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GENDER, AUTONOMY, AND THE CONSTITUTION: A CASE COMMENTARY ON ANUJ GARG V. HOTEL ASSOCIATION OF INDIA

~ *Ujjayani Debnath*

INTRODUCTION

The relationship between protective legislation and substantive equality has long troubled Indian constitutional jurisprudence. Laws enacted with an ostensibly benevolent purpose — to “protect” women from workplace hazards — have historically operated to exclude them from public life altogether. *Anuj Garg v. Hotel Association of India*¹ represents one of the most significant judicial interventions on this question. Decided by a two-judge Bench of the Supreme Court on 6 December 2007, the case tested the constitutionality of Section 30 of the Punjab Excise Act, 1914,² a colonial-era provision barring the employment of women, and of men below twenty-five years, on premises where liquor or intoxicating drugs are consumed by the public. In striking down the provision, the Court moved decisively away from a formalistic reading of equality under Articles 14 and 15 of the Constitution,³ towards a substantive, autonomy-centred approach that continues to influence anti-discrimination adjudication in India.

FACTS OF THE CASE

Section 30 of the Punjab Excise Act, 1914 prohibited licensed premises serving liquor or intoxicating drugs from employing any woman, or any man under twenty-five years of age, in any part of the establishment where such consumption occurred. The Hotel Association of India, along with individual respondents, challenged the provision before the Delhi High Court, contending that it was arbitrary, discriminatory, and violative of the right to carry on a trade or profession. The High Court partly allowed the challenge, declaring the provision

¹*Anuj Garg v. Hotel Ass'n of India*, (2008) 3 SCC 1 (India).

²Punjab Excise Act, 1914, § 30 (India).

³India Const. art. 14, art. 15.

unconstitutional insofar as it barred the employment of women, while leaving the age-based restriction on men undisturbed. Aggrieved employers and prospective employees, together with the State, carried the matter in appeal to the Supreme Court. The appellants argued that the provision, framed nearly a century earlier under wholly different social conditions, no longer served any rational protective purpose and instead operated as an instrument of exclusion dressed in paternalistic language.

ISSUES INVOLVED

The Court was principally called upon to determine, first, whether Section 30 constituted permissible protective discrimination in favour of women or amounted to invidious discrimination violating Articles 14 and 15; second, whether the provision could be sustained as a legitimate exercise of the State's *parens patriae* power; and third, what standard of judicial review ought to apply to legislation that classifies on the basis of sex while professedly seeking to protect the classified group.

ARGUMENTS ADVANCED

Counsel for the Hotel Association argued that the provision infantilised women by presuming their inability to work safely in the presence of alcohol, thereby perpetuating the very stereotypes that Articles 14 and 15 sought to dismantle. They submitted that a large pool of women trained in hotel management and hospitality stood deprived of employment for which they were professionally qualified, and that the restriction bore no rational relationship to any contemporary safety concern. It was further urged that the provision offended the right to practise any profession or to carry on any occupation, trade or business, guaranteed to every citizen.

The State, defending the provision, invoked its *parens patriae* power, asserting that the legislature was entitled to shield women from the risks associated with employment in establishments serving alcohol, including exposure to intoxicated patrons and irregular working hours. It also sought to justify the restriction through the doctrine of *res extra commercium*, contending that trade in intoxicants could be regulated, and even prohibited, in the larger public interest without attracting the ordinary rigour of fundamental-rights scrutiny.⁴

⁴Anuj Garg, (2008) 3 SCC 1, ¶ 53.

JUDGMENT

Writing for the Bench, Sinha, J. rejected the State's justification and upheld the High Court's finding that Section 30 was unconstitutional to the extent it barred the employment of women. The Court held that legislative measures resting on protective discrimination must satisfy a two-fold test: the object pursued must be legitimate, and the means adopted must be proportionate to that object.⁶ While conceding that protecting women from exploitation could constitute a legitimate aim, the Court found the blanket exclusion from an entire category of employment to be a disproportionate response, one that displaced the burden of addressing workplace safety onto the very individuals it purported to protect. The Court further observed that security concerns, however genuine, could not be resolved by curtailing the autonomy of the persons sought to be secured, and cautioned that protective measures must not amount to a form of censorship.⁷ It rejected the plea that employment in liquor-serving establishments could be treated as *res extra commercium*, noting that the State had not adopted a policy of prohibition and could not selectively invoke the doctrine to displace an entire class of citizens from a lawful trade.⁸

RATIO DECIDENDI AND LEGAL REASONING

The judgment's enduring contribution lies in its articulation of a heightened standard of review for gender-based protective legislation. The Court held that where a law restricts the fundamental rights of a class defined by an immutable characteristic such as sex, in the name of protecting that very class, courts must examine both the necessity of the restriction and its actual, as opposed to presumed, impact on the group concerned.⁹ The Bench drew upon comparative constitutional material to hold that traditional notions premised on physical differences between men and women could not, by themselves, justify exclusion from the workplace.¹⁰ Importantly, the Court linked the right to be considered for employment to the right to livelihood under Article 21,¹¹ reasoning that legislative paternalism which forecloses economic opportunity strikes at the core of individual dignity and self-determination.

⁵Id. ¶¶ 33-36.

⁶Id. ¶ 35.

⁷Id. ¶¶ 44-46.

⁸Id. ¶¶ 29-32.

⁹Id. ¶¶ 40-43.

¹⁰India Const. art. 21.

¹¹India Const. art. 19, cl. 1(g).

CRITICAL ANALYSIS

The decision is significant for at least three reasons. First, it signals a doctrinal shift from the traditional “reasonable classification” test under Article 14, which merely required an intelligible differentia bearing a rational nexus to the object of the legislation, towards a more searching proportionality analysis. This shift anticipated, and arguably laid the groundwork for, the substantive equality reasoning later adopted in cases dealing with sex discrimination and personal autonomy. Second, the Court's insistence that protective legislation be tested against its real-world effect on the protected class, rather than its stated legislative purpose, offers a valuable interpretive tool for scrutinising other paternalistic statutes that continue to restrict women's participation in public and economic life, such as restrictions on night-shift work or on employment in hazardous occupations. Third, by grounding its reasoning partly in Article 21, the Court reinforced the interconnectedness of the equality and liberty guarantees, a theme that would recur prominently in later privacy and dignity jurisprudence.

The judgment is nonetheless not without its limitations. The Court declined to strike down the corresponding restriction on men below twenty-five years, leaving an inconsistency between its stated commitment to proportionality and its selective application to only one limb of the same provision. Commentators have also noted that the proportionality standard articulated in the judgment, while doctrinally rich, was not accompanied by a clear methodological framework for future courts to apply, leaving considerable discretion in how “necessity” and “adverse impact” are to be assessed.¹² Moreover, the decision offered limited practical guidance on how legislatures ought to design genuinely protective, non-exclusionary safety measures for vulnerable workers, an omission that has allowed similarly paternalistic provisions to persist in other statutes largely unexamined. Nonetheless, the case remains a foundational text for constitutional challenges to protective discrimination and continues to be cited in subsequent decisions addressing the interplay between formal and substantive equality.

CONCLUSION

Anuj Garg v. Hotel Association of India reoriented Indian equality jurisprudence away from a paternalistic conception of protection towards one grounded in autonomy, dignity, and proportionality. By invalidating a century-old provision that excluded women from an entire category of employment under the guise of safeguarding their interests, the Supreme Court affirmed that the Constitution does not permit the State to trade a citizen's liberty for the

¹²Tarunabh Khaitan, *Beyond Reasonableness — A Rigorous Standard of Review for Article 15 Infringement*, 50 J. Indian L. Inst. 177 (2008).

citizen's own supposed security. Nearly two decades later, the judgment continues to serve as an important precedent for testing the constitutional validity of protective legislation, and remains a valuable illustration of how courts can look beyond the text of a statute to assess its true impact on the rights it claims to secure.