMC), Army Ordnance

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<sup>2</sup> Wing Commander TP Hariprasad-(Retd.),Should We Shun Women in the Armed Forces?, Internet www page at URL:<<http://www.expressindia.com>> version current as of 02 Oct 2008.

<sup>3</sup> Indian Arm Forces now have 9449 women personals most in the army ,Government of India, Business Standard, 04 March, 2020

<sup>4</sup> "Women Officers of Armed Forces to get Permanent Commission in Select Branches", Press Information Bureau, Government Of India, Ministry of Defense, 26 September, 2008

Corps(AOC), Judge Advocate General (JAG), Army Education Corps(AEC), Intelligence Corps.

**Air Force:** Flying, Technical (Aeronautical Engineering), Administration and Logistics, Accounts, Education and Meteorology.

**Navy:** Law, Logistics, Air Traffic Control (ATC) and Education.

Women are not permitted in specialities where a military position or direct enemy contact is envisaged. In the Air Force alone, women can fly planes into danger zones.

### **(C) GENDER BIAS OR STEREOTYPE**

In all cultures, stereotypes exist. It is essential to ascertain how we view each other by oversimplified assumptions about individuals based on specific characteristics, such as race, sex, age, etc. They are founded on traditions, behaviours and values that are socially formed. Stereotyping is often cultural, religion-based and encouraged and represents the underlying relationships of power. Stereotypical views can be static, but over time, they do and have changed, and that's the challenge and the chance. To move beyond understanding that genders stereotyping is an obstacle to women's rights to substantive progress in the enforcement of human rights commitments to combat negative stereotypes and wrongful stereotyping would take all of us to give this problem the serious attention it needs, treaty bodies, special procedures, States Parties, civil society, academics and many others. Stereotypes are not necessarily inherently negative, but they appear to be prejudicial because they are stereotypes that ignore the personal and innate talents, opportunities and environment of an individual. By restricting options and opportunities, negative assumptions impede the willingness of people to fulfil their potential. They are at the centre of gender inequality, transparent and hidden, direct and indirect, and persistent, adversely affecting the de jure and de facto substantive equality that women should be guaranteed. They are converted into realistic policies, regulations, and procedures that harm women on the ground.

The consequence of this on women's mental and physical dignity is to deprive them of equal knowledge, exercise and enjoyment of fundamental freedoms and rights (recommendation of the CEDAW Committee). The gender wage gap, occupational discrimination, denial of leadership promotions, glass ceiling in different occupations, increased casualisation of female employees and poverty feminisation, trafficking, forced marriage, female genital mutilation, honour killings, domestic violence against women, workplace and public spaces, and lower levels of equation and employment prospects.

### **(D) WOMEN OFFICERS:**

At the age of 23 to 25 years, female officers are usually commissioned. In all three branches, several women officers decided that joining the armed forces was a tremendous achievement. Some were motivated by the army's aura, while others wanted to prove themselves. Mentally robust women, physically fit, and highly motivated dislike them seeking pre-frential care. Women only want to be viewed on a par with their male peers to have an equal chance to prove their worth. They need criteria of the same selection, the same training requirements and the same work schedules. As it offends their sensitivity and self-respect, they do not want to be viewed as frail. Some women requiring kid-glove care to avoid hardship are excluded.

### **(E) MAJOR ISSUES EXPERIENCED BY WOMEN IN THE ARMY:**

The global scan and our observations show that women face social, behavioural and psychological issues at all levels across all military forces. Women in the militia profession's ethos are not fully content. Women in all the armed forces have to face big issues.

#### **1. Sexual Harassment**

This is regarded by almost all women as their greatest fear. And extreme sexual harassment accusations are frequently handled functionally. Some male officers said that doing what comes naturally or a bit of socialising to have some fun is not wrong here. Per the male officers on seeing a female and regulating the animal instinct, it is impossible for anyone to act like a saint. The explanation given by female officers for failing to disclose that any woman filing a case or speaking out is castrated by the public, while the person responsible for the act may face negligible fines and remain in service. According to rough figures, just 2 percent of the cases are published, and most of them are settled outside court or with the culprit apologising for his actions. In the worst kind of injustice, the defendant often finds herself in the dock rather than the officer she charges. Captain Poonam Kaur, a young officer who posted a Kalka with a supply and transport unit in August 2008, accused three of her senior officers of sexual assault, including commanding officers. According to the admission of the lawyer of Captain Kaur, Colonel RK Agarwal, the investigative court ordered to review the matter did not even investigate her complaint. Instead, he said, it investigated counter-allegations made by her commanding officers. The air force had a "Kaur moment" of its own. Flying officer Anjali Gupta slapped harassment charges against her senior officers, but she proved none of them. For insubordination, Officer

Gupta was court-martialled.<sup>5</sup> The way out is not to restrict women from joining but to shift the

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<sup>5</sup> No Unequal Treatment for Women Officers, Internet www page at URL:< <http://pragmaticnationalinterest.in>> version current as of 21 September 2008.

working culture from a feudal, colonial military to a pre-professional military belonging to the democratic republic of India in the twenty-first century.

## **2. Low Acceptance**

The acceptance of women in the militia in the country was not smooth. In particular, to increase the acceptability of women in the militia, we need to shape the mindset of society at large and male soldiers. There is a clear perception that many male officers prefer not to have a colleague with a woman. In the words of Lt. Gen S Pattabhiraman, former vice chief of military staff, "Ideally, we will restrict ourselves to having gentlemen and not lady officers at the unit level. Feedback from lower formations suggests low levels of comfort with lady officers. We can do without them."<sup>6</sup> He acknowledged that women with the utmost and well-qualified more than men, but the army recruited women with the utmost women.<sup>7</sup> The question is how best to use their service without undermining the character and ethos of the army.

## **3. Lack of job satisfaction**

Many women feel that there is no adequate appreciation of their competence. Without valuing their thoughts, seniors tend to be over-indulgent. They are generally oppressed and do not engage in significant decision-making. To prove their worth, they have to work twice as hard as men. Additionally, for even slight slip-ups, a woman is still under investigation. Many women claim they are usually comprehensive for supposed women, such as work, despite their professional qualifications. Either they are assigned regular desk work or are asked to complete social minutiae-related duties.

## **4. Poor Comfort Level**

The fact that their presence among males appears to make the world 'formal and rigid' was acknowledged by most females. The level of mutual comfort between male and female colleagues is low. Men lack their light-hearted humour, which is necessary for releasing work tensions and fostering harmony in the group. Women are perceived to be messing with their privacy. A retired brigadier said, "a lady army officer is treated like a lady, not an officer." This mentality starts from the lowest ranks and goes to the periphery. "The jawans, long used to taking orders from men, are not comfortable with lady officers," an army officer stationed at Delhi dismissively said. The army men are not yet ready to recognise women in their midst; forget about battle positions. There is an unwritten rule that female officers can only be posted where families are stationed. In other words, they're always at peace stations and hardly ever in

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<sup>6</sup> Kumar Meenakshi, Women at Ease, 21 Sep 2008, Sunday special Times of India

<sup>7</sup> Krishnan Kavita, Women Unwanted in the Indian Army, 20 Aug 2008, Times of India, New Delhi

the thick of things.

### **5. Women Officers and WorkPlace in the Indian Armed Forces**

The inclusion of women in the forces for most of the troops meant lowering physical requirements, changes to women's work culture requirements, constraints on the ego and liberty of soldiers, tensions, courtships, jealousies, favouritism, the disintegration of hierarchies, unenforceable codes of conduct leading to discontent and sex scandals.

## **II. ANALYSIS**

### **(A) FORMULATION OF THE LEGISLATION**

The army has just 3% females, the Navy 2.8%, and the Air Force performs best with 8.5%. In the Defence Forces, for example, India has one of the worst recruitment records in the world, worse than immediate neighbours Pakistan, Nepal, and Sri Lanka.

#### **30th January 1992**

In non-medical roles, the Indian Army started to employ women. This included jobs in education, law, food catering, and logistics. It had a veiled motive behind it, however. India's gender record was recently reviewed by UN agencies in 1991. As a result, the obnoxious ban on women's recruitment in non-combat positions was withdrawn, and women were hired for a span of 5 years as SSC officers, as provided in the government notification. Later, however, because of their excellent efficiency and shortage of personnel, the term was extended to 14 years. But, although not long after 14 years, all women were exempted from service, men earned raises, and, in addition, PCs were also given in the same branches and jobs where women had previously worked.

#### **February 2003**

Before Delhi HC, a Writ Petition was formed by Babita Puniya to grant PC in the form of a Public Interest Litigation to Women SSC Officers in the Army. The PIL recommended that, because of the short 14-year service period for old female officers, they are not eligible for a pension which requires 20 years of service. After five years of service, men enrolled as SSC officers and female officers were given PCs, but the female officers were only given an increase of five to six years to keep them in service. In all three branches, Air Force, Navy, and Army, Babita Puniya represented 50 women officers' written petitions.

#### **July 2006**

Recruits from the "Gender Special Entry System" (WSES) had a shorter pre-commission

training time than their male counterparts, who were basically in the way of qualifying for PC. In 2006, the SSC scheme replaced the WSES scheme, a striking step toward gender equality. But even now, at the end of 10 years of service, women officers have not been able to opt for a Permanent Commission. Nonetheless, in September 2008, the Defence Ministry released an order stating that the Advocate General and Army Education Corps would be assigned the PC.

### **March 2010**

On the ground that PC was given prospectively and only in particular cadres, the above decision was questioned. Delhi HC passed an order specifying that female SSC officers would be entitled to PC at the same level as their male counterparts. The government appealed this order and, even though the judgement was not stayed, the Ministry of Defence did not follow these orders.

### **(B) PURPOSE OF MILITARY ACT**

1. For some time, the need for a general revision of the three Acts, namely the Army Act, 1950, the Navy Discipline Act, 1934 and the Air Force Act, 1932, has been felt. Some of the provisions of the current Acts were already obsolete and inadequate for modern requirements, but for obvious reasons, the need for revision became urgent after 15 August 1947. The goal was to make them as closely comparable in form and arrangement of matter as might be required by the special requirements of each service.

2. While the reform of the Army and Air Force Acts has been completed, this was not necessary in the case of the Naval Act. The new Naval Discipline Act is based on the corresponding British Act and in many ways, is significantly different from the British Army Act and Air Force Acts, one largely to the British Navy's unique practises. Therefore, revising the Naval Discipline Act has proved a more challenging issue. A special committee was formed in the United Kingdom to discuss the issue of revision of the British Naval Act. It was considered that it would be an advantage to await that committee's report and gain from its recommendations. Therefore, the revision of the Naval Discipline Act has been postponed. The Committee's report is expected to be available within the next few months, following which the reform of the Naval Discipline Act will be considered. However, it is no longer deemed appropriate to postpone the revision of the Army and Air Force Acts, and they are therefore being implemented during the Legislature's session.

3. The key objectives of the reform of the Army Act are

(a) to make it self-sufficient by integrating the relevant provisions from several other related enactments;

(b) to adapt the existing provisions to the new constitutional establishment and current requirements; and (c) to bridge, on the one hand, the distance between the Army and Civil Laws to the extent possible in the case of penalties for punishment.

4. Some of the more important objects desired to be accomplished are the following:

(1) The Chapter on penalties needed to be rationalised. On the one hand, the Army Act of 1911, is unduly harsh in its penalties and, on the other, insufficient in its list of offences. It also varies greatly from the Air Force Act of 1932 regarding the scale of fines for the number of offences. As in the Indian Penal Code and other penal laws of the country, the maximum penalty as now prescribed in the draught Bills varies with offence or group of offences, as is consistent with the severity of the offence or offences. An effort was also made in the Bill to classify penalties in various cases according to the severity of the crimes, penalties being naturally more serious, for example, in the case of offences committed wilfully or while on active duty.

(2) Provision has been made for the powers of the Indian States to become subject to the Army Act in the bill. Exclusion from service of foreigners, except with the permission of the Central Government; awarding of commissions to officers; acting on behalf of the Governor-General, and protections against improper arrest and pre-trial detention of accused persons. Provisions have been made to reduce the possibility of discrimination in court-martial trials and, at the same time, improve the status and responsibility of these courts.

(3) While total uniformity is neither feasible nor desirable, the Army and Air Force Acts have eliminated, where feasible, conspicuous disparities. With necessary differences in terms and with such special provisions as were considered appropriate, the Bills have been identical in type, arrangement and matter.

(4) Subsidiary enactment provisions such as the Indian Army (Suspension of Sentences) Act, 1920, and Ordinances Nos. The Army bill included XXXVI of 1943 and XXXVII of 1945 about penal pay deductions and benefits for prisoners of war.

(5) In the Army and Air Force Acts, sections relating to the property of deceased deserters and lunatics have been excluded. These will focus on a separate bill common to the two Services. Gaz. Ind., 1949. Pt. V, page 602. An Act to consolidate and amend the legislation relating to the regular Army government.

## **1. WHAT DOES THE ACT SAY?**

In Indian Defence Services, a Permanent Commission indicates that an individual, unlike the SSC, may serve in the Defence Services until they retire. The officers of the SSC are the

individuals who come into service for a short period, usually lasting from 7 to 14 years before they have to retire. Annuity or post-retirement canteen facilities are not provided to SSC officers. Individuals are recruited into the Defence Services as SSC officers and can, after a predefined duration, apply for the Permanent Commission to fulfil the requirements. For woman officials, however, that is not the case; Section 12 of the Army Act, 1950, unambiguously makes women ineligible for a permanent army position.

The Navy Act, 1950, and the Air Force Act, 1950, also contain such discriminatory sections, which are not only derogative to women but also violate the principle of non-discrimination on the grounds of sex, enshrined in Article 15(1) of the Constitution of India. The recruitment process and the qualifications needed to be SSC officers for both men and women are the same, and they have similar post-enlistment duties as SSC officers. Women are, however, denied their constitutional right to pursue fair opportunities in public jobs when it comes to opting for a PC.

The Navy Act, 1950, and the Air Force Act, 1950, also contain such discriminatory sections, which are not only derogative to women but also violate the principle of non-discrimination on the grounds of sex, enshrined in Article 15(1) of the Constitution of India. The recruitment process and the qualifications needed to be SSC officers for both men and women are the same, and they have similar post-enlistment duties as SSC officers. Women are, however, denied their constitutional right to pursue fair opportunities in public jobs when it comes to opting for a PC.

Despite having devoted prime years of their lives to the nation's government, they have been left in the lurch without pension and promotional rewards at par with their male counterparts. The latest decision of the Supreme Court to give women officials a new ray of hope has been brought by the permanent commission in every section of the Defence Services.

## **2. CONSTITUTIONAL VALIDITY OF THE ACT**

All laws established in the country must necessarily be in line with the provisions laid down in the Indian Constitution. In addition, any statute should not violate the constitutional rights enshrined under the Constitution. The provisions of the Army Act 1950 have failed to protect women's rights and violate the basic fundamental rights given to them by not granting them equal opportunity and rights in the Indian Army in matters of personal choice, individual freedom and dignity.

## **3. THE ARMY ACT IS DISCRIMINATORY UNDER ARTICLE 14, ARTICLE 15, and ARTICLE 16**

SECTION 12 of the *Indian Army Act, 1950* defines the Ineligibility of females for enrolment or

employment.<sup>8</sup> As per the said Section, “, no female is eligible for enrolment in or jobs in the regular army. Except in the case of a corps, department, branch or other unit forming part of, or annexed to, any part of the regular army, as the central government may specify in that name by notification in the Official Gazette: provided that nothing contained in this section affects, for the time being in force, the provisions of any law providing for the raising and maintenance of any auxiliary service”. This Section doesn’t allow women to take part in combat roles. It violates the Fundamental Rights of women officers, as they are not treated equally.

**Article 14** of the Constitution of India reads: “*The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.*”<sup>9</sup> The said Article is divided into two parts –it commands the State not to deny to any person ‘equality before the law not to deny the ‘equal protection of the laws. Equality before the law prohibits discrimination. The concept of ‘equal protection of the laws requires the State to give special treatment to persons in different situations to establish equality amongst all. The requisite corollary to this would be that equals would be treated equally, while un-equals would have to be treated unequally. Article 14 refers to all people, both natural and legal. All human beings, whether male, female or transgender, are included among natural persons.<sup>10</sup> The concept of equality is not based on the uniformity of treatment for all in all respects, but on giving them the same treatment in those respects in which they are identical and in those respects in which they differ.’ Over and over again, the Supreme Court has reiterated that “*Article 14 does not rule out classification for legislation.*”<sup>11</sup> It is important to note here that the validity of a statutory classification must be rational and based on some true and substantive distinction which is rational and reasonably related to the need or intent for which the classification is made.

**Article 15** guarantees that “*the citizens are not discriminated against in any way by the State, based on religion, race, caste, sex or place of birth, or by any of them. This Article shall not prohibit the State from making specific provisions for women or children.*”<sup>12</sup>

**Articles 16** guarantees “*equality of opportunities in matters of public employment. It prevents the State from discriminating based on the religion of any kind, class, caste, gender, descent, birthplace, place of residence, or all of these.*”<sup>13</sup>

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<sup>8</sup> Army Act 1950, Sec. 12

<sup>9</sup> Constitution of India, Ar. 14

<sup>10</sup> National Legal Services Authority v. Union of India, (2014) 5 SCC 438, 492.

<sup>11</sup> Charanjit Lal Chowdhry Vs.. Union of India, AIR 1951 SC 41.

<sup>12</sup> Constitution of India, Ar. 15

<sup>13</sup> Constitution of India, Ar. 16

The majority of the Hon'ble Supreme Court's 7-Judge Bench, in the *State of Kerala v. N.M. Thomas*<sup>14</sup> introduced a revolution in the definition of equality. It held that Articles 14, 15 and 16 are all rights to equality and that the purpose of the equality scheme was to achieve true equality.

### III. COMPARATIVE STUDY

#### (A) WOMEN'S ROLE IN ARMED FORCES OF UNITED STATES

The Women's Armed Services Integration Act, 1948 is a United States law authorising women to serve in the Army, Navy, Marine Corps, and the newly created Air Force as permanent, regular armed forces members. Before this act, women served in the military, except nurses, only in times of war. More than 150,000 women served in the WAVES (the Navy), and the Women are Auxiliary Army Corps during World War II and were still serving when the act was passed. Women also participated during the war in the SPARs, produced by the Coast Guard and the Marine Corps Women's Reserves Marines. During World War II, 350,000 American women entered and served. Section 502 of the Act regulated women's service by removing them from Navy aircraft and warships that could participate in combat.

The bill was sent to the 80th U. Margaret Chase Smith of S. Congress, who served in both parts of the U.S. Congress, serving Maine State. The bill went to the House and Senate Armed Services Committees in January 1948. There were opponents in the Assembly, however, who felt that women could only serve in reserve capacities. The opposition leaders were Walter G. Andrews, the chairman of the House Armed Services Committee, and Carl Vinson, the ranking minority member of the committee. According to Bettie Morden: "Army men claimed that women should not be admitted to Regular Army until their peacetime service could be studied and observed." A counterattack was organised. On February 18, 1948, when the House Armed Services Committee convened for hearings on the bill, high-ranking civil and military officials attended to lobby for the bill's approval. They included Defence Secretary James Forrestal, Dwight D. Eisenhower, General Omar Bradley, Admiral Louis Denfeld, and General Hoyt Vandenberg. The chairman reviewed the bill for two more days, section by section; he questioned Col. Mary Hallgren, Director of the Women's Army Corps, and Gen. Willard Paul, Assistant Chief of Staff of the Army, regarding its contents. On March 23, 1948, the committee rejected normal status and rewrote and re-titled the bill as the "Women's Armed Services Reserve Act of 1948." On April 21, 1948, the Women's Armed Services Reserve Act passed the House floor. Both proponents and critics had a chance to defend the bill. The vote on the

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<sup>14</sup> (1976) 2 SCC 310

amended act was approved and submitted to the Senate. But the revised bill will not be appropriate for the Senate. In May, a joint committee was convened to try to find a consensus. The decaying condition has reiterated the case for women's regular status globally.

The House yielded and accepted on May 19, 1948, with women serving in the armed services' regular and reserve elements. Two amendments restored the original wording of the bill: a cap on the number of women in regular status between 1948 and 1950 and a provision for the commissioning of female officers in several increments instead of only one. Morden notes, "Members of the House were pleased that these amendments would discourage women's indiscriminate commissioning and enlisting and avoid any indication of favoured treatment." The Senate passed the bill unanimously on May 26. By a vote of 206 to 133, the House approved it on June 2. President Truman signed the bill on June 12, 1948.

On July 7, 1948, the Navy swore in its first six woman enlistees. Later that year, it commissioned Frances Lois Willoughby, its first female doctor, as Lieutenant Commander, who had served in the Naval Reserve during World War II. By the end of the year, hundreds had begun basic training in the Army. By inducting some of its women reservists and others who served in the Marine Corps Women's Reserve in World War II, the Marine Corps initiated its initiative. The New York Times referred to them as "Marinettes"

In October 1949, despite the passage of the Act, the Army established a rule that mothers with dependent children were not eligible for military service and that female servants with children under the age of 18 were to be discharged. This regulation stayed in effect until the inclusion of women with children in the armed forces was established by federal legislation in the 1970s. In 1998, a ceremony was held at the Women in Military Service for America (WIMSA) Memorial in Arlington National Cemetery to celebrate the 50th anniversary of the Women's Armed Forces Act. Deputy Defence Secretary John J. Hamre delivered the keynote address.

## **(B) CASE ANALYSIS**

### **1. INDIA**

- **Secretary, Ministry of Defence vs Babita Puniya (Civil Appeal Nos. 9367-9369 of 2011)**

**Facts:** The basis for these appeals is a demand for equal rights for women pursuing Permanent Commissions in the Indian Army. The lead appeal originated in a batch of written petitions filed in 2003 and 2006 before the High Court of Delhi. Women participating in Short Service Commissions in the Army have spent a decade in litigation pursuing parity with their male counterparts in securing PCs. In February 2003, Babita Puniya, a lawyer, filed a Public Interest

Litigation Written Petition before the Delhi High Court to award a PC to female SSC officers in the Army. In addition to the PIL filed before the High Court of Delhi on 16 October 2006, Major Leena Gurav filed a written petition primarily questioning the terms and conditions of service imposed by the circulars dated 20 July 2006 and seeking the award of PCs to female officers. The Division Bench heard the Written Petitions of the High Court of Delhi. The High Court, by a judgement of 12 March 2010, gave directions which were not subsequently complied with, hence the present appeal.

**Issues Raised:**

1. Whether to follow the government's guideline of 15 February 2019?
2. Whether to give women a Permanent Commission in the Indian Army?
3. What are the requirements regulating female army officers?

**Judgement and Analysis:** Subject to the following, the policy decision taken by the Union Government allowing the grant of PCs to SSC women officers in all ten streams where SSC was given to women in the Indian Army is accepted:-

1. All serving female SSC officers shall be deemed to have been awarded PCs irrespective of the fact that each of them has served 14 years or, as the case may be, 20 years of service.
2. All women currently serving as SSC officers are granted the option.
3. The term 'on different staff appointments only' in Para 5 and 'on staff appointments only' in Para 6 shall not be used about women's PCs.
4. At the decision to award the PC, all specialisation options shall be made available to female officers on the same terms as for male officers of the SSC. On the same terms as their male counterparts, women SSC officers shall be allowed to exercise their options to be eligible for the grant of PCs.
5. In this case, the order of the Delhi High Court has been upheld.
6. All consequential benefits, including promotion and financial benefits, will be entitled to SSC female officers who are given PCs in compliance with the above directions.

**2. THE UNITED STATES**

- **United States Vs. Virginia, 518 U.S. 515 (1996)**

**Facts:** As one of America's first state military schools, sponsored by the Commonwealth of Virginia, the Virginia Military Institute (VMI) was founded in 1839. Its goal is to create "citizen soldiers, men trained for civil life and military service." Despite intense hardship, it

accomplished that goal. New cadets were referred to as "dogs" and were subjected to a trial known as the "rat line" for about 7 months, where they were exposed to physical and mental stress. "To quote Col. Bissell, the Leader of the Cadets, [the rat line], "'dissects the young student,' and makes him aware of...' how far he can go with his indignation,... how much he can bear under stress,... what he can do when physically drained.' In 1990, when a female high-school student seeking admission to VMI lodged a lawsuit with the Attorney General, VMI's single-sex policy was eventually questioned. She argued that VMI's predominantly male admission policy violated the 14th Amendment's Equal Protection Clause.

She was one of 347 women who submitted VMI inquiries, none of whom had received responses. Virginia argued that the "adversative" training method of VMI was fundamentally unsuitable for females. It argued that not only did single-sex education yield substantial educational benefits, but without changes that would inevitably kill VMI's programme, those benefits should not be available to women. The Federal District Court ruled in favour of VMI, finding that a single-gender environment has important educational benefits. But the Court of Appeals of the 4th Circuit disagreed. The appellate court found that the Commonwealth failed to argue that VMI's admissions policy advanced any state policy. In addition, it contradicted the state's declared commitment to educational non-discrimination and diversity. Virginia suggested the creation of a parallel women's curriculum, named the Virginia Women's Institute of Leadership (VWIL), as a remedial measure. The proposal was approved by the 4th Circuit, finding it "substantively equivalent." The Attorney General appealed the case to the Supreme Court in response.

**Issues Raised:** The petition by Virginia for separate military schools for men and women addressed two key issues:

1 Whether the exclusion of eligible women from VMI by Virginia denied them equal protection under the 14th Amendment, and whether the exclusion of qualified women from VMI denied them equal protection under the 14th Amendment, and

2 If so, what was the remedy required?

**Judgement and Analysis:** The Court ruled in a 7 to 1 ruling that the male-only admissions scheme of VMI violated the 14th Amendment's Equal Protection Clause. In writing for the majority, Justice Ginsburg drew a simple rule: parties trying to justify gender-based government action must show "exceedingly compelling evidence" for the action under an equal protection analysis. Virginia failed to fulfil the norm here.

1. Virginia struggled to explain that the male-only admissions policy was advancing a state

policy. In reality, the policy contrasted per se with Virginia's stated commitment to supporting education diversity.

In addition, the suggested solution by Virginia, the establishment of a separate women's institute, VWIL, was ineffective because it did not provide the same benefits to women that VMI provided to men. VWIL does not have the same intensive military preparation, schooling, or alumni participation that VMI offers. VWIL does not require students to wear uniforms, eat together, or take part in any traditional military format events. For these factors, the conclusion of the 4th Circuit that VWIL and VMI were "substantially equivalent" was misplaced, and the criterion was inconsistent with precedent. Admitting eligible women to the VMI was the required solution. The required criteria were explicitly outlined here by Justice Ginsburg: all gender-based classifications must be assessed with "enhanced scrutiny." Borrowing from the ideas of constitutional historian Richard Morris, Justice Ginsburg wrote, "The history of the expansion of constitutional rights and freedoms to persons once neglected or excluded is a prime part of the history of our Constitution." Here, "there is no reason to think that the admission of women capable of all the activities needed by VMI cadets will ruin the Institute."

#### IV. CONCLUSION

*"When old words die out on the tongue, new melodies break forth the heart: and where the old tracks are lost, a new country is revealed with its wonders"* - Rabindranath Tagore.

Women have made a positive and enduring contribution to the Indian Armed Forces. Women are no longer prisoners of the past, but they are future architects. As an objective review, it was clearly shown that the difference in roles is not due to prejudice but the dynamic of the three services. Significant steps are being taken to integrate them with the system and channel a common good with the resulting fusion. The old barriers have already been dismantled. Only the fading signposts need removal for a smooth and seamless integration of the glorious fold of the Indian Armed Forces. It's not the time to be judgmental-maybe taking the inspiration from Mother Teresa who once said, "if you judge people, you have no time to love them." A positive outlook is needed to fulfil our organisational responsibilities while helping a generation of Indian women to be life winners. Given the socio-economic climate in which women strive to enter the national mainstream, it is our responsibility as people to transition from our thinking and make an effort to use the un-exploited human capital of the greatest democracy. History bears witness to the fact that women led their armies through war chaowomen-ledthe fight for national freedom. The demand for national security and the effectiveness of militias cannot be influenced by attitudes and assumptions and must be firmly grounded in reality. The presence

of skill and not gender should be the combat assignment. On a gender-neutral standard, all facilities should be available to those trained, capable and competent to pursue them.

### **(A) Recommendations**

In the debate on the assignment of fighting positions to women, militia effectiveness should not be undermined, or resources based on gender cannot be denied to individuals. Women who meet the requirements and apply for fighting roles should be allowed to be assigned. If women are permitted to volunteer, they should also be included in the required growth forecast. Women wanted to be handled "just like men" and wanted combat arms assignments. Physical and psychological tests and field experience will reveal who is stronger than dismissing an entire pool of human resources just because they are not of the right sex. When the problem under equal parameters is checked on the ground, all debates concerning women and fighting will rest. In all three services, India should also conduct trials and studies to see how it can best use its women's strength and build opportunities for an elite band of professional women to battle soldiers. The armed forces need to tackle the issue faced by women officers seriously. The prime need of the hour is an independent grievance Redressal process. To give the female officers a healthy field- peace profile, relevant field areas and adequately substantive appointments can be established within the organisational constraints. Even the ones requiring some roughing out, must be introduced to all the facts of professional life as many of them have joined the armed forces to drop the outdoors' fresh air and lead an adventurous life. By assigning desk jobs where they merely attend telephones and file reports with the higher headquarters, their zeal and seal for strenuous tasks must not be curbed. They don't require any concessions or privileges based on pampering and gender. They do not do the same either unless the organisation pressures them to alter their actions to take on feminine roles. As per the age-old practices of the three services, their errors must be acknowledged and immediately corrected rather than trying to relate them to gender issues. There is nothing insurmountable about these problems that we cannot resolve in-house by taking the appropriate steps.

### **(B) Future Scope**

Every army is nothing more than a part of its citizens. It represents the social, cultural and historical predispositions of a country. A mirror image of a nation or a perfect representation is called military by many social sciences. The functioning and actions of the military are influenced by the members' social factors subjected to their formative years before joining the military. The fact that the military is not created to produce amplifications is unanimously acclaimed and thus has little to do with gender equality. They need only the fittest — men and

women. To withstand battlefield stresses, the armed forces needed physically strong and psychologically robust staff. A force's combat potential depends on its cohesion, shared confidence and leadership faith. Nothing should be done to undermine these characteristics.

The Indian Army has begun granting eligible female officers to the Permanent Commission, almost two weeks after the Defence Ministry approved the proposal. To grant the Permanent Commission (PC) to women officers recruited under the Women Special Entry Scheme (WSES) and the Short Service Commission (SSC), Army Headquarters invited applications by 31 August 2020.

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## **V. BIBLIOGRAPHY**

### **STATUTES REFERRED**

- The Army Act, 1950
- The Constitution of India, 1950
- The Navy Act, 1957
- The Air Force Act, 1950

### **BOOKS REFERRED**

- Constitution of India; P.M. Bakshi
- The Kargil Girl; Gunjan Saxena and Kiran Nirvana
- One Women's Army; Charity Adams Earley
- Fight Like A Girl; Kate and Kelly Kennedy
- They Fought Like Demon; DeAnne Blanton and Lauren M. Cook
- The Lonely Soldier; Helen Benedict
- They Fought For The Motherland: Russia's Women Soldiers in World War I and the Revolution; Laurie S. Stroff
- Proud To Be; Kelly Flinn
- Arms And The Women: Female Soldiers at War; Kate Muir
- Call Sign Revlon: The Life and Death of Navy's Fighter Pilot Kara Hultgreen; Sally Spears
- To Serve My Country, To Serve My Race: The Story of the only African- American Wars Stationed Overseas during World War II; Brenda L. Moore
- Women At Risk- We also Served; Noonie Fortin
- Women In The Line Of Fire: What you should know about Women in the Military; Erin Solars
- Battle Cries and Lullabies: Women in War from Prehistory to the Present; Linda Grant De Pauw
- Standing Up Against Hate: How Black Women in the Army Helped Change the Course of World War II; Mary Cork Farrell

- Women in Combat; Lorry M. Fenner and Marie E. DeYoung
- It's My Country To: Women Military Stories from the American Revolution to Afghanistan; Jerri Bell
- Gender for the Warfare State: Literature of Women in Combat; Robin Truth Goodman
- Undaunted: The Real Story of American's Servicewomen in Today's Military; Tanya Biank
- Women on the Frontline: British Service- Women's Path to Combat; Kathleen Sherit

### **ARTICLES REFERRED**

- Prem Chowdhry ( Senior Academic Fellow Indian Council off Historical Research), Women in the Army, Economic and Political Weekly - VOL XLV NO.31, 2010
- T. K. Rajlakshmi, Women Officers in the Indian Army: A Bastion Breached, Frontline India's National Magazine, 13 March, 2020.
- Editor of the Hindu, Arms and the Women: On gender barrier in Indian Army, The Hindu, 25 July, 2020.
- Jai Brunner, Sex and Gender Stereotype in the Armed Forces, Centre for Law and Policy Research, 2 March, 2020.
- Ltd. General Prakash Menon, Indian Army must work on inducting women in Combat roles or court may force its hand, The Print, 18<sup>th</sup> Dec, 2018.
- Manoj Joshi, Women in Armed Forces: The other asymmetrical war won, The Economic Times, 17<sup>th</sup> Feb, 2020.
- N.C. Asthana, Army was peddling its sexism by Proxy, but the Supreme Court was not Fooled, The Wire, 17<sup>th</sup> Feb, 2020.
- Ghazala Waheb, Women in Combat: The Navy Chief spoke sense but the Army Chief did not, The Wire, 21<sup>th</sup> Dec, 2018.
- Prerna Dhoop and Vandana Dhoop, On Permanent Commission for Women Officers, the Army continues to drag its feet, The Wire, 9<sup>th</sup> July 2020.
- Aparna Asokan, Supreme Court busts Gender Stereotype in Indian Army: A Feminists Victory, Intersectional Feminism, 19<sup>th</sup> March, 2020.
- Col. DS Cheema (Retd.), Women deserves a bigger role in Armed Forces, The Tribune, 20<sup>th</sup> Feb, 2020.

- Shreshtha Das, Equal roles for women in Indian Army is not a Feminist Victory, Aljazeera, 3<sup>rd</sup> March, 2020.
- The Editor, Government issues order for permanent commission of women officers in Army, The Indian Express, 23<sup>rd</sup> July, 2020.
- Suchitra Mohanty, India's top court order equal roles for women in army, Thomson Reuters Foundation News, 17<sup>th</sup> Feb, 2020.
- The Editor, Indian Supreme Court makes landmark ruling on Women in Army, BBC News, 17<sup>th</sup> Feb, 2020.

### INTERNET SOURCES

- <https://en.wikipedia.org/wiki/WAVES>
- [https://en.wikipedia.org/wiki/Women%27s\\_Army\\_Corps](https://en.wikipedia.org/wiki/Women%27s_Army_Corps)
- <http://pragmaticnationalinterest.in>
- [https://economictimes.indiatimes.com/news/defence/army-starts-process-to-grant-permanent-commission-to-women-officers-recruited-under-wses/articleshow/77354103.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/news/defence/army-starts-process-to-grant-permanent-commission-to-women-officers-recruited-under-wses/articleshow/77354103.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)
- <https://www.indiacode.nic.in/handle/123456789/1930?locale=en>
- [https://www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_28\\_38\\_00012\\_195046\\_1517807323368&sectionId=31536&sectionno=12&orderno=12](https://www.indiacode.nic.in/show-data?actid=AC_CEN_28_38_00012_195046_1517807323368&sectionId=31536&sectionno=12&orderno=12)
- <https://indiankanoon.org/doc/1942013/>
- <https://indiankanoon.org/doc/250697/>
- [https://main.sci.gov.in/supremecourt/2010/20695/20695\\_2010\\_8\\_1501\\_20635\\_Judgement\\_17-Feb-2020.pdf](https://main.sci.gov.in/supremecourt/2010/20695/20695_2010_8_1501_20635_Judgement_17-Feb-2020.pdf)
- *Bellafaire, Judith A. (1972). The Women's Army Corps: A Commemoration of World War II Service. Washington, DC: United States Army Centre of Military History. Pg. 2, CMH Publication 72-15.*
- *Spring, Kelly, "In the Military"- National Women's History Museum, 9 May2020.*
- *Kegerreis Kara, "Overview of WWII", WWII Women Veterans, Retrieved 9 May2020.*

- No Unequal Treatment for Women Officers, version current as of 21 September 2008.
- Kumar Meenakshi, Women at Ease, 21 Sep 2008, Sunday special Times of India
- Krishnan Kavita, Women Unwanted in the Indian Army, 20 Aug 2008, Times of India, New Delhi

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