

“The Disparaging Position of Women and Their Battle against Patriarchy in the Indian Armed Forces”

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ABSTRACT

“Aaj aasman ko dekh kar aisa nahi lag raha ki sky is the limit (Today, when I look up, it doesn’t seem like the sky is the limit)”

-a woman Army officer,

Lieutenant Colonel

On February 17th 2020, the women of India rejoiced with great joy over another victory. The Supreme Court upheld the decision of the Delhi High Court, putting an end to the continuing practice of discriminating against women based on gender stereotypes. In the said decision, the Apex Court announced that women officers in the army shall be given command positions at par with their male counterparts. Acknowledging the unjust and regressive nature of the arguments put forward by the Centre, the Supreme Court opined that the women officers were not inferior in the male dominated establishment. But do we call this a step towards putting male and female officers on an equal footing or a step taken 30 years late?

Gender disparity has always been a deep-rooted issue in the Indian Armed Forces. While battles are being fought on a daily basis to incorporate gender equality in various walks of life, the Indian Armed Forces still remain a patriarchal regime which promotes institutionalized sexism. Adopting the norm of ‘protective approach’ and restricting the role of women to such extent that weren’t considered ‘dangerous’ were indeed ways to patronize the female officers. Through this article, the authors want to criticize the existing pattern of inequality in the Indian Armed Forces and the farcical arguments put forth by the Government of India. Furthermore, the authors want to focus on the legal battle and how the

grant of Permanent Commission to women SSC officers is one step towards the goal of equality.

Keywords: *Gender disparity, patriarchy, permanent commission, sex discrimination, gender conformity*

1. INTRODUCTION

It has been more than half a millennium since Joan of Arc was executed in Europe for challenging the male monopoly on warfare, a century-and-a-half since India's Rani of Jhansi fought the British, led troops into a battle for her country's freedom, all while carrying her child on her back, and some 45 years since Phoolan Devi set an example of how a woman can lead a group of armed men. After more than 70 years since India got its freedom, the Supreme Court of India declared that it's time to let female officers hold command positions in the Indian Armed Forces.

The said judgment found its genesis in Section 12¹ of the Army Act, 1950 wherein enrolment of women in the regular army was barred, except in certain streams. Following this, women were allowed to be enrolment in the Army for the first time in the year 1992, for a period of five years, in a total of ten streams. These said streams were limited to the 'Combat Support Arms' or the 'Service Arms' and did not include 'Combat Arms'. Eventually, the tenure was also extended from five to ten years and further to 14 years. However, while the male army officers were given the option to choose to continue their service in the army, the female officers were given no such option.

1.1 Background of the Case:

In 2003, a Public Interest Litigation was filed in the Delhi High Court to allow the grant of permanent commission to women SSC officers of the Indian Army. In 2010, the Court held that such women officers of the Indian Armed Forces that sought permanent commission but were denied that same shall be entitled to it at par with their male counterparts, which shall now be implemented in India after the Supreme Court upheld the High Court's order.

¹ 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, specify 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.

The fight for gender-equality and the role played by Indian judiciary can be followed through a number of cases. In the case of *Anuj Garg v. Hotel Association of India*², the Apex Court held Section 30 of the Punjab Excise Act, 1914 unconstitutional as it barred women from working in a premise that served liquor. Declaring individual's right to self-determine as a part of gender equality, the Supreme Court struck the said section down as it furthered a notion that emanated from an ideology that was against the concept of gender parity, setting an example for the future. Through the case of *Joseph Shine v. Union of India*³, Section 497 of the Code of Criminal Procedure, which criminalized the act of committing adultery, was struck down by the Supreme Court as the section furthered the idea of a woman to be considered as a man's property.

The novel logic laid down by the Supreme Court in the aforementioned cases was reinforced in the SSC judgment as it not only aims to take the idea of gender-equality forward, it enforces the application of the same against the claim of army being a matter of national security. Additionally, disproportionate importance was not given by the Court to Article 33⁴ of the Indian Constitution, which declared that people serving in the Armed Forces do not have the right to avail all the fundamental rights guaranteed to its citizens.

2. THE ANALYSIS OF THE 'FEMINIST' JUDGMENT

Rebutting all the frivolous and patriarchal arguments put forward by the Government, the Supreme Court reiterated the constitutional mandate of gender equality as enshrined in Article 14 and pronounced a landmark judgment, speaking to the feminist souls of the female army officers, who have long been facing the aspersions casted by their male counterparts in the Indian Armed Forces.

2.1 Prominent Features

This judgment has been widely celebrated by the female army officers on account of the following points addressed and allowed by the Apex Court:-

² *Anuj Garg v. Hotel Association of India*, Appeal (civil) 5657 of 2007

³ *Joseph Shine v. Union of India*, WRIT PETITION (CRIMINAL) NO. 194 OF 2017.

⁴ 33(a) Power of Parliament to modify the rights conferred by this Part in their application etc Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to the members of the Armed Forces.

- The most notable feature of this judgment has been its feminist jurisprudence in allowing the female SSC officers to have the equal opportunity of opting for Permanent Commission based on their ability at par with their male equivalents.
- Eliminating the redundant excuse of physical incapacity of the female gender in comparison to the male gender for justifying the discriminatory practices in the field of the Armed Forces, the Apex Court directed the Government to allow the female officers to continue their service till 20 years, if they have completed 14 years of service, with full pension benefits, which was earlier denied to them.⁵ The court said that “physiological features of a woman have no significance to her equal entitlements under the Constitution”.⁶
- Further, this Court extended the pension benefits to all the female officers alike, whether they choose to opt for Permanent Commission or not.
- ‘Command positions’ are now available to be occupied by the female gender as well. This means that the posts like Brigadier, Major General and Lieutenant General will now be tested on the basis of capability, suitability and individual merit, rather than the gender. The court observed that restricting such posts to only male officers is not in conformity with the constitutional guarantee of equality as enshrined in Article 14. If such discrimination was allowed to be continued, the women would have been unable to be promoted beyond the rank of ‘Colonel’.
- The court criticized the Government’s arguments thoroughly and admonished the misogynist and patriarchal psychology of the Government. The arguments put forward by them showed highly derogatory picture of women, who have the added responsibility of tending to their children and families. The argument that women were more prone to be captured and taken as prisoners is nothing but a mirror image of the male dominance in the society and the perceived female subservience. The court said that this discrimination stimulated the gender conformity that only women are casted with domestic responsibilities. The lesser physical capacity of the women argument was quashed by the court as a ‘sex stereotype’. Further, the court said that questioning the ability and integrity of the women officers offended not only the dignity of those women or women in general,

⁵ Shekhar Gupta, 10 things you need to know about the Supreme Court judgment on women officers in Army (May 9, 2020, 12:40 P.M), <<https://theprint.in/opinion/10-things-you-need-to-know-about-the-supreme-court-judgment-on-women-officers-in-army/367636/>>

⁶ Permanent Commission for Women Officer (May 11, 2020, 1:34 P.M), <<https://www.iastoppers.com/permanent-commission-for-women-officers-mains-article/>>.

but also the dignity of the Indian Army as whole, which continuously work for the country as equal citizens, irrespective of their gender.⁷

- The judgment broke the stereotypical notion that women are the weaker sex and are therefore, incapable of performing strenuous tasks. It eliminated the physiological nuances of the men and women as a justification for gender discrimination and accentuated the need for change in values, beliefs and norms of the society to safeguard the constitutional rights of women.⁸

3. POST JUDGMENT – STILL A LONG JOURNEY

Although, the judgment is a milestone in itself in advocating the equal rights of men and women in the Indian Armed Forces, it is still a long way from eliminating this sex discrimination completely from the army sphere. While the judgment spoke volumes on the age-old patriarchal system in the Armed Forces and criticized it, it was silent on some crucial aspects, which are as follows:-

- The combat arms positions are still not open to the female army officers. The judgment did not deal with this aspect, rather left it to the Government to decide upon as the same was not contested in the petition.
- While the judgment opened up the option of getting Permanent Commission to female officers as well, it does not make it mandatory or confer the same as a right upon the women officers.
- Even the command positions are restricted to non-combat arms, and do not extend to combat arms.
- Even though the judgment has resonant of the equality of gender in the sphere of Armed Forces, it does not guarantee the equality in treatment for deciding command positions or Permanent Commission. It merely promotes the ideology, leaving the decision on the discretion of the Indian Army and the government.⁹ It does not clearly say whether the grant of Permanent Commission to women will be based on selection as in the case of their male counterparts or otherwise. Secondly, even if it is based on selection, there is

⁷ Women Eligible for Permanent Commission (May 9, 2020, 1:31 P.M), <<https://www.drishtias.com/daily-updates/daily-news-analysis/women-eligible-for-permanent-commission>>.

⁸ Permanent Commission for Women Officer (May 11, 2020, 1:34 P.M), <<https://www.iastoppers.com/permanent-commission-for-women-officers-mains-article/>>

⁹ Shekhar Gupta, 10 things you need to know about the Supreme Court judgment on women officers in Army (May 9, 2020, 12:40 P.M), <<https://theprint.in/opinion/10-things-you-need-to-know-about-the-supreme-court-judgment-on-women-officers-in-army/367636/>>

serious doubt whether many women will be selected over their male colleagues, given the resistance to gender equality and the notional patriarchy in the military.¹⁰

- The judgment has been fallaciously labeled as ‘feminist’, even though it has left the graver gender issues in the military untouched. The more serious issues like sexual harassment and abuse of such female officers by their male colleagues have not been commented upon by the Apex Court. The fear of retaliation by the hegemonic masculinity in the military has long discouraged such women officers from complaining or raising their voices against such offences.¹¹

In a country like India, where male-chauvinism and misogyny is embedded in every walk of life, a mere Supreme Court judgment will not enlighten and sensitize the society towards feminism and gender equality. One of the arguments put forward by the Centre that the male officers are unwilling to take orders and commands from female superiors, is redolent of the existence of male ego and the conformed role of women in life. While the aforementioned judgment paves a path towards dignity and gender parity, it needs to be acknowledged that the judgment merely puts females into a place but cannot make their male counterparts see them as equals. Therefore, a change in the perceptions, beliefs and norms of the society as a whole and not only the Armed Forces is requisite for inculcating the gender equality ideology in the country.

4. CONCLUSION

Looking at countries like United States, North Korea, Israel, France and others, where women are given the equal opportunity of occupying front-line combat positions in military, it is a shame that a country like India, wherein great women like Indira Gandhi, Anasuya Sarabai, Kalpana Chawla, Mahashweta Devi formed a part of our history, has failed to inculcate the basic constitutional guarantee of gender equality in its military sphere. Instead, it has become a country wherein the men need to be mentally schooled to accept females in the role of power, where showing femininity is associated with weakness and women are still fighting for their dignity. The continuing traditional, institutional and structural resistance

¹⁰ Akansha Khullar, Permanent Commissions For Women: The Pursuit Of Gender Equality In The Indian Army (May 12, 11:32 A.M), <<https://southasianvoices.org/permanent-commissions-for-women-the-pursuit-of-gender-equality-in-the-indian-army/>>

¹¹ Shreshtha Das, Equal roles for women in Indian army is not a feminist victory (May 12, 11:18 A.M), <<https://www.aljazeera.com/indepth/opinion/equal-roles-women-indian-army-feminist-victory-200303152707759.html>>.

that is faced by female officers within the army goes on to show that the goal of achieving gender parity and equality is a distant reality. To reach a stage where there is equality i.e., uniform privileges and practices for all officers regardless of their gender, the existing gender-biased attributes need to be attacked from the lowest level to the highest one.

Thus, the Supreme Court judgment is just a rectification to the larger problem of discriminatory practices and gender imbalance prevailing and deeply ingrained within the Indian Armed Forces. Article 14¹² of the Indian Constitution guarantees that every person is equal before the law and Article 15¹³ and Article 16¹⁴ of the Constitution protects its citizens from discrimination on the basis of sex and discrimination in opportunities respectively. Hence, as the army chief General M.M. Naravane said, it is time that the Indian Armed Forces show their allegiance to our Constitution and inculcate its ideologies.¹⁵

¹² 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 Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

¹³ 15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

¹⁴ 16 (1) Equality of opportunity in matters of public employment. There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State

¹⁵ Opinion | An Indian army that can now be led by a woman (May 9, 2020, 12:40 A.M)

<<https://www.livemint.com/opinion/onlineviews/an-indian-army-that-can-now-be-led-by-a-woman-11581963376478.html>>

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