
LEGAL FRAMEWORK GOVERNING WOMEN IN ARMED FORCES: A COMPARATIVE STUDY OF INDIA AND U.S.

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ABSTRACT

The Armed Forces regulate in their own world and are governed by rules which are not applicable to civilians. This construction has been done in order to maintain national security and discipline among the members. Due to this job profile and the hardships involved in the services women have been tried to kept aloof from being recruited in this field however now the glass ceiling has been started to break. With the societal changes and shift in the roles of gender, more and more women are participating in this domain and actually coming with flying colors. The admittance of women in armed forces is backed by recent interpretations of the legal provisions and the judicial pronouncements. Their integration into these services has a direct link with the fundamental right to equality of opportunity. Whenever this point is raised the authorities come up with defence of national security and other organization related issues. This issue involves legal and socio-economic aspect which needs to be addressed. Whenever any legal issue is intermingled with the socio-economic aspect it requires a multi-faceted approach by the concerned authorities. On the other hand, the individual growth of women also has to be articulated in the policies of the government. It is the duty of the State to maintain a balance between the individual autonomy and the aims of the organization. Thus, it is necessary to examine the legal framework governing these services in order to check the constitutionality of the rules which have been framed with respect to women in these services. This paper will analyze the legal provisions of India and U.S. along with the judicial pronouncements which may form one of the deciding factors whether the map of growth in terms of gender inclusivity is moving upwards or downwards.

Keywords: Armed Forces, Women Inclusion, Service Law, Equality of Opportunity, Legal framework

INTRODUCTION

Women have always been the pivotal part of Armed Forces. From the ancient world to the present day, they have contributed to military efforts in various capacities, including warriors, spies, medics and support staff. It showcased the resilience and determination of women who defied societal norms to serve their countries in times of conflict and peace.

During major world wars and conflicts, women stepped into traditional male roles within the armed forces to fill critical gaps in manpower. Their contributions were essential for the functioning of the military, yet they often faced discrimination and unequal treatment. They were overlooked and remained unrecognized in these services.

Over time, their roles evolved, leading to advancements in gender equality and reflecting changing societal attitudes and perceptions. They broke the barriers and paved the way for future generations. As the role of women in these forces continues to evolve, it is crucial to examine the legal framework governing their integration.

In Indian Armed Forces, the official recognition of women recently became evident. They are recruited as officers in supporting arms and services. Albeit two decades have passed subsequent to the official recognition, their outright integration and acceptance still remains a contentious issue. In U.S. Armed Forces, though all the roles are open to women officers, they face discrimination after joining the services regarding their promotion, postings etc. which hinders their career advancements and impacts their morale.

Here the question arises whether only opening the roles will improve the women's status in these services or there is a need to further strengthen the provisions and internal oversight in order to make the integration complete in its essence. The answer to this question lies in the fact that when a right is established in favor of society then it must come up with an adequate way in which it can be made properly effective for different sections of the society as per their needs and requirements. There are situations where equality is not enough to uplift society owing to the natural differences that exist, then equity must do complete justice. The state has a bounden duty to make sure that every citizen of the country benefits from the right that has been established in favor of society.

The military organizations of India and U.S. are carving out various policies in such a way that the aims of the organization and the personal advancement goals of all the women who wants to pursue career in armed forces are balanced by keeping in mind a larger aim of flourishing gender neutrality in all the realms of these services.

OVERVIEW OF INDIAN ARMED FORCES

India has the fourth largest military after U.S., Russia and China out of 145 countries considered for the annual GFP review.¹

The supreme command of the Indian Armed Forces is vested in the President of India as governed under Article 53(2) of the Constitution of India (1950). The responsibility of national defence however is looked upon by the cabinet. The Cabinet Committee on Political Affairs presided by the Prime Minister, decides all important matters having a bearing on defence. The Defence Minister is answerable to Parliament for all matters related to the defence services. The Ministry of Defence (MoD) and the three Services Headquarters (HQs) exercise all operational and administrative control of the Armed Forces.

The Indian Armed Forces are responsible for ensuring the country's national security and defence. Comprising of three wings: The Army, Navy and Air Force which are governed by Army Act 1950, Navy Act 1957 and Air Force Act 1950, all the three wings function under their respective Chiefs of Staff.

The total strength of women in all the three services is 11,414 as per the government data and they form up 3.8% of the forces.

OVERVIEW OF U.S. ARMED FORCES

U.S. has the largest military out of 145 countries considered for the annual GFP review.² The President of U.S. is the Commander-in-Chief of the armed forces as governed by Article II Section 2 of the Constitution of U.S. (1789). The U.S. Armed Forces are split between two cabinet departments, with the Department of Defense (DoD) serving as the primary cabinet

¹ 2024 Military Strength Ranking: GFP Annual Ranking available at: <https://www.globalfirepower.com/countries-listing.php> (Visited on 15th January 2024)

² 2024 Military Strength Ranking: GFP Annual Ranking available at: <https://www.globalfirepower.com/countries-listing.php> (Visited on 15th January 2024)

department for military affairs and the Department of Homeland Security responsible for administering the United States Coast Guard.

The chain of command flows from the President of U.S. to DoD headed by Secretary of Defense appointed by the President. Within DoD, each department of the tri-services is headed by its respective Secretary. These military departments are responsible for organizing, training and equipping forces. The departments are further segregated into branches. Each branch under the respective departments is headed by a military 4-star general or admiral and these individuals are collectively known as the Joint Chiefs of Staff.

Women make up approximately 16% of active-duty personnel in the U.S. Army. The U.S. Navy has the highest representation of women, with around 20% of active-duty members being female. The Air Force of U.S. follows closely behind the Navy, with women accounting for 19% of active-duty personnel.

INDIAN LEGAL FRAMEWORK

In India, the integration of women in armed forces has been a subject of legal and social significance. The legal framework governing the participation of women in the military encompasses various aspects such as recruitment, service conditions, promotion policies, combat roles and protection against gender-based discrimination. The legal provisions in India have evolved over the years to address the barriers and challenges faced by women in uniformed service.

Furthermore, the legal framework outlines the rights and responsibilities and entitlements of women serving in the Armed Forces, ensuring their equal treatment and opportunities for professional growth. The framework also encompasses the aspects of maternity leave, childcare support, and gender-sensitive policies aimed at creating a more inclusive and supportive environment for women in the military.

Moreover, it delves into the complexities of balancing the right to equality and non-discrimination with the operational requirements of the military, reflecting the nuanced approach required in aligning legal provisions with the unique challenges and opportunities presented by the inclusion of women in the Armed Forces.

The recruitment of women officers is governed the Army Act, Navy Act and the Air Force Act. In Section 12 of the Army Act, 1950 which is pari materia to the provision of Navy Act and Air Force Act, contemplates that women will be eligible for enrolment only in those segments as the Union Government permits through official notification.

The Union Government has recognized women officers' rights to equality of opportunity through policy initiatives. The principle of non-discrimination based on gender, as enshrined in Article 15(1) of the Constitution, is one aspect of that right. According to Article 16(1) of the Constitution, the second aspect of the right is the equality of opportunity for all citizens in areas of public employment. Therefore, the policy statement is interpreted as a decision that upholds women's fundamental rights to apply for public office and to equal opportunity in matters of involvement pertaining to the Army.

The issue arises whether the Union Government can curtail the right of women to seek access in the appointment to these services as governed under Section 12 of Army Act, 1950?

To examine this issue, the concept of equality needs to be looked upon. The concept of Equality is governed in Article 14 of the Indian Constitution. Article 14 forbids class legislation but does not forbid classification or differentiation which rest upon reasonable ground of distinction. The real test for classification would be to find out the purpose of the law and to demarcate as to who are the people upon whom the purpose of the law falls. The purpose of the law can be of two categories:-

1. to eliminate some public mischief and
2. to do some public good

The Supreme Court in *State of Gujarat v. Shri Ambika Mills (1979 SC)* held that reasonable classification includes all who are similarly situated with respect to the purpose of the law. As Jennings has said, that there cannot be equality among unequal

State of Bombay v. FN. Balsara. (1951 SC) as regard to the classification which are as follows

1. The classification must be based upon intelligible differentia.

2. The differential must have a rational nexus with the purpose of the law.

Since not every individual is in the same position by nature, accomplishment, or situation, the equality principle expressed in Article 14 does not imply that every rule must apply to everyone. The varying needs of different classes of persons require different treatment, hence, Article 14 permits legislative classification

Prof. P.K. Tripathi, in his Telang lectures on "right to equality attempted a more comprehensive study of the right to equality. After careful analysis of several decisions of the Supreme Court applying nexus test, he concluded that these tests were inappropriate in certain situation. He pointed out that the theory of classification has three aspects which he chooses to call "why", "what", and "whom" elements respectively. He also observed that, the nexus test notice only the object and criterion of classification and their mutual relation but ignore the "what" element and the relationship of this element with the other two, resulting in the "what" element being confused with the other "why" or "whom" element, especially when the object or "why" element is not expressly and clearly indicated in the statute itself.

He further concluded those nexus tests are not at all for tackling certain situations. These are:

- a. Where the statute indicates the policy or purpose to be fulfilled and also the special treatment to be given to selected persons or things but it leaves it to the executive to make actual situation of the persons or things in fulfillment of the legislative policy.
- b. To "one person" statutes.
- c. Where the legislature gives broad indication of the kind of cases to be subjected to differential treatment, and
- d. To statute which leaves the executive free to pick and choose individuals towards the fulfillment of statutory policy.

To put it concisely, nexus tests were determined to be insufficient in cases where the authorities were granted unrestricted or extremely broad discretion to select individuals for special treatment despite the statute explicitly stating otherwise.

As a result of the aforesaid, well-informed criticisms of nexus test the Supreme Court freed

itself from the shackles of this dogma of first in, *Maganlal Chaganlal v. Municipal Corporation, Greater Bombay, (1974 SC)* – where the Supreme Court held that in determining the validity of a legislation or statute, especially made by the executive, the court will examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the executive or the administration in the matter of selection or classification.

Ultimately, the positivistic or activist position was taken by the Supreme Court in *E.P. Royappa v. State of Tamil Nadu, (AIR 1974 SC)*- Here the phrase equality before law expanded in the light of two principles namely Rule of law and principles of Natural Justice, particularly with the efforts of Bhagwati J. The Supreme Court challenged the additional concept of equality which was based upon the reasonable classification doctrine and laid down a new concept of equality. From a positivistic perspective, equality is opposed to arbitrariness since it is a dynamic notion with numerous facets and dimensions that cannot be limited, cribbed, or confined inside traditional and doctrinaire boundaries. In fact, equality and arbitrariness are sworn enemies, one belongs to the rule of law in a republic while the other, to whim and caprice of an absolute monarch. When an act is arbitrary, it implicitly violates Article 14 since it is unfair in light of both political logic and constitutional law.

The view taken by Bhagwati J. in Royappa case was again approved by him in *Maneka Gandhi v. Union of India, (AIR 1978 SC 597)*- while deciding the case he said that Article 14 strikes at arbitrariness in state action and ensures fairness and equality of treatment. This Article is infused with the notion of reasonableness, which is a pervasive and brooding aspect that is fundamental to equality and non-arbitrariness, both legally and philosophically.

Now, given the present situation the delegated power of Union Government under Section 12 of Army Act with respect to the recruitment of women cannot be questioned rather the policy statements which are made in furtherance of this power can be questioned on the ground of equality and other provisions of the constitution and if they are found unconstitutional then they can be declared ineffective by the courts to that extent.

Article 33 of the Constitution of India gives power to the Parliament to determine the extent of Fundamental Rights as applicable to members of Armed Forces. The restriction can be based on upon two grounds:

- (i) Proper discharge of duties

(ii) Maintenance of discipline among them.

Any restriction except these grounds will be violative of the rights of the members of Armed Forces thus any policy on the ground other than the abovementioned will be ultra vires to the constitution.

However, the courts are indeed conscious of the limitations regarding national security and policy imposed upon the judicial evolution of doctrine in matters relating to the Armed Forces. For this reason, the engagement of women in the specified departments where their recruitment is restricted has been held to be a matter of policy.

AMERICAN LEGAL FRAMEWORK

The legal framework for the integration of women in services in the United States began with the Women's Armed Services Integration Act, 1948, which allowed women to serve as permanent, regular members of the military. This was followed by the repeal of the combat exclusion policy in 2013, which opened up ground combat roles to women. The Department of Defense has continuously worked towards ensuring gender equality, non-discrimination and fair treatment of women in the military through its various policies and directives.

Article I, Section 8 of the U.S. Constitution gives Congress the power to raise and support armies, provide and maintain navy, and make rules for the governance of these forces. In furtherance to this, Congress has the power to decide what military criminal law applies to service members in the armed forces. The Uniform Code of Military Justice designates sexual assault as a crime.

The Uniform Code of Military Justice (UCMJ) provides the legal foundation for addressing issues related to harassment, discrimination and gender-based offences within the military. Additionally, the U.S. government has implemented laws such as the Military Justice Improvement Act to further protect the rights of women in the Armed Forces. Furthermore, Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on sex, which applies to the military as well.

The ongoing legal developments and policy changes demonstrate the commitment of the U.S. government towards ensuring equal opportunities and rights for women in the Armed Forces.

These legal frameworks play a pivotal role in addressing gender-related challenges and fostering an inclusive environment within the military.

JUDICIAL PRECEDENTS

The Judiciary has played a major role in transforming society and acts as a catalyst for social change. Judicial decisions have been instrumental in the development of new dimensions of justice by giving effective interpretation to the Constitution and the laws for doing justice. The judicial process tries to do the balancing of interests and derive conclusions from issues before it in accordance with law. The judiciary has tried to enforce and augment the principles as laid down in the Constitution by evolving new techniques and methods to meet the changing needs of society. It is the gap between the text of law and policy inspiring it, which leaves the scope of dynamism for the Judge. The judiciary has grown up with the demands of society in order to be a protector not only of the traditional individual rights, but also of the new diffused, collective, and fragmented rights and interests which are the characteristics of the masses.

The law when enacted, in spite of the best efforts and capacity of the legislators cannot visualize all situations in future to which that law requires application. New situations develop and the law needs to be interpreted for the purpose of application to them and finding a solution to new problems. Lord Denning has said, “every decision on every new situation is a development of law. The law does not stand still. It moves continually (therefore it is dynamic). Once this is recognized, then the task of the judge is to put it on a higher plane. He must deliberately work to shape the law to fit the demands of the moment. He can't just be a working mason building brick on brick or a mechanic without considering the entire design. He must be an architect who views the structure as a solid, long-lasting, and equitable architecture for society—a legal system. Civilized civilization depends on his work.”

INDIAN JUDGMENTS

Miss C. B. Muthamma, I. F. S. v. Union of India and Ors.³

The writ petition was filed by the senior member of Indian Foreign Service, Miss Muthamma who complained that she had been denied promotion to Grade I of the I.F.S. which is illegal

³ (1979) 4 SCC 260

and unconstitutional as infringing upon her fundamental rights.

Rule 8 (2) of the Indian Foreign Service (Conduct and Discipline) Rules, 1961 states that in cases where sub-rule (1) does not apply, a woman member of the service shall obtain the permission of the government in writing before her marriage is solemnized. If the government determines that a woman's family and domestic responsibilities will likely prevent her from carrying out her obligations as a member of the military in a timely and effective manner, the woman may be obliged to resign from the service at any point after getting married. Rule 18(4) of the Indian Foreign Service (Recruitment, Cadre, Seniority and Promotion) Rules, 1961 states that No married woman shall be entitled as of right to be appointed to the service.

The issue before the court was whether these two impugned rules are discriminatory against women?

It was held by the division bench of Hon'ble Justice V.R. Krishna Iyer and Hon'ble Justice P.N. Shinghal that sex-discrimination in service rules would be unconstitutional being violative of Articles 14, 15(1) and 16(2) of the Constitution of India unless justified by the peculiarities and nature of the employment. The rules were held to be unconstitutional on this note and the Court impressed upon the government to overhaul all Service Rules and remove discrimination based on sex.

The Secretary, Ministry of Defence v. Babita Puniya and Ors.⁴

A writ petition was filed by an advocate Babita Puniya in 2003 at Delhi High Court seeking grant of PC to women officers enrolled by way of SSC. Some other petitions of same nature were also filed by other women officers which were ultimately clubbed into one petition.

In 2010, Delhi High Court ruled that Permanent Commission should be granted to all Short Service Commission women officers who have served the Indian Army for five years or more and this order of the High Court was challenged by the Army in July 2010 in the Hon'ble Supreme Court. The apex court refused to stay the order of the High Court and asked them to dutifully follow and implement the same. In 2019, the permanent commission was granted to women officers prospectively in eight arms of the Army via notification issued by the Ministry

⁴ (2020) 7 SCC 469

of Defence. The circular mentioned the employment of women officers “in various staff appointments only.”

The main issues that were raised in the present case include:-

1. Whether women officers in the Indian Army should be granted Permanent Commission?
2. Whether the notification of the government dated 15 February 2019 be implemented?

Submissions presented by Union Government are as follows:

- The main contention was that the judgment of the High Court of Delhi failed to take notice of Section 10 and 12 of the Army Act, 1950 which restricts the enrolment of women officers into the Armed Forces.

Under section 10 of the Act, the grant of commission is at the discretion of the President, and no mandamus can be claimed from the court. Section 12 states that, no females should be employed in the regular army, except for those positions as specified by the official gazette. The provisions of 1950 Act are said to be protected by Article 33 of the Indian Constitution which confers power of the Parliament to determine by law what extent of the fundamental rights shall in regard of Armed Forces personnel, be abrogated or restricted.

- The new policy communicated on 25 February 2019 was termed as “Organizational Interest”. Women officers who have served for more than fourteen years are not eligible for the perks outlined in the policy since they will have less time for training. They would not be able to work for a profit because of their less years of service.
- It was submitted by the Union government that the Parliament is entitled to frame the policy regarding the grant of PCs to women officers after accounting for the need for a balanced approach involving military services and national security. The Union Government considers the inherent dangers involved in serving in the Army, adverse conditions of service which include an absence of privacy in field and insurgency areas, maternity issues, and childcare while framing the policy. The scope judicial review is limited in this regard as held by Hon’ble Supreme Court in *Union of India v. P K Choudhary* (2016 SC).

- According to the Union of India, women are not employed on duties which are hazardous in nature unlike male counterparts in the same Arm/Service who are liable to be employed in combat duties due to the “inherent risks” involved. It was further submitted that Army faces a huge management challenge “to manage WOs in soft postings with required infrastructure, not involving hazardous duties with the regular posts with the other women in the station.” The Army has to cater for spouse postings, long absence on account of maternity leave, childcare leave as a result of which the legitimate dues of male officers have to be compromised.
- The Government argued about the structural organization of the Army. According to the “Ajay Vikram Singh Committee” constituted by Union to enquire into the cadre issues in the armed forces suggested a ratio of 1:1.1 between permanent cadre to support cadre. However, the ratio is distorted at 3.98:1. Hence, further placement to Permanent Commission through Short Service Commission will upset the structure.
- The Union of India in a written note raised the concern of difficulties to cope up with WOs in Exigencies of Service, differences in the Physical Capabilities of men and women, peculiar dynamics in composition of rank and file, minimal facilities for habitat and hygiene. Towards the end, the note portends the dangers of a woman officer being captured by enemy and becoming prisoner of war.

Submissions presented by respondents are as follows:

- It was argued that the situation with respect to border postings and remote areas is not new and 30% of women officers are already deployed in such areas. Hence, women have already been posted in those places for a very long time and have been able to handle the adverse conditions just like their male counterparts. The contention advanced by the Union of India w.r.t battlefield scenarios lacks substance. The argument in relation to the disruption in the unit cohesion due to the presence of women officers does not validity as the organization should start accepting women as equal colleagues.
- It was urged that women officers on SSC have suffered from serious discrimination comprising of lack of opportunity for professional growth, absence of job security due

to the ambiguous status of the cadre and rendering service under junior officers due to the lack of a uniform and equal promotion policy.

- With respect to the application of the restriction under Article 33 of the Constitution of India, it is applied only when the restriction is to ensure that there is proper maintenance of discipline in the forces and the duties are being discharged effectively and it should not be for any other purpose.

In the Army, men and women undergo the same training and the same selection process for the Short Service Commission however inequalities exist as the latter are not given the option of Permanent Commission.

- On 16 August 2010, a question was raised before the Lok Sabha that 11,500 officers in the Indian Army are falling short, out of which there was a requirement of 5,115 officers in support services, where women were commissioned. Despite this shortage, the trained female officers are not given the service they deserve. The total strength of women officers in the Indian Army was highlighted, which forms 4% of the total strength of the commissioned officers in the army. In spite of being no stay on the Delhi High Court judgment, no steps have been taken to grant PCs to women in the Army.

The division bench of Chief Justice D. Y. Chandrachud and Hon'ble Justice Ajay Rastogi delivered the judgment in the present case which came in favor of the women officers. It was noted that the submissions advanced in the note tendered to the court were based on sex stereotypes premised on assumptions about socially ascribed roles of gender which discriminate against women. Denying women officers PCs on the grounds that doing so would disrupt the "peculiar dynamics" within a unit places an excessive load on them, a justification that has been made in support of the exclusion of women.

If the society holds strong beliefs about gender roles – that men are socially dominant, physically powerful and the breadwinners of the family and that the women are weak and physically submissive, and primarily caretakers confined to the domestic atmosphere- it is unlikely that there would be change in mindsets. Keeping in mind the restrictions imposed on the judicial evolution of doctrine in matters relating to the Armed Forces, the engagement of women in combat arms has been specifically held to be a matter of policy. The time has come for a realization that women officers are not adjuncts to a male dominated establishment whose

presence must be tolerated within narrow confines. The policy decision of 2019 was accepted subject to the directions (in para 69 of the judgment) as follows:

- A) All female officers now serving on the SSC will be eligible to apply for PCs, regardless of whether they have completed twenty or fourteen years of service;
- B) Women officers on the SSC with more than fourteen years of service who do not choose to be considered for the grant of PCs will be allowed to stay in their positions until they have completed twenty years of pensionable service;
- C) As a one-time measure, any current SSC officers with more than fourteen years of service who are not appointed on PC will also benefit from staying in service until they reach pensionable service;
- D) The phrases "in various staff appointments only" in paragraph 5 and "on staff appointments only" in paragraph 6 are not to be enforced;
- E) Women SSC officers with more than twenty years of service who are not awarded PC will retire on pension in accordance with the policy decision; and
- F) Women officers will have equal access to all specialization options when choosing to opt for the grant of PC, just like male SSC officers. On the same terms as their male counterparts, female SSC officers are allowed to use their options for consideration when awarding PCs.

In accordance with the aforementioned instructions, SSC women officers who receive PC shall be eligible for all ensuing perks, including financial and promotional advantages. However, those officers who were still in service, those who had filed Writ Petitions to the Delhi High Court, and those who retired while the case was still pending would be eligible for these benefits.

Union of India and Ors. v. Lieutenant Commander Annie Nagaraja and Ors. ⁵

The batch of civil appeals comes up for adjudication from two decisions, the first being that of

⁵ (2020) 13 SCC 1

the Delhi High Court and the second being the Armed Forces Tribunal. Six writ petitions were filed with the Delhi High Court in accordance with Article 226 of the Constitution.

The seventeen petitioners were female officers in the Education Branch, the Air Traffic Controller and Logistics cadres, who had joined the Indian Navy as Short Service Commissioned Officers. Nine of them worked in the Education Branch, two in the ATC cadre, and six in the Logistics cadre. They claim that after serving as SSC officers for fourteen years, they were let go from the service without being given the opportunity to receive permanent commissions.

The decision of the AFT at the Principal Bench in New Delhi in a batch of six Original Applications is the source of the second set of proceedings that have resulted in appeals before this court. Commander Priya Khurana was the one who initiated the lead original application. Seven SSC officers who were enlisted in 2002 into the Indian Navy's Education, ATC, and Logistics cadres were the applicants before the AFT in this batch of cases.

They requested that a few cadres and branches be given PCs. As a result, the MoD's Integrated Headquarters' implementation guidelines, dated December 3, 2008, were also contested. When their term of SSC commitment came to an end, the officers contested their discharge from duty.

Sub-section (2) of Section 9 conditions the eligibility of women to the appointed or enrolled in the Navy or the Indian Naval Reserve Forces. The provision commences with the expression “no woman shall be eligible” and follow it up with the expression “except in such department, branch or other body.” Subject to the Union Government abolishing the limitation, women are not allowed to be appointed or enrolled. The power to designate which divisions, branches, or organizations within the Navy or Indian Naval Reserve Forces are open to female appointments or enlistment has been granted to the Union Government. Additionally, the Union Government has the power to specify the terms under which an appointment or enrollment may occur.

In Annie Nagaraja's case, female SSC officials were appointed between 1992 and 2001 in accordance with notices dated July 1, 1992, October 9, 1991, and December 20, 1991. However, in Priya Khurana's case, the women SSC officers were inducted as SSC officials in accordance with the July 2002 advertisement.

Regarding the issuance of PCs to SSC female officers, the MoD sent a message to the Chiefs

of the Army, Navy, and Air Force on September 26, 2008. The aforesaid notification has two noteworthy aspects. Firstly, SSC women officers were given the opportunity "to be inducted" into the designated cadres/branches as a condition of receiving a PC.

Consequently, women SSC officers who were already serving were not granted PCs; additionally, women SSC officers in the Army, Navy, and Air Force were only allowed PCs in certain cadres and branches. Insofar as the Navy is concerned, PCs were to be granted in the cadres/branches of the Army in addition to the Naval Constructor cadre of the Navy.

Selection of officers for the grant of PCs is to be based on inter se merit determined on the basis of the Annual Confidential Reports of the officers under consideration and subject to the availability of vacancies.

The Delhi High Court ruled that even though SSC officers in the navy who requested permanent commission but were denied it could receive it within six weeks of becoming eligible to retire, even if their cases were still pending. In contrast to the high court's ruling, the AFT declared that the relevant authorities would make the decision regarding the award of a permanent commission since it lacked sufficient information.

Submissions on behalf of Union of India are as follows:

1. Sea-going duties in the Indian Navy unlike the Army or Air Force have a distinctive feature since there is no immediate return to base;
2. The policy has been to exclude women from sea-going branches with the exception of the Logistics cadre;
3. There are practical difficulties in allowing the induction of women SSC officers on PCs; the majority of the Indian Navy's fleet is made up of Russian-built ships without any female restroom facilities; and
4. There is a possibility of certain branches involving sea-going duties being opened up for women officers on PCs in the near future as new ships are introduced into the Naval Fleet.

When the Union Government opened up specific branches and cadres on December 20, 1991,

for the recruitment of women as Short Service Commissioned officers, it was planned that the policy governing the granting of PCs would be enacted in 1997. The MoD's two letters dated December 20, 1991, were specifically mentioned in the policy that was released on February 25, 1999, making it possible to refer to the previous commitment.

A notification was released on November 6, 1998, in accordance with Section 9(2), permitting the appointment of female officers to positions in the Executive, Engineering, Electrical, and Education branches. The policy announcement dated February 25, 1999, made it clear that women would be particularly allowed to serve in the maritime industry and that PCs would be granted in compliance with Regulation 203.

The following are submissions that were made on behalf of the respondents:

1. Insofar as it is future and limited to specific cadres/branches, the policy letter of September 26, 2008, may be revoked. Male officers are directly inducted as PC officers into the Education Branch and the Logistics cadre. It is discriminatory to completely refuse SSC women officers' requests for consideration when granting PCs.
2. The policy letter dated September 26, 2008, supersedes both Regulation 203 of the 1963 Regulation and the policy letter dated February 25, 1999. In this case, the AFT's conclusions should be affirmed. Regulation 203, since subordinate laws take precedence over executive directives;

It was held by the division bench of Chief Justice D.Y. Chandrachud and Hon'ble Justice Ajay Rastogi that as a result of the policy decision of the Union Government in the Ministry of Defence dated 25 February 1999, the terms and conditions of service of SSC officers including women in regard to the grant of PCs are governed by Regulation 203, Chapter IX, Part III of the 1963 Regulations. The clause in the policy letter dated September 26, 2008, which limits its application to certain Indian Navy cadres and branches and makes it prospective, will not be implemented. The parts of the 3 December 2008 implementation guidelines that are limited to certain cadres and made prospective were declared null and void.

All currently serving SSC officials in the cadres of education, law, and logistics will be given consideration for PC grants. The policy of February 25, 1999, in conjunction with Regulation

203 of Chapter IX, Part III of the 1963 Regulations, confers the right to be given consideration for the granting of PCs.

The grant of PCs to SSC women officers who were in service at the time of the High Court and AFT's rulings will be based on the vacancy status as of the judgment dates of the Delhi High Court and the AFT, or as it currently exists, whichever is higher.

In exercise of the power conferred by Article 142 of the Constitution, it was directed that SSC officers in the ATC cadre in Annie's Nagaraja's case shall be entitled to pensionary benefits. SSC officers in the ATC cadre in Priya Khurana's case shall be considered for the grant of PCs in accordance with the directions.

Lt. Col. Nitisha and Ors. v. Union of India and Ors. ⁶

The Central government issued several directives concerning the evaluation of the women officers set forth three criteria:

1. Women Officers have to clear a certain percentage score as well as score higher than the lowest scoring male officer who had previously been awarded a PC;
2. Annual Confidential Reports (ACRs) were to be included in the grading;
3. Certain Medical Requirements had to be met.

These criteria were contended to be discriminatory and violative of their constitutional rights.

The three petitioners in their appeal argued that the medical standard stated in the General Instructions was arbitrary and unreasonable, given that female officers between the ages of 40 and 50 were required to adhere to the same medical standards as their male counterparts between the ages of 25 and 30. They also mentioned that after a permanent commission was granted, there was no longer a necessity for a medical examination, therefore later-stage medical conditions did not prevent male officers from advancing in their careers. Because women were routinely denied entry to these courses, they contended that the reliance on ACRs

⁶ 2021 SCC Online SC 261

was inaccurate because these reports were often produced on the spur of the moment and lacked the related benefit in their ACRs.

The respondents contended that time waivers were provided in accordance with established protocols and that the Army considered physiological changes that take place during childbirth. Because age and obesity are not tied to a person's gender, petitioners were unable to use that as justification for an exemption. It was further stated that as the candidate's age and height were used to determine the results of the SHAPE-1 (Psychology, Hearing, Appendages, Physical Capacity, and Eyesight) assessment, age-related changes would still be taken into consideration.

By looking into laws, standards, or practices that disproportionately and negatively affect members of groups that are protected from discrimination by the Constitution under Article 15(1) of the Constitution, the Hon. Supreme Court noted that systemic discrimination is incompatible with substantive equality.

Consequently, the court decided that in order to achieve meaningful equality, indirect discrimination must be outlawed—even in the absence of discriminatory intent. After ten or fourteen years of service, rather than during the selection process, medical fitness should be evaluated. It is not implied by the Army's mistake in postponing inclusion that medical examinations for women are conducted later than those for men in the military. ACRs should be assessed by keeping in mind that they might not have been made with diligence. The court ruled that score criterion was arbitrary and could not be compared to that of men and there was no need to include a component of “competitive merit”. PC should be awarded to all women who met the 60 percent cut-off. It was stated that while these restrictions appeared to be neutral on surface, they were applied in a way that was unjust to women and perpetuated the impacts of previous exclusion.

AMERICAN JUDGMENTS

*Frontiero v. Richardson (1973)*⁷

Sharron Frontiero, an Air Force Lieutenant on getting married requested an increased housing allowance in addition to dental and medical benefits for her husband Joseph, who was a full-

⁷ 411 U.S. 677

time college-student.

Federal law guaranteed these benefits to married men serving in the armed forces, regardless of how much their wives earned. However, married women could not get these benefits unless they could demonstrate that their spouse was reliant on them for more than half of their income. Joseph did not provide Sharron with more than half of his support, even though he made more money each month than the veteran's stipend. As such, Sharron was not eligible for the extra perks.

The Frontiero filed a lawsuit in federal court, claiming that the unequal treatment of men and women in the "uniformed services" was unconstitutional and that married women should be entitled to the same benefits as married men, without proof of genuine dependability.

The Frontiero had to claim the Fifth Amendment's Due Process Clause, which does extend to federal action, because the Equal Protection Clause of the Fourteenth Amendment only applies to actions done by states and not by the federal government. But according to the Court's interpretation of the Due Process Clause, the federal government must also provide equal protection.)

For the first time, the proper level of review—strict scrutiny or rational basis—came up for debate before the Supreme Court.

According to Justice William Brennan, who wrote the opinion, Women in the United States experienced widespread discrimination in politics, the labor market, and education. Sex-based classifications, like those based on race or national origin, ought to be closely scrutinized by the courts. Without stringent scrutiny, legislation would just need to pass the "rational basis" test as opposed to the "compelling state interest test." That is, rather than meeting the considerably easier standard of having a reasonable basis for the statute, strict scrutiny would force a state to demonstrate why there is a compelling state interest for the discrimination or sex classification.

However, in this case, only a majority of justices concurred that gender categories should be strictly scrutinized. While most justices concurred that the military benefits legislation violated the Constitution, there was disagreement about how closely gender classifications and issues of sex discrimination would be examined in this case.

Rostker v. Goldberg (1981) ⁸

The plaintiffs filed a lawsuit, claiming that the Equal Protection Clause of the Fifth Amendment to the United States Constitution (Constitution) is violated by the Military Selective Service Act (MSSA). All males between the ages of 18 and 26 are required by the MSSA to register with the Selective Service. The MSSA's main goal is to give the armed forces the authority to choose men in the event that a military draft is required. Women are exempt from Selective Service registration requirements.

The issue before the court was can federal government require only males to register with the Selective Service?

In the majority opinion, Justice William Rehnquist (J. Rehnquist) stated that the main goal of the MSSA is to produce combat personnel when a military draft is required, which is unquestionably a significant government interest.

Regarding the means, J. Rehnquist pointed out that combat service is only available to men (as a group). This is why registering every woman is a significant administrative hassle for a negligible benefit. For the purposes of a draft, men and women are therefore in different situations. The majority of non-combat roles are also occupied by combat-ready soldiers who rotate with other soldiers, which reduces the benefit of women registering for these posts even more. In his dissenting opinion, Justice Byron White (J. White) claimed that some occupations can be completed by those who are not qualified for combat service. Therefore, there's no reason Congress can't hire women to fill these roles.

United States v. Virginia (1996) ⁹

Out of the fifteen public schools in Virginia, VMI (Virginia Military Institute) was the only one institute with the representation of single gender (male). The goal of VMI was to develop future leaders who are (male) "citizen soldiers." Through its "adversative method," which was defined by physical rigor, mental stress, complete equality of treatment, lack of privacy, etc., VMI fulfilled its objective.

⁸ 453 U.S. 57

⁹ 518 U.S. 515

During the trial, the District Court recognized that women were losing out on a special educational opportunity, but it maintained the school's ban, arguing that admitting women would jeopardize the institution's adversarial curriculum. The State created the Virginia Women's Institute for Leadership (VWIL) for women in response to a Court of Appeals ruling. VWIL operated without the use of the adversative method and provided fewer courses than VMI.

The issue before the court was whether VMI violates the Fourteenth Amendment's Equal Protection Clause?

Virginia has not presented an "exceedingly persuasive justification," according to Justice Ruth Bader Ginsburg (J. Ginsburg), for barring all women. Arguments that are presented as "harmless" to support absolute exclusions won't be taken at face value. The idea that allowing women in would diminish VMI's reputation and ruin the school's adversity program was rarely supported by evidence.

It will no longer be acceptable to deny opportunities to women based on stereotypes about their nature or what is proper for them; instead, individuals whose skills and abilities set them apart from the norm will be given equal consideration.

Furthermore, VWIL is ineligible to serve as VMI's replacement. The professors, facilities, educational options, and student body of VWI differ from those of VMI.

The Court held that The State is required to demonstrate how its classification furthers significant governmental goals and how the methods used are closely tied to those goals. The explanation cannot be theoretical; it must be sincere. Furthermore, it can't rely on too generalized conclusions about how men and women vary from one another.

CONCLUSION

The differences in societies (the cultural practices) ended up in having different forms and levels of women's integration in the armed forces. The legal provisions in India and U.S. have helped further in the integration process. At the same time, technological development in the military and its divergent roles makes it imperative for the armed forces to enlist women in its services in all branches.

As far as combat jobs are concerned, U.S. women officers have done a remarkable job in the combat positions since the opening in 2016. One or the other milestone is being achieved by them every single day and this spirit is supported by the U.S. Department of Defense (DoD) by carving out policies which fully support the women personnel without affecting the rights of men personnel in the services. This balancing of interests is resulting in their increasing women personnel in services. In India, direct combat arms in Indian Navy (Submarine specialization) and three combat arms of Indian Army are still restricted for women because of the reasons as specified by the Ministry of Defence (MoD). However, the ceiling has slowly started to break, and the ministry is opening different positions for women officers to see their performance and also supporting the existing women personnel in the Services with the new policies. Women must be included and accepted in all combat roles because there is no justifiable ground to exclude women from these roles. If a level playing field is opened for women they are capable of entering the institutions which were traditionally considered for men. But for that Level Playing field must be created at tip to the toe of services. Once their integration in complete at all the levels, it is a matter of time for society to follow.