

**WRITTEN SUBMISSION/ARGUMENTS IN SUPPORT OF W.P. (C)  
11904/2022**

**HIGHLIGHTS:**

- 14/06/22- PIB Delhi made a press release Cabinet clearing Agnipath scheme for recruitment of youth in armed forces.
- 15/06/22- Chief of Staff, Head Quarters Southern Command briefed the media at Pune about the Scheme.
- 16/06/22- The department of School Education and Literacy announced special programme in consultation with defence authorities.
- 17/06/22- Government extended the upper age limit in defence recruitment for the year 2022.
- Press release titled “DFS holds meeting with Public Sector Banks, Insurance Companies & Financial Institutions to identify ways to support agniveers. Article titled “Agnipath protests highlights: Rajasthan unanimously passes resolution to withdraw Agnipath Scheme.
- 08/08/22- The petition was filed.

**Questions:**

The petition has the following questions to be considered;

1. The *Locus Standi* of the petitioner.
2. The shortcomings of the Agnipath Scheme.
3. The retrospective effect of the scheme being arbitrary.

**Locus Standi:**

1. The petitioner is the Citizen of India and retired Colonel from Indian Army having service of 20 years in Combat and Legal expertise. This Writ

Petition is filed in the interest of public at large and for the youth of the nation, stating that AGNIPATH Scheme has not been properly tested and is artificial in nature based on presumptions without conducting any test or pilot project(s) by Commanding Officers, Company Commanders & Section Officers at Unit levels and also lacking the same at Brigade, Division, Core and Command levels. This petition is filed in consideration with respect of No Freedom of Expression to the service who are incapable of putting up these points across. The petitioner is well verse with the law of the land and having 21 years of experience in Armed Forces as an Infantry Officer and Judge Advocate General, Branch. As per Para. 17 of judgement in case of S.P. Gupta Vs Union of India (1981 SUPP. SCC 87) which speaks about the requirement of PIL for unrepresented public-

“It may therefore now be taken as well established that where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such person or determinate class of persons, It is in this spirit that the Court has been entertaining letters for Judicial redress and treating them as writ petitions and we hope and trust that the High Courts of the country will also adopt this pro-active, goal-oriented approach. But we must hasten to make it clear that the individual who moves the Court for judicial redress in cases of this kind must be acting bona fide with a view to vindicating the cause of justice and if he is

acting for personal gain or private profit or out of political motivation or other oblique consideration, the Court should not allow itself to be activated at the instance of such person and must reject his application at the threshold, whether it be in the form of a letter addressed to the Court or even in the form of a regular writ petition filed in Court. We may also point out that as a matter of prudence and not as a rule of law, the Court may confine this strategic exercise of jurisdiction to cases, where legal wrong or legal injury is caused to a determinate class or group of persons or the constitutional or legal right of such determinate class or group of persons is violated and as far as possible, not entertain cases of individual wrong or injury at the instance of a third party, where there is an effective legal aid organisation which can take care of such cases”.

2. In **People'S Union For Democratic ... vs Union Of India & Others on 18 September, 1982**, the court said that, “*Where judicial redress is sought of a legal injury or legal wrong suffered by a person or class of persons who by reason of poverty, disability or **socially or economically disadvantaged position** are unable to approach the court and the court is moved for this purpose by a member of a public by addressing a letter drawing the attention of the court to such legal injury or legal wrong, court would cast aside all technical rules of procedure and entertain the letter as a writ petition on the judicial side and take action upon it.*”
3. In **1981 Justice P. N. Bhagwati in .S. P. Gupta v. Union of India AIR 1982 S.C 149** , articulated the concept of PIL as follows, “*Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons by reasons of poverty, helplessness or disability or **socially or***

*economically disadvantaged position unable to approach the court for relief, any member of public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case any breach of fundamental rights of such persons or determinate class of persons, in this court under Article 32 seeking judicial redress for the legal wrong or legal injury caused to such person or determinate class of persons.” Thus, establishing the **locus standi** of the petitioner”.*

4. As per the question asked by the Hon’ble court regarding validity of this PIL in service related matter, the petitioner would like to bring the notice of the Hon’ble court to **Section 3(0) of the Arms Force Tribunal Act, 2007**, which states,

*service matters, in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950), mean all matters relating to the conditions of their service and shall include*

*(i) remuneration (including allowances), pension and other retirement benefits;*

*(ii) tenure, including commission, appointment, enrolment, probation, confirmation, seniority, training, promotion, reversion, premature retirement, superannuation, termination of service and penal deductions;*

*(iii) summary disposal and trials where the punishment of dismissal is awarded;*

*(iv) any other matter, whatsoever, but shall not include matters relating to*

*(i) orders issued under section 18 of the Army Act, 1950 (46 of 1950), sub-section (1) of section 15 of the Navy Act, 1957 (62 of 1957) and section 18 of the Air Force Act, 1950 (45 of 1950); and*

*(ii) transfers and postings including the change of place or unit on posting whether individually or as a part of unit, formation or ship in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950).*

*(iii) leave of any kind;*

*(iv) Summary Court Martial except where the punishment is of dismissal or imprisonment for more than three months;*

The present case as seen does not fulfil the requirements mentioned under **Section 3 (o) of the Arms Force Tribunal Act, 2007**, to be considered as a “service” matter as the service has not been granted yet and no post or position has been provided. The aggrieved had cleared their examination and other required test to receive the post applied for but the same had not been granted due to the retrospective effect of the Agnipath scheme, which is arbitrary and not justified.

5. Further in the case of **Dr. Duryodhan Sahu and Ors. Vs Jitendra Kumar Mishra and Ors (AIR 1999 SC 114)**, held that PILs are not maintainable in service matters in Administrative Tribunals. Whereas, the exclusive jurisdiction of High court remains unfettered under Article 226. In addition to that this hon’ble court in the case of **The Secretary, Ministry of Defence Vs Babita Puniya and Ors (2020 7 SCC 469)** has adjudicated on an issue relating to permanent commission of women officer in the PIL which was filed by a practicing advocate in the year **2003**. Further the Apex Court on a writ petition civil No. 1416/2020 in the matter of **Kush Kalra Vs Union of India** passed an interim order (**I.A.No.87814/2021**) allowing women to appear in the National Defence Academy entrance examination. In these cases the Govt policies were challenged under writ jurisdictions in PILs and were admitted as a matter of public grievances at large and not for

personal grievance. The petitioner is asking the similar relief by challenging this scheme which has led to protest in the entire nation and even some suicide death cases of youths due to the implementation of Agnipath Scheme.

Thus the petitioner before discussing the petition in totality request the hon'ble court to consider the following questions for its adjudication.

### **Questions**

1. Whether the issue raised in this PIL affects the public at large and this Court can entertain Public Interest Litigation (PIL) under Article 226 on such issues which relates to service matters in the light of the above quoted judgments and issues or the ibid judgement restricts the power of the High Court to entertain such matters under Article 226 ?
2. Whether the present PIL/Writ Petition is covered under the service matters under **Sec: 3(o) of Armed Forces Tribunal Act, 2007 which defines "Service matters" and does not caters for the unrepresented people who are affected being not in service?**
3. Whether the PIL filed after the direction of the Supreme Court to entertain all such Writ Petitions by this court on 17 July 2022, bind the court to hear the issues as raised in the PIL ?
4. Whether the service matters cover the present issue raised against AGNIPATH Scheme affects the national security in view of the deliberations of the experienced veterans and in the light of the facts that the Agnipath Scheme is launched without the considerations of feedbacks and suggestions or participation at the level of Sub Units, Units, and Formations level who are going to

face the brunt and heavy loads in upcoming trainings, operations and presently performing under existing deficiencies of troops?

5. Whether the Scheme has considered the requirements of our demography, population, background, hostile neighbour and terrain and our role at present relating to external aggression or internal disturbance and operation preparedness in all climates and weather conditions ?
6. Whether the issues raised in the PIL are affecting the infringement of Article 14,19 & 21 such as '*equal work and equal pay*', infringement of Sec: 193 of Army Act,1950 for not bringing out the issue for discussion in the Parliament as it affects the basic structure of the forces and their fighting capabilities and lastly doctrine of Legitimate Expectation?
7. Whether the issues raised by the petitioner in respect of Interest of Public at large is maintainable prima facie in consideration of the **suicide** of youth and ongoing protest by the youth and veterans, and also affects the concern over on security, sovereignty of the nation as brought out by the experts veterans of Armed Forces ?
8. Whether this PIL urges the Hon'ble court to use their effective weapon in the armoury of law for delivering social justice to the citizens aggrieved and is aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta?

In view of the above the petitioner representing the unrepresented body of persons prays the Hon'ble court for its careful adjudication while deciding the locus standi & maintainability of the writ petition in light of the ibid judgements quoted above. This petition is an effort to provide legal representation to unrepresented groups and in the interests of the public and

has been filed by the petitioner after considering the observations and ratio-decidenti of the Apex court judgement in Dr. Duryodhan Sahu and ors vs Jitendra kumar Mishra and Ors (AIR 1999 SC 114), Duttaraj Nathuji Thaware vs. state of Maharashtra and others, S.P. Gupta vs. Union of India (1981 SUPP. SCC 87), State of H.P. vs. A. Parent of student of medical college of Shimla and Ors, (1985(3 SCC 169), in Ashok Kumar Pandey vs. state of West Bengal (2004 (3 SCC 349) and Dr. B. Singh Vs. Union of India and Ors (2004 (3 SCC 363).

#### ARGUMENTS ON AGNIPATH SCHEME SHORTCOMINGS:

The petitioner has filed the present writ petition under Article 226 of the Indian Constitution to enforce the fundamental rights particularly Right to Life guaranteed under Article 21 and Right to Equality and Doctrine of legitimate expectations guaranteed under Article 14, Article 16 and 39(f) of the Indian Constitution. Thus the petitioner prays this Honourable Court for invalidate the Agnipath Scheme exercising its exclusive jurisdiction in view of the arguments as follows –

1. The petitioner is a retired colonel from the Judge Advocate General Branch of the Indian Army and has an experience of combat & legal expertise in the Armed Forces and on behalf of those aggrieved youth and candidates who are aggrieved by the implementation of this Scheme. Further for those who have cleared the exams & who were shortlisted for the Indian Armed Forces but did not receive their call letter and their recruitment has been cancelled due to the implementation of Agnipath Scheme. The aggrieved candidate's identity is not revealed for the sake of their future and to ensure their security/prevent them from unnecessary targeting. It's a well establishment fact that army is not a mere employment scheme and it



requires a highly patriotic, courageous mindset to put your lives to risk for the nation. The soldier while he puts his life to risk atleast expects his basic needs to be in place. The Agniveers who are being employed to the position of a Sepoy in the Indian Army, as not being paid equally for the equal work done by the Sepoy in the regular cadre. If a soldier is not convinced, he will not get much benefit he would not have that zeal and enthusiasm required for the combat operations. In **State of Punjab and others V/s Jagjit Singh and Others 2017 (1) SCC 148**, Justice Jagdish Singh Khera said, *“In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, cannot be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare state.”*

2. Below is a comparison chart of the pay received by Agniveer and Soilders of the regular cadre:

Indian army post/rank	Indian Army In-hand Salary	Pay Scale	Grade Pay	Army Service Pay
Naib Subedar	45,000	9,300-34,800 (Level 6)	4,200	2,000
Naik	35,000	5,200-20,200 (Level 4)	2,400	2,000
Sepoy	25,000	5,200-20,200 (Level 3)	1,800	2,000
Subedar	50,000	9,300-34,800 (Level 7)	4,600	2,000

अग्निपथ स्कीम की वेतन संरचना (Salary structure of Agniveers)

Year	Customised Package (Monthly)	In Hand (70%)	Contribution to Agniveer Corpus Fund (30%)	Contribution to corpus fund by GoI
All figures in Rs (Monthly Contribution)				
1 <sup>st</sup> Year	30000	21000	9000	9000
2 <sup>nd</sup> Year	33000	23100	9900	9900
3 <sup>rd</sup> Year	36500	25580	10950	10950
4 <sup>th</sup> Year	40000	28000	12000	12000
Total contribution in Agniveer Corpus Fund after four years			<b>Rs 5.02 Lakh</b>	<b>Rs 5.02 Lakh</b>
<b>Exit After 4 Year</b>	Rs 11.71 Lakh as Seva Nidhi Package (Including, interest accumulated on the above amount as per the applicable interest rates would also be paid)			

3. The above mentioned pay scale of the Scheme proposes to recruit Men for all three services from 17-21 (17-23 as one time exemption). For 06 months training and then to units. After four years, based on their Assessment report (ACR), top 25% will be absorbed again. Rest 75 % will have to come out. No trade allotment and rank like Sepoy, Seaman or Aircraftsman. With the idea of giving Rs. 5.2 lakh and Rs. 5.2 lakhs which is approx. Rs. 11 lakhs along with the salary he will save during his 4 years as the basic equality of pay while paying the same as a regular Sepoy/Seaman/Airman. This is an inequality against the two **(pp. 14 to 15, Para 16 of Rejoinder)**
4. The decision of the central government to make recruitment through a new 'Agnipath Scheme', therefore, constitutes a policy decision taken by the government for national security reasons clearly violates **Sec: 193A of the Army Act, 1950** which states that *“Rules and regulations to be laid before Parliament. Every rule and every regulation made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session,*

*for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session, or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation should not be made the rule or regulation on shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation. The central government failed to do so".* When the Government has decided to carry out big changes in strength and structure of organisation there is an obligatory duty on the government **under Section 193A of Army Act 1950** to bring such changes before the Parliament prior to the implementation of the said policies to debate in front of the Parliament. Therefore, this policy cannot be implemented because of the reasons that it brings amendments into acts ad rules and the same needs to be discussed in the parliament under section 193A. **(pp. 3 to 4, Para 7, Rejoinder)**

5. Because compromise on National Security through the implementation of an experimental and faulty scheme is violative of Article 21 of the Indian Constitution. Article 21 of the Indian Constitution states that "Protection of Life and Personal Liberty – No person shall be deprived of his life and personal liberty except according to procedure established by law." In *Maneka Gandhi v. Union of India* the Supreme Court in 7 judges bench said that "The attempt of the court should be to expand the reach and ambit of the fundamental rights rather than attenuate their meaning and content by a process of judicial construction." Subsequent cases have reiterated this view and the article has a wide scope of interpretation. This article not only can be

interpreted in terms of providing social and economic security but also in terms of national security. National security is provided to protect the nation and its citizen from external aggression and internal armed rebellions. The citizen has chosen the government as he believes they are capable to give him security and this scheme which is being implemented in a haphazard way fails to keep in mind that there are high chances of it being disastrous and putting the national security at stake. No scheme or policy can be without drawbacks but in this case the government seems to be negligent and not heading to warning given by experts on the scheme having a high chance of putting national security at stake. **(pp. 20 – 21, A. Grounds)**

6. Because that the recruitment scheme for Indian Youth to serve in armed forces was approved by the cabinet of 14th June 2022. After a lot of resistance, the Respondent on 17th June 2022 announced the relaxation of entry age in Agnipath Scheme. However, there are a lot of concerns regarding the Agnipath scheme one being it has been brought in all of a sudden and another being the quest for reducing the burden of exchequer can take a toll on national security. The major concerns regarding the scheme are -:
  7. The lack of efficient training -: The training under previous scheme was for one year and in this scheme of entry it has been reduced to 6 months. The reduction without any experimentation will lead to reduction of efficiency of the forces. There has been no study conducted on a small number of people first and then implemented completely. In a sudden and haphazard way, the scheme is being implemented wholly for recruitment even though the government knows that no risk can be taken due to the geopolitical situation and tension in the borders of China and Pakistan. The claim that it will reduce the age profile will be a matter of statistical analysis. The armed forces need experienced

soldiers along with young soldiers. The soldier has to do general duty along with few courses. Within 4 years span this would not be practically possible. So, the government is giving capsules in place of courses. What had to be a pilot project has been implemented haphazardly without contemplation. Armed forces are the final line of defence and they have been doing other functions like rescuing people during natural calamities. Armed forces have been the most trusted organization among the citizens because of its high levels of standard and efficiency and this cannot be compromised due to a haphazard scheme brought in without experimentation.

8. Weaponized youth can pose a threat to the internal security -: The youth who join the forces are mostly from rural region and some rural areas fall under the red corridor (naxal prone areas). The youth who are unhappy with the government due to unemployment, lack of benefits etc. after the training may join hands with the anti-India forces and pick up arms against the state.
9. Lack of camaraderie and coordination between the soldiers -: In the army the nature of operations is in such a way that there needs to be good rapport between the soldiers and the bond between soldiers takes a certain amount of time to build. And within those 4 years' time it would not be possible to build that rapport.
10. Seva Nidhi Package and other benefits not enough to motivate the youth to work with full commitment in operations-: It's a well establishment fact that army is not a mere employment scheme and it requires a highly patriotic, courageous mindset to put your lives to risk for the nation. The soldier while he puts his life to risk at least expects his basic needs to be in place. If a soldier is not convinced, he will not get much benefit he would not have that zeal and enthusiasm required for the combat operations. **(pp. 21-24, B. Ground)**

11. Because that the scheme hence would be disastrous if implemented before an experiment and the expert opinions of veterans are evident for that. India's geopolitical situation is such that it cannot afford to take risk and implement a scheme recklessly without a thought. Future wars of course will be on technology but the Indian topography is such that it needs soldiers on boots too. In the incidents of Kargil War and Galwan valley clash it has been evident that experienced and robust infantrymen came to the rescue of the situation and not the sophisticated missiles, long range vectors, Beyond Visual Range (BVR), Smart Munitions, Anti-Satellite weapons (ASAT). **(p. 24, C. Ground)**
12. Because that Many international conventions have spoken about the state's obligation to provide efficient system for internal security and law and order but it's the duty of state at the same time to secure the borders of the nation. Rights of citizens are protected only when national security is robust. The state's role may have extended over centuries to a welfare state also but its primary responsibility of securing the citizens remains unaltered. **(pp. 24-25, D. Ground)**
13. Because that Article 21 of the Constitution provides for protection of life and personal liberty and says no person shall be deprived of his life or personal liberty except according to procedure established by law. In *Maneka Gandhi v. Union of India*, the Supreme Court in 7 judges bench said that "The attempt of the court should be to expand the reach and ambit of the fundamental rights rather than attenuate their meaning and content by a process of judicial construction". Subsequent cases have reiterated this view and the article has a wide scope of interpretation. In this case the Agniveer's after their completion of tenure would not be ensured of adequate livelihood and their education also gets affected due to this. The government is promising various schemes for education, skill and employment but that would not even cover the 10%

of the Agniveer's who have been discharged from their duty. **(pp.26-27, H. Ground)**

14. **Because that Undue advantage of youth because of social evils like Poverty and Unemployment** - Unemployment in India have always been a major obstacle in India's development. Lack of employment opportunities results in exaggeration of social evils like poverty, malnutrition, poor health status, illiteracy and so on. As per the data of Centre for Monitoring India Economy Pvt. Ltd., rate of unemployment varies from 6% to 8% for preceding year. After considering the astonishing figures of unemployment the Central Government intends to take undue advantage of youth and exploiting them by luring with attractive salary package and seva nidhi package. A soldier is an utmost important part of any army. No Army can survive without its soldiers and state must take care and works for the welfare & betterment of its soldiers. But in this scheme, there are tactics to take undue advantage of the soldiers. Soldiers (Agniveers) under this scheme is derived from post-retirement benefits like Monthly Pension, Ex- Servicemen Health Contributory Scheme (ECHS), CSD Facilities, status of ex-servicemen and other post-retirement benefits which act as a motivating factor. **(pp. 27-28, I. Ground)**
15. Because there is a negative impact on the education. There is a direct correlation between the level of education achieved and likelihood of finding a job. Education plays an important role in order to get any reputed and average earning job. Education means to acquire knowledge and some special skills rather than a piece of paper. In this scheme 75% soldiers (Agni veers) are discharged into the society after 4 years and they are free to join any other service or job or sit in any competitive examinations, but the point is whether the soldier after living a life in army for 4 years will be having the mindset to get in

touch with education again and crack any competitive examination? A gap of 4 years in education, in most of the cases after 10th standard or 12th standard, is a drastic change in the life of youth. This temporary employment prima facie looks very lucrative but deep down having serious repercussions on the life of youth. There is no job security after 4 years and soldiers are required to get back to academics in order to get a good job and settle their life. According to eminent academicians this is not an easy task to get back to books after a huge gap of 4 years. In this way also this is mere exploitation of youth in their very young age. **(pp. 28-29. J. Ground)**

16. Because the implementation of this scheme as it is will result in grave injustice to the 75% of the Agniveers selected under this scheme as after 4 years this scheme neither gives 75% soldiers (Agniveers) a permanent job nor the government guarantees deployment of all the 75% soldiers to any another job. There is no job security under this scheme for 75% of soldiers after 4 years which is a significant number. They were discharged into the society with a sum of lump sum 11.7 Lacs as Seva Nidhi package. Many government and private institutions claiming to reserve 10% of vacancies in their recruitment for Agniveers but what if they step back from their promises after one or two years? In this way there are high chances of exploitation of soldiers. Previous recruitment scheme was far better than this as they were provided with job security and this is an important motivating factor for a soldier who is miles away from their families to serve the nation and state must think about his welfare. **(pp. 29-30, K. Ground)**

17. Whereas the concept of Agnipath schemes attacks the basic structure of forces and in context to Army, Sec 193 A of Army Act is well thought intention of the parliament to protect the basic structure of Army and its class of people. Because that Section 193 A of the Army Act, 1950



states that “ Rules and regulations to be laid before parliament – Every rule and every regulation made by the central government under this act shall be laid , as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions , and if , before the expiry of the session immediately following the session , or the successive sessions aforesaid , both houses agree in making any modification in the rule or regulation should not be made the rule or regulation or shall thereafter have effect only in such modified form or be of no effect , as the case may be ; so, however that any such modification or annulment shall be without any prejudice to the validity of anything previously done under that rule or regulation. Here after the Agnipath Scheme is enforced the distinct rank Agniveer and their service rules required needs to be mentioned in the act and for that The Army Act,1950 should be amendment. And amendment can only be made after the discussion happens in the parliament. There needs to be a comprehensive discussion and deliberation in the parliament before the scheme is brought into force. **(pp. 30-31, L. Ground)**

18. Because that when the Government has decided to carry out big changes in strength and structure of organisation there is an obligatory duty on the government under Section 193A of Army Act 1950 to bring such changes before the Parliament prior to the implementation of the said policies to debate in front of the Parliament. Therefore, this policy cannot be implemented because of the reasons that it brings amendments into acts ad rules and the same needs to be discussed in the parliament under section 193A. **(pp. 31-32, M. Ground)**
19. Further it is pertinent to note that in Indian Air Force up to the year 2000, training for technicians was for a period of 02 to 2.5 yrs. After

pass out, On the Job Training (OJT) in unit for 06 months used to be followed by carrying out the regular work as a technician. He was also given a Diploma in Engineering certificate equivalent in civil. In 2000-2002, a concept of JITT (Just In Time Training) was introduced. By this a technical Airman used to undergo basic for 06 months, then 06 months trade and sent to unit. After 06 months again he will be sent back to Training centre, again Unit, again Training centre for upto 05 yrs. **(pp. 6 to 7, Para. 11, Rejoinder)**

20. Further to be noted that the next 06 years, there will be regular retirements due to superannuation and by Airmen who give unwillingness for further extension of service on completion of their present terms of engagement of 20 years. Replacements has to be provided for vacancies which are likely to arise. After absorption he has to be given training for at least 02 years, then OJT (On job training) for another 06 months in unit. As per former chief of IAF in 2002 during his visit to an Air Base, he had said that it takes 13 yrs to train a technician to carry out first line servicing of a fighter aircraft and hence IAF wanted to utilise this experience for another 07 years. Therefore the bond period of 20 yrs cannot be reduced to 15 years as IAF need to utilise his experience. At a time when India is facing a threat from adversaries, there is a situation wherein there will be no technician to be trained for the coming 04 years to replace personnel who will be going out of service due to retirement. **(pp. 5 to 6, Para. 9, Rejoinder)**
21. The purpose of training a civilian to a soldier is to mould the mentality of individual to that of Organization, to acquire technical knowledge, to extract immediate action for a command etc. The best age group to mould is 16-20yrs of age. As age grows, it's difficult to change the mentality. It is believed that those who had done continuous training are giving their best than those who have been trained in JITT module.

The dangerous part in the scheme is the assessment part which decides whom of the 25% should be absorbed. If an Agniveer is not in the good books of his officer, then he may be assessed low even though he may be upright and sincere. So the assessment depends on the individual trait of the assessing officer. The same concept of training as discussed above is applicable in context to Indian Navy when one consider the time period of training and operation readiness with respect to types of equipment, armaments and physical endurance required as a Sailor **(p. 8, Para. 12, Rejoinder)**

22. Another argument put forth is tech savvy. An Agniveer is absorbed as raw from 12<sup>th</sup> standard. What tech qualifications will he have without experience? Again Agniveer is not allotted any particular trade. He will be only doing duties of General nature. The question of him gaining any technical knowledge for first four years is very low. After 04 yrs., when he comes out he is as good as raw due to lack of technical knowledge. **(p. 8, Para 12, Rejoinder)**
23. Instead of providing replacements due to retirements, Agnipath scheme is creating a vacuum to carry out servicing and maintenance of Fighter jets, Missiles, Radars and other technical systems. This is a threat to war machines and an indirect threat to the nation. Technology keeps on upgrading, but above all "MAN BEHIND THE MACHINE IS MORE IMPORTANT FOR SUCCESS IN A WAR" **(p. 6, Para. 10, Rejoinder)**
24. Russia- Ukraine War has also given clear warning that the Russian soldiers who were on conscription for two to three years have not proved to be very effective combat soldiers in the battle zone. Even in Galwan, brave soldiers of 16 Bihar Regt under Col Babu surprised the Chinese with their raw courage, indomitable fighting spirit and killing instinct. Before our 20 brave soldiers made supreme sacrifice,

protecting the honour of the Unit, Regiment and the Nation they killed more than 100 Chinese soldier bare handed who were also part of conscription scheme. **(pp. 9 & 10, Para. 14, Rejoinder)**

25. The 36 countries which are mentioned are either having different Geography, Geo-political stand, population measurements or either signed the Partnership for Peace with UN or a NATO member. Few countries like China, Russia and North Korea are communist and Dictatorship rule where the Fundamental Rights of those people does not exist. A chart depicting different status of the comparison countries is mentioned in **(pp. 10 to 14, para 14, Rejoinder)**
  
26. That National security is a crucial thing in protecting the sovereignty and integrity of its nation. That Compromise on National Security violative of Article 21 of the Indian Constitution. The Article has a wide scope of interpretation. This article not only can be interpreted in terms of providing social and economic security but also in terms of national security. National security is provided to protect the nation and its citizen from external aggression and internal armed rebellions. But this Agnipath scheme which is recklessly and haphazardly implemented without experimentation has a high probability of putting the national security at risk and same notion has been reiterated by the Hon'ble Supreme Court in the case of **In Kesavananda Bharati vs State of Kerala & Anr (Annexure P – 7)**

**Retrospective effect of the scheme is arbitrary in nature:**

It is asserted that appointment right is not being claimed by petitioner and only call letter for training is being asked. Discontinuation of appointing recruitment scheme is arbitrary and violates established principles of law. In the 2 years span lockdown has been lifted many times and recruitment for post of officers has been

conducted then why not for Jawans/Sailors/Airmen. Even though Agnipath Scheme has received 75 Lakh applications, it does not mean that they have done it with interest but, out of compulsion having no other alternative. **(p. 3, Para 6 of Rejoinder)**

- i. **Mode of recruitment and appointment recruitment rules, 1984 and 1985 supplement division of DoR&T. (NM Thomas Vs State of Kerala, clause 1 - Initial appointments)** *“completion of procedure is necessary and there is no ambiguity in that. Central Government cannot leave the procedure and start a new scheme afresh without completing the old. The recruitment was not at the nascent stage as provisional select list had been declared after conduct of medical test. Once PSL is made call letter should be issued to the candidates pertaining to vacancy”.* **(pp. 2 to 3 of Rejoinder)**
- ii. The judgment in the case of *The Secretary, Ministry of Defence V. Babita Puniya & Ors.*, Basically, Babita puniya, a practicing advocate in 2003 filed a petition in Delhi high court seeking permanent commission for female officers recruited through SSC. Later on, Delhi high court gave the judgement in favour and even the supreme court refused to uphold the order and gave directions to implement the order and became landmark due to its curious and notable subject matter. Its decision was given by the Hon. Supreme Court of India. This judgment paved the way to gender equality in armed forces by providing Permanent Commissions to female officers in Indian Army, Indian Air Force and Indian Navy. The Hon. Supreme Court bench led by Justice D.Y Chandrachud held the following: *“That it is a clear violation of Fundamental Rights guaranteed under article 14, That the notification issued on February 15<sup>th</sup>, 2019, allowing the female officers in PCs through SSC. The order given by the High Court of Delhi is to be implemented”.* The

landmark judgment in the case of *The Secretary, Ministry of Defence V. Babita Puniya & Ors.*, delivered by the Hon. Supreme Court of India, was well put together and has successfully sets a benchmark in providing equal opportunity to female in Army and had imparted equal treatment with their male-counterparts.

- iii. Because the decision to completely cancel the recruitment process which had reached the last stage and then start a new selection process to implement the Agnipath scheme is arbitrary and dictatorial. Cancellation of the recruitment process initiated vide notification of 2019 is wholly illegal, arbitrary as well as infringing the fundamental rights of the youth guaranteed under Article 16(1) and Article 21 of the Constitution of India. The state must follow Article – 39(f) that state should direct its policy in such a way to secure the youth from the exploitation. To implement this scheme in such a way that it impacts retrospectively is mere exploitation of youth. **(p. 25-26, F. Ground)**
- iv. Because that as this new scheme was introduced, the earlier selection of successful candidates stands cancelled which apart from being unfair is also illegal. Many candidates were shortlisted for the post of Airmen (IAF Airmen) in the Air Force under the notification released in 2019 but the recruitment process was pending due to COVID-19. But after the arrival of this new scheme Agnipath, Central Government cancelled the previous recruitments and their candidatures. **(p. 25, E. Ground)**
- v. Because that the decision to completely cancel the recruitment process which had reached the last stage and then start a new selection process to implement the Agnipath scheme is arbitrary and dictatorial. Cancellation of the recruitment process initiated vide notification of 2019 is wholly illegal, arbitrary as well as infringing the fundamental

rights of the youth guaranteed under Article 16(1) and Article 21 of the Constitution of India. The state must follow Article – 39(f) that state should direct its policy in such a way to secure the youth from the exploitation. To implement this scheme in such a way that it impacts retrospectively is mere exploitation of youth. **(p. 25-26, F. Ground)**

- vi. Because that Article 16(1) of the Constitution of India states that There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state. The expression “matters relating to employment or appointment” must include all matters in relation to employment both prior and subsequent to the employment which are incidental to the employment and form part of the terms and conditions of such employment. Thus, this guarantee will also cover initial appointments **(Southern Railway v. Rangachari, AIR 1962 SC 36)**. The cancellation of shortlisting of candidates who were selected for the post of Airmen is arbitrary and not justified. Their opportunity has been denied without any valid justification which has caused a agony to the aggrieved candidates. **(p. 26, G. Ground)**

### **COMMENTS/ OPINION OF EXPERTS**

1. That the armed forces veterans have expressed their displeasure over this scheme. **Lt Gen Prakash Katoch (retd)** has written in an article for the financial express “Has anyone taken a look at the expenditure in Civilian Manned government organizations , including defence related DRDO and DPSU“s – their pay, pensions and perks ? What about CAPF, their strength, pay, allowances and pensions? Why is only the military being targeted and within that the army?” **(Annexure P – 8)**

2. **Air Cmdre TK Chatterjee** in his article written in financial express has opined that “Why not make some policy changes to raise more disposable income for the exchequer than go into uncharted territories with assumptions that are neither tested nor verified?” (**Annexure P -9**)
3. **Air Vice Marshal Manmohan Bahadur (retd)** said “The Agnipath Scheme has been the subject of animated debates about its pros and cons. One only hopes that its implications have been thought through well beyond just the issue of cutting down the pension load on the defence budget. There would be many operational fallouts that would need to be tackled without compromising the deterrence and fighting capabilities of the forces”. **Major general G.D Bakshi (retd)** tweeted “Was flabbergasted by the Agniveer scheme. I thought initially it was a trial being done on a pilot basis. This is an across the board change to convert Indian armed forces to a short tenure quasi conscript force like the Chinese. For God’s sake, please don’t do it. Let’s not destroy our institutions in a time of great threats from China and Pakistan. Armed forces have performed well . Just for saving money lets not destroy what we have”. Adding to this he said “If trained and young military manpower released is not absorbed, it could join terrorists or insurgents. 4 year contractual period militates against integration in unit and could make men risk averse. Cater for 6 months training period and 8 months annual leave, residual service will be just 3 years”. **Lt Gen Zameer Uddin Shah ,retired deputy chief of army staff (personnel and systems)** , described Agnipath as a „retrograde step“ and the most detrimental measure inflicted on armed forces“ and said “with a year spent on training and six months on pre-release formalities, the soldier will get only 2.5 years to serve which is inadequate to inculcate regimental ethos, affiliation and discipline. Regarding that the scheme would generate employment opportunities he said that “You can’t



- choose welfare at the cost of the army's discipline and regimentation. It is these qualities that have helped us in winning wars". **Lt Gen Vinod Bhatia (retd)**, former director of Joint Warfare Studies, described it as a death knell for armed forces and said "No Pilot project, straight implementation. Will also lead to militarisation of society"
4. In the reply to **para 17**, of the counter affidavit where India is surrounded by 2 major powers in south east Asia (PAK & CHINA), there is a situation wherein there will no technician to be trained for the coming 4 years to replace personnel who will be going out of service due to retirement, hence Agnipath is creating vacuum to carry out servicing and maintenance for fighter jets, missiles, radars and other technical system.

### **Reasons For Reconsideration of Agnipath Scheme:**

- (1) The argument of this scheme is to reduce pension bills. In the interests of keeping war machines in a fighting fit condition and in the interest of nation, it is prudent to continue with the already existing system till a system on pension bills is worked Territorial Army is already for part time service and a backup for regular Army. As an alternative, all male candidates selected in Govt service/ PSU /PSBs including IAS/IPS/IRS can be compulsorily put in Territorial Army service for a period of 01 to 02 yrs and after completion . Thus this petition deserves merits on t and required to be reconsider by the Committee of Experts involving the sub units and unit commanders and must be put on pilot test before its implementation on following aspects-
- Because National security is a crucial thing in protecting the sovereignty and integrity of its nation hence, violating Sec: 193 of

The Army Act, 1950. The list of countries mentioned and discussed for launch of Agnipath are either protected or under compulsion of signed international treaties for their Sovereignty, difference dynamics and neighbours in comparison to ours , vast borders held by us and operational preparedness in all four climates.

- Because compromise on National Security violative of Article 21 of the Indian Constitution
- Because the recruitment scheme for Indian Youth to serve in armed forces was approved by the cabinet of 14th June 2022. The major concern regarding the scheme are:
  1. The lack of efficient training
  2. Weaponized youth can pose a threat to the internal security
  3. Lack of camaraderie and coordination between the soldiers
  4. Seva Nidhi Package and other benefits not enough to motivate the youth to work with full commitment in operations
- Because the armed forces veterans have expressed their displeasure over this scheme.
- Because the scheme hence would be disastrous if implemented before an experiment and the expert opinions of veterans are evident for that.
- Because Many international conventions have spoken about the state's obligation to provide efficient system for internal security and law and order but it's the duty of state at the same time to secure the borders of the nation.
- Because as this new scheme was introduced, the selection of previously selected candidates stands null and void which is highly reprehensible.

- Because the decision to completely cancel the recruitment process which had reached the last stage and then start a new selection process to implement the Agnipath scheme is arbitrary and dictatorial.
- Because Article 16(1) of the Constitution of India states that There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state.
- Because t Undue advantage of youth because of social evils like Poverty and Unemployment
- Because Impact on education (Gap of 4 years leads to set a different mindset)
- Because Exploitation of 75% Agniveers after 4 years
- Because There needs to be a comprehensive discussion and deliberation in the parliament before the scheme is brought into force as per Section 193 A of the Army Act, 1950.

## **CONCLUSION**

**Thus the implementation of the Agnipath Scheme is going to be disaster in the coming years. It will end the custom and Ethos which are essential requirements , developed over a period of time in the units and will be putting more load on the commanders at junior level who are already running the show under deficiency of troops. The Scheme needs to be experimented and was required to be tested as a Pilot test. The Government has specified that there is no financial burden then what was the reasons for launching this scheme on the Forces which has never failed it Nation. Serving Soldiers are trained to follow orders but the Nation has its responsibility to give them an atmosphere to perform , the same generates the sense of duties and commitment and**

**we should be thus careful to experiment any new changes which have far reaching ramifications in terms of security of nation.**

**PRAYER**

In the facts and circumstances, it is most respectfully prayed that your Lordships may graciously be pleased to:

- a) Issue a Writ, order or direction in nature of Mandamus to the central government to withdraw the Agnipath Scheme
- b) Issue a Writ, order or direction in nature of mandamus to constitute a committee and review the scheme thoroughly and implement it only after a pilot test and discussion in the parliament.
- c) Issue a Writ, order or direction in nature of Mandamus to not give retrospective effect to the scheme and not to cancel the selection of the candidates who have cleared the Indian Air Force Airmen recruitment exam already in 2019.
- d) Pass any order the court may deem fit in terms of Justice, equity and good conscience.
- e) Pass such other orders as may be deemed fit in the facts and circumstances of this case.

Col. Amit kumar

In Person for the Petitioner

Ch. No. 128, R.K Jain Block

Supreme Court Of India

New Delhi- 110001

Date: 11/12/2022

Place: New Delhi