



Induction of women in the combatant ranks in the armed forces: Socio-legal issues and challenges

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Abstract

Constitution of India guarantees the equality before law and equal protection of law to all persons. Induction of women in Indian armed forces is well supported by Constitutional provisions. The Ministry of Defence has approved the induction of women into the fighter (combat) stream of the Indian Air Force. Concept of induction of women in the Combatant Forces has been borrowed from the foreign countries like USA, Canada, and Australia etc.

Keywords: women empowerment, induction, armed forces

1. Introduction

Article 21 of the Constitution of India ^[1] reinforces right to life. Life in its expanded horizon includes all that which gives meaning to a person's life including culture, heritage, tradition and dignity of persons. Every woman is entitled to elimination of obstacles and discrimination based on gender. Women are entitled to enjoy economic, social, cultural and political rights without discrimination. The General Assembly of United Nations adopted a declaration in 1986 on the right to development. India played significant role for its adoption and ratified the same. The Vienna declaration on the elimination of all forms of discrimination against women was ratified by the UNO in 1979. The Government of India ratified it in 1993. As per declaration the State should take all appropriate measures including legislation to modify or abolished gender based discrimination in the existing laws, regulations, customs and practices which constitute discrimination against women. The research paper is aimed/ intended to analyse the different aspects in the events of the proposals for induction of women in Armed forces. Such proposals are implemented in the Armed Forces. Women in India were earlier lagging behind the men in terms of access to education, health care jobs etc. Apart from the economic and social inequality, women in India are victims of heinous crimes such as dowry deaths, rape, molestation and immoral trafficking etc. The induction of women in the ranks below the officers level especially as combatant in the Armed Forces is also one of the steps proposed to move towards achievement of equality and prosperity of women. The drastic steps to improve socio legal status of women and empower them are the need of the time keeping in view the international scenario. To make India progressive bold steps are necessary at grass root level.

2. Enrolment/employment of Women in Armed Forces

The earliest formal record of women soldiers in combat role

can be attributed to the Russian Army. Russian armed forces recruited women soldiers during the First World War in combat and near combat missions ^[2]. By the Second World War most nations were using uniformed women soldiers in combat support roles especially air defence on home soil and similar duties. After the war, many Western countries started regular recruitment of women soldiers due shortages of their male counterparts. Israel was the first country to adopt compulsory military service for unmarried women in 1948. In the Navy, the induction was comparatively slower especially in the submarine arm. In 1985 the Royal Norwegian Navy became the first navy in the world to permit female personnel to serve in submarines, followed by the appointment of a female submarine captain in 1995. The Danish Navy allowed women on submarines in 1988, the Swedish Navy in 1989, followed by the Royal Australian Navy in 1998 and Canada in 2000 ^[3].

In India the Government of India also plans to induct the women in combat roles. Recently the former President of India declares the same while addressing to Parliament.

The government would induct women in all military combat roles in the future, President Pranab Mukherjee said in his address to Parliament on Tuesday. Though the operative words are "in the future", it underlines the Centre's resolve to eventually demolish the existing combat-exclusion policy regarding women officers ^[4].

"In our country, shakti is the manifestation of female energy. This shakti defines our strength. The government has approved the induction of women as short service commission officers and as fighter pilots in the IAF. In the future, my government will induct women in all fighter streams of our armed forces," said Mukherjee.

Presently the eligible women who qualify the test for entry in the various branches of armed forces serve in short services (5-14 years):

¹ "No person shall be deprived of his life or personal liberty except according to a procedure established by law".

² www.salute.co.in (visited on 29.12.2017)

³ Ibid

⁴ Times of India 24th Feb. 2016

- **Army:** EME, Signals, Engineers, Army Education Corps, Army Ordnance Corps, Army Service Corps, Intelligence and Judge Advocate General's branch.
- **Navy:** All branches of the Navy (except submariners and divers).
- **Air Force:** Flying (transport aircraft and helicopters), Technical and Administration branches.
- **Coast Guard:** All branches of the Coast Guard^[5]

Army Act^[6] stipulates that 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, specify in this behalf. However, 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. This has been enacted under the provisions of the Constitution^[7]. Law would seem to mean any law, ordinance, order, byelaw, rule or regulation passed or made by parliament, any authority or person having power to make such a law, ordinance, order, byelaw, rule or regulation. Military Nursing Service has been raised and maintained as an auxiliary to the regular Army^[8]. The Air Force Act^[9] also provides that no female shall be eligible for enrolment or employment in the Air Force, except in such corps, department, branch or other body forming part of, or attached to any portion of, the Air Force as the Central Government may, by notification, specify in this behalf. However, 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 Air Force or any branch thereof in which females are eligible for enrolment or employment. This section is not *ultra vires* to the provisions of the Constitution^[10]. Navy Act^[11] also provides that no woman shall be eligible for appointment for enrolment in the Indian Navy or the Indian Naval Reserve Forces except in such department, branch or other body forming part thereof or attached thereto and subject to such conditions as the Central Government may, by notification in the Official Gazette

⁵ Sajita Nair 'www.Gatewayforindia.com' (visited on 29.12.2017)

⁶ Section 12, Army Act, 1950

⁷ Equality of Opportunity in matters of public employment: No Citizen shall, on ground only on religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for or discriminated against in respect of, any office or employment under the State. [Article 16 (2), Constitution of India]

⁸ The Military Nursing Service (India) Ordinance, 1943 (No. 30 of 1943)

⁹ Section 12, Air Force Act, 1950

¹⁰ 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 (d) person 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 (Article 33 of the Constitution of India)

¹¹ Section 9, Navy Act 1957

specify in this behalf.

3. Constitutional Provisions with respect to empowerment of women

Constitution of India guarantees the equality before law and equal protection of law to all persons^[12]. Constitution of India further provides prohibition of discrimination on grounds of religion, race, caste, sex or place of birth etc.^[13]. It also provides that the State is empowered to make any special provision for women. Special provision for women means that no less favourable treatment is to be given to women on gender basis. Constitution of India provides right to equality in matters of public employment^[14]. Constitution of India also provides freedom to practise any profession, or to carry on any occupation, trade or business^[15]. The Constitutional mandate was incorporated by Indian Air Force by induction of lady officers in 1992 in different branches for ground duty and subsequently in aviation in the field of transport and helicopter streams but so far the fighter stream is concerned, they inducted three lady pilots in fighter stream and they are at present under training in the fighter stream and yet it is a subject matter of great debate that how far they will succeed in the fighter branch. Thus induction of women in Indian armed forces is well supported by Constitutional provisions. These are the Constitutional Provisions for empowerment of women:

1. Equality before Law for equal persons^[16]
2. Prohibition of discrimination on ground of religion, race, caste, sex or place of birth^[17]
3. Special provisions may be made by the State in favour of women and Children^[18]
4. Equality of opportunity for all citizens relating to employment or appointment to any office under the State^[19]
5. State policy to be directed to securing for men and women equally the right to an adequate means of livelihood^[20]
6. Equal pay for equal work for both men and women^[21]
7. Provisions to be made by the State for securing just and human conditions of work and maternity relief^[22]
8. Promotion of harmony for every citizen of India and renouncement of such practices which are derogatory to the dignity of women^[23]
9. Reservation of not less than of total seats for women in direct election to local bodies viz; Panchyats and Municipalities^[24]

¹² 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 (Article 14 Constitution of India)

¹³ Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth: The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them (Article 15 Constitution of India)

¹⁴ Article 16

¹⁵ Article 19(1)(g)

¹⁶ Article 14, Constitution of India

¹⁷ Article 15(1), Constitution of India

¹⁸ Article 15(3) & 16(3), Constitution of India

¹⁹ Article 16, Constitution of India

²⁰ Article 39(a), Constitution of India

²¹ Article 39(d), Constitution of India

²² Article 42, Constitution of India

²³ Article 51A(e), Constitution of India

²⁴ Article 243D & 243T, of the Constitution of India

4. Requirement of Women as combatant in the Armed Forces

Women are already in police forces and para military forces such as Border Security Forces, Central Reserve Police Forces, Central Industrial Security Forces etc. which are primarily based on handling/dealing with ladies with reference to their involvement in maintenance of law and order situation. In Armed forces ladies are appointed either as Presiding Officers/Investigating officer or as members for inquires or investigations.

Basically the concept of induction of women in the Combatant Forces has been borrowed from the foreign countries like USA, Canada, and Australia etc. But comparing the foreign countries where Air women are in existence to our country is not justified as the socio-cultural and socio-economic factors are entirely different which ultimately affect the psychology. In the case of Women officers in Indian Air Force working conditions are entirely different since their number is very less or limited which is almost 0.08 % of the total strength of officers and they are empowered with the authoritative powers where they are involved in decision making process of the organisation. The situation will be totally different in case an Air woman is being inducted in Indian Air Force as they will be working in coordination with the actual combat and working force which even requires extraneous working conditions which may subsequently become extremely different for them to couple up with the emerging need of the organisation. The first batch of the women fighter pilots would be serving the Indian Air Force, altering dramatically the male dominated Indian Military combat frontiers. The Ministry of Defence has approved the induction of women into the fighter (combat) stream of the Indian Air Force," a statement from the Ministry of Defence. According to the announcement, the first women pilots for flying fighters would be selected from the batch which is presently undergoing flying training at Air Force Academy in Hyderabad. "After successful completion of *ab-initio* training, they would be commissioned in the fighter stream in June 2016. Thereafter, they would undergo advanced training for one year and would enter fighter cockpit by June 2017," the statement said. "Since their induction into the transport and helicopter streams of the IAF, their performance has been praiseworthy and at par with male counterparts. Inducting women into the fighter stream would provide them with an equal opportunity to prove their mettle in combat roles as well," the statement said. According to the announcement, the first women pilots for flying fighters would be selected from the batch which is presently undergoing flying training at Air Force Academy in Hyderabad. "After successful completion of *ab-initio* training, they would be commissioned in the fighter stream in June 2016. Thereafter, they would undergo advanced training for one year and would enter fighter cockpit by June 2017," the statement said. Formal entry of women by the induction of women into fighter stream would be the first formal entry of women into combat role with any arm of the Indian military. As of now, they are not allowed into the combat arms of the army, navy or air force, which includes regiments of infantry and armoured corps, warships and the fighter aircraft. Presently, the army inducts women into signals, engineers, army aviation, army air defence,

electronics and mechanical engineers, army service corps, Army Ordnance Corps, Intelligence Corps, Army Education Corps and Judge Advocate General Branches. In the navy, they are allowed into all branches other than the submarines, other ships and flying. In the air force, they are allowed to fly helicopters and transport aircraft, and into most other branches but not fighters. The Ministry of Defence decision, coming a few days after the air force chief announced the plan to induct women into fighter stream, would mean all branches and streams of Indian Air Force would now be open to women. The Ministry of Defence also said that it has taken up "a comprehensive review pertaining to induction of women in armed forces both in short service commission and permanent commission and one finalised more and more branches would be opened up for induction of women to give them the space with they deserve in the armed forces of the country^[25].

5. Requirement of Additional Infrastructure

Although the members of the Armed Forces are excluded from the definition of the worker, but still as the induction of women in the Armed Forces would also require the following infrastructure in addition to the existing ones as provided in the Factories Act, 1948:

- (a) Provision of separate wash room^[26],
- (b) Provision of separate feeding rooms^[27]
- (c) Attendants and one separate room for children^[28] where more than 40 ladies are working.
- (d) Separate Temporary duty billets/accommodations to meet out operational needs.
- (e) Separate Latrines and urinals^[29]
- (f) Provision for crèches^[30]
- (g) Separate cloak room for female workers^[31]

The existing infrastructure will be insufficient to meet the requirements for induction of women in the Armed Forces. As per the existing provision, the members of the Armed Forces are excluded from the purview of the Labour Law, hence provisions of the above mentioned infrastructure will be in contravention of the said provisions and therefore there will be requirement of amendment in the Labour Law for inclusion of the members of the Armed Forces.

6. Women Empowerment: Role of Judiciary

In the case of *Air India v. Nargesh Mirza*^[32], the issue of employability may come in the way as laid down by Supreme Court, and thereby the operation efficiency may be reduced. While dealing with the fixation of different ages of retirement for male and female employees from having child, expressed the view to the effect that the retirement of air hostesses in the event of marriage taking place within four year of service does not suffer from any irregularity or arbitrariness but retirement

²⁵ The Hindu, 24th October 2015

²⁶ Section 42

²⁷ Section 27

²⁸ Section 43

²⁹ Section 19

³⁰ Section 48

³¹ Section 93

³² AIR 1981 SC 1829

of air hostesses on first pregnancy is unconstitutional being violative of Article 14 and 16 of the Constitution. Such provisions are callous, cruel and an insult to Indian Womanhood. Therefore, such disability violates the equal protection of law and opportunity which is the cornerstone of our Constitution and legal system.

In case of *Mrs. Neera Mathur v. Life Insurance Corporation of India* ^[33] the Supreme Court recognized the right to privacy of female employee. The question was asked by the Life Insurance Corporation to female employee about her menstrual cycles and past pregnancies. It was considered invasion of privacy and violative of Article 21 of the Constitution of India.

In *Maya Devi v. State of Maharashtra* ^[34] the requirement of husband's consent for wife's application for public employment was struck down as anachronistic obstacle to women's equality and economic justice. In *Municipal Corporation of Delhi v. Female Workers* ^[35] the Apex Court held that maternity benefit is applicable to casual and daily workers also.

Judiciary has played a vital role in enforcing "equal Pay for equal work". The Supreme Court reiterated that 'equal Pay for equal work' ^[36] enshrined in Article 39 (a) is implicit in Article 14 and 16 of the Constitution of India and hence become enforceable in court of law.

6. Limitation for employing women in the combatant role in the Armed Forces

Discipline

The discipline in the Indian armed forces will become a severe cause of concern after the induction of women as comparing to the women officers because women will not be having authoritative control and be subject to disciplinary proceedings by any men/Officers placed over them. Also in the case of a woman getting married to an officer, would be subject to enormous administrative inconveniences as there is no legal embargo for doing so by them and even further to that there are multiple chances of sour relationship and friction in their relationships, due to difference of status and position within the domain of the Armed Forces. The two important legislations recently enacted Sexual Harassment of Women at Work Place (Prevention and Redressal) Act, 2013 and Protection of Women from Domestic Violence Act, 2005 will become a regular part of the disciplinary proceedings along with Armed Forces.

Safety and Health Measures

Factories Act ^[37] provides that no women shall be allowed to clean, lubricate or adjust any part of a prime mover or any transmission machinery vehicle while the prime mover or transmission machinery is in motion, or to clean, lubricate or adjust any part of any machine if the cleaning, lubrication or adjustment thereof would expose the women to risk of injury from any moving part either to risk of injury from any moving

part either of that machine or of any adjacent machinery. Employment of women in technical trades e.g. MT trades, Missile Technicians and aviation technicians would tantamount to violations of the above said provisions.

Prohibition of Night Work

Factories Act ^[38], Beedi and Cigar Workers (Conditions of Employment) Act ^[39] and Mines Act ^[40] prohibit employment of women between 7 P.M. to 6 A.M. which will again be in contrary to military requirement of actual combat forces.

Maternity Benefits

The Maternity Benefit Act 1961 regulates the employment of women in certain establishments for certain periods before and after child birth and provides maternity benefits. The same will affect the manning levels of the Armed Forces and can cause a lot of embarrassment to the organisation because it becomes highly inescapable due to legal embargo and ultimately it will adversely affect the state of actual combat forces and reducing the efficiency of the Armed Force thereby.

Epilogue

The framers of the Constitution of India ensured equality and dignity to all the citizens of India by eliminating all discrimination based on caste, creed, sex or religion. The Government of India and State Governments have framed many policies and same were implemented to make *de-jure* equality into *de-facto* one. The recent debate about the induction of women in the Armed Forces has been highly skewed and shallow. An issue that critically affects the fighting potential of the Indian Armed Forces is being reduced to 'equality of sexes' and women's liberation. This observation has been trifled by terming such a sensitive matter as 'conquering the last male bastion'. Sadly, stances have been taken more on the basis of personal basis and mind sets rather than on well evolved logic ^[41]. In view of the foregoing discussions the induction of women in the Armed Forces although gives immense emotional feelings in terms of equality of status and of opportunities as mandated in the Constitution of India, but with respect to the difference of socio-economic and socio-legal factors as well as organisational commitments, it would not be in better interest of service to induct women in the Armed Forces. Hence, the nation's pride in our women does not justify the assignments in direct combat forces. The biggest road block in the employability of women in the combatant role is that there is an urgent requirement of the Constitutional Amendments whereby the provisions related to all the three wings of the Armed Forces are required to be amended. India should follow a graduated approach. Women's expertise, talent and competence should be profitably utilised in areas which are

³³ AIR 1992 SC 392

³⁴ 1986 SCR (1)743

³⁵ 2000 SCC(3) 224

³⁶ *Mackinnon Mackenzie and Co. Ltd. v. Andrey D. Costa* AIR 1987 SC 1281;

People's Union for Democratic Rights v. Union of India AIR 1982 SC 879;

³⁷ Section 22(2) Factories Act, 1948

³⁸ Section 66(1)(b), Factories Act, 1948

³⁹ Section 25, Beedi and Cigar Workers (Conditions of Employment) Act, 1966

⁴⁰ Section 46(1) Mines Act, 1952

⁴¹ Major General Mrinal Suman "Women in the Armed Forces: Misconceptions and Fact" Published in 'The United Service Institution of India' See also Indian 'Defence Review' Vol. 25.1 Jan-March, 2010

totally non combat in nature. Women must continue to play their established role in the medical, dental and nursing services; both short service and permanent Regular Commission Officers. The current policy of non induction of women in arms should continue^[42].

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⁴² Ibid