



## MARCHING TOWARDS EQUALITY: A JUDICIAL SALUTE TO WOMEN IN UNIFORM

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### INTRODUCTION

Should gender define one's capacity to serve the nation in the armed forces? Can the government justify exclusionary practices in the name of operational concerns when fundamental rights are at stake? To what extent can administrative or operational justifications be accepted by courts when such justifications result in systemic gender discrimination?

These questions lie at the heart of Babita Puniya, a case that marked a transformative moment in India's constitutional and service jurisprudence. The Supreme Court's intervention not only upheld the dignity and rights of women in uniform but also challenged the embedded patriarchal norms within the defence establishment. This case comment aims to evaluate the judgment in light of constitutional values, administrative fairness, and evolving gender norms.

This case comment delves into a significant Supreme Court ruling in *The Secretary, Ministry of Defence v. Babita Puniya & Ors.*, which marked a turning point in the conversation around gender equality within the Indian Army.<sup>1</sup> At the core of the dispute was the question of whether women serving under the Short Service Commission (SSC) should be granted the same opportunity for Permanent Commission (PC)<sup>2</sup> and command roles as their male counterparts. The government had previously denied these roles to women, justifying the decision on operational, administrative, and societal grounds.

The Supreme Court's decision in *The Secretary, Ministry of Defence v. Babita Puniya & Ors.* Confronted this systemic imbalance and marked a watershed moment in the struggle for gender

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<sup>1</sup> 'Supreme Court of India Establishes Parity for Permanent Commission of Women Officers in Indian Army' (CaseMine, 2020) <https://www.casemine.com/commentary/in/supreme-court-of-india-establishes-parity-for-permanent-commission-of-women-officers-in-indian-army/view> accessed 9 July 2025.

<sup>2</sup> Lt Cdr Annie Nagaraja v Union of India (2020) SCC OnLine Del 598.

parity within India's defence establishment.<sup>3</sup> By striking down discriminatory policies, the Court sent a clear message that constitutional guarantees cannot be diluted by institutional convenience or regressive social norms.

The case has continued relevance as India witnesses a growing participation of women in various state institutions, including the judiciary, police forces, and defence services. However, representation alone is not enough. The real challenge lies in transforming the institutional culture that still operates on inherited patriarchal assumptions. This judgment thus serves as a judicial reminder that equal treatment under the law cannot be delayed or denied due to outdated norms or administrative hesitation.

Furthermore, the ruling must be seen not just as a milestone in military law, but as part of a larger constitutional journey—one that aspires to make India's public institutions reflective of the constitutional promise of equality and non-discrimination. As we move forward, the legal reasoning in this case continues to guide both policy and public consciousness, reinforcing the judiciary's role as a counter-majoritarian institution that protects fundamental rights even when doing so disrupts entrenched traditions.

## **FACTS OF THE CASE**

Before moving to the facts, it is pertinent to know the provision under section 12<sup>4</sup> of the Army Act, 1950, that states the ineligibility of females for enrollment or employment. It states that females are not eligible for enrollment or employment in the regular Army, with the exception of specific corps, departments, branches, or bodies that the Central Government may specify by notification in the Official Gazette. This section also clarifies that it does not affect laws allowing females to serve in auxiliary services or branches where they are already eligible. Now, through a series of time, the facts and background of the case will be discussed.

In 1992, the Indian Army began inducting women officers through the Short Service Commission (SSC) in specific non-combat branches such as the Army Education Corps, Judge Advocate General (JAG), and the Army Service Corps. Unlike their male counterparts, who had the option of being considered for a Permanent Commission (PC), women officers were

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<sup>3</sup> Women in Indian Armed Forces' (Shankar IAS Parliament, 2023)

<https://www.shankariasparliament.com/current-affairs/women-in-indian-armed-forces> accessed 9 July 2025.

<sup>4</sup> The Army Act 1950, s 12

initially restricted to a short tenure of five years, which could be extended to ten or, later, a maximum of fourteen years.

Over time, women officers serving under SSC challenged this disparity in career progression and sought parity in terms of service benefits and long-term career opportunities. In 2003, a Public Interest Litigation (PIL) was filed in the Delhi High Court by Babita Puniya, a practising advocate, highlighting the systemic denial of PC to women despite their years of dedicated service. This was followed by multiple individual petitions filed by women officers who were nearing the end of their SSC tenure and faced compulsory retirement without any consideration for PC.

In 2010, the Delhi High Court delivered a significant verdict directing the Central Government and the Indian Army to grant PC to women officers in the SSC across all the streams where it was already being offered to male officers. However, the Ministry of Defence filed an appeal against this decision before the Supreme Court and continued to resist granting PC to women in command roles, citing operational, logistical, and societal constraints.

In February 2019, during the pendency of the appeal, the Ministry issued a policy stating that women officers would be considered for PC, but only prospectively and limited to certain branches. The policy, however, excluded women officers who had already completed more than 14 years of service, thus rendering many of them ineligible.

Aggrieved by the prospective nature of the policy and continued exclusion from command roles, the women officers challenged the government's approach before the Supreme Court. The Court had to examine whether the policy violated constitutional principles of equality, whether it perpetuated gender stereotypes, and whether the armed forces could legally justify such discriminatory practices.

### **ISSUES RAISED**

1. The women entitled to get permanent commission in the Indian Army?
2. Whether the guidelines issued by the government of India dated February 15, 2019 should be implemented?
3. What are the conditions governing women in the Indian Army?<sup>5</sup>

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<sup>5</sup> Meenakshi Sharma, 'Induction of Women in Indian Armed Forces' (Modern Diplomacy, 18 January 2023) <https://moderndiplomacy.eu/2023/01/18/induction-of-women-in-indian-armed-forces/> accessed 9 July 2025.

## ARGUMENTS FROM BOTH SIDES

### Contentions from the petitioner (Union Government)

**Delhi High Court's Judgment Lacked Statutory Basis:** The Union Government contended that the Delhi High Court's decision to grant Permanent Commission (PC) to women officers failed to consider the applicable statutory provisions under the Army Act, 1950, specifically Sections 10<sup>6</sup> and 12, which empower the Central Government to make appointments and impose restrictions on enrolment in the Army.

**Operational and environmental constraints:** It was submitted that conditions of service in the armed forces often involve adverse and inhospitable terrains, a lack of privacy, and hazardous deployments. The government argued that these realities, coupled with gender-specific issues like maternity and childcare, justified excluding women from permanent command roles.

**Disruption to Cadre and Career Planning:** The Army expressed concern that granting PCs to women who had already completed over 14 years of service (as per the 2019 notification) would result in significant disruption in cadre planning. The long tenure of such officers would entitle them to pension and other benefits, straining the system and affecting resource allocation.

**Logistical and Management Burden:** According to the Government, managing women officers (WOs) presented administrative hurdles. Posting them required soft assignments with adequate infrastructure and facilities.<sup>7</sup>

**Cadre Restructuring Challenges:** Referring to internal committee findings, the government emphasised the need for a lean permanent cadre.

### Contentions from the respondent (women officers)

**Equal Risk, Equal Service:** The respondents challenged the privacy and safety arguments by pointing out that women are already serving in sensitive areas, including force headquarters,

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<sup>6</sup> The Army Act 1950, s 10

<sup>7</sup> Secretary, Ministry of Defence v Ajay Kumar Choudhary (2015) 7 SCC 291.

field zones, and operational commands, often under the same risky and unsanitary conditions as their male counterparts. Hence, denying them PC on such grounds was unjustified.

**Existing Deployment in Hostile Conditions:** Respondents highlighted that a significant proportion—nearly 30% of women officers—are already deployed in high-risk zones, proving that they are not only capable but are actively serving in challenging environments. This contradicted the government's claim that women could not be deployed in such roles.

**Equal Training, Unequal Opportunity:** Women officers undergo the same rigorous training and assessments as their male peers in the SSC. Despite meeting all service standards, only men were considered eligible for PC. This denial, the respondents argued, amounted to unfair treatment despite being equally capable and deserving of promotions and permanent status.

**Discriminatory Policy and Status Erosion:** Lastly, they criticised the government's 2019 policy, which extended PC only to newly commissioned women officers, while excluding existing ones. This policy, they claimed, not only unfairly ignored their years of contribution but also degraded their status.

**Misuse of Unit Cohesion Argument:** While the government claimed that women's presence could disrupt unit discipline, the respondents asserted that this reflected deep-seated gender bias. Instead of blaming women for this, we should make efforts to foster their inclusiveness.<sup>8</sup>

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## JUDGEMENT

The Supreme Court held that the policy decision of the Union Government excluding women from Permanent Commission in the Army, other than in specific branches, was discriminatory

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<sup>8</sup> Union of India v Pushpa Valli (2010) 12 SCC 728.

<sup>9</sup> Shreya Srivastava, 'Women in Indian Armed Forces: A Journey Towards Equality' (Bar & Bench, 20 February 2020) <https://www.barandbench.com/columns/women-in-armed-forces-equality> accessed 9 July 2025.

and violated Article 14<sup>10</sup> of the Constitution. It was clarified that while Article 33<sup>11</sup> of the Constitution allows for certain restrictions on the fundamental rights of armed forces personnel, these restrictions must be reasonable and proportional to the demands of military discipline and function. Article 33 cannot be used as a blanket justification to deny women equal treatment or to block their career progression in the armed forces. The Supreme Court praised the balancing act of protecting national security while still upholding constitutional rights.

The Court emphasised that the Delhi High Court's directives, which had already ordered equal treatment of women officers, must be implemented and complied with by the Union Government and military authorities. It held that all Short Service Commission (SSC) women officers, regardless of years of service, must be considered for Permanent Commission (PC) on par with male officers. This means that they must be eligible for command roles and promotions without any discrimination.

The judgment noted that women in the armed forces had already demonstrated competence and dedication in service and that exclusion from command positions was unjustified. The Court stated that administrative convenience or operational efficiency could not override constitutional guarantees. Gender cannot be a ground to deny equal opportunity, and restricting women's roles in the military based on outdated notions amounts to a violation of their rights under Article 14<sup>12</sup> and Article 15<sup>13</sup> of the Indian Constitution.

The Court made it clear that phrases such as "only for staff appointments" must not be used when referring to the Permanent Commission for women officers. Women would be eligible for all benefits available to male officers, including pensions, promotions, and incentives, provided they meet the same criteria. They must also be allowed to serve until their service becomes pensionable, if they so choose. This decision was required to be implemented by the Union Government within three months from the date of the judgment.

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<sup>10</sup> Constitution of India 1950, art 14.

(Equality before law and equal protection of the laws.)

<sup>11</sup> Constitution of India 1950, art 33 ("Parliament may, by law, modify the rights conferred by this Part in their application to the members of the Armed Forces or the Forces charged with the maintenance of public order so as to ensure the proper discharge of their duties and the maintenance of discipline among them.").

<sup>12</sup> Constitution of India 1950, art 14.

(Equality before law and equal protection of the laws.)

<sup>13</sup> Constitution of India 1950, art 15.

(Prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth.)

In analysing this decision, the Court's application of the anti-stereotyping principle was significant. The judgment marked a shift from traditional interpretations that often accepted gender-based exclusions in military service. By applying this principle, the Court reaffirmed that psychological and physiological stereotypes cannot be valid reasons for policy decisions that affect fundamental rights.<sup>14</sup>

## ANALYSIS OF THE JUDGMENT

It was recognised that women had been inducted into the armed forces since 1992<sup>15</sup> and the decision to grant them only limited roles had been the result of outdated and evolving policies. However, over time, the state's own changing approach to policy and administration within the military made it clear that excluding women from Permanent Commission had no sound basis. The refusal to offer women equal opportunities was not based on legal rationale, but rather on institutional inertia.

It was acknowledged that the Court's task was made easier by the military's growing willingness to revise its internal policies.<sup>16</sup> Rather than imposing equality from above, the Court relied on persuasive constitutional reasoning to enable the armed forces to reach a just and inclusive outcome on their terms. By aligning the military's internal framework with constitutional values, the Court ensured a smooth path toward parity without disrupting institutional hierarchy.

The judgment also highlighted that even after completing 14 or 20 years of service, all women SSC officers were eligible for Permanent Commission and would not be restricted by arbitrary rules.<sup>17</sup> They must be given the same range of specialisation choices as their male counterparts.<sup>18</sup> Once awarded PC, women officers would be entitled to all pension and promotional benefits, and any limiting clauses such as "only for staff roles" were to be discarded.<sup>19</sup>

By doing so, the Court reasserted that the military cannot remain a rights-free zone and that those armed forces, like any other state institution, are subject to constitutional scrutiny. The

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<sup>14</sup> Anuj Garg v Hotel Association of India (2008) 3 SCC 1

<sup>15</sup> Sharma (n 1).

<sup>16</sup> Srivastava (n 4).

<sup>17</sup> The Secretary, Ministry of Defence v Babita Puniya & Ors (2020) 7 SCC 469, para 54.

<sup>18</sup> Ibid, para 56.

<sup>19</sup> Ibid, para 57.

decision strengthened the principles of justice, equity, and inclusivity, ensuring that women in uniform are recognised for their competence and dedication, not judged by outdated norms or discriminatory assumptions.

Finally, this judgment stands as a historic reaffirmation of the constitutional values of equality and dignity. It moves India closer to a future where women officers in the military are not just symbols of progress but active participants in shaping the nation's defence on equal footing and with full rights. The judgment not only dismantled gender bias in military policy but also became a guiding light for gender justice in institutions historically governed by patriarchal standards.

## CONCLUSION

The judgment in this case is a remarkable step forward in ensuring true equality for women in the Indian armed forces. By allowing women officers the right to Permanent Commission and command roles, the Supreme Court addressed long-standing discrimination based on outdated gender roles. What makes this judgment powerful is how it places constitutional values—like equality, dignity, and fairness—above traditional biases and institutional convenience. The Court made it clear that being a woman should never be a barrier to career growth, especially in a service where dedication, discipline, and performance matter more than anything else.<sup>20</sup> This case also sends a strong message that even institutions like the military, which have their structure and rules, are not above the Constitution. It rightly pointed out that societal perceptions and stereotypes cannot define someone's capability. The ruling goes beyond just legal reform—it pushes for a change in mindset, where women are seen as equal contributors in every field, including national defence. In many ways, this judgment isn't just about the Army; it's about building a more just and inclusive society, where equal opportunity is a reality and not just a promise written in law.

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<sup>20</sup> Babita Puniya (n 1) [54]; see also Lt Col Nitisha and Ors v Union of India (2021) SCC OnLine SC 261 [75]–[80].