
A CRITICAL ANALYSIS OF THE MAHARASHTRA PROHIBITION OF OBSCENE DANCE ACT, 2016 AND ITS IMPACT ON BAR GIRLS' LIVELIHOODS AND RIGHTS

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ABSTRACT

This study aims to critically examine the effects of the Maharashtra Prohibition of Obscene Dance Act, 2016 on the rights and livelihoods of bar girls in Maharashtra by examining the socio-economic effects of the Act on these women, who have historically relied on dance performances as their primary source of income, as well as the legal and constitutional aspects of the Act, with a focus on the balance between public morality, protecting women from exploitation, and preserving their fundamental rights to freedom of *expression*, livelihood, and dignity. By examining judicial trends and the conflicts between statutory laws and constitutional provisions, the study hopes to provide insights into the Act's broader implications for the rights of women in the entertainment industry and to make recommendations for more effective and compassionate policy reforms.

Keywords: Maharashtra Prohibition of Obscene Dance Act, Bar Girls' Livelihoods, Women's Rights, Legal Restrictions, Exploitation and Objectifications

INTRODUCTION

In India, and especially in Maharashtra, the practice of bar dancing has been controversial for decades, with serious legal, social, and economic consequences for the women who perform as "bar girls." Dance bars are establishments that usually serve alcohol while showcasing dance performances; the first dance bars appeared in India in the 1980s, with 24 in Maharashtra by 1986. However, as these bars became linked to exploitative practices, such as objectifying dancers, exchanging money in the form of currency notes on the performers, and creating a late-night or early-morning atmosphere that blurred the boundaries of decency, the Maharashtra government stepped in and passed laws intended to regulate and, in certain situations, outlaw dance performances in these venues.

The Maharashtra Prohibition of Obscene Dance Act, 2016 was a landmark piece of legislation designed to stop bar girls from being exploited and objectified. Nonetheless, this rule has had a significant impact on these women's rights and means of subsistence. The perceived "lustful atmosphere" of dance bars is one of the main concerns that the Act attempts to address in order to get rid of what it considered to be pornographic dance performances. The Act restricts bar girls' roles and outlaw's specific kinds of acts, making it harder for them to make a living from this kind of entertainment. Critics counter that although the law was intended to save women from exploitation, it has actually resulted in the infringement of their basic and economic rights.

The way that the law affects bar ladies' lives is complicated. Some exploitative behaviours may have decreased as a result of the prohibition on dance performances in bars. In contrast, it has made these women even more vulnerable. Many bar girls have lost their main source of income due to the inability to work lawfully in dance clubs, which has made their financial situation worse and forced them into unofficial and frequently dangerous work settings. Furthermore, because these women are stigmatized and barred from mainstream economic activity, the legislative ban has led to further marginalization, making it challenging for them to find alternative jobs.



Figure 1: Dance Bar Regulation Amid Cultural and Political Debates

A number of court rulings that highlight the conflict between rights and legislation characterize the legal dispute surrounding bar dancing in Maharashtra. Citing worries about public decency, the Maharashtra government first issued a rule in 2005 prohibiting dance performances in hotels and bars. Dancers and bar owners contested this restriction, claiming it infringed upon their freedom of expression and right to a living. The Supreme Court overturned the prohibition in 2006 after the Bombay High Court had upheld it, stating that it violated the dancers' constitutional right to free speech. The Maharashtra government then passed a new law in 2014 that permitted dance performances under certain restrictions. Even though the Supreme Court upheld this statute in 2017, other legal challenges resulted from certain of its aspects being deemed unduly restrictive.

In a historic decision rendered in 2018, the Supreme Court upheld bar dancing's legal standing as a valid form of expression that is safeguarded by the right to free speech and expression. The Court also acknowledged that bar dancers should have the same rights at work as employees in other industries, including safe working conditions and minimum wages. However, because it restricts their capacity to operate in a legally controlled setting, the Maharashtra Prohibition of Obscene Dance Act, 2016 still presents serious obstacles to bar girls' rights and livelihoods.

1.1.Objectives of the study

- To analyses the legislative and judicial aspect towards the protection of rights of women working in Dance Bar;
- To know the socio-economic (religion, caste/tribe, place of residence, age, marital

status, education of size of the families, parental and siblings' relationship in the family, hobbies etc.) background of the victims.

- To understand the nature and effectiveness of the measures initiated by the Government of Maharashtra.
- To identify and understand the effectiveness of the non-government agencies engaged rehabilitation of its victims.

2. LITERATURE REVIEW

Shankar, et al. (2021) revealed that the well-known dancing style known as Bharatanatyam originated with the Devadasi community in South India. This essay looked at a number of aspects of this community, such as social and legal viewpoints. The modern Devadasi population was misunderstood and misjudged, and their situation was rife with social impairments, from a lack of economic prospects and consequent poverty to a higher risk of crime. The article attempted to use a wide range of sources to produce a coherent narrative while offering an objective assessment of the Devadasi system's history. It suggested a way forward through truth commissions as a restorative justice approach that was anticipated to help artists and legislators alike.

Kumar (2021) examined the problems encountered by sexually disadvantaged and offended groups, as well as the current and developing sexual cultures in modern India. Popular culture, literary genres, advertising, consumerism, globalizing cities, social movements, law, scientific research, Hijra community life, (alternative) families and kinship, and locations that defined the cultural other—whose sexual practices or identities deviated from normative moral conventions—were all examined in relation to sexual politics. Questions of agency, opinions on intimate sexual relationships, the state's role, popular conceptions of adolescent romance, ideas of legitimacy and stigma, moral policing and resistance, body politics and marginality, representations in popular and folk culture, sexual violence and freedom, issues with historiography, structural inequalities, queer erotica, gay consumerism, Hijra suicides, and marriage and divorce were among the many related sociological and political issues that were covered in the chapters. Additionally, the book offered some revolutionary ideas for imagining and (re)writing sexual equality.

Bhosekar (2023) studied the relationship between sex labour and urban development at Budhwar Peth in Pune, India. Using a mixed-methods approach that includes historical analysis, mapping, interviews, and a survey of the literature, it investigated how sex work enterprises coexisted with the urban environment. According to the study, opinions on sex work differed by generation, with younger people displaying greater acceptability and older generations having stigmatizing beliefs. It also emphasized how, even in the absence of particular zoning regulations; urban planning affects the existence of red-light districts. Plans and strategies for inclusive urban development that uphold human rights and foster an inclusive urban environment are crucial, according to the study.

Sircar (2020) concluded that it would be impossible to write about the Indian women's movement's relationship to the law without recognizing the groundbreaking work of activist, advocate, and academic Flavia Agnes. Key insights into the kind of movement-based legal pedagogy, awareness, and training promoted by the women's movement in India were provided by her life story, involvement with the movement, involvement in women's rights litigation, feminist jurisprudential scholarship, and outreach work through Majlis, the organization she co-founded. The discipline of what could be referred to as Indian feminist jurisprudence was founded on Flavia's activism and study during the past three decades, which brought to light complex criticisms of India's rape law and family law reform. This conversation shed light on the intersections of scholarly, feminist, and autobiographical ideas in Flavia's writing and thought processes. Speaking candidly and firmly, she offered insights into the sheltered nature of clinical legal education in India by introducing perspectives on violence against women, feminist lawyering, and the politics of law reform in India that were theoretically and historically based on an ethics of self-reflection and common sense.

Deshraju, et al. (2021) examined how the Playboy Club's 2014 debut in India caused controversy because of the brand's connection to pornographic content and how women were portrayed. Playboy, which was notorious for its nude spreads and the Playboy bunny insignia, was opposed by both feminist and right-wing organizations since its opening went against India's policy on erotic labour and obscenity. The company responded by changing its image to one that is family-friendly. The chapter explored how the controversy surrounding the club exposed the country's discomfiture with erotica in public and the removal of such material as "un-Indian."

3. JUDICIAL TREND

Humans have inherent rights and dignity from birth; these are moral claims that are fundamental to their humanity and cannot be taken away. Individual dignity cannot be preserved without these fundamental rights, which serve as the cornerstone of what we now call human rights. However, human dignity and equality are regularly violated in today's world in a variety of ways and in a variety of dimensions, especially when those in positions of authority take advantage of the weaker members of society. Throughout history, and even now, women have been disproportionately subjected to discrimination and exploitation.

Although laws and constitutional measures aimed at protecting women, such as those that protect equality and prohibit discrimination, have been put into place, the exploitation and sexual abuse of women are still quite common and concerning. Frequently, the fundamental problem is not a lack of legislation, but rather the insufficient enforcement of legal protections by authorities and the inconsistency between the creation of policies and their execution. When statutory duties are not properly carried out by the appropriate authorities, judicial action becomes essential to protecting women's rights. The judiciary has intervened, rendering significant rulings to shield women from sexual assault and other types of exploitation when the law is broken.

Regarding dance bars and bargirls' rights, the researcher has looked at how the Maharashtra Prohibition of Obscene Dance Act, 2016 has been applied, as well as different court interpretations of constitutional clauses including Articles 19(1)(g), 14, 21, and 47. Statutory provisions and government practices pertaining to the constitutionality of legislation prohibiting bar dancing are interpreted as part of the study. The researcher has also concentrated on the Supreme Court's rulings regarding the rights, protection, and rehabilitation of bar girls, especially in view of their precarious socioeconomic situation and the exploitation they endure. Understanding the extent of bar girls' constitutional safeguards and the wider ramifications for the rights of women employed in the entertainment industry depends on these court rulings.

4. CONFLICT BETWEEN CONSTITUTIONAL AND STATUTORY PROVISIONS

A Constitution Bench of five justices considered a crucial constitutional issue in the case of

Narendra Kumar v. Union of India: does "prohibition" fall under the definition of "restriction" under Articles 19(5) and 19(6) of the Indian Constitution? Before 3-4-1958, the petitioners in this case had contracts with importers in Bombay and Calcutta for the acquisition of copper. But on 2-4-1958, the Government of India, acting under Section 3 of the "Essential Commodities Act, 1955," issued the "Non-ferrous Metal Control Order, 1958" before they could accept the copper. With Clause (3) capping pricing and Clause (4) forbidding the purchase of non-ferrous metals without a permit from the Controller, this order placed stringent restrictions on both the acquisition and price of these metals. Under Article 19(1)(g), which protects the right to practice any profession or to engage in any occupation, trade, or business, the Court's main concern was whether the limitations placed by this order could be deemed a reasonable restriction on the petitioners' fundamental right to trade. Since the Constitution allows for the imposition of restrictions on fundamental rights in the interest of the public welfare, as long as they pass the reasonableness test, the Court decided that the term "restriction" in Articles 19(5) and 19(6) also refers to cases of prohibition. The Court underlined that extra caution must be used to determine whether limitations on basic rights are justified when they become complete prohibitions. This entails taking into account elements such as the type of harm that the law is intended to address, the severity of the harm done to individuals, and the anticipated wider societal advantages of such limitations.

The Court further emphasized that, even though the Constitution guarantees fundamental rights, it permits laws that place reasonable limitations on those rights when doing so serves the public interest, public order, national security, and other important public issues. These limitations are specifically protected by Articles 19(2) through 19(6). The Court went on to explain that the word "restriction" was purposefully used by the Constitution's framers to refer to both restrictions and bans, so long as they are required and reasonable in the public interest. The Court also reaffirmed the need to examine such limitations in light of their proportionality to make sure they don't unnecessarily impede the exercise of basic rights. In this case, the Court affirmed that bans are legally lawful where they are reasonable and justified, rejecting the claim that regulations that restrict the exercise of basic rights can never be upheld.

Therefore, the ruling in "Narendra Kumar" upheld the idea that, even though the Constitution protects fundamental rights, these rights are not unqualified and may be subject to reasonable limitations for the sake of security, public welfare, and other group considerations.

5. CONCLUSION

The Maharashtra Prohibition of Obscene Dance Act, 2016 was designed to safeguard women from being objectified and exploited in dance bars, it has inadvertently harmed the rights and livelihoods of bar girls. The strict requirements of the law have resulted in the loss of employment for many women whose only source of income was dance performances in bars. The Act has pushed individuals into more precarious and vulnerable working conditions that are often unprotected by the law, rather than providing them with better alternatives. It has also made bar girls more stigmatized, which makes it harder for them to get employment. Court rulings throughout the years have highlighted the tension between protecting individual rights, such the right to free speech and the right to a living, and regulating businesses for the general benefit. Comprehensive regulatory changes are required to adequately handle the intricacies of bar dancing and its socioeconomic ramifications, striking a balance between safeguarding women from exploitation and preserving their fundamental rights to autonomy, livelihood, and dignity.

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