

## **“Constitution Provisions and Judicial Approaches for the Protection of Working Women Rights”**

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**ABSTRACT :** *Women have become equal participants in many respects at all levels of society. The future would see more women venturing into areas traditionally dominated by men. This will lead to income generation and greater sense of fulfillment among women. In almost all the countries governments are providing special provisions for women’s development and efforts are being made to extract maximum of their talent. In this modern world where the cost of living has increased significantly, it becomes necessary for women to undertake economic activity and support their families. Women are in vulnerable conditions from ancient society till today. Especially in working places. Various social reformers have tried to uplift the social conditions of women, various legislation and judiciary has played a vital role for her empowerment. Because of globalization, various sectors of government opened the gate for foreign corporate entities. Thousand of educated women working day and night in those service sectors, due to that the problems of working women’s has taken another shape, they are harassed physically (sexually) and mentally, there fundamental and human rights are in threat. There is no specific legislation for protection of working women and their rights, Hence, the present research work was undertaken to study and throws light on Constitutional provisions and Judicial approaches for the protection of working women rights.*

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### **I. INTRODUCTION**

Ever since Indian opened its doors to liberalization in the early 1990s, there has been a steady transformation in India’s economy. Self reliance helped in building great institutions of learning and taking strides in various field of life in keeping pace with the rapidly changing world, women who earlier stayed at home to attend their domestic duties how maintain both work and home simultaneously, participating in the process on an equal footing with men in social and economic development. Women have moved away from their traditional roles of homemaker and child rearing to social and business solutions.<sup>1</sup> Women have become equal participants in many respects at all levels of society. The future would see more women venturing into areas traditionally dominated by men. This will lead to income generation and greater sense of fulfillment among women. In almost all the countries governments are providing special provisions for women’s development and efforts are being made to extract maximum of their talent. In this modern world where the cost of living has increased significantly, it becomes necessary for women to undertake economic activity and support their families. In the best way to understand, the spirit of a civilization and its excellence is to study the history of its women and children and the treatment meted out to them. Gender has always shaped the legal and cultural landscape of all countries. Each person is to an equal to the most extensive basic liberty compatible with and similar liberty for others. Social and economic inequalities are to be arranged so that they can reasonably be expected to be to everyone’s advantage and in such a manner that the positions and offices to which they are attached are open to all.<sup>2</sup> In India, women are entering the formal labour workforce in unprecedented numbers. In light of this development, there is more than ever before, a pressing need for rights of women to be respected protected and fulfilled, particularly in the workplace. The right to work encompasses the right to work free from harassment. Women’s rights in the workplace are important for many reasons. The obvious reasons that come to mind are of course, the right of women to be free from sexual comments and advances and touching sexual and more. However, any kind of Harassment at workplace extends for beyond individual women and their happiness. It extends to workforce productivity, economic development and much more.

### **II. HYPOTHESIS**

Women are in vulnerable conditions from ancient society till today. Especially in working places. Various social reformers have tried to uplift the social conditions of women, various legislation and judiciary has played a vital role for her empowerment. Because of globalization, various sectors of government opened the gate for foreign corporate entities. Thousand of educated women working day and night in those service sectors, due to that the problems of working women’s has taken another shape, they are harassed physically (sexually) and mentally, there fundamental and human rights are in threat.

. There is no specific legislation for protection of working women and their rights, so I Endeavour to study and throws light on Constitutional provisions and Judicial approaches for the protection of working women rights.

### **III. RESEARCH METHODOLOGY**

This research involves doctrinal method for collection of data. Material in connection to may research topic are collected from the primary and secondary sources of data collection

### **IV. RESEARCH QUESTIONS**

1. Problems faced by women employees.
2. Constitutional applicability of protection of working women.
3. Judicial approaches in matters relating to the safeguards provided for working women.

### **V. PROBLEMS OF WORKING WOMEN**

It is an open truth that working women have to face problems just by virtue of their being women. Social attitude to the role of women lags much behind the law. The attitude that considers women fit for certain jobs and not others, those who recruit employees. The gender bias creates an obstacle at the recruitment stage itself, when it comes to remuneration the law proclaims equality but it is seldom put into practice. The inbuilt conviction that women are capable of less work than men or less efficient than men governs the injustice of unequal salaries and wages for the same job. The age old belief of male superiority over women creates several hurdles for women at much better than their male colleagues to reach the top,<sup>3</sup> Technological advancement results in retrenchment of women employees. No one thinks of upgrading their skills. Maternity leave is seldom given. It is much easier to terminate the woman's employment and hire someone else. Trade unions do little to ameliorate the lot of women workers. Women's issues do not occur on the priority list of most of the trade unions. Women going to work are often subject to sexual harassment. Public transport system is over crowded and men take advantage of the circumstances to physically harass women. Colleagues offer unwanted attention which can still be shaken off but a woman is placed in a difficult situation if the higher officer demands sexual favours. If refused, the boss can easily take it out on the woman in other ways to make life miserable for her. There has been several cases of sexual harassment recently involving even the senior women officials. On the other hand, if a woman is praised for her work or promoted on merit, her colleagues do not hesitate to attribute it to sexual favours. The psychological pressure of all this can easily lead to a quitting her job. Most of the problems that beset working women are in reality rooted in the social perspective of the position of women. Traditionally men are seen as the breadwinner and women as the housekeepers, child bearers and rearers. This typecast role model continues to put obstacles before the working women. A fundamental change is required in the attitudes of the employers, policy makers, family members and other relatives and the public at large. This is applicable to all working women whether drawing salary of honorarium or doing voluntary work. Whether in government or public or private enterprise.<sup>4</sup>

### **VI. CONSTITUTIONAL PROVISIONS TO WOMEN EMPLOYMENT**

A constitution is the basic document of a country having a special legal sanctity. The constitution aims at creating legal norms, social philosophy and economic values, which are to be effected by striking synthesis, harmony and fundamental adjustment between individual rights and social interest to achieve the desired community goals. Indian constitution provides for equality of opportunity to all, which includes, inter alia, equality of opportunity for both men and women. Article 16 specifically provides for equality of opportunity in matters of public employment irrespective of religion, race, caste, creed, sex, place of birth. The broader objective was to bring about democratization of employment where everybody contributes and is benefited by the economic development of the nation. It was argued that this would also help their social status. Socio economic development is necessary for the success of democracy. It is argued that employment among women would help improving their economic status, which in turn would facilitate more concentration on other social and political matters of the society. Thus, to promote large-scale employment amongst women, creation of job opportunities and appropriate working environment become crucial. This is a society- building task in which law has a role to play, though a limited one.<sup>5</sup> In India, various legal measures have been taken to promote and protect women employment. They afford protection at two levels; at the time of employment and post employment. The focus of the discussion is limited to critically examining three such measures: One is the reservation. In this respect, the executive steps and judicial response will be scrutinized. Another is the general discrimination against women based upon sex in employment. The third issues would be a specific instance of sexual discrimination in the form of different wages to men and women.

Preamble of Indian Constitution clearly discloses that ‘We the people of India, having solemnly resolved to constitute India into a (sovereign, socialist, secular, democratic, republic) and to secure to all its citizens. Justice, social, economic and political Liberty of thought, expression, belief, faith and worship, equality of status and of opportunity, and to promote among them a fraternity. Assign the dignity of the Individual and the (unity and integrity of the nation) The source of the constitution is thus traced to the people i.e. men and women of India. Irrespective of caste community religion. The framers of the constitution were not satisfied mere territorial unity and integrity. If the unity is to be lasting, it should be based on social, economic and political justice. Such justice should be equal for all.<sup>6</sup> Fundamental Rights and Directive Principles of State Policy provide matrix for development of human personality and elimination of discrimination. Constitution under Article 14 provides for equality before law and equal protection of laws. However, Article 14, which per se, prohibits discrimination between and among equals, permits class legislation through classification to give differential treatment. Classification must pass the test of intelligible differentia and nexus with the objective to be achieved. In that sense, men and women can be reasonably classified and classed separately and separate and different provisions can be made for each class. To give more strength to equality clause, constitution specifically forbids state under Article 15(1) from discriminating in all state actions, on the grounds only of religion, race, caste, sex or place of birth. There is prohibition against discrimination but not against preferential treatment. Constitution of India specifically permits the state to make special provisions for women and children under Article 15(3). The purpose is to improve and strengthen the status of women by affording them the opportunities to participate in the socio-economic activities of the state.<sup>7</sup> Besides Article 14 and 15(1), 38, 39 and 40 lay down the public policy and constitutional philosophy to accord social and economic democracy to women as assured in the preamble of the constitution. In other words, they frown upon gender and cultural rights on equal footing.

## **VII. JUDICIAL APPROACHES TO PROTECTION FOR WORKING WOMEN**

Economic dependence of women is the main reason for their marginalization and exploitation. To promote economic independence women must engage themselves in productive employment. For this purpose, various steps have been taken at legal and political level. For example, constitution of India ensures that there is an equal opportunity to both men and women and forbids discrimination against women at the time of recruitment. However, bare provision of equality of opportunity will not automatically attract the womenfolk to come out and work and become independent. They are in fact not capable and equipped to compete with men in recruitments. This incapacity is not necessarily related to their intelligence. It may be result of lack of opportunity due to socio economic conditions such as lack of willingness on the part of parents to educate girls or proper environment for educational or unavailability of nutritious food etc. under such unfavorable circumstances, it is crucial that women be given certain concession in employment at the time of recruitment. In *Vishaka V. State of Rajasthan*.<sup>8</sup> Judgment of the Supreme Court was delivered by Justice J.S. Verma on behalf of Justice Sujata V. Manohar and Justice B.N. Kirpal on a writ petition filed by Vishaka, a non governmental organization working for “Gender equality” by way of public interest litigation, seeking enforcement of fundamental rights of working women under Articles 14, 19 and 21 of the Constitution of India. The Supreme Court upheld gender equality and right to work with human dignity in Articles 14, 19(1) (g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein.

The legal provision for judicial intervention are: (a) Article 24, which says ‘equality before law; (b) Article 19(1)(g) right to practice any profession or to carry on any occupation or business; (c) Article 15 Prohibition of discrimination on grounds of religion, race, caste, sex, place of birth; (d) Article 21 Right to life and personal liberty; and (e) Article 51(e) to promote harmony and the spirit of common brotherhood among all the people of India transcending religious, linguistic and regional or sectional diversities, to renounce the practices derogatory to the dignity of women.

The Supreme Court, in absence of enacted law to provide for effective enforcement of basis human rights of gender equality and guarantee against sexual harassment laid down the following guidelines.

1. All employers or persons in charge of work place whether in the public or private sector, should take appropriate steps to prevent. Sexual harassment of women employees.
  - a) The rule or regulation of Government and Public Sector bodies relating to conduct a discipline should include rules prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
  - b) As regards private employers, steps should be taken to include the aforesaid provisions in the Standing Orders under the Industrial Employment Act, 1946.

- c) Appropriate work conditions should be provided in respect of work leisure, health and hygiene to further ensure that there is no hostile environment towards women at work place and no woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.
2. Where such conduct amounts to specific offences under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.
3. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer. Hence working women who face sexual harassment today shall seek protection under Article 21 and other supporting Articles mentioned above, in Indian Constitution to live with human dignity.

Universally working women in general are subject to discrimination at various levels. The problems and difficulties of working women are multi-dimensional, varying from woman at personal level, and section to section at general level and hence need to be analysed in depth. The problems of working women at work place are multiple and differ from woman to woman according to the nature of the work and position. As per Aruna Broota, a psychologist of Delhi University, no girl is respected in the office if she is known to be a single woman. In fact, in India women are considered less of an individual than as an object of view by men whether she is single or married. This is particularly true for the women who are working among the males. Working women of the present generation, in the opinion of Ms. Broota, are at the crossroads. They are aware that they are being exploited and ill treated. Yet they consciously or unconsciously adopt their mother's roles of sub service to the male. Therefore, women, in general, have to be taught to develop their self-confidence, as well as self-respect.<sup>9</sup> In the contemporary world, women no longer lag behind in terms of career. They are keeping themselves shoulder to shoulder with opposite sex. However, even today they are expected to do multitasking. They have to take care of family and household even if they are working. Working women refers to those in paid employment. There is no profession today where women are not employed. However, it is true that working women have to face problems by virtue of their sex.<sup>10</sup> For centuries; women have been subjected to exploitation and torture physically, sexually and mentally. There are innumerable challenges and problems faced by them both at home and work place. In the world of Sujata V. Manohar, J.<sup>11</sup> creating job opportunity is the important limb of the concept of gender equality. Such reservation or preference to women in employment can be justified under Articles 15(3) and 16(1). Giving preference or reservation to women in employment does not violate equality under Article 14. Article 14 permits classification and as the supreme court held in Dattatraya case classification on the ground of sex is permissible provided belonging to that class are of a particular sex.<sup>12</sup> In addition, combined reading of Article 15(3) and Article 16(1) has been interpreted to mean that special provisions under Article 15(3) would cover reservation in employment under state as special provisions. This interpretation supports the above proposition laid down in the Dattatraya case. It has been argued that Article 15(3), which provides for special provision for women, is applicable to only affirmative action by the state and not to reservation. This was argued on the lines of Article 15(4) and 16(4). Article 15(4) provides for special provision for socially and educationally backward classes whereas Article 16(4) of the constitution of India provides for reservation in employment for backward classes who are not adequately represented in employment. It was contended that Article 15(4) is applicable only to affirmative action whereas article 16(4) deals exclusively with reservation for backward classes. The Supreme Court rejected this contention in *Indira Sawhney v/s Union of India*.<sup>13</sup>, observed that article 15(4) is wider in scope than Article 16(4), and does include affirmative action in addition to reservation. On the same lines it was argued in *Government of AP v/s Vijayakumar PB*.<sup>14</sup> that in the absence of specific provision. Reservation for women would constitute violation of Article 14. Article 15(3) is applicable only to affirmative actions by the state and not to reservation. The Supreme Court rejected the contention in this leading case and held that both preference and reservation can be given under Article 15(3) and it would not violate equality clause under Article 14. The Supreme Court thus observed:

In India, there is no specific policy on the reservation for women in employment except one-third reservation of seats in local elected bodies. However, here and there, different governments have offered reservation and given preference to women in recruitment within the limits, set forth in *Indira Sawhney case*.<sup>15</sup> Judiciary has upheld such measures by the government to give preference to women candidates to men where they are suited more. The leading instance of such judicial support is *Government of AP v/s Vijayakumar PB*.<sup>16</sup> In this case Andhra Pradesh government inserted rule 22-A (2) in Subordinate Service Rules that provided for preference to be given to women in the matter of direct recruitment up to 30% of the posts when men and women are equally suited. The Supreme Court upheld this provision and observed that the preference, in addition to reservation of seats for women is valid.

*Tonguru Sudhakar Reddy Another v/s Government of AP.*<sup>17</sup> Andhra Pradesh Government made amendment in the AP societies Act 1964 in 1991 to provide for two women members being nominated by registrar of societies in the management of the societies. It was contended this preference to women would increase the reservation for women in management above 50%. It was also contended that this is violation of Article 14 as being arbitrary. Government defended by saying that women are otherwise not coming forward to contest elections in view of serious campaigning on the basis of factional and political consideration. The purpose of this provision is to encourage women to participate in the management of the affairs of the societies. The Apex Court held that this is not unconstitutional. *Vijay Lakshmi v/s Punjab University.*<sup>18</sup> The Punjab University calendar Vol III was challenged which provided for appointment of lady principals, lady teachers and lady doctors for women colleges and lady superintendents for the women hostels. The court held such a preference to women employment is not violative of Article 14. The court was of the opinion that giving such preference is a matter of policy by the state with which judiciary ought not interfere unless until it is unconstitutional, arbitrary and unjustified. In this particular case, court observed giving preference to women in women colleges/hostels is a form of preventive, protective and precautionary measure based on the public morals particularly in view of the young age of the girl children to be taught. Considering the peculiarities of situation, it does not seem that preference given to women, in this case, is arbitrary and unjustified. Moreover, when separate schools or colleges for girls are justified then the rules providing for appointment of women employees for women colleges / hostel would also be justified. Discrimination, according to Black's Dictionary, means differential treatment especially a failure to treat all persons equally when no reasonable distinction can be found between those favored and those not favoured. However, the dictionary meaning of discrimination is neutral while the current political usage of the term is non-neutral pejorative.<sup>19</sup> held that discrimination is comparative in connotation. It is double edged. To discriminate against one is to discriminate in favour of other but inherent in the very notion of discriminate, is the measure of comparison. Sex discrimination, in that sense that would mean differential treatment on the ground of sex disfavoring either sex. However, the term sexual discrimination or gender discrimination is generally used to denote discrimination against women on the ground of sex alone.

It is acknowledged that though discrimination is comparative, it is not necessary that every time discrimination is alleged, there must be some comparator who would become parallel to measure the behavior. Suffice to say when a predominantly female group is at substantial disadvantage in practice when compared with a predominantly male group, discrimination is evident. Termination from services at the instance of pregnancy could constitute unlawful sex discrimination even though there is no male comparator with whom to compare. The treatment meted out to women because they cannot become pregnant.<sup>20</sup> *Nargeesh Meerza case.*<sup>21</sup>, which still holds good, is a classical example of sexual discrimination. Before discussing relevant issues of this case, it is pertinent to state the fact in brief. Regulation n46(i)(c) of the Air India Employees service Regulation and Regulation n12 of Indian Airlines Corporation provides for retirement of Air Hostesses (Ahs) at the age of 35 years or on marriage if it takes place within 4 years of the service or on first pregnancy. There was no such retirement condition for Assistant Flight Pursuers (AFPs). Ahs and AFPs are members of cabin crew. The early retirement of Ahs had bearing on their over all monetary benefits.

The earlier retirement age became the bone of contention between the corporations and Ahs earlier in 1962. At that time Ahs demanded alternation of service regulations that are prejudicial to them and the matter was referred to Justice Khosla tribunal and justice Mahesh Chandra tribunal. The awards given by these tribunals were carried into effect. However, in this case the constitutional validity of these regulations was challenged through the writ petition on the ground that these regulations were arbitrary and discriminatory. The Apex court upheld the constitutional validity to the termination from service if marriage takes place within four years of service. This was justified on the ground that this would help not only in improving the health of the employee but also promote and boost family planning Programme. This is not sound legal reasoning. It seems arbitrary and unreasonable to single out Ahs not only from AFPs but also from form rest of the population for making population control policy a success. In addition, the provision puts unreasonable restriction no personal liberty under Article 21 of Ahs to marry for no cogent reason whatsoever. The court goes on to justify the four years bar on marriage by saying that Ahs usually enter the profession when they are 19 years old. Because of the bar, they would be able to marry at 23, which is not unreasonable rather would be better for them to make their marriage success. The court's presumption that 'there are very few who decide to marry immediately after entering the service' is unreasonable. It is pertinent to point of here that can judiciary rise marriageable age to 23, which fixed at 18 for girls, for Ahs by making them a class apart and thereby treating them unequally.

Another pertinent issue was whether retirement on first pregnancy of AH is justified? The Supreme Court held unconstitutional the provision regarding retirement of Air Hostess on her first pregnancy by holding that this is an ‘insult to womanhood’ but did not recognize it to be an instance of sexual discrimination. It is true that women generally have to undergo childbearing activity and attend to other domestic and job related responsibilities without much support from other family members. The apex court seems to be conscious of this reality but advocates neutrality instead of being sympathetic to such unfavorable circumstance at home. The court says that how a woman attends to her children is her personal matter and corporation (Air India) does not have anything to do with it. The underlying notion of the judgment seems to be that marriage creates more hurdles for women in due discharge of the job related responsibilities than that for men. Also the married women cannot cope effectively the marital obligations and career related responsibilities simultaneously. It is an instance of enforcing fanciful idea regarding stereotyped traditional role structure for women.<sup>22</sup> Vishaka and Another v. Union of Indian.<sup>23</sup> Sexual discrimination is very well evident while making classification to justify differential treatment. One such aspect of sexual discrimination is dealt in detail in the next part, which will give instance of unreasonable classification to justify unequal wages.

Sexual harassment is a serious problem for women workers. There is extensive anecdotal evidence indicating its pervasiveness, but it remains hidden by the veil of silence surrounding the issue. Sexual harassment at work place has attracted attention from the marks of the Indian Penal code. However, in Indian criminal law, it has not been pronounced as a juridical category of crime. As regards protection from sexual harassment in the work place, the Indian Penal Code of 1860 (Section 509) defines sexual harassment as any word, gesture or act intended to insult the modesty of a woman and which is heard or seen is an offence and is punishable with simple imprisonment and / or a fine. It was only in 1997 that, in the realm of juridical interpretation, the object sexual harassment of working women was named and defined. This does not imply that there are no related laws in the Indian penal code (IPC) that may be evoked when a woman is sexually harassed. However, these related laws are framed as offences that either amount to obscenity in public or act that are seen to violate the modesty of women under section 294, 354 and 509 of the IPC. While section 294 IPC is a law applicable to men and women, the latter two are specifically oriented towards women. Role of the Supreme court of India in Protecting women from Sexual Harassment: The major significant development and achievement on sexual harassment at work place was the landmark Vishaka judgment by the Supreme Court. The spirit of Vishaka is very positive and makes major shifts in dealing with acts of sexual harassment at work place. It lays a major responsibility on the employers to provide safe work environment to women employees and stresses on prevention. The “Vishaka” guidelines provide the scope for creative application to different workplace to make the spirit of “Vishaka” come true. Thus, it stresses on clear role of employer for both prevention and resolution of sexual harassment at work place. State of MP v/s Pramod Bhatia.<sup>24</sup> Payment of equal remuneration to both man and woman for the same work is yet another positive step to prevent exploitation in the name of physical weakness. President of India issued an ordinance in 1975, which was later replaced by Equal Remuneration Act 1976 (Hereinafter called as Act) in order to give effect to the mandate of Article 39 (d) of the constitution of India and India’s commitment to Equal Remuneration Convention 1951 adopted by general conference of ILO. The purpose of the Act was to secure equal pay for equal work for both men and women

The Act has a specific purpose and limited operation. Even without this Act, equal pay for equal work is covered under the Article 14, which is very well interpreted and recognized by the judiciary. B.P. Jeevan Reddy J. held that equal pay for equal work is self-evident and implicit in doctrine of equality Under Article 14, it flows from it. The Supreme Court justifies this sort of interpretation by maintaining that in the matter of employment, the governments of socialist state must protect the weaker sections of the society. It must be ensured that there is not exploitation of poor and ignorant. It is the duty of the state to see that unprivileged and weaker sections get their due. Equal pay for equal work under Article 14 is wider in scope, affording equality in payment to all for same or similar work. Equal Remuneration Act, 1976 merely makes the picture unambiguous as far as the equality of payment between men and women is concerned. However, rule of reasonable classification and all other rules evolved with respect to the Article 14 and 16 (1) come into play whenever, there is a complaint of infraction of equality rules falls into consideration. Equal remuneration Act and equivalent connotation under Article 14 provides that everyone should be paid equal for same or similar work. It implies that different wages can be paid for different work. However, such differential payment would call for classification. Apparently, in India, the problem of equal pay to both man and women for same or similar work does not seem to pose big threat. Even if it is present here and there, it can be easily agitated and proved in the courts of law. The difficulty lies in the classification to justify differential payment. As earlier discussed, sex coupled with other factors can be a ground for classification and thus women can easily constitute a class apart for differential payment.

The definition, states that same or similar work will be determined by taking into consideration the skill, efforts and responsibilities involved in the work. However, the difference, if any, between man and women, on the basis of these factors may be ignored while framing the terms and conditions of employment.<sup>25</sup> *Air India V. Nargeesh Meerza*<sup>26</sup> is an instance of disguise discriminatory classification on the ground of sex to justify differential treatment. On the issue of classification between Ahs and AFPs for differential service conditions, the Supreme court held That having regard to various circumstances, incidents, service conditions, promotional avenues etc. of AFPs and Ahs, it is clear that Ahs are an entirely separate class governed by separate rules, regulations and conditions of service. *State of UP v/s Chaurasia*.<sup>27</sup> It may be pointed out here that the classification between Ahs and AFPs is not based upon skill, efforts or responsibilities or nature of work or actual work done, or merit or experience. Classification in this case, on the grounds of various circumstance, incidents, service conditions, promotional venues etc., was held valid. As such these factors cannot supply rounds for classification rather are matters of concerns at the next stage once the classification is done. As far as functions of two categories are concerned, the Apex Court itself conceded that function of two, though obviously different, overlap on some point but the difference, if any is one of degree rather than of kind. Not only this, the court also agreed with the observations made by Mahesh tribunal that “there cannot and should not be any inflexibility and rigidity regarding functions and duties of the different categories of cabin crew and management should have full authority and discretion as regards interchangeability of job allocation and functions and duties of different categories of cabin crew. Thus, one may safely say that the criterion to differentiate AHs and AFPs is not the nature of job but the service conditions, which to my understanding, is a faulty criterion to differentiate.

In a more recent case of *Air India Cabin Crew Association V. Yeshaswini Merchant*.<sup>28</sup> Supreme court held that differential treatment meted out to one group of Ahs is justified because it is the result of negotiations and resultant agreements, settlement and awards made of industrial tribunals. The court here is shifting from its own stand that was taken in *Mackinnon* case, which was reiterated in *State of UP v Chaurasia*, that even if an employee has voluntarily accepted the employment on unequal terms, state should not deny their basic right of equal treatment. In a recent judgment delivered by Delhi high court on 13<sup>th</sup> August, 2004, *Madan B. Loku J.* held that concept of equality in all its aspects is enshrined in Article 14 of the Indian constitution. There may be some discrimination on certain well defined principles, but in the matter of pay scales, there cannot be any discrimination only on the ground of sex. In this case forty nine women worker approached the High court alleging gender discrimination against super Bazaar court came to the conclusion that there is discrimination on the ground of sex because women are getting the pay scale of Rs. 150 per month, which is lower than male counterparts, who are getting the pay scale of Rs.185 per month for doing the same kind of work of packaging.

### **VIII. CONCLUSION**

Women upliftment is a big task ahead of us. It has multifarious dimensions. The issues relating to women need to be addressed with exceptional sensitivity taking into consideration all the surrounding factors. Law, in this respect may prove to be useful and forceful instrument. By and large, the response of law has been positive and constructive in this direction. The legal steps taken however are not sufficient. Much more needs to be done in this field. In addition to this, it could be said that law can do part of the task for its inherent limitations. For the better and total results, the society needs to work at various other levels to do the complete task.

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