
FROM FORMAL TO SUBSTANTIVE EQUALITY: A CRITICAL ANALYSIS OF WOMEN'S INCLUSION IN THE ARMED FORCES WITH SPECIAL REFERENCE TO THE BABITA PUNIYA JUDGMENT

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ABSTRACT

The inclusion of women in the armed forces has historically been shaped by deeply entrenched patriarchal norms and institutional barriers. Despite constitutional guarantees of equality, women in India were restricted to limited roles and denied long-term career advancement through permanent commission. The Supreme Court's landmark judgment in *Secretary, Ministry of Defence v. Babita Puniya* (2020)¹ marked a transformative shift by recognizing the right of women officers to permanent commission in the Indian Army. This research paper critically evaluates the judgment through the lens of formal and substantive equality. It argues that while the decision represents a significant step towards dismantling legal discrimination, it does not fully address structural and institutional barriers that impede the realization of substantive gender equality. The paper further analyzes constitutional provisions, judicial precedents, and practical challenges, and proposes reforms necessary to achieve true gender parity in the armed forces.

Keywords: Gender Equality, Substantive Equality, Formal Equality, Women in Armed Forces, Permanent Commission, Military Law, Constitutional Law, Gender Discrimination, Patriarchy, Institutional Barriers, Judicial Activism, Indian Army, Women Empowerment, Service Law, Equality Jurisprudence, Human Rights, Structural Inequality.

¹ *Sec'y, Ministry of Def. v. Babita Puniya*, (2020) 7 SCC 469 (India)

1. Introduction

The position of women in the Indian armed forces has long been characterized by systemic exclusion and limited participation. Historically, women were confined to non-combat roles and short-term service commissions, reflecting a broader societal perception of gender roles. Despite constitutional guarantees under Articles 14, 15, and 16, institutional policies often perpetuated discrimination by restricting women's career progression.

The Supreme Court's decision in *Secretary, Ministry of Defence v. Babita Puniya* (2020) marked a watershed moment in addressing these inequalities. The Court held that the denial of permanent commission to women officers violated constitutional principles of equality and non-discrimination. It rejected arguments based on physiological differences and social norms, emphasizing that such reasoning was rooted in gender stereotypes.

However, the judgment raises an important question: does granting permanent commission ensure true equality, or does it merely establish formal parity? While the decision removes explicit legal barriers, deeper structural inequalities continue to limit women's full participation in the armed forces.

This paper examines whether the Babita Puniya judgment achieves substantive equality or remains confined to formal recognition of rights. It argues that although the judgment is progressive, it falls short of addressing systemic and cultural barriers that hinder the realization of gender justice.

2. Historical representation of women

The historical status of women in ancient India reflects a gradual shift from relative equality to deeply institutionalized inequality, as evidenced in texts such as the Vedas, Puranas, and the Manusmriti. In the early Vedic period (c. 1500–1000 BCE)², women enjoyed a comparatively elevated position, with access to education, participation in religious rituals, and engagement in philosophical discourse, as seen in the contributions of scholars like Gargi and Maitreyi, indicating a form of proto-formal equality. However, during the later Vedic and Epic periods, particularly in narratives like the Ramayana and Mahabharata, the status of women began to

² A.S. ALTEKAR, *THE POSITION OF WOMEN IN HINDU CIVILIZATION* 17–25 (Motilal Banarsidass 1956).

decline, with increasing emphasis on domesticity, chastity, and subservience, exemplified by figures such as Sita and Draupadi, whose experiences reinforced patriarchal norms. This decline was further solidified in the Dharmashastra period, especially through the Manusmriti, which codified the doctrine of female dependence by asserting that a woman must remain under the guardianship of her father, husband, and son throughout her life, thereby denying her autonomy and independent legal identity. Although the text paradoxically advocated respect for women, in practice it entrenched their subordination by restricting their rights in matters of property, education, and mobility. Subsequent Puranic traditions and social practices further deepened this inequality through the emergence of oppressive customs such as child marriage, purdah, and the marginalization of women from public and religious spheres, despite their continued symbolic glorification as goddesses. Thus, the trajectory from the Vedic period to the later classical age demonstrates a clear transformation from participation and relative equality to systemic exclusion and control, forming a historical foundation of gender inequality that continues to influence contemporary debates on women's substantive equality in institutions such as the armed forces.

2.1. Vedic Period (c. 1500–1000 BCE) – Relative Equality

The Vedic period is often regarded as a phase of relative gender equality in ancient India, where women enjoyed a comparatively elevated social and intellectual status. They had access to education and were permitted to study sacred texts, participate in religious rituals, and engage in philosophical debates. Women such as Gargi and Maitreyi are frequently cited as examples of female scholars who contributed to intellectual discourse. Marriage was generally at a mature age, and women possessed limited property rights in certain contexts. Although patriarchal elements existed, the overall structure allowed women a degree of autonomy and participation, indicating a form of early, albeit limited, equality.

2.2. Later Vedic Period (c. 1000–600 BCE) – Beginning of Decline

The later Vedic period marked the beginning of a gradual decline in the status of women, as patriarchal norms became more pronounced. Women's³ access to education and participation in public and religious life began to diminish, and their roles increasingly shifted toward domestic responsibilities. The consolidation of the patriarchal family structure led to greater

3. *The Ramayana* (Valmiki).

4. *The Mahabharata* (Vyasa)

control over women's mobility and decision-making. This phase represents a transition where earlier forms of relative equality were slowly replaced by gender-based restrictions, laying the groundwork for more structured inequality.

2.3. Epic & Puranic Period (c. 600 BCE–200 CE) – Ideological Subordination

During the Epic and Puranic period, the subordination of women became deeply embedded in cultural and moral narratives. Texts such as the Ramayana and Mahabharata portrayed idealized versions of womanhood centered on obedience, sacrifice, and devotion to the husband, as exemplified by figures like Sita. At the same time, incidents such as the humiliation of Draupadi highlight the vulnerability and objectification of women within these narratives. The concept of *pativrata dharma* gained prominence, reinforcing the idea that a woman's identity and virtue were tied to her subservience. This period reflects the ideological normalization of gender inequality.

2.4. Manusmriti & Dharmashastra Period (c. 200 BCE–300 CE) – Institutional Inequality

The composition of the Manusmriti marked a significant turning point in the institutionalisation of gender inequality. It codified the doctrine of female dependence, asserting that a woman must remain under the guardianship of her father, husband, and son throughout her life. This framework denied women autonomy and independent legal identity, while restricting their rights in areas such as property, education, and mobility. Although the text outwardly emphasized respect for women, in practice, it entrenched a hierarchical social order that subordinated women. This period represents the formal legal and social codification of patriarchy.

5. Medieval Period (c. 8th–18th Century) – Deepened Oppression

The medieval period witnessed the intensification of patriarchal practices and the further marginalization of women. Social customs such as *pardah*, child marriage, and *sati* became more prevalent, severely restricting women's freedom and agency. Women were largely excluded from education and public life, and their roles were confined to the domestic sphere. The intersection of socio-political instability and rigid social norms contributed to the deep entrenchment of gender inequality. This phase represents one of the most oppressive periods in terms of women's rights and autonomy.

6. Colonial Period (18th Century–1947) – Reform and Resistance

The colonial period introduced both challenges and opportunities for the status of women in India. While patriarchal practices persisted, this era also saw the emergence of social reform movements aimed at improving women's conditions. Legislative measures such as the abolition of sati and initiatives promoting women's education marked significant progress. Reformers played a crucial role in challenging oppressive customs and advocating for women's rights. However, despite these developments, deep-rooted social inequalities continued to limit the full realization of gender equality⁴.

7. Post-Independence India (1950 onwards) – Formal Equality

With the adoption of the Constitution of India in 1950, a new legal framework guaranteeing equality and non-discrimination was established. Provisions such as Articles 14, 15, and 16 formally recognized the rights of women and sought to eliminate gender-based discrimination. Despite these constitutional guarantees, the persistence of social norms and institutional barriers meant that equality remained largely formal rather than substantive. Women continued to face challenges in accessing equal opportunities in various sectors, including employment and governance.

8. Contemporary Period – Toward Substantive Equality

In the contemporary period, there has been a growing recognition of the need to move beyond formal equality toward substantive equality. Judicial interventions, particularly in cases like *Secretary, Ministry of Defence v. Babita Puniya*, have played a crucial role in addressing structural discrimination and promoting gender justice. The focus has shifted toward removing institutional barriers, ensuring equal opportunities, and recognizing the importance of dignity and autonomy. While significant progress has been made, the persistence of social and structural inequalities indicates that the journey toward true gender parity remains ongoing.

2. Research Methodology

This research adopts a doctrinal methodology based on the analysis of primary and secondary legal sources. Primary sources include constitutional provisions and judicial decisions, while

⁴ LATA MANI, *CONTENTIOUS TRADITIONS: THE DEBATE ON SATI IN COLONIAL INDIA* 1–20 (1998)

secondary sources include books, journal articles, and international conventions. The study critically examines legal principles and evaluates their practical implications in achieving gender equality in the armed forces.

3. Conceptual Framework: Formal vs Substantive Equality

Equality is a foundational principle of constitutional law, yet its interpretation varies significantly. Formal equality focuses on equal treatment under the law, ensuring that individuals are not discriminated against on arbitrary grounds. It operates on the premise that similar cases should be treated alike.

Substantive equality, however, recognizes that identical treatment may not yield equitable outcomes in contexts marked by historical disadvantage. It seeks to address structural inequalities by ensuring equal access to opportunities and removing systemic barriers⁵.

In the context of gender justice, substantive equality requires more than legal recognition; it demands institutional reforms and cultural transformation. The judiciary plays a critical role in advancing this vision by interpreting constitutional provisions in a manner that promotes social change.

The Babita Puniya judgment must therefore be evaluated not only in terms of its formal recognition of rights but also in its capacity to achieve substantive equality.

4. Constitutional and Legal Framework

The Indian Constitution provides a robust foundation for gender equality. Article 14 guarantees equality before the law and equal protection of laws. Article 15 prohibits discrimination on the grounds of sex, while Article 16 ensures equal opportunity in public employment.

These provisions collectively establish that women cannot be excluded from employment opportunities based on gender. The Supreme Court has interpreted these articles expansively to promote gender justice and eliminate discriminatory practices.

Additionally, India is a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which obligates the state to ensure equal

⁵ Catharine A. MacKinnon, *Substantive Equality: A Perspective*, 96 MINN. L. REV. 1, 10–15 (2011).

participation of women in all sectors, including the armed forces.

5.1 Facts

Women were inducted into the Indian Army through the Short Service Commission (SSC), which limited their tenure. Unlike male officers, women were not granted permanent commission, restricting their career advancement and access to benefits.

A group of women officers challenged this policy, arguing that it violated their fundamental rights. The women officers (petitioners) primarily argued that the denial of Permanent Commission (PC) to them in the Indian Army amounted to a direct violation of their fundamental rights guaranteed under Articles 14, 15, and 16 of the Constitution of India. They contended that despite undergoing the same rigorous selection process, training, and performing duties equivalent to their male counterparts, they were systematically denied equal career advancement opportunities, including command positions and pension benefits. This differential treatment⁶, based solely on gender, was asserted to be arbitrary, discriminatory, and lacking any reasonable nexus with the objectives of military efficiency, thereby failing the test of equality before the law.

The petitioners further emphasized that the policy reflected a flawed and unconstitutional classification between male and female officers, which was rooted not in merit or capability but in entrenched gender stereotypes. They argued that the state's approach perpetuated formal equality—by allowing women to enter the armed forces—while simultaneously denying them substantive equality by restricting their professional growth and long-term service prospects. The exclusion of women from command roles, despite their proven competence and commendable service records, was presented as clear evidence of institutional bias rather than any legitimate operational concern.

Additionally, the petitioners highlighted that such discriminatory practices were inconsistent with India's international obligations, particularly under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),⁷ which mandates the elimination of gender-based discrimination in all spheres, including employment. They also argued that the

⁶ Sandra Fredman, *Substantive Equality Revisited*, 14 INT'L J. CONST. L. 712, 715–18 (2016).

⁷ Convention on the Elimination of All Forms of Discrimination Against Women art. 7, Dec. 18, 1979, 1249 U.N.T.S. 13.

denial of Permanent Commission adversely affected their dignity, financial security, and career stability, thereby infringing upon their right to life and dignity under Article 21 of the Constitution.

On the other hand, the Union of India (respondents) defended its policy by invoking physiological differences between men and women, asserting that the demands of military service—especially in combat and command roles—require a level of physical endurance that women, as a class, may not uniformly meet. The government also relied on social arguments, suggesting that women’s traditional roles related to family and childcare responsibilities could hinder their ability to undertake long-term and demanding military assignments, thereby justifying their restricted inclusion.

The respondents further pointed to operational challenges, including difficult terrain, extreme weather conditions, and the lack of adequate infrastructure such as separate accommodation and sanitation facilities, as practical constraints in deploying women officers in all roles. They also raised concerns about unit cohesion and morale, arguing that male soldiers, particularly from rural backgrounds, might face difficulties in accepting women as commanding officers, potentially affecting discipline within the ranks. Moreover, the government contended that its policy was already progressive, as it had begun granting Permanent Commission to women in certain branches, and emphasized that decisions related to military structure and deployment should be left to executive discretion, with minimal judicial interference.

In response, the petitioners strongly rebutted these arguments by asserting that physiological differences cannot be used as a blanket justification to deny opportunities to an entire class, especially when individual capability and merit can be objectively assessed. They argued that reliance on social roles and stereotypes was inherently discriminatory and contrary to constitutional values. The infrastructural and operational limitations cited by the government were characterized as administrative shortcomings rather than valid legal grounds for exclusion. Furthermore, the plea for judicial deference was challenged on the basis that the judiciary has a constitutional duty to intervene whenever state action violates fundamental rights. Ultimately, the petitioners maintained that the policy was rooted in outdated patriarchal notions and failed to align with the principles of substantive equality, dignity, and non-discrimination enshrined in the Constitution.

5.2 Issues

1. Whether denial of permanent commission violates Articles 14, 15, and 16.
2. Whether gender-based classification is constitutionally valid.
3. Whether such denial violates the principle of equality under the Constitution.
4. Whether women officers can be considered for command appointments on par with men.

5.4 Policy Framework and Arguments of the Union of India

The Union of India defended its policy framework by emphasizing that certain aspects of military functioning fall strictly within the domain of executive policy and are not subject to judicial interference. It was argued that the exclusion of women from combat roles and specific “areas of operation” was a conscious policy decision based on operational requirements, and therefore lay outside the scope of judicial review. Similarly, decisions relating to manpower management—such as the non-grant of Permanent Commission (PC)⁸ to certain categories of Short Service Commission (SSC) officers, irrespective of gender—were presented as neutral policy choices aimed at maintaining organizational efficiency.

The government further relied on its policy communications, particularly those issued in 2019, to demonstrate that steps had been taken toward inclusion, albeit in a limited manner. Under this framework, women officers with up to fourteen years of service were considered eligible for the grant of PC, though their roles were largely confined to staff appointments rather than command positions. Those with service between fourteen and twenty years were permitted to continue until they became eligible for pensionary benefits, while officers exceeding twenty years of service were to be released with pension. This classification, according to the Union, was a balanced approach aimed at addressing both gender concerns and administrative exigencies.

Additionally, the Union highlighted structural and institutional constraints, including cadre management issues and the recommendations of expert bodies such as the Ajay Vikram Singh

⁸ Ministry of Defence, Govt. of India, Policy Letter No. 12(1)/2019/D(AG), Feb. 25, 2019 (India).

Committee, which viewed SSC as a support cadre rather than a long-term leadership pipeline. It was also argued that extending the benefit of PC beyond the defined categories would lead to administrative complications and open the “floodgates” of litigation, thereby disrupting the existing service structure.

In contrast, the petitioners strongly challenged these contentions by highlighting the discriminatory impact of such policies. It was argued that women officers suffered from systemic disadvantages, including lack of career progression, absence of job security, and unequal promotion opportunities. The restriction to staff roles and denial of command appointments were seen as reinforcing institutional inequality rather than addressing it. These arguments were crucial in framing the issue not merely as a matter of policy⁹, but as a constitutional question involving the violation of equality and dignity, ultimately influencing the Court’s rejection of administrative convenience and stereotypes as valid grounds for discrimination in *Secretary, Ministry of Defence v. Babita Puniya*.

5.4 Judgment

The decision in *Secretary, Ministry of Defence v. Babita Puniya*¹⁰ marks a watershed point in Indian constitutional law, pushing the move from nominal to substantive equality. At its root, the decision goes beyond just addressing women's service conditions in the armed services, instead questioning the deeper structural inequalities ingrained in governmental institutions. The Supreme Court's reasoning marks an intentional shift away from conventional deference to administrative discretion in military issues, emphasizing that institutional autonomy cannot trump basic rights.

A critical aspect of the judgment lies in its rejection of gender stereotypes as a legitimate basis for policy-making. The Court dismantled the Union Government’s reliance on arguments related to physiological differences, domestic responsibilities, and societal perceptions, identifying them as manifestations of entrenched patriarchy rather than objective criteria. By doing so, the Court aligned its reasoning with the broader constitutional vision of equality, which demands that laws and policies be free from assumptions that perpetuate historical disadvantage. This approach underscores the judiciary’s role in challenging not only overt

⁹ Ajay Vikram Singh Committee Report on Cadre Management of the Indian Army (2001) (India).

¹⁰ *Babita Puniya*, (2020) 7 SCC 469 (India).

discrimination but also the subtle, systemic forms that operate through seemingly neutral justifications.

The Court's emphasis on substantive equality marks a significant analytical advancement. It recognized that formal inclusion—allowing women entry into the armed forces—does not suffice if structural barriers continue to restrict their growth, leadership opportunities, and institutional recognition. In this sense, the denial of Permanent Commission was not merely a service-related issue but a mechanism of exclusion that reinforced gender hierarchies within the military framework. The judgment thus reframes equality as an outcome-oriented concept, requiring the state to actively dismantle barriers rather than passively ensure non-discrimination.

Equally important is the Court's stance on institutional reform. By rejecting arguments related to unit cohesion and infrastructural limitations, the Court shifted the burden from individuals to the institution, asserting that systemic inefficiencies cannot justify the denial of rights. This reflects a progressive understanding that equality requires structural adaptation, especially in historically male-dominated domains like the armed forces. The decision also reinforces the idea that constitutional morality must prevail over social prejudices, even within disciplined forces.

However, the judgment is not without its limitations. While it expands opportunities for women, it stops short of addressing their exclusion from combat roles, thereby leaving a significant area of gender disparity intact. Nonetheless, the ruling sets a powerful precedent by affirming that equality must be substantive, inclusive, and transformative. It not only redefines the contours of gender justice in the military but also contributes to the broader discourse on dismantling institutionalized discrimination in India.

5.5 Ratio Decidendi

The judgment establishes that gender stereotypes cannot justify discrimination. It affirms that equality requires the removal of systemic barriers that restrict opportunities for women.

6. Evolving jurisprudence

The decision in *Secretary, Ministry of Defence v. Babita Puniya* demonstrates India's growing law on gender equality, which has progressed from formal to substantive. Earlier verdicts, such

as *Air India v. Nergesh Meerza*, maintained discriminatory practices, but more recent cases, such as *Anuj Garg v. Hotel Association of India* and *Joseph Shine v. Union of India*, rejected gender stereotypes and stressed dignity and autonomy. Building on this trend, the Court in *Babita Puniya* ruled that equality necessitates not just access but also equal chance for growth. It dismissed physiological and sociological arguments as unlawful stereotypes and emphasized the need to remove structural impediments¹¹. The ruling so reinforces a transformational constitutional approach, ensuring that equality is genuine, effective, and consistent with constitutional values, rather than simple nominal inclusion.

7. Critical Analysis

While the judgment is progressive, it has limitations.

Firstly, women remain excluded from many combat roles, limiting their career advancement. Secondly, implementation challenges persist, with institutional resistance affecting the realization of the judgment. Thirdly, societal attitudes continue to reinforce gender stereotypes.

Thus, the judgment achieves formal equality but falls short of substantive equality.

10. Conclusion

The issue of women's inclusion in the armed forces cannot be understood in isolation from the broader historical context of gender inequality in India. Ancient texts such as the Vedas reflect a period where women enjoyed relatively higher status, participating in education, intellectual discourse, and religious life. However, this position gradually deteriorated with the emergence of patriarchal norms in later texts, most notably the Manusmriti, which institutionalized the doctrine of female dependence and restricted women's autonomy in social, economic, and legal spheres. This transition from relative equality to structured subordination laid the foundation for enduring forms of social inequality that continue to manifest in modern institutions.

These historical patterns of exclusion and control are reflected in the armed forces, where women, despite formal entry, were long denied substantive opportunities such as Permanent Commission and command roles. The judgment in *Secretary, Ministry of Defence v. Babita Puniya* marks a significant constitutional intervention by challenging such institutionalized

¹¹ Sandra Fredman, *Substantive Equality Revisited*, 14 INT'L J. CONST. L. 712, 715 (2016)

discrimination and rejecting stereotypes rooted in deeply embedded social norms. The Court's emphasis on substantive equality represents a critical step toward dismantling structural barriers.

However, the persistence of restrictions, particularly in combat roles and leadership positions, indicates that legal reform alone is insufficient to achieve true gender parity. The legacy of social inequality—shaped by historical, cultural, and institutional forces—continues to influence policy and practice. Therefore, achieving genuine equality requires not only judicial recognition but also comprehensive structural reforms, societal transformation, and a shift in institutional mindset. Only through such a multidimensional approach can the promise of substantive equality be fully realized, ensuring that women are not merely included in form but empowered in substance.

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