CHAPTER-IV
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CONCEPT OF EQUALITY

In the last chapter an attempt was made to discuss the history and nature of Directive Principles of State Policy in relation to living wage. In the present chapter an attempt is being made to discuss the concept of equality as provided in Articles 14, 15 and 16. The Constitutional right to equality of opportunity in matters of employment, the policy of reservation, remuneration for men and women has been discussed. The judicial attitude with regard to these matters has also been highlighted.

Analysis of the concept of Equality begins by confrontation with defence of Inequality. Debate on merits and demerits of Inequality is endless. It is a tussle between 'Haves' and 'Have-nots' and each side has its ablest advocates.  

The main lines of defence are: Inequality is ordained by nature.

Plato, Aristotle, Burke, Adam Smith, James Stephen and Nietzsche are well known admirers of Inequality. Plato argued that society, by nature, is divided into classes. Hence, the social order should be based upon ranking of people according to their functions. Society would be happy if the ruler rules, the worker works and slave slaves. Aristotle went further and framed a formula 'Equality for equals, inequality for unequals'. Eversince, Aristotle's formula has been a standard objection to egalitarianism. Equality would be welcome if men are equal but they are not equal and can not be made equal. Burke thought that all men have equal right but not to equal things. He did not realise that 'formal equality of rights becomes the decorous drapery for a practical relationship of mastery and subordination. Adam Smith and James Stephen were convinced that real reason behind the indictment of inequality was envy. Adam Smith asserted 'The affluence of the rich excites the indignation of the poor, who are prompted by envy to invade their possessions'. And Stephen said equality is nothing more than a vague expression of envy on the part of those who have not against those who have. Both conveniently ignored that inequality could be a cover for 'greed' of the rich. Because the rich are greedy, the poor are envious. Envy seems to be a natural consequence of greed. Nietzsche hated equality as
itself. Civilization and culture depend upon it. The innate inequality between persons creates inequality of ranks, conditions and fortunes in the society.

The advocates of equality are of the view that inequality creates a jungle of vested interests and hence is an eternal source of conflicts. The main critiques are: Protagoras, Rousseau, Kant, Mathew Aronld, John Stuart Mill and Marx

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2 Protagoras says that man is the measure of all things. He rejects inequality. Rousseau pointed out that natural obstacles are not insurmountable, that natural differences could be removed by enforcing natural similarity. He argued that it is not nature but society that makes man unequal. All distinctions are purely conventional and therefore alterable. Kant, in a very simple manner advised that no man should consider himself more valuable than any other person. Mathew Aronld observed that on the one side, inequality harms by pampering, on the other by vulgarising and depressing. A system founded on it is against nature and our short comings in civilization are due to our inequality. John Stuart Mill realised that equality is one of ends of good social arrangements, and that a system of institutions which does not make the scale turn in favour of equality, is essentially a bad government a government for the few, to the injury of the many. Karl Marx aimed at a classless society in which the free development of each will be the condition of the free development of all.
Equality rejects all distinctions based upon birth, wealth and office. It means abolition of all privileges. Naturally, it involves a certain levelling process. It is such an ordering of social forces where a share in the tail is balanced with share in the fruits of tail. Men are not equals but their basic needs are identical. Demand for equality means basic needs of all must be satisfied irrespective of their abilities. It means equal opportunity. That is to say, that all should have an equal start in the race for success.

Mankind's experience convinces that the worst tyranny is economic tyranny; that the roots of social tensions and political conflicts are always to be found in economic relationship. Consequently, without economic equality, there cannot be equality of opportunity. Equality of opportunity must be in form as well as in fact.

(1) Constitutional Provisions in India:- We know the agony that India suffered to win her freedom. Patriots, known and unknown, who sacrificed their lives, dreamt of a better India after independence. They aspired for a new and just order. Our constitution craves for an egalitarian society, a society in which every body would prosper whatever may be his or her caste, creed, race, religion or region.

In regard to equality Article 14 says: The State shall not deny to any person equality before law or the equal protection of the laws within the territory of India.

Article 15 says:

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth, or any of them.

(2) No citizen shall on grounds only 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, 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 the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes.  

Article 16 says:

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

(2) 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.

5. Clause (4) of Article 15 added by the Constitution (First Amendment) Act, 1951.
(3) Nothing in this Article shall prevent Parliament from making any law prescribing, in regard to class or classes of employment or appointment to an office under the Government of, or any local or other authority, within, a State or Union territory, any requirement as to residence within the State or Union territory prior to such employment or appointment.

(4) Nothing in this Article shall prevent the State from making any provision for the reservation of appointment or posts in favour of any backward class of citizen which in the opinion of the State, is not adequately represented in the service under the State.

(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion of any class or classes of posts in the services under the State in favour of Scheduled Castes and Scheduled Tribes which, in the opinion of the State are not adequately represented in the services under the State.

(5) Nothing in this Article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or any denominational institution or any member of the governing body there of shall be a person professing a particular religion or belonging to a particular denomination.

It has been discussed in chapter 1 that the Preamble to our constitution promises 'equality of status and opportunity' to all citizens and that this ideal of equality embraces both social and political equality.

So for as the ideal of social equality is concerned, it is embodied in a series of Articles, of which Article 14 is the genus, and the succeeding Articles 15-18 contain particular applications thereof.

6. Clause (4A) inserted by the Constitution (77th Amendment) Act, 1995, w.e.f. 17.6.1995
M. Hidayatullah observed:

"Article 14 guarantees the equal protection of all persons (not only citizen) by the State in accordance with two principles: Equality before law; and (2) Equal protection of the laws. What is the meaning of these expressions? Different views are possible and have expressed as to their meaning. The expression 'equality before law' is well known in the English Constitutional Law and to the readers of Diecythough Article 14 takes it from the constitution of the Irish Free State. The expression 'equal protection of the law' is taken from the Fourteenth Amendment to the American Constitution. One view (expressed by P.K. Tripathi in 'some Insight into Fundamental Rights' pp. 47-51) is that both these expressions mean the same thing. The distinction drawn by Subba Rao J. in the State of U.P. vs. Deoman, A.I.R. 1960 S.C. 1125, Laxman Das vs. the state of Punjab A.I.R. 1952 S.C. 75 that equality before law is negative concept and equal protection of the laws is positive one has been criticised by Tripathi who is unable to find such a distinction in this language. Basing himself on the relevant American decisions, Patanjali Shastri C.J. in State of West Bengal vs Anwar Ali Sarkar, A.I.R. 1952 S.C. 75 gave a slight different meaning to the expression 'equal protection of laws. Thereunder it was necessary for the State to ensure not only the equality before the law but also equal protection of the laws by so framing the laws so that the benefit thereunder is enjoyed equally by all. Government has to deal with the variety of relations. Inequality of operation may thus lead to equality of protection. The duties and burdens cast on different persons are different and therefore law has to adjust itself to giving them equal protection. The idea of reasonable
classification is mooted in this meaning".  

Article 14 being a general provision, is to be read subject to the special provisions which engraft exceptions to the general rule of equality as well as those Articles which explicitly override Article 14 to the specified extent. Thus the special provisions for women and children in Article 15(3) or for the backward classes in Articles 15(4) and 16(4) can not be challenged on the ground that they violate the rule of equality enunciated in Article 14. Rightly viewed all these three Articles are different facets of the same principle enunciated in Article 14. Therefore, the judicial decisions by the Supreme Court have generally agreed that the these three Articles are to be read together. But the view had developed in response to the changing conditions. In the very begining when the constitution was viewed as more democratic than socialist, merit or the liberty of the individual was given the pride of place. Reservation in favour of backward classes for admissions to a Medical College was challanged in Champakan Vs. The State of Madras. In this case the State of Madras had reserved seats in Medical and Engineering institutions in favour of candidates coming from backward classes, in pursuance of Article 46 of the constitution. It was contended on behalf of the affected students that Article 46 is a Directive Principle and Directive Principles can not override the Fundamental Rights and thus demanded that government order be declared invalid. It was held that even though the reservations were made with a view to promote the educational interest of Scheduled Castes and Schedule Tribes and other weaker sections of the public a duty placed upon the State by Article 46 of the constitution, the Directive Principles cannot override the Fundamental Rights but have to remain and run as subsidiary to the Fundamental Rights.

8 A.I.R. 1951 S.C 226
The Fundamental Rights to admissions to educational institutions without discrimination guaranteed by Article 29 (2) cannot be abridged by trying to implement Article 46. This decision was contrary to the spirit of the overwhelming provisions of the constitution which are to be used for bringing about equality in place of the existing inequality in the Indian society. This decision therefore, led to the amendment of Article 15 by the insertion of clause (4) in 1951 stating that Article 29 (2) shall not prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes in admissions to educational institutions is being upheld by the Courts.

(a) The basis of classification:

The principle of equality and the basis of rules of classification have been considered by the Supreme Court on several occasions in the light of circumstances and facts of the cases and according to the changed social conditions. In Moti Ram Vs. N.E. Frontier Railway the validity of Rules 148 (3) and 149 (3) which authorise the Railway Administration to terminate the services of all the permanent servants to whom the Rules apply merely on giving notice for the specified period, as on payment of salary in lieu thereof, was challenged in the Supreme Court. The Court observed:

"Rules 148 (3) and 149 (3) do not lay down any principle or policy for guiding the exercise of discretion by the authority who will terminate the service in the matter of selection or classification. Arbitrary and uncontrolled power is left in the authority to select at its will any person against whom action will be taken. The Rules thus enable the authority concerned to discriminate between two railway servants to
both of whom the Rules equally applied by taking action in one case and not taking it in the other. In the absence of any guiding principle in the exercise of the discretion by the authority the Rules have therefore to be struck down as contravening the requirements of Article 14 of the Constitution"\textsuperscript{10}.

In State of Kerala Vs. N.M. Thomas\textsuperscript{11}, Roy, C.J. Observed :-

"The rule of parity is the equal treatment of equals in equal circumstances. The rule of differentiation is enacting laws differentiating between different persons or things in different circumstances. The circumstances which govern one set of persons or objects may not necessarily be the same as those governing another set of persons or objects so that the question of unequal treatment does not really arise between persons governed by different conditions and different sets of circumstances. The principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position and the varying needs of different classes of persons require special treatment. The legislature understands and appreciates the need of its own people, that its laws directed to problems made manifest by experience and that its discriminations are based upon adequate grounds. The rule of classification is not a natural and logical corollary of the rule of equality, but the rule of differentiation is inherent in the concept of equality. Equality means parity of treatment under parity of conditions. Equality does not connote absolute equality. A classification in order to be constitutional must

\textsuperscript{10} Id. at 602
\textsuperscript{11} A.I.R. 1976 S.C. 490
rest upon distinctions that are substantial and not merely illusory. The
test is whether it has a reasonable basis free from artificiality and
arbitrariness embracing all and omitting none naturally falling into
that category" 12.

Justice Mathew observed:

"It is no doubt a paradox that though in one sense classification
brings about inequality, it is promotive of equality of its object is to
bring those who share a common characteristic under a class for
differential treatment for sufficient and justifiable reasons" 13.

He further observed:

"It is a mistake to assume a priori that there can be no classification
within a class... If there are intelligible differentia which separate a
group within that class from the rest and that differentia have nexus
with the object of classification, . I see no objection to a further
classification within the class" 14.

In State of Mysore Vs. P. Narasinga Rao 15, the apex Court observed:

"It is well settled that though Article 14 forbids class legislation, it
does not forbid reasonable classification for the purpose of legislation.
When any impugned rule or statutory provisions is assailed on the
ground that it contravenes Article 14, its validity can be sustained if
two tests are satisfied. The first test is that the classification on which
it is founded must be based on an intelligible differentia which

12. Id. at 499
13. Id. at 520
14. Id. at 519-20
distinguish persons or things grouped together from others left out of the group, and the second test is that the differentia in question must have a reasonable relation to the object sought to be achieved by the rule or statutory provisions in question. In other words, there must be some rational nexus between the basis of classification and the object intended to be achieved by the statute or rule."\(^{16}\)

Further in State of J and K Vs T.N. Khosa\(^{17}\), The Supreme Court said that judicial scrutiny can therefore extend only to the consideration whether the classification rests on a reasonable basis and whether it bears nexus with the object in view. It cannot extend to embarking upon a nice or mathematical evaluation of the basis of classification, for were such an inquiry permissible it would be open to the courts to substitute their own judgement for that of the legislature or the rule making authority on the need to classify or the desirability of achieving a particular object.

It is submitted that Article 14 does not mean that all laws must be uniform and must universally be applicable. It only prohibits improper and invidious distinctions created by conferring rights or privileges upon a particular group to the exclusion of other group without any valid reason. Thus under this Article, there cannot be unfair discrimination between one group of citizens and another in relation to the same matter or between citizens and foreigners and arbitrary use of the power in favour of one group or another group or in favour of an individual. Since all persons are not by nature, attainment or circumstances equal and the varying needs of different classes of persons often require separate treatment. For this separate treatment

\(^{16}\) Id. at 351.

\(^{17}\) A.I.R. 1974 S.C. 1 at 11.
or classification for the purpose of legislation two conditions must be fulfilled, namely:

(i) That the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out the group; and

(ii) That differentia must have a rational relation to the object sought to be achieved by the statute or rule in question.

The constitution of India in its Article 16 provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State but at the same time, keeping in view the condition of the backward classes, it provided in clause (4) that nothing in this Article shall prevent the State for making any provision for the reservation of appointment or posts in favour of any backward class of citizens which, in the opinion of the State is not adequately represented in the services under the State.

In All India Station Masters' and Assistant Station Master's Association. Vs. General Manager Central Railways, the Supreme Court Observed:

"Equality of opportunity in matters of employment can be predicated only between persons who are either seeking the same employment, or have obtained the same employment. Equality of opportunity in matters of promotion, must mean equality as between members of the same class of employee and not equality between members of separate, independent classes. The fact that the qualifications necessary for recruitment of one post and another are approximately or even wholly

the same can in no way affect the question whether they form one and the same class, or form different classes.\textsuperscript{19}"

In C.A. Rajendran Vs Union of India,\textsuperscript{20} it was held that Article 16 of the constitution is only an incident of the application of the concept of equality enshrined in Article 14 thereof. It gives effect to the doctrine of equality in the matter of appointment and promotion. It follows therefore that there can be a reasonable classification of the employees for the purpose of appointment and promotion. To put it differently, the equality opportunity guaranteed by Article 16 (1) means equality as between members of the same class of employees, and not equality between members of separate, independent classes.

In Ganga Ram Vs Union of India\textsuperscript{21} Supreme Court has given wide interpretation to Art 16 and says:

"The equality of opportunity in the matter of service undoubtedly takes within its fold all stages of service from initial appointment to its termination including promotion but does not prohibit the prescription of reasonable rules for selection and promotion applicable to all members of a classified group. Mere production of inequality is not enough to attract the Constitutional inhibition because every classification is likely to some degree to produce some inequality. The State is legitimately empowered to frame rules of classification for securing the requisite standard of efficiency in services and the classification need not be scientifically perfect or logically complete..."\textsuperscript{22}

\textsuperscript{19} Ibid.
\textsuperscript{20} A.I.R. 1968 S C. 507
\textsuperscript{21} A.I.R. 1970 S C 2178 at 2179.
\textsuperscript{22} Id at 2179.
A class must be a homogeneous social section of the people with common traits and identifiable by some common attributes.\textsuperscript{23}

Further more in State of Kerala Vs. N.M Thomas\textsuperscript{24} the Supreme Court laid down three principles about Article 16 as follows:

(i) That Article 16 is merely an incident of Article 14 and both these Articles form a part of the common system seeking to achieve the same end.

(ii) Article 16 applies to all classes of appointment including promotions and selection posts, and

(iii) Article 16 permits a valid classification.

One thing which is very clear from the various judgements of court is that in deciding the scope and ambit of the Fundamental Right of equality of opportunity guaranteed by Article 16 it is necessary to bear in the mind that in construing the relevant Article a technical or pedantic approach must be avoided. Thus construed it would be clear that matters relating to employment can not be confined only to the initial matters prior to the act of employment. The narrow construction would confine that application of Article 16 (1) to the initial employment and nothing else; but that clearly is only one of the matters relating to employment. The other matters relating to employment would inevitably be the provision as to the salary and increments therein, terms as to leave, gratuity, pension, compulsory retirement, age of superannuation, termination, promotion, abolition of post, as to confirmation, seniority, transfer, and reservation etc. These are all matters relating to employment and they are, and must be deemed to be included in the

\textsuperscript{23} Janki Prasad Parimoo Vs State of J and K 1973 Lab I C 565 at 576
\textsuperscript{24} State of Kerala Vs N M Thomas A I R 1976 S C 490
expression "matters relating to employment" in Article 16.

This equality of opportunity need not be confused with absolute equality as such. What is guaranteed is the equality of opportunity and nothing more. Article 16 does not prohibit the prescription of reasonable rules for selection to any employment or appointment to any office. Any provision as to the qualification for the employment or the appointment to office reasonably fixed and applicable to all citizens would certainly be consistent with doctrine of the equality of opportunity.

(b) Comparison of Articles 14, 15 and 16:

In N.M. Thomas case, the Supreme Court compared Articles 14, 15 and 16 of the Constitution. The Court says that Articles 14, 15 and 16 form part of a string of constitutionally guaranteed rights. These rights supplement each other. Article 16 which ensures to all citizens equality of opportunity in matters relating to employment is an incident of guarantee of equality contained in Article 14. Article 16(1) gives effect to Article 14. Both Articles 14 and 16(1) permit reasonable classification having a nexus to the objects to be achieved. Under Article 16 there can be a reasonable classification of the employees in matters relating to employment and appointment. Article 16 is affirmative where as Article 14 is negative in language. 16(4) indicates one of the methods of achieving equality embodied in Article 16(1). Article 16(1) is only a part of a comprehensive scheme to ensure equality in all spheres. It is an instance of the application of the larger concept of equality under the law embodied in Articles 14. and 15. Article 16(1) permits classification just as Article 14 does. But, by the classification, there can be no discrimination on the ground only of race, caste and other factors mentioned in Article 16(2).

25. Ibid.
The accent in Article 14 is on the injunction that the State shall not deny to any person equality before the law or the equal protection of the laws, that is, on the negative character of the duty of the State. The emphasis in Article 16(1) is on the mandatary aspect, namely that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State implying thereby that affirmative action by Government would be consistent with the Article if it is calculated to achieve it.

However, it is platitudinous law that Articles 14 to 16 are common code of guaranteed equality, the first laying down the broad doctrine, the other two applying it to sensitive areas historically important and politically polemical in a climate of communalism and jobbery. The genius of Articles 14 and 16 consists not in literal equality but in progressive elimination of pronounced inequality. Indeed, to treat sharply dissimilar persons equally is subtle injustice. Equal opportunity is a hope, not a menace. Article 16 is merely an incident of Article 14, Article 14 being the genus is of universal application where as Article 16 is the species and seeks to obtain equality of opportunity in the services under the State. What Article 14 or Article 16 forbid is hostile discrimination and not reasonable classification. Article 16 represents one facet of the guarantee of equality. Articles 14, 15 and 16 underline the importance which framers of our constitution attached to ensuring equality of treatment. Such equality has special significance in the matter of public employment. It was with a view to prevent any discrimination in the field that an express provision was made to guarantee equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
In E.P. Royappa Vs. State of Tamil Nadu, the Supreme Court said that Article 16 is only an instance of application of the concept of equality enshrined in Article 14. In other words Article 14 is the genus while Article 16 is a species. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. These Articles strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of mind, is not legitimate and relevant but is extraneous and outside of area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the letter comprehends the former. Both are inhibited by Articles 14 and 16.

Articles 14 and 16 of the Constitution are not limited to cases where a servant has a right to the post. Even if a public servant is in an officiating position, he can complain of violation of Articles 14 and 16 if he has been arbitrarily or unfairly treated or subjected to a mala fide exercise of power by the State machine.

(2) Equality: Service conditions and Labour.

It is now settled that Article 14 is applicable to employment under the State so as to invalidate discriminatory Rules or Orders. A Rule or Order will

be discriminatory if the classification made by it is not reasonable. The power of the State as an employer is more limited than that of a private employer inasmuch as it is subject to Constitutional limitations and cannot be exercised arbitrarily. A government servant does not waive his protection by the Constitutional guarantees while entering into a contract of employment with the State. Article 16 guarantees equality of opportunity to all citizens in the matter of appointment to any office or any other employment, under the State. The principle underlying Article 14 has, accordingly, been applied to the interpretation of Article 16(1), namely that the equality of opportunity guaranteed by it means equality as between members of the same class of employees, and not equality between members of separate, independent classes.

The words 'employment and appointment' connote two different conceptions, while 'appointment' refers to appointment to an 'office' and therefore, implies the conception of tenure, duration, emoluments, and duties and obligations, fixed by law or some rules having the force of law. The word 'employment' refers the engagement of labourers or professional expert by bilateral contracts for temporary purpose.

It is submitted that the equality of opportunity, in matters relating to employment or appointment, is wide enough to include all matters in relation to employment, both prior and subsequent such as Initial appointment, Pay, Conditions of service, Confirmation, Seniority, Promotion, Termination, Abolition of post, Compulsory retirement, Reversion, Superannuation, Pension, Transfer, Reservation of backward classes, Periodical increments, Terms of leave, Gratuity etc.
If, in laying down the qualifications for an appointment, the State lays down qualifications which have no nexus with the object to be achieved, the Rule or Order in question shall be invalid. This, with a view to secure fair and efficient administration of justice, it would be competent for a State to prescribe knowledge of local laws, knowledge of the regional language or adequate experience at the Bar as qualifications for appointment to the judicial service, but it can not be provided that only Advocates practising in that State High Courts shall be eligible, so as to disqualify Advocates practising in other High Courts though they belong to the same class, without any rational basis for such disqualification.  

In C Channa Basavaiah Vs. State of Mysore, after holding viva voce examination for direct recruitment to class I and class II posts relating to certain Administrative Services, the Mysore Public Service Commission published a list of candidates who were selected and appointed. Subsequent to this announcement, the State Government sent, for the consideration of the Commission, a list of twenty-four, candidates and as the Commission approved of them, they were also appointed. In giving their concurrence the Commission purported to take power from the foot-note to sub-rule (3) of rule 4 of the Mysore Public Service Commission (Functions) Rule, 1957. The foot-note is as follows:-

"Nothing contained herein shall preclude the Commission from considering the case of any candidate possessing the prescribed qualifications brought to its notice by Government, even if such a candidate has not applied in response to the advertisement of the Commission"
Sixteen candidates, out of those who were not selected, filed petitions in the High Court alleging violations of Articles 14, 15 and 16 of constitution. In the course of these proceedings, a compromise was effected and as a result of an undertaking given by the government before the High Court, the sixteen petitioners were also appointed.

Thereafter, the candidates who were not selected, instituted similar proceedings in the High Court, but their petitions were summarily dismissed. They thereupon, filed the petitions in the Supreme Court.

Upon a direction of Court to the Mysore State Government, mark-lists prepared by the Public Servie Commission after the viva voce tests were produced and these showed that all the candidates except two who belonged to the Scheduled Castes in the first list of 98 candidates had secured marks higher than 56%. Some of the candidates who were appointed on the recommendation of the Government and those appointed by compromise in the High Court (excluding three who were not interviewed at all) received lower marks and it was admitted that many of the petitioners who were rejected, had obtained higher than some of the selected candidates.

It was held by the Court that (i) discrimination and unequal treatment was established in the case of the 16 candidates selected as a result compromise before the Higher Court. Their appointment could not be sustained since most of these candidates had obtained fewer marks than some of the rejected candidates. Three candidates had not attended the viva-voce test at all and there was nothing before the High Court for comparing the remaining thirteen candidates with those who had failed in the selection. In such a case the Court should be slow to accept compromises unless it was made clear that what was being done did not prejudice anybody.
(ii) The foot-note to sub-rule (3) of rule 4 of the Mysore Public (Functions) Rules, 1957, on which reliance was placed to justify the appointments of the 24 candidates selected at the suggestion of the government, was not intended to bypass the selection based on merit but to cover a case of exceptional merit. These candidates had also obtained lower marks than some rejected candidates and their appointments could not therefore be upheld since this amounted to discrimination and unequal treatment.

In Govind Dattatray Vs. Ch. Controller of Imports and Exports the question which was before the Court was in relation to the constitutional validity of the appointment of Assistant Controller of Imports and Exports by direct recruitment.

The import and Exports Organisation came into existence during the Second World War. It was expected to be a temporary organisation and therefore, appointments to the various categories in the said organisation were made on an adhoc basis. In the year 1949 it comprised the following posts : Chief Controller, joint Chief Controller, Deputy Chief Controller, Assistant Chief Controller of Imports and Exports, Executive Officers, Licensing Officers and Junior licensing officers. In the year 1949 the appointment of the said Officers and their promotions were governed by the principles enunciated in the memorandum No.30/44-48 Appts, dated June 22, 1949 issued by the Government of India. But as no rules were prescribed and the appointment were made on an adhoc basis, the Union Public Service Commission raised objections, and after protracted correspondence it was agreed in 1955 that the appointments made by the Ministry during 1947-1951 should be regularised on the basis of the record of work and that in regard to

subsequent appointments there should be a ratio of 25% for the departmental promotees and 75% for the direct recruits. Ultimately, on June 13, 1962, the said agreement was embodied in the recruitment rules made by the Government of India under Article 309 of the constitution. There were three main categories of employees in the said department, namely, (i) those appointed prior to January 1, 1952; (ii) Those appointed between January 1, 1952 and Nov. 30, 1955, and (iii) Those appointed after Nov. 30, 1955.

Here the question before the Court is in relation with those Officers who were appointed after Nov. 30, 1955.

The petitioners raised following points before the Court:

(i) The rules of 1962 were not retrospective in operation and therefore, the seniority list dated November 30, 1961 based on the decision of the 2nd respondent, Union of India, dated July 29, 1961, was without any authority of law and was violative of Article 14, and 16 of the constitution.

(ii) Prior to Nov. 1955 there was only one source of recruitment to the cadre of Assistant Contoller and therefore, the decision to relate back the seniority of the direct recruits to the period between January 1, 1952 and Nov. 30, 1952 being based on reservations to those who were then not in existence amounted to carry forward of vacancies.

(iii) The ratio of 75% and 25% between direct recruits and promotees was violative of Article 14 of the constitution, and

(iv) The appointment of the Offices of the Ministry of Rehabilitation to the posts reserved for direct recruits through the Union Public Service Commission violative of Article 14 of the constitution.
The Court Observed:

"The relevant law on the subject is well settled and does not require further elucidation. Under Article 16 of the constitution, there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any Office under the State or to promotion from one Office to a higher Office thereunder. Article 16 of the constitution is only an incident of application of the concept of equality enshrined in Article 14 thereof. It gives effect to the doctrine of equality in the matter of appointment and promotion. The concept of equality in the matter of promotion can be predicated only when the promotees are drawn from the same source. If the preferential treatment of one source in relation to the other is based on the differences between the said two sources, and the said differences have a reasonable relation to the nature of the office or offices to which recruitment is made, the said recruitment can legitimately be sustained on the basis of valid classification. There can be cases where the difference between the two groups of recruits may not be sufficient to give any preferential treatment to one against the other in the matter of promotions, and in that event a Court may hold that there is no reasonable nexus between the differences and recruitment. In short, whether there is a reasonable classification or not depends upon the facts of each case and the circumstances obtaining at the time the recruitment is made. Further, when a State makes a classification between two sources of recruitment, unless the classification is unjust on the face of it, the onus lies upon the party attacking the classification to show by placing the necessary material before the Court that the said classification is unreasonable
and violative of Article 16 of the constitution."\(^{30}\)

Similarly in Jaisinghani Vs. Union of India\(^{31}\) where the appellant, S.G. Jaisinghani, challenged the constitutional validity what has been described as the 'seniority rule' in regard to Income Tax Service, class I grade II along with the improper implementation of the 'quota' recruitment to that Service as infringing the guarantee of Articles 14 and 16 (1) of the constitution.

The first question which was to be considered was whether Rule 1 (f) (iii) of the seniority rule as frame in 1952 violates the guaranteed under Articles 14 and 16 of the constitution. It was contended on behalf of the appellant that the impugned rule was based upon unjustifiable classification between direct recruits and promotees after they had entered into class I, grade II service and on the basis of that classification promotees are given seniority with weightage over direct recruits of the same year and three previous years. It was contended that there was discrimination between Officers of class I, grade II Service after their recruitment and the actual working of the rule kept on pushing down the direct recruits and postponing their chances of promotion to higher posts in class I Service. It was further contended that the promotees and direct recruit became one class immediately on entry and thereafter there can not be any class within that class.

In reply of these contentions the Court held that it is not right to approach this problem as if it is a case of classification of one Service into two classes for the purpose of promotion and as the promotion rule operating to the disadvantage of one of the two classes. It is really a case of recruitment to the service from two different sources and then adjustment of seniority

\(^{30}\) Id at 841-42
\(^{31}\) A. I. R.1967 S C 1427
between the recruits coming from the two sources. So far as Article 16 (1) is concerned, it cannot be said that the rule of seniority proceeds on an unreasonable basis. The reason for the classification is the objective of filling the higher echelons of the Income Tax Service by experienced Officers possessing not only a high degree of ability but also first rate experience. Having regard to the particular circumstances of this case the seniority rule is not unreasonable when read with the quota rule which provides for a special reservation of a small percentage of posts for the promotees who are selected by a special committee, which determines the fitness of the candidates for promotion after they have put in at least three years of service as Income Tax Officers. A rule which gives seniority to outstanding officers with considerable experience, and selected on merit and limiting the promotion to a percentage not exceeding the prescribed limit, cannot per se be regarded as unreasonable.

In C. A. Rajendran Vs Union of India\textsuperscript{32}, where petitioners was a permanent Assistant in Grade IV (Class III, non-gazatted ministerial) of the Railway Board Secretariat Service. He was initially appointed, as Accounts clerk on February 6, 1953 in Southern Railway. He was appointed as an Assistant on October 22, 1956 in the Railway Board and confirmed as Assistant on April 1, 1960. The Railway Board Secretariat Service (Reorganisation and Reinforcement) scheme was drawn up in consultation with the Ministry of Home Affairs and introduced with effect from December 1, 1954 with the approval of the Union Public Service Commission. According to the new scheme the Railway Board Secretariat Service consists of the following grades:

"Grade IV-Assistant in the Scale of Rs 210-530/= (Class II non-gazatted) (to which petitioner belongs) Grade III- Section Officers in

\footnote{32. A. I. R. 1968 S C. 507.}
the scale of Rs. 350-900 (Class II gazetted) with effect from 1st July, 1959 (Section Officers grade) Grade II-Amalgamated with effect from 1st July, 1959 as section Officer grade.

Grade I-Assistant Directors/Under Secretariate in the of Rs. 900-1, 250/=.

In 1963 Central Government issued a memorandum dated 8, Nov. 1963 which reads as follows:

"In posts filled by promotion through Competitive Examination limited to departmental candidates, reservation at 12½ percent and 5½ percent of vacancies were provided for Scheduled Castes and Scheduled Tribes respectively... In regard to promotions on the basis of seniority subject to fitness, and those by selection no reservations were provided, but certain concessions were allowed to persons belonging to Scheduled Castes and scheduled Tribes..."

The contention of petitioner was that there is discrimination between the employees belonging to the Scheduled Castes and Scheduled Tribes in the Railway Service and similar employees in the Central Secretariate Service. It was said that the competitive departmental examination for promotion to the grade of Section Officers was not held by the Railway Board for the years 1955-63. On the contrary such examinations were held for the Central Secretariate Service and 74 employees belonging to Scheduled Castes and Scheduled Tribes secured the benefit of the reservation.

It was held by the Court that there is no substance in this contention. The petitioner being an employee of the Railway Board is governed by the rules applicable to the Officers in the Service to which he belongs. The employees of the Central Secretariate Service belong to a different class and
it is not possible to adopt the argument that there is any discrimination.

The arbitrary use of power by the Government was again discussed in State of Mysore Vs. S. R. Jayaram, where Mysore Recruitment of Gazatted Probationers' Rule (1959), Rule 9 (2) was challenged under Articles 14 and 16 (1) of the constitution.

The last part of Rule 9 (2) reserve to the Government the right of appointing to any particular cadre any candidate whom it considers more suitable for such cadre. The Rules are silent on the question as to how the government is to find out the suitability of candidate for particular cadre. The Rules do not give the Public Service Commissions the power to test the suitability of a candidate for a particular cadre or to recommend that he is more suitable for it. Nor is there any provision in the Rules under which the Government can test the suitability of a candidate for any cadre after the result of the examination is published. It follows that under the last part of Rule 9 (2) it is open to the government to say at its sweet will that a candidate is more suitable for a particular cadre and to deprive him of his opportunity to join the cadre for which he indicated his preference.

It was observed by the Court that the principle of recruitment by open competition aims at ensuring equality of opportunity in matter of employment and obtaining the services of the most meritorious candidates. Rule 1-8, 9(1) and the first part of Rule 9 (2) seek to achieve this aim. The last part of Rule 9 (2) subverts and destroys the basic objectives of the preceding Rules. It vests in the government an arbitrary power of patronage. Though R. 9 (1) requires the appointment of successful candidates to class I posts in the order of merit and thereafter to class II posts in the order of merit, Rule 9 (1) is

subject to Rule 9 (2) and under the cover of Rule 9 (2) the government can even arrogate to itself the power of assigning a class I post to a less meritorious and class II post to a more meritorious candidate. The last part of Rule 9 (2) gives the government an arbitrary power of ignoring the just claims of successfully candidates for recruitment to Offices under the State. It is violative of Articles 14 and 16 (1) of the constitution and must be struck down.

Where there are different modes prescribed for promotion, not to consider other who were eligible, on the ground that the respondent was 'the only eligible candidate' would be violative of Art. 14 34.

The ban imposed by government should have a reasonable basis and must have relation to his suitability for employment or appointment to an Office. But an arbitrary imposition of a ban against the employment of a certain person under the government would certainly amount to denial of right of equal opportunity of employment, guaranteed under Article 16 (1)35.

In Ramesh Prasad Vs. State of Bihar 36 the appellant who passed the final examination of Bachelor of Science (Engineering) in Tele-Communication of the Ranchi University held in August, 1962 was appointed by the Bihar State Electricity Board as Assistant Engineer (Tele Communication) in September 1963. A few weeks after his recruitment, the appellant was sent by the Board to Switzerland for six months' specialized training in power line carrier, tele metering and tele-control equipment in the modern power system. On his return he was deputed to look after the entire tele-communication system of the Board. The Board in June 1968 reorganized the tele

36 A.I.R 1978 S.C 327.
communication system and a temporary post of Executive Engineer (Tele Communication) was sanctioned. Acting on the recommendation of its Expert Selection Committee to the effect that the appellant was fit to be promoted to the rank of the Executive Engineer (Tele Communication) in view of the fact that he had a consistently good record of service possessed the degree in Tele-Communication Engineering had undergone special training in Switzerland in Tele-Communication, had ever since his return from Switzerland been satisfactorily performing the onerous and complex duties assigned to him and had been looking after the entire Tele-Communication system of the Board and had thus acquired a valuable practical experience in that field which is necessary to man the post of executive Engineer (Tele-Communication). The Board issued the aforesaid notification temporarily promoting the appellant to the post of Executive Engineer (Tele-Communication). In this case the validity of the executive order which created the temporary post and laid dawn the qualifications was challenged.

The Court held that on the facts and circumstances of the case that creation of a temporary post, Executive Engineer (Tele-Communication), was absolutely essential for ensuring reliability and continuity in power supply and the maintenance of the sophisticated equipments and selection of the appellant who was specially trained experienced and qualified, did not offend the provisions of Articles 14 and 16 of the constitution, when other persons who were not so qualified and trained were not considered while filling up the post.

In Air India Vs. Nargesh Meerza 37 where Air Corporations Act, 1953 section 45 (2) (b), regulations 46 and 47 made under by Air India International and Regulation 12, Para 3 made under by Indian Air lines Corporation were challenged as violative of Article 14 of the constitution.

The Court observed that so far as the restriction on marriage within the first four years of service is concerned, the provisions do not suffer from unreasonableness or arbitrariness. But the provision according to which the service of Air-Hostess would stand terminated on first pregnancy is not only manifestly unreasonable and arbitrary but contains the quality of unfairness and exhibits naked despotism and is, therefore, clearly violative of Article 14 of the constitution. It amounts to compelling the Hostesses not to have any child and thus interfere with and divert the ordinary course of human nature. By making pregnancy a bar to continuance in service of an Air Hostesses the corporation seems to have made an individualised approach to a women's physical capacity to continue her employment even after pregnancy which undoubtly is a most unreasonable approach. The termination of the services of an Hostesses under such circumstances is not only a callous and cruel act but an open insult to Indian woman hood. It is extremely destable, abhorrent to the notions of civilized society and grossly unethical in disregard of all human values. Pregnancy is not a disability but one of the natural consequences of marriage and is an immutable characteristic of married life. Thus the impugned provisions in A.I. Regulation 46 (1) (c) appear to be a clear case of Official arbitrariness. As it is severable from the rest of the regulation, it is not necessary to strike down the entire Regulation. It will, however, be open to the corporation to make suitable amendments so as to soften the rigrous of provision and make it just and reasonable and the similar provision regarding pregnancy contained in para 3 of India Airlines Corporation Regulation 12 must also be struck down.

Recently in A.M Shaila Vs. Chairman Cochin Port Trust where the policy of the Cochin Port Trust to exclude woman from employment as shed
clerk was challenged as violative of Articles 14 and 15 of the constitution. The Court observed:

"The petitioner's right under Articles 14 and 15, considered together, may be perceived from two angles-

(i) Is the grouping of women in a separate class based on their physical structure, capacity for work and the conditions in which they may be required to work, valid?

(ii) Is the exclusion of woman from specified jobs valid if it is designed to promote their well being and to protect them from hazardous work and social and moral risks"?

Further after examining various judicial decisions the Court introduced the following principles-

(i) Women can not be excluded from employment by stipulating irrelevant and unnecessary qualification.

(ii) The denial of promotion to women on the score that job requires them to tour with men is discrimination on the ground only of sex and therefore unconstitutional.

(iii) The differences of physical structure, the effect of long hours of work, and the natural function of motherhood place women in a separate class in the matter of employment

39. Id at 1195
(iv) The grouping of women as a separate class based on the conditions in which they may be required to work, is valid.

(v) A law which seeks to protect women from moral and social hazards, by denying bartending licence or denying employment at right does not offend equality and equal protection of the law.

(vi) The well being of women is an object of public interest. A law meant to protect women from the greed as well as passion of man is not discriminatory.

Considering the above principles the Court held that no doubt women shed clerks are not required to lift the huge packages each weighing about 30 tonnes. But they will have to tally them, move them around and read what is printed on them, all this may have to be done standing for the whole night or day, all alone. Secondly the movement amidst moving cargo and in the midst of huge cranes, forklifts etc.; demanding quick movement of feet, exposes them to accident. Thirdly presence at isolated spots particularly between 6.00 pm. and 6.00 am exposes them to what may be called risks peculiar to their sex. While women can not be excluded from employment only on the ground of sex, their right may be restricted, if the conditions in which they are required to work, are hazardous to their health and well being. The policy of the Port Trust indeed protects women from the hazardous effect of such work on their well being. Therefore the policy is not based only on sex and does not violate Articles 14 and 15 of the constitution.

Again in the same year, there was a question before the Allahabad High Court in regard to the appointment on the compassionate grounds. In this case the father of the petitioner, was a confirmed Asstt. Teacher in Baba Raghavdas Krishak Inter College, Bhatpur Rani, Distt. Deoria, which is a recognised a
Educational Institution, receiving grant, in aid from the State of U.P. He died in harness. Pursuant to a direction given by the Distt. Inspector of Schools Deoria, the principal of the College appointed the petitioner against a class-4 post in the College. The said appointment was admittedly made on compassionate ground in view of the provisions contained in Regulation 103 of chapter III of the Regulations made under the U.P Intermediate Education Act. The petitioner joined his duties in the college as class-4 employee pursuant to his appointment and is admittedly working there. The instant petition has been filed for issuance of a writ in the nature of mandamus directing the respondents to appoint the petitioner as class-3 employee in the college. The basis of the claim of appointment to class post on compassionate ground is that the petitioner is highly qualified, being M. Com., B. Ed. It was urged for the petitioner that he was entitled to be appointed on a clerical post commensurate with his qualification in the minimum and the respondents (State Government) were not justified in giving appointment on a class-4 post in utter disregard of his educational qualification. The Court observed that the language employed in Regulation. 103, does not lead to a conclusion that the one member of the family of a deceased teacher who is above 18 years of age should as a matter of course and as a matter of right be appointed on a non-teaching post, befitting his educational qualification. The object of the rule being to give relief against destitution and to see the family through the economic calamity, the dependant of the deceased cannot claim, as of right to be appointed on a non-teaching post befitting his qualification. Further it is implicit in the Rules that the dependant of a teacher dying in harness cannot claim appointment on compassionate ground as a matter of right irrespective of the financial position of the family of the deceased. Any other view of the Regulation would render it ultra-vires and violative of Article 16. The petitioners having accepted the appointment to class 4 post on compassionate
ground, is not entitled now to claim appointment on compassionate ground to a clerical post on the basis of his educational qualifications 41.

In General Manager, S. Rly. Vs. Rangachari 42 the question before the Court was whether the term 'employment' includes Promotion to selection post or not. In other words does Article 16 apply to all matters relating to employment including promotion to selection post? The Supreme Court observed that in deciding the scope and ambit of the Fundamental Right of equality of opportunity guaranteed by this Article it is necessary to bear in the mind that in construing the relevant Article to technical or pedantic approach must be avoided. Thus construed it would be clear that matters relating to employment can not be confined only to initial matters prior to the act of employment. The narrow construction would confine the application of Article 16 (1) to the initial employment and nothing else; but that clearly is only one of the matters relating to employment. The other matters relating to employment would inevitably be the provision as to the salary and periodical increments therein, term as to leave, to gratuity, to pension and to the age of super annuation. These are all matters relating to employment and they are, and must be deemed to be included in the expression "matters relating to employment" in Article 16 (1). This equality of opportunity need not be confused with absolute equality as such. What is guaranteed is the equality of opportunity and nothing more. Article 16 (1) or (2) does not prohibit the prescription of reasonable rules for section to any employment or the appointment to office. Any provision as to the qualifications for the employment or the appointment to office reasonably fixed and applicable to all citizens would certainly be consistent with the doctrine of the equality of opportunity,

42 A. I. R. 1962 S C 36
but in regard to employment, like other terms and conditions associated with and incidental to it, the promotion to a selection post is also included in the matters relating to employment, and even in regard to such a promotion to a selection post all that Article 16 (1) guarantees is equality of opportunity to all citizens who enter service. Therefore, promotion to selection post is covered by Article 16 (1) and (2).

In All India Station Masters' Association Vs. General Manager, Central Railway the question arose about the rights of promotion of the Roadside Station Masters and guards already employed in the Railway Service. The Roadside Station Masters claimed equality of opportunity for promotion qua the guards on the ground that they were entitled to equality of opportunity in the matter of employment or appointment to any office of the State under Article 16 (1) of the constitution.

The Court observed:

"It is clear that, as between the members of the same class, the question whether conditions of service are the same or not may well arise. If they are not, the question of denial of equal opportunity will require serious consideration in such cases. Does the concept of equal opportunity in matters of employment apply, however, to variations in provisions as between members of different classes of employees under the State? In our opinion, the answer must be in the negative. The concept of equality can have no existence except with reference to matters which are common as between individuals, between whom equality is predicated. Equality of opportunity in matters of employment can be predicated only as between persons, who are

43. (1960) 2 S.C.R 311
either seeking the same employment, or have obtained the same employment. There is, in our opinion, no escape from the conclusion that equality of opportunity in matters of promotion, must mean equality as between members of the same class of employees, and not equality between members of separate, independent classes."  

In U.S. Menon Vs State of Rajasthan 45. The question which was before the Court was related to different pay-scales of two persons on same post of Deputy Secretary under the same Government i.e. Rajasthan Secretariate Service and Rajasthan Administrative Service under Rajasthan Civil Service (Rationalisation of Pay Scales) Rules and Schedules, 1956. The Court observed that the rules, on the face of them, show that, in the case of members of R.S.S. (Rajasthan Secretariate Service) appointed as Deputy Secretaries, no special pay is admissible, while special pay is admissible to members of the R.A.S (Rajasthan Administrative Service) when holding similar posts.

But the methods of recruitment, qualifications etc., of the two services are not identical. In their ordinary time-scale, the two services do not carry the same grades. Even the post, for which recruitment in the two services is made, are to a major extent, different. The members of the R.A.S. are mostly meant for posts which are outside the Secretariate though some posts in the Secretariate can be filled by members of the R.A.S.

In such a case, where appointment is made to the posts of Deputy Secretaries of Government servants belonging to two different and separate services, there can arise no question of a claim that all of them, when working as Deputy Secretaries, must receive identical salaries. or must necessarily both be given special pay. It is entirely wrong to think that everyone.

44. Id 315, 316.
45. A. I. R. 1968 S. C. 81
appointed to the same post, is entitled to claim that he must be paid identical emoluments as any other person appointed to the same post, disregarding the method of recruitment, or the source from which the Officer is drawn for appointment to that post. No such equality is required either by Article 14 or Article 16 of the constitution.

The rules, as framed, are thus, based on well-recognised principles for granting salary of members to different Services even when they are appointed to the same post. In these circumstances, no question arises of any discrimination under Article 14 of the constitution, or of any denial of equality of opportunity under Article 16 of the constitution.

In State of J and K Vs. Triloki Nath Khosa*1, the classification of Assistant Engineers into Degree holders and Diploma-holders for the purpose of promotion under J. and K. Engineering (Gazetted) Service Recruitment Rules (1970), was challenged.

The question before the Court was— if persons drawn from different sources are integrated into one class, can they be classified for purposes of promotion on the basis of their educational qualifications?

The Court held that though persons appointed directly and by promotion were integrated into a common class of Assistant Engineers, they could, for the purpose of promotion to the cadre of executive Engineers, be classified on the basis of educational qualifications. The rule providing that graduates shall be eligible for such promotion to the exclusion of diploma holders does not violate Articles 14 and 16 and must be upheld. The Court further held that classification on the basis of educational qualifications made with a view to achieving administrative efficiency in the Engineering services. If this be the

object, the classification is clearly correlated to it for higher educational qualifications are at least presumptive evidence of higher mental equipment.

Recently in State of Punjab Vs. Dharam Paul, the stepping up of pay in favour of Instructor belonging to 8 Trades by way of revising the pay-scale by the order of Government was challenged by the Instructor belonging to other trades as violative of Article 14 of the constitution. In this case the Court held that it is undisputed that the instructors originally were getting one scale of pay namely 80-200 prior to 1961, by the virtue of the Government's order dated February 23, 1962 the said pay scale of Rs. 80-200 was revised to Rs. 160-330 only in respect of the instructors in the 8 trades. The aforesaid pay revision in respect of the instructors belonging to the 8 trades was challenged unsuccessfully by the rest of the instructors belonging to other trades and the writ petition and the letters patent appeal were dismissed on January 24, 1972. While the State Government in September 1970 put all the instructors in one pay scale of Rs. 160-400 but so far as 181 instructors who had got a higher scale of pay in pursuance to the Government order were allowed to enjoy their scale as personal to them. This being the admitted position, in 1976, the pay scale was further revised to Rs. 225-500 in respect of all instructors but while fixing the pay in the revised scale necessarily the higher pay drawn by those 181 instructors belonging to the 8 trades was taken into account and they got a higher sum. In these circumstances the question of stepping up of the pay of Instructors does not arise. These 181 instructors originally may have been junior to these instructors but by virtue of the Government order dated February 23, 1962, they have been given higher scale of pay and the same benefit having been continued as a personal pay to them in the subsequent revision of the pay scale and the persons similarly placed having challenged

47. (1996) II L. L. J. S. C 26
and lost in the earlier writ petition, it is not open to them to reopen the matter. Therefore, the stepping up of pay on the ground that the qualification to the post of instructors being the same and they being governed by same service conditions a junior person can not get a higher sum is unsustainable.

In Bhanu Prakash Singh's, case\textsuperscript{48} where 28 appellants while working as Lecturers in Haryana Agricultural University were selected to undergo Ph.D. Course in the year 1978. They joined in July and November, 1978. They were permitted as in service candidates to undergo the course according to the leave of the kind due to them. They pursued the course of study upto 1980-81. They were not paid the leave salary and that, therefore, they filed the writ petition. The Division Bench of the High Court of Punjab and Haryana by its order dated May 10, 1992 dismissed the writ petition holding that during the relevant period due to financial stringency the University had prohibited the in service candidates to pursue their course of study and they are not in a position to pay the full pay etc., to them. Thereafter, the said condition was withdrawn on January 10, 1979. Since the appellants had joined during the period of prohibition they are not eligible to get their full pay except in accordance with the leave of the kind due to them. The Court held that the appellants were allowed to undergo Ph.D. course and it was clearly mentioned in the order that they would entitled to leave of the kind due to them. When the appellants were permitted to undergo the course subject to condition, then they can not have any right higher than what they were permitted to avail of. The appellants are not entitled to any salary and allowances though other teachers, after lifting the prohibition were permitted to undergo the course of study with full pay and allowances. Under these circumstances, there is no invidious discrimination or arbitrary or unjust action violating equality enshrined

\textsuperscript{48} Dr Bhanu Prakash Singh's Vs The Haryana Agricultural University, 1995 II L. J. S. C.654
in Article 14 of the constitution.

In Parimal Chandra Case’s\textsuperscript{49}, the canteen workers in Life Insurance Corporation's offices claimed that they are employees of corporation. They should be absorbed as regular employees and minimum salary of class IV employees should be paid. Two question arise before the Court: (1) whether the workers are or should be deemed to be regular employees of the Life Insurance Corporation and if the answer in affirmative (2) what pay-scales and other service conditions should be made available to them.

The court considers the statute law and judicial pronouncements\textsuperscript{50} and the following points emerge: -

(i) where, as under the provisions of the Factories Act, it is statutorily obligatory on the employer to provide and maintain canteen for the use of his employees, the canteen becomes a part of the establishment and, therefore, the workers employed in such canteen are the employees of the management.

(ii) where, although it is not statutorily obligatory to provide a canteen, it is otherwise an obligation on the employer to provide a canteen, the canteen becomes a part of the establishment and the workers working in the canteen, the employees of the management. The obligation to provide a canteen has to be distinguished from the obligation to provide

\textsuperscript{49} Parimal Chandra Raha Vs Life Insurance Corporation Of India (1995) II L L J S C 339
facilities to run canteen. The canteen run pursuant to the latter obligation, does not become a part of the establishment.

(iii) The obligation to provide canteen may be explicit or implicit. Where the obligation is not explicitly accepted by or cast on the employer either by an agreement or an award etc., it may be inferred from the circumstances, and the provision of the canteen may be held to have become a part of the service conditions of the employees. Whether the provision for canteen services has become a part of the service conditions or not, is a question of fact to be determined on the facts and circumstances in each case.

Where to provide canteen services has become a part of the service conditions of the employees, the canteen becomes a part of the establishment and the workers in such canteen become the employees of the management.

(iv) Whether a particular facility or service has become implicitly a part of service conditions of the employees or not, will depend, among others, on the nature of the service/facility, the contribution the service in question makes to the efficiency of the employees and the establishment, whether the service is available as matter of right to all the employees in their capacity as employees and nothing more, the number of employees employed in the establishment and the number of employees who avail of the service, the length of time for which the service has been continuously available, the hours during which it is available, the nature and character of management, the interest taken by the employer in providing, maintaining, supervising and controlling the service, the contribution made by the management in the form of infrastructure and
It was held by the Court that from the facts and circumstances, it has to be held that the canteen has become a part of the establishment of the Life Insurance Corporation. The Canteen Committees, the Co-operative society of the employees and the contractors engaged from time to time are, in reality, the agencies of the Corporation and are, only avail between the Corporation and the canteen workers in fact are the employees of the Corporation. The Corporation is directed to prescribe different service conditions to different kinds of appellants. Pending prescription of such service conditions, the corporation should pay to all the appellants the minimum of the salary presently paid to class IV employees together with allowances and special facilities, if any other benefits available to class IV employees shall also be given.

There was another case where an employee (respondent) was employed as a mistry in a telephone workshop belonging to the appellant, the Union of India. There appears to have been a strike in the workshop and thereafter on July 9, 1949, for what reason it does not appear from the record, the respondent was put under detention under the Bombay Public Security Measures Act. On July 21, 1949, the manager of the workshop suspended the respondent from duty with effect from the date of his detention. The order of suspension stated that the respondent was not entitled to any subsistence allowance during the period of suspension. On March 29, 1950, the manager passed an order terminating the service of the respondent with effect from July 9, 1949, the date on which he was suspended. He was given one month's pay in lieu of notice. The respondent was released from detention on October 25, 1950, by an order made by the High Court at Bombay. He had been in

detention from July 9, 1949, till October 25, 1950, during which period the orders, suspending him and terminating his service, were passed. After his release the respondent started proceedings under the Payment of Wages Act for arrears of his dues from the appellant, as a result of which he obtained payment of subsistence allowance for the period during which he had been suspended. The respondent had also made a representation to the manager for reinstatement was rejected. He thereupon filed a suit in the Bombay City Civil Court. In that suit he contended that the orders of his suspension and termination of service were void for various reasons but only two of them are relevant for the purpose of this appeal. He first said that the orders were in violation of Article 311 of the constitution as he had not been given proper opportunity to show cause why they should not be made. He also said that the order terminating his service violated Articles 14 and 16 of the constitution as he had been "arbitrarily picked up and sacked." He claimed that the orders should be declared void and illegal. The trial Court held that he was a temporary employee and the termination of his service being in terms of the contract of his employment, no question as to a violation of the Article 311 of the constitution arose. It appears to have been conceded in the trial Court that if Article 311 is not made applicable to this case. The respondent appealed to the High Court at Bombay. The High Court affirmed the findings of the trial Court. This Court found nothing to support the conclusion that there has been any discrimination. All that appears from the evidence led in the case, is that many employees junior to the respondent had been retained in service while his service had been terminated. It is earlier stated that the respondent had been detained under the Bombay Public Security Measures Act. It does not appear whether the employees junior to the respondent had been similarly detained. As a person detained legally under a statute, the respondent might legitimately have been put in a separate class and treated
differently from others not so detained. Further, as a result of the detention, the appellant was deprived of the benefit of the respondent's service for a considerable period. That also put him in a separate class. The evidence does not show that the junior employees referred to were otherwise in the same class as the respondent. In these circumstances, the fact that the service of the respondent was terminated while employees junior to him were retained in service does not by itself prove unequal treatment and there is nothing else on which the respondent has relied to establish discrimination.

The validity of Delhi judicial Service Rules (1970). R. 9 (a) and R. 11 which were in relation to the seniority of Judicial Officers, was challenged in Joginder Nath Vs. Union of India 52. In this case Supreme Court observed that the source of the initial recruitment to the service under clause (a) of Rule 9 was subordinate Judges who necessarily belonged to the Judicial Cadre of a State and law graduate Judicial Magistrate (not merely Judicial Magistrates) working in the Union Territory of Delhi. The creation the service being only in two grades, grade 2 and grade 1 (Selection grade) and there being no provision for appointment in the selection grade at the stage of the initial recruitment of the service all those who fulfilled the qualification laid down in clause (a) of Rule 9 and who were found 'suitable' by the Selection Committee could be initially recruited to Delhi Judicial Service Rule was not invalid. For the purpose of initial recruitment to the service Officers of the Judicial Cadre of a State and Officers although not belonging to the Judicial Cadre but by and large performing the Judicial functions could be put together. There was no infraction of Articles 14 and 16. The Court further said that once the Selection Committee found persons belonging to clause (a) of Rule 9 suitable for appointment to the service it was under a duty and

52 A. I. R 1975 S. C 511.
obligation to arrange the list of suitable persons by placing them in proper places in the matter of seniority. They were all being initially appointed to the Delhi Judicial Service where in there was no separate gradation of posts. The assignment of duties was to follow on the basis of seniority list. Arranging the seniority of the candidates recommended by the Selection Committee in accordance with the length of service rendered by them in the Judicial Cadre to which they belonged at the time of their initial recruitment to the service was performed good. Taking the length of service rendered by the candidates in their respective cadres for the Delhi Judicial Service Rules was justified, legal and valid. Had it been otherwise it would have been discriminatory. It was not equating unequals with equals. It was merely placing two classes at par for the purpose of seniority when it became a single class in the integrated Judicial Service of Delhi. For the purpose of fixation of seniority it would have been highly unjust and unreasonable to take the date of their initial recruitment to the service as their first appointment. Nor was it possible to take any other date in between the period of their service in their parent cadre. It would have been wholly arbitrary. It was not possible or practical to measure their respective merits for the purpose of seniority with mathematical precision by a barometer. The only reasonable and workable formula which could be evolve was the one engrafted in Rule 11. The object of the Delhi Judicial Service Rules was to create a service by integration of different classes of persons already working as judicial officers. The fixation of seniority on the basis of length of service in their respective parent cadres had a rational nexus to the object intended to be achieved, treating the two classes as one for the purpose of initial recruitment and fixation of seniority was reasonable as the classification was one which included all persons who were similarly situated with respect to the purpose of the law. Rule 11 was not bad as being violative of Articles 14 and 16 of the constitution.
Recently Delhi High Court decided a case where the petitioner was commissioned in the Military Nursing Services as Lieutenant from June 1, 1988 and kept on probation for a period of two years. During the probation she got married in December 1988. Such marriage being in violation of clause A of criteria dated March 6, 1987, her services were terminated on this "Marriage ground". The petitioners challenged the termination as being discriminatory on ground of sex. The Court held that clause A and termination of the petitioner's service based thereon were held to be nothing but a basis on account of sex. It was clearly in violation of Articles 15 & 16 of the constitution. The petitioner's service could not be terminated on the mere ground of marriage. The Court observed it found no difference between a total ban on marriage of women while in service and the present ban on marriage during probation period. The impugned order was set aside.

In Bharat Petroleum Corporation Ex-Employees' Association Vs Bharat Petroleum Corporation. The question before the Court was related to discrimination in of the payment of pension. The Court held that the appellants had specifically raised the demand for increasing the pension on the basis of D. A. merger with basic pay and the demand that 50% of the total wages should be the foundation for calculation of the pension. In the industrial dispute adjudication this demand was expressly negatived and the same was allowed to become final. That apart, it seen that in the industrial adjudication other demands also had been raised and while granting the benefits on the demands the parties the management and the workmen entered into a compromise in the High Court, agreeing to pay to the employees retired prior to January 1, 1989 higher amount of Rs. 50,000/= and the working employees

the benefit of Rs. 25000/=. Thus having consented to the adjudication made
by the Tribunal and having allowed the Industrial Tribunal award to become
final, it is not open to the appellant to go behind the award and claim pension
on parity with others on the anvil of Articles 14 and 21. That apart the
difference of payment of the pension had arisen on account of the revision of
the wages etc., only in the industrial adjudication and demands by the Union on
behalf of the workmen. The discrimination was due to the acts of the respondents.
It is no longer, therefore, open to the workmen to contend that they are
entitled to parity in the payment of pension with the employees in other
regions. The retired employees in other regions are getting higher pension that
the retired employees of Bombay region but it is only due to judicial
adjudication.

In Ganga Ram Vs. Union of India 55. The procedure of determination
of seniority of grade I Accounts clerks of the Railway Establishment, contained
in the provisions of Indian Railways Establishment Manual was challenged as
violative of Articles 14 and 16 of the constitution.

The Court said that the procedure for determining seniority of Grade
I Accounts Clerks as contained in Indian Railways Establishment Manual, by
which seniority of direct recruits to Grade I is determined on the basis of their
appointment where as seniority of promotees from Grade II is determined with
reference to their substantive or basic seniority in grade II irrespective of the
dates they qualify for promotion by passing the examination prescribed for the
purpose does not violate Articles 14 and 16. The Court further said that the
direct recruits and the promotees from grade II clearly constitute different
classes and this classification is sustainable on intelligible differentia which
has a reasonable connection with the object of efficiency sought to be

achieved. Promotion to grade I is guided by the consideration of seniority-cum-merit. Hence, no fault can be found with the provisions which place in one group all those grade II clerks who have qualified by passing the qualifying examination. The fact that the promotees from grade II who have officiated for some time are not given the credit of this period when a permanent vacancy arise also does not attract the prohibition contained in Articles 14 and 16. It does not constitute any hostile discrimination and is neither arbitrary nor unreasonable. It applies uniformity to all members of grade II clerks who have qualified and become eligible.

In V. N. Sharma’s case the question before Court was whether there can be different age of retirement to different kinds of employees in the same organisation. The Court held that disparity between the age of retirement of different classes of employees under one employer does not per se amount to discrimination. If the discrimination between the two groups of employees is based upon reasonable differentia, Article 14 is not violated. Therefore, in an organisation there could be different ages of retirement for different sets of employees and lack of uniformity in the age of retirement does not fall foul of Article 14 of the constitution, unless it is shown that the classification is not based upon reasonable differentia or is wholly unreasonable, arbitrary and unfair. The petitioners in the present case can not claim violation of Article 14 as they have not been able to establish that the disparity between the ages of superannuation of ‘workmen’ and safai Karamcharis on the one hand and other employees on the other, is not grounded on intelligible differentia, or the same suffers from the vice of unreasonableness, arbitrariness or unfairness. Therefore, their claim of violation of Article 14 because of lack of uniformity in the ages of retirement of employees of the corporation is not tenable.

56. V. N. Sharma Vs. Lt. Governor (1996) II L. L. J. Delhi High Court. 94.
In E.P. Royappa Vs. State of Tamil Nadu\textsuperscript{57}, the matter before the court was related to the transfer of employee from one post to another where the posts are of equal status and responsibility. The Court observed:

"The posts of Deputy Chairmen, Planning Commission and Officer on special Duty are equal in status and responsibility. The service of cadre Officers are utilised in different posts of equal status and responsibility because of administration and employing the best available talent in the suitable post. There is no hostile discrimination in transfers from one post to another when the post are of equal status and responsibility"\textsuperscript{58}.

In P. B. Roy Vs. Union of India\textsuperscript{59} the appellant was holding a temporary post of Editor in the Publication Division of the Department of Information and Broadcasting. The temporary post was sanctioned upto 28.2.1957. On 16.2.1959, the President of India, in exercise of the powers conferred by the provision to Article 309 of the constitution, promulgated the Central Information Service Rules, 1959. These Rules were meant for the creation of a Central Information service with prescribed grades and strengths, and entry into the service was open to departmental candidates according to rule 5 for initial constitution of the service. The appellant was chosen by the Selection Committee and was posted as an Assistant Editor. He challenged the said order and it was contended that the impugned order violated Articles 14 and 16 of the constitution in as much as it places an employee who was serving as an Editor in post of lower grade with less emoluments whereas no such result had followed in the case of any other employee in the Information and Broadcasting Department. The Court observed:

\textsuperscript{57} (1974) Lab 1 C 427
\textsuperscript{58} Id at 438
\textsuperscript{59} (1972) S C R 449
"We are unable to see how an order which has the effect of terminating an officiating appointment, in which the petitioner had no right to continue, and which gives him a fresh appointment, with a different designation but permanent tenure and prospects, constitutes a violation of either Article 14 or 16 of the constitution simply because the process which resulted in such an order did not have a similar effect upon the position or rights of any other servant in the Department. Indeed, the Selection Committee had, apparently after taking into account the special features of the petitioner's individual case, recommended the maximum pay, in the class and grade of the post given to him and the petitioner got this exceptional pay. Even his prospects improved to the extent that from the precarious position of a temporary servant he had moved into a permanent service. It could not be definitely stated that his position had worsened on the whole. He was at least no longer subject to the hazards of temporary employment which could be terminated by a month's notice at any time."\(^\text{60}\)

In Sughar Singh's case\(^\text{61}\) the question before the Court was in relation to reservation of one out of several officers from officiating post to substantive post. The Court observed:

Where the petitioner alone is reverted from his officiating post to his substantive post allowing others who were juniors to him to retain their officiating posts and the basis for such reversion is admitted to be an adverse entry in his character roll, the order of reversion is by way of punishment and amounts to reduction in rank. The order is also violative of Articles 14 and 16 of the Constitution\(^\text{62}\).

\(^{60}\) Id. at 456.


\(^{62}\) Ibid.
In Balaji Vs. State of Mysore,63 the Court held that the sub-classification made by the order between 'backward classes' and 'more backward classes' was not justified under Article 15 (4). 'Backwardness' as envisaged by Article 15 (4), must be both social and educational and not either social or educational. Though caste may be relevant factor but it cannot be the sole test for ascertaining whether a particular class is backward class or not. Poverty, occupation place of habitation may all be relevant factors to be taken into consideration. Article 15 (4) does not speak of 'castes', but only speak 'classes' and 'caste' and 'class' are not synonymous. The impugned order, however, proceeds only on the basis of caste without regard to other relevant factors and that is sufficient to render the order invalid.

There are some other cases where the arbitrariness, unreasonableness and unfairness in the State action and the Constitutional validity of various labour legislations was tested on the basis of provisions of Article 14 of the Constitution.

In E.P. Royappa Vs State of Tamil Nadu,64 the Supreme Court observed:

"Equality is a dynamic concept with many aspects and dimensions and it can not be 'cribbed, cabined and confined, within traditional and doctrinaire limits. From a positive point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belong to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and Constitutional law and is therefore violative of Article 14"65.

63 AIR 1963 SC 649
64 AIR 1974 SC 427
65 Id at 556
In Maneka Gandhi Vs Union of India 66, the Court observed:

"Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The Principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non arbitrariness pervades Article 14 like a brooding omnipresence..." 67

Recently in Satya Deo Mishra Vs State of U.P. 68, where the petitioner was appointed temporarily on 1-8-1970 on the post of Agriculture Teacher and joined his post on 14.8.1970 after having selected by the department. Since then he has been continuously working on the said post with an unblemished record of service. He was thereafter transferred from place to place but was not regularised and juniors to him had been regularised, he made representations in 1985 and 1987 to the Additional Director (Basic) to confirm him but no action was taken. His service was terminated by the order dated 16.3.1988. The only reason given in the impugned order is that the petitioner's services are no longer required, the Court observed:

"In my opinion the concept that a temporary employee has no right to the post has to be modified in the light of the new interpretation of Article 14 of the constitution given by the Supreme Court in Maneka Gandhi's Case, which is a 7- Judge constitution Bench decision followed by several subsequent decisions of the Supreme Court. The concept that a temporary employee has no right to the post can not be treated as an absolute concept. It has to be treated as subject to Article 14 of the constitution. The constitution is the supreme law of

66. A.I R 1978 S.C. 597
67 Id at 624.
68. 1996 Lab. I.C. 443.
the land. If the Supreme Court gives as new interpretation to a constitutional provision then it is necessary to revise the earlier concepts in the light of the new interpretation given by the Supreme Court. To tell a person who has put in 18 years of service that his service is no longer required, in my opinion is wholly arbitrary and unreasonable... But it is wholly arbitrary and unreasonable to keep a damocles sword hanging over the head of the employee and not to confirm him for a longer period of time. No one can work properly if he does not get job security. Hence the concept that a temporary employee has no right to the post must be held to be subject to Article 14 of the constitution according to which the State can not act arbitrarily.69

In Jalan Trading Co. Vs., Mill Mazdoor Sabha 70, The constitutional validity of section 36 of the Payment of Bonus Act (1965) was challenged. Under section 36 power conferred on appropriate government to exempt an establishments from operation of Act provided government is of opinion that having regard to financial position and other relevant circumstances, it would not be in public interest to apply all or any of the provisions of the Act. The Court held that condition for exercise of that power (under section 36) is that the government holds the opinion that it is not in the public interest to apply all or any of the provisions of the Act to an establishment or class of establishment, and that opinion is founded on a consideration of the financial position and other relevant circumstance. Parliament has clearly laid down principles and has given adequate guidance to the appropriate government in implementing the provisions of section 36. The power so conferred does not amount to delegation of legislative authority. Section 36 amounts to conditional

69 Id at 444
70 A.I.R. 1967 SC 691 at 703
legislation, and is not void. Whether in a given case, power has been properly exercised by the appropriate government would have to be considered when that occasion arises.

In M/s Bhikus Yama Kshatrya (P) Ltd. Vs., Union of India 71, it was held that section 85 of Factories Act, 1948, which authorises the State government to issue a notification applying all or any of the provisions of the Factories Act, to any place in which a manufacturing process is carried on and which involves the consequence that place is deemed a factory and persons working therein are deemed workers, is not by itself discriminatory so as to infringe Article 14 of the constitution.

In Mangalore Ganesh Beedi works Vs., Union of India,72 sections3 and 4 of Bidi and Cigar workers (Condition of Employment) Act, 1966 were challenged as violative Article 14.

Sections 3 and 4 require the licence in respect of industrial premises and authority granting licences will have to consider certain matters mentioned in section 4. The licencing authority is required to communicate the reasons in writing if it refuses to grant licence. Section 5 provides an appeal to the appellate authority. The Court held that it shows that grant of licence is to be determined on objective considerations. The provisions are neither unfair nor unreasonable.

In Manager, Vidarbha Tobacco Products (P) Ltd. Vs. Fulwantabai Ishwardas73 the workers in the Bidi industry upon termination of their services by their employer sought relief by initiating proceedings before the prescribed authority, that is, before the Assistant Commissioner of Labour, under section

71 (1964) 1 S.C.R. 860.
73. 1996 I L.L.J. Delhi High Court, 101.
31 (2) of the Bidi and Cigar workers (Conditions of Employment) Act, 1966. The Asst. Labour Commissioner held the termination as bad and set then aside. Six writ petitions were filed by the employees against the orders of the Asst. Labour Commissioner challenging interalia the constitutional validity of section 31 (2) (a) of the Beedi worker, Act, 1966. The Court held that merely because the authority to whom an appeal under section 31 (2) (a) challenging the dismissal, discharge or retrenchment by an employer has not been specified, it cannot be said that the said provision conferred unbridled and uncontrolled power for appointment for such authority hearing the appeals. Vasting of the discretion in the State Government to make the rule interalia concerning the authority to impose the time within which such an appeal may be filed does not invalidate section 31 (2) (a) on ground of contravention of Article 14 of the constitution. The Court further said that since the constitutional validity of entire Beedi workers Act, 1966 has been upheld by the Apex Court in Mangalore, Ganesh Beedi Workers Vs., Union of India, the fact that certain aspects were not specifically raised or certain provisions of the Act were not specifically challenged therein cannot permit the re-opening the issue with different pleas at different times. The constitutionality of section 31 (2) (a) would thus be presumed to have been upheld by the Apex Court in Mangalore Ganesh Beedi Works Case.

In M/s Murugan Talkies Vs., Union of India, section 24 and 25 of Cine Workers and Cinema Theatre Workers (Regulation and Employment) Act, 1981, making applicability of Provisions of employees Provident Funds and Miscellaneous Provisions Act 1952 and Payment of Gratuity Act, 1972, were challenged as violative of Article 14 of the constitution. The Court held that section 25 carves out only a special class of employment unlike section 1 (3)

(b) of Gratuity Act and hence not violative of Article 14. The Court further says:

"The constitutionality of a statute is always presumed and Courts must always endeavour to uphold the validity of a statutory provision. It should also be the endeavour of the Court to interpret the legislation in such a manner that it is easily workable. The maxim 'ut res magis valeat quam pereat' will apply."

In Express News papers Vs., Union of India, the constitutional validity of various provisions of the Working Journalists (Conditions of Service and Miscellaneous Provisions) Act, 1955 was challenged on the ground that the Act violated the Fundamental Rights guaranteed to the petitioners (employers) under Articles 14, or 19(1)(a) or 19(1)(g) or 32 of the constitution. In this case, the Court in regard to the violation of Article 14 of the constitution, observed:

"The working Journalists are a group by themselves and could be classified as such apart from the other employees of newspaper establishments and if the legislature embarked upon a legislation for the purpose of ameliorating their conditions of service there were nothing discriminatory about it. They could be singled out thus for preferential treatment against the other employees of newspaper establishments. A classification of this type could not come within the ban of Article 14. The only thing which is prohibited under this Article is that persons belonging to a particular group or class should not be treated differently as amongst themselves and no such charge could be levelled against this piece of legislation. If this group of working

75. Id. at 1133.
76. 1961 1 L.L.J. S.C 339.
of journalists was specially treated in this manner, there is scope for the objection that group had a special legislation enacted for its benefit or that a special machinery was created, for fixing the rate of its wages different from the machinery employed for other workmen under the Industrial Disputes Act, 1947..."

The Supreme Court examined the constitutional validity of contract Labour (Regulation and Abolitions) Act, 1970 and of the Central Rules the Rajasthan Rules and the Maharashtra Rules made there under in Gammon India Ltd. Vs., Union of India 78, and found that there is unreasonableness in the measure.

The Supreme Court also rejected the contention that the provisions of the Act are unconstitutional and unreasonable because of impracticability of implementation. The Canteens, rest rooms, supply of drinking water, latrines, urinals, first aid facilities are amenities for the dignity of human labour and are not in exes of the object of the Act. There is no violation of Article 14. The classification is not arbitrary. The legislature has made uniform laws for all contractors.

It is submitted that equality and arbitrariness are sworn enemies, one belongs to the rule of law in republic while the other to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Article 14. Articles 14 and 16 strike at arbitrariness in state action and ensure fairness and equality of treatment in matters relating to employment and appointment. The term 'employment and appointment' is wide enough to include all matters in relation to employment, both prior and

77. Id. at 341.
subsequent such as initial appointment, pay, conditions of service, confirmation, abolition of post, compulsory retirement, reversion, superannuation pension, transfer, reservation, periodical increments, and gratuity etc. It is attracted where equals are treated differently without any reasonable basis. The principle underlying the guarantee is that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws, rules, and regulations must be applied equally and there should be no discrimination between one person and another if as regard the subject matter of either administrative action or of legislation, their position is substantially the same. Article 14 forbides class legislation but permits reasonable classification for the purpose of legislation or administrative mandate. The classification must, however, be founded on an intelligible basis which distinguishes persons or things that are group together from those that are left out of the group and that differentia must have a rational nexus with the object to be achieved by the differentiation made in the statute order, rules or regulations in question. In other words, there ought to be casual connection between the basis of classification and the object of the classification.

Supreme Court has been assigned with the duty as the guardian and interpreter of the India constitution. So the interpretation given by the Supreme Court in respect of labour legislations is to be viewed from the stand point of its responsibility to preserve the sanctity of the constitution.

This is fact that the judicial aproach towards the Fundamental Rights i.e., Articles 14, 15 and 16 in the area of employment and appointment has been more liberal than in the case of other economic reforms. In the cases discussed above, the Courts have shown greater enthusiasm in guaranteeing the equality of opportunity in the matters relating to employment and appointment contained in Article 16.
Article 16 (4) empowers the State to make special provision for the reservation of appointments of posts in favour of any backward class of citizens which in the opinion of the State are not adequately represented in the services under the State.

Article 16 (4) must be interpreted in the light of Article 335 which says that the claims of Scheduled Castes and Scheduled Tribes shall be taken into consideration consistently with maintenance of efficiency of administration. The reservation for backward classes should not be unreasonable. The scope of Article 16(4) was considered by the Supreme Court in Devadasan Vs. Union of India 79. In this case the constitutional validity of the Government's instructions in regard to reservations for members of Scheduled Castes and Tribes for recruitment to posts and services was challenged. The Supreme Court observed that it must be held that the carry-forward provisions of the reservation in favour of candidates belonging to Scheduled Castes and Scheduled Tribes contained in the resolution of Government of India, Ministry of Home Affairs, dated 13, September 1950, as clarified by the supplementary instructions dated 28, January 1952 and 7 May 1955 (resulting in reservation of more than 50 percent of the vacancies to be from candidates belonging to Scheduled Castes and Scheduled Tribes) are unconstitutional as infringing the provisions of Article 16 (1) of the constitution of India.

Mere educational backwardness or the social backwardness does not by itself make a class of citizen backward. In order to be identified as belonging to such a class, one must be both educationally and socially backward. Backward classes must be comparable to Scheduled Caste and Scheduled Tribes 80.

79 1965 II L.L.J. S C 560
In State of Kerala Vs. N. M. Thomas 81, the important question which came up for consideration of the Court was whether it was permissible to give preferential treatment to Scheduled Castes and Scheduled Tribes under clause (1) of Article 16, that is, outside the exception clause (4) of Article 16. The Kerala Government framed rules for promotion of employees working in the Registration Department from the lower division clerks to the higher posts of upper division clerks. According to Rule 13AA the promotion depended on passing departmental tests within two years. Rule 133AA, however, empowered the State Government to further exempt for a specified period members of the Scheduled Castes and Scheduled Tribes from passing the test. Pursuant to Rule 13AA the Government passed the impugned order granting exemption for two years more to Scheduled Castes and Scheduled Tribes candidates to pass the test. This exemption was challenged as discriminatory under Article 16 (1). A seven member Bench of the Supreme Court by a majority 5:2 held that the classification of employees belonging to Scheduled Castes and Scheduled Tribes for allowing them an extended period of two years for passing tests for promotion from other classes of employees was just and reasonable classification having rational nexus to the object of providing equal opportunities for all citizens in matters relating to employment or appointment to the Public Office. The temporary relaxation of test qualification made in favour of Scheduled Castes and Scheduled Tribes was warranted in the services in view of their overall backwardness. The above Rules do not impair the test of efficiency in administration in as much as members of Scheduled Castes and Scheduled Tribes who are promoted will have to acquire the qualification of passing the test ultimately. The only relaxation is that they are granted two years more time to acquire the qualification. Thus according to the majority reservation for backward classes may be made even

outside the scope of clause (4) of Article 16. The Rules and Order were, therefore not violative of Articles 14, 16 (2) and valid. This is a new interpretation of Article 16 (1) of the constitution.

In Akhil Bhartiya Shoshit Karamchari Sangh Vs, Union of India, the Supreme Court, following Thomas case, upheld the validity of the Railway Board Circular under which reservations were made in selection posts of the Scheduled Castes and Scheduled Tribes candidates. The Court held that under Article 16 (1) itself the State might classify groups or classes based on substantial differentia. So the Fundamental Right to equality of opportunity has to be read as justifying the categories of Scheduled Castes and Scheduled Tribes separately from rest of the community for the purpose of adequate representation in the services under the State. Thus the classification between Scheduled Castes and Scheduled Tribes candidates from the rest of communities for the purpose of reservations is just and reasonable because they constitute a class by themselves because of their social backwardness. The Court also upheld the 'carry forward' rule under which 17% posts are reserved for those categories. The carry forward rule was extended from 2 to 3 years. As a result of this rule the reservation quota came to about 64.4% but the Court held that this was not excessive as mathematical precision could not be applied in dealing with human problems. Some excess will not affect the reservation, but substantial excess will void the selection.

This attitude of the judiciary creates lot of resentment amongst people who are denied promotions and thereby affects efficiency in the administration. Besides, politicians can take undue advantage of the rulings in the above case and create disharmony and dissensions amongst members of different classes of society.

(a) Mandal Commission and Reservation: On January 1, 1979 the government headed by the Prime Minister Sri Morarji Desai appointed the second Backward Classes Commission under Article 340 of the constitution under the chairmanship of Sri B. P. Mandal, to investigate the socially and educationally backward classes within the territory of India and recommend steps to be taken for their advancement including desirability for making provisions for reservation of seats for them in Government Jobs. The Commission submitted its report in December 1980. The government has placed the report on the Table of the Parliament in 1982 but has not indicated its reaction to the said report. Though the Commission had been asked to recommend the criteria of backward classes, the Commission has not grappled with this problem. Instead of suggesting norms and guide lines for determining what class of persons should be regarded as backward, the Commission has selected certain castes which are in their opinion backward and therefore backward classes. Apparently the Commission is of the view that the castes as a whole are backward and they form backward classes. "The Commission identified as many as 3743 castes as socially and educationally backward classes and recommended for reservation of 27 percent Government's Jobs for them".

M. Hidayatullah observed:

"It is somewhat disappointing for such a commission to run away from the task imposed upon it. If the reality is that certain castes as a whole form backward classes why was it that the framers of the constitution prohibited discrimination on the ground of caste but allowed it on the ground of backward classes. The obvious intention was to discourage casteism and to deal with socially and educationally backward classes rather than caste. But the caste feelings are so strong and the castes are so united in pressing their claims as castes.

that even the Mandal Commission abandoned the attempt to formulate any criteria for determination of backward classes and contented itself by equating the backward classes with certain castes. The unfortunate effect of such and attitude is to encourage casteism and to enable discrimination on the ground of caste, though this is expressly contrary to its terms of reference in so far as they require the Commission to determine the criteria for distinguishing socially and educationally backward classes. The making of reservations was to be only in favour of socially and educationally backward classes and not in favour of castes on this ground alone therefore the report is liable to be rejected and cannot form the basis of Governmental action”.

In the meantime the Janta government collapsed due to internal dissensions and the Congress Party headed by the Prime Minister Smt. Indira Gandhi came to power at the Centre. The Congress Government did not implement the Mandal Commission report till 1989. In 1989 the Congress Party was defeated in the Parliamentary elections and the Janta Dal again came to power and decided to implement the Commission’s report as it had promised to the electorate Accordingly, the government of India, headed by Prime Minister Sri V. P. Singh issued the Office Memoranda (Called O.M) on August 13, 1990 reserving 27 percent seat for backward classes in Government services on the basis of the recommendations of the Mandal Commission. The acceptance of the report of the Mandal Commission threw the Nation into turmoil and violent anti-reservation movement rocked the Nation for nearly three months resulting in huge loss of persons and property. A writ petition on behalf of the Supreme Court Bar Association was filed in a famous case of Indira Sawhney Vs. Union of India*, (Popularly known as Mandal Case,).

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84 M Hidayatullah, "Constitutional Law of India" 279 (Vol 1, the Bar Council of India Trust, 1984)
challenging the validity of the O.M. and for staying its operation. The five Judges Bench of the Court stayed the operation of the O.M. till the final disposal of the case on October 1, 1990. Unfortunately the Janta government again collapsed due to defections and in 1991 in Parliamentary elections the Congress Party again came to power at the Centre.

The Congress Party government headed by Sri P.V. Narsimha Rao issued another Office Memoranda on September 25, 1991: (i) by introducing the economic criterion in granting reservation by giving preference to the poorer sections of Socially and Educationally Backward classes in the 27 percent quota, and (ii) reserved another 10 percent of vacancies for the other socially and educationally backward classes economically backward section of higher castes. The economic criterion was to be specified separately. The five Judges Bench referred the matter to a special Constitution Bench of 9 Judges in view of the importance of matter finally settle the legal position relating to reservation as in several earlier judgements the Supreme Court have not spoken in the same voice on this issue. Despite several adjournments the Union Government failed to submit the economic criterion as mentioned in Official Memoranda September 25, 1991. The Supreme Court held that the decision of the Union Government to reserve 27 percent Government jobs for backward classes provided socially advanced persons-creamy layer among them-are eliminated, it is only confined to initial appointments and not promotions and total reservation shall not exceed 50 percent. The Court accordingly partially held the two impugned notifications (O.M.) dated August 13, 1990 and September 25, 1991 as valid and enforceable but subject to the conditions indicated in the decision that socially advanced persons-creamy layer-amongst backward classes as excluded. However, the court struck down the Congress Government's O.M reserving 10 percent Government
jobs for economically backward classes among higher classes. The majority also held that the reservation should not exceed 50 percent. While 50 percent shall be the rule but it is necessary not put out of consideration certain extraordinary situations inherent in the great diversity of this country and people. In view of this the majority did not express any opinion on the correctness or adequacy of the Mandal Commission Report. The minority struck down the two OMs issued by the Union Government as unconstitutional. It held also that Mandal Report is unconstitutional and recommended for the appointment of another Commission for identifying the socially and educationally backward classes of citizens.

Position after Indra Sawhney's Case:- The decision of Indra Sawhney case has laid down a workable and reasonable solution to the problem of reservation. But the politician are still trying to dilute the effect of this decision in order to make their vote bank intact. The Court has laid down that there shall be no reservation in promotions in Government jobs. But the government has enacted the Constitution 77th Amendment. Act, 1995 in order to bypass the Court's ruling on this point. This amendment has added a new clause (4-A) to Article 16 of the Constitution. This clause provides:

"Nothing in this Article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services of the State in favour of the Scheduled Castes and Scheduled Tribes which in the opinion of the State, are not adequately represented in the service under the State".

This means that reservation in promotion in government will be continued for Scheduled Castes and Scheduled Tribes even after Indra Sawhney's case if the government wants to do so. The haste in which the government had brought this amendment clearly shows that it was passed for
political considerations. It caused a lot of bitterness and disappointment among employees of the same category where were bypassed by their colleagues having less merits. It has its own dangers.

The Supreme Court has to intervene again. In Union of India Vs. Virpal Singh the Supreme Court has tried to mitigate to some extent the inequity that reservation in general has to represent by holding that caste criterion for promotion is violative of Article 16(4) of the Constitution. The Supreme Court rightly held that seniority between reserved category candidates and general candidates shall continue to be governed by their panel position prepared at the time of selection.

The Constitution Bench in R.K. Sabharwal Vs. State of Punjab has said in clear and unambiguous terms that after the quota is over and roster points are full, then the "running account" of roster shall stop and there is no question of promoting beyond the posts which had been reserved. In the said judgement it has been said in respect of members of Scheduled Castes that if they are appointed/promoted on their own merit, then such candidates shall not be counted towards the percentage of reservation fixed for them. On the basis of the same logic, whenever members of the Scheduled Castes are to be considered for promotion against posts which are not reserved for them, then they have to be selected on merit only. They cannot claim that as they had been promoted earlier from Grade 'C' to Grade 'B' on the basis of reservation and roster, in this process they have superseded the candidates belonging to the general category and even for promotion against general category post in Grade 'A' the only requirement shall be satisfactory record of service.

86 (1995) 6 S C C 684
87 J T 1995 (2) S C 351
In Ajit Singh Januja Vs. State of Punjab the Supreme Court relying and following the judgements of Indra Sawhney, Virpal Singh and Sabharwal cases, observed:

"The roster comes to an end once the quota fixed for reservation is full. If Scheduled Caste or Backward class candidates appointed/promoted by roster are considered against posts meant for general category candidates merely because they have become senior on basis of accelerated promotions then, it would mean that for all practical purposes the promotions of such candidates are being continued like running account although the percentage of reservation provided for them has been reached and achieved. Once such reserved percentage has been achieved and even the operation of the roster has stopped, then how it will be permissible to consider such candidates for being promoted against the general category post on the basis of their accelerated promotion which has been achieved by reservation and roster. Once is full and roster has stopped for members of Scheduled Castes and Backward classes in respect of whom reservation has been made and roster has been prescribed, their case for promotion to still higher grade against general category post have to be considered not treating them as member of Scheduled Castes or Backward Classes "on any crutch". They cannot be promoted only on basis of their 'accelerated seniority' against the general category post.

In a recent case in Jadhish Lal Vs. State of Haryana, the Supreme Court has held that the seniority gained by Scheduled Castes and Scheduled Tribes candidates because of his accelerated promotion as per rule of reservation cannot be wiped out on promotion of general candidates on a later
date. The reserved candidates will become senior to the general candidates in each successive promotion. The court further said that on promotion to the higher cadre the reserved candidates steal march over general candidates and become member of the service in the higher cadre grade earlier to the general candidates. Under Rule 11 of Haryana Education Department (State Service Group B) Rules (1980), the inter se seniority of the members shall be determined by the length of continuous service in a post in the service. Therefore, their seniority cannot be reopened, after the general candidates get promotion to the higher cadre or grade, though he was erstwhile senior in the feeder cadre/grade.

The ruling of the Supreme Court in these cases puts a question mark on the validity of the recent Constitution amendment permitting reservation in promotions to Scheduled Castes and Scheduled Tribes.

It is submitted that at the initial stage reservation can be made for them but once they enter the service, efficiency demands, that these members too compete with others and earn promotions like all others.

(b) Equal Remuneration for Men and Women:

The main desire has been for social security since the origin of mankind. All human beings want minimum requirement of food, shelter and clothing. There have been historical revolutions in China, Russia and other Countries to have economic security an emancipation from exploiter's yoke. In human society there can not be mathematical equality nor it is physically and humanly possible. There has been endeavour to reduce it to the minimum gap and efforts will continue till the survival of the human beings.90

Equal pay for men and women for equal work is a vital subject of great concern to society in general and employees in particular; a disparity in wage payment leads to unrest and discontent. 

During last few years flood of litigation all over India has cropped up in Supreme Court, High Court, and Tribunals on the part of the workers to seek equal pay for equal work. The case law has been developed on the interpretation of Article 39 (d) read with Article 14 of the Indian constitution.

International Concern: It is one of the significant Human Rights set out in the Universal Declaration of Human Rights, which the General Assembly of the United Nations adopted and proclaimed on 10th December, 1948 (with not a single Country voting against it), as "a common standard of achievement of all people and all nations". It stipulates that "Everyone without discrimination, has a right to equal pay for equal work". Further Article 7 of the International Covenant on Economic and Cultural Rights of 1966, inter alia, provides:

"The States parties to the present Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular....the equal remuneration for work of equal value without distinction of any kind in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work...."

Earlier in February 1957, at its 11th Session, the General Assembly of the United Nations Third Committee adopted the text of Article 7 of the draft International Covenant on economic, social and cultural right, which recognised as follows:

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"The right of everyone to enjoyment of just and favourable conditions of work including fair wage and equal remuneration for work of equal value without distinction of any kind, in particular, women being guaranteed... equal pay for equal work. Furthermore, Article 26 of the International Covenant on Civil and Political Rights (1966) provides that all persons are equal before the law and have the right to equal protection by the law without discrimination.

In the United Nations, the Commission on the Status of Women, a functional Commission of Economic and Social Council, has recognised the need for providing "equal pay for equal work" for men and women workers. It has also taken several steps to promote the principles of equal pay. For instance, in 1947, at its first session, it set forth as one of its aims that women should enjoy the same right as men with regard to wages. In 1948, at its second session, it adopted a resolution affirming its support of the principle of equal pay and recommended that the Economic and Social Council call on member States to encourage application of the principles by all possible means.

A significant milestone in acceptance and promotion of the principles of "equal pay for equal work" was earlier reached with the establishment of the International Labour Organisation (I.L.O). While the preamble to the I.L.O constitution of 1919 stressed the urgency of, *inter alia*, recognition of the principle of equal remuneration for work of equal value, the preamble to the constitution as amended in 1948 re-affirmed the urgency in improvement of the conditions of labour as regards the principle of "equal pay for equal work". In May 1944, the Philadelphia Declaration, which set down the aims and objectives of I.L.O. and principles of social policy that were to inspire member States, had affirmed among the principles basic to social justice that

92. Ibid
"all human beings regardless of race, creed or sex have the right to pursue their material progress and spiritual development in liberty and dignity, in economic security and with equal changes". In its 34th session I.L.O. adopted a convention concerning equal remuneration for men and women workers for work of equal value, known as Equal Remuneration Convention 1951. This was complemented by Recommendation No. 90. I. L. O. 1951. The latter underlined that the achievement of equality of remuneration should be accompanied by more extensive measures than mere fixing of pay rates. In 1958 I. L. O. concluded Convention No. 111 against discrimination in matters of employment and profession. In September 1958, India ratified ILO convention No. 111 which requires a member State ratifying it to promote as well as ensure application of the principle of equal remuneration to all workers through national laws or regulations, legally established or recognised machinery for wages determination, collective agreements between employers and workers or a combination of these means.?

(c) Status of Women:

The Preamble of the Indian Constitution sets out the main objectives which the framers of the constitution intended to achieve. It seeks to secure to citizens including women, justice social, economic and political; liberty of thought, expression, faith and worship; equality of status and opportunity and to promote among the people of India fraternity, assuring dignity for individual and the unity of the nation. Although the expressions, 'Justice' 'Liberty' 'Equality' and Fraternity, stated in the Preamble, may not be susceptible to exact definitions, yet they are not mere platitudes for they are given content by the enacting provisions of the constitution particularly by Part III, dealing with the Fundamental Rights and Part IV, dealing with the Directive Principles.

93. Ibid.
The 'Directive Principle' contained in Article 38 envisages a social order in which social, economic and political justice is assured to the people of India. Thus the object of this Article is to promote the welfare of India masses.

Article 39 of the constitution relating to the Directive Principles is more specific and comprehensive in nature. This Article with six sub-clauses is analogous to the one contained in Article 45 (2) of the Irish constitution. This Article specifically requires the State to strive for securing equal pay for equal work of both men and women. [Article 39(d)]

Among the Fundamental Rights Article 14 guarantees 'equality before law and equal protection of laws within the territory of India'. Article 15 prohibits discrimination on grounds, inter alia, of sex. Article 15 (3) empowers the State to make any special provision in favour of women. Article 16 guarantees equality of opportunity in matters of public employment. While Article 16 (1) ensures equality of opportunity for all citizens (including women) in matters relating to employment or appointment to any Office under

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94 Article 39: "The State shall, in particular, direct its policy towards securing-
(a) that the citizen, men and women equally, have the right to an adequate means of livelihood,
(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good,
(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment,
(d) that there is equal pay for equal work for both men and women,
(e) that the health and strength of workers men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength,
(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom..."
the State, Article 16 (2) prohibits discrimination in respect of any employment or Office under the State on the ground, inter alia, of sex.

Legislative Measure: In order to implement the constitutional directive, the President of India promulgated on the 26th September, 1975, the Equal Remuneration Ordinance, 1975 so that the provisions of Article 39 of the constitution may be implemented in the year which is being celebrated as the International Women's Year. The Ordinance provides for payment of equal remuneration to men and women workers for the same work or work of similar nature and for the prevention of discrimination on grounds sex. The ordinance also ensures that there will be no discrimination against recruitment of women and provides for the setting up of Advisory Committees to promote employment opportunities for women. The Act received the assent of President on February 11, 1976, published in Gazette of India.

Important Provisions: Some important provisions of the Equal Remuneration Act are discussed as follows:-

Selection 2 (a) defines 'appropriate government' to means-

(i) In relation to any employment carried on by or under the authority of the Central Government or a railway administration, or in relation to a banking Company, a mine, oilfield or major port or any corporation established by or under a Central Act, the Central Government, and

(ii) In relation to any other employment, the State Government.

In K.E. Koshy Vs. State,95 the Court observed:

"Having regard to the definition of appropriate government' given in section 2 (a) of the Act, the placement of the expression in the

definition clause of the Act and the purpose for which it is enacted, it has to be held that the case of the firm and its partners would be covered by section 2 (a) (ii) of the Act (the residuary clause). Section 2 (a) (i) is not attracted. The firm and its partners are independent contractors and it can not be said that their employment is the one carried on by or under the authority of the Central Government. The case of the firm and its partners would be governed by the residuary provision in section 2 (a) (ii) and the State Government would be the appropriate government."

Section 2 (g) defines "remuneration" to mean -

The basic wage or salary, and any additional emoluments what so ever payable, either in cash or in kind, to a person employed in respect of employment or work done in such employment, if the terms of the contract of employment, express or implied, were fulfilled.

Section 2 (h) defines the term "same work or work of a similar nature". It states:

Work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man or a woman and the differences, if any, between the skill, effort and responsibility required of a man and those required of women are not of practical importance in relation to the terms and conditions of employment.

In M/s Mackinnon Mackenzie and Co. Ltd. Vs., Andrey D' Costa, the Court held that in deciding whether the work is the same or of a similar nature, a broad approach should be taken. In doing so the duties actually and generally
performed by men and women not those theoretically possible, should be
looped at.

Section 3 clearly provides that the provision of the Act shall have effect
notwithstanding anything inconsistent therewith contained in any other law or
in the terms of any award, agreement or contract of service, whether made
before or after the commencement of the Act, or in any instrument having
effect under any law for the time being in force. In Mackinnan Mackenzie's
case the Court said that the management cannot, therefore, rely upon the
settlement arrived at between the parties. The settlement has to yield in favour
of the provisions of the Act. The employer is bound to pay the same
remuneration to both of them irrespective of the place where they were
working unless it is shown that the women are not fit to do the work of the
same stenographers. Nor can the management deliberately create such
conditions of work only with the object of driving away women from a
particular type of work which they can otherwise perform with the object of
paying them less remuneration elsewhere in its establishment.

Section 4 imposes duty on an employer to pay equal remuneration men
and women workers for same work or work of similar nature. In order to grant
relief under section 4 the employee should establish that the remuneration paid
by the employer, whether payable in cash or in kind is being paid at rates less
favourable than those at which remuneration is paid by him to the employees
of the opposite sex in such establishment for performing the same work or
work of a similar nature. Whether a particular work is same or similar in nature
as another work can be determined on three consideration. In deciding
whether the work is the same or broadly similar, the authority should take a
broad view: next, in ascertaining whether any differences are of practical

97. Ibid.
importance, the authority should take an equally broad approach for the very concept of similar work implies differences in details, but these should not defeat a claim for equality on trivial grounds. It should look at the duties actually performed, not those theoretically possible. In making comparison the authority should look at the duties generally performed by men and women. Whether, however, both men and women work at inconvenient times, there is no requirement that all those who work e.g., at night, shall be paid the same basic rate as all those who work normal day shifts. Thus, a women who works days can not claim equally with a man on higher basic rate for working nights if, in fact, there are women working nights on that rate too, and the applicant herself would be entitled to that rate if she changed shifts. But that does not mean that there can be no discrimination at all between men and women in the matter of remuneration. There are some kinds of work which women may not be able to undertake. Men do work like loading, unloading, carrying and lifting heavier things which women can not do. In such cases there can not be any discrimination on the ground of sex. Discrimination arises only where men and women doing the same or similar kind of work are paid differently. Wherever sex discrimination is alleged, there should be a proper job evaluation before any further enquiry is made. If the two jobs in an establishment are accorded an equal value by the application of those criteria which are themselves non-discriminatory (i.e., those criteria which look directly to the nature and extent of the demands made by the job) as distinct from criteria which set out different value for men and women on the same demands and it is found that a man and a woman employed on these two jobs are paid differently, then sex discrimination clearly arises.
The Act does not permit the management to pay to section of its employees doing the same work or work of similar nature lesser pay contrary to section 4(1) only because it is not able to pay equal remuneration to all. The applicability of the Act does not depend upon the financial ability of the management to pay equal remuneration as provided by it\(^{98}\).

If the two jobs in an establishment are accorded an equal value by the application of these criteria which are themselves non-discriminatory (i.e., those criteria which look directly to the nature and extent of the demands made by the job) as distinct from criteria which set out different values for men and women on the same demands and it is found that a man and a woman employed on these two jobs are paid differently, then sex discrimination clearly arises\(^{99}\).

Sub-section (3) would be attracted only where in an establishment or an employment the rates of remuneration payable before the commencement of the Act for the men workers and for the women workers for the same work or work of a similar nature are different the proviso to sub-section (3) of section (4) comes in to operation only where sub section (3) is applicable., Where there are no different scales of pay sub-section (3) of section 4 would not be attracted and, consequently, the proviso would not be applicable at all. The proviso can not travel beyond the provision to which it is a provision\(^{100}\).

Section 5 attempts to check discrimination in recruitment in future on the basis of sex except where the employment of women in such work is prohibited or restricted by or under any law. Section 6 provides for establishment of an advisory committee with the objective of increasing


\(^{99}\) Ibid.

\(^{100}\) Ibid.
employment opportunities for women. Section 7 empowers the appropriate
government to appoint adjudicating authority to hear and decide complaints
and claims arising out of non-payment of equal pay to both men and women.
The Act also provides for appointment of an appellate authority to hear any
appeal against the decision of the authority. Section 16 maps an exception
where difference in remuneration of men and women workers in any
establishment is based on factors other than sex.

During the last 10 years some defects, ambiguity and loopholes have
been noticed. To overcome these defects, ambiguity and loopholes the Act
was amended in 1987. According to this amendment Courts can take cognisance
on the basis of complaints made by recognised organisations notified by the
Centre or State Governments. The amendments in the Act also remove the
ambiguity and loopholes in certain provisions of the Act and make penalties
more stringent.

(3) Judicial Attitude: In 1962 the Supreme Court was for the first time
called upon to decide a claim for a higher pay scale. Among various grounds,
Article 39 (d) was put forward to support it. But the Constitution Bench
rejected the claim, observing that equal pay for equal work was an abstract
doctrine and had nothing to do with Article 14. The trend thus set by the
Supreme Court in 1962, was reversed only after about two decades, when a
milestone in the area of implementation of the Equal Remuneration Act,
was reached with the pronouncement of Supreme Court decision in Asiad Case.
The Court ruled that it is the principle of equality embodied in Article 14 of
the constitution which finds expression in the provision of the Equal

102 People's Union for Democratic Rights Vs. Union of India (1982) II L.L.J. 454
(S.C.)
In Randhir Singh 'Case', construing Articles 14 and 16 in the light of Preamble and Article 39 (d), the Supreme Court observed:

"It is true that the principle of equal pay for equal work' is not expressly declared by our constitution to be a fundamental goal. Article 39 (d) of the constitution proclaims 'equal pay for equal work for both men and women' as a Directive Principle of State Policy. 'Equal pay for equal work for both men and women' means equal pay for equal work for everyone and as between the sexes".

Mr. Justice O. Chinnappa Reddy breathed Judicial life into the doctrine of 'equal pay for equal work'. In this case, he gave it content by declaring that it is not a 'mere demagogic slogan' but a constitutional goal' capable of being achieved through constitutional remedies and enforcement of constitutional right.

Several other cases followed where the principle of equal pay for equal work was applied by the Supreme Court. The Randhir Singh decision was affirmed and expanded within two years by Constitution Bench of the Supreme Court in D.S. Nakara Vs. Union of India, giving relief to the pensioners, justice Desai observed that the Central Government, the State Government and likewise all Public Sector Undertakings are expected to function like mode and enlightened employees". In this connection he explained the objective of a 'socialist' State. While relying on the decision of Randhir Singh case, the Supreme Court in the case of P. Savita Vs. Union of India, held that the equal pay for equal work envisaged in Article 39(d) of the

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103 Randhir Singh Vs. Union of India, A I R 1982 S C 879
104 Id at 881
104a A I R 1983 S C 130
105 A I R 1985 S C 1124
Constitution of India and has exalted it to the position of a Fundamental Right by reading it along with Article 14. It was held by the Supreme Court in Surinder Singh Vs. Engineer-in-Chief, C.P.W.D.,\textsuperscript{106} that 'the Central Government like all organs of State is committed to the Directive Principles of State Policy and Article 39 enshrines the principle of equal pay for equal work'. The claimants of relief in this case were poor daily-wage workers employed for several years by the Central Public Works Department. They demanded parity in their wages with those of regular and permanent employees of the department on the basis of doing identical work. The Court granted the immediate relief in view of Randhir Singh decision.

Again in Bhagwan Das Vs. State of Haryana\textsuperscript{107}, the Supreme Court was of the view that

(i) Persons doing similar work can not be denied equal pay on the ground that made or recruitment was different; and

(ii) a temporary or casual employee performing the same or similar duties and functions is entitled to the same pay as that of a regular or permanent employee.

A survey of the aforesaid decisions reveals the creative role of judiciary in securing equal pay for equal work to both sexes. Further the Court has brought equal remuneration within contours of Fundamental Right of equality. However till 1987, it did not lay down the test for determining 'same and similar work'.

\textsuperscript{106} A.I.R. 1986 S.C. 584.
\textsuperscript{107} A.I.R. 1987 S.C. 2049.
In Mackinon Makenzie's case the employee was working as a Lady Stenographer. The Lady Stenographers working in the establishment of the petitioner were called 'Confidential Lady Stenographer' since they were attached to the senior executive working in the petitioner Company. In addition to the work of Stenographers they were also attending to the persons who came to interview the senior executives and to the work of filing, correspondence etc. There was practically no difference between the work which the Confidential Lady Stenographer were doing and the work of their male counterparts. She accordingly claimed the difference between the remuneration paid to her and her male counterpart. The Court held that the Confidential Lady Stenographers were doing the same work or work of a similar nature as defined by section 2 (h) which the male stenographers in the Company were performing. There was practically no difference between the work which the Confidential Lady Stenographers were doing and the work of their male Counterpart.

It is submitted that in the cases discussed above and in many other cases the Supreme Court affirmed and reaffirmed the view taken in Randhir Singh's case. In fact by examining the above cases one can witness the judicial radicalism of the Supreme Court in developing the doctrine of equal pay for equal work in this decade.

But, unfortunately this trend was departed and the traditional and conservative outlook again took place in the latest pronouncements of the Supreme Court. In State of U.P.Vs. J.P. Chaurasia109, the Supreme Court observed that the question of equal pay for equal work depends on several factors. More often functions of two posts may appear to be the same or similar. But There may be difference in degrees in performance. The quantity

of work may be the same, but the quality may be different. Equation of posts or equation of pay must be left to the executive government. It must be determined by expert bodies like pay Commission. The Court should not try to be a thinker with such equivalence unless it is shown that it was made with extraneaus considereation. The Supreme Court further said that this principle has no mechanical application in every case of similar work. It has to be read into Article 14 of the constitution. Article 14 permits reasonable classification founded on different basis.

In both Randhir Singh's case and Chaurasia's Case, Article 14 was strongly relied upon to achieve different ends. In 1982 in (Randhir Singh's Case) the equality clause of Article 14 was used to breath life into the doctrine of equal pay for equal work, in 1989 (Chaurasia' Case) the reasonable classification part of the same Article used to snuff out its life.

In reality the major section of deprived workers are working on starving wages even government sector. They are afraid of seeking equal pay for equal work due to poverty, unemployment and due to fear of victimisation. It is true that the Trade Union movement could not achieve equal pay for equal work as Fundamental Right after decades of struggle, Justice Chinnappa Reddi achieved by stroke of his pen. But such judge made law has its own limitations. Firstly, it can be nullified by subsequent judicial pronouncements. Secondly, the scope of its application is narrow. In this country Fundamental Rights are enforceable only against the State and not against individuals. Therefore, a person can challenge the violation of Article 14 only if the State discriminate him/her. There is no remedy if a private person discriminates. The doctrine of equal pay for equal work is unworkable against private employers. If the benefits of this doctrine is to reach the vast multitude of workers who are in the private sector, unorganised sector, the government should enact a
comprehensive legislation covering all categories of workers in all sectors, for the effective implementation of the doctrine of equal pay for equal work\textsuperscript{110}.

Further it is submitted that in fact, there is not even a single piece of legislation in India guaranteeing a citizen equal pay for equal work, No State Machinery is there to protect the worker's right to get equal pay for equal work, of course, there is the Equal Remuneration Act, 1976. But the Act is insufficient and ineffective. Firstly, it seeks to provide for payment of equal remuneration to male and female workers, but it does not guarantee equal pay for equal work among men. Secondly it provides for equal wages for man and women for same or similar work. Similar work is defined as one on which the skill, effort and responsibility are the same. But the government on subjective satisfaction has the power to declare that difference in remuneration between men and women in specific establishment is based on a factor other than sex. Moreover, establishing that the work is same or similar is an uphill task. For instance, in the construction industry women helpers carrying bricks are paid less than male helpers who carry cement bags. There is nothing in the argument that carrying 100 kg. of bricks is less strenuous than carrying 100 kg. of cement. But a claim for equal pay could be easily defeated by saying that it is not same and similar work\textsuperscript{111}. Therefore, the government should enact a comprehensive legislation covering all categories of workers in all sectors, for the effective implementation of the doctrine of equal pay for equal work.

\textsuperscript{110} Miss Y Vishnupriya "Equal Pay for Equal Work in India Myth or Reality", 88 (Supreme Court Journal 1991)
\textsuperscript{111} Ibid.