

CASE COMMENT: AIR INDIA V NARGESH MEERZA, [1978] 2 SCR

Vishnu Narayanan. J***ABSTRACT**

“Air India v. Nargesh Meerza”¹ is the first case in the 30-year-long struggle of air hostesses claiming back their rights and equality. In this case, two regulations of Air India Employees Service Regulations have been contended. These regulations were 46 and 47. This was because they were discriminatory. These regulations were violative of articles 14, 15, and 16. The judgment given by the court highlights the loopholes in the courts in India. After this case, many other cases followed based on the same issues which improved the conditions of the air hostesses. This research paper is an analysis of this case. The paper will analyze why the regulations were violative of articles 14, 15 and 16. Moreover, the research paper will also attempt to understand the limitations of the judgment given by the SC of India and the reasons for it being criticized. Lastly, the researcher will analyze the other cases which were based on the same issues and judgment of the present case.

Keywords: Air Hostesses, Discrimination, Article 14, 15, And 16, Equality, Intersectionality.

INTRODUCTION

Discrimination occurs due to several factors such as gender linguistics, cultural differences geographical differences, etc. In discrimination based on gender, a group of people is discriminated against based on sex or gender. Discrimination based on gender is most commonly prevalent in the civilized societies of today’s world. Though societies have developed and transformed into modern societies yet sex discrimination is still rooted in the minds of the people as it was prevalent in ancient times. This is the reason why people still didn’t adapt themselves to equality and impartiality. This kind of discrimination usually happens in the workplace and is usually towards women. In our country, women are always seen as inferior to men due to the patriarchal element present in our society. Due to this stereotype prevalent in society, women lose their right to freedom and livelihood. This is the reason why women are always seen fighting for their rights and opportunities. Women are subjected to different kinds of discrimination in pay scale, sexual harassment, education,

* BA, LLB, SECOD YEAR, SYMBIOSIS LAW UNIVERSITY, HYDERABAD.

¹ Air India v. Nargesh Meerza, [1978] 2 SCR

employment, or pregnancy. Discrimination at the workplace can be due to various factors like causing disrespect to people of a certain gender, being given lesser salaries paid less than a person belonging to an equal position, and not allowing any women to work due to marriage or pregnancy. Though many laws are prevalent in our Constitution, the main issue is in the implementation of the law. Due to a lack of awareness and proper implementation, women suffer in almost every area. The present case is also based on gender discrimination where women were considered inferior to men and were thus subjected to discrimination.

In the 30-year-long case of “Air India vs. Nargesh Meerza”², the Air Hostess lost a court struggle for an equal age limit for both male and female employees. Female attendants were to retire at the age of 35, but male staff might work until they were 58. After submitting a petition in the Lok Sabha for the aforementioned discrimination, the Government of India passed laws in 1989 that permitted female attendants to be granted acceptable ground staff duties after the age of 35 and to retire at the same age as male attendants at the age of 58. Following suit, Air India issued a statement in 1990 in which the air hostesses after attaining 45 years will be given ground service posts. This age restriction was raised to 50 years in 1993, subject to the employee's medical fitness for flying responsibilities. Following this, Air India was legally separated into two independent businesses, one of which was Indian Airlines and the other was Air India. With prior versions of the matter being submitted before the "National Industrial Tribunals (one being the Khosla Tribunal (1965) and the other being the Mahesh Tribunal)" (1972). The court ruled that the retirement and pregnancy provisions were unlawful and ordered that they be repealed. Rule 47, too, met with a similar scenario, since it was discovered that the regulation had an enormous delegation of authorities without even any realistic parameters for policing it.

REVIEW OF LITERATURE

“If you are treated less favorably than another person in a comparable position, and this behavior cannot be objectively and fairly justified, you are being discriminated against. Discrimination can also occur if you are disadvantaged as a result of being treated the same as someone else despite the fact that your circumstances are different (for example if you are disabled or pregnant).”³ The way we describe sexual harassment has a big impact on how we

² Id.

³ Equalityhumanrights.com. 2022. Article 14: Protection from discrimination | Equality and Human Rights Commission.

frame redress measures. Despite the fact that Article 15 prevents discrimination in public areas, there is no local counterpart of the United States Civil Rights Act of 1964 or the United Kingdom Equality Act 2010 for implementing this restriction. Similarly, while Article 16 provides equal opportunity in State employment, no statute or agency exists to regulate workplace discrimination in the private sector or even the public sector. “Instead, POSH mandates that workplaces establish Internal Accusations Committees ("ICCs") to investigate sexual harassment complaints.”⁴ Fundamental rights are thought to be on par with God's, thus no one can change them. “Only discrimination on the basis of caste, sex, religion, place of birth, and race is prohibited by Article 15 of the constitution. The usage of the term merely implies that discrimination based on other reasons is unjustified. Part III of the Indian constitution protects the article of the constitution, and article 15 explicitly falls under the category of the Right to Equality.”⁵ Article 16 is an example of the general rule being applied with specific regard to the possibility of State appointments. “It states that in situations pertaining to employment or appointment to any position under the State, all citizens shall have equal opportunity.”⁶

RESEARCH QUESTIONS

- “Whether Regulation 46 & 47 are violative of Articles 14,15, 16 of the Constitution of India and thus ultra vires in whole or part?”
- “Whether discretionary powers as enumerated under Regulation 47 can be deemed as being excessive delegation?”
- Can a law be struck down because it is ultra vires with that of the fundamental rights by the Indian Constitution?

RESEARCH OBJECTIVES

- To analyze the facts and the judgment of the case of “Air India vs. Nargesh Meerza” and form a conclusion on the basis of our analysis.
- To discuss 10 more cases related to that of “Air India vs. Nargesh Meerza”

⁴ Indian Constitutional Law and Philosophy. 2022. sex discrimination – Indian Constitutional Law and Philosophy.

⁵ Legalserviceindia.com. 2022. Article 15 of The Indian Constitution: An Insight.

⁶ Academike. 2022. Equality of Opportunity in Public Employment - Academike.

RESEARCH METHODOLOGY

A qualitative form of research was found to be suitable and appropriate to analyse the cases. The primary source is the case as its whole. The secondary sources for the research include opinions and articles from varied and reputed individuals from the field of law. There has been a usage of journal articles, newspaper reviews, interviews, online databases, and various other sources that give us insight into the rule of the case. A combination of descriptive, conceptual analysis, and analytical research design has been employed in the course of this study to come out with appropriate advancements.

SCOPE OF RESEARCH

This research paper is mainly an analysis of the case “Air India v. Nargesh Meerza.”⁷ The paper also analyzed the law and its applicability in the case. Cases preceding the present case were also analyzed. The paper also includes other cases based on the same issue.

FACTS OF THE CASE

The case Air India vs. Nargesh Meerza is about regulations 46 and 47 of ‘Air India Employees Service Regulations.’ These regulations contended because they caused inequality between the male and female cabin crew. Both the regulations were discriminatory on various grounds including the different retirement ages for male and female cabin crew, payment and promotional avenues, and conditions related to the termination of Air Hostesses. The regulations also specified different operational grounds for air hostesses working in International and domestic circuits. The male and female cabin crew were also called differently, the male cabin crew were known as Air Flight Pursers (AFPs.), and the female cabin crew were known as the Air Hostesses (AH). The major issue of the case was regarding the age of retirement for air hostesses and air flight pursuers. This is specified under regulation 46. It specifies the retirement age for men as 58 years but for women was 35 years. But the female cabin crew had to retire on grounds of marriage or pregnancy.

Another important issue raised was regarding the discretionary powers of the Managing Director given under regulation 47 of the Air India Employees Services. This regulation specifies that the managing director at his discretion can increase the retirement age.

⁷ *Supra* note 1.

RULE OF LAW**ARTICLE 14 OF THE CONSTITUTION OF INDIA**

“Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.”

ARTICLE 15(1) OF THE CONSTITUTION OF INDIA

“The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them.”

ARTICLE 16 OF THE CONSTITUTION OF INDIA

“Equality of opportunity in matters of public employment”

“Article 16(1): There shall be equality of opportunity for all citizens in matters of employment under the State.”

REGULATION 46 AIR INDIA EMPLOYEES SERVICE REGULATIONS

“Retiring Age:

Subject to the provisions of sub-regulation (ii) hereof an employee shall retire from the service of the Corporation upon attaining the age of 58 years, except in the following cases when he/she shall retire earlier:

c) An Air Hostess, upon attaining the age of 35 years or on marriage if it takes place within four years of service or on first pregnancy, whichever occurs earlier.”

REGULATION 47 OF AIR INDIA EMPLOYEE'S SERVICE REGULATIONS

“Extension of Service”

“Notwithstanding anything contained in Regulation 46, the services of any employee, may, at the option of the Managing Director but on the employee being found medically fit, be extended by one year at a time beyond the age of retirement for an aggregate period not exceeding two years, except in the case of Air Hostesses and Receptionists where the period will be ten years and five years respectively.”

VERDICT

The Supreme Court in its judgment did not completely strike down both regulations. The Court partially struck down the clauses of regulation 46 and completely struck down regulation 47. The conditions regarding retirement and pregnancy were ordered to be struck down as it was unconstitutional but the clause regarding marriage was not ordered to be struck down as it was constitutionally valid. It was also recommended by the court to amend the pregnancy clause and change the retirement criteria to third pregnancy than the first pregnancy. This suggestion was made on the reason of public health. The Court also held regulation 47 unconstitutional as it suffered from the excessive delegation and also proper guidelines were not prescribed for the same. Regulation 47 therefore also had to be struck down.

RULE OF LAW

“The Indian Constitution contains provisions for the Right to Equality in Articles 14 to 18. The Preamble of the Indian Constitution also provides for the right to equal status and opportunity for the citizens of India. Right to Equality forms part of the basic structure of the Indian Constitution which can't be amended. It is one of the six fundamental rights which is provided to the citizens of India by the Constitution.”

ARTICLE 14 OF THE INDIAN CONSTITUTION

This article states that “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”⁸ The main objective is to treat all citizens equally. Article 14 consists of two components, ‘**equality before the law and equal protection of the law**’. Equality before the law implies that every person should be treated equally. Class differentiation like rich and poor, male and female, upper caste and lower caste cannot be applied. It is the duty of the state to not provide any special privileges to any section of society. Equality protection of laws is a positive concept. It implies that all citizens must not be denied equal treatment and protection. The state has a duty to prevent violation of the citizen's rights and should ensure that the people are treated equally and are receiving equal protection of the law. This has been discussed in the case “**Stephens College v. The University of Delhi.**”⁹. In this case, the main issue was that Christian students were given more preference in the admission process in a minority institution. Supreme Court held that giving more

⁸ Constitution of India § 14.

⁹ Stephens College v. The University of Delhi. 1992 AIR 1630

preference to one section of students does not violate article 14. The court also held that using different admission processes for different categories of students is not violative of article 14. This differential treatment is required for students belonging to minority sections.

The right to equality is not an absolute right. It is subject to several exceptions. This issue has been raised in the case “**State of West Bengal v. Anwar Ali Sarkar**”¹⁰, where the state was accused of using arbitrary power to refer to any case made by them in the Special Court. The Court ordered the act of the state violative of article 14.

ARTICLE 15 OF THE INDIAN CONSTITUTION

Article 14 talks about equality and equality can be ensured only when discrimination is absent. Article 15 thus ensures that discrimination is absent. Article 15 consists of six different clauses. The first clause prohibits discrimination only on 5 grounds. It talks about how discrimination can be prohibited. Article 15(1) states that the “state shall not discriminate against any citizen on grounds only of race, religion, caste, sex, and place of birth.” The term “discrimination” is the process of differentiating between favorable and unfavorable people. “It thus involves an element of unfavorable bias. This is because of the term “only”, due to which the state cannot discriminate against people only on the five grounds but can discriminate against people on any other grounds. Therefore, discrimination on grounds other than the one mentioned in article 15(1) is not violative of article 15.”¹¹

Journal of Legal Research and Juridical Sciences

The major difference between articles 14 and 15(1) is that article 14 applies to both citizens and non-citizens but article 15(1) applies only to citizens. Article 14 is a wider article whereas article 15(1) is narrower in several aspects. “Another major difference between these two articles is that article 14 permits reasonable classification on the basis of any rational criterion whereas under Article 15(1) the grounds mentioned can never form the basis of the classification.”¹²

ARTICLE 16 OF THE INDIAN CONSTITUTION.

This article ensures that citizens are provided with equal opportunities in all matters related to employment in the public sector and private sectors. Under Article 16(1), “citizens are guaranteed equal opportunities both in employment and for office under the state.” The

¹⁰ State of West Bengal v. Anwar Ali Sarkar ,1952 AIR 75

¹¹ MP Jain, Indian Constitutional Law, pp. 933

¹² Id.

statement “any employment or office under the state” implies that this clause is applied to employment in both the public and the private sector. Article 16(1) and 16(2) provides provisions for equal opportunities on the other hand article 16(3) and 16(4) are the exceptions that state the circumstances where the state can treat people unequally.

ANALYSIS OF AIR INDIA V. NARGESH MEERZA.

The Air Hostess of Air India Corporation has faced a lot of struggle for gaining back their rights and equality. The 30-year-long struggle is filled with various cases before the courts and tribunals. The cases also involved several stages. “Air India v. Nargesh Meerza”¹³ is the first case of the struggle. In this case regulations, 46 and 47 of the Air India Employees Service Regulation were challenged. It was argued that both these cases were discriminatory in nature. Regulation 46 was regarding the retirement ages of women and men. The retirement ages were different for men and women. “For the male cabin crew it was 58 years on the other hand for the female cabin crew it was 35 years, on their first or on marriage within 4 years of the service, whichever was earlier.” These conditions on women were considered violative of articles 14, 15, and 26. Regulation 47 was also considered violative of articles 14, 15, and 16. This is because this regulation granted discretionary powers to the manager. Thus the manager had a choice to extend the service of the air hostess by his own choice by five or ten years.

- **Whether clause C of regulation 46 is violative of articles 14, 15, and 16.**

Clause C of Regulation 46 specifies that an air hostess should retire from her service on “attaining 35 years, or marriage within four years joining of the service or on her first pregnancy, whichever is earlier.”¹⁴ It was argued that this clause of regulation was violative of articles 14, 15, and 16.

1) Marriage Condition.

According to the regulation, an air hostess should retire from her service if she gets married within 4 years of her service. Generally, a woman begins her career between the ages of 19-26. Also, very few women decide to marry at such a young age and immediately after joining the service as many air hostesses possess higher qualifications than the minimum required qualification that is SSC. Therefore, if an air hostess joins the service at the age of 19, she could retire from her service at 23 and then she could marry. Also, marrying at the age of 22- 23 years

¹³ *Supra* note 1.

¹⁴ Air India Employees Service Regulations § 46

is the right age for a woman as they would become very mature by that time and thus the marriage could be successful. The regulation is not implementing a complete ban on the marriage of air hostesses but only for a certain period. The air hostess could also marry within those four of joining their service but they would have to retire from their service. If the corporation removes this clause, then they would have to incur huge expenditures for employing temporary air hostesses in place of the working air hostesses who would be on leave. This would be very difficult for the company to bear huge expenditures within a very short period of joining the air hostesses which is 4 years.

Thus, for the above reasons, the condition “should retire on marriage within four years of the service” is valid and not violative of article 14. This is mainly because the clause is not based on any arbitrariness or unreasonableness.

2) Pregnancy clause.

Another condition imposed on the air hostesses is that they should retire from their service on their first pregnancy. The corporations stated that this condition is valid because pregnancies may lead to many complications and medical disabilities which will lead to the inefficient discharge of the duties by the air hostesses. It was also argued that the usual women in the early stages of pregnancy get sick due to the high air pressure and may also develop nausea due to long flight hours. The company also claimed that while employing women as post-air hostesses, a lot of importance is given to their glamour, charm, appearance, and youth so as to provide an attractive and satisfying service to the passengers. This is very much required in the competitive world of today. This is the reason why the air hostesses are asked to retire from their service after their first pregnancy as women after giving birth to the child may lose their physique, appearance, and glamour. However, this argument is baseless and is thus violative of article 14 as the reasons given by the company are based on unreasonable classification between the same class of people that is women who got married and have borne a child and women who are not married or are married but have not borne a child. It was also claimed by the company that once a pregnant woman is allowed to continue in the service, she needs to be given maternity leave for a period of 14 to 16 months under the maternity benefits act, of 1961. This would again become difficult for the company to employ another temporary air hostess in her place as it will lead to huge expenditure.

Based on the above reasons it can be concluded that the condition “the air hostess should retire on her first pregnancy” is violative of Article 14 as the condition is based on unreasonableness

and arbitrariness. The condition also treats equals unequally which is against article 14 as Article 14 specifies that equals and unequal can be treated differently but if equals that is people belonging to the same class are treated differently, it would amount to discrimination and is thus violative of article 14. Thus the last part of regulation 46(C) “on first pregnancy or whichever occurs later” is void and unconstitutional and therefore is struck down as it is severable from the regulation and therefore the entire regulation need not be struck down. The Supreme Court gave the recommendation to change the condition of retirement criteria based on pregnancy to third pregnancy than on first pregnancy on the grounds of public welfare and health.

3) The condition where retirement age of the air hostesses is 35 years.

The minimum age of retirement for air hostesses is 35 years. This is mentioned in regulation 46. But the minimum age for air flight pursuers is 58 years. This was challenged in the court as the retirement age for the male and females were different and thus amounting to discrimination. The company argued that the reason for employing young women in the service is to attract customers so that they will be happy with the service of the airline company. This will in turn increase the profits of the company. Thus, the company gives more importance to glamour and appearance. From the company’s statement, it can be assumed that women will lose their glamour and appearance after attaining the age of 35 years. This statement of the company is baseless and discriminates against women. It was also very surprising to hear the same arguments given by the Khosla and Mahesh Tribunals. The argument by Khosla's judgment was that the air hostesses are needed to deal with passengers with a different characters. Thus it would easy for “young and attractive” air hostesses to manage and settle difficult and awkward situations more efficiently and without any prejudice than older women or air hostesses above the age of 45. The argument by the Khosla Tribunal is also not sensible as the older women would be able to solve such difficult situations more efficiently than the young air hostesses. The argument given by the Mahesh tribunal was also the same as the arguments by the company and Khosla tribunal. Both the tribunals and the company gave more importance to smartness and beauty but what is required to settle the disputes between the passengers is greater experience and goodwill which will be available to older women than young women. Thus older women are more capable to solve disputes than younger air hostesses. Therefore, this clause is also violative of Article 14 as the arguments of the company and the tribunals are baseless and discriminate between the same class of people. Therefore, this clause of the regulation was also removed.

Thus, though the entire regulation 46 was violative of article 15 yet it was not removed. Only the clause regarding the retirement age and pregnancy was removed.

Whether regulation 47 was violative of Article 14

The general rule of Regulation 47 of the Air India Employee Service Regulations is that the employees if medically fit, can extend their service by one year after their period of retirement but only at the discretion of the managing director. This extension cannot be for more than 2 years. This rule is applicable only to the employees who retire at the age of 58 years that is the air flight pursers and the other male cabin crew and staff. The exception to this clause is the air hostess and receptionists. Their service also can be extended but only at the discretion of the managing director. The only difference between the air flight pursuers, air hostesses, and receptionists is that the maximum extension for male officials is 2 years but for the air hostess and receptionists it is ten and five years respectively. Therefore, if an air hostess is medically fit, she can extend her service to 45 years with yearly extensions by the managing director. But this clause has not been properly implemented. This is mainly due to the unguided, unrestrained, and absolute discretion given to the managing director. The statement “at the option of the party” in regulation 47 specifies that the managing director has the option to approve one air hostess and disapprove another. This will lead to discrimination among the air hostesses. The regulation also does not provide a proper mechanism through which the managing director can exercise his discretion. The managing director also need not specify the reason for not approving the extension of the retirement period as an air hostess. The air hostesses also do not have the right to file an appeal in the higher courts against the decision of the managing director. Thus, according to this regulation, the air hostesses, were under the control of the managing director’s decision regarding the extension of their retirement period. Therefore, this regulation is violative of article 14 of the Indian constitution as it confers unrestrained and unguided powers to the managing director and also suffers from an excessive delegation of powers.

Thus, the clause where the managing director had discretionary power over the extension of the retirement period of the air hostesses was struck down as it was invalid and was violating article 14. The removal of this clause would increase the age of air hostesses to 45 years. The managing director would not also have the discretionary power over the extension of the retirement period of the air hostesses and would be bound to extend their period on a yearly

basis of up to ten years if the air hostess is medically fit. This would prevent the managing director from discriminating between the air hostesses.

Whether the regulations were violative of articles 15 and 16.

Regulations 46 and 47 were challenged as they were discriminating based on sex. Therefore, these regulations should be violative of Article 15(1) and Article 16(2). But, Articles 15(1) and 16(2) prohibit discrimination made only and only on the ground of sex. These articles, however, allow discrimination on sex when it is combined with other considerations. In the case “**Yusuf Abdul Aziz v. The State of Bombay and Husseinbhoj Laljee**”¹⁵ discrimination based on gender was considered a reasonable classification. The Court held that classification based on gender is a valid classification and cannot be considered discrimination. Moreover, The Constitution also provides special provisions for women and children.

Therefore, regulations 46 and 47 are not violative of articles 15(1) and 16(2) as classification was made not only on sex but also on many other considerations.

ANALYSIS OF CASES SUCCEEDING THIS CASE

After the case of *Air India v. Nargesh Meerza*, several other cases were filed arguing to take back the judgment given in the 1982 case.

1987: “LENA KHAN V. UNION OF INDIA.”¹⁶

In this case, it was argued that the discrimination was made only to the Indian employees and not to employees employed by Air India from other countries. The retirement age of these employees was at par with the air flight pursuers. However, this petition was allowed and the 1982 judgment was only upheld. In 1989, a parliamentary committee was formed where the government issued directions to increase the retirement age of women cabin crew and both air hostesses and air flight pursers will serve till the age of 58 years. However, due to pressure from the company, the government changed the direction ordering that women should be in service till the age of 58 years but gave this discretion to the company to decide their position.

The company, thus in 1990 issued a statement that women after the age of 45 years would be given ground positions and this was extended to 50 years in the year 1993.

¹⁵ *Yusuf Abdul Aziz v. The State of Bombay and Husseinbhoj Laljee*, 1954 AIR 321

¹⁶ *Lena Khan V. Union Of India*, (1987) 2 SCC 402

However, women were still not considered equals in their workplaces.

2003: “AIR INDIA CABIN CREW ASSOCIATION (AICCA) V. YASHASWANEER MERCHANT”¹⁷

This case was based on the judgment given by the Bombay High Court where it was held that both the regulations were violative of articles 14, 15, and 16 as they were discriminating against the male and female cabin crew on the basis of gender. However, in 2003, this judgment was overruled. In this case, the Court also supported the regulation which specifies different retirement ages for both cadres as both of them had varied service conditions. The Court, therefore, held both the regulations were not discriminating based on sex.

2012: “AICCA V. UNION OF INDIA”¹⁸

This was the final case in the 30-year-long struggle of the air hostesses to gain back their right to equality. After the 2003 judgment, the government directed the introduction of policies for providing equal treatment to the female cabin crew. “Following this directive, Air India issued an office order indicating that the flying age of female cabin crew is brought up at par with male cabin crew and liberties be given to the in-flight service department to assign flight duties to such air hostesses who were grounded at the age of 50.”¹⁹ This directive was however challenged in the Supreme Court. The Court ordered the company to provide equal treatment to female cabin crew so that they are on par with the male cabin crew. Therefore, by this judgment given by the Supreme Court, women air hostesses finally won their battle and gained back their fundamental rights.

OTHER RELATED CASES

“THE STATE OF WEST BENGAL V. ANWAR ALI SARKAR”²⁰

In this case, the court declared the “West Bengal Special Courts Act” invalid because it gave the State Government arbitrary, uncontrolled, unguided power that could be used unreasonably and biasedly, as well as restricting equal protection of the laws. The Act needs a clear distinction between "cases," "classes of cases," "offenses," and "classes of offenses."

¹⁷Air India Cabin Crew Association (Aicca) V. Yashaswaneer Merchant , (2003) 6 SCC 277

¹⁸ AICCA V. UNION OF INDIA ,(2012) 1 SCC 619

¹⁹ Gender Discrimination in the High Flyers Club: Indian Air Hostess’ Battle for Workplace Equality, NYAAYA,

²⁰ The State Of West Bengal V. Anwar Ali Sarkar, 1952 AIR 75

Furthermore, it was held that the classification of cases done in the Code of Criminal Procedure was reasonable, but that this reasonableness did not satisfy the classification done in the contested Act. The Act, which was enacted in 1949, was updated by the State Government, and specific clauses were changed.

“YUSUF ABDUL AZIZ V. STATE OF BOMBAY”²¹

Yusuf Abdul argued that Section 497 was unconstitutional because it did not render women equally liable in an adulterous relationship, which violated the Indian constitution's basic right to equality. He argued that Section 497 only punishes a man and leaves the woman unpunished because it only provides for punishment for a male offender and the wife is not punished as an abettor, which is violative of article 14. The impugned section is also violative of Article 15(1) as it is based on discrimination of sex. This is because it uses unequal treatment between men and women. As a result, he is immune from prosecution under Section 497.

The Honourable Chief Justice pointed out that the Section 497 charge was never meant to apply to women, thus there is no dispute that the law applies unequally to men and women. As a result, he was unable to accept the claim of a breach of Article 14.

“M. NAGARAJ & OTHERS V. UNION OF INDIA & OTHERS”²²

In this case, it was argued that the challenged amendments infringe the Constitution's basic structure and fundamental rights of Articles 14, 16, and 19. This was because it violated the basic principles of the Constitution. The challenged amendments established an unconstitutional, unrestricted, unfettered, and regime of reservations, undermining the efficacy of judicial review, which is an essential component of the rule of law.

“Amendments were held as constitutionally valid. Article 16(4A and B) are inserted into the flow of article 16, and they do not alter the structure of Article 16(4).”

CONCLUSION

It took the air hostesses many years to gain their right to equality at their workplace. This struggle is an example of what women face in different sectors of society. Even though our Constitution provides for the right to equality and protection from discrimination, women in patriarchal societies still find it difficult to use these rights. This can be understood from the

²¹ Yusuf Abdul Aziz V. State Of Bombay ,AIR 1954 S.C 321

²² M. Nagaraj & Others V. Union Of India & Others, AIR 2007 SC 71

30-year struggle of the air hostesses involving various cases and judgments. But in the end, the female cabin crew achieved their goal and finally got back their fundamental rights.

SUGGESTIONS

The judgment of the Supreme Court in the case “Air India v. Nargesh Meerza”²³ brings no equality between the male and female cabin crew. It also upheld the discrimination between the male cabin crew and female cabin crew based on the reason that both belong to different cadres. Due to this both of them will have different rules and conditions and therefore, the regulations are not violative of articles 14, 15, and 16. Though this reason by the Court is true according to the Labour Law and Service Rules the court failed to observe that the regulation was discriminating between the male and female cabin crew based on sex only and no other consideration was used. Therefore, the regulation will be violative of articles 14, 15, and 16.

The court also upheld the clause where the air hostesses are required to retire if they marry within four years of their service based on the reason that it would cause a financial burden to the company to employ other temporary air hostesses. This clause is violative of articles 14, 15, and 16 as it is laying a restriction on marriage for women.

Air hostesses despite having several years of experience were not given higher positions like the male air flight pursuers. Female air hostesses with years of experience were forced to answer inexperienced flight pursers, assuming their inferiority based on their gender.

²³ *Supra* note 1.

References

1. Equality humanrights.com. 2022. Article 14: Protection from discrimination | Equality and Human Rights Commission.
2. Indian Constitutional Law and Philosophy. 2022. sex discrimination – Indian Constitutional Law and Philosophy.
3. Legalserviceindia.com. 2022. Article 15 of The Indian Constitution: An Insight.
4. Academic. 2022. Equality of Opportunity in Public Employment - Academike.
5. Gender Discrimination in the High Flyers Club: Indian Air Hostess' Battle for Workplace Equality, Nyaaya.

