CHAPTER – III

CONSTITUTIONAL FRAMEWORK

The role of women, which constitute half of the population, has greatly changed after industrialization and independence of the country. In addition to their family chores, they are now working in offices, industries, educational and professional institutions and commercial and agricultural occupations. Nobody can now afford to ignore their contribution in different walks of life. In the industrial area, they are working both in the organised and unorganised sectors of employment.¹

Now women workers constitute an important component of the Indian labour force. An increasing number of women are today compelled to leave the security of their homes and venture out in search of work depending upon the socio-economic status.² But other side of the picture is that it has led to many evils, such as gender discrimination, physical and mental harassment and more specifically sexual harassment at workplace.³ It is recognized that they have been victims of discrimination everywhere which in manifested is many spheres, political, social, economic, and employment.

The Constitution of India, the law of the land, which is considered one of the most progressive Constitutions in the world ensures equality of gender by making it a fundamental right. The Constitution of India provides security and protection to women by guaranteeing equality before law, equality of opportunity in the matter of employment, equal pay for equal work, maternity relief, decent standard of life and living wages. It prohibits the State from making any discrimination on the basis of sex. The Constitution of India enjoins upon the State to make special provisions in favour of women. An attempt has been made in this chapter to give a sketch of the constitutional framework which provides security and protection to women and also to examine the judicial interpretation of the constitutional provisions relating to women in general and to women labour in particular.
The Constitutional Policy and Their Judicial Interpretation

The Framers of the Constitution were aware of the socio-economic problems of women in India. They knew the gender equality was necessary for national development. They also bestowed sufficient thought on the position of women in the Indian social order. Such concern is evident in the entire scheme of the Constitution such as part III dealing with Fundamental Rights, the basic guarantees for development of human personality, part IV dealing with Directive Principles of State policy which lay down the guidelines to be followed by the State, in future policy formulation and enactment of laws, or its newly added part IV A dealing with fundamental duties for the citizens. The Constitution of India, in its attempt to build an egalitarian and secular ideology engrafted into it principles of equality, liberty and justice proclaimed in the Declaration of Human Rights. The preamble to the Constitution of India resolves to secure to all its citizens including women, justice, socio-economic and political, liberty of thought, expression, belief, faith and worship, equality of status and opportunity and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the nation. Social justice would be a myth in a society wherein one half of the population consisting of women continues to bear the burden of erstwhile servile or inferior status. Equality of status and of opportunity is a consistent principle of social justice, for the realisation of the latter is well nigh impossible without the free play of the former. The Constitution makers have incorporated sufficient provisions in the Constitution to uphold the dignity of women and for the happy consummation of the above mentioned two principles.

The Constitution of India has given special attention to the needs of women to enable them to exercise their rights on an equal footing with men and participate in national development. The Constitution aims at the creation of an entirely new social order where all citizens are given equal opportunities for growth and development and that no discrimination takes place on the basis of race, religion, sex etc. The constitutional commitments impose an obligation on the Welfare State to protect the interests of the women and children. As they belong to the weaker section of the labour force, their exploitation by the employer has become in practice a rule rather than an exception.4
The Indian Constitution, which is the fundamental legal document, is at the same time a social document as well. It seeks to ameliorate the sufferings of the weak, the oppressed and suppressed classes or groups.

While all the provisions of Indian Constitution are applicable in equal measures to men and women and can therefore be invoked by women for the assertion of their rights, there are some provisions which accord a special protection to women.

The constitutional provisions which have a bearing on women and their rights can be divided into 2 groups. One conferring rights on women as provided in part III of the Constitution and the other in the nature of directions to the state to take appropriate measures for the welfare of the women as enshrined in part IV of the Constitution. Given below are the Constitutional provisions which have a special significance for women.5

1. **Fundamental Rights**

The Indian Constitution has a “fundamental rights” chapter that guarantees various rights. Those of special importance to women are the Right to Equality in Article 14 and express prohibition against discrimination in Article 15.6

Constitutional Commitments recognizing right to equality has been explicitly laid down under Article 14 of the Constitution of India.

Article 14 of the Constitution in general enshrines the ‘principle of equality’. Stating the general ‘principle of equality’ Article 14 declares that “the State shall not deny to any person equality before the law or equal protection of laws within the territory of India.” The expression equality before law and equal protection of laws aim at establishing ‘equality of status’ as envisaged in the preamble of the Constitution. Thus Article 14 guarantees to all persons, including women, the right to equality in law. The equality guarantee does not require that the law treats all individuals exactly the same, but it permits discrimination on the basis of reasonable classification. The classification should not be arbitrary and discriminatory.7

Article 14 in addition to conferring equality of status in women, recognizes women as a class different from men as a class. In other words, legislation favouring women can be passed and would not be violative of Article 14.
In Madhu Kishwar and Others v. State of Bihar and Others,\textsuperscript{16} The petitioners who were members of Ho and Oraon tribes of Bihar challenged the vires of Chhota Nagpur Tenancy Act, 1908 on the ground that under the said Act the succession of property was confined to male line only. It was contented by the petitioner that the Act was violative of the Fundamental Rights to equality. The Court opined that as citizen of the country, the female members of these tribes were entitled to Constitutional guarantee given to them under Article 14. However, instead of deciding the case on merits the Court directed the State of Bihar to explore the possibilities of inheritance to female also.

In Air India v. Nargesh Meerza\textsuperscript{9}, The Court held that the termination of service on pregnancy was manifestly unreasonable and arbitrary and was, therefore, clearly violative of Article 14 of the Constitution. Having taken in service and after having utilised her services for four years to terminate her service if she becomes pregnant amounts to compelling the poor air hostess not to have any children and thus interfere with and divert the ordinary course of humane nature.

In Air India, Lena Khan v. Union of India,\textsuperscript{10} The regulations which required air hostesses employed in India to retire at the age of 35, with extension to age 45, but which allowed air hostess employed outside India to continue employment beyond age 45, was challenged as violative of Article 14. The Supreme Court held that such discrimination should not be allowed. However, in the light of Air India’s submission that it would phase out air hostesses recruited outside India at age 45, the Court concluded that no intervention was required at this time.

Article 15 refers to women as equal citizens. This Article runs as follows: “Article 15(1) says that the State shall not discriminate against any citizens on ground only of religion race, caste, sex, place of birth or any of them.”

Article 15 prohibits the State from making discrimination against any citizen on grounds only of religion, race, sex, place of birth or any of them. Article 15 is a specific application of the principle expressed in Article 14. Thus in Radha Charan V. State,\textsuperscript{11} the Orissa High Court held Rule 6(2) of the Orissa Statutory Judicial Service rules, 1963 purporting to disqualify married women from being
appointed as District Judges, was violative of Art. 15(1) as disqualification was on the ground of sex.

Article 15(2) provides that no citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regards to:

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of general public.

Article 15(3) also allows for special provision for women and children by clarifying that “nothing in this Article shall prevent the State from making any special provisions for women and children.” In other words, it enables the State to discriminate in favour of women. However, a question arises whether Article 15(3) authorises discrimination against women? This question was answered in negative by Calcutta High Court in Mahadeb Jiew v. B.B. Sen. P.B. Mukherjee, J. observed:

The words women and children used in Article 15(3) means making special provision in favour of women and children and not against them.

The special provision for women mentioned in Article 15(3) would not be interpreted to authorise a discrimination against women, because Article 15(3) did not use the expression ‘discrimination against’ but used a different expression namely ‘special provision for’. The expression ‘special provision for’ denotes provisions especially for women and that such special provision is ‘for’ i.e. in favour of women. The intention clearly was obviously to protect the interests of women and children. This gave a clear and coherent interpretation to Article 15(1) and (3) because the provision discriminating in favour of women, would necessarily discriminate against men and would therefore constitute an exception to the prohibition of discrimination on the
ground of sex contained in Article 15(1). It is submitted that this view is correct and sound.

The above interpretation was followed by Bose, J. in *Anjali Roy v. State of West Bengal*¹³ but struck a note of doubt. However, on appeal the doubt did not find favour with Chakravarti, Ag C.J. and Sen, J who observed:

As to the true meaning of Article 15(3), I am inclined to think that it really contemplates provisions in favour of women, although grammatically and etymologically, ‘for’ may mean ‘concerning’ and though, theoretically, it is possible to think of reasonable discrimination against women... But the ordinary meaning of ‘provision’ is certainly provision in favour of... that clause (3) is obviously an exception to clause (1) and (2) since its effect is to authorise what the Article otherwise forbids, its meaning seems to me to be that notwithstanding that clause (1) and (2) forbid discrimination against any citizen on the ground of sex, the state may discriminate against males by making ‘special provision’ in favour of females it is true that since clause (1) and (2) use the general term sex, clause (3) may logically also mean that the state may discriminate against women, but the language used being ‘provision for’ such an intention of the clause appears to be excluded. Further, support to that conclusion is lent by clause (4), the other exception clause, which speaks of any special provision for the advancement of any socially and educationally backward classes of citizens ‘for the scheduled castes and scheduled tribes.’ There can be no doubt that the word ‘for’ in the last part of clause (4) means ‘in favour of’ and it is reasonable to presume that the same word used elsewhere in the Constitution bears the same meaning. Another instance where ‘provision for’ clearly means provision in favour of is to be found in Article 16(4). Therefore, the meaning of Article 15(3) of the Constitution would be that a special provision in favour of
women would be valid even if it implied discrimination against men.

Again in *Dattatreya Motiram v. State of Bombay*, Chief Justice Chagla held:

As a result of the joint operation of Article 15(1) and Article 15(3) the state could discriminate in favour of women against men, but it could not discriminate in favour of men against women.

One of the arguments raised in this case was that Article 15(3) must not be read as a proviso to Article 15(1) because that would result in completely nullifying one of the important ingredients of Article 15(1). It was said that the object of Article 15(3) was not to make discrimination possible by permitting special provision for women. Answering this, the Bombay High Court observed:

Article 15(3) is obviously a proviso to Article 15(1) and proper effect must be given to the proviso. It is true that in constructing a proviso one must not nullify the section itself, but it does not and cannot destroy the whole section. The proper way to construe Article 15(3) in our opinion, is that whereas under Article 15(1) discrimination in favour of men only on the ground of sex is not permissible, by reason of Article 15(3) discrimination in favour of women is permissible, and when the state does discriminate in favour of women it does not offend against Article 15(1). As a result of the joint operation of Article 15(1) and Article 15(3) the state may discriminate in favour of women against men, but it may not discriminate in favour of men against women.

Therefore, according to the Court, Article 15(3) is an exception to Article 15(1) so far as provisions for benefit of women are concerned.

The aforesaid survey of the cases at the High Court level indicates that the trend is uniformly in favour of interpreting Article 15(3) as referring only to matters beneficial to women. But the Supreme Court in a case *Yousuf Abdul Aziz*
v. State of Bombay,\textsuperscript{15} seems to give the exception an unbridled scope and operation. The Supreme Court remarked:

It was argued that the clause (3) should be confined to provisions which are beneficial to women we are unable to read any such restrictions into the clause.

It is submitted with due respect that this was not a sound judgment because it lacks reasons in its support and the framers of the Constitution who so ardently championed the cause of ameliorations or upliftment of the women folk of India should not have thought of framing special laws under this clause which should be of a non-beneficial, character. The view of High Courts that special provision for women means ‘in favour of women’ is the correct view.

B.R. Acharya and Qamar v. State of Gujarat and Another,\textsuperscript{16} The petitioners, who were probation officers in the pay scale of Rs. 425-700 have filed this petition claiming promotion to the higher post carrying the pay-scale of Rs. 550-900, mainly on the ground that officers junior to them are promoted to the higher post.

The contention of the petitioners was that they should be considered to be eligible for appointment to the post of Lady Superintendent and promotions given to the Lady Officers who were junior to them to such post should be quashed and set aside.

It was clear from the affidavit in reply send on behalf of the respondent state that there were certain posts which are meant only the lady officers. The institutions, where destitute women, unmarried mothers, etc. are kept, are headed by Lady Superintendent, only Lady Officers were considered eligible for such mens. The petitioners, however, contended that they should not be discriminated only on the ground of sex. They should also be considered eligible for promotion to such posts. This claim made by the petitioners could not be accepted. Having regard to the nature of duties to be performed, it was open to the State Government to decide that the institutions which were exclusively meant for women should be headed by only women or lady officers. The Government cannot be compelled to appoint male officers to head such institutions, if it does not consider it advisable to do so. If a special provision is made for women, the petitioners could not make
grievance that they have been discriminated against. Incidentally it may be pointed out that Article 15 of the Constitution of India prohibits discrimination on grounds of religion, race, caste, sex or place of birth. Clause (3) of the said Article however, provides “Nothing in this Article shall prevent the State from making any special provision for women and children.” The Court, therefore, did not find any substance in the petitioners contention that they should be considered to be eligible for promotion to the post of Lady Superintendent. Petition was dismissed.

It is clear that Article 15(1) is paramount in appropriating to women socio-economic equality through the protection of their rights and it does not prevent the State from making any special provision for women. Again Article 15(2) ensures social equality to women because it protects the women from being subject to any disability or restriction on the grounds of sex with respect to access or use of any public place. The need for inclusion of Article 15(1) in the Constitution arose because the Framers of the Constitution knew the fact that the 14th Amendment guaranteeing equal protection of law for preventing social discrimination in various segments of American social and political life was not found sufficient in America. The Framers keeping this factor in mind feared that inspite of the prohibition in Article 14 discrimination on the basis of sex ... might be legitimated by the Court on the basis of reasonable classification. It was with a view to forestalling such as eventuality that the clause 1 was incorporated in Article 15 of the Constitution. These fundamental rights in chapter III of the Constitution are enforceable in a Court of law.

Article 15(3) acts as an exception to Article 15(1) which authorises the State for making special provision for women. It enables the State to enact laws protecting women. In other words it enables the State to discriminate in favour of women, which is therefore, called protective discrimination by constitutional experts. This provision is called compulsory provision for women because according to Constitution makers this provision might compensate the loss of opportunities suffered by women during the last several centuries. Since women were suppressed for a very long period, they lost their initiative confidence in their capacity to face problems and opportunity to equip themselves for various types of employments. It is because of these facts that the Constitution makers considered
them weaker sections of the people who required some help and they took a pragmatic decision in incorporating clause (3) of Article 15 in the Constitution.

The welfare of women is of vital significance in a Welfare State. Consequently any special provision for their protection or upliftment would not offend or operate against the subject of non-discrimination provided in Article 15(1). Therefore, Article 15(3) is intended to give advantage to women so that they compete with men in various fields. The provision has been used to enact special laws for the protection of women workers in factories, mines, plantations and establishments. However, it is unfortunate that this provision has not been so far used to make reservations in favour of women in employments by recognizing them as socially and economically vulnerable class. Therefore, much more remains to be done under this provision.

Article 16 ensures equality of opportunity in matters relating to employment or appointment to any office under the State. This right to equality is only in matters of recruitment, promotion, wages, termination of employment, periodical increments, leave, gratuity, pension, age of superannuation etc. This Article further states that no citizen shall be discriminated against or be ineligible for any employment of office under the State on grounds only of religions, race, caste, sex, descent, place of birth or residence. This equality is limited to public employment. Discrimination by private employers is not covered by this Article. Article 16 creates a right to equal treatment in State employment and not a right to public employment. Equality of opportunity applies not only to initial appointment but to all facets of employment, such as promotion, pay, transfer and retirement.

In State of Kerala v. K. Kunhipacky, the question of preferring female lecturers in State colleges exclusively for women came under review. A male lecturer claimed that a female lecturer junior to him in experience had been promoted to a professorship in the same department, violating Article 16. Traditionally, only females had been appointed to teaching positions in women’s colleges when available. The state argued that since the preference of females in women’s colleges was an established practice, preference for a female teacher was proper. The Court held that while the preference for women in women’s college was not unreasonable given the general inequality between sexes, seniority cannot
be overlooked, directing the government to reconsider the promotion after the contestant presented reasons to support their promotion. In effect, the Court held that females can be given preferences over males in women’s college, a conventional practice but, once appointed, senior male and female employees of equal caliber shall be promoted.

The Kunihipacky’s decision is significant in that the Court reinforced existing social preferences. Instead of emphasizing Article 16 banning sex discrimination, the Court appeared eager to protect convention. Would the Court take the same position if a female claimed discrimination in men’s college where most employees are men? Following the logic of Kunihipacky, the Court would probably upheld the convention of extending preference to men in men’s colleges. This type of an approach continues sex discrimination and the practice of separate categories of jobs.

Sex discrimination challenges in the employment law context can be divided into two groups of cases. In the first bigger group of cases, women have challenged, rules, regulations and practices that restrict or prohibit their employment. In the second group of cases, rules, regulations and practices that treat women preferentially have been challenged on the basis that they restrict or prohibit men’s employment.

(i) **Restrictions of Women’s Employment**

Many rules, regulations and practices which impose restrictions on women’s employment have been found to violate the equal guarantees, but the approach of the Courts to equality and gender differences informing these decisions is divided and problematic. However some of the rules and practices which impose restrictions on women’s employment have been upheld by the Courts.

The prohibition regarding marriage had come under challenge before the Supreme Court in *Bombay Labour Union v. International Franchise Ltd.* In this case a service rule in the International Franchise Company requiring unmarried women in a particular department to resign on getting married was challenged. The Supreme Court rejected the writ petition on the ground that the company was not bound by fundamental rights because the company is not a state within the
meaning of Article 12 of the Constitution. But, at the same time the Court held the rule should be abrogated in the interest of social justice.

In criticizing the validity of this rule, the Supreme Court observed:

We do not think that because the work has to be done as a team, it cannot be done by married women. We also feel that there is nothing to show that married women would necessarily be more likely to be absent than unmarried women or widows. If it is the presence of children which may be said to account for greater absenteeism among married women, that would be so more or less in the case of widows with children also. The fact that work has got to be done as a team and presence of all those workmen is necessary, is in our opinion no qualification so far as married women are concerned. It cannot be disputed that even unmarried women or widows are entitled to such leave as the rules provide and they would be availing themselves of these leave facilities.

However, the Supreme Court found the above Rule justified on the ground that it does not compel women who marry to resign as a matter of course but only when the Central Govt. finds that the marriage impairs efficiency. The Rule stated that if a women employee subsequently marries she may be asked to resign if necessitated by the maintenance of efficiency in the service. This Rule does not bar married women as a class. The fact that Supreme Court justified this Rule shows the Victorian attitude of the Court with regard to married women. If married women as a class are disqualified for govt. service, it seems that Article 16 is violated. The Committee on the status of women reported that Rule 5 was deleted in 1972. However it also reported instances, such as in the Military Nursing Service where married women are still banned for government jobs.

In Raghubans Saudagar Singh v. State of Punjab,\(^{20}\) The rule, which made women ineligible for various posts in men’s jail except for the posts of clerks and matrons, was upheld by the Punjab and Haryana High Court. The Court observed:

It needs no great imagination to visualize the awkward and even hazardous position of women, acting as a warden or other jail official who has to personally ensure and maintain discipline
over habitual male criminals, their own safety and security
might be in danger if women were appointed to such offices.

The Court further observed that the govt. rule barring women from serving
as superintendents of men’s jails does not discriminate on the basis of sex alone
but was geared to efficiency and suitability.

It is submitted that this decision exhibits old prejudicial attitude towards
fair sex. Today, when women are excelling in all types of professions, whether it
is police, parachute units, pilots or drivers, there is no justification for such an
attitude. Women officers now work as efficiently as men in every department
including the police department. Kiran Bedi has set an example for the same.

Another important case which highlights discrimination against women in
govt. employment is *C.B. Muthamma v. Union of India*, the Apex Court held that
the provisions in the service rules requiring a female employee to obtain the
permission of Government in writing before her marriage is solemnised and
denying right to be appointed on ground that a candidate is a married women are
discriminatory against women and that if a married man has a right, a married
women, other things being equal, stands on no worse footing. The very decision
also clarifies the position that it was not meant to universalise or dogmatise that
men and women are equal in all occupations and all situations and do not exclude
the need to pragmatic where the requirements of particular employment. The
sensitiveness of sex or the peculiarities of societal sectors or the handicaps of
either sex may compel selectivity. It has been also made clear that save where the
differentiation is demonstrable the rule of equality must govern.

It is submitted that the Supreme Court in the above two cases, namely
*Bombay Labour Union case and Muthamma case* has rightly advanced the socio-
economic interests of women. But it is strange that why the government, which is
under an obligation to protect the fundamental rights and to secure socio-economic
justice for all, should defy the Constitution and its spirit.

It is further submitted that before framing rules the Government at its level,
should ensure that the rules framed are not violative of any of the fundamental
rights conferred on the citizens. This will help in reducing the institution of
litigation in Courts.
The most radical approach came in the case of Air India v. Nargesh Meerza, which also involved the issue of equality between men and women. In this case Supreme Court struck down the Air India and Indian Airlines Regulations on the retirement and pregnancy bar on the services of air hostesses as unconstitutional on the ground that the conditions laid down therein were entirely unreasonable and arbitrary. Regulation 46 provided that an air hostess would retire from the service of corporation upon attaining the age of 35 years, or on marriage, if it took place within four years of service or on first pregnancy, whichever occurred earlier. Under Regulation 47 the Managing Director had the discretion on extend the age of retirement by one year at a time beyond the age of retirement upto age of 45 years if an air hostess was found medically fit. The condition that the services of Air Hostesses would be terminated on first pregnancy was the most unreasonable and arbitrary provision and liable to struck down. The regulation did not prohibit marriage after four years and if an Air Hostess after having fulfilled the first condition became pregnant, there was no reason why pregnancy should stand in the way of her continuing in service. The Court held that the termination of service on pregnancy was manifestly unreasonable and arbitrary and, was, therefore, clearly violative of Article 14 of the Constitution. Having taken in service and after having utilised her services for four years to terminate her service if she becomes pregnant amounts to compelling the poor Air Hostess not to have any children and thus interfere with and divert the ordinary course of humane nature. The termination of services of Air Hostesses in such circumstances is not only a callous and cruel act but an open insult to Indian womanhood – the most sacrosanct and cherished institution. The provision for extension of service of A.H. “at the option” of the Managing Director Confers a discretionary powers without laying down any guidelines or principles and liable to be struck down as unconstitutional. The option to continue in service may be exercised in favour of one A.H. and not in favour of the other and is thus discriminatory. Under the Air India Regulations the extension of the retirement of an A.H. was entirely at the mercy and the sweetwill of the Managing Director. The conferment of such a wide and uncontrolled power on the Managing Director was violative of Article 14 as it suffered from the vice of excessive delegation of powers.
It is appreciated that the Supreme Court rightly struck down a provision which not only promoted inequality but also undermined the status of women. It may therefore, be said that judicial approach has assumed a positive and human approach which is inconsonance with the modern values. It is found that where the law is unfavourable to socio-economic status of women, the attitude of the Supreme Court has been critical in no uncertain terms.

Again in a case against Air India, *Lena Khan v. Union of India*, the regulations which required air hostesses employed in India to retire at the age of 35, with extension to age 45, but which allowed air hostess employed outside India to continue employment beyond age 45, was challenged as violative of Articles 14 and 15. The Supreme Court held that such discrimination should not be allowed merely because it complies with local law abroad. However, in the light of Air India’s submission that it would phase out air hostesses recruited outside India at age 45, the Court concluded that no intervention was required at this time.

In the decision of *Mrs. Sivanarul v. The State of Tamil Nadu and others*, S. Mohan J, the learned judge then was, held that an order of termination of the services of a lady teacher serving in a private school recognised and aided by the Government, based on a clause in the contract of service, on the ground that she got married was not only obnoxious, but also opposed to public polity and, therefore, bad.

*In Maya Devi v. State of Maharashtra*, a requirement that married woman obtain her husband’s consent before applying for public employment was challenged as violating Articles 14, 15 and 16. The Supreme Court held:

This is a matter personal between husband and wife. It is unthinkable that in social conditions presently prevalent a husband can prevent a wife from being independent economically just for his whim or caprice.

The Court emphasized the importance of economic independence for women, and the importance of not creating conditions that discourage such independence. The consent requirement was held to be unconstitutional and discriminatory. The Court was of the view that consent requirement was an obstacle to women’s equality. The decision also supports a view that consent
requirement contributed to the subordination of women. The decision is commended to be one more step towards equality of sexes. However, it is a pity that the judge should opine that “a man and woman are two different classes and the historical truth is that women are a weaker class but that is all the more reason why she needs protection. Is it protection that a woman seeps or is it her right to be given equal opportunity to employment? Surely there is no nexus between her getting a job for which she is qualified and trained and her belonging to a “weaker class” and in need of protection.

In Sujaya v. Director General,27 the petitioner was working as a staff nurse in the Military Nursing Service. She was released from service on the ground of marriage the petitioner challenged her dismissal. Petitioner said that the order would result in her being discriminated against in matters of employment under the state. She therefore argues that the order is hit by the prohibition contained in Article 14, 15 and 16 of the Constitution. The Court held that the order releasing the petitioner from service on the ground of marriage is highly discriminatory and hence hit by the Articles 14, 15 and 16. The Court further said that it is sad to say that this ancient land, which is on its onward march to the 21st century with ambitions reforms to have more developments, still allows orders reflecting male chauvinism to be issued with impurity. This morbid approach amounts to an open insult to the institution of our womanhood. This is impermissible. Thus, the order releasing the petitioner from service therefore is declared unenforceable in law.

In Mohini Philip v. Union of India and others,28 the petitioner was working as a nursing officer in military service was ordered to be released and relieved from service on the ground of marriage. The Court held that irrelevant considerations have been taken into account to order the release on marriage ground only. Thus the order was arbitrary and unreasonable and quashed the order of termination. It further held that circular dated April 20, 1977 which provides for assessment of standard of performance after marriage not violative of Articles 14 and 16.

In Urmila Devi v. State of U.P. and Anr.,29 by means of the present writ petition under Article 226 of Constitution of India the petitioner has challenged the validity of an order passed under Rule 24 of the subordinate Civil Courts
Ministerial Establishment Rules, 1947 which provides that woman shall not be eligible for appointment to the ministerial establishment of the Civil Courts subordinate to the High Court.

The Court held that part III of the Constitution of India deals with fundamental rights. Article 16(2) of the Constitution of India specifically provides as follows:

“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.”

The above Article 16(2), therefore, specifically lays down that a person shall not be ineligible for the employment to any post merely on the ground of sex. The impugned order disentitled the women for appointment to the ministerial establishment of the Civil Courts subordinate to the High Court. This order is clearly violative of Article 16(2) of the Constitution of India and as such is ultra vires. The consequential communication issued by the District Judge dated April 5, 1990 is also, therefore, invalid.

In view of the above the petition was allowed and the order passed under Rule 24 of the Subordinate Civil Courts Ministerial Establishment Rules, 1947 quoted above was declared ultra vires of the Constitution of India. The communication issued by the District Judge dated April 5, 1990 was also quashed. It was open to the District Judge, Gorakhpur to issue a fresh communication providing that for women would also be entitled to apply for the vacant posts for which advertisement has already been issued on April 5, 1990.

The petition is disposed accordingly

In Shalini Damodar Nikam v. India United Mills and Others, the petitioner filed this petition regarding the different retirement age for male and female employees. The issue in this case is whether a different and differentiating system in relation to retirement age for male and female should object? The learned judge observed that a different and differentiating system in relation to retirement age could not survive as prima facie it was obnoxious. In that view of the fundamental issue involved on which the learned judge had a prima-facie
inclination in favour of the petitioner’s contention and directed that she shall be continued in service until further orders.

Maniamma V. Hindustan Latex Limited, where the fact was denial of promotion to lady security guard on the ground that she is a lady. The issue before the Court was whether the petition should be promoted to the post of Assistant Security Inspector. The Court held that the respondent has no case that the petitioner being a female employee will not be in a position to perform the duties of Assistant Security Inspector. It has been accepted as universal principle that there shall not be any discrimination on the ground of sex. Hence the denial of promotion to the petitioner is clear violation of Article 16(2) of the Constitution and the respondent is directed to consider the case of the petitioner for promotion.

It is submitted that the Supreme Court has through these judgments uplifted the position and status of women. It has not only recognized the fundamental right of women to work without any discrimination but has also recognized the right to work with dignity and honour.

(ii) Preferential Treatment

Some cases have come up before the Courts where the employment rules, regulation and practices have been challenged due to preferential treatment to women tantamounting to a discriminatory treatment against men. The question raised in these cases was whether clause (3) of Article 15 can be invoked for construing and determining the scope of Article 16(2). The opinion of the Courts have been mixed. For example, in Shamsher Singh v. State, the employment practices of the State Educational System were challenged as violating Article 16(2). The Educational System had two branches, one run exclusively by women, the other, exclusively by men. In the women’s branch, Assistant District Inspectors were granted a special pay increase. The Educational Department was subsequently re-organised and as a result both male and female Assistant District Inspectors were designated as Block Education Officers. Both the women and men, were performing identical duties. The male petitioner challenged the pay increase as discrimination based on sex and thus violative of Article 16(2). The question referred to the full Bench of the Punjab and Haryana High Court was whether Article 15(3) could be invoked to interpret Article 16(2) and whether
increase of pay in cases of females can be justified under Article 15(3). The High Court held that Articles 14, 15 and 16 constitute a single code. Article 14 is the genus and Articles 15 and 16 are the species. If Articles 15(1) and 15(2) cover the entire field of discrimination, Article 16 deals with public employment, specifically. There is an overlapping of provisions. Therefore, Article 15(3) could be invoked to determine the scope of Article 16(2) because Article 15(3) is deemed to be a special provision in the nature of proviso qualifying the general guarantees of Articles 14, 15(1), 15(2), 16(1) and 16(2). The petition was dismissed and the pay increase upheld.

Justice R.S. Narula gave a dissenting opinion by holding that Article 16 seems to be an exception to the general rule of discrimination and therefore Article 15(3) cannot be read into Article 16(2).

*In Walter Alfred Baid v. Union of India*, a recruitment rule making a male candidate ineligible for promotion in a predominantly female institution was declared un-Constitutional. Delhi High Court agreed with the dissenting opinion in Shamsher Singh’s case and held that Article 16(2) did not permit a classification on the basis of sex.

Article 16(2) incorporates a concept of absolute equality between the sexes in matters of employment which is underscored by the absence of any saving in the other clauses in relation to sex. The Court maintain that considerations which have their genesis in sex and arise out of it would not save discrimination. What could save such a discrimination is any ground or reason independently of sex such as socio-economic conditions, material status and other disqualifying conditions e.g. age, background, health academic accomplishments etc. If every man is ineligible for a particular post in an exclusively female educational institution, it would be a clear case of discrimination on the ground of sex alone. However, justified socially, administratively or otherwise such a requirement may be, such discrimination having its genesis in sex would be hit by Article 16(2) and none of the considerations which have their foundation in sex would be able to save such a discrimination from the challenge of unconstitutionality.

*Major Ramji Lal Verma v. Union of India and others,* In this case petitioner was a lecturer in the P.B.A.S. Inter College, Hathras. In 1961 he was
commissioned as second Lieutenant in the National Cadet Corps. Subsequently, he was promoted to the rank of major. He was by the order dt. 27th May, 1980, discharged from service of the National Cadet Corps. with effect from 27.08.1979. He filed a civil suit for a declaration that he was entitled to held commission in the National cadet Corps as Major till the age of 52 years but he withdrew the suit and filed the present petition challenging the validity of the order of his discharge.

Rule 22 of the National Cadet Corps. Rules, 1948, as amended on 21.08.1979 says that no officer is entitled to hold commission as an officer in the N.C.C. beyond the age of 45 years. Under the proviso the competent authority has power to grant extension up to the age of 50 years. Such extension is to be granted if the authority is satisfied that the officer continues to be physically fit and it is necessary or expedient to allow him to continue in service. Rule 28 lays down that every officer and cadet shall on becoming entitled to receive his discharge under the rules be so discharged with all convenient speed. The petitioner was discharged from the N.C.C. in accordance with R.28(1) read with Rule 22 as amended in August, 1979, after he had attaining the age of 48 years. The petitioner made an application for grant of extension but he was not granted any extension.

Learned counsel for the petitioner assailed the validity of Rule 22 on the ground that it practices discrimination. He urged that under Rule 19 of the National Cadet Corps (Girls Division) Rules, 1949, a female commissioned officer in the Girls Division is entitled to continue in service until she attains the age of 52 years. He argued that Articles 15(1) and 16(2) of the Constitution prohibit discrimination on the ground of sex in public employment. Rule 22 practices discrimination as under that rule no male commissioned officer is entitled to continue in service beyond the age of 45 years which under Rule 19 applicable to Girls Division a female commissioned officer is entitled to continue in service up to the age of 52 years. There is no justification for the discrimination.

The Court observed that Articles 15 and 16 read together ensure equality to all citizens in matters relating to employment under the state without any discrimination, the state is not prevented from making any special provision for women. It is open to the state to make laws and rules which may treat males and
females differently, but, such differentiation must be reasonable and it must have some reasonable nexus with the object sought to be achieved.

In this judgment the Court consider the following judgments:

*In Yusuf Abdul Aziz v. State of Bombay,* sex was held to be a permissible classification. The Supreme Court held that sex is a sound classification although there can be no discrimination in general on that ground, the Constitution itself provides for special provisions in the case of women and children.

*In Miss C.B. Muthamma v. Union of India,* Krishna Iyer J. Speaking for the Court made the following observations:

“We do not mean to universalize or dogmatise that men and women are equal in all occupations and all situations and do not exclude the need to pragmatise where the requirements of particular employment, the sensitivities of sex or the peculiarities of societal sectors or the handicaps of either sex may compel selectivity. But save where the differentiations demonstrable, the rule of equality must govern.

*In Air India v. Nargesh Meerza,* the Supreme Court upheld the Regulations 46 and 47 of the Air India Employees Service Regulations which prescribed different period of age of retirement for the Air hostess. The Supreme Court emphasised that what Articles 15(1) and 16(2) prohibit is that discrimination should not be made only and only on the ground of sex. These Articles of the Constitution do not prohibit the state from making discrimination on the ground of sex coupled with other considerations.

The Court thus held:

“We, therefore, hold that Rule 22 which prescribes the age of 45 years for the retirement of a male officer of the National Cadet Corps Rules 1949 (Girls Division) which prescribes the age of 52 years for retirement of lady officers does not practise any discrimination. The petitioner who was an officer in the Male Division belongs to different cadre and forms a different group. He is regulated by separate rules, he cannot claim any parity with lady officers to claim a right to continue in service till the
age of 52 years. The petitioner having attained 48 years of age has rightly been discharged from service. He is not entitled to any relief from this Court.

The controversy regarding the interpretation of these two Articles was set at rest by Supreme Court in recent decision namely, Government of A.P. v. P.B. Vijay Kumar,39 by holding that Article 15(3) should be read harmoniously with Article 16 of the Constitution. In this case the Government of Andhra Pradesh by introducing Rule 22-A in Andhra Pradesh State and Sub-ordinate Service Rules, made reservation for women in public services, to a specified extent. This was challenged to be violative of Articles 14 and 16. The Supreme Court held that making special provisions in respect of employment or posts under the State is an integral part of Article 15(3). This power conferred under Article 15(3) is not whittled down in any manner by Article 16. The special provision which the state may make to improve women’s participation in all activities under the supervision and control of the state can be in the form of either affirmative action or reservation. The Supreme Court while justifying the reservation for women in public employment observed:

Therefore, in dealing with employment under the State, it has to bear in mind both Articles 15 and 16 - the former being a more general provision and the latter, a more specific provision. Since Article 16 does not touch upon any special provision for women being made by the State, it cannot in any matter derogate from the power conferred upon the State in this connection under Article 15(3). This power conferred by Article 15(3) is wide enough to cover the entire range of State activity including employment under the State.

The Supreme Court while upholding the Article 15(3) further observed:

The insertion of clause (3) of Article 15 in relation to women is a recognition of the fact that for centuries, women of this Country have been socially and economically handicapped. As a result they are unable to participate in the socio-economic activities of the nation on a footing of equality. It is in order to eliminate the
socio-economic backwardness of women and to empower them in a manner that would bring about an effective equality between men and women that Article 15(3) is placed in Article 15. Its object is to improve the status of women. An important limb of this concept of gender equality is creating job opportunities for women. To say that under Article 15(3), job opportunities for women cannot be created would be to cut at the very root of the underlying inspiration behind this Article.

Therefore, it is submitted that the main purpose of incorporating Article 15(3) in the Constitution was to remove the socio-economic backwardness of women and to empower them in a manner that would bring effective equality between man and woman. The object of this Article is to strengthen and improve the status of women. Article 15(3) would therefore, include the power to make reservations for women. It is further submitted that Articles 14, 15 and 16, must not be read individually they must be read jointly because they constitute a single code. Reading them individually will nullify the guarantees provided under them. Thus as per ruling in Vijay Kumar’s case the Supreme Court has rightly held, that “Article 15(3) should be read harmoniously with Article 16 to achieve the purpose for which these Articles have been framed.”

It is clear that the reverberations of the Constitutional principle of equality are again heard in Article 16. The banner of equality, the hallmark of our Constitution is foisted in the realm of public employment. This obligation not to discriminate in matters relating to employment or appointment to any office under the State has thus ensured a significant position and status for Indian women. This provision, no doubt, ensures equality of opportunity to women in matters relating to government employment. Women, like the other backward classes of citizens, have been considered weaker sections by the Constitution because of suppression in society for a long period with the result their position has become so weak that they are not in a position to compete with men. Although, they constitute half of the population, they are not adequately represented in the services under the state. A special provision in Article 16 for reservation of appointments or posts in favour of women would have helped to mitigate this situation. Therefore, it is submitted
that in order to render the right to equality of opportunity in govt. employment more meaningful to women a suitable amendment must be carried out to Article 16 to incorporate in it a special provision for reservation of appointment or posts in government service in favour of women. This can be justified under the Article 15(3).

Thus Articles 14, 15 and 16 underline the significance which our Constitution makers attached to the principle of equality. The term “equality” carries a very special significance in matters of public employment. It was with a view to prevent any discrimination in that specific realm that an express provision was incorporated to guarantee equality in that field. Article 14, 15 and 16 taken together are found to supplement each other. Articles 16(1) and 16(2) give effect to the principle of equality before law and to the prohibition of discrimination guaranteed by Article 15(1). The three provisions are the part of the same constitutional code of guarantee. These Articles are so interwoven that one Article can be invoked to construe the scope of other. Article 14 could be considered as genus and Article 15 and 16 as the species. Article 14 guarantees the general right of equality. Article 15 and 16 are instances of the same right in favour of citizens in some specific circumstances.  

Article 19 guarantees the basic freedoms of speech and expression, movement, and peaceable assembly, and the right to for association or unions.

Another important right is the protection of life and personal liberty provided in Article 21, since this right has been very widely interpreted by the Courts and has been held to include the right of privacy and the right of an individual to live with dignity.

Article 21 says that no person shall be deprived of his life or personal liberty except according to procedure established by law. Women workers have a right to lead a dignified and honourable life and liberty. A serious problem with respect to women worker, at place of work is sexual harassment. Sexual harassment at the workplace can seriously affect a person’s job, person well being and can create an intimidating, hostile and humiliating work environment. Sexual harassment is a violation of the Article 21 of the Indian Constitution, which ensures protection of life and personal liberty. It is also the violation of Article 15,
i.e. prohibition of discrimination on the grounds of religion, race, sex or place of birth.

In India there is no specific legislation to protect woman against sexual harassment at the workplace.* However, it is the judiciary which has come to the rescue of the working woman and filled the vacuum by formulating guidelines and norms to govern the behaviour of the employers and all others at the workplace. The SC held sexual harassment to be violative of the fundamental right to equality, right to life and liberty and also the right to practice any profession or to carry out any occupation trade or business.\footnote{In the case of Vishaka v. State of Rajasthan, the learned Judges quoted Articles 14, 15, 19 and 21 of the Constitution of India and emphasized upon the great significance of the International Conventions and norms in the formulations of guidelines to achieve the object of protection of woman from sexual harassment and to make their fundamental rights meaningful. The Court observed that in the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all workplaces, the content of International Convention and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19 (1) (g) and 21 of the Constitution and the safeguards.}

*More recently, Protection of Women against Sexual Harassment at Workplace Bill, 2010 has been prepared. The Bill mandates that women subjected to sexual advances verbal or physical – are within their rights to complain against colleagues. A persons found guilty of sexual harassment is likely to face financial penalties besides loss of employment and, in the case of a graver offence, a police complaint. Officials argued that domestic: workers were left out in view of administrative difficulties in proving sexual harassment due to lack of witnesses and the effectiveness of the local Committee in the accused home. Activists, however slammed maids being left out of the Bill’s loop. The Bill is extremely limited in its scope and it is very condemnable that the government has not taken this marginalized section on board. In order to address complaints related to sexual harassment, the Bill envisages formation of Committees in every organisations with more than 10 workers or a local Committee at the district/sub-district level for organisations with less than 10 employees. In the organised sector, employers will be expected to set up a Complaints Committee, which should include senior officials in the company preferably with experience in social work, legal knowledge or committed to the case of women, besides a member from an NGO. Atleast half the Committee members should be women. The penalty, if harassment is proved, will be levied in view of the victim’s mental suffering and trauma, income and financial status, medical expenses incurred and loss in career opportunity because of the incident. For the first time, any person giving a false complaint or false evidence will be liable to be punished under service rules.
against sexual harassment implicit therein. Any International Convention consistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the Constitutional guarantee. This is implicit from Article 51(c) and the enabling power of Parliament to enact laws for implementing the International Conventions and norms by virtue of Article 253 read with Entry 14 of the union list in seventh schedule of the Constitution and Article 73 is also relevant.”

The Judges placed reliance on some provisions of the convention on the elimination of all forms of discrimination against women for the purpose of construing the nature and ambit of Constitutional guarantee of gender equality in India.

The Supreme Court observed that sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

(a) Physical contact and advances,
(b) Demand or request for sexual favours,
(c) Sexually coloured remarks
(d) Showing pornography
(e) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Where any of these acts is committed in circumstances where under the victim of such conduct has a reasonable apprehension that in relation to the victim’s employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance whom the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection.

The guidelines also cast an obligation on the employer to take adequate steps to prevent sexual harassment. These include notification, publication and circulation of prohibition of sexual harassment. It has been suggested that
complaint mechanism should be created in the employer’s organisation for redress of the complaint made by the victim, adequate to provide, where necessary, a Complaints Committee, a special counselor or other support services, including the maintenance of confidentiality. The committee should be headed by a woman and not less than half of its members should be women. Further to prevent the possibility of any pressure or influence from senior levels, such committee should involve a third party, either a NGO or any other body familiar with the issue of sexual harassment – where sexual harassment occurs as a result of any third party or outsider, the employer will take all steps necessary to assist the affected person in terms of support and preventive action.

Law declared by the Supreme Court in Vishaka’s case was again reiterated in Apparel Export Promotion Council v. A.K. Chopra, by emphasizing that the term sexual harassment as defined in earlier case shows that sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favour and other verbal or physical conduct with sexual overtones whether directly or by implication, particularly when submission to or rejection of such a conduct by the female employee was capable of being used for effecting the employment of the female employee and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile working environment for her. It enlarged the definition of sexual harassment by holding that physical contact is not essential to constitute sexual harassment at workplace. It further observed:

“There is no gainsaying that each incident of sexual harassment at the place of work results in violation of fundamental right to gender equality and the right to life and liberty – the two most precious fundamental rights guaranteed by the Constitution of India.

The issue of sexual harassment has assumed larger dimensions with the decision of Supreme Court in Chairman Railway Board and Others v. Mrs. Chandrima Das and others wherein the employer was vicariously held liable to compensate the victim of a gang rape who happened to be a stranger and a foreigner, committed by its employees within its premises having for reaching
implications. Thus, if a woman employee or even a stranger is subject to acts of sexual harassment of grave nature wherein the offender is another employee, the prospect of the employer being held vicariously liable for the acts of his servants committed on or within his premises appears to be real and opening the eyes of employers. Likewise in the wake of judgment delivered by the Andhra Pradesh High Court in *K.S. Triveni and Others v. Union of India and Others*, following Madras High Court, striking down of Sec. 66(1)(b) of Factories Act, 1948 as unconstitutional which prohibit the employment of women in night shifts, the issue of sexual harassment assumes all the more importance. In both the cases, while upholding the contention of the women’s force that woman should also be permitted to work in night shifts, the Court had issued elaborate guidelines in furtherance to the Vishaka’s directives, to be followed by employers when women are being permitted to work in night shifts, the chances of sexual harassment would be heightened further against which the employer should ever remain vigilant.

In this background, the union cabinet decided to lift the ban on women working in night shifts between 7 p.m. to 6 a.m. in factories by ratifying the protocol of 1990 to the ILO Night work (Women) Convention and amending the Factories Act, 1948. The amendment made in 2005 allowing women to work between 10 p.m. to 6 a.m. will benefit those working in special economic zones, textile and IT sector (specially call centers) as it includes a rider that these timings shall be allowed only if the employer ensures safety.

The Apex Court has ever remained vigilant of the issue of sexual harassment and from time to time dealt with cases of sexual violence more sternly. Again in *State of Punjab v. Ramdev Singh*, it was held that “sexual violence apart from being a dehumanizing act is an unlawful intrusion on the right of privacy and sanctity of a female. It is serious blow to her supreme honour and offends her self-esteem and dignity. It degrades and humiliates the victim and more so where the victim is a helpless innocent child or a minor.

Article 23 guarantees right against exploitation. This Article provides that traffic in human beings (including women) and beggar and other similar form of
forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

It reveals from a critical analysis of various reported cases that the higher judiciary of the country has played a dynamic role in upholding the human right of women enshrined in the Constitution of India and as declared in several international instruments on human rights. It has been bold enough to lay down law on this sensitive issue.49

2. **Directive Principles of State Policy**

As far as part IV of the Constitution dealing with ‘Directive Principles of State Policy’ is concerned, there are a number of directives which show concern for women and children in order to ensure equal justice. As per the constitutional directives the State is under an obligation to promote the welfare of the people especially women and children by securing and protecting as effectively as possible the social order in which justice social economic and political shall pervade all the institution of life (Article 38).

Article 39, by virtue of clause (a) further casts on obligation upon the State to direct its policy towards securing to all the citizens including men and women equally, right to adequate means of livelihood.

Equal pay for equal work is one such directive principle, enshrined in Article 39(d), which provides that the State shall direct its policy towards securing that there is equal pay for equal work for both men and women. The fundamental rights relevant to Article 39(d) are Articles 14 and 16, which pertain to equal protection of laws and equality in matters of public employment respectively.

The principle of ‘equal pay for equal work’ has been widely discussed by the Apex Court in various decisions. Initially, the Supreme Court had expressly de-recognised the principle from falling within the ambit of the fundamental right to equality. The position remained the same for almost two decades, and it was only in 1981 that the principle was recognised as a fundamental right.50

*In Kishori Mohanlal Bakshi v. Union of India,*51 the first case before the Supreme Court wherein the concept of equal pay for equal work was discussed, the question before the Court was whether discrimination in pay scales between class I and class II Income Tax Officers, inasmuch as they did the same work, was
violative of the Right to Equality. A six judge Bench of the Apex Court held that the doctrine of equal pay for equal work was an abstract one and had no relation to the right to equality guaranteed under 14.

It is submitted that though the Court may have been justified in denying equal pay for equal work was an abstract doctrine, having no relation to Article 14. It is submitted that the right to equal remuneration for work of equal value must be considered one of the most important fundamental rights, keeping in mind the social conditions existing in the country. By not recognising the same as a fundamental right, the Court had left too much scope for exploitation of the unemployed masses, especially women and casual labourers, at the hands of employers.

In Randhir Singh v. Union of India, a writ petition filed under Article 32 of the Constitution, the petitioner, a Driver-Constable in the Delhi Police Force prayed that his pay scale should at least be the same as the scale of others drivers in the service of the Delhi Administration. The petitioner submitted that he discharged the same duties as the rest of the drivers, and complained that there was no reason to discriminate against him and other Driver-Constables merely because they were described as ‘Constables’. For the respondents, it was contended that the petitioner was “no more and no less” than a constable of the Delhi Police Force, and that there was no such category of Drivers as the Delhi Police Force. The Court, upon consideration of the nature of service of the petitioner, held that it was clear that the petitioner had appointed as a Driver in the Delhi Police Force.

It was further contented on behalf of the respondent, placing reliance upon Kishori Mohanlal Bakshi case, that the principle of equal pay for equal work was an abstract doctrine which had nothing to do with Article 14. However, the Court distinguish between the facts of the Kishori Mohanlal Bakshi case and the instant case and held that the principle was “not an abstract doctrine,” but one of substance.” The Court observed that the decision could not be of any assistance in the instant case, as what was decided there was that there could be different scales of pay for different grades of a service.” It was further observed that the principle would be an abstract doctrine only if sought to be applied in such circumstances.
Chinnappa Reddy J. Speaking for the Court pointed out that “equal pay for equal work for both men and women means equal pay for equal work for everyone as between the sexes.” He was of the view that equality clause of the Constitution would be meaningful to the vast majority of the people only if equal pay is given for equal work, otherwise it will lead to unrest impelling peace and harmony of the society. The Court removed the misconception that the principle of “equal pay for equal work” is an abstract doctrine and added a new dimension to the service jurisprudence but the fact remains that women are still paid unequal scales of pay and the principle of “equal pay for equal work” remains an ideal.

The ruling in Randhir Singh’s case has been followed and strengthened by the Supreme Court in a catena of cases. The Supreme Court has emphasised in all those cases that Article 39(d) and like other provisions in the Directive principles are “conscience of our Constitution.” They are rooted in social justice. They were intended to bring about socio-economic transformation in our society.

Clause (e) again enjoins upon the State to direct its policy in such a manner that health and strength of workers including definitely women and children are not abused and that they are not compelled to enter occupations and avocations unsuitable for to health, age and strength.

Article 42 directs the State to make provisions for securing just and humane conditions of work and for maternity relief. In order to give effect to this directive the state has passed the Maternity Benefit Act 1961.

Article 43 provides that the State shall endeavour to secure to all workers, both men and women, a living wage and a decent standard of life. Another very important Article of the Directive Principles of State Policy aims at ending the regime of personal and regional laws: “the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of the India.”

Article 46 directs the State to promote with special care the educational and economic interests of the weaker sections of the people. It is regarded to aim at
improving the employment opportunities and conditions, *inter-alia*, of the working women.

In this context it will not be out of place to make a mention of Article 37 of the Constitution which lays down in clear terms that though the provisions contained part IV shall not be enforced by the Court but the principles laid down therein would nevertheless be fundamental in the governance of the country and it shall be the duty of the state to apply these principles.

A new part (Part IV-A) was added to the Constitution in 1976 lying dawn ‘Fundamental Duties for the Citizens. One of such fundamental duties is to denounce practices derogatory of women. Though there is no mention in the Constitution as to which are the practices derogatory of the dignity of the women but definitely the practices like sati, pardha system, dowry etc. are some of the examples of the practices derogatory of the dignity of women.

In order to empower the women further the Constitution of India by amendment 73rd and 74th provides for reservation of seats for women in Panchayats and Local Bodies. Inclusion of the provision pertaining to reservation of women in Panchayats and Local Bodies is an indicator of the commitment of the state to provide political justice to its people as envisaged in the preamble. Further a move is on for providing similar reservation of seats for women is State Legislature and Parliament.

The foregoing discussion reveals that socio-economic justice of our country can be achieved only by providing equality to women along with men in all fields and also by giving special protection to them in certain cases. The Constitution of India has given special attention to the needs of women to enable them to exercise their rights on an equal footing with men and participate in national development. It also aims at creation of an entirely new social order where all citizens are given equal opportunities for growth and development and where no discrimination takes place on the basis of race, religion, sex etc.

The founding fathers of our Constitution granted freedom, liberty and equality to women but they were also pragmatic realists and knew that misuse and exploitation of these liberal principles would frustrate their aim and purpose. As such, they read in freedom for women a need for protection while prohibiting
injustice of discrimination on the basis of sex which victimised women. They could also foresee the justice of discrimination when it protected the essential interests of women. The founding fathers also expressed the fear that discrimination will continue even after enacting Article 14, which provides equality before law and equal protection of law. They, therefore, prohibited discrimination on the basis of sex etc. by providing Article 15(1).53

The Framers were also conscious of the fact that the pitiable condition of Indian women cannot be improved by only prohibiting discrimination on the ground of sex. It can be improved by giving special protection in the form of discrimination to the women. Thus they provided Article 15(3), which empowers the state to make special laws in favour of women. Thus, special care has been taken to provide socio-economic justice to women. The State is under an obligation to promote the welfare of the people including women by securing and promoting as effectively as it may a social order in which justice, social, economic and political shall pervade all the institutions of national life.54

The Indian Judiciary to a certain extent has taken lead in securing socio-economic justice to women. An analysis of the decided cases reveals that there is a new trend in the judiciary to interpret laws so as to provide better protection to women in respect of their rights. The creative thinking that is evident in cases like Muthama and Nargesh Meerza is a good sign of judicial activism. The Court rightly maintained that women are the participants in the mainstream and deserve equal treatment. Old laws making women’s biology as a basis of segregation are unreasonable and the Supreme Court has held such laws unconstitutional. The Supreme Court has interestingly maintained recently that giving preference to women in jobs was only an affirmative action and need not be deemed as reservation. The judiciary is playing a creative role in harmonizing and balancing the rights and interests of men vis-à-vis women.

Women are suffering from problem of sexual harassment at work place. The judgment of the Supreme Court in Vishaka case is no doubt a step in the right direction. So, the authority should implement the measures strictly described by the Court in Vishaka’s case. State Government should enact effective legislation to check the problem of harassment.
The doctrine of “equal pay for equal work” for men and women which is a part of Directive Principles of State Policy has been read in Articles 14 and 16 and made enforceable in the Courts of law. It is no more an abstract doctrine and is considered as the constitutional goal capable of attainment through constitutional remedies. Though the women are physically weak in comparison to men. Yet the Supreme Court has condemned the discrimination on the basis of sex and has given new interpretation to principle of equal pay for equal work. It has refused to consider the quantum of physical strength of women, a standard for evaluation of work and pay.

Punjab and Haryana High Court in Shamsher Singh’s case has rightly said that Articles 14, 15 and 16 constitute a single code. Article 14 is said to be the genus and Articles 15 and 16 the species. Article 15(3) is to be deemed as a special provision in the nature of proviso qualifying the general guarantees of Articles 14, 15(1), 15(2), 16(1) and 16(2). But at the same time only such provisions in favour of women can be made under Article 15(3) which are reasonable and do not render illusory the constitutional guarantee of Article 16(2). Clause (3) of Article 15 has come for criticism a good many times but the legislature and judiciary have always responded positively by upholding the provision. The judiciary has recognised the sex-based discrimination constitutionally valid on the basis of peculiar conditions of women if it protects the interest of women.

Article 16, which ensures equality of opportunity in public employment is meaningless until women compete with men. Women, who are considered by the Constitution to belong to the weaker section of the society are not in a position to compete effectively with men because of their weak position. Therefore, an amendment is suggested to be made to Article 16 to enable the state to make reservation of posts and appointment in government service for women on the lives of Article 16(4) which would go a long way in helping women to complete effectively with men for posts in government services.

A new culture of equality of men and women in all walk of life must set the tone to assume dignity and justice for which economic security and equal opportunities are essential. However, the most sacred object, “the Constitutional
mission of equalization,” could not be achieved fully due to general ignorance of law, indifferent and hostile attitudes of law-enforcing agencies, economic backwardness and lack of community support for women seeking justice against discrimination, and disregard for the socioeconomic basis of the laws.

Indian women do not suffer from legal disparities but they suffer from practical disparities. To bring about social change, a change in attitude is very important. Once this is achieved, Indian society will be receptive to ideas that accommodate both modernity and tradition.

Women must understand what their rights are and fight back if they are denied opportunities to work. Indeed, they must fight back whenever they feel they have been discriminated against. To become equals of men, they must have economic independence – not just a few women, but many.55

Until the status of women in the family is changed-unless women strive to redefine their role within the family and revolt against traditions and customs which contribute to their sufferings – no amount of Constitutional guarantee can given them equality with men.

Many new laws have been passed and the old ones have been amended to help women, but the government alone cannot do anything if the society does not support them. Gender issues are emerging strongly, but these need to be given proper direction and understood in the right perspective for women to actually achieve a better position at home, at work and in our society. Blind faith is not enough.
REFERENCES


3. Ibid.

4. Supra note 1, page 83, 84.


7. Supra note 1, p. 87.


9. AIR 1981 SC 1829

10. AIR 1987 SC 1575

11. AIR 1969, Oris, 237.

12. AIR, 1951, Cal. 563.


15. AIR 1952 Calcutta 825-830.


18. AIR 1965 Ker. 108.

19. AIR 1966 SC 942

20. AIR 1972 Punjab and Haryana 117.

21. AIR 1979 SC, 1868


24. AIR 1987 SC 1575
25. 1985 II LLJ 133
27. 1991 (2) KLT 58.
28. 1993 (II) LLJ 182.
29. 1992 (I) LLJ 127.
30. 1993 (66) 1 LLJ 793.
31. 1994-I LLJ 488.
32. AIR 1970 P and H 372
33. AIR 1976 Del. 302.
34. Supra note, 22, pp. 122-124
35. 1985 Lab I.C. 33
36. AIR 1954 SC 321
37. AIR 1979 SSC 1869
38. AIR 1981 SC 1829.
39. AIR 1995 SC 1648
42. (1979) 6 SCC 241.
43. AIR 1999 SC 625
44. AIR 2000 SC 988.
45. 2002 Lab IC AP 1714
48. AIR 2004 SC 1290
51. AIR 1962 SC 1139
52. AIR 1982 SC 879
54. Article 38(1) of the Constitution of India.