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AIR INDIA V. NARGESH MEERZA

Authored by -
Shaileja Narain and Aeshita Marwah
Labour and Services
(1981) 4 SCC 335
Bench : Faizal Ali, Syed Murtaza & A. Vardarajan, JJ.

"The grammar of labor law in a pluralist society tells us that the worker is concerned with wages and conditions of service, the employer with output and economies, and the community with peace, production, and stream of supply."

- **V.K. Krishna Iyer, J.** in *Bangalore Water Supply & Sewerage Board* v. *A. Rajappa*, (1987) 2 SCC 213, para 102

INTRODUCTION

The issue of sex discrimination under Article 15(1) of the Indian Constitution has never been brought substantially before the Supreme Court, except for one instance where it was briefly considered and the Court ultimately upheld the constitutionality of adultery ("Supreme Court")[1]. As a result, the Supreme Court recognized the case of Air India v. Nergesh Meerza[2] as one of the earliest significant occurrences of sex discrimination under Indian equality legislation. The court made a distinction between sex and gender, concluding that only the former is protected by the Constitution. This was achieved by reading the word "*only*" as meaning "*only and only based on sex*" in Article 15(1). The Court's perspective constrained the application of Article 15(1).

By separating sex discrimination from other forms of discrimination experienced by women, such as age, marital status, and pregnancy[3], the court effectively broadened the definition of intersectional discrimination beyond the parameters of Article 15(1). The extent of the right to equality and non-discrimination has thus been wrongly and arbitrarily constrained.

In light of the nation's developing equality legislation as well as the fourth wave of feminism, it is now more vital than ever to review this choice. The development of constitutional protections against indirect, gender-based, and intersectional discrimination will benefit from this re-examination[4].

BRIEF FACTS OF THE CASE

Air India governed the Air Hostesses employed under them through Regulations 46 and 47 of the Air India Employees Service Regulations. The said Regulations were challenged on the grounds that they resulted in the violation of the Articles 14, 15 and 16 of the Indian Constitution. It was alleged that there was a grave disparity between the Air Hostesses of Air India and their male counterparts, consisting of Assistant Flight Pursers, Flight Pursers and In-Flight Pursers in terms of salary, promotions and the basis of retirement.

[1] *Yusuf Abdul Aziz v. The State of Bombay and Hosseinbhoy Laljee* [1954] SCR 930.
[2] Air India v. Nergesh Meerza, (1981) 4 SCC 335.
[3] Kimberlé W Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics" (1989) 4 University of Chicago Legal Forum 139.
[4] *Lt. Col. Nitisha v. Union of India* 2021 SCC OnLine SC 261.

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According to the Regulations, the following are the contingencies upon which the Air Hostesses had to retire from their services:

- Attaining thirty-five years of age, which could be extended to the age of forty-five, at the discretion of the Managing Director.
- Marriage within the first four years of service and/or
- First pregnancy.

These conditions did not exist for the Assistant Flight Pursuers. While the male employees could work up until the age of 58, the female attendants were to retire at the age of 35. The petitioners argued that any discrimination between two employees who belong to the same class and execute the same or similar tasks was in clear violation of Article 14. The duties the Air Hostesses and Flight Pursers performed were near identical and hence any discrimination between them would be an infringement of Article 14[5]. To this, the respondents contended that insofar as the Air Hostesses are concerned, they are recruited on the basis of sex and are thus entirely distinct from the class of Pursers in that their service conditions, method of recruitment, remuneration, and age of retirement were all very different. Hence, the question of applicability of Article 14 would not arise in this case.

When it comes to the age bar on the Air Hostesses' tenure of service, Air India believed that young and attractive women are more competent for the job of an Air Hostess, which entails dealing with various temperamental and difficult people.

Furthermore, upon claiming that the bar of marriage of Air Hostesses be removed, the respondents argued that it is both a required and desirable provision since, while being married they will fail to efficiently carry out the primary function of their work.

ISSUES RAISED

- Whether Regulations 46 and 47 ultra vires in whole or in part as they violate Articles 14, 15, and 16 of the Indian Constitution?
- Whether discretionary powers as enumerated under Regulation 47 can be deemed as being excessive delegation?

ANALYSIS OF THE CASE

The decision starts on a narrative note by describing how Air India Corporation and Indian Airlines came to be while tying the issue with the 1965 and 1972 Khosla and Mahesh Awards, respectively. The court holds that Article 14 simply outlaws hostile discrimination and is not against reasonable categorization when it comes to the question of whether the aforementioned rules violate it. This ruling relies on a long list of other rulings that claim to treat equal and unequal people differently does not constitute hostile discrimination to support this claim. Therefore, neither the full nor any portion of the aforementioned regulations for the relevant topic violate Article 14.

The judgments support this ideologue by stating that when people of a certain class are treated differently in the public interest to advance and boost members of backward classes, such a classification would not constitute discrimination under Article 14 due to their unique qualities, attributes, mode of recruitment, and the like. The court next tries to establish an example, if not exhaustive, set of rules to determine if the Air Hostesses and Air Flight Pursuers forged separate classes and, thus, to determine whether the alleged breach of Article 14 occurred.

The claim that Article 14 was breached is dismissed based on reasonable and understandable differentiation since the Court views their promotional opportunities, beginning pay, and entry-level

[5] 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.

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qualifications as two separate groups. According to the Court, Air India's compliance with UK legislation is what causes discrimination between it and Indian Airlines regarding air hostesses. The Court also considers a further line of reasoning that contends these restrictions are ultra-vires to Article 14 since they are based on an arbitrary and unjustified premise (by classifying people based on their sex).

While Article 16(2) asserts that no discrimination shall be made only based on sex, the Court notes that it never forbids the state from discriminating based on sex and other factors (as asserted in the case of Yusuf Abdul Aziz v. The State of Bombay and Husseinbhoy Laljee[6]). Based on this, the Court denies that Article 16 was violated. Curiously, however, neither the case law nor the court's decision, in general, tries to explain what the new requirement was. The respondent's argument that women post-childbirth seem to leave the job or that their husbands do not allow them to work and thus making it essential to have a lower age of retirement for them is categorically rejected by the court on the issue of termination of services in the instance of first pregnancy. The Court assumes by declaring that companies like Air India must always be ready for absences that may occur owing to, among other things, fatalities or illness. Regarding the arguments made by the respondents, those are situations that can occur even when there are no children present, thus these claims are at first glance unfounded.

The Court instead urges that the pregnancy provision be completely changed, with the current language being replaced by a need for retirement at the birth of a third child. Its justification is based on a public health premise. As a result, Article 14 declares that the stated regulation feature is arbitrary. The court reflects Article 14 based on usefulness, public health, and other factors, so the issue of the air hostess' marriage within four years of employment is not subject to the same claim of constitutional infirmity and arbitrariness.

Finally, let's talk about whether the managing director's discretionary powers are comparable to over-delegating. The Court responds in the affirmative, stating that the true aim of the rule writers is being undermined by giving the managing director unrestricted and unguided discretion to grant an extension. The phrase "at the discretion of" gives the managing director more power than is necessary, which might result in instances of discriminatory conduct. Other factors, such as the lack of a clause allowing the air hostess to challenge the Managing Director's decision to deny an extension or the absence of a system mandating the communication of reasons for the denial, only serve to corroborate the aforementioned assertion. Due to the vast and extended scope of the authorities, it is therefore apparent that Regulation 47 violates Article 14 by being overly delegated.

AGE OF RETIREMENT CRITERION

According to Regulation 46, an employee of Air India must retire from services when he or she becomes 58 years old, with the exception of the following circumstances where an early retirement is required:

An Air Hostess, upon attaining 35 years of age, or on marriage, given, it takes place within the first four years of her service or on her first pregnancy, whichever event occurs earlier. This Regulation was based on the erroneous presumption that "young and attractive" women are better suited for the demanding work of an air hostess, as it might involve interacting with a variety of people, some of who might be callous and hot tempered. This kind of mindset warrants sex-based stereotyping and is founded on the idea that women are inherently sexualized creatures, further oppressing them by unjustly promoting these preconceptions.

Due to the lack of evidence demonstrating that an Air Hostess' competence or performance starts to decline after the mere age of thirty-five or, for that matter, forty-five, it is an illogical premise. As a result, this retirement age regulation violates Articles 15(1), which prohibits discrimination against any citizen based solely on race, caste, sex, place of birth, or any other factor. The very same goes with Article 16(2), which forbids discrimination in public employment based solely on race, caste, sex, descent, place of birth, residence, or other factors. As a result of this, Air India would be breaking the law by classifying employees in such a manner without any valid justification as it is a public

[6] Yusuf Abdul Aziz v. The State of Bombay and Husseinbhoy Laljee [1954] SCR 930[1].

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employer.

MARRIAGE CRITERION

The Air Hostesses' job with Air India would be terminated if they were to marry during their first four years of work, according to the company's service regulations. They used economic arguments to support the relevant rule. They argued that they invest a lot of money in educating their Air Hostesses, and that the tenure of their service directly affects how much money they are able to recoup from those expenditures.

This justification is also flawed since Air India ends the employment of Air Hostesses upon marriage, if it occurs within four years of employment, rather than just keeping them on to recover the cost of training. The Regulation is based on the ridiculous notion that married women are unfit workers or that women are obligated to resign from their occupations after getting married. Once more, there is no evidence to support this argument that a woman's marital status and her professional success are related in any way.

The idea that married women can't work effectively because their responsibilities as wives take up all of their time is incompatible with the equality of women in the workplace. In addition to this, it also unintentionally supports the notion that women lack a free will and are instead controlled by their spouses or bosses. In the current instance, the petitioners correctly described this Regulation as an "outrage on the dignity" of women.

PREGNANCY CRITERION

Additionally, in accordance to the Service Regulations, Air Hostesses were also required to leave their jobs in the event of their first pregnancy. The Court determined that it was unconstitutional since it was arbitrary and irrational, and that it consequently violated Article 14. While it is true that the Regulation is unconstitutional, it must be noted that this is not simply because it is unreasonable but also because Articles 15(1) and 16(2) of the Regulation unfairly discriminate based on sex.

The pregnancy clause only applies to women, making it unlawful sex-based discrimination. This clause is clearly based on the idea that women bearing a child are unreliable workers or that being a mother makes an Air Hostess unattractive. Again, there is no proof or authority to back up the claim that giving birth has a detrimental impact on a woman's capacity to perform professionally.

The Maternity Benefit Act of 1961 and the Maharashtra Maternity Rules of 1965 provide protection for expectant mothers and new mothers under the law, notwithstanding the fact that women's temporary inability to work can be tolerated for as long as childbearing and pregnancy last. In addition to outlawing termination on the basis of pregnancy, these regulations often provide relaxations like maternity leave that give women a break and time to care for themselves and their unborn children. They also provide individuals the choice, if they so choose, to return to work sooner or even after the statutory term of leave has ended.

LAWS CONCERNED AND CONTENTIONS

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, place of birth, or any of them

Article 16 of the Constitution of India

Equality of opportunity in matters of public employment

Regulation 46 Of Air India Employees Service Regulations

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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 Employees 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."

RATIO DECENDI

After citing several decisions, Justice Fazal Ali expressed his perspective on the subject of discrimination under Article 14 of the Indian Constitution. In his opinion, a distinction between "discrimination with reason" and "discrimination without reason" must be made. The issue of uneven treatment doesn't come up in this case since the circumstances controlling one group of people or things could not always be the same for another set of people or things. ***Joginder Singh, Sham Sunder v. UOI***[7], ***Western U.P. Electric Power and Supply Co. Ltd. V. State of U.P***[8]., and numerous other cases, Justice Ali concluded that when employment conditions, promotion procedures, working methods, and service terms are different, there are differences in the terms of employment i.e., the AFPs and AHs belong to distinct classes, therefore, under article 14 of the Indian Constitution, there is no discrimination between AFPs and AHs and therefore, there can be no discussion of discrimination or uneven treatment since unequal classes can be treated unequally. Additionally, while the terms of service concerning retirement and other matters varied, these do not violate Article 16 of the Indian Constitution. The laws appear to be biased in more ways than just sex; they also take other factors into account. Since the law does not violate Article 15 of the Indian Constitution, ***Yusuf Abdul Aziz v. State of Bombay and Husseinbhoy Laljee***[9] are cited as supporting authorities.
Justice Ali stated that the retirement age cannot be fixed by a clear-cut formula and must be determined from person to person based on a medical test as well as a variety of other factors and circumstances. This also applies to the Managing Director's authority to extend an employee's retirement. A law that grants authorities an excessive amount of discretionary power is irrational and violates Article 19(1)(g) of the Constitution, according to Lala Hari Chand Sarda v. Mizo District Council. Justice Ali invalidated the aforementioned rule 47 because it provided the Managing Director unrestricted, unguided authority.

JUDGMENT

"It seems to us that the termination of the services of an AH under such circumstances is not only a callous and cruel act but an open insult to Indian womanhood the most sacrosanct and cherished institution."

The retirement and pregnancy clauses were declared to be unconstitutional by the Supreme court after hearing arguments from both parties, and as a result, it ordered that they be repealed with immediate effect. Regulation 47 of the Air India Employees Service Regulations also met with a similar demise since it was discovered that there were too many powers delegated to it without any reasonable limits

[7] Joginder Singh, Sham Sunder v. UOI, 1969 AIR 212, 1969 SCR (1) 312.
[8] Western U.P. Electric Power and Supply Co. Ltd. V. State of U.P, 1970 AIR 21, 1969 SCR (3) 865.
[9] Yusuf Abdul Aziz v. State of Bombay and Husseinbhoy Laljee, 1954 AIR 321, 1954 SCR 930.

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to monitor them. The Court declared Regulation 46 I (c) to be invalid and held that the clause "or on first pregnancy, whichever comes earlier" is invalid and in violation of Article 14 of the Constitution. As a result, it will be removed. Moreover, the supreme court advised that the said pregnancy provision be changed to replace the present clause with one that requires retirement following the birth of a third child. This recommendation was based on the idea of public health. In addition to this, the honourable judges also claimed that they were unable to understand how a young, gorgeous Air Hostess might be able to handle awkward or tough situations better than others because intelligence or attractiveness cannot be the main indicator of ability.

However, the Court did not find any irrationality or arbitrariness in the Regulations' requirements, which demand that AHs not get married within four years of their employment or risk having their services terminated.

CRITICAL REVIEWS

While the aforementioned judgment is undoubtedly an improvement over the Khosla Tribunal's decision (1965), which served as the foundation for its holding, in terms of the age criterion being fairly imposed due to factors like how attractive young air hostesses are as a tool for dealing with passengers. However, it still raises several issues on several grounds that have only partially been resolved in subsequent sex discrimination-based lawsuits, such as ***MacKinnon Mackenzie v. Audrey d'Costa***[10] and ***Rajendra Grover v. Air India Ltd.***[11].

There appear to be serious issues with the subject of whether administrative law and the constitution clash, in this case, leaving aside the blatant sexist overtures that seem to be made throughout this opinion. To begin with, the argument used by the Court to refute the infringement of Article 14 is different from looking at a sex-based categorization as a violation of Articles 14, 15, and 16. It aims to distinguish between the sexes by highlighting auxiliary factors like qualification, pay, and other characteristics that seem to be different. The application of constitutional remedies to an administrative regulation is thus compromised by the distorted notion of reasonable categorization that is produced.

Another breach of Articles 15 and 16 occurs when the distinction made based on sex is subject to the test of reasonable categorization or understandable differentiation. Surprisingly, the ruling never attempts to support the extra standard that is employed in addition to the sex differentiation to refute the claim of an Article 16 breach. An obvious omission in this ruling about that element. Even when the ruling requests reliance on American cases, this line of twisted reasoning is still clear. decisions that were utterly at odds with the situation at hand, such as ***Frontiero v. Richardson***[12] and ***Mary Ann Turner v. Department of Employment Security***[13] .

To tie together our prior remarks, we will say that several situations bring the judgment's sexist aspect into sharp relief. In one such case, the court rejects the one-child basis for air hostess retirement and instead pushes for a change that adds the possibility of retiring after the birth of the third child. Although the court gave this justification a glorification by giving it a public health foundation, in our opinion, it just aims to re-establish a conventional concept about gender roles.\

CRITICAL ANALYSIS

According to Article 15(1) of the Indian Constitution, "The State shall not discriminate against any person solely on grounds of religion, race, caste, sex, or place of birth." While emphasizing the term "only," Indian courts have understood it to mean that only discrimination based on a single reason is

[10] MacKinnon Mackenzie v. Audrey d'Costa, 1987 AIR 1281, 1987 SCR (2) 659.
[11] Rajendra Grover v.Air India Ltd., 2007 SCC OnLine Del 1389.
[12] Frontiero v. Richardson, 423 U.S. 44.
[13] Mary Ann Turner v. Department of Employment Security, 411 U.S. 677.

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prohibited by Article 15. In ***Dattatraya Motiram v. the State of Bombay***[14], the Bombay High Court ruled that:

"*If there is discrimination in favor of a particular sex, that discrimination would be permissible provided it is not only on the ground of sex, or, in other words, the classification on the ground of sex is permissible provided that classification is the result of other considerations*"

But it's crucial to grasp the full meaning of Article 15(1). The number of bases on which a discrimination claim may be made is not limited by the rule. This is because the term "on grounds only of" rather than "only on grounds of" is included in the provision's text instead of "only on grounds of." It is asserted that the word "only" was used to highlight the inadequacy of such grounds for discrimination[15]. Furthermore, it is clear from the words "or any of them" that a claim of discrimination under Article 15(1) is not limited to one cause but may also be made under multiple/intersecting grounds.

Unfortunately, this continued the habit of interpreting Article 15 incorrectly (1). The Supreme Court ruled that Articles 15(1) and 16(2) do not "ban the State from discriminating on the premise of sex paired with other reasons," but they do prohibit discrimination purely based on sex. By doing so, it relied on the disparity in the terms of service between Air Hostesses and Air Flight Pursuers and rejected the Article 15(1) allegation. The Court did not, however, raise a concern about the methodology used to allocate these "other considerations" inequitably.

It is argued that the Court should have evaluated the Constitution of the separate cadres that relied on these "other considerations" and should have held them to be a result of discrimination based on sex after noting that the job descriptions of the Air Hostesses and Air Flight Pursuers were similar. The petitioners correctly pointed out that the "other reasons" justification was a smokescreen used to support the sex-based inequalities. This case is not an example of a "sex plus" allegation of discrimination; rather, it is one of sex discrimination where the Court failed to acknowledge that the "other reasons" were also a result of sex-based discrimination. This subtlety must be understood.

THE INTERNALISED MISOGYNY IN THE INDIAN SOCIETY

Regulations 46, 47 and Air India's arguments to defend the same are a clear reflection of the Indian society's quintessential mindset that a woman's one duty is to take care of their homes, husbands and children. It caters to the already misogynistic ideals that are so prevalent in the world. Hence it is the government and the courts' responsibility to do away with this instilled paradigm and shift towards a more liberal and modern era where we do not promote discrimination or disparity of any kind with respect to gender and sex.

More so, these conditions can be deemed extremely restrictive in nature. It robs a woman of her freedom to choose her own marriage date by tying it to her professional obligations. Despondently, the Court has reinforced this autonomy-robbing provision by upholding it on the grounds that it enhances "employee health," advances "family planning programmes," and enables women to "fully mature so that there is every chance of such a marriage proving a success, all things being equal."

The aforementioned clauses are arbitrary and without foundation. According to Articles 15(1) and 16(2), the regulation is discriminatory based on gender. In both text and spirit, the Constitution prohibits the State from regulating marriage in the manner outlined by the Court in this case. A woman's will cannot be curtailed by the State in order to promote the "success" of marriage as an institution or for family planning programmes. In that it claims responsibility for protecting women's health, it is both patronising and patriarchal in character. This is just another tactic used to deny women control over their bodies and a covert effort to regulate their sexuality.

The object of the statutes such as Maternity Benefit Act, 1961, and the Maharashtra Maternity Rules, 1965 is to provide women with as many options as possible, enabling them to live completely independent lives. More crucially, these laws permit women's economic engagement in society, which

[14] Dattatraya Motiram More v. State of Bombay AIR 1953 Bom 311.

[15] Shreya Atrey, Article 15 Through the Lens of Intersectionality – II, June 14, 2015, available at https://indconlawphil.wordpress.com/2015/06/14/guest-post-article-15-through-the-lens-of-intersectionality-ii/.

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has traditionally been constrained by gender roles and binary distinctions that kept women confined to the house. By enforcing gendered roles on them, the pregnancy condition in the employment terms was another attempt to limit their involvement in society. As a result, a huge disparity between the standing of women and men as employees is drawn.

While the pregnancy condition is indeed an extremely problematic, the real reason behind it is that it uses a woman's reproductive power against her, perpetuating her enslavement and relegation to a lower class of society's economic and social status. Justice Fazal Ali's justification overtly reinforces gender norms and prejudices. Pregnancy and motherhood don't have to be related in some way. In either case, being pregnant is most definitely not a normal component of human nature or an unchangeable aspect of marriage. Most significantly, becoming a mother in no way, shape, or form defines an Indian woman.