SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 1 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

2025 SCC OnLine SC 1668

In the Supreme Court of India

(BEFORE DIPANKAR DATTA AND MANMOHAN, JJ.)

Arshnoor Kaur and Another ... Petitioners;

Versus

Union of India and Others ... Respondents.

Writ Petition (C) No. 772 of 2023

Decided on August 11, 2025

Advocates who appeared in this case :

Mr. Gopal Sankarnarayanan, Sr. Adv., Mr. Mandeep Kalra, AOR, Ms. Radhika Narula, Adv., Ms. Anushna Satapathy, Adv., Ms. Chitrangada Singh, Adv., Ms. Radhika Jalan, Adv., Ms. Widaphi Lyngdoh, Adv., Ms. Gauri Rajput, Adv., Mr. Vaibhav Yadav, Adv., Mr. Paras Mohan Sharma, Adv., Ms. Shefali Tripathi, Adv., Mr. Vishal Sinha, Adv., Ms. Ishita Chowdhury, Adv., Mr. Musharraf Shrivastava, Adv., For Petitioner(s)

Ms. Aishwarya Bhati, ASG, Ms. Shivika Mehra, Adv., Ms. Shagun Thakur, Adv., Mr. Saurav Gaur, Adv., Mr. Mukesh Kumar Maroria, AOR, Dr. Dinesh Rattan Bhardwaj, AOR, Ms. Vernika Tomar, AOR, For Respondent(s)

TABLE OF CONTENTS

Para Nos.

Primary issue

Arguments on behalf of Petitioners

Arguments on behalf of Respondent No. 3

Arguments on behalf of Union of India and Army

Rejoinder

Additional Arguments on behalf of the Respondents

Order dated 08th May 2025

Reasoning

Since notification issued under Section 12 of Army Act, 1950 permits women to join JAG, their number cannot be restricted in the manner sought to be done

Circulars of 11th November 2011 and 14th March 2012 are untenable in law

Argument that JAG Branch consists of primarily combatants is misconceived

Field parity has been institutionalised

Argument that women officers are not posted where contact with enemies is likely, has no basis

No waiver of fundamental rights

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 2 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

Constitution and Government policy towards women

Impugned notification is unconstitutional as it reserves double the number of vacancies for males

Distinction between gender-neutral and gender-equal

As the nature of tests of male and female candidates is similar, a combined merit list ought to be prepared

Constitutionally valid interpretation of the 2023 recruitment policy implemented w.e.f. 2024

Merit-based selection will improve efficiency of JAG

Conclusion

The Judgment of the Court was delivered by

MANMOHAN, J.:—

PRIMARY ISSUE

1. The primary issue that arises for consideration in the present case is whether Respondent-Union of India after having issued a Notification under Section 12 of the Army Act, 1950 allowing induction of women in the Judge Advocate General ('JAG') branch could have denied admission to Petitioner No. 2 (Ms. Astha Tyagi), who has achieved the fourth (4^{th}) rank with 477 marks and Petitioner No. 1 (Ms. Arshnoor Kaur), who has achieved (5^{th}) rank with 447 marks in the merit list of women candidates in preference to Mr. Himanshu Panwar who has secured third rank with 433 marks in the merit list of men candidates, but has obtained lesser marks than the female candidate placed at Serial No. 10 in the Females Merit List in pursuance to the notification dated 18^{th} January, 2023 for the JAG Scheme 31^{st} Course, *qua* Short Service Commission ('SSC') Course for Law Graduates (impugned notification) on the grounds that the said Notification provides for separate merit list for male and female candidates and provides for only three (03) vacancies for female candidates, as against six (06) vacancies for male candidates. It is pertinent to mention here that the Petitioners have sought not only a declaration that the impugned Notification is *ultra vires* Articles 14, 15, 16 and 19 of the Constitution, but also publication of a common merit list irrespective of sex of the candidate and implementation of a real and effective '*gender-neutral*' policy of recruitment in the JAG branch instead of the subsequent intake policy of the Respondents of having men and women officers in the ratio of 50:50, which has been branded by the Respondents as '*gender-neutral*'.

ARGUMENTS ON BEHALF OF PETITIONERS

2. Mr. Gopal Sankaranarayanan, learned senior counsel for the Petitioners stated that the selection criteria for male and female candidates in the JAG branch were not separate as they were assessed on identical parameters. Only few indicators such as physical attributes were different. He pointed out that the Service Selection Board ("SSB") procedure for male and female candidates is

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 3 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

identical in content, structure and evaluation, including the fifteen (15) Officer Like Qualities. The relevant portion of the procedure and testing parameters of the Officer Like Qualities considered by the SSB and the conduct thereof for recruitment to the Indian Armed Forces is reproduced hereinbelow: -

"…. Note:

1. Each candidature is tested for the above mentioned 15 OLQs.

2. There are mainly three people who test candidates for 15 OLQs they are: -

(a) Psychologist.

(b) Ground Testing Officer (GTO).

(c) Interviewing Officer.

Three officers are well trained in their fields to undertake the task. They independently interact with candidates to assess them for possessing the 15 OLQs.

The Psychologists do not physically interact with the candidates but assess them on the answers given by them.

CONDUCT OF SSB

DAY	*ACTIVITY*	*TEST CONDUCTED*	*TEST PROCEDURE AND REASON FOR TEST*	*REMARKS*
Stage 1: This is a coarse filter. The aim is to retain only those candidates who have the potential and fit to undergo detailed testing for four days. The Stage 1 selection system includes the following:				
DAY 1	*Stage I Screening Test (Intelligence Test)*	*1. Intelligence Test* *2. Picture Perception and Discussion Test*	*1. Intelligence Test* *This is a simple test of logic/analytical aptitude based on which an intelligence rating ranging from I to V is rewarded* *2. Picture Perception and Discussion Test* *Picture is flashed for 30 seconds. The*	*Common for Men and Women Candidates*

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 4 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

				candidates have to broadly note down seven basis parameters viz number of characters, age, sex, mood, action relating to past, present and future for each character in one minute. Time for story writing is four minutes. The key to performing well in this test is the accuracy of their perception. *Discussion Test* *In this phase batch is divided into different groups. Strength of group is around 15 candidates. Each candidate narrates his individual written story verbatim. Subsequently, in Part-II all the candidates have to discuss amongst themselves and achieve a common*		

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 5 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

			consensus about the characters and theme of the story. In this phase, candidates are evaluated on their power of expression, clarity of language (both grammatical and logical), confidence, participation, and their ability to accept and integrate others' ideas.	
Candidates who successfully clear Stage 1 proceed to Stage 2, which is based on their individual performance in Stage 1, as well as the administrative and logistical capacity of the selection center. *The stage-II tests comprise of three different techniques, namely the psychological tests, group tasks and personal interview. It is emphasized that in all the three techniques the assessment is of your personality which is based on specified 15 OLQs (Officer Like Qualities).*				
DAY 2	*Stage-II Psychological Test* *It is a test of your mind. Candidate's answers are required to be natural responses and not preconceived.*	*The Psychological Test.* *The psychologist does not interact with candidate nor does he know them by their physical appearance or attribute. He assess personality merely through the*	*Tests conducted:* *i. Thematic Apperception Test (TATs) - 60 items:* *12 Pictures including one blank are shown. Candidates are asked to write a story around what led to the situation, what is going on and what would be*	*Common for Men and Women Candidates*

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 6 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

			inputs which candidates give.	*the likely outcome.* *Each Picture is shown for 30 seconds and candidates are asked to write it in 4 minutes. In the blank side, they have to think a picture of their own choice and write a story around that.* *ii. Word Appreciation Test (WATs) - 60 items:* *In this test, a series of 60 words are shown to the candidates one after another for 15 seconds each. The candidate is required to write down the first thought or idea that comes to his mind.* *iii. Situation Reaction Test (SRTs) - 60 items* *This test consists of 60 routine life situations regarding day to day activities.*	

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 7 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

			The situations are printed in a booklet and the candidate is asked to write his/her reactions by completing the sentences, as to how they would feel, think and act in these situations. *iv. Self Description Test (SD).* *Candidate is asked to write five separate paragraphs on each context about the opinion of his parents/guardian, friends, teachers/superiors.* *Aim of these tests is to check for 15 OLQs by Psychologists independently*	
Day 3&4	*<u>Stage-II GTO Test</u>*	*1. Group Discussion (GD):* *2. Group Planning Exercise (GPE)* *3. Progressive Group Task (PGT)* *4. Snake/Group*	*1. Group Discussion (GD):* *Two topics of common interest (social issues and current events) are discussed.* *It is an informal discussion and*	*Common for Men and Women Candidates*

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 8 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

			Obstacle Race *5. Lecturette* *6. Half Group Task (HGT)* *7. Individual Obstacles Task (IOT)* *8. Command Task* *9. Final Group Task*	*not a debate. Each topic is allotted 20 minutes each. No definite conclusion is required to be deduced. There is no standard answer.* <u>Done:</u> To assess communication skills, ability to express opinions, and listen to others. *2. Group Planning Exercise (GPE):* *It comprises of five stages viz., explanation of the model, reading of the narrative by GTO, five minutes for self-reading by candidates, 10 minutes for individual written solutions and 20 minutes for group discussion. Narration of the group solution and definite conclusion is required.*	

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 9 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

				Done: To evaluate problemsolving abilities, logical thinking, and teamwork. *3. Progressive Group Task (PGT)* *It is the first outdoor task. A set of four obstacles with progressively increasing level of difficulties are to be completed in 40 to 50 minutes. Structures. Helping material and load are provided to the group.* *Done:* To assess teamwork, leadership, determination, and physical stamina. *4. Snake/Group Obstacle Race* *In this task the group is pitched against each other over a set of six obstacles with a snake like load to carry.* *Done:* To	

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 10 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

				assess physical stamina, coordination, and teamwork. *5. Lecturette* *It is an individual task and the candidate is required to give a short talk to the group. Three minutes are allowed to prepare any chosen topic from the 3-4 given in the Lecturette Cards for the talk.* *<u>Done:</u> To evaluate communication skills, clarity of thought, and ability to present information.* *6. Half Group Task (HGT)* *It has one obstacle similar to progressive group task with helping material and load to be carried. Group is divided into two Sub Groups and assigned the same obstacle in turn*	

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 11 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

				in such a way that when one group is working, the other one is not allowed to watch it. Time allotted to each sub group is 15 minutes. *<u>Done:</u> To assess leadership, delegation, and ability to work under pressure.* *7. Individual Obstacles Task (IOT)* *A set of 10 obstacles is set to be tackled individually. Obstacles are numbered from one to ten, denoting the points each one carries. Each individual is given three minutes.* *(In certain instances, female candidates may be permitted to complete 8 obstacles instead of the full 10. However, they retain the*	

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 12 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

				option to attempt the remaining 2 obstacles, and marks will be awarded for those obstacles upon successful completion. Additionally, candidates may repeat any obstacle, provided that all 10 obstacles are completed before attempting again. It is further stipulated that the marking scheme is uniform for both male and female candidates. A female candidate who completes 8 obstacles shall not be granted marks equivalent to those awarded to a male candidate who completes all 10 obstacles.	

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 13 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

				This provision ensures the integrity of the testing process, making it Gender Neutral. *<u>Done:</u> To assess physical fitness, determination, and problemsolving skills.* *8. Command Task:* *Each individual is nominated as commander for one task consisting of one obstacle similar to be Progressive Group Task Time given in 15 minutes.* *<u>Done:</u> To assess leadership potential, ability to take charge, and motivate others.* *9. Final Group Task (FGT).* *Task consisting of one obstacle similar to the Progressive Group Task.* *Time given to*	

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 14 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

			complete this task is 15-20 minutes May include scenarios involving problemsolving, decisionmaking, and teamwork. GTOs closely observe the way a candidate participates in various tasks and builds a personality profile.	
DAY 2-4 Concurrently	Stage-II Interview The interviewing officer discusses by way of questions and answers the opportunities you had in your life and the positive or otherwise benefit you have derived from them. It is a test of your heart. The interviewing officer is fairly senior and experienced in the armed forces. While	Interview	Tested for 15 OLQs The interviews are normally conducted in the afternoon by the Interviewing Officer (IO), who is also one of the three assessors. The interviews will carry on from day 1 to day 4. Each candidate is interviewed only once and is informed about it well in advance. The atmosphere throughout the interview is relaxed and informal. The	Common for Men and Women Candidates

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 15 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

	he interacts with you he discerns whether you have the qualities required to be an army officer. What you have done till date with regard to your academics, competitive exams, your achievements in extracurricular activities, your interests in life, sports you play, your feelings for your parents, friends, teachers and society at large, your general knowledge and awareness and your physical and mental fortitude are all important faces of his assessment.		*questions are generally based on everyday experience.*	
DAY 5	*Stage-II Conference The three assessors have individually carried out their*		*Confirmation test to select or reject the candidate*	*Common for Men and Women Candidates*

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 16 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

		assessment. However, there is no discussion as sharing of facts of assessment between them not any results of your performance is known to them or anybody else at the beginning of the conference. For the final result on the performance of a candidate all the three assessors and all members of the board must interact as also meet the candidate in person. Thus, we have the final board conference. During this, this individual assessments are discussed and a candidate's plus points and weak qualities are deliberated upon in detail. All aspects of			

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 17 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

	a candidate are analyzed to see if he/she has the required qualities to be trained to become a good armed forces officer.			

3. He emphasised that the Ministry of Defence in its Press Release dated 17th March 2023 affirmed that employment in the Indian Armed Forces is '*gender-neutral*' and that there is no distinction in testing, deployment or working conditions. The relevant portion of the Press Release is reproduced hereinbelow: -

> "*Employment in Indian Armed Forces is gender neutral. There is no distinction in the deployment and working conditions of male and female soldiers in the arms and services in which they serve. The postings are as per organizational requirements and employment is as per qualifications and service qualitative requirements.*"

4. He also stated that the Union of India had repeatedly stated in its counter affidavit that the selection process for JAG is '*gender-neutral*' and is based purely on merit. In support of his contention, he relied on para 25 of the counter affidavit which is reproduced hereinbelow:—

> "25……The process of shortlisting of candidates for SSB is done on a gender neutral common cut off marks obtained by the candidates in CLAT PG Exam. Secondly the process of Stage I during SSB verily forms part of a scientifically approved testing process by the DIPR (Defence Institute of Psychological Research) which is a premier National Institute responsible for creation and sustenance of Selection process of Indian Armed Forces….
>
> The process of merit formulation is based on Directorate General Recruiting/Recruiting 'A' policy No 58538/Recruiting P&C dated 31 Mar 2004 which has the approval of the competent authority on whose behalf the Directorate carries out selection of officers for Indian Army wherein candidates are placed in order of merit purely based on the marks obtained by them at the SSB."
>
> (emphasis supplied)

5. Thus, according to him, there is no rational basis to treat men and women separately in JAG and any such attempt would be violative of Article 14 of the Constitution. He stated that reference to any '*operational and functional requirements*' is baseless and not supported by any justifiable reason or empirical data.

6. He submitted that reserving additional seats for men in any public

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 18 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

examination is not permissible and violative of Articles 14, 15 and 16 of the Constitution. The relevant portions of Articles 14, 15 and 16 of the Constitution are reproduced hereinbelow:—

> *14.Equality before law. —The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.*
>
> *15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth— (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.*
>
> *xxx xxx xxx*
>
> *(3) Nothing in this article shall prevent the State from making any special provision for women and children……*
>
> *16. Equality of opportunity in matters of public employment— (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.*
>
> *(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State…..”*

7. He submitted that seats can only be reserved for women in view of Article 15(3). The other seats must be kept unreserved and filled up exclusively through merit. In support of his submission, he relied upon *Dattatraya Motiram More* v. *State of Bombay*, ILR 1953 Bom 842, wherein it has been held as under: —

> “*……In our opinion, if that was the object of enacting art. 15(3), then art. 15(3) need not have been enacted at all because if the special provision for women contemplated by art. 15(3) were only those provisions which did not discriminate against men, then no proviso to art. 15(1) was necessary. Article 15(3) is obviously a proviso to art. 15(1) and proper effect must be given to the proviso. It is true that in construing a proviso one must not nullify the section itself. A proviso merely carves out something from the section itself, but it does not and cannot destroy the whole section. The proper way to construe art. 15(3) in our opinion is that whereas under art. 15(1) discrimination in favour of men only on the ground of sex is not permissible, by reason of art. 15(3) discrimination in favour of women is permissible and when the State does discriminate in favour of women it does not offend against art. 15(1). Therefore as a result of the joint operation of art. 15(1). and art. 15(3) the State may discriminate in favour of women against men, but it may not discriminate in favour of men against women……*”

ARGUMENTS ON BEHALF OF RESPONDENT NO. 3

8. Mr. Rana Mukherjee, learned senior counsel appearing on behalf of Respondent No. 3 pointed out that on 24th July, 2023, the instant writ petition had been filed by the Petitioners, after having participated in the selection process and having failed to secure a spot in the woman's merit list (ranked 4th

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 19 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

and 5th) dated 14th July, 2023 for appointment against the vacancies notified for JAG branch of the Indian Army, 31st Course, October, 2023, inter-alia on the ground that notification was discriminatory as the vacancies notified for men were greater (6) than those notified for women (3). He submitted that once the Petitioners had participated in the selection procedure and failed to secure a suitable rank for appointment against the vacancies so notified, they are deemed to have waived their right to challenge the selection procedure.

9. He stated that Respondent No. 3 a successful candidate having secured the 6th rank in the men's merit list dated 21st July 2023, was not made a party to the said writ petition.

10. He contended that Respondent No. 3, who had bona fide participated in the selection process and succeeded therein, was now on the verge of losing the opportunity to join the Army for no fault of his. He prayed that this Court may take a sympathetic view as Respondent No. 3 has now become overage and is not eligible to participate in any further recruitment examination for the JAG branch.

ARGUMENTS ON BEHALF OF UNION OF INDIA AND ARMY

11. At the outset, Ms. Aishwarya Bhati, learned Additional Solicitor General ('ASG') fairly handed over marks of all the candidates (male and female) as per merit list who had appeared in SSC (JAG-31) Course. The mark lists are reproduced hereinbelow:—

MERIT LIST : SSC (JAG)-31 (MEN) COURSE (OCT 2023)				
Vacancy as per Notification - 06				
Merit	Roll No	Name	DoB	SSB MARKS
1.	900525	SURYA DEV SINGH BHANDARI	27/12/1997	548
2.	900023	AKASH	12/10/1998	485
3.	900039	HIMANSHU PANWAR	17/08/1998	433
4.	900482	PATH MEHTA	27/12/1999	431
5.	900130	RAJAS JANI	12/8/1996	425
6.	900096	SUNEET SINGH	8/12/1996	424
7.	900188	SOURABH SHUKLA	24/07/1997	404
8.	900020	AABID KHAN	28/03/1998	395
9.	900423	SANEER SINGH DAHIYA	4/10/1998	394

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 20 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

10.	900216	UJJUAL SINGH	22/06/1998	392
11.	900123	HARSH KUMAR	29/05/1999	392
12.	900476	AMIT CHOUDHARY	14/10/1997	385
13.	900248	RITIK SHARMA	9/11/1998	382
14.	900613	SHAMS SIDDIQUI	23/08/1996	378
15.	900608	SHAMAL SANGAM	10/7/1998	374
16.	900332	ADEET SRIVASTAVA	6/12/1998	373
17.	900107	PUNEET JANGID	1/4/1999	369
18.	900094	ABHISHEK KANDWAL	25/02/1999	368

MERIT LIST : SSC (JAG)-31 (WOMEN) COURSE (OCT 2023)

Vacancy as per Notification - 03

Merit	Roll No	Name	DoB	SSB MARKS
1.	950016	VANISHA UPADHYAY	31-Mar-98	494
2.	950089	CATHERINE JIMMY	1-Dec-98	492
3.	950153	AMANATBIR KAUR	23-Feb-98	490
4.	950023	ASTHA TYAGI	27-Jul-99	477
5.	950245	ARSHNOOR KAUR	6-Nov-96	447
6.	950209	DEEKSHA TRIPATHI	19-Jul-97	447
7.	950145	SAMYUKTA MENON	30-May-97	446
8.	950007	LAVANYA YADAV	30-Aug-98	444
9.	950415	RASHMI KUMARI	23-Sep-00	438
10.	950114	SHRUTI PATHAK	2-Jul-96	437

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 21 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

11.	950057	NANDANI ANAND	21-Jan-99	429
12.	950077	SAUMYA KATARA	11-Jan-98	424
13.	950284	AISHWARYA SETHI	6-Aug-99	423
14.	950249	HIMANSHI CHOUHAN	13-Oct-98	421
15.	950477	KAJAL RAI SADANA	10-Jun-99	407
16.	950485	KAMNA CHOPRA	6-Jun-97	406
17.	950433	ANUSHRI SANTOSH SHUKLA	14-Jun-00	405
18.	950159	VAISHALI TOMAR	19-Oct-97	402
19.	950033	PRIYANKA GOYAL	14-Sep-96	401
20.	950039	POOJA JANGRA	15-Jul-98	397
21.	950461	NEHA RATHORE	16-Feb-97	396
22.	950357	KIRANDEEP KAUR	5-Aug-97	392
23.	950168	RHYTHM SINGH THAKUR	10-Jan-97	385
24.	950131	SHIVANI PATEL	18-Dec-98	366

12. Learned ASG submitted that maintenance of defence forces is a sovereign function and it is up to the Service Headquarters to decide the induction of Women Officers, including the '*extent of induction*', so as to ensure that fighting efficiency, combat effectiveness and functionality of Armed Forces are maintained. She contended that all JAG Officers are combatants and there is a likelihood of all of them being deployed in combat. In support of her contention, learned ASG relied upon Union of India's Policy on Induction and Employment of Women in Armed Forces dated 11th November 2011. The relevant portion of the said Policy is reproduced hereinbelow:—

> *"2. Respective Services Headquarters will issue appropriate administrative instruction on induction of women officers including the extent of induction, so as to ensure that fighting efficiency, combat effectiveness and functionality*

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 22 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

of the Armed Forces are maintained."

13. She emphasised that the services in Indian Army cannot be compared with any other services, be it public or private. According to her, determination of vacancies is based on war time requirement to maintain optimal functional and operational need and thus, the same is gender-specific and not '*gender-neutral*'.

14. She stated that initially Women JAG Officers on commissioning were being posted in JAK LI (Jammu and Kashmir Light Infantry) Regiment Centre for a period of twelve (12) weeks only. She emphasised that at that time i.e. in 1992 training of Women Officers for the combat role was not a part of their induction and employment in the Indian Army as it was not a permanent cadre. She stated that it was only subsequently in 2008 that the Women Officers of JAG branch were brought on par with male officers for grant of permanent commission.

15. She further contended that despite bringing Women Officers at par with Male Officers for consideration of Permanent Commission, there was no change in its policy of not posting the Women Officer in Combat Arms due to the peculiar requirement of Indian Army. She emphasised that it is a conscious decision of the Government of India to restrict the employment of Women Officers from being posted in frontline combat deployment where contact with the enemy/hostiles is likely. She stated that Women Officers are not posted to Rashtriya Rifles Battalions and isolated posts engaged in conduct of active operations, including Counter Insurgency Operations. She stated that in view of Army HQ Policy dated 14th March 2012, Women Officers of JAG Department, among others, do not undergo the attachment with Infantry battalions [which is for a period of eighteen (18) months]. She pointed out that at any given point of time, approximately fifteen (15) JAG Male Officers are attached to various infantry battalions to perform the combat duties. By way of example, she stated that during Operation Pawan and Operation Vijay, JAG's Department officers were actively deployed alongside Infantry Units. The relevant portion of administrative instruction dated 14th March 2012 is reproduced hereinbelow:—

"ADM INSTRS ON INDUCTION AND EMP OF WOs IN ARMY

1. *Reference Govt of India MoD letter No. 671/2009-D(AG) dated 11 Nov 2011 regarding policy on Induction and Employment of Women in Armed Forces, copy enclosed.*
2. *In accordance with Para 2 of ibid Govt letter, Adm Instrs on induction and employment of WOs are as under:*
   (a) *Tenure. 10 years extendable by 4 years with a special provision for release on completion of 05th year of service, subject to approval of Army HQ. During extended tenure, can be permitted to seek release to take up civil jobs, pursuing higher education, starting own business/joining family business.*
   (b) *Substantive Promotions*

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 23 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

(i) Time based substantive promotions as SSCOs to the ranks of Capt., Maj. And lt. Col. on completion of 02, 06 and 13 years of reckonable commissioned service. Mandatory courses for grant of substantive ranks including promotional exams as applicable to PC Offrs will be applicable.

(ii) WOs commissioned in AEC & JAG will be considered for PC in 10th yr. subject to passing JAG Deptt. exam in case of JAG WOs.

(c) Physical Standards As per existing policy issued by MT Dte.

(d) Adjustment of Seniority Adjustment of seniority to the extent of shortfall in training vis-à-vis PC offrs will be made at the time of grant of first substantive rank of Capt.

(e) Leave

(i)	*Annual Leave*	*:*	*60 days*
(ii)	*Casual Leave*	*:*	*20 days*
(iii)	*Maternity Leave*	*:*	*180 days (for each confinement subject to maximum of two confinements/two surviving children).*
(iv)	*Child Care Leave*	*:*	*Presently under consideration with PPOC; will be added subsequently on implementation.*

(f) Peace/Field Tenure As applicable to male SSCOs

(g) Compassionate Posting Posting to be carried out by MS Branch keeping in view career profile and org interest. Compassionate/spouse postings to be managed as per extant policy.

(h) Field/CI No attachment with Inf units as applicable to male SSCOs of ASC, AOC, JAG, AEC, EME and Int. Corps.

(j) Posts to be Held While in Fd/CI Ops Area WOs while being posted in fd/CI ops areas should tenant Regt/Staff/Adm/Instrs appointments in all situations except in frontline combat deployment where contact with the enemy/hostiles is likely. WOs would not be posted to RR bns and isolated posts engaged in conduct of active ops incl CI ops.

5. MS Branch will disseminate the extant Compassionate/Spouse Posting Policy as mentioned in Para 4(g) above to the environment in the interest of transparency, objectivity and fair play.

6. These Admn. Instrs may be disseminated to the unit level for strict compliance."

16. She stated that subsequently, on revision of Policy on attachment of Women Officers and to bring them on par with Male Officers, the attachment period of Women JAG Officers in JAK LI Regimental Centre was discontinued and their attachment in combat support arms for seventy-eight (78) weeks was approved. The same is provided vide IHQ of MoD (Army) dated 16th December 2022 and 12th February 2023. The policies dated 16th December 2022 and 12th

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 24 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

February 2023 are reproduced hereinbelow:—

A) Policy dated 16th December, 2022

"Tele:23333521 Apvl & Plans Br/Apvl-2
HQ ARTRAC
Room No 740
A Wing, Sena Bhawan New Delhi-110011

PC-A/41006/YO Att (WOs) GS/MT-11

16 Dec 2022

HQ ARTRAC/APPROVAL & PLANS BRANCH APVL-2 (Erstwhile MT-11)
ADM INSTRUCTIONS ON POST COMMISSIONING ATT FOR WOMEN OFFRS (WOs)

1. *Pl ref:—*
   - *(a) MT Dte letter No A/41006/GS/MT-11 dated 22 May 1996.*
   - *(b) MT Dte letter No A/41006/GS/MT-11 11 Oct 2011.*
   - *(c) AG (Pers) letter No 32318/Misc/AG/PS-2 (a) dated 14 March 2012.*
   - *(d) MT Dte letter No A/1410006/YO- Att (JAG)/GS/MT-11 dated 05 Nov 2014.*
   - *(e) MS 9 Note no 04490/MS Policy dated 15 Jul 2022.*
   - *(f) MT-11 Noting No. PC-A/41006/YO att (Int) GS/MT-11 dt 03 Dec 22.*
2. *The proposal for Att on Post Commissioning trg modules for WOs has been analysed and has been approved by the competent auth vide ref at 1 (f) on 03 Dec 22. The new att period will be at par with the Male Offrs. Details are as under:—*
   - *(a) Att For WOs of ASC/AOC/EME. WOs of ASC/AOC/EME will be att with parent units in fd loc for the pd at par with male offrs of respective arm/services.*
   - *(b) Regt Orientation for WOs of JAG Branch. One week Regt Orientation at IML to be done as part of YO's course, without any change in the course curriculum based on letter No A/41006/YO-Att (JAG)/MT-11.*
   - *(c) Att with JAKLI RC of WOs of JAG Branch. In view of new att being at par with male offrs, att at JAKLI RC for 12 Weeks will be discontinued.*
   - *(d) Att of WOs of Int Corps. Int Corps WOs will be att being at par with male offrs, for a period of 52 weeks for SSCOs & 78 weeks for Reg Offrs with Engrs/Sigs/AAD unit in fd.*
   - *(e) Approved Att Period. Approved att period for the WOs of the Int Corps & JAG Branch is as under:—*

Ser No	Arm/Service of WOs	Engrs/Sigs AAD Units in Fd (in weeks)	Comd HQ (JAG Br) (in weeks)	Total (in Weeks)	Remarks

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 25 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

(a)	*Int Corps WOs (SSOs)*	*52*	*-*	*52*	*52 Weeks/1 Yr Att for SSCOs*
(b)	*Int Corps WOs (Reg Offrs)*	*78*	*-*	*78*	*78 Weeks/1.5 Yrs for Reg Offrs*
(c)	*JAG Branch All WOs*	*78*	*26*	*104*	*Total Att Pd will be 104 Weeks/2 Yrs*

3. For info and necessary action pl.

Sd-X-X-X
(Sanjeev Tyagi)
Col
Col Apvl-2
For MGGS (Apvl & Plans)"

B) Policy dated 12th Feb 2023

"*Tele:25018823 Integrated Headquarters of MoD (Army)*
Military Secretary's Branch/MS-8B
South Block, New Delhi-110011

35393/WO/Policy/MS 8B

12 Feb 2023

POST COMMISSION ATTACHMENT OF WOMEN OFFICERS (WOs)

1. *Refer HQ ARTRAC/Approval & Plans Br/Apvl-2 letter No PCA/41006/YO Att (WOs) GS/MT-11 dt 16 Dec 2022 and even No dt 06 Feb 2023 (copy encl)*
2. *HQ ARTRAC vide its letter u/r has been informed about post commission att/posting of WOs getting commissioned in Services, Int and JAG Br. The policy will be implemented wef the next passing out course from OTA, Chennai i.e, 29 Apr 2023. The detls are as under:—*
   (a) WOs of ASC/AOC/EME WOs of ASC/AOC/EME will have initial posting with respective parent units in fd loc.
   (b) WOs of Int & JAG Br. Approved attachment period for WOs of Int Corps and JAG Br is as under:—

S No	*Arm/Service*	*Engrs/Sigs/AAD Units in Fd (Weeks)*	*Comd HQ (JAG Br)*	*Total (weeks)*	*Remarks*

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 26 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

(i)	*Int Corps (SSCOs)*	*52*	*NA*	*52*	*52 weeks/1 Yr*
(ii)	*JAG Br (All WOs)*	*78*	*26*	*104*	*104 weeks/2 Yrs*

3. Regt Orientation for WO of ASC/AOC/EME and Int Corps will be as per existing instructions. Regt orientation for JAG Br commissioned WOs will be conducted at IML for one week duration as part of YO's course.

4. For info and necessary action please.

Sd-X-X-X
(MS Tomar)
Lt Col
AMS 8B
For Military Secretary"

17. She submitted that the policy of the Government of India in not posting the Women Officers in Infantry battalion has not been interfered with by any Court of Law. In fact, the same has been upheld by the High Court of Delhi vide its order dated 12th March 2010 passed in *Babita Puniya* v. *Secretary*, 2010 SCC OnLine Del 1116, wherein it has been held as under:—

"45. The Air Force after due sanction of the President of India itself brought a policy into force for recruitment of women. Similarly, the Army also recruited women though there was no such policy decision as in the Air Force. Thus, the policy decision was that women personnel should be recruited in certain areas of operation of the Armed Forces which are not in combat and other such services. As to whether women ought to be recruited or not into the Armed Forces and if so then in which areas of operation, does fall within policy domain. There are countries which have given opportunity to women even in combat areas but there are social and cultural ethos which vary from country to country. There has been continued debate and analysis on induction of women in Armed Services even in India. Thus, we are clearly of the view that it is not for the Court to decide as to which areas of operation of the Armed Forces should women be employed."

18. She stated that the same has been upheld also by this Court vide its order dated 17th February 2010 in *Secretary, Ministry of Defence* v. *Babita Puniya*, (2020) 7 SCC 469, wherein it has been held as under:—

"74. Courts are indeed conscious of the limitations which issues of national security and policy impose on the judicial evolution of doctrine in matters relating to the Armed Forces. For this reason, we have noticed that the engagement of women in the Combat Arms has been specifically held to be a matter of policy by the judgment [Babita Puniya *v.* Ministry of Defence,, *2010 SCC OnLine Del 1116 : (2010) 168 DLT 115]of the Delhi High Court and*

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 27 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

which is not in question in the present appeals…..”

19. She stated that it was in 2012 when accretion of two hundred and fifty four (254) officers in JAG branch was sanctioned, it was decided to induct Men and Women Officers in 70:30 ratio keeping in view the functional requirement of Army from the perspective of its operational preparedness and requirement of officers in Infantry/Combat Battalions. This, according to her, broadened the base of Officers of the rank of Lieutenant, Captain and Field/Acting Major in combat arms enabling the organization for making officers commissioned in the combat arms available for training/sharpening and enhancing their skills in courses like commando course/Young Officer's course and other all arms courses without disturbing the actual strength of the combat arms. Thus, she contended that the requirement of vacancies in the JAG Department is gender specific as it is a military necessity.

20. She stated that functioning of JAG branch cannot be seen in isolation as mere legal advisors to military commanders during peace time. She contended that JAG branch officials are combatant personnel, who play an important role in operational preparedness of the Army as they constitute a reserve for mobilisation.

21. She contended that from 2024 onwards, the intake of Men and Women Officers in JAG branch has been recommended by a Study Team of senior experts and senior officers at 50:50 ratio to bring in gender parity in the JAG branch. The said Study Team's 2023 report, which has been approved by the competent authority (and brought into effect from 2024), has recommended that JAG branch offers an ideal opportunity to have a ‘*Gender-Neutral Entry*’. The relevant portion of the said 2023 report, handed over by learned ASG during the hearing, is reproduced hereinbelow:—

“<u>General</u>

1. The history of women in the military is one that extends over 4000 years into the past, through a vast number of cultures and nations. Women have played many roles in the military, from ancient warrior women, to the women currently serving in conflicts like the Russia-Ukraine War. Indian women have often been on the battlefield, Rani Durgawati of Gondwana and Chand Bibi of Ahmednagar (during Akbar's period), Rani Laxmi Bai of Jhansi during the First War of Independence in 1857, are a few examples of women fighters from our history.

2. The Indian experience of women in armed forces as officers has been for about 79 yrs. They were inducted as Medical Officers Cadre in 1943 and have served with dedication and distinction. Induction of women officers (WOs) in other branches of the three Services started only in 1992 and now in year 2022 we have come a long way.

<u>Background</u>

3. In the background of the Hon'ble Supreme Court orders dated 17 Feb 2020 and 22 Sep 2021 granting PC to WOs and allotment of vacancies in

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 28 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

NDA, there is a need to holistically analyse the fallout of these orders and formulate measures to include review of cadre strength, modes of entry, service conditions etc. In line with this, the extant study was ordered by AGs Branch, IHQ of MoD (Army) and needs to carry out a holistic appraisal of induction and employment of WOs in Indian Army, post commencement of induction of women cadets in NDA and grant of PC to WOs……

Scope of Study

6. Mandate of the Study Group. Study Group was required to give its recommendations on the under mentioned issues:—

(a) No of WOs as part of the overall officer cadre in the existing Arms & Services where WOs are being commissioned (less AMC/ADC/MNS).

(b) Identifying arm/service-wise billets/appointments in units/HQs/establishments, based on functional requirements.

(c) Proposed yearly induction pattern (for next 10 years) through various entries to achieve desired optimal strength of WOs, in consonance with the desirable Regular to Support cadre ratio.

(d) Feasibility of extending entry types to women candidates and determination of vacancies in PCTAs, keeping in view the desirable Regular to Support cadre structure.

(e) Grant of PC to SSC WOs while ensuring Regular to Support cadre structure.

(f) Any other issue, which may emerge during conduct of study and is felt critical in overall cadre management planning.

xxx xxx xxx

11. The Operational Context. India is surrounded by states inimical to our interests along the immediate neighborhood. This implies that our Army is mandated to maintain operational readiness to undertake conventional operations along Northern and Western Borders. Given the proxy war waged by our Western adversary and the insurgency movements in various parts of the Country, there is 24x7 commitment of large quantum of forces including Rashtriya Rifles (RR), Assam Rifles (AR) units in addition to regular units and formations. All Arms and Services are also required to contribute large number of officers to RR and AR battalions. Hence, there are major challenges with employment of women in all ranks in our Army, unlike some of the Western armed forces based on large scale reservists.

xxx xxx xxx

15. Optimal Cadre Strength of Each Arm/Service.

(a) The optimal cadre strength of WOs in the ten Arms & Services has been arrived at by using three different approaches, as under: -

(i) Considering the functional capacity of each Arm/Service to absorb WOs considering their role and employment towards enhancing operational effectiveness.

(b) Considering the requirement of male officers to man certain CT-II

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 29 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

billets where WOs cannot be employed/are not being employed presently.

(c) Considering the ratio of women in World armies with special reference to Asian countries.

xxx xxx xxx

21. Increase of Women Strength. The process for any further increase should commence only once the turbulence and career management issues post grant of PC to women have matured and the number of WOs who are unwilling to continue in service have retired with all consequential benefits due to them. Also, measures to make Short Service entry more attractive are on the anvil. Only once these issues have stabilized and their impact has been analysed should the intake be calibrated/increased."

22. Therefore, she submitted that the induction and employment of Women Officers in Indian Army, including JAG branch, has been a progressive process keeping in view the Army's operational preparedness. According to her, to say that the policy of intake of Men and Women Officers from 2012 to 2023 in the ratio of 70:30 or now being 50:50 is discriminatory and volatile of Fundamental Rights would not only be incorrect but would also transgress into the domain of the executive which is the only competent and sole authority for deciding the intake of Men and Women Officers in Indian Army.

23. She emphasised that as both male and female candidates are assessed separately and independently, there cannot be a common SSB Merit list.

24. She contended that the aspect of gender integration in the defence services is an evolving process and is calibrated to the operational needs and is subject to periodic review and studies. The intake policies have evolved progressively from 70:30 ratio to 50:50 from 2024. This, according to her, is aligned with cadre health and deployment restrictions, which is not arbitrary. She lastly stated that any imposition of this Court's own understanding of the concept of parity or neutrality without factoring in operational imperatives would undermine both command and control of the Army.

REJOINDER

25. Learned senior counsel for the Petitioners contended that the Respondents were misleading this Court by representing that being a combatant is a pre-requisite for all JAG Officers as there is a likelihood of all of them being deployed in combat.

26. He stated that the Union of India's reliance on letter dated 14th March 2012 issued by Adjutant General of the Indian Army as a policy decision of the Union of India not to employ women officers in frontline combat deployment is misplaced. He stated that the letter does not have any statutory force and, in any event, cannot override provisions of the Constitution and decisions of this Court.

27. He also contended that the stereotypes about psychological, intellectual,

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 30 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

and physical attributes in the letter dated 14th March 2012 reflect an outdated '15th century thought process' of the Respondents regarding how war and combat takes place in the information age. According to him, any letter/standing instruction which restricts women officers based on gendered assumptions is *ipso facto* unconstitutional.

28. He further stated that the argument that men JAG officers undertake eighteen (18) months' attachment with infantry units and that similar attachment is not done for women JAG officers is completely unsubstantiated as no supporting documents have been filed to this effect. Further, just based on the plausibility of a potential combat deployment of any women officer, the same cannot be used as a justification to deny equal opportunities. If this reason is taken forward, the same can be made a basis to deny recruitment of women across all non-combat positions in the armed forces, which is baseless.

29. He pointed out that as of 2021, a statistic published by the Ministry of Defence, Govt. of India, showed that the miniscule percentage of women in the forces were as follows : 0.56% (Indian Army), 1.08% (Indian Air Force), 6.5% (Indian Navy). He further stated that the Respondents have presented a vague example of "*one of the officers*" out of a total of approximately two hundred and eighty five (285) officers as a Combatant Personnel, without specifying his place of posting despite the fact that Operations Vijay and Pawan extended across multiple regions, including Jammu & Kashmir, Punjab, Haryana and Himachal Pradesh. Furthermore, there is a complete absence of details regarding the specific roles and responsibilities undertaken by the officers in question. A mere reference to participation in operations, without disclosing the nature of duties or the geographical area of deployment, is insufficient. He pointed out that similar feats have been achieved by women JAG Officers as under:

> *"A. List of JAG Women Awardees*
>
> *a. Jyoti Sharma:*
>
> *In 2019, Lieutenant Colonel Jyoti Sharma created history when she was appointed as the first woman officer from the Judge Advocate General (JAG) department of the Indian Army to be deployed for a mission in a foreign country. In November 2019, Lt Col Sharma was inducted with the Government of Seychelles as a military legal expert.*
>
> *b. Major Radhika Sen*
>
> *In May 2024, Major Sen received the prestigious United Nations Military Gender Advocate of the Year Award.*
>
> *B. Achievements of other Women Officials:*
>
> *• Captain Shiva Chouhan was posted at Siachen Glacier, the world's highest battlefield, which demands extreme physical and mental endurance. The deployment, by its very nature, contradicts the notion that women are unfit for extreme terrain or operational mobilisation.*
>
> *• Group Captain Shaliza Dhami became the first woman officer to command a frontline combat unit in the IAF. Command of such units is*

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 31 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

inherently mobilisation-oriented, involving high-stakes readiness and strategic execution.

• Captain Abhilasha Barak was commissioned in 2022 as the first woman combat aviator in the Indian Army. Her induction into the Army Aviation Corps, which functions directly under combat conditions, nullifies the argument that women cannot be deployed in operationally intensive roles."

30. He stated that if the aim is to ensure gender integration and allow this to be an '*evolving process*' where women officers are commissioned in equal numbers in the armed forces, the impugned action devolves the process one hundred (100) steps backwards when it should be marching ahead.

31. In conclusion, learned senior counsel for Petitioners submitted that even the 2024 Policy of Recruitment though labelled as '*gender-neutral*' by the Respondents, was '*in practice and in effect*' discriminatory towards women candidates. He prayed that since this Court was examining the policy of recruitment in depth in the JAG branch and the prayer clause in the writ petition was broadly worded, it would be appropriate for this Court to expound the law and to give an interpretation of the 2024 Recruitment Policy in accordance with the Constitution of India and the Army Act, 1950.

ADDITIONAL ARGUMENTS ON BEHALF OF THE RESPONDENTS

32. After the arguments had concluded and judgment had been reserved, the parties filed their 'Written Submissions'. The Respondent-Union of India subsequently filed 'Additional Written Submissions' and thereafter a 'Final Arguments Note'. Since the Additional Written Submissions and the Note contained additional arguments, the matter was listed for further arguments.

33. During the course of further hearing, Ms. Aishwarya Bhati, learned ASG submitted that Article 33 of the Constitution of India provides for power of Parliament to modify the Fundamental Rights for the Armed Forces of Union of India. She submitted that in pursuance of the said power, Parliament had enacted Section 12 of the Army Act, 1950 which specifically stipulates ineligibility of females for enrolment or employment. Since considerable emphasis was laid on Article 33 of the Constitution and Section 12 of the Army Act, 1950, the same are reproduced hereinbelow:—

A. Article 33 of the Constitution of India

"33. Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc.

Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,-

(a) the members of the Armed Forces; or

(b) the members of the forces charged with the maintenance of public order; or

(c) persons employed in any bureau or other organization established by the State for purposes of intelligence or counter intelligence; or

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 32 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

(d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any force, bureau or organization referred to in clauses (a) to (c), be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

B. Section 12 of the Army Act, 1950

"12. Ineligibility of females for enrolment or employment.— No female shall be eligible for enrolment or employment in the regular Army, except in such corps, department, branch or other body forming part of or attached to any portion of, the regular Army as the Central Government, may, by notification in the Official Gazette, specific in this behalf:

Provided that nothing contained in this Section shall affect the provisions of any law for the time being in force providing for the raising and maintenance of any service auxiliary to the regular Army or any branch thereof in which females are eligible for enrolment or employment."

34. Consequently, according to her, women can be inducted in the Army only by way of notification of the Central Government. She stated that Government of India issued notification dated 30th January 1992 vide Gazette Notification SRO - 11 dated 15th February 1992 and Notification dated 31st December 1992, issued vide Gazette Notification SRO-1 dated 23rd January 1993, vide which women became eligible for induction into ten (10) arms and services issued. She, however, submitted that despite allowing induction of women in a particular corp or branch under Section 12 of the Army Act, 1950, the Respondents can restrict the number of women candidates joining the said branch by way of a policy or administrative instruction under the guise of extent of induction. She emphasised that Union of India is authorised to impose restriction on Fundamental Rights beyond Section 12 of the Army Act, 1950.

35. In this hearing, it transpired that Petitioner No. 2 (Ms. Aastha Tyagi), during the pendency of the present petition, had been selected and was working as a Trainee Officer in Indian Navy JAG-SSC. Therefore, learned counsel for the Petitioners stated that he was under instruction not to seek any relief qua Petitioner No. 2 in the present proceedings. The said statement was taken on record.

36. At that stage, Mr. Rana Mukherjee, learned senior counsel for Respondent No. 3 stated that since Petitioner No. 2, namely, Aastha Tyagi, had expressed her unwillingness to join the JAG branch of the Indian Army, i.e., for the 31st Course, it would be proper for this Court to adopt a lenient and a compassionate view with regard to the two seats which had been kept vacant vide this Court's order dated 04th August, 2023 and allow the Respondent No. 3 and Petitioner No. 1-Ms. Arshnoor Kaur, to join the course in the two vacant seats.

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 33 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

ORDER DATED 08TH MAY 2025

37. After hearing the additional arguments, judgment was reserved on 08th May, 2025 and the following order was passed:—

> *"1. Arguments concluded.*
>
> *2. Judgment reserved.*
>
> *3. Prima facie, we are satisfied with the case set up by the petitioner no. 1 Arshnoor Kaur.*
>
> *4. Accordingly, we direct the respondents to initiate whatever action is required for the purpose of her induction in the next available training course for being commissioned in the Judge Advocate General (JAG) Department of Indian Army."*

REASONING

SINCE NOTIFICATION ISSUED UNDER SECTION 12 OF ARMY ACT, 1950 PERMITS WOMEN TO JOIN JAG, THEIR NUMBER CANNOT BE RESTRICTED IN THE MANNER SOUGHT TO BE DONE

38. Having heard learned counsel for the parties, this Court is of the view that the primary issue that arises for consideration is whether after allowing induction of women in a particular corp or branch under Section 12 of the Army Act, 1950, can the Respondents by way of a policy and/or administrative instruction restrict the number of women candidates joining the said branch.

39. This Court is of the view that Articles 14, 15 and 16 of the Indian Constitution form a string of constitutional rights which firmly guarantee the right to equality. The said Articles supplement each other and recognize the right to equality of opportunity to all the citizens in matters relating to public employment irrespective of religion, race, caste, place of birth or sex/gender. Article 16(2) prohibits discrimination on the ground of gender/sex, but clause (3) of Article 15 enables the State to make "*any special provision for women and children".*

40. Article 33 of the Indian Constitution carves out an exception to the aforesaid right to equality insofar as it empowers Parliament to modify the Fundamental Rights in their application to members of the Armed Forces. But such modification is subject to Parliament by law determining the permissible extent to which any of the Fundamental Rights may be restricted or abrogated in their application to members of the Armed Forces. The effect of Article 33 is to enable Parliament to limit or abrogate the Fundamental Rights in their application to the members of the Armed Forces. It needs to be emphasised that such restrictions or abrogation must be made by law passed by Parliament.

41. It is by virtue of the power conferred by Article 33 of the Indian Constitution that Parliament has enacted the Army Act, 1950. Section 12 of the Army Act, 1950 restricts the Fundamental Right of females to join the Indian Army, except in such corps, department, branch or other body forming part of, or attached to any portion of, the regular Army as the Central Government may, by notification in the Official Gazette, specify in this behalf. In other words, the

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 34 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

eligibility of women for enrolment or engagement in the regular Army is conditional on a notification being issued by the Central Government in terms of the enabling provision of Section 12 of the Army Act, 1950.

42. Since Article 33 is an exception to Fundamental Rights, this Court is of the view that any Act passed by Parliament under the said power would have to be strictly construed/interpreted. Accordingly, restrictions on the Fundamental Rights must be found in the Army Act, 1950 itself. Consequently, the extent to which restrictions can be imposed on Articles 14, 15 and 16 has to be clearly '*spelt out*' in Section 12 of the Army Act, 1950 and the Union of India is authorised to impose restrictions on these Fundamental Rights only to the extent of Section 12 of the Army Act, 1950 and no more. This Court in *R. Viswan* v. *Union of India*, (1983) 3 SCC 401 has in the context of Section 21 of the Army Act, 1950 held as under:—

> *"7……Parliament was therefore within its power under Article 33 to enact Section 21 laying down to what extent the Central Government may restrict the Fundamental Rights under clauses (a), (b) and (c) of Article 19 (1), of any person subject to the Army Act, 1950, every such person being clearly a member of the Armed Forces. The extent to which restrictions may be imposed on the Fundamental Rights under clauses (a), (b) and (c) of Article 19 (1) is clearly indicated in clauses (a), (b) and (c) of Section 21 and the Central government is authorised to impose restrictions on these Fundamental Rights only to the extent of the Rights set out in clauses (a), (b) and (c) of Section 21 and no more….."*

43. The aforesaid conclusion applies with equal vigour to Section 12 of the Army Act, 1950.

44. Upon a harmonious reading of Articles 14, 15, 16, 33 of the Indian Constitution and Section 12 of the Army Act, 1950, this Court is of the view that no women is eligible for employment in the regular Army, except in such corps, department, branch or other body forming part of, or attached to any portion of, the regular Army as the Central Government may, by notification in the Official Gazette, specify in this behalf.

45. Under Section 12 of the Army Act, 1950, the Respondents had issued notifications on 30th January 1992 (published on 15th February 1992) and 31st December 1992 making women eligible for appointment as SSC officers in the following ten (10) streams:—

i. Army Postal Service;

ii. Judge Advocate General's Department;

iii. Army Education Corps;

iv. Army Ordinance Corps (Central Ammunition Depots and Material Management);

v. Army Service Corps (Food Scientists and Catering Officers);

vi. Corps of Signals;

vii. Intelligence Corps;

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 35 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

viii. Corps of Engineers;

ix. Corps of Electrical and Mechanical Engineering;

x. Regiment of Artillery.

46. Accordingly, SSC appointments for women in the above ten (10) streams are limited to Combat Support Arms and Services and not to Combat Arms like Artillery, Armoured Division and Mechanised Infantry. Neither the Petitioners nor this Court is insisting that Women be enrolled in Artillery, Armoured Division and Mechanised Infantry as they are not the corp or branch of the Army where the Central Government has by notification permitted the women to join.

47. Consequently, this Court is of the view that once the Army permits women officers to join any corps, department or branch forming a part of the regular Army, it cannot impose an additional restriction with regard to '*extent of induction*' of women officers in the said corps, department or branch—as Section 12 of the Army Act, 1950 does not empower it do so.

48. Further, on 26th September 2008, the Respondents issued a circular envisaging the grant of Permanent Commission prospectively to SSC Women Officers in the JAG Department and the Army Education Corps. Subsequently, on 25th February 2019, the Respondents granted Permanent Commission to SSC Women Officers in the remaining eight (08) arms. This Court in *Babita Puniya* (supra) has held that the grant of Permanent Commission to all ten (10) streams (including JAG) is '*is a step forward in recognizing and realizing the right of women to equality of opportunity in the Army*'.

49. Also, while making women officers eligible for appointment in such streams, no notification has been published in the official gazette laying down the '*extent of induction'*. It is settled law that '*when a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are forbidden*' [See: *Taylor* v. *Taylor*, [L.R.] 1 Ch. 426, *Nazir* v. *King Emperor*, AIR 1936 PC 253, *Babu Verghese* v. *Bar Council of Kerala*, (1999) 3 SCC 422]. Accordingly, there is no basis to say that women can be appointed '*only up to a certain extent*' in such streams.

50. Consequently, this Court is of the view that once the Service Headquarters decides to induct women officers in a particular branch or corp by way of a Notification under Section 12 of the Army Act, 1950, it cannot restrict their numbers and/or make a reservation for male officers by way of a policy or administrative instruction under the guise of '*extent of induction*'. Accepting the submission of the Respondents would amount to '*setting at naught*' the Notification issued under Section 12 of the Army Act, 1950.

CIRCULARS OF 11TH NOVEMBER 2011 AND 14TH MARCH 2012 ARE UNTENABLE IN LAW

51. As far as the reliance on Internal Administration Instruction dated 11th November 2011 and policy on induction dated 14th March 2012 are concerned, the same are untenable in law as they are contrary to the statutory Notification

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 36 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

issued under Section 12 of the Army Act, 1950 and there is no legal backing for the same in the Constitution or the Army Act, 1950.

52. As held hereinabove, any restriction qua the '*extent of induction*' cannot be imposed by an administrative instruction or policy decision of the executive as Parliament has not conferred this right upon the executive under the Army Act, 1950.

53. Further, the Respondent's reliance on an internal order that was published thirteen (13) years ago is erroneous as similar argument to treat women separately in the armed forces on the basis of apparent physiological limitations, physical capability to engage in combat and hygiene conditions has been rejected by this Court in *Babita Puniya*, (supra) in paragraphs 65 to 70. The relevant portion of the said judgment is reproduced hereinbelow:—

> *"65. ....*
>
> *xxx xxx xxx*
>
> *69. The submissions advanced in the note tendered to this Court are based on sex stereotypes premised on assumptions about socially ascribed roles of gender which discriminate against women..... Reliance on the "inherent physiological differences between men and women" rests in a deeply entrenched stereotypical and constitutionally flawed notion that women are the "weaker" sex and may not undertake tasks that are "too arduous" for them. Arguments founded on the physical strengths and weaknesses of men and women and on assumptions about women in the social context of marriage and family do not constitute a constitutionally valid basis for denying equal opportunity to women officers.....*
>
> *70. These assertions which we have extracted bodily from the written submissions which have been tendered before this Court only go to emphasise the need for change in mindsets to bring about true equality in the Army.....*"
>
> (emphasis supplied)

54. This Court is of the view that the legal position has undergone a substantive transformation pursuant to the *Babita Puniya* (supra) judgment, which upholds the right to equal opportunity and mandates non-discriminatory consideration for Permanent Commission, irrespective of gender. Also, if reliance is placed on the said policy, any grant of Permanent Commission to women officers under its provisions would stand vitiated, as Clause 2(a) of the policy explicitly limited the induction of women officers to a tenure of ten years. Consequently, not only is Clause 2(a) of the said instruction inapplicable, but all other clauses of the said instruction and policy are redundant and inapplicable.

ARGUMENT THAT JAG BRANCH CONSISTS OF PRIMARILY COMBATANTS IS MISCONCEIVED

55. The Respondents' argument that JAG branch consists of '*exclusively combatant personnel*' as they constitute a reserve for mobilisation is misconceived as it runs contrary to the directions of this Court and all policy

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 37 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

decisions of the Respondents itself which have crystallised the right of women to form part of all Combat Support Arms and Services, to exclusion of '*Combat Arms*' and recognised the right of women to be treated as equals in all aspects of their employment in the Army.

56. This Court is of the view that the acceptance of the stand of the Respondents would lead to exclusion of women officers from all streams of the Army and have the consequence of allowing 100% reservation for men in all streams on the ground that all posts in the Army are Combatant posts. The same would also be inherently unconstitutional and contrary to Section 12 of the Army Act, 1950 and the Union of India's stand of '*evolving process of gender integration of women*'.

57. Consequently, as stated by the Respondents, the services in the Army are classified into three broad categories: (i) Combat Arms; (ii) Combat Support Arms; and (iii) Services. By their very nature, the above ten (10) streams (including JAG) in which women are eligible for appointment as SSC officers form part of the '*Combat Support Arms*' or the '*Services*' category and not '*Combat Arms*'. Thus, the contention of the Union of India that JAG officers are primarily combatants and a reserve for mobilisation is not entirely correct.

58. Also, with a strength of over 1.4 million active, 2.1 million reserve and 1.3 million paramilitary personnel and with only about two hundred and eighty five (285) JAG officers, it is an extreme stretch to claim that because there may be JAG deployment at the time of war, women ought to be excluded. This Court is further of the view that there is no bar to such an off-chance deployment, but this still does not provide a rationale to prevent JAG women from being inducted.

FIELD PARITY HAS BEEN INSTITUTIONALISED

59. While it is true that JAG male officers were initially posted with Infantry Battalions for a period of two (2) years for regular officers and one (1) year for SSC officers, it was modified to one and a half (1.5) years for both regular officers and SSC officers by way of policy dated 02nd May 2017.

60. JAG Women Officers were not sent for attachment with Infantry battalions as per policy dated 14th March 2012.

61. However, subsequently, the policy relating to attachment of JAG Women Officers with other corp or branches of the Army were brought '*at par with the Male Officers*' by way of policies dated 16th December 2022 and 12th February 2023, as extracted hereinabove. They are now trained under identical operational conditions, including logistics, terrain and regimental structure. These admissions effectively dismantle the argument that only male officers receive "*essential*" exposure. Field parity has already been institutionalised.

ARGUMENT THAT WOMEN OFFICERS ARE NOT POSTED WHERE CONTACT WITH ENEMIES IS LIKELY, HAS NO BASIS

62. The argument that women officers are not deployed for counter-insurgency or in counter terror forces such as Rashtriya Rifles and Assam Rifles

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 38 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

or are not attached to Infantry Units as they are not expected to discharge the role of combatants in case of armed conflicts has no legislative sanction/basis.

63. There is also no restriction on appointment of women in departments in other Armed Forces which are *ejusdem generis* on the ground that these posts are combative in nature. In fact, the Air Force has continually opened new combat air force roles for women as fighter pilots, helicopter pilots, etc.

64. It does not stand to reason that when women officers like Captain Ojaswita Shree of the elite Parachute Air Defence Unit, Major Dwipannita Kalita of highly specialised airbone medical unit of the Indian Army and Flight Lieutenant Shivangi Singh (Pilot of Rafale Jet) of the Indian Air Force can operate behind enemy lines with all expected risks, why women officers in times of emergency cannot be deployed for counter-insurgency or in counter-terror forces or attached to Infantry/Artillery Units.

65. This is supported by the fact that the Indian Army entrusts women officers with complex tasks, such as transporting convoys of 30 to 50 vehicles through militant-prone areas in Leh, Srinagar, Udhampur and the North-East. For instance, Major Gopika Bhatti commanded a convoy from Leh to Pathankot in 2010, overseeing Junior Commissioned Officers and Jawans, managing logistics, arms, and ammunition.

66. Women officers like Colonel Anshu Jamwal have also been actively involved in UN Peacekeeping missions since 2004, serving in combat zones like Syria, Lebanon, Ethiopia, Congo and Israel, further illustrating their capability to perform in high-risk, operational environments. Consequently, in the opinion of this Court, there exists no legal or operational bar, express or implied, that restricts deployment based on gender at peace locations.

67. This Court understands that people always fear change. But as Bill Gates, Microsoft co-founder famously said '*people feared electricity when it was invented. Didn't they*'.

68. Further, no one is suggesting, including this Court, that women officers, once they are recruited in the Army, need special treatment in the form of relaxed standards/criteria. This Court is only observing that if women candidates are more meritorious than men in the JAG entrance exam, then merit must be given a chance. If the women officers do not conform the discipline or match up to standards prescribed or expected of them, the Army shall be at liberty to act as they would with regard to the '*errant*' or '*inefficient*' or '*unfit*' male officers in accordance with law.

NO WAIVER OF FUNDAMENTAL RIGHTS

69. It is settled law that it is not open to the Respondent-Union of India to contend that a person is not entitled to enforce his/her Fundamental Rights, in particular his/her Right to Equality, because he/she has waived it. It is always open to an aggrieved person to challenge any policy or notification or statutory provision by filing a writ petition under Article 226 or under Article 32 on the grounds that it violates his/her Fundamental Rights. In *K.S. Puttaswamy* v.

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 39 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

Union of India, (2017) 10 SCC 1, it has been held that Part III of the Indian Constitution which embodies Fundamental Rights is part of the wider notion of securing the vision of justice of the Founding Fathers and as a matter of doctrine, the rights guaranteed are not capable of being waived. This Court also in *Basheshar Nath* v. *Commissioner of Income Tax Delhi & Rajasthan*, 1958 SCC OnLine SC 7 has held as under:—

> "*68. It is suggested that if a person, after waiving his fundamental right to property and allowing the State to incur heavy expenditure in improving the same, turns round and claims to recover the said property, the State would be put to irreparable injury. Firstly, no such occasion should arise, as the State is not expected to take its citizens' property or deprive them of their property otherwise than by authority of law. Secondly, if the owner of a property intends to give it to the State, the State can always insist upon conveying to it the said property in the manner known to law. Thirdly, other remedies may be open to the State — on that I am not expressing any opinion — to recover compensation or damages for the improvements bona fide made or the loss incurred, having regard to the circumstances of a particular case. These considerations, in my view, are of no relevance in considering the question of waiver in the context of fundamental rights. By express provisions of the Constitution, the State is prohibited from making any law which takes away or abridges the rights conferred by Part III of the Constitution. The State is not, therefore, expected to enforce any right contrary to the constitutional prohibition on the ground that the party waived his fundamental right. If this prohibition is borne in mind, no occasion can arise when the State would be prejudiced. The prejudice, if any, to the State would be caused not by the non-application of the doctrine of waiver but by its own action contrary to the constitutional prohibition imposed on it.*"

70. It is pertinent to mention that the marks obtained by the candidates (both male and female) were not placed in the public domain by the Respondent-Union of India and it is only in course of this proceeding that the marks were disclosed; hence, the Petitioners cannot be expected to know of the illegality that crept in the process of selection before presenting the Writ Petition under Article 32 of the Constitution.

71. Consequently, Respondent No. 3's submission that the Petitioners have waived their rights to challenge the impugned Notification is untenable in law and that too when the violation of Fundamental Rights in the present instance is egregious.

CONSTITUTION AND GOVERNMENT POLICY TOWARDS WOMEN

72. In view of the aforesaid conclusions, this Court will have to examine as to what is the constitutional mandate and the policy of the government with regard to status of women.

73. It is settled law that Articles 15 and 16 read together prohibit direct discrimination between members of different sexes. No less favourable treatment can be meted out to women on gender-based criterion which would

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 40 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

favour the opposite sex. The constitutional mandate is infringed only where the females would have received same treatment with males, but for their sex. However, Articles 14, 15 and 16 do not prohibit special treatment of women.

74. As stated hereinabove, Article 15(3), which additionally allows the State to make special provisions for women, has largely been interpreted as an exception to the principle of non-discrimination or what has been described as '*positive discrimination*'. However, in some judgments like *Dattatraya Motiram More* v. *State of Bombay* (supra), Article 15(3) has been interpreted as a part of the equality provisions as a whole, so that the differential treatment authorised by this Article is not an exception, but a part of equality.

75. According to '*The Oxford Handbook of The Indian Constitution*' there are three very different approaches to the question of gender difference and equality namely: protectionist, sameness and compensatory. In the first approach, women are understood as different from men—more specifically, as weaker, subordinate, and in need of protection. In the name of protecting women, this approach often serves to reinforce their subordinate status.

76. The second approach is an equal treatment or sameness approach. In this approach, women are understood as the same as men—that is to say, for the purposes of law, they are the same and must be treated the same. In this approach, any legislation or practice that treats women differently from men is seen to violate the equality guarantees.

77. In the third approach, women are understood as a historically disadvantaged group, and as such, in need of compensatory or corrective treatment. In this approach, rules or practices that treat women differently from men can be upheld, if such rules or practices are designed to improve the position of women. Proponents of this compensatory approach attempt to illustrate how the ostensibly '*gender-neutral*' rules of the formal equality approach are not gender-neutral at all—but rather, based on male standards and values. In such a model, women will only qualify for equality to the extent that they can conform to these male values and standards. Thus, the compensatory approach argues that gender differences must be considered in order to produce substantive equality for women.

78. Women make up slightly less than half (48.4%) of India's population but contribute less than a fifth (18%) of GDP, per world Economic Forum's (WEF) 2024 Global Gender Gap Report, which also shows that purely in terms of gender gap in economic participation, India ranks 142nd among 146 countries. In terms of overall gender gap - which also includes education, political participation and health and survival - India stands at 129th out of 146 countries. [See: *Article by C. Raj Kumar, The Times of India dated January 7, 2025*].

79. Consequently, the Government of India has in pursuit of creating a more inclusive society, in the last decade implemented a series of proactive policies and programmes aimed at empowering women across various spheres. Key initiatives such as the Women's Reservation Act, 2023 reflect the commitment to

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 41 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

tangible action. The Act, 2023, a landmark in India's legislative landscape, seeks to enhance women's representation in political spheres, ensuring their voices contribute significantly to decision-making processes.

80. In fact, India celebrated its 75th Republic Day on January 26, 2024, displaying the prowess of its armed forces and cultural richness and '*Nari Shakti*'. With the themes of '*Viksit Bharat*' and '*Bharat - Loktantra ki Matruka*', the 75th Republic Day parade was women-centric.

81. Recently, India's presidency of The Group of Twenty (G20), inspired by vision of an *Amritkaal* where *Nari Shakti* (the power of women), endeavoured to shift the global focus from old UN terminology of gender equality and women's development to women-led development. India's presidency of G20 was celebrated for negotiating impactful outcomes centered on global empowerment of women. *Mr. Amitabh Kant (India's G20 Sherpa)* in his recent book "*How India Scaled MT G20 The Inside Story of the G20 Presidency*" has written as under:—

> *"Instead of viewing women solely as recipients of opportunities, there was a fundamental shift towards recognizing their role as leaders and changemakers. This wasn't merely a rhetorical adjustment, but a call to action necessitating concrete policies that positioned women at the forefront of decision-making processes, thereby challenging and transforming existing systems. This was evident at the G20 tables, where discussions emphasized the need for women to lead the discourse and shape the socio-economic landscape. To create a world where women wield substantial influence, recognized the importance of moving beyond inclusion to active participation….*
>
> *However, promoting women-led development faced significant challenges. Many countries insisted on UN terminology like 'gender equality' and argued against women-led development. Our push for women-led development met severe resistance, but through ambitious, aggressive, forward-looking negotiations, we saw women-led development through…..*
>
> *……The NDLD ('New Delhi Leaders' Declaration') underscored the essential role of gender equality and female leadership, emphasizing how empowering women and girls could accelerate progress towards the 2030 Agenda. India's comprehensive strategy rested on four key pillars:*
>
> - *The first, 'Enhancing Economic and Social Empowerment', aimed to break down barriers hindering women's progress and ensure equal access to resources.*
> - *The second, 'Bridging the Gender Digital Divide', focused on providing women with equitable opportunities in the digital world.*
> - *'Driving Gender-Inclusive Climate Action' recognized the unique challenges climate change poses for women and incorporated a gender-sensitive approach to climate initiatives.*
> - *Last, 'Securing Women's Food Security, Nutrition, and Well-Being' addressed crucial aspects of women's health, emphasizing access to*

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 42 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

nutritious food and healthcare.

These pillars formed a multi-faceted approach, showcasing a holistic strategy for the global empowerment of women."

82. Consequently, the constitutional mandate and the national as well as international policy of the Government of India is to ensure that women are not discriminated in any manner and a more inclusive society is created by enhancing representation of women in all spheres of life.

IMPUGNED NOTIFICATION IS UNCONSTITUTIONAL AS IT RESERVES DOUBLE THE NUMBER OF VACANCIES FOR MALES

83. Accordingly, this Court is of the view that the impugned notification to the extent that it provides for only three (03) vacancies for female candidates, whereas six (06) vacancies have been notified for male candidates is violative of Articles 14, 15 and 16 as well as Section 12 of the Army Act, 1950.

THE PROFESSED POLICY OF ENROLMENT IS GENDER-NEUTRAL AND NOT GENDER-SPECIFIC

84. Another issue that arises for consideration is whether the current policy of Union of India with regard to enrolment of women in JAG course is '*gender-neutral*' or '*gender-specific*'.

85. As fairly pointed out by the learned ASG, a study team of senior experts and senior officers in 2023 has examined afresh the ratio of men and women in various branches of Indian Army to be introduced with effect from the year 2024. The said study team's 2023 report which has been approved by the competent authority at the highest level has recommended that JAG branch offers an ideal opportunity to have a '*gender-neutral entry*'. The annexure to '*Holistic appraisal of induction and employment of women officers in Indian Army post commencement of induction of women cadets in NDA and grant of PC to women officers*' - (2023 report) succinctly sums up its recommendation with regard to enrolment of women in JAG branch as under:—

"JAG Dept

Appts. JAG presently consists of 75 WOs in the cadre str of 285. The study gp feels that like AEC, JAG also offers an ideal opportunity to have a gender-neutral entry. A functional capacity of 142 WOs, has therefore been recommended in the JAG Dept. Summary of functional capacity is att as Annexure."

86. Even in the counter affidavit filed by the Union of India in the present case, it has been repeatedly stated that the selection process for JAG is '*gender-neutral*'. In addition to para 25 of the counter affidavit as pointed by learned senior counsel for the Petitioner and as quoted hereinabove, in para 12 of the counter affidavit, it has been stated, "*That with regard to the statement made in para 4 to the petition, under reply, it is stated that the Indian Army carries out an absolutely fair, gender-neutral selection process for both Men and Women candidates appearing for any of the officer entries. There are no quotas for caste, creed, region, religion and place of birth. Right from the step of*

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 43 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

accepting applications based on the merit of exam filter, educational qualifications, testing process and degree of difficulty for various tests, all steps involved in the selection process are fair and gender neutral……"

87. Consequently, the professed policy of the Respondents of enrolment/recruitment in JAG branch is '*gender-neutral*' and not '*gender-specific*' as contended by the Respondents during the course of oral arguments.

DISTINCTION BETWEEN GENDER-NEUTRAL AND GENDER-EQUAL

88. This Court is of the view that the expression '*gender-neutral entry*' in the 2023 policy (which has been accepted and implemented by the Respondents from 2024) is of significant import. '*Gender-neutral*' in ordinary parlance means that no discrimination shall be made between candidates on the basis of gender or sex of an individual. The expression '*gender-neutral*' is normally misunderstood and often thought to be synonyms with the expression '*gender-equality*'.

89. A simple analogy to address the difference would be that when an employer hires the same number of men and women, it would be deemed to be following the policy of '*gender-equality*'; on the other hand, if the employer hires the best candidate for the job regardless of gender/sex, it would be deemed to be following the policy of '*gender-neutrality*'.

90. Consequently, the concept of gender-neutrality does not just prohibit sex based classification but it ensures that the most meritorious candidate is selected for the job. Also, the principle of '*gender-neutrality*' in service does not preclude or limit deployment in any operational area or role.

91. It is pertinent to mention that during the hearing of *Gopika Nair* v. *Union of India*, SLP (C) 3293/2023 relating to the challenge of reservation for men in the Army Dental Corps, the Respondents gave an undertaking to make the selection by applying '*gender-neutral formula*' and by not restricting the entry of women candidates to fifty per cent (50%) vacancies. The orders dated 11th April 2023 and 08th May, 2023 in *Gopika Nair* (supra) case are reproduced herein below:—

Order dated 11th April, 2023:

"Prima facie, we are of the view that the stand of the respondent is violative of Article 14 of the Constitution of India. Whereas the male candidates who have rank till 2394 are permitted to participate in the selection process, in so far as the female candidates are concerned, the cut-off rank is 235.

2. It is sought to be argued by Mr. K.M. Nataraj, learned Additional Solicitor General that this is on the ground of various exigencies which are peculiar to the defence services. It is submitted that taking into consideration this aspect in the present selection process, only 10 per cent seats are reserved for female candidates.

3. We find that an anomalous situation has arisen due to such a stand.

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 44 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

Whereas a male candidate who is 10 times less meritorious than a female candidate is permitted to appear in the selection process, a female candidate who is 10 times meritorious than a male candidate is deprived from being participating in the selection process.

4. Though, we have expressed readiness to hear the matter finally, learned Additional Solicitor General, appearing for the Union of India submits that taking into consideration wider ramification, the matter will have to be heard at length. He submits that the entire selection process is stalled thereby depriving the service of dental surgeon to which are necessary for the establishment of the defence service.

5. Prima facie, we find that depriving the highly meritorious female candidates from participating in the selection process is putting the clock in reverse direction. Leave aside giving preferential treatment to the female as envisaged under Article 15 of the Constitution of India, the stand of the respondent-Union of India is violative of Article 14 of the Constitution of India, inasmuch as it deprives a meritorious female to compete and permits much less meritorious male to participate in the selection process.

6. In any event, learned Additional Solicitor General, on instructions, has expressed willingness to conduct the interviews of the present petitioners whose ranking in the NEET (MDS) - 2022 is much below 235.

7. It is further stated that interview will be conducted within two weeks.

8. List this matter on 03.05.2023.

9. We request the learned Additional Solicitor General to place before us the result of the petitioners' interview alongwith the results of the interview of the other candidates.

10. Needless to state that after the interview of the petitioners are conducted, the respondent would be free to declare the results."

Order dated 08th May, 2023:

"*1. Shri K.M. Nataraj, learned Additional Solicitor General ("ASG" for short) states that all the petitioners herein as well as the petitioners before the High Court of Punjab and Haryana and the High Court of Madhya Pradesh were interviewed by the respondents. As per the result sheet, three of the female candidates find place in the list of 27 persons.*

2. It is submitted that the said three female candidates would be appointed as per their position in the select list of first 27 candidates.

3. It is submitted that insofar as three seats reserved for female category are concerned, they would be filled by the female candidates as per their merit after the first 27 candidates are appointed.

4. It is further submitted that since there are other vacancies, three more male candidates would be accommodated.

5. Learned ASG further submits that hereinafter the selection would be made by applying gender neutral formula.

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 45 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

6. In that view of the matter, we find that the grievance of the petitioners stands satisfied.

7. The special leave petition is disposed of accordingly.

8. Pending application(s), if any, stand(s) disposed of."

92. Consequently, the distinction between the two concepts, namely, '*gender-neutral*' and '*gender-equal*' is well known to the Respondents and the Respondents have accepted and implemented the '*Gender-Neutral Policy*' as against '*gender-equal*' policy.

PRESENT RECRUITMENT POLICY LEADS TO INDIRECT DISCRIMINATION

93. Though the study report recommends a '*gender-neutral*' entry in JAG branch, yet it paradoxically recommends an intake ratio of 50% (Men) and 50% (Women) for JAG branch with effect from year 2024 till year 2032 or till the time 50:50 cadre ratio is achieved whichever is earlier.

94. This Court is of the view that the actual practice of recruiting equal number of male and female candidates in JAG branch, though neutral in form, is anything but gender-neutral in application and practice. The policy, as per the evidence and empirical data before this Court in the form of marks obtained by the candidates, shows that it has adverse impact on women who are more meritorious than the male candidates.

95. In fact, to determine whether the recruitment policy is genuinely gender-neutral or not, one has to look beyond formal level of evaluation and take additional factors such as '*impact*' or '*effect*' into account. Therefore, '*genuine*' gender-neutrality lies in addressing disparate effects of laws/policy/practice which appear to be facially fair or equal.

96. In *Lieutenant Colonel Nitisha* v. *Union of India*, (2021) 15 SCC 125, this Court has held that indirect discrimination is closely tied to the substantive concept of equality and the focus in anti- discrimination enquiry has switched from looking at the intentions or motive of the discriminator to examining whether a rule, formally or substantively, '*contributes to the subordination of a disadvantaged group of individuals*'. It needs to be clarified that the use of the terms '*indirect discrimination*' is not to refer to discrimination, which is remote, but is, instead, as real as any other form of discrimination. While evolving a framework to assess claims of indirect discrimination, this Court in *Nitisha* (supra) has held as under:

"70. A study of the above cases and scholarly works gives rise to the following key learnings. First, the doctrine of indirect discrimination is founded on the compelling insight that discrimination can often be a function, not of conscious design or malicious intent, but unconscious/implicit biases or an inability to recognise how existing structures/institutions, and ways of doing things, have the consequence of freezing an unjust status quo. In order to achieve substantive equality prescribed under the Constitution, indirect discrimination, even sans discriminatory intent, must be prohibited.

71. Second, and as a related point, the distinction between direct and

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 46 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

indirect discrimination can broadly be drawn on the basis of the former being predicated on intent, while the latter is based on effect (US, South Africa, Canada). Alternatively, it can be based on the fact that the former cannot be justified, while the latter can (UK). We are of the considered view that the intention effects distinction is a sound jurisprudential basis on which to distinguish direct from indirect discrimination. This is for the reason that the most compelling feature of indirect discrimination, in our view, is the fact that it prohibits conduct, which though not intended to be discriminatory, has that effect. As the Canadian Supreme Court put it in Ontario HRC [Ontario Human Rights Commission *v.* Simpsons Sears Ltd.,, *1985 SCC OnLine Can SC 75 : [1985] 2 SCR 536], requiring proof of intention to establish discrimination puts an "insuperable barrier in the way of a complainant seeking a remedy*". [Ontario Human Rights Commission *v.* Simpsons Sears Ltd.,, *1985 SCC OnLine Can SC 75, para 14 : [1985] 2 SCR 536, para 14] It is this barrier that a robust conception of indirect discrimination can enable us to counteract.*

72. Third, on the nature of evidence required to prove indirect discrimination, statistical evidence that can establish how the impugned provision, criteria or practice is the cause for the disproportionately disadvantageous outcome can be one of the ways to establish the play of indirect discrimination. As Professor Sandra Fredman notes:"Aptitude tests, interview and selection processes, and other apparently scientific and neutral measures might never invite scrutiny unless data is available to dislodge these assumptions." [Sandra Fredman, Discrimination Law at p. 187] Consistent with the Canadian Supreme Court's approach in Fraser [Joanne Fraser *v.* Attorney General of Canada,, *[2020] SCC 28 (Can SC)], we do not think that it would be wise to lay down any quantitative thresholds for the nature of statistical disparity that must be established for a claimant to succeed. Equally, we do not think that an absolutist position can be adopted as to the nature of evidence that must be brought forth to succeed in a case of indirect discrimination. The absence of any statistical evidence or inability to statistically demonstrate exclusion cannot be the sole ground for debunking claims of indirect discrimination. This was clarified by the European Court of Human Rights in a case concerning fifteen Croatians of Roma origin claiming racial discrimination and segregation in schools with Roma-only classes. In assessing the claims of the fifteen Croatians, the court observed that indirect discrimination can be proved without statistical evidence* [Orsus *v.* Croatia,, *2010 ECHR 337, para 153]. Therefore, statistical evidence demonstrating patterns of exclusion, can be one of the ways to prove indirect discrimination.*

73. Fourth, insofar as the fashion in which the indirect discrimination enquiry must be conducted, we think that the two-stage test laid down by the Canadian Supreme Court in Fraser [Joanne Fraser *v.* Attorney General of Canada,, *[2020] SCC 28 (Can SC)] offers a well-structured framework of analysis as it accounts for both the disproportionate impact of the impugned provision, criteria or practice on the relevant group, as well as the harm*

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 47 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

caused by such impact. It foregrounds an examination of the ills that indirect discrimination seeks to remedy.

74. Fifth and finally, while assessing the justifiability of measures that are alleged to have the effect of indirect discrimination, the Court needs to return a finding on whether the narrow provision, criteria or practice is necessary for successful job performance. In this regard, some amount of deference to the employer/defendant's view is warranted. Equally, the Court must resist the temptation to accept generalisations by defendants under the garb of deference and must closely scrutinise the proffered justification. Further, the Court must also examine if it is possible to substitute the measures with less discriminatory alternatives. Only by exercising such close scrutiny and exhibiting attentiveness to the possibility of alternatives can a court ensure that the full potential of the doctrine of indirect discrimination is realised and not lost in its application."

97. Further, this Court in *Nitisha* (supra) has referred with approval the judgment of The Supreme Court of Canada, in *Action Travail des Femmes* v. *Canadian National Railway Co.* [*Action Travail des Femmes* v. *Canadian National Railway Co.*, 1987 SCC OnLine Can SC 37 : [1987] 1 SCR 1114] wherein it analysed the claim of woman seeking equal employment opportunities in the National Railroad Company. In echoing the mutually reinforcing consequences of direct and indirect discrimination within organisational structures as a systemic feature, the Court noted [*Id.* at SCR p. 1139] : (SCC OnLine Can SC)

"... systemic discrimination in an employment context is discrimination that results from the simple operation of established procedures of recruitment, hiring and promotion, none of which is necessarily designed to promote discrimination. The discrimination is then reinforced by the very exclusion of the disadvantaged group because the exclusion fosters the belief, both within and outside the group, that the exclusion is a result of "natural forces", for example, that women "just can't do the job"... To combat systemic discrimination, it is essential to create a climate in which both negative practices and negative attitudes can be challenged and discouraged."

98. Keeping the above noted analytical framework in consideration, this Court is of the opinion that the practice challenged in the present petition results in indirect indiscrimination. The practice of fixing a ceiling limit to recruitment of female candidates has the effect of perpetuating the status quo, which has been historically discriminatory to women candidates. The result of such practice is confinement of women candidates, irrespective of their performance/merit, in their gendered category, thereby being destructive of not just the Constitutional scheme under Articles 15 and 16 as noted hereinabove, but also of the concept of '*gender-neutrality*' and '*merit*'. The evidence of the disparate treatment is writ large in the form of the merit list produced before this Court, as per which the female candidates have overwhelmingly outscored their male counterparts. It is pertinent to mention that Respondent No. 3 though placed at Serial No. 6 in the mens merit list has obtained less marks than the female candidate placed at

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 48 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

Serial No. 10 in the female's merit list. Accordingly, despite their performance, the meritorious women candidates are not being selected only due to their gender.

99. Consequently, this Court is of the view that in the present case, indirect discrimination is real and is caused by a facially neutral 50:50 criteria by not taking into consideration the underlying effect of the said criteria.

AS THE NATURE OF TESTS OF MALE AND FEMALE CANDIDATES IS SIMILAR, A COMBINED MERIT LIST OUGHT TO BE PREPARED

100. The argument that there is a distinction between JAG women and JAG men on the basis that they give separate SSBs and have separate merit lists is contrary to facts as there is no evidence to show that nature of tests is different in the separate SSBs. On the contrary, it is the Union of India's own stand in the counter affidavit that they have maintained the neutrality of the examination process.

101. Upon a perusal of the record, this Court is of the view that though men and women during the JAG selection procedure appear before separate boards, yet the selection criteria for male and female candidates are not separate and only few indicators such as physical attributes are different. The conduct of separate SSBs for men and women are a necessity due to the nature of tests involved, which require close intensive physical interactions. Both male and female candidates are assessed on identical parameters. The mere existence of separate boards, however, does not extend to separate treatment of men and women candidates in law. This is apparent from the procedure and testing parameters of the fifteen (15) Officer Like Qualities considered by the SSB (as extracted hereinabove) for recruitment to the Indian Armed Forces.

102. It is pertinent to mention that male and female JAG officers do not have distinct cadres with different conditions of service. Further, in terms of the policy dated 20th July 2006 dealing with SSC appointment of women, combined merit lists are prepared for men and women in case of seniority for SSC Non-Technical and Technical members.

103. Consequently, this Court is of the view that similar combined merit list ought to be prepared.

CONSTITUTIONALLY VALID INTERPRETATION OF THE 2023 RECRUITMENT POLICY IMPLEMENTED W.E.F. 2024

104. This Court is of the opinion that if the 2023 Policy is read with the mandate of law, it means that Union of India shall recruit the most meritorious candidates in JAG branch irrespective of their sex/gender, but to '*compensate the women for their previous non-enrolment*', the Union of India has decided to allocate at least 50% of the vacancies to women candidates. This intent is apparent from the 2023 policy when it states that the Indian Army has decided to increase the number of Women Officers in JAG branch from current 75 to 142 by allocating at least 50% of the seats in JAG branch to Women Officers.

MERIT-BASED SELECTION WILL IMPROVE EFFICIENCY OF JAG

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 49 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

105. This Court is also of the view that the understanding of 2023 policy as implemented by the Respondents is not only untenable in law as after allowing women to join Combat Support Arms and Services there can be no reservation category for '*male*' or '*men*', but also contrary to facts as no explanation has been offered by the Union of India as to why gender-based vacancy allocation is necessary for a legal branch where the duties, training and performance expectations are identical for all officers regardless of gender.

106. Admittedly, the JAG Department falls under the Adjutant General's branch which majorly performs administrative duties. As per clause 33 of Defence Service Regulations 1987 ('DSR'), "*the JAG is the legal adviser to the Chief of the Army Staff in matters of military, martial and (in its fighting service aspect) international law. He also assists the Adjutant General in matters relating to discipline involving application of military law*". JAG is the '*Nodal Legal Agency*' for single point contact with the institutionalized judicial system as well as advise on all legal matters pertaining to the Army. The legal matters in addition to those covered by the Army Act, 1950, Regs for the Army, Special Powers Act, International Laws and Conventions agreed by the Government of India for the Indian Army and special laws invoked by the Government for the Army also includes Charter of Trades and Tariff Laws formally agreed upon by the Government pertaining to the Army. The legal advice has to be within the framework of the Constitution of India and its amendments thereof as on the date and day of promulgation. Consequently, the submission of the Respondents that being a combatant is a pre-requisite to be a JAG officer is incompatible with the job description of JAG officers.

107. Apart from the Army, the JAG's Department is present in the following other branches of the Armed Forces:—

i. Air Force;

ii. Navy;

iii. Border Security Force;

iv. Central Armed Police Forces;

v. Coast Guard [known as 'Assistant Commandant (Law)];

vi. National Security Guard (known as 'Judge Attorney).

108. In none of the aforesaid branches, the enrolment of women candidates is restricted on the ground of operational efficiency.

109. This Court takes judicial notice of the fact that female candidates have been outperforming their male counterparts in the entrance examination for judicial services. For instance, in Delhi Judicial Service, during the period 2019 to 2023, the female candidates have been outperforming their male counterparts. From being 50% in 2019 batch, the number of female Judicial Officers in 2023 batch is nearly double the male Judicial Officers. The details of total number of male and female Judicial Officers appointed in Delhi Judicial Service during the last three Delhi Judicial Service Recruitment Examinations are as under:—

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 50 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

	DELHI JUDICIAL SERVICE			
Name of the Examination	Year of Appointment	Number of Male Judicial Officers	Number of Female Judicial Officers	Total Candidates Selected
Delhi Judicial Service Examination 2018	2019	63 (Out of which 06 officers have resigned)	63 (Out of which 01 officer had resigned)	126
Delhi Judicial Service Examination 2019	2021	22 (Out of which 01 officer had resigned)	28	50
Delhi Judicial Service Examination 2021	2023	36	74 (Out of which 02 officers have resigned)	110

110. Consequently, the Respondents have failed to establish how a merit-based '*gender-neutral*' selection process would negatively impact functionality, manpower planning, or operational efficiency of the JAG branch. On the contrary, a merit-based selection process will improve efficiency of the JAG branch.

CONCLUSION

111. Keeping in view the aforesaid as well as the fact that the Respondents vide Notification issued under Section 12 of the Army Act, 1950 have permitted women to join the JAG branch, this Court is of the view that the executive cannot restrict their numbers and/or make a reservation for male officers under the guise of '*extent of induction*' by way of a policy or administrative instruction.

112. Further, the impugned notification to the extent that it provides for only three (03) vacancies for female candidates as against six (06) vacancies for male candidates is against the concept of equality as enshrined in the Constitution as it makes a reservation for male officers under the guise of '*extent of induction*'.

113. Though men and women candidates during the JAG selection procedure appear before separate boards, yet as the selection criteria and testing parameters of the fifteen (15) Officer Like Qualities are identical, this Court is of the view that combined merit list ought to be prepared.

114. Moreover, as held hereinabove, male and female JAG officers do not have distinct cadres with different conditions of service and the true meaning of concept of '*gender-neutrality*' and 2023 recruitment policy is that Union of India shall recruit the most meritorious candidates in JAG branch irrespective of their sex/gender as the primary job of this branch is to give legal advice and conduct cases, but to '*correct the past*' and to '*compensate the women for their previous non-enrolment*', the Union of India shall allocate not less than 50% of the vacancies to women candidates.

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 51 Monday, May 18, 2026
Printed For: Mr. Rajeeve Mehra
SCC Online Web Edition: https://www.scconline.com
© 2026 EBC Publishing Pvt. Ltd., Lucknow.

115. However, to restrict the women candidates to 50% of the seats, as argued by the Respondents despite they being more meritorious than the male candidates is violative of the Right to Equality. Since in the present case Petitioner No. 1 has obtained 447 marks as against 433 marks of Respondent No. 3, this Court directs the Respondents-Union of India and Army to induct Petitioner No. 1 in the next available training course for being commissioned in the JAG Department of Indian Army. As Respondent No. 3 despite having secured third rank with 433 marks in the merit list of men candidates has obtained less marks than the female candidate placed at Serial No. 10 in the Females Merit List, this Court is of the view that his selection by the Respondents amounts to indirect discrimination and, therefore, he is not entitled to any relief.

116. This Court clarifies that it is not imposing its own views or predilection on the Army but is implementing the Constitution and the mandate of law. But this Court agrees with the view held by many that '*no nation can be secure, when half of its population (i.e. its women force) is held back*'.

117. Consequently, this Court directs the Union of India to henceforth conduct recruitment in the aforesaid manner as well as publish a common merit list for all JAG candidates (i.e. for all male and female candidates) and make the merit list public as well as the marks obtained by all candidates participating in the selection process.

118. With the aforesaid directions, the present writ petition stands disposed of.

———

Disclaimer: While every effort is made to avoid any mistake or omission, this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification is being circulated on the condition and understanding that the publisher would not be liable in any manner by reason of any mistake or omission or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification. All disputes will be subject exclusively to jurisdiction of courts, tribunals and forums at Lucknow only. The authenticity of this text must be verified from the original source.