CHAPTER - III

Constitutional Frame-Work Of Protective Discrimination In Respect Of Women Workers
The role of women, which constitute half of the population, has greatly changed after industrialisation 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 un-organised sectors of employment.

Although, one third of the labour at present is constituted by women\textsuperscript{1}, yet unfortunately their working and service conditions are far from satisfactory. They are discriminated in the matters of employment, service conditions and in the payment of wages. 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 discrimi-
nation 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 frame-work 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.

I. The constitutional Policy:

The framers of the constitution were aware of the socio-economic problems of women in India. They knew that gender equality was necessary for national development. They also bestowed sufficient thought on the position of women in the Indian social order. This all is evident from the provisions of the constitution, which have not only ensured equality between men and women but also provided special safe-guards in favour of women. 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, social, 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. Equal-
ity 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 commitment imposes 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.

In order to eliminate their exploitation and inequality and to provide opportunities for the exercise of human rights and claims, it was necessary to promote with special care educational and economic interests of the women with the above aim in view. For achieving the socio-economic emancipation of women, the constitution has formulated the following principles. First, the discrimination is prohibited on the ground of sex and every individual is treated equally secondly, it empowers the state to make special provisions for women with a view
to enable it to take special care of women in the light of their peculiar physiological, psychological and social position. And, thirdly, the Directive Principles give special directions to the state to do certain things in relation to women.

These principles which constitute constitutional philosophy are incorporated in the constitution in the form of Fundamental Rights and Directive Principles. The Fundamental Rights and Directive Principles are the instruments for attaining our national objectives of justice, liberty and equality. The Fundamental Rights and Directive Principles together concertize the vision of a new Indian socio-political order. While the Fundamental Rights are justiciable and enforceable in courts of law, the Directive Principles are non-justiciable and non-enforceable in courts. But directive Principles are, nevertheless, Fundamental in the governance of the country and the state is charged with a duty to apply these principles in making laws.

II. Protective Discrimination and Fundamental Rights

The constitution of India guarantees Fundamental Rights to people including women under various provisions contained in Part IIIrd of the constitution. The relevant provisions concerning women are as follows:

Article 14 provides that the state shall not deny to any person (including women) equality before the law or the equal protection of the laws within the territory of India.
Article 15(1) provides that the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

Article 15(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 regard to:

a) access to shops, public restaurants, hotels and places of public entertainments; 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) provides that nothing in this article shall prevent the state from making any special provision for women and children.

Article 16(1) provides equality of opportunity in matters of public employment. Whileas article 16(2) says that no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discrimination against in respect of, any employment or office under the state.

Article 23 guarantees right against exploitation. This Article provides that traffic in human beings (including women) and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.
Constitutional commitment recognizing right to equality has been explicitly laid down under Article 14 of the constitution of India which provides that the state shall not deny to any person equality before the law or the equal protection of law. This provision 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.

Article 15(1) provides that the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. The phrase "equality before law" contained in Article 14 has been elaborated under Article 15(1) of the constitution. 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\textsuperscript{9}. It was with a view to forestalling such an eventuality that the clause (1) was incorporated in Article 15 of the constitution.

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 compensatory 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 could compete with men in various fields. The provi-
sion has been used to enact special laws for the protection of
women workers in factories, mines, plantations and establish-
ments. 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.

The reverberations of the constitutional principle of
equality is 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 govern-
ment employment. Women, like the other backward classes of
citizens, have been considered weaker sections by the constitu-
tion 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 government 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 appointments or posts in government service in favour of women. This can be justified under 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. Articles 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 Articles 15 and 16 as the species. Article 14 guarantees the general right of equality. Articles 15 and 16 are instances of the same right in favour of citizens in some specific circumstances.

III. Directive Principles and Protective Discrimination:

Directive principles of state policy are contained in Part IVth of the constitution. Those Directive principles, which are concerning women and have a special bearing on their status are given as follows:

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Article 39(a) directs the state to frame its policy for ensuring that the citizens, men and women equally have the right to an adequate means of livelihood;

Article 39(d) directs the state to ensure that there is an equal pay for equal work for both men and women;

Article 39(e) directs the state to ensure that the health and strength of workers, men and women and the tender age of children are not abused;

Article 42 directs the state to make provision for ensuring just and humane conditions of work and maternity relief;

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, and

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.

These Article at a glance show that the Framers of the Constitution were alive to the fact that women required not only equality with men but some special protection. Various labour laws have been passed on the above lines protecting the interests of women. These labour legislations provide for prohibition of night work, prohibition of work near dangerous
machinery, prohibition on carrying of heavy loads, creche facility, maternity relief, equal pay for equal work and other welfare measures\textsuperscript{12}.

Although on the one hand the constitution prohibits the state from taking any sex based discriminatory action, yet on the other hand it imposes a positive duty on the state to strive to secure equality and guarantees equal opportunities of employment and equal pay for equal work. Despite these constitutional provisions and guarantees, in practice our women folk remain backward and are discriminated against in every sphere of life. When the kind of work is different then it does not matter. However, if men are given a differential treatment if the work is of same nature then both should be paid equally and without any discrimination. Factories discriminate against women by invariably referring to them as unskilled labourers. Despite the constitutional guarantee of equal pay for equal work, it is a matter of regret that we have not been able to achieve this goal.

In addition to the rights and privileges provided to women under Fundamental Rights and Directive Principles, a new chapter IV A dealing with Fundamental Duties has been incorporated in the constitution. In this chapter one of the duties imposed on every citizen is to renounce practices derogatory to the dignity of women\textsuperscript{13}.
Iv. Judicial Response and its Impact on Protective Discrimination:

The right to equality has been the main theme of many legal battles fought necessarily for quashing unequal provisions against women. The Supreme Court and the High Courts have laid down enough law concerning equality of men and women and added much to the constitutional jurisprudence of the country.

A) Article 14:

Article 14 of the constitution guarantees equality before the law and equal protection under the law. It forbids state discrimination and does not apply to private persons. It has been interpreted as a prohibition against unreasonable classification. The equality guarantee does not require that the law should treat all alike. It allows the state to make classifications. However, this power of classification must be exercised on reasonable grounds.

There is a striking similarity between Article 14 and the Fifth and Fourteenth Amendments to the United States constitution, in that both countries confer equal protection of the laws. In various court decisions in India, the equal protection in Article 14 is interpreted as providing the same protection as the Fourteenth Amendment to the United States constitution. Consequently, United States Supreme court decisions are accepted by the Indian Courts for the interpretation of Article 14.
However, the similarity ends there. Unlike the Fourteenth Amendment to the United States constitution, Article 14 of the Indian constitution does not provide for due process of law.\textsuperscript{13A}

\textbf{B) Article 15:}

Article 15 guarantees to citizens that the State shall not discriminate on the basis of sex. While Article 14 protects all residents, Article 15 protects the citizens only. To take action under Article 15, two conditions must be satisfied. First, proof must be offered that an unwarranted differentiation has been made by the State, and, secondly, the differentiation adversely affects the plaintiff. Article 15 by expressing in a particular manner the general principle of equality enshrined in Article 14, became the pivot round which the whole scheme of equality between men and women revolves. The Article read in the light of marginal note suggests that it forbids all kinds of discriminations, for or against, if based on ground of sex. The guarantee against sex discrimination extends to all legislative, executive and judicial actions of the government. A number of debates have arisen in the case law regarding the meaning of discrimination within Article 15.

In \textit{Kathi Raning Rawat v. State of Saurashtra}\textsuperscript{14}, Patanjali Shastri, J. Explained it as follows:

\textit{The expression 'discriminate against' according to Oxford dictionary means, 'to make an adverse distinction with regard to', distinguish unfavourably from others'. Discrimination thus involves an element of unfavourable bias and it is in that sense that the expression has to be understood}\textsuperscript{15}
The observations of Calcutta High Court in *Mahadeb Jiew v B.B.Sen*\textsuperscript{16} were more elaborate and exhaustive:

Discrimination is comparative in its connotation. Discrimination on the ground of sex alone must mean that one sex is discriminated as against the other. Discrimination is double edged. To discriminate against one is to discriminate in favour of the other, but inherent in the very notion of every discrimination is a measure of comparison. There cannot be any discrimination 'against' without a resulting and corresponding discrimination in favour of someone else which would be commonly known as preference for that someone else. Discrimination and preference are twin and inseparable ideas.\textsuperscript{17}

It is, humbly submitted that this need not necessarily be universally true despite the fact that in majority of cases discrimination would be comparable in its connotation and double edged. For instance, a law providing for maternity relief should remain one-sided. It is founded on the special obligation which only women are to carry out. In this case discrimination, if any operates only one-sidedly. Another instance will be a law protecting the modesty of women folk. It will be absurd and ridiculous to say that this will discriminate against men by not protecting their modesty\textsuperscript{18}.

Article 15(3), which allows the state to make special provisions for women, has been interpreted as authorising 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*\textsuperscript{19}. 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.\textsuperscript{20}
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. A noted constitutional expert Mr. H. M. Seervai also supports the same view.

The above interpretation was followed by Bose, J in Anjali Roy v State of West Bengal 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). 23.

Therefore, the meaning of Article 15(3) of the constitu-
tion 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\textsuperscript{24}, 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*\textsuperscript{25}.

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 can not 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\textsuperscript{26}.

Therefore, according to the court, Article 15(3) is an exception to Article 15(1) so far as provisions for the 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 \textit{Yousuf Abdul Aziz v. State of Bombay}\textsuperscript{27} seems to give the exception an unbridled scope and operation. The Supreme court remarked;

\textit{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}\textsuperscript{28}.

It is submitted with 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 amelioration 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 the High Courts that special provision for women means 'in favour of women' is the correct view. Moreover, in \textit{Balaji v State of
Mysore the Supreme Court, while considering clause (4) of Article 15 stated that the clause cannot be so interpreted as to make clause (1) wholly nugatory. This also shows that clause (3) cannot be given unbridled scope and operation.

While discussing Article 15, another point which has come across the courts is the interpretation of the sentence 'on the grounds only of sex'. As is clear Article 15(1) prohibits discrimination "... on the grounds only of religion, race, caste, sex, place of birth or any of them". It has been interpreted as requiring discrimination "only" on the prohibited grounds. Calcutta high Court in Anjali Roy v State of West Bengal observed:

The discrimination which is forbidden is only such discrimination as is based solely on the ground that a person belongs to a particular place or is of a particular sex and on no other ground. A discrimination based on one or more of these grounds and also on other grounds is not hit by the Article.

According to this interpretation, if discrimination is found to exist on grounds other than those enumerated, then there is no violation of Article 15(1). But discrimination on the basis of sex, coupled with discrimination on other non-enumerated grounds, would not also constitute a violation. This discrimination which is referable to sex only incidentally or in a subsidiary way will not be unconstitutional. For example, a discrimination may be based on sex and physical or
intellectual fitness for some work.

The focus on "the grounds only of sex" has been used primarily to uphold legislation that provides preferential treatment for women. In attempting to uphold this legislation the courts have searched for some other grounds on which the legislative distinction is based. They have found, for example, that distinctions based also on the "backward social position" of women, on the "financial need of wives" for support, and on "public morality" constitute grounds other than those stated in Article 15(1)\(^{32}\). The intention of the courts in their inquiry into "on the grounds only of sex" is laudable. They can in some respects be seen to be concerned with promoting the social, economic and political equality of women. As such, the courts do not strike down legislation designed to benefit women by calling it discrimination on the basis of sex. However, narrow focus on "the grounds only of sex" is sometimes dangerous. Without an inquiry into disadvantage and substantive inequalities, a search for other grounds could even, be used to uphold legislation that is detrimental to the interests of women. For example, legislation prohibiting women for voting could be found to be based not only on sex, but also on the "backward social position" of women.

The Delhi High Court, in Walter Alfred Baid v Union of India\(^{33}\) although dealing primarily with a challenge under Article 16(2), recognised some of the problems implicit in this approach to "only on the grounds of sex". The court observed:
"... it is difficult to accept the position that a discrimination based on sex is nevertheless not a discrimination based on sex 'alone' because it is based on other considerations even though these other considerations have their genesis in the sex itself. It virtually amounts to saying that woman was being discriminated against...... not because she belonged to a particular sex but because of what the sex implied......"34.

The court further observed:

"Sex and what it implies cannot be severed. Considerations which have their genesis in sex and arise out of it would not save such a discrimination. What would save such a discrimination is any ground or reason independently of sex such as socio-economic conditions, marital status and other qualifying conditions such as age, background, health, academic accomplishments, etc"35.

The approach in Bald's Case recognised the connection between sex and the social implications of sex, and thus criticised the narrow doctrinal approach to "only on the ground of sex". However, the approach is not unproblematic. The decision is rooted firmly within a formal model of equality, and the result of the case was to strike down a recruitment rule that had been advantageous for women36.
C) Article 16:

Article 16 of the constitution ensures equality of opportunity for all citizens including women in matters relating to employment or appointment to any office under the state and it reinforces this idea when it states further that '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'. 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 calibre should be promoted.

The Kunlhipacky'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 Kunlhipacky, the court would probably uphold 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.
(1) Restrictions on Women's Employment:

Many rules, regulations and practices which impose restrictions on women's employment have been found to violate the equality 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 that the Rule should be abrogated in the interest of social justice.

In criticising 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 un-married women or widows. If it is the pres-*
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 un-married 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 Government 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 government 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.
Again, in *Radha Charan Patnaik v State of Orissa* the issue was whether a Government Rule disqualifying married women from being selected as district judges violates Article 16. The petitioner challenged Rule 6 which specified:

> No married women shall be entitled to be appointed to the judicial service and where a women appointed to the services subsequently marries, the State Government may, if the maintenance of the service so requires, call upon her to resign.

The defendants argued that women were excluded from posts because marriage creates disabilities and obligations which adversely affect the efficiency in government service. The court, however, held that while the maintenance of efficiency must be considered, disqualification of married women from eligibility amounted to sex discrimination violating rights guaranteed in Article 16. This decision rejects the rule which would disqualify all married women for government jobs.

In *Raghubans Saudagar Singh v State of Punjab* 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 \[46\].

The court further observed that the government 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 utility.

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. Kiren Bedi \[47\] has set an example for the same.

Another important case which highlights discrimination against women in government employment is *C.B. Muthama v Union of India* \[48\]. The petitioner, a successful candidate in the Indian Foreign Service, was refused appointment because she was married. The rules \[49\] of the Indian Foreign Service, prohibiting the appointment of married women and requiring that un-married women in the employment of the Foreign Service obtain permission before marrying were challenged. Justice Krishna Iyer, speaking for the court held that the rules were utterly discriminatory against married women and hence violative of Article 16 of the constitution. He advised the Government to remove sex discrimination in service rules without waiting for writ.
petitions. While dismissing the writ petition after an assurance given by the Government that the rule will be deleted, the Supreme court observed:

If a women member shall obtain the permission of government before she marries, the same risk is run by government if a male member contracts a marriage. If the family and domestic commitments of a women member of the service is unlikely to come in the way of efficient discharging of duties, a similar situation may well arise in the case of a male member. In these days of nuclear families, intercontinental marriages and unconventional behaviour, one fails to understand the naked bias against the gentler of the species.

Justice Krishna Iyer, while answering a question that why a married women should not be allowed to stand on the same footing as a married man, observed:

This misogynous posture is a hangover of the masculine culture of manacling the weaker sex forgetting how our struggle for national freedom was also a battle against men's thraldom.

He further observed:

We do not mean to universalise or dogmatise that men and woman are equal in all occupations and all situations and do not exclude the need to pragmatise
where the requirements of particular employment, the sensitiveness or the peculiarity of societal sectors or the handicaps of either sex may compel selectivity. But save where the differentiation is demonstrable the rule of equality may govern.\textsuperscript{52}

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.

The Muthamma judgment also stressed the point that men and women can not be treated equally in all occupations and situations. A particular job may require a particular sex because of the sensitiveness of sex, or the peculiarities of social factors or handicaps of either sex. In these particular cases, the rule of equality must not be enforced blindly. Even the constitution has recognised the difference between the sexes. It provides for special laws in favour of women. The reference to women as "the gentler of the species" suggests that the court does see women as different, as weaker and as in need of protection.

Therefore, such a rule which requires to seek permission from employer to resign at the time of marriage is arbitrary and unreasonable and is a clear violation of basic human
rights. It leaves to the subjective satisfaction of the employer grant or refusal of permission to marry, which is against natural course of human behaviour. The whole bias is against women on the ground of marriage because an un-married women is not required to resign.

It is, 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 Nergesh Meerza\textsuperscript{53}, which also involved the issue of equality between men and women. In this case, the court considered the validity of service regulations governing the air hostesses in Air India and the Indian Airlines. According to the Regulations 46 and 47, an air hostess in Air India would be retired on the following contingencies: (1) on attaining the age of 35 years; (2) on marriage if it took place within four years of service; and (3) on first pregnancy. An air hostess had to retire at the age of 35 years whereas a male steward could work upto 58 years of age. An air hostess, however, could be continued by the Managing Director upto 45 years of age.

Regarding the retiring age of the air hostesses, it was argued that a young and attractive air hostess, is able to cope up with difficult and awkward situations more easily than an older person. The court rejected this argument on the ground...
that it was based on pure speculation and artificial understanding of the qualities of the fair sex. The court also held that the Regulation conferred a wide and uncontrolled discretion on the Managing Director to extend the retiring age by ten years and hence violated Article 14 of the constitution on the ground of excessive delegation of powers. Thus this Regulation was struck down. The effect of this striking down was that an air hostess would retire at the age of 45 years if found medically fit. The court clarified that it is open to the management to frame new rules in this regard.

On the question of bar of marriage within first four years of employment, it was argued that such a bar doubtless constituted "an outrage on the dignity of the fair sex" and is per se unconstitutional. The Supreme court did not agree with this argument and upheld the Regulation. Fazal Ali, J, stated:

_We do not think that the provisions suffer from any constitutional infirmity. According to the Regulations, an A.H. (Air Hostess) starts her career between the age of 19 to 26 years .... Thus, the regulation permits an A.H to marry at the age of 23 if she has joined the service at the age of 19 which is by all standards a very sound and salutary provision. Apart from improving the health of the employee, it helps a good deal in the promotion and boosting up of our family planning programme. Secondly, if a woman marries near about the age of 20 to 23 years, she becomes fully mature and there is_
every chance of such a marriage proving a success, all things being equal. Thirdly, it has been rightly pointed out to us by the corporation that if the bar of marriage within four years of service is removed then corporation will have to incur huge expenditure in recruiting additional A.H's either on a temporary or on an adhoc basis to replace the working A.H's if they conceive and any period short of four years would be too little for the corporation to phase out such an ambitious plan\textsuperscript{54}.

The court concluded that the treatment of the "fair sex" in this Regulation is neither arbitrary nor unreasonable, and thus does not violate Article 14.

It is submitted that any discrimination against women in the name of family planning ought to be avoided. If the family planning programme could be justification for a bar on the air hostesses getting married within four years, it should equally ban the male employees from getting married within four years\textsuperscript{55}. Also if a bar like this could be justified on the ground of huge expenditure which the corporation is required to spend during the maternity leave of the working hostesses, then it could apply to all women employments in general. As under Article 42 it is the duty of every employer to grant maternity benefits to women, therefore, the approach of the court by drawing justification on the basis of huge expenditure on granting maternity relief is wholly untenable and is clearly violative of Article 14, 15(1), 15(3), 16(2) and 42 of the
constitution. On the contrary whenever the court feels that the state has committed breach of duty by acting, enacting laws or framing rules, regulations and bye laws contrary to the Directive Principles of State Policy, the court could categorically direct the State not to act, enact or frame such rules. Rather it is the duty of the court, that if the state commits a breach of its duty by acting contrary to the Directive Principles, to prevent it from doing so. Thus, it is submitted that neither family planning nor the costs of maternity leave can be arguments to uphold the impugned order.

The court then examined the regulation which terminated the services of the air hostess on first pregnancy. The court observed that it amounts to compelling the poor air hostess not to have any children and thus interferes with and diverts the ordinary course of human nature. According to court, such a condition was unreasonable and arbitrary which shook the conscience of the court. The corporation argued that the pregnancy led to a number of complications and to physical disabilities which might obstruct the efficient discharge of her duties. What the corporation must have meant was that the physical charms of an air hostess were diminished on her pregnancy. Acting sharply to such a suggestion, the court remarked:

*It seems to us that the termination of the services of an air hostess under such circumstances is not only callous and cruel but an open insult to Indian womanhood - the most sacrosanct and cherished institution. We are constrained to observe that such a*
course of action is extremely detestable and abhorrent to the notions of civilised society. Apart from being grossly unethical it smacks of deep rooted sense of utter selfishness, at the cost of all human values. Such a provision, therefore, is not only unreasonable and arbitrary but contains the quality of unfairness and exhibits naked despotism and is, therefore, clearly violative of Article 14 of the constitution\textsuperscript{57}.

It is submitted 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, \textit{Lena Khan v Union of India}\textsuperscript{58}, 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 submissions 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 *Maya Devi v State of Maharashtra*\(^5\), 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\(^6\).

The Court emphasised 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. In order to achieve economic independence women must not, be treated differently than men. 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 is a weaker class but that is all the more reason why she needs protection. Is it protection that a woman seeks 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.

The anxiety of the judiciary to protect the interest of women workers against sex discrimination and arbitrary action of the management is also evident from the decision in Omana Oommen v F.A.C.T. Ltd. Certain women operators were denied the opportunity to write an internal examination on the basis of restrictions imposed on the working hours of women by 5.66 of the Factories Act. The petitioners contended that they would have been accommodated in the day shift in which there were several male technicians and that women technicians had been absorbed in other divisions of the company. The court held that the refusal to admit women workers for internal examination was entirely on the basis of sex and was violative of Articles 14 and 15.

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 has 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 education 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 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 in eligible for promotion in a predominantly female institution was declared unconstitutional. Delhi High Court agreed with the dissenting opinion in *Shamsher Sing'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*.65

The Court maintains 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 in eligible 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.

The controversy regarding the interpretation of these two Articles was set at rest by Supreme court in a recent decision namely, *Government of A.P. v P.B. Vijay Kumar*66 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 subordinate 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 article 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 manner 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".

**D) Article 39(d):**

Article 39(d) of the constitution enunciates the fundamental principle of "equal pay for equal work", which not only means equal pay for men and women engaged in similar or same work, but also implies that persons holding jobs, with similar duties and responsibilities, should not be treated differently in the matter of pay, merely because they belong to different departments or have different status, such as permanent, temporary or casual. It is a part of the Directive Principles of the state policy and is contained in part IVth of the constitution. Directive Principles of State policy, which were expressly made non-justiciable by Article 37, were declared by the same Article to be fundamental in the governance of the country and duty was cast on the state to apply these principles in making laws. The reason for making these principles non-justiciable was that in their very nature some of them could not be enforced for lack of economic resources and development.

Equal pay for men and women for equal work is a vital subject of great concern to society in general and employees in particular. It is one of the significant Human Rights set out in the Universal Declaration of Human Rights, which the General Assembly of the UNO adopted and proclaimed on 10th December,
1948. The preamble of the constitution of the ILO also recognises the principle of "equal remuneration for work of equal value".

Article 39(d) was intended to secure equality between the sexes in the matter of remuneration. However, the judicial application of the doctrine of "equal pay for equal work" has gone beyond sex discrimination and has extended it to every one i.e. between men and men also. Articles 14 and 16 guarantee the fundamental rights to "equality before the law" and "equality of opportunity" in the matters of public employment, respectively. But in spite of these constitutional provisions the Supreme court of India in *Kishori Mohan Lal Bakshi v Union of India*, held that "equal pay for equal work" is an abstract doctrine and has nothing to do with Article 14.

However, in recent years the Supreme Court played a creative role and enforced some of the directives of part IVth of the constitution as implicit in Fundamental rights guaranteed in Articles 14, 16 and 21. It was in *Randhir Singh v. Union of India* that a three judge bench of the Supreme court read the guarantee of equal pay for equal work in Articles 14 and 16 of the constitution. The Supreme court observed:

*Equal pay for equal work is not a mere demagogic slogan. It is a constitutional goal capable of attainment through constitutional remedies, by enforcement of constitutional rights.*

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 has been followed and strengthened by the Supreme court in a Catena of cases\textsuperscript{75}. The Supreme Court has emphasised in all these 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.

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).

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. Not only this, the constitution also laid down clear guidelines for the future legislators to enact laws for providing 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.

After the commencement of the constitution of India some positive governmental efforts (legislative and executive) have been made to uplift the socio-economic status and position of women. The doctrine of protective discrimination which is the cumulative product of the foresight of the legislators and pragmatic and constructive approach of judiciary expresses constitutionality in our legal system. But its real efficacy lies in its live and dynamic interpretation of the facts and circumstances of individual cases and precedents to co-ordinate the freedom and protection, discrimination and non-discrimination for the welfare of women.

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 Nergesh 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 harmonising and balancing the rights and interests of men vis-a-vis women.

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 the 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 Supreme Court has recently rightly observed that Article 15(3) 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 this socio-economic backwardness of women and to empower them in a manner that would bring about effective equality between man and woman that Article 15(3) is placed in Article 15. Its object is to strengthen and improve the status of women. Making special provisions for women in respect of employment or posts under the state is an integral part of Article 15(3). The power conferred under Article 15(3) is not whittled down in any manner by Article 16. Therefore, 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 lines of Article 16(4) which would go a long way in helping women to compete effectively with men for posts in government services. The observa-
tions of the Supreme Court made in *Indira Sawhney v Union of India*\(^{82}\) regarding reservation are worth consideration over here. The Court observed:

> It can-not also be ignored that the very idea of reservation implies selection of a less meritorious person. At the same time, we recognize that this much cost has to be paid, if the constitutional promise of social justice is to be redeemed\(^ {83}\).

These remarks are qualified by observing that efficiency, competence and merit are not synonymous and that it is undeniable that nature has endowed merit upon members of backward classes as much as it has endowed upon members of other classes. What is required is an opportunity to prove it. It is precisely a lack of opportunity which has led to social backwardness, not merely amongst what are commonly considered as the backward classes, but also amongst women. Reservation, therefore, is one of the constitutionally methods of over-comming this type of backwardness. Such reservation is permissible under Article 15(3)\(^ {84}\).

A new culture of equality of men and women in all walks of life must set the tone to assume dignity and justice for which economic security and equal opportunities are essential. The discrimination gap particularly in the private and unorganised sector largely persists\(^ {85}\). Much remains still to be done to concretise and establish women's equality in details in both individual and social life. Despite many social welfare
legislations, constitutional guarantees and judicial pronouncements, the concept of "equal pay for equal work" is still a distant dream.

However, eradication of discrimination and change of treatment of women cannot be achieved by law alone. The problems of women which are primarily on account of social prejudice and conventional and traditional approach inherent in the system, can be solved only by creating the right public opinion against such conservative and discriminatory approach. Majority of the women being illiterate, ignorant and poor are unaware about their rights and status. They must rise to the occasion and realise their rights and status given to them under the law and must utilise those rights if they have to live as human beings with equality and should play a vital role in the economic development of the country. Trade unions and other social organisations can play an important role by educating women in this regard.
REFERENCES


2. The preamble of the constitution is the introduction of its objectives, ideals and aspirations which it contains.


4. Fundamental Rights are contained in the Part IIIrd of the constitution while as the Directive Principles are contained in the Part IVth.

5. Article 37 of the constitution of India.

6. It empowers the state to make special provisions for the welfare of women and children.

7. Article 16 guarantees equality of opportunity in public employment only.

8. The Supreme Court has held that two conditions must be met to pass this test of reasonable classification. The classification must be founded on an intelligible differentiation which distinguishes persons or things that are grouped together from others left out of the group and that differentiation must have a rational relation to the object sought to be achieved by the statute in question. (see seervai's constitutional law of India, 3rd-d., ed. Bombay, N.M.Tripathi, Private Limited, 1988, P. 292 - 993).


11. Articles 39, 42, 43 and 46 of the constitution of India.


13. Article 51-A(e) of the constitution of India.

13A. The Vth Amendment of the U.S. constitution lays down inter-alia that "no person shall be deprived of his life,
liberty or property, without due process of law". This clause has been the most significant single source of judicial review in the U.S.A. The word 'due' is interpreted as meaning 'just', 'proper' or 'reasonable', according to the judicial view. Therefore, the courts can pronounce whether a law affecting a person's life, liberty or property is reasonable or not. The court may declare a law invalid if it does not accord with its notions of what is just and fair in the circumstances. See Jain, M.P. Indian constitutional Law. Agra, Wadhwa and Co., 1994, P.577.

14. AIR 1952 SC 123.
15. Id. at P.125.
16. AIR 1951 Cal. 563.
17. Id. at P.568.
19. Supra note 16.
20. Id. at P. 568.
22. AIR 1952 Calcutta P.825-830.
23. Id. at P. 830.
25. Id. at P.314.
26. Ibid.
27. AIR 1954 SC 321.
28. Id. at P.322.
29. AIR 1963 SC 649.
30. Supra note 22.
31. Id. at P.829.
33. AIR 1976 Del. 302.

34. Id. at P. 306.

35. Ibid.


37. AIR 1965 Ker. 108.

38. AIR 1966 SC 942.


40. Supra note 38 at P. 944.


42. Id. at P.207

43. AIR 1969 Orissa 237.


45. AIR 1972 Punjab and Haryana 117.

46. Id. at P. 121.

47. Kiran Bedi was the Superintendent of Tihar Central Jail, New Delhi and a very competent and capable police officer; she is famous for introducing jail reforms.

48. AIR 1979 SC 1868.


50. Supra note 48 at P.1869.

51. Id. at P. 1870.

52. Ibid.

53. AIR 1981 SC 1829.

54. Id. at P. 1850.


57. Supra note 53 at P. 1850.

58. AIR 1987 SC 1515.


60. Id. at P. 745.

61. AIR 1991 Ker. 129.

62. Section 66 of the Factories Act Provides that "no women shall be required or allowed to work in any factory except between the hours 6 a.m. and 7 p.m."

63. AIR 1970 P & H 372.

64. Supra note 33.

65. Id. at P. 306.

66. AIR 1995 SC 1648.

67. Id., at P. 1651.

68. Ibid.

69. This is also recognised by all socialist systems of law. For example, see S.59 of the Hungarian code; S.67 of the Bulgarian code; S.40 of the code of German Democratic Republic.


71. AIR 1962 SC 1139.

72. The same was held by Delhi High Court in *Binoy Kumar Mukherjee v Union of India* ILR (1973) 1 Delhi 427 and *Makhan Singh v Union of India* ILR (1975) Delhi 227.

73. Supra note 70.

74. Ibid.

76. Article 38(1) of the Constitution of India.
77. Supra note 48.
78. Supra note 53.
80. Supra note 63.
81. Supra note 66.
82. AIR 1993 SC 477.
83. Ibid.
84. Ibid.
85. The Times of India, New Delhi, December 13, 1994, P.1.