

The Bombay High Court ruling upholding the right of women to earn their living by dancing in bars has come as a morale booster for many of us who have been fighting an uphill battle against extreme odds, countering the hypocritical aspects of middle-class Maharashtrian morality. For the past several months, it had seemed as if the ground under our feet was slipping away and we had only a slender hope that the judiciary would decide in our favour — given that the ban was justified as essential to ‘cleanse’ the city of sex and sleaze. The High Court ruling, therefore, not only came as a pleasant surprise but also offered a ray of hope for the bar dancer confined to the margins of society.

The judgement striking down the dance bar ban as unconstitutional, in the case of Indian Hotels and Restaurants Association and others Vs. the State of Maharashtra and others, was pronounced on April 12, 2006, to a packed courtroom by a division bench comprising Justices F I Rebello and Roshan Dalvi. The statute that was struck down was an amendment to the Bombay Police Act, 1951, passed by both the Houses of the Maharashtra State Legislature in July 2005. The ban came into effect on August 15, 2005, so as to coincide with the Independence Day celebrations.

The statute banning dance performances in bars had curiously allowed hotels with three stars or above as well as gymkhanas and clubs to hold such performances to ‘promote culture’ and ‘boost tourism’. As the state celebrated the Independence Day, an estimated 75,000 girls, mainly from the lower economic strata, lost their means of livelihood.

The Right to Dance: Mumbai High Court Judgement Strikes the Right Note

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Soon thereafter, petitions were filed in the Bombay High Court challenging the Government’s move by three different segments — the bar owners associations, the bar girls’ union and social organisations.

After months of legal battle, the High Court struck down the ban on the following grounds:

- The exemption [given to certain categories of hotels as well as clubs] is not concurrent with the aims and objectives of the statute and hence it is arbitrary and violates Article 14 of the Constitution of India (the clause pertaining to equality and non-discrimination).
- It violates the fundamental freedom of the bar owners and the bar dancers to practice an

occupation or profession and goes against Article 19 (1)(g) of the Constitution

Regarding the exemption given to star hotels, gymkhanas and clubs, among others, the Court held as follows: “...*the financial capacity of an individual to pay or his social status is repugnant to what the founding fathers believed when they enacted Article 14 and enshrined the immortal words, that the State shall not discriminate.*”

But if this was the only ground for violation of fundamental rights, then the Court could have struck down the provision granting exemption to a certain category of establishments, contained in a separate section, i.e. Section 33B¹ of the amended statute. The ban could have been retained and made uniformly applicable to all establishments. But the fact that the judgement goes much beyond this and deals elaborately with yet another fundamental right seemed to have missed media attention.

The Court struck down the dance bar ban on the ground that it violates the fundamental freedom guaranteed under Article 19(1)(g) of the Constitution. This is a significant development and nearly half of the extensive 257-page judgment deals with this concern. “*Are our fundamental rights so fickle that a citizen has to dance to the State’s tune*” is a



caustic comment in the judgement.² Further, the Court held:

“The State does not find it offensive to the morals or dignity of women and/or their presence in the place of public entertainment being derogatory, as long as they do not dance. The State’s case for prohibiting dance in dance bars is that it is dancing which arouses the physical lust amongst the customers present.

There is no arousing of lust when women serve the customers liquor or beer in the eating house, but that happens only when the women start dancing... The right to dance has been recognised by the Apex Court as part of the fundamental right of speech and expression. If that be so, it will be



open to a citizen to commercially benefit from the exercise of the fundamental right. This could be by a bar owner having dance performance or by bar dancers themselves using their creative talent to carry on an occupation or profession. In other words, using their skills to make a living...”³

The Ban’s Impact

The ban was based on two premises that were contradictory to each other. The first portrayed the bar dancers as evil and immoral, corrupting the youth and wrecking middle-class homes, hankering after easy money and amassing a fortune each night by goading innocent and gullible young men into sex and sleaze. The second one claimed that bars were in fact brothels, and bar owners traffickers who sexually exploited the girls for commercial gains. This premise refused to grant an agency to the women dancers. Rather unfortunately, both these populist premises appealed to the parochial, middle-class Maharashtrian sense of morality. What was even worse, the demand

Extracts from the Judgement

“Entry into bars is restricted to an adult audience and is voluntary. The test, therefore, would be whether the dances can be said to have a tendency to deprave and corrupt this audience. The test of obscenity and vulgarity has to be judged from the standards of adult persons who voluntarily visit these bars...”⁴

“If the dances which are permitted in the exempted establishments are also permitted in the banned establishments then, considering the stand of the State, they should not be derogatory to women and on account of exploitation of women are unlikely to deprave or corrupt public morals. The expressions western classical or Indian classical which are used by the State in the affidavit is of no consequence, as the Act and the rules recognise no such distinction. All applicants for a performance licence have to meet the same requirements and are subject to the same restrictions. ...If the test is now applied as to whether the classification has a nexus with the object, we are clearly of the opinion that there is no nexus whatsoever with the object...”⁵

“Dancing is one of the earliest forms of human expression and recognised by the Apex Court as a fundamental right. If it is sought to be contended that a particular form of dance performed by a particular class of dancers is immoral or obscene that by itself cannot be a test to hold that the activity is *res extra commercium*. It can never be inherently pernicious or invariably or inevitably pernicious. If the notions of the State as to the dancing are to be accepted we would have reached a stage where skimpy dressing and belly gyrations which today is the Bollywood norm for dance, will have to be banned as inherently or invariably pernicious. We think as a nation we have outgrown that, considering our past approach to dancing, whether displayed as sculpture on monuments or in its real form. Dancing of any type, if it becomes obscene or immoral, can be prohibited or restricted. Dancing however would continue to be a part of the fundamental right of expression, occupation or profession protected by our Constitution...”⁶

“The right to dance has been recognised by the Apex Court as part of the fundamental right of speech and expression. If that be so, it will be open to a citizen to commercially benefit from the exercise of the fundamental right. This could be by a bar owner having dance performance or by bar dancers themselves using their creative talent to carry on an occupation or profession. In other words, using their skills to make a living.

“Does the material relied upon by the state make out a case, that the manner of conducting places having bar dances, constitute a threat to public order? The case of the State... can be summarised as: “Complaints were received

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by wives relating to illicit relationship with bar dancers.” This by itself cannot amount to a threat to public order considering the number of complaints which the State has produced on record.”

“The bar girls had to suffer commercial exploitation and were forced into a situation that used to leave them with no other option than to continue in the indecent sector. It is true that there is material on record to show that many of those who perform dance in these bars are young girls, a large section being less than 21 years of age and with only a primary education. Can that by itself be a ground to hold that they constitute a threat to public order? Can a girl who may be semi-literate or even illiterate who may be beautiful, knows to dance or tries to dance prohibited from earning a better livelihood or should such a girl, because of poverty and want of literacy, be condemned to a life of only doing menial jobs?

“It is normal in the hospitality and tourist related industries to engage young girls. The inability of the State to provide employment or to take care of those women who had to take to the profession of dancing on account of being widowed, or failed marriages or poverty at home and/or the like cannot result in holding that their working for a livelihood by itself constitutes a threat to public order. There is no sufficient data to show that the women were forced into that profession and had no choice to leave it.

“It is then set out that in or around places where there are dance bars there are more instances of murder, firing, thefts, chain snatches and that public in general and women in the locality feel unsafe. In what manner dancing by women in dance bars results in increase in crime which would constitute a threat to public order? Inebriated men, whether in dance bars or other bars are a known source of nuisance. The State has not cancelled the liquor permits to remove the basic cause of the problem. Maintenance of law and order is the duty of the State. *If drunk men fight or involve themselves in criminal activity, it cannot result in denying livelihood to those who make a living out of dance.* It is not the case of the State that apart from these places, in the rest of the State the same kind of offences does not take place.

“The state has produced record that 17,403 cases have been registered under section 110 of the Bombay Police Act. These are cases of incidents within the establishments and at the highest have been committed in front of an audience who have taken no objection to the dresses worn by the dancers or the kind of dancing. The public at large are not directly involved. A learned Judge of this Court, Justice Srikrishna, (as he then was) in *Girija Timappa Shetty vs. Assistant Commissioner of Police*, 1977 (1) All M.R. 256, has taken note of the fact that in order to inflate the figures, the police would register separate cases against every customer and employee present. Even otherwise we are unable to understand as to how, if there is a breach of rule by an establishment, that would constitute a threat to public order. An illustration has been given of one Tarannum as having links with the underworld. At the time of hearing of this petition the police had not even filed a charge sheet. Even otherwise a solitary case cannot constitute a threat to public order.

“It has also been pointed out that the Legislature has noted that dance bars are used as meeting places for criminals. This defies logic, as to why criminals should meet at dance bars, where they could easily be noted by the police. Criminals, we presume, meet secretly or stealthily to avoid the police unless they are confident that they can meet openly as the law enforcement itself has collapsed or they have friends amongst the enforcement officers. Even otherwise, how does a mere meeting of persons who are charged or accused for criminal offence constitute a threat to public order? Do not they meet in other places? It is then pointed out that the nature of business of dance bars is such that it is safe for criminals and immoral activities and this constitutes a serious threat to public order.”

“It was on the State to show that the dance bars were being conducted in the manner which was a threat to public order. The bars continue to operate with all activities except dancing. The State has been unable to establish a nexus between dancing and threat to public order....”⁷

“It was pointed out that though the State has initiated action under Section 294 of I.P.C. it was not possible to secure a conviction as the State had to prove obscenity and annoyance to customers. This by itself would indicate that the dance performances inside the premises are not obscene or immoral as to cause annoyance amongst those who gathered to watch the performance. How that could cause annoyance to those who do not watch it or affect public order is not understood. It is like saying that watching a Hindi movie which has dance sequences and the dancers are skimpily dressed, would result in affecting public order....”

“It is then submitted that though the Police were prompt in taking action under the prevailing enactments, the accused being successful in getting around the law, continued to indulge in the same activities again. Failure of the police to secure a conviction cannot be a valid ground to impose a restriction on fundamental rights. The pronouncement of this Court under Section 294 would be the law. How then can the State still insist that the performance of dance was obscene or vulgar and caused annoyance to the public?”⁸ □

for a ban was framed within the language of 'women's liberation', and the economic disempowerment of this vulnerable class of women came to be projected as a plank that would liberate them from sexual bondage.

Hypocrisy & Double Standards

While the ban adversely impacted bar owners and bar dancers from the lower economic rungs, the state exempted hotels with three or more stars, clubs and gymkhanas. Those of us who opposed the ban raised some uncomfortable questions: Could the State impose arbitrary and varying standards of vulgarity, indecency and obscenity for different sections of society or classes of people? If an 'item number' in a Hindi film could be screened in public theatres, then how could an imitation of the same be termed 'vulgar'? The bar dancers imitate what they see in Indian films, television serials, fashion shows and advertisements. All these industries use the woman's body for commercial gain. There is sexual exploitation of women in these and many other industries. But no one has ever suggested that an entire industry should be shut down because there is sexual exploitation of women! Bars employ women as waitresses but the ban does not affect this category. Waitresses mingle more with the customers than the dancers, who are confined to the dance floor. And if certain bars were functioning as brothels, why were the licenses issued to them not revoked?

Despite us pointing out such contradictions in the stand adopted by the ruling party and the pro-ban lobby, no one was willing to listen.

On August 14, 2005, at midnight, as music blared in bars packed to capacity in and around the city of Mumbai, disco lights were turned off



and the dancers took their final bow and faded into oblivion.

Some left the city in search of other options, others fell by the wayside. Some became homeless. Some could no longer provide medical care for their ailing parents. Some had to pull their children out of school. Some were battered and bruised by drunken husbands as they were no longer bringing in money. Some put their pre-teen daughters out for sale in the flesh market. And some committed suicide; they remained just names in police diaries: Meena Raju, Bilquis Shahu, Kajol... There were more to follow in the intervening months. A few stuck on, begging for work as waitresses in the same bars.

With the exit of the dancers, the dance bar industry came to a grinding halt. Devoid of glamour and fanfare, the profit margins plummeted and many bars closed down. Few others braved the storm and worked around the ban by transforming themselves

into 'silent bars' or 'pick-up points' — slang used for the sex trade industry. Left with few options, women accepted the paltry sums thrown at them by customers to make ends meet. Groups working for prevention of HIV/AIDS sounded warning alarms about the increasing number of girls turning up for STD check-ups.

Malafide Motives

Why was the dance bar ban struck down? To understand this, we must first examine the Statement of Objects and Reasons (SOR) of the amendment. The SOR claimed the following:

- Dance performances in eating houses, permit rooms and beer bars are indecent, obscene or vulgar.
- The performances lead to exploitation of women.
- There are several complaints regarding the manner in which the dance performances are held.

- The Government believes that dance performances in an indecent manner is derogatory to the dignity of women and is likely to deprave, corrupt or injure public morality or morals.

The Court overruled each of these reasons stated by the Government on the ground that there was no rational nexus between the amendment and its aims and objectives. Some relevant comments from the judgement are summarised in the accompanying box.

Constructing the Sexual Subject

A glaring discrepancy in the arguments put forward by the state was in the realm of the agency of women. At one level, the state and the pro-ban lobby advanced an argument that the dancers were evil women, who came to the bars to earn ‘easy money’ and corrupt society. This argument granted an agency to women dancers. But after the ban, the government tried to justify it on the ground of trafficking and argued that these women lack an agency and need state intervention to free them from the world of sexual depravity in which they were trapped.

Refuting the argument of trafficking, the Court commented: “No material has been brought on record from those cases that the women working in the bars were forced or lured into working in the bars. The Statement of Objects and Reasons does not so indicate this... To support the charge of trafficking in order to prohibit or restrict the exercise of a fundamental right, the State had to place reliable material which was available when the amending Act was enacted or even thereafter to justify it. A Constitutional Court, in considering an act directly affecting the fundamental rights of citizens, has to look beyond narrow confines to ensure protection of those rights. In

answer to the call attention motion, an admission was made by the Home Minister and it is also stated in the Statement of Objects and Reasons that young girls were going to the dance bars because of the easy money they earned and that resulted also in immoral activities. There was no mention of trafficking.”⁹

Rather ironically, the anti-ban lobby also framed its arguments within this accepted ‘victim’ mould. Further, it was important for the anti-ban lobby to make a clear distinction between the dancer/entertainer and the street walker and base the arguments squarely upon the fundamental right to dancing. The sexual erotic inherent in dancing had to be carefully crafted and located within ‘Indian traditions’ and the accepted norm of ‘Bollywood gyrations’ and not slip beyond into sexual advances. The emphasis had to be for a right to livelihood only through dancing and not beyond.

During the entire campaign, the world of the bar dancer beyond these confines lay hidden from feminist activists who were campaigning for their cause. Only now and then would it spill over, though more as a defiant statement. So while we were exposed to one aspect of their lives with its many problems — of parenting, poverty, pain and police harassment, we must admit that this was only a partial projection, an incomplete picture. We could not enter the other

world in which they are constantly negotiating their sexuality, the dizzy heights they scale while they dance draped in gorgeous chiffons studded with sequins, oozing out female erotica and enticing their patrons to part with a generous tip.

Did the problem lie with our ideas and the picture that we wanted to paint for them? Perhaps yes. But for now, as the State prepares to file its appeal in the Supreme Court, aided by the best legal minds in the country to defend its stand on sexual morality, we would be content if we are able to safeguard the advantages we gained in the Bombay High Court.

Footnotes

¹ As per the amended statute, the section concerned, ie, Section 33B of the Bombay Police Act, 1951, is worded as follows: “Nothing in section 33A shall apply to the holding of a dance performance in a drama theatre, cinema theatre and auditorium or sport club or gymkhana where entry is restricted to its members only or a three starred or above hotel or in any other establishment or class of establishment. Which having regarding to (a) the tourism activities in the State or (b) cultural activities, the State

Government may by special or general order, specify in this behalf.”

² Para 61 on page 163

³ Para 68 on Page 183

⁴ Para 49 on page 130

⁵ Para 52 on page 135

⁶ Para 58 on page.155

⁷ Para 83 pages 222-225

⁸ Para 84 on page 232

⁹ Para 86 on page 235



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