# case analysis of C.B Muthamma v. union of india

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# THE CASE OF C.B MUTHAMA AND ITS ROLE IN GENDER DISCRIMINATION

**BACKGROUND OF THE CASE**

CB Muthamma, the first woman officer in the Indian Foreign Service qualified the U.P.S.C in the year 1948. She was posted in the Indian Foreign Services where she was treated in a manner that was discriminatory and against the principles of equality as she was not promoted due to her gender. Soli J Sorabjee, represented her side of the petition which was against the Union of India involving the Indian Ministry of Foreign Affairs. Justice VR Krishna was the judge and dealt with this landmark case in a beautiful manner setting a precedent for all forthcoming cases on gender-based discrimination.

**FACTS OF THE CASE**

CB Muthamma, the petitioner in the said case was a senior officer in the Ministry of External Affairs who served the Indian Foreign Service. She claimed that there was an evident discrimination in the Ministry based on the grounds of sex. She voiced against the hostile treatment given to the senior officers of Services during that period. Her complaint entailed many sub issues of which the main issue was the Ministry’s rejection to promote her to the post of Grade I officer in the Service which according to her was owing to the fact that she was a woman. Hence, she filed a complaint making the union of India and the Ministry as a party to her suit before the Supreme Court of India under Article 32, as a writ petition.

**ISSES RAISED BY THE PLAINTIFF**

The plaintiff had several issues which were mostly revolving around the fact that the Ministry of External Affairs, her workplace created a very hostile environment for women in the service sector. Her first complaint was on the basis that, there was a long-standing practice of hostile discrimination against women [1] in her workplace. Further, she complained that women had to give an undertaking at the inception of their work in the Foreign service that she would give her resignation if she were to get married. [2] She added that she had to face the consequences of being a woman which was coupled by certain discrimination. [3] She raised another pertinent issue saying that the Union Cabinet’s members who appoint officers are prejudiced against women as a group. [4] Lastly, the plaintiff brought to light that she was denied promotion on the bases of “merit” [5]

**GROUNDS THAT WERE CHALLENGED BY THE PLAINTIFF**

Thus, challenging two rules in two distinct statutes issued by the Ministry namely, the rule 8(2) of the Indian Foreign Service (Conduct and Discipline) Rules of 1961. [6] She also challenged the rule 18(4) of Indian Foreign Service (Recruitment, Cadre Seniority and Promotion) Rules of 1961. [7]

**ELUCIDATING THE GROUNDS CHALLENGED**

The two rules were challenged by the petitioner in front of the Apex Court. One of the said two rules succinctly mentioned that the woman officer is required to obtain the permission and consent of the Government before her marriage, specifically in writing. Further, if at any point after the marriage of the woman officer, if the government finds that her work will not be satisfactory and if they are satisfied that that her commitments towards her family and domestic affairs will affect her performance, then she will be required to resign from that post. The second rule stated that, no woman, as of right, shall be considered for or entitled to appointment at the service. The petitioner also mentioned that some male officers that were junior to her were given a promotion in the interval between her first and second evaluation which had affected her career and reputation.

**CONTRAVERTIAL COURSE THE CASE TOOK**

Soon after the petition was filed by CB Muthamma regarding the hostile environment in the Ministry of External Affairs and how she was overlooked and denied promotion despite merit and after the same was considered by the Supreme Court, the Indian Ministry of External Affairs all of a sudden promoted Muthamma. This was done by the Ministry of External Affairs keeping in mind that if the promotion was given to Muthamma, the petition will get dismissed at any cost. The Ministry promptly promoted her, hoping that the Supreme Court would dismiss the case. [8] Therefore, after the ministry of external affairs promoted Muthamma, the Supreme Court had to inevitably dispose the case off. However, the Supreme Court dismissed the case only after ruling that the issues raised by the petitioner could not be dismissed. [9]

**PERTINENT LEGAL CONCERNS RAISED**

The issues raised by the plaintiff can be streamlined into a few concerns. (i) The plaintiff was denied equality before the law; (ii) The plaintiff was discriminated on the basis of sex; (iii) On the basis of employment, the plaintiff was treated indifferently due to her sex.

**LEGAL PROVISIONS RELATED TO THE CONCERNS**

The above legal issues presented are violative of the Fundamental Rights of the Constitution of India. The Article 14 clearly states that “The State shall not deny to any person equality before the law…” [10] Regarding the second legal concern, It is enshrined in the constitution that, “The State shall not discriminate against any citizen on the grounds of only religion, race, caste, ***sex*,** place of birth or any of them” The third concern raised is in complete derogation of Article 16 of the Indian Constitution it states that “There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State” [11] and “No citizen shall, on grounds of only religion race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State” [12]

**GENDER EQUALITY AND CASES FOLLOWING MUTHAMMA CASE**

In a case just two years after the case of CB Muthamma, a rule book provided that an airhostess needs to step down due to her pregnancy as the rules dictated that pregnancy is abhorrent and against the ideals of a civil society. The Supreme Court struck this provision down. [13] Despite living in a society that is progressing, women are terminated describing that pregnancy is against societal morals! In another case where the husband assumed ownership of the wife’s property, the Supreme Court clearly ruled that the *stridhan* belongs completely to the woman and just because the wife resides with the husband and the husband looks after the wife, it doesn’t give him any right to claim ownership of her belongings. [14]

In a landmark case of Vishakha v. Rajasthan, the Supreme Court laid down guidelines. It stated that it is the violation of Articles 14, 15 and 21 if a woman is exposed to harassment sexually in her workplace. The Supreme Court sternly held that the Fundamental Rights are the supreme rights and violation of the same through an act of sexual harassment is the zenith of gender inequality. The same was reiterated through the case **of Apparel Export Promotion Council v. AK Chopra** where the Supreme Court stated that violation of the Fundamental Rights provided by the Constitution is the violation of the gender equality clause provided in the Articles 14 and 21.

**RELEVANCE OF ARTICLE 14 TO MUTHAMMA CASE**

When we talk about Gender Equality and the Constitution, Article 14 is the first such Article enshrined in the Constitution that clearly prohibits State’s discrimination. A pertinent question arises here that whether the Indian Foreign Service is a “State” as defined under Article 12 of the Indian Constitution. In this Part, unless the context otherwise requires, “the State’’ includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India” [15] As the Indian Foreign Service is a branch of the Ministry of External Affairs, which is a part of the Government of India, we can deduce that Indian Foreign Service is well within the ambit of State as provided by Article 12 of the Constitution.

Further, Article 14 states that the State shall not deny to any person equality before law, as per the statements made by Muthamma regarding the denial of her promotion based on the grounds of merit, the State did not give her equality before law as per Article 14 of the Constitution of India. There was a clear discrimination between men and women in Muthamma’s workplace as women had to give a certain undertaking before marrying and they could be dismissed at the discretion of the Government too due to her marriage and domestic responsibilities.

However, Article 14 does not deal with any specific category of differentiation. The same can be unravelled by Article 15 and 16 of the Constitution of India which deals specifically with sex-based discrimination and discrimination on the basis of sex in the field of public employment respectively which is rather more pertinent to the case stated above.

**ARTICLE 15 AND ITS RELEVANCE TO MUTHAMMA’S CASE**

It is guaranteed by Article 15 of the Constitution of India that there shall be no discrimination entertained on the basis of sex. To bring out a case under this Article, two elements must be proven. [16] The first criterion is that a proof must be given regarding the unwarranted discrimination made by the state. The second one being that the said discrimination has adversely affected the plaintiff. Further, this guarantee against sexual discrimination must be guaranteed by all the following, the legislature, executive and the judicial branch. [17]

Analysing the particular situation with respect to the two criteria provided above we can conclude a few things. There was a clear discrimination and prejudice against women in the Indian Foreign Services and the respondent number 2 that was a senior authority in the UPSC. This was a statement provided by Muthamma herself “one of the reasons for the petitioner's supersession is the long-standing practice of hostile discrimination against women. Even at the very threshold when the petitioner qualified for the Union Public Services at the time of her interview, the Chairman of the U.P.S.C. tried to persuade (dissuade) the petitioner from joining the Foreign Service. On subsequent occasion he personally informed the Petitioner that he had used his influence as Chairman to give minimum marks in the viva. As the time of entry into the Foreign Service, the petitioner had also to give an under taking that if she were to get married, she would resign from the service.” [18] By this statement we can conclude that there was an evident hostile environment open for discrimination towards women in the UPSC during those times. Secondly, the undertaking that was supposed to be signed by the petitioner is a clear distinction between men and women as women were supposed to seek permission before marriage. This particular rule was not there for men as per the rule book and only for women and this is clear discrimination between the genders.

The second criterion talks about the affect the said discrimination had on the plaintiff. Muthamma made a statement saying many of her juniors were given higher posts between her first and second evaluation despite her being much more capable than any of the people being evaluated. She said that it deeply affected her career and reputation and hence it can be held that since her career and reputation were affected by the said discrimination directed towards her, there was an impact the discrimination had on her status as a woman, citizen and a working official. Hence, the discrimination has definitely adversely affected the plaintiff.

**RELEVANCE OF ARTICLE 16 TO MUTHAMMA CASE**

This Article is the most pertinent one when it comes to the case of CB Muthamma, the plaintiff. The Article 16 of the Constitution of India guarantees to every citizen equal opportunity, protecting from discrimination, in the field of public employment. It bars sex-based discrimination in the matters of government employment. This article stresses upon the equality of “opportunity” and hence, very pertinent in our case. The case of Muthamma was brought directly to the Supreme Court. However, a few high court rulings before the Muthamma case were also brought to limelight.

In a certain case, a male lecturer in a college preferring female lecturers filed a case regarding promotion of a female lecturer junior to him in experience. The Court held that though not discriminatory as the classification is reasonable as the college prefers female lecturers. However, they added further that seniority cannot be overlooked and they were asked to review and reconsider the promotion of the junior woman. [19]

In a case similar to CB Muthamma’s, an issue arose in the High Court of Odisha regarding a rule that disqualified married women from selection to the post of a district judge. The other party made a strange statement saying that marriage leads to inefficiency in women and hence hampers with the work. However, the Court held that though efficiency is an important aspect to look at, but disqualifying women is a direct case of sexual discrimination under the Article 16 of the Constitution of India. [20]

Shockingly, there was another rule in the Rule 5 [21] which stated that married women are not entitled to a government job. The rule also stated that if a woman employee subsequently marries, she may be asked to resign if necessitated by the maintenance of efficiency in the service. [22] This proves a clear discrimination under Article 16 of the Constitution of India against women and the prejudiced mentality against married women and questioning their ability to perform well after marriage when men are not subjected to any such rules.

As per the two discriminatory rules in the petition by Muthamma too, the two rules are subjected just to the women and it is questioning their inability to perform along with their marriage and other responsibilities. While the men were not questioned and subjected to such monstrous laws.

**JUDGEMENT**

Justice VR Krishna opens with a shocking yet true statement, “This writ petition by Miss Muthamma, a senior member of the Indian Foreign Service, bespeaks a story which makes one wonder whether Articles 14 and 16 belong to myth or reality” through which he tried to convey that despite Constitutional protection of the gender equality through the Articles 14 and 16, it is not considered and hence, the respondents behaved in a reckless manner that led to wonder whether the two said articles exist in reality or its just a mere myth. He mentioned that prejudice against women is existent even despite years of Independence in India. He further added that if officials in such high posts itself lose faith and hope, he is concerned about the “legal lot of the little Indian”. Through this disturbing thought, he made a few conclusions of the two rules placed by the IFS which were prima facie discriminatory against the women officials that were working in the UPSC. He goes on stating three assertions made by the plaintiff.

One being, “.one of the reasons for the petitioner's supersession is the long-standing practice of hostile discrimination against women. Even at the very threshold when the petitioner qualified for the Union Public Services at the time of her interview, the Chairman of the U.P.S.C. tried to persuade (dissuade) the petitioner from joining the Foreign Service. On subsequent occasion he personally informed the Petitioner that he had used his influence as Chairman to give minimum marks in the viva. As the time of entry into the Foreign Service, the petitioner had also to give an under taking that if she were to get married, she would resign from the service.” [23] The second one being, “That on numerous occasions the petitioner had to face the consequences of being a woman and thus suffered discrimination though the Constitution specifically under Article 15 prohibits discrimination on grounds of religion, race caste, sex or place of birth and Article 14 of the Constitution provides the principles of equality before law” [24] and the last one being “That members of the Appointments Committee of the Union Cabinet and the respondent No. 2 are basically prejudiced against women as a group. The Prime Minister of India has been reported in the Press as having stated-it will not be irrelevant here to mention that most of the women who are in the service at senior levels are being very systematically selected for posts which have traditionally been assigned a very low priority by the Ministry.” [25]

He states the following that even if a small portion of the following statements were to be true, it depicts the “masculine hubris” that is a possible anathema for the Fundamental Rights of the Constitution of India. He says that the following deserves undivided attention as there is a huge role of gender injustice in the above three assertions made by the plaintiff.

He goes ahead and calls the Indian Foreign service a “misogynistic” workplace due to the rule 8(2) that states “In cases where Sub-rule (1) does not apply, a woman member of the service shall obtain the permission of the Government in writing before her marriage is solemnised. At any time after the marriage, a woman member of the Service may be required to resign from service, if the Government is satisfied that her family and domestic commitments are likely to come in the way of the due and efficient discharge of her duties as a member of the service.” [26]

He says that this rule is outrightly discriminatory against women as she needs to seek the permission of the Government to get married whereas the same isn’t applicable to the male members of the Services. Another shocking rule that the petitioner challenged was the rule 18 which stated that “married women are not entitled to appointment in the service” [27]

However, soon after this, the petition had to be dismissed as Muthamma was promoted and the two rules were taken back by the Ministry of External Affairs.

Towards the end, Justice Krishna stated that the petition is being dismissed but not the problem!

**REFERENCES**

[1] *CB Muthamma v. Union of India,* [1979] SCC (4) 260

[2] Ibid

[3] Ibid

[4] Ibid

[5] <https://peoplepill.com/people/c-b-muthamma/> as accessed 25 April 2020

[6] *CB Muthamma v. Union of India*,[1979] SCC (4) 260

[7] Ibid

[8] <https://peoplepill.com/people/c-b-muthamma/> as accessed 25 April 2020

[9] Ibid

[10] Article 14, The Constitution of India

[11] Article 16(1), The Constitution of India

[12] Article 16(2), The Constitution of India

[13] *Air India v. Nargesh Mirza*, [1981] SC 1829

[14] *Pratibha Rani v. Suraj* Kumar*,* [1985] SC 628

[15] Article 12, The Constitution of India

[16] *Kathi Ranning v. State of Saurashtra*, AIR., SC. 123 (1952

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[19] *State of Kerala v. K. Kunihipacky,* [1965] AIR 108

[20] *Radha Charan Patnaik v. State of Orissa*, [1969] AIR 237

[21] Indian Administrative Service (Recruitment) Rules, 1954

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[23] *CB Muthamma v. Union of India,* [1979] SCC (4) 260

[24] Ibid

[25] Ibid

[26] 8(2), Indian Foreign Service (Conduct & Discipline) Rules, 1961

[27] Rule 18(5) of the Indian Foreign Service (Recruitment Cadre, Seniority and Promotion) Rules, 1961

**BRIEF ABOUT THE AUTHOR**

Shachi Gambhir is a first-year law student with an inclination towards Insolvency Laws, Arbitration, Securities and Investment Laws. Additionally, her interest towards socio-legal issues was bolstered by IDIA Chapter-Odisha that gave her a platform to conduct extensive research on Minimum Wages, Provident Fund, ESI Act, etc. for the house-keeping staff in her university.