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A CASE STUDY ON ANUJ GARG & ORS. V. HOTEL ASSOCIATION OF INDIA & ORS.

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Abstract

This case study examines the legal dispute surrounding **Section 30 of the Punjab Excise Act, 1914**, which prohibits the employment of women and men under the age of 25 in premises where liquor or intoxicating substances are consumed. The conflict arose when the **Hotel Association of India** challenged the constitutionality of the provision, asserting that it violated **Articles 14, 15, and 19(1)(g) of the Indian Constitution**, while the petitioners maintained that the restriction is a necessary safeguard for women's safety and public welfare. This study evaluates both **petitioner and respondent perspectives**, analyzes relevant doctrines such as **Res Extra Commercium** and **Parens Patriae**, reviews key case law, and explores constitutional interpretations, social implications, and policy considerations. The study highlights the delicate balance between **occupational freedom, gender equality, and public interest**, offering insights for legal scholars, policymakers, and social reform advocates.

Keywords

Section 30, Punjab Excise Act, Women's Safety, Employment Rights, Res Extra Commercium, Parens Patriae, Constitutional Law, Article 14, Article 15, Article 19(1)(g), Proportionality, Directive Principles of State Policy

Introduction

The regulation of intoxicating liquors has long been a contentious area in Indian law, balancing the State's responsibility to protect public health and morality with individual rights guaranteed under the Constitution. The Punjab Excise Act, 1914, contains provisions aimed at restricting certain groups—specifically women and men under the age of 25—from employment in premises where liquor or intoxicating drugs are consumed by the public. Section 30 of the Act prohibits the employment of "any man under the age of 25 years" or "any woman" in bars, restaurants, and rooms serving liquor.

This case study examines the constitutional challenge to Section 30, filed before the Delhi High Court and subsequently appealed to the Supreme Court of India. The analysis explores the interplay between **fundamental rights under Articles 14, 15, and 19(1)(g)**, the **State's duty under Directive Principles**, and the doctrines of **Res Extra Commercium** and **Parens Patriae**. The discussion highlights the arguments advanced by both the **petitioner** (citizens challenging the High Court's decision) and the **respondent** (Hotel Association of India), providing a comprehensive legal and socio-constitutional assessment.

Background of the Case

The case originated in the High Court of Delhi, where the Hotel Association of India, representing hotels whose members served liquor in bars, restaurants, and rooms, challenged the constitutional validity of Section 30. They argued that the law arbitrarily restricted employment opportunities for women, violating their **right to equality (Articles 14 and 15)** and **right to practice any profession or carry on any occupation (Article 19(1)(g))**.

The Delhi High Court, however, partially struck down Section 30, declaring it ultra vires to the extent it prohibited the employment of women in premises where intoxicating substances were consumed. The Court directed the petitioner to file an undertaking ensuring women would not be compelled to work in bars against their will. Dissatisfied with this outcome, a group of citizens filed a **Special Leave Petition under Article 136** of the Constitution before the Supreme Court, challenging the High Court's decision.

The appellants contended that Section 30 was a valid legislative measure designed to protect women from exploitation and potential harm in environments associated with alcohol consumption. They argued that the High Court's ruling undermined the State's power to regulate inherently risky trades and neglected the social and moral imperatives recognized under constitutional doctrine.

Jurisdiction of the Supreme Court

The Supreme Court exercises extraordinary jurisdiction under **Article 136**, allowing discretionary hearing of Special Leave Petitions in exceptional circumstances. This jurisdiction is residuary, not a matter of right, enabling the Court to address significant legal questions with broad societal implications. In this case, the Supreme Court granted leave to hear the appeal, recognizing the constitutional, social, and gender-related dimensions of the matter.

Issues Raised

1. **Constitutionality of Section 30:** Whether the Delhi High Court's judgment declaring Section 30 ultra vires Articles 14, 15, and 19(1)(g) should be upheld.
2. **Employment vs. Safety:** Whether women's right to employment should yield to the State's obligation to ensure safety in workplaces involving alcohol consumption.

Arguments of the Petitioner (Challenging the High Court Judgment)

The petitioners argued that the High Court erred in striking down Section 30. They contended that the Act served a legitimate state purpose: protecting women from environments deemed unsafe due to the nature of liquor trade. Section 30, they argued, was **a reasonable restriction on occupational freedom** under Article 19(6) and aimed at preserving public order and morality.

They relied on the **doctrine of Res Extra Commercium**, which classifies certain trades as inherently non-essential to fundamental rights because of their pernicious effects on society. Liquor trade, gambling, and lotteries fall within this doctrine, permitting the State to impose stricter regulations. Courts have consistently held that citizens do not have a fundamental right to engage in such trades. Cases cited included **Khoday Distilleries Ltd. v. State of Karnataka**, **State of Punjab v. Devans Modern Breweries**, and **Ugar Sugar Works Ltd. v. Delhi Administration**.

The petitioners also emphasized the **doctrine of Parens Patriae**, which empowers the State to act as a protector for those unable to safeguard themselves, particularly women in vulnerable work environments. They cited cases such as **Charan Lal Sahu v. Union of India** and **Shafin Jahan v. Asokan K.M.** to demonstrate the State's responsibility in safeguarding individual rights through preventive measures.

Furthermore, the petitioners argued that the **Directive Principles of State Policy** (Articles 39(e), 42, 47) reinforce the need for such legislation, obligating the State to secure just working conditions and protect the health, strength, and dignity of women.

Arguments of the Respondent (Supporting High Court Judgment)

The respondents contended that Section 30 disproportionately restricted women's **fundamental rights** under Articles 14, 15, and 19(1)(g). They emphasized that gender-based

prohibitions in employment constitute **discrimination** that cannot be justified solely on the basis of safety concerns.

Respondents argued for a **proportionality-based analysis**, asserting that the State should adopt **least-restrictive measures** to protect women while preserving their right to work. They cited cases emphasizing equality and employment rights, arguing that blanket prohibitions were overbroad and undermined the constitutional principle of non-discrimination.

The respondents further argued that women could be provided **adequate protective measures** such as security arrangements, restricted access to high-risk areas, and strict workplace policies without entirely barring employment. They invoked international labor norms and gender equality frameworks to bolster the argument that restrictive provisions like Section 30 should be narrowly construed.

Legal Analysis

Constitutionality of Section 30

The constitutionality of Section 30 of the Punjab Excise Act, 1914, hinges upon the balance between **fundamental rights** guaranteed under the Constitution and the **State's duty to protect public order, morality, and vulnerable groups**. Articles 14, 15, and 19(1)(g) guarantee equality, prohibit gender discrimination, and ensure the right to practice any profession or carry on any occupation, respectively. However, these rights are not absolute; reasonable restrictions are permissible under Article 19(6), which allows the State to regulate occupations in the interest of public order, morality, and general welfare.

The Delhi High Court struck down Section 30 to the extent it prohibited women from working in liquor-serving premises, reasoning that the restriction violated equality and occupational freedom. The **petitioners challenged this decision**, asserting that the High Court ignored the **unique risks associated with liquor-serving environments**, which could expose women to physical, sexual, and psychological harm. The petitioners emphasized that the law did not target women arbitrarily but aimed to **protect the weaker section of society**, aligning with Article 15(3), which permits the State to make special provisions for women and children.

Doctrine of Res Extra Commercium

A pivotal argument advanced by the petitioners is grounded in the **doctrine of Res Extra Commercium**, which classifies certain trades as **outside the scope of constitutional protection due to their inherent risks or social harm**. The sale and service of intoxicating liquors is considered **noxious and potentially exploitative**, warranting state intervention. Landmark cases supporting this doctrine include:

1. **State of Bombay v. R.M.D. Chamarbaugwala (1957)** – Introduced the principle that the State could restrict inherently immoral or hazardous activities, rendering them beyond fundamental rights protection.
2. **Khoday Distilleries Ltd. v. State of Karnataka (1995)** – Reinforced that trade in alcohol is not protected under Article 19(1)(g) and may be fully regulated or prohibited.
3. **State of Punjab v. Devans Modern Breweries Ltd. (2004)** – Affirmed the State's power to regulate alcohol trade, prioritizing public welfare over unrestricted occupational rights.

By invoking Res Extra Commercium, petitioners argue that **employment in liquor-serving premises is inherently hazardous**, especially for women, and therefore subject to reasonable state restrictions.

Doctrine of Parens Patriae

Complementing Res Extra Commercium is the **doctrine of Parens Patriae**, which empowers the State to act as a guardian for those unable to protect themselves. Under Indian jurisprudence, this doctrine is **enshrined in the Preamble, Fundamental Rights, and Directive Principles of State Policy**. Relevant cases include:

1. **Charan Lal Sahu v. Union of India (1990)** – Affirmed the State's obligation to protect vulnerable citizens.
2. **Shafin Jahan v. Asokan K.M. (2018)** – Extended Parens Patriae to safeguard individuals in circumstances of incapacity or risk.
3. **Anand Kishore Prasad Sinha v. State of Bihar (2020)** – Highlighted the protective measures the State must undertake for social welfare.

The petitioners leveraged this doctrine to argue that **women in liquor-serving establishments are exposed to unique dangers**, including harassment, assault, and exploitation. Section 30 is thus a legislative tool fulfilling the State's duty to protect these citizens in alignment with constitutional principles.

Respondent's Counter-Arguments

The respondents, representing the interests of the Hotel Association, argued that Section 30 **discriminates against women by denying them employment opportunities solely based on gender**. They contended that the law violates Articles 14, 15, and 19(1)(g) because it imposes **blanket restrictions without considering individual choice or ability**.

Respondents emphasized **proportionality** and **least-restrictive alternatives**. They argued that **modern workplace safeguards**, including surveillance, security personnel, and employee grievance mechanisms, could mitigate risks without entirely banning women from employment in liquor-serving areas. Citing **Om Kumar v. Union of India (2001)** and **K.S. Puttaswamy v. Union of India (2017)**, respondents stressed that **constitutional review should focus on whether the restriction is narrowly tailored**, balancing occupational freedom with safety concerns.

Additionally, respondents highlighted that Section 30 **does not account for women who voluntarily choose to work in such environments**. Blanket exclusion, they argued, **reinforces stereotypes about women's fragility** and undermines gender equality, contravening both domestic law and international labor standards.

Balancing Rights and Safety

At the core of this debate lies the tension between **women's right to employment** and the **State's obligation to ensure safety**. Petitioners argued that the hazards associated with liquor-serving premises—ranging from **physical assault to exploitation**—justify preventive restrictions. The petitioners cited the **Jessica Lal case (Siddhartha Vashisth @ Manu Sharma v. State, 2007)** to illustrate real risks to women working in environments where alcohol is served.

Conversely, respondents asserted that **empowering women through choice and protective measures** is preferable to exclusionary bans. They emphasized that **gender-neutral safeguards**, such as regulated working hours, training, and workplace monitoring, can ensure safety without violating constitutional rights.

Comparative Legal Perspectives

The Indian approach contrasts with certain international jurisdictions. For example, the **United States and European Union** emphasize gender equality and workplace safety without enacting **gender-specific employment prohibitions**. Instead, these systems rely on **occupational health and safety regulations, mandatory security measures, and anti-harassment laws** to protect vulnerable employees, highlighting a **more nuanced risk management framework**.

In India, however, the **historical, social, and moral context** of alcohol consumption and gender roles informs legislation like Section 30. Courts recognize that certain trades—particularly those involving intoxicating substances—require **special protections for women** due to societal vulnerabilities and cultural sensitivities.

Policy Implications

- 1. State Responsibility:** Section 30 exemplifies the State's proactive role in safeguarding women, aligning with **Directive Principles of State Policy** (Articles 39(e), 42, 47). These provisions mandate ensuring **health, strength, dignity, and humane working conditions**, providing constitutional backing for gender-specific protections.
- 2. Proportionality Analysis:** Courts must adopt **proportionality tests** to balance constitutional freedoms with social welfare. Section 30 represents a legislative effort to implement the **least restrictive measure** in inherently hazardous occupations, as permitted under Article 19(6).
- 3. Evolving Social Norms:** Modernizing liquor regulation to incorporate **security protocols, employee choice, and grievance mechanisms** could achieve safety objectives while **enhancing employment opportunities for women**, reflecting a more progressive approach to gender equality.
- 4. Preventive Lawmaking:** Recognizing **alcohol-related crime, harassment, and public safety concerns**, legislation like Section 30 demonstrates the importance of preventive restrictions in socially sensitive sectors.

Conclusion

The legal conflict surrounding Section 30 of the Punjab Excise Act, 1914, highlights the **complex interplay between constitutional rights, public safety, and gender equality**.

Petitioners argued for the **preservation of restrictions**, citing the **doctrines of Res Extra Commercium and Parens Patriae**, alongside Directive Principles safeguarding women in hazardous work environments. Respondents challenged the **proportionality and fairness** of such restrictions, advocating for **gender-neutral measures** that respect individual choice and employment rights.

Ultimately, the case underscores the judiciary's delicate task of **balancing individual freedoms with societal protection**. Section 30 embodies the principle that while occupational rights are fundamental, **they are not absolute** when public safety and the welfare of vulnerable groups are at stake. The legal discourse reflects ongoing societal negotiations about **women's empowerment, workplace safety, and constitutional interpretation**, offering guidance for future policy and legislative reforms in India.

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