



The Legal Position of Bar Girls in India

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ABSTRACT

On the eve of 15th August 2005, the Government of the State of Maharashtra declared Ban on performing dance of bar girls in dance bar by making amendments in the Bombay Police (amendment) Act, 2005 and that led a huge cry in all over India. Because there were 2500 dance Bars and 75000 bar girls in Maharashtra State and about 82% bar Girls were out of the State of Maharashtra. A writ petition was filed in Bombay High Court (WP 2450 \2005) and H'ble Bombay High Court accepted the plea of the appellants on 12\4\2006, but the Government obtained a stay on the decision and filed an appeal against the decision. On 16\7\2013 out H'ble Supreme Court of India affirmed the decision of the Bombay High Court and the ban has been lifted. The supreme court of India directed some steps to be taken by the Government for pro bono Bar Girls. This article revolves round the history of working of Girls in Dance Bar, the study and survey made by various institutes and legal provisions related with issue, that can be known as Pre-Ban Era and Post-Ban Era.

KEYWORDS: Dance Bar- Bar Girls-The Bombay Police (amendment) Act- Survey and Study on Bar Girls- Bombay High Court- Supreme Court of India- Morality and Equality-Constitution of India

A. INTRODUCTION:

Dance Bar means the place where entertainment of Dance is performed with liquor. Bar Girl means the girl who dances in front of the customers of Dance Bar. It began to serve entertainment of Dance of Bar Girls in Dance Bar in India in 1980. In 1986, there were 24 Dance Bars in the State of Maharashtra. Gradually, it began to appear lustful atmosphere in some Dance Bars. The service of liquor, a huge crowd, showering currency notes on dancing Bar Girls and that too, in late night or at dawn, have been the main elements of such Dance Bars. On seeing the exploitation of such Bar Girls of Dance Bars, it was decided to ban on the Dance of Bar Girls and it resulted in the violations of Bar Girls in other side. The main topics that revolve rounds are as such:

- Survey regarding the position of Bar Girls in India.
- The amendments made in the Bombay Police Act to ban on Dancing of Dance Girls in the State of Maharashtra.
- Post Ban situations of Bar Girls.
- The writ petitions in H'ble High Court and in Supreme Court of India regarding this ban.
- Arguments in favors and against of the Ban in the courts.
- The Rights of Bar Girls.

B. SURVEY REGARDING THE POSITION OF BAR GIRLS IN INDIA :¹

B.1: SHUBADHA CHAUKAR Survey \ Study :

The study conducted by Shubadha Chaukar for Vashantrao Bhagwat Memorial Fellowship entitled "Problems of Mumbai Bar Girls" is based on conversations with 50 Bar Girls. It suggests the reason for serving in the Bar for Bar Girls are as such :

- (1) Attraction of big money and need to shoulder responsibility of looking after the family.
- (2) Misery or ill-treatment at home.
- (3) No good husband.
- (4) Glamour of the job.
- (5) Not fit for marriage.

According to this report 84% Bar Girls were outside the state of Maharashtra.

B.2: PRAYAS REPORT :²

A study of socio-economic situation of the women in dance bars was conducted by PRAYAS (A field action project of the Tata Institute of Social Science) in 2005 and that pointed out the exploitation of minor girls in such bars and presence of the element of human trafficking thereto and actions were needed to be taken in this regard. It found 6% Minor Bar Girls while 87% Age Group between of 18-30 Years of Bar Girls.

B.3: S.N.D.T. Survey :

Interaction with 500 Bar Girls from 50 Dance Bars, the study on " Background and Working Conditions of Women Working As Dancers in Dance Bars " Conducted by the Research Centre for Women's Studies, SNDT University and Forum Against Oppression of Women in 2006. It found 6.80% Minor Bar Girls while 88.20% Age Group of 19-30 Years of Bar Girls. The study indicates that –

1. It is an issue of trafficking from other States and countries.
2. 75% dancers are from Bangladesh.
3. Only 3% are dancers from Maharashtra.
4. Bar culture is against the tradition of Maharashtra.
5. Girls who dance are minors.
6. Bar Dancers hide their faces.
7. Girls don't work hard.
8. Bar Girls can be rehabilitated in Call Centers.
9. Dancing in Bars is sexual exploitation.
10. Girls are forced into sex work.
11. Dance bars are vulgar and obscene.
12. Ban will solve all these problems.

However, the study also summarized that the complete prohibition on the Bar is not the solution.

"The study also declared that the Bar Girls names were not registered in the registers in Dance Bars and there were no any provisions for remuneration of Dance Girls. Dance Girls had to dependent on the **TIPS** of the customers. Even in some Dance Bars the owners of Dance Bars were having their shares in such **TIPS**!"³

B.4: Bifurcation of Bar Girls :⁴

Times of India (TNN) indicates the figure of Bar Girls as such:

| State\Territory | % of Bar Girls |
|-----------------------|----------------|
| Uttar Pradesh | 24.8 |
| West Bengal | 20.6 |
| Mumbai | 12.4 |
| Rest of Maharashtra | 5.6 |
| Rajasthan | 12 |
| Madhya Pradesh | 9 |
| Outside India : Nepal | 6 |

C. AMENDMENT MADE IN THE BOMBAY POLICE ACT:

Besides the studies and survey of the conditions of Dance Bar, the State Government became aware of many complaints of victims' families against illicit relations with Bar Dancers were registered. On 6\8\2004, the chairperson of the Maharashtra State Commission for Women

wrote a letter to the State Government about the exploitation of Bar Girls in Dance Bars and demanded to prevent such activities. And that is why the State of Maharashtra decided to ban on Dance of Bar Girls in Dance Bars by inserting new sections 33A and 33B by amending The Bombay Police (Amendment) Act, 2005.

The (Amendment) Sections are as under:

33A (1) Notwithstanding anything contained in this Act or the rules made by the Commissioner of Police or the District Magistrate under sub-section (1) of Section 33 for the area under their respective charges, on and from the date of commencement of the Bombay Police (Amendment) Act, 2005,-

- (a) holding of a performance of dance, of any kind or type, in any eating house, permit room or beer bar is prohibited;
 - (b) all performance licences, issued under the aforesaid rules by the Commissioner of Police or the District Magistrate or any other officer, as the case may be, being the Licensing Authority, to hold a dance performance, of any kind or type, in an eating house, performance, of any kind or type, in an eating house, permit room or beer bar shall stand cancelled.
- (2) Notwithstanding anything contained in Section 131, any person who holds or causes or permits to be held a dance performance of any kind or type, in an eating house, permit room or beer bar in contravention of Sub-section (1) shall, on conviction, be punished with imprisonment for a term which may extend to three years and with fine which may extend to rupees two lakhs: Provided that, in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such imprisonment shall not be less than three months and fine shall not be less than rupees fifty thousand.
- (3) If it is, noticed by the Licensing Authority that any person, whose performance licence has been cancelled under Sub-section (1), holds or causes to be held or permits to hold a dance performance of any kind or type in his eating house, permit room or beer bar, the Licensing Authority shall, notwithstanding anything contained in the rules framed under section 33, suspend the Certificate of Registration as an eating house and the licence to keep a Place of Public Entertainment (PPEL) issued to a permit room or a beer bar and within a period of 30 days from the date of suspension of the Certificate of Registration and licence, after giving the licensee a reasonable opportunity of being heard, either withdraw the order of suspending the Certificate of Registration and the licence or cancel the Certificate of Registration and the licence.
- (4) A person aggrieved by an order of the Licensing Authority cancelling the Certificate of Registration and the licence under Sub-section (3), may, within a period of 30 days from the date of receipt of the order, appeal to the State Government. The decision of the State Government thereon shall be final.
- (5) Any person whose performance stands cancelled under Sub-section (1), may apply to the Licensing Authority, who has granted such licence, for refund of the proportionate licence fee. The Licensing Authority, after making due inquiry shall refund the licence fee on pro-rata basis, within a period of 30 days from the date of the receipt of such application.
- (6) The offence punishable under this section shall be cognizable and non-bailable.

33B. Subject to the other provisions of this Act, or any other law for the time being in force, nothing in section 33A shall apply to the holding of a dance performance in a drama theatre, cinema theatre and auditorium; or sports 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 establishments, which, having regard to (a) the tourism policy of the Central or State Government for promoting the tourism activities in the State; or (b) cultural activities, the State Government may, by special or general order, specify in this behalf.

Explanation.--

For the purposes of this section, "sports club" or "gymkhana" means an establishment registered as such under the provisions of the Bombay Public Trusts Act, 1950, or the Societies Registration Act, 1860 or the Companies Act, 1956, or any other law for the time being in force.

SUMMARY OF THE AMENDMENTS

| Sr.No. | Section 33A | Section 33B |
|--------|--|--|
| 1. | Prohibition Clause | Immunity Clause |
| 2. | Prohibition of Performance of dance, of any kind or type, in any eating house, permit room or beer bar . | Immunity to Drama Theatre, Cinema Theatre, Auditorium, Sports Club, Gymkhana and THREE STAR HOTELS in performance of dance of the Bar Girls. |
| 3. | Punishment Clause : Imprisonment which may extend to 3 Years and fine of Rs.50 thousands. | No any Punishment or Fine in Sr.No.2 places, like 3 Star Hotels and other places. |
| 4. | Licence of such eating house, permit room or beer bar may be suspended. | No any suspension clause. |
| 5. | Cognizable and Non Bailable Offence. | Not any Offence. |

D. IMPACT OF THE AMENDMENTS :

By this amendment, on dated 15th August 2005, it declared ban on Dancing in Dance Bars and that effected not only the owners of Dance Bars but the bread and butter of Bar Girls were also snatched. The Bar Girl could not show her performance in below the rank of 3 Star Hotels and it was not easy to get job in other field, the Bar Girl suffered a lot in this regard. On seeing the condition of the Bar Girl, Ms.Varsha Kale, Honorary President, Bharatiya Bar Girl Unions and Shri J.V.Shetty, President of Indian Hotel and Restaurant Association decided to file a writ petition for *pro bono* Bar Girls.

E. WRIT PETITIONS IN THIS MATTER :

The writ petition filed was known as the INDIAN HOTEL AND RESTAURANT ASSOCIATION VS.THE STATE OF MAHARASHTRA WP NO.2450 \ 2005 (BOMBAY HIGH COURT)⁵ in which the rights of Bar Girls were discussed in the context of the constitution of India and general principles of Administrative Law. H'ble Justice F.I.REBELLO and H'ble Justice MRS.ROSHAN DALVI decided the case on 12th April 2006 in 95 paras. The Bombay High Court in this case has held the amendments (SS.33A and 33B of the Bombay Police (amendment) Act, 2005) unconstitutional.

However, the Government of the State of Maharashtra obtained the stay on this decision.

The appeal in this matter was filed in STATE OF MAHARASHTRA & ORS. VS. INDIAN HOTELS & RESTAURENTS & ORS.⁶ (2705\2006) by the state of Maharashtra in the supreme court of India.

ARGUMENTS OF THE STATE OF MAHARASHTRA

- The women who dance in bars are trafficked or compelled to dance against their will.
- Many dancers are minor or under the age of eighteen years.
- The majority of dancers are from states outside Maharashtra which confirms the allegation of inter-state trafficking.
- The dancing in bars is a 'GATEWAY' to prostitution.
- The bar dancing is associated with crime and breeds criminality.
- The conditions in dance bars are exploitative and dehumanizing for women.
- The wives of the visitors of Dance Bars have been the victim of Domestic Violence.
- Exploitation prevails in Dance Bars of the Bar Girls.
- It creates anti cultural atmosphere in the State of Maharashtra.

Thus, the Government of the State of Maharashtra reflects the worry of the minor and innocent Bar Girls in the arguments.

ARGUMENTS IN DEFENCE OF THE DANCE BAR AND BAR GIRLS

- Morality does not fall under the State List, so the state legislation is not having any right to amend the Act and the amendment is nothing but a colourable legislation in exercise of colourable exercise powers.
- To make a law to prevent trafficking as per International Covenant falls under the Parliament Powers.
- The doctrine of Pith and Substance shall be applied in this case.
- Sec.33A (4) is the infringement of Independence of Judiciary, as it prevents the license holder to file an appeal in any authority.

- Petitioners are not having eating houses and that is why the amendment is not applicable to them.
 - Prohibition of Dancing amounts to discrimination against Women and it violates Art.15 (1) of the Constitution of India.
 - The ban amounts to an unreasonable restriction on the Fundamental Rights of the Bar Owners and violation of free speech and expression under Art.19(1)(a) of the Bar Girls
 - The amendment violates the Bar Dancers Rights under Art.21
 - It violates Art.14.
 - There are enough legislations to prevent such exploitations, such as, Indian Penal Code and other legislations.
- The arguments are related with the fundamental rights, directive principles of state policy, and other relevant provisions of the Constitution of India.

F. THE VIEWS OF JUDICIARY:

F.1: The right to dance:

In the case of MANEKA GANDHI VS. UNION OF INDIA⁷, the H'ble Supreme Court of India has held: "The right to paint, or sing or DANCE or write to poetry or literature is also covered by Art.19 (1) (a), because the common basic characteristic in all these activities is FREEDOM OF SPEECH AND EXPRESSION."

F.2: DANCE TYPES AND IMPORTANCE:

The Bombay High Court in INDIAN HOTEL AND RESTAURENT ASSOCIATION VS. THE STATE OF MAHARASHTRA (WP NO.2450 \ 2005) at Para 46 mentions:

"Dancing is both an art and a form of relaxation. Dancing may partake of various forms. Couples may dance together to relax or for entertainment of others. Stake Dancing as a sporting activity is one illustration. Ballroom Dancing another. There are then other various forms of Dancing embedded in the culture of our region. There could be a dance performance by homogenous groups of males and/or females and or a heterogeneous of female and male dancers, watched by a participating audience and or the like."

F.3 SUGGESTIONS MADE FOR THE INTEREST OF BAR GIRLS:⁸

The H'ble Supreme Court has held:

- "(1) Bar girls dancing in dance bars should not wear clothes which expose the body and also there should be restriction on such dancers wearing tight and provocative clothes.
- (2) There should be a railing of 3 ft. height adjacent to the dance stage. There should be distance of 5 ft. between the railing and seats for the customers. In respect of dance bars who have secured licences earlier, provisions mentioned above be made binding. It should be made binding on dance bars seeking new licences to have railing of 3 ft. height adjacent to the stage and leaving a distance of 5 ft. between the railing and sitting

arrangement for customers.

- (3) Area of dance floor should be minimum 10 x 12 ft. i.e. 120 sq. ft. and the area to be provided for such dancer should be minimum of 15 sq. ft. so that more than 8 dancers cannot dance simultaneously on the stage having area of 12- sq.ft.
- (4) If the dancers are to be awarded, there should be ban on going near them or on showering money on them. Instead it should be made binding to the said money in the name of manager of the concerned dancer or to hand over to the manager.
- (5) Apart from the above, a register should be maintained in the dance bar to take entries of names of the girls dancing in the bar every day. Similarly, holders of the establishment should gather information such a name, address, photograph and citizenship and other necessary information of the dance girls. Holder of the establishment should be made responsible to verify the information furnished by the dance girls. Also above conditions should be incorporated in the licences being granted."

G. CONCLUSION:

16TH July 2013 is the red letter day for the history of the rights of Bar Girls in India. Because H'ble CJI Altamas Kabir and Justice Surinder Singh Nijjar lifted the ban on Bar Girls to dance in Dance Bar below the rank of 3 Star Hotels in India. The Bar Girls are having Right to Dance along with the right to livelihood as per Art.19. The Bar Girls are having right to work, right against exploitation, right to equality, right to work, right to healthy atmosphere in work place, right to rehabilitation and what not!

Suggestions:

However, the vulgarity in dance must be ban for the protection of Indian Culture and Indian Womanhood. The questions regarding the nexus between law and morality must be discussed by the learned councils in such cases. The cases registered by the wives of the visitors of Dance Bars on Domestic Violence must be put before appropriate authority so that it may be introduced in National Crime Records Bureau Report, so that appropriate steps may be taken and such statistics may be put before the court of Law in India. The authority must take note of the sting operation of media channel in such types of topics. We must not forget that liberty is not the only solution of any evil. The words of Justice Sastri still rings in our ears: 'Man, as a rational being, desires to do many things, but in civil society his desires have to be controlled, regulated and reconciled with the exercise of similar desires by other individuals... Liberty has, therefore, to be limited in order to be effectively possessed.'

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