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State Control and Sexual Morality

The Case of the Bar Dancers of Mumbai

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Historical Ruling

I begin this essay on a positive note – the historical Bombay High Court ruling which upheld the dancers right to dance in bars and earn a living.[1] It was a morale booster for the pro-dancer lobby which had been fighting an uphill battle against extreme odds, countering the norms of middle-class, Maharashtrian, sexual morality. For the last several months, it seemed that the ground was steadily slipping from under our feet and we were left with only a slender hope of the judiciary deciding in our favour. Since the ban was couched in a language of cleansing the city of sex and sleaze, our hopes were indeed slender, considering that our courts are known for their Victorian 'stiff upper lip' moral sensibilities. But when we had all but given up hope, the High Court ruling came as a bolt out of the blue or rather a ray of hope for the lowly bar dancer who lives at the margins and our stand was vindicated.

The judgement striking down the dance bar ban as unconstitutional was pronounced on 12 April 2006 to a packed court room by a Division Bench comprising of Justices F.I. Rebello and Mrs Roshan Dalvi and made national headlines. The concerned statute, an amendment to the Bombay Police Act, 1951, was passed by both Houses of the Maharashtra State legislature in July 2005 and the ban had come into effect on 15 August 2005 to coincide with the Independence Day celebrations. The decision to ban dance performances was part of a drive to cleanse the state of immorality. But the statute exempted hotels with three stars or above as well as gymkhanas and clubs so that they could hold such performances to 'promote culture' and 'boost tourism'. As the state celebrated Independence Day, an estimated 75,000 girls, mainly from the lower economic strata, lost their means of livelihood.

Soon thereafter, petitions were filed in the Bombay High Court challenging the constitutionality of the Act by three different segments – the bar owners' associations, the Bar Girls' Union and social organizations. After months of legal battle, finally, the High Court struck down the ban as unconstitutional on the following two grounds:

- The exemption (given to certain categories of hotels as well as clubs etc.) has no reasonable nexus to the aims and objects which the statute is supposed to achieve and hence it is arbitrary and violative of Article 14 of the Constitution of India (the clause of equality and non-discrimination).
- It violates the fundamental freedom of the bar owners and the bar dancers to practise an occupation or profession and is violative of Article 19 (1)(g) of the Constitution.

Regarding the exemption given to starred hotels, gymkhanas, clubs etc. 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 of violation of fundamental rights, then the provision granting exemption to a certain category of establishments, which is contained in a separate section, i.e., Section 33B[2] of the amended statute, could easily have been struck down; the ban could have been retained and made uniformly applicable to all establishments to remedy the Act of its discriminatory aspect. But the fact that the judgement goes much beyond this and deals elaborately with yet another fundamental right seemed to have missed the media attention.

The Court struck down the dance bar ban on the ground that it violates a fundamental freedom guaranteed under Article 19(1)(g) of the Constitution. This is a significant development and nearly half the pages 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*?' was the caustic comment.[3] 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 recognized 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 a 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 . . . .[4]

While contextualizing the High Court ruling, this essay attempts to locate the bar dancer within a larger framework of state policies and the entertainment industry of the colonial and post-colonial period and examine the hypocritical and contradictory moral postures of the state administration and the politics of police raids in recent times. Of particular interest are the concerns of morality and obscenity which surround the bar dancers, the construction of their

sexuality by social organizations supporting and opposing the ban and their own agency in negotiating their sexuality in an industry confined within the traditional binaries of a male patron and female seductress. It also traces my own journey into the world of sexual erotica and dwells upon the personal challenges it posed to my notions of sexual morality.

Entertainment Industry and Liquor Policy

The female dancer/entertainer has been an integral part of the city's thriving nightlife, the Bombay that never sleeps. The city is hailed as the crowning glory of the nation's entertainment industry. Her history is also linked to the migrant workers who were brought in to build this city.

From the time when the East India Company developed Bombay as a port and built a fort in the seventeenth century, Bombay has been a city of migrants. Migrant workers have flocked to the city for over three hundred years in search of livelihood, and with the workers have come entertainers.

The traders, the sailors, the dockworkers, the construction labour and the mill hands – all needed to be 'entertained'. So the government marked areas for entertainment called 'play houses' which are referred to in the local parlance even today as 'peela house' areas. Folk theatre, dance and music performances and, later, silent movie theatres all grew around the 'play houses' and so did the sex trade. Hence Kamathipura – a name which denoted the dwelling place of a community of construction labourers, the *Kamtis* of Andhra Pradesh, later came to signal the sex trade or 'red light' district of the old Bombay city. Within the red light district, there were also places for the performance of traditional and classical dance and music, and the *mujra* houses. (Sometime in the seventies, when the then Prime Minister, Indira Gandhi, visited the area and saw the dilapidated status of the dwellings of the performers, she sanctioned a grant to construct modern buildings under the banner of Lalit Kala Akademi. This did not bring much change in the social status of the performers or their dwelling places which continue to be dilapidated except for a change of nomenclature. The area is now ironically referred to as 'Congress House'.)

The prevalence of dance bars is linked not only to the restaurant industry and the entertainment business, but also to the state policy on the sale of liquor. After independence, during the fifties, when Morarji Desai was the Chief Minister, the state of Bombay was under prohibition and restaurants could not serve liquor. But after Maharashtra severed its links with the Gujarat side of the erstwhile Bombay Presidency, the newly formed state reviewed its liquor policy and the prohibition era was transformed into the 'permit' era. A place where beer was served was called a 'permit room'. Only a person who had obtained a 'permit' could sit in a permit room and drink beer.

But, gradually, the term 'permit room' lost its meaning and the government went all out to promote liquor sale in hotels and restaurants. It is during this period that the beer bars introduced innovative devices to beat their competitors – live orchestra, mimicry and 'ladies' service bars' where women from the red light district were employed as waitresses. In the early 1906s, the state started issuing entertainment licences,[5] and some bars introduced live dance performances to boost up their liquor sales. Hindi films also started introducing sexy 'item numbers' and the dancers in the bars imitated these popular dances. The government also issued licenses for the performance of 'cabaret shows'. A place that was notorious for its lewd and obscene cabaret performances is 'Blue Nile' which was constantly raided and was entangled in a lengthy litigation. It is this litigation that forced the High Court to examine the notion of obscenity under Section 294 of the Indian Penal Code (IPC), an issue I will deal with more elaborately later in this essay.

Soon the sale of liquor and consequently the profit margins of the owners recorded an upward trend. This encouraged the owners of other Irani 'permit room' restaurants, South Indian eateries and Punjabi *dhabas* to convert their places into dance bars. Coincidentally, during the same period, the *mujra* culture in Bombay was on the decline due to loss of patronage. The dance bars opened up a new and modern avenue of earning a livelihood to these traditional *mujra* dancers.

Soon the 'dance bar' phenomenon spread from south to central Bombay, to the western and central suburbs, to the satellite cities of New Bombay and Panvel, and from there, along the arterial roads, to other smaller cities and towns of Maharashtra. From a mere 24 in 1985–86, the number increased tenfold within a decade to around 210. The next decade 1995–2005 witnessed yet another phenomenal increase and according to one estimate, just before the ban there were around 2,500 dance bars in Maharashtra.

As the demand grew, women from traditional dancing/performance communities of different parts of India, who were facing a decline in patronage of their age-old profession, flocked to Bombay (and later to the smaller cities) to work in dance bars. These women from traditional communities have been victims of the conflicting forces of modernization. Women are the primary breadwinners in these communities. But after the zamindari system introduced by the British was abolished, they lost their zamindar patrons and were reduced to penury. Even the few developmental schemes and welfare policies of the government bypassed many of these communities. From their villages, many moved to cities, towns and along national highways in search of a livelihood. The dance bars provided women from these communities an opportunity to adapt their strategies to suit the demands of the new economy.

Apart from these traditional dancing communities, women from other poor communities also began to seek work in these bars as dancers. These women are mainly daughters of mill workers. With the sole earner having lost his job after the closure of the textile mills, young girls entered the job market to support their families. Similarly, women who had worked as domestic maids, or in other exploitative conditions as piece-rate workers, or as door-to-door sales girls, as well as women workers who had been retrenched from factories and the industrial units, found work in dance bars. For children of sex workers, dancing in

bars provided an opportunity to escape from the exploitative conditions of brothel prostitution in which their mothers had been trapped.

Tax Revenue and Police Raids

Paucity of jobs in other sectors and the boost given by the Maharashtra government to the active promotion of liquor sales led to the proliferation of dance bars. Each ruling power provided additional boost to this industry. The maximum gain to the state government was the 20 per cent sales tax on liquor. As the liquor sales increased, so did the coffers of the bar owners and the revenue for the state. But while the business of dance bars flourished in the state, until 2001, the state administration did not frame any rules to regulate the performances.[6]

The official charge for police protection was a mere Rs 25 per night and the stipulated period for closing the bars was 12.30 am. But in this *hafta raj* (corrupt state administration), most bars remained open till the wee hours of morning. Only when the *haftas* (bribes) did not reach the officials in time would the bars be raided. The grounds for raiding the bars were:

> (a) the owner had violated the license terms by keeping the place open beyond 12.30 am; (b) the dance bar caused 'annoyance' through obscene and vulgar display under Section 294 of the IPC; and (c) caused a public nuisance under Section 110 of the Bombay Police Act.

After a raid, licenses were sometimes either suspended or revoked. But the bar owners say that the government always came to their rescue. They could approach the Home Department for cancellation of the suspension orders issued by the police or for getting the revoked licenses re-issued, all this for a fee!

But something went wrong in late 1998. A large number of bars were raided. The state government also declared a hike of 300 percent in the annual excise fee, raising it from Rs 80,000 to Rs 240,000. It was at this point that the bar owners decided to organize themselves. Around 400 bar owners responded to a call given by one Mr Manjeet Singh Sethi; later they formed an association called 'Fight for the Rights of Bar Owners Association' which organized an impressive rally on 19 February 1999.

In order to work out a compromise, the Association approached the then Commissioner of Police (CP), assured him of their cooperation and sought his intervention to end the *hafta raj*. They claim that they had evolved an internal monitoring mechanism to ensure that all bars would abide by the stipulated time for closing down. But the local police stations were most unhappy at their potential loss of bribes. They tried to break the unity among the members of the Association. The police benefit when the bar owners violate the rules and consequently pay regular *haftas*. Over a period the regular *haftas* paid by each bar owner to the police increased, and just before the recent ban, each bar owner was allegedly paying Rs 75,000 per month to the Deputy Police Commissioner (DCP) of their zone. The money then trickles down the police ladder from the DCP to the lowest ranking constable in pre-determined proportions.

The right-wing BJP–Sena alliance lost the 1999 Assembly elections and there was a change of regime. The Association started fresh negotiations with the ruling National Congress Party (NCP). They greased the palms of high ranking politicians to extend the timings from 12.30 am to 3.30 am so that there would be no need to pay regular *haftas* for this particular violation. After much negotiation, on 3 January 2001, the first ever regulation regarding dance bars came through a government notification. The bars were granted permission to keep their places open till 1.30 am. But somewhere the negotiations backfired, or perhaps the right palms were not sufficiently greased. The government decided to increase the police protection charges from Rs 25 to Rs 1500 per day per dance floor. The angry bar owners held rallies and approached the courts. Due to court intervention, the hiked fees were brought down to Rs 500 per night.

Bar owners claim that the police raids increased after a National Congress Party (NCP) worker was beaten up by a security guard, outside a bar, late at night in February 2004. Following this, 52 bars were raided in February, and 62 in March 2004. The bar owners alleged that the raids were politically motivated and were connected to the forthcoming state Assembly elections. The NCP denied these charges and accused the bar owners of indulging in trafficking of minors. The bar owners approached the High Courts and several FIRs filed by the police were quashed. Again, in July, 30 bars were raided. This time, the bar owners filed a Writ Petition in the Bombay High Court and sought protection against constant police harassment. They also organized a huge rally at Azad Maidan on 20 August 2004. An important feature of this rally was the emergence of the Bar Girls' Union on this public platform.

Women Activists and Differing Perceptions

The mushrooming of an entire industry called the 'dance bars' had escaped the notice of the women's movement in the city despite the fact that several groups and NGOs had been working on issues such as domestic violence, dowry harassment, rape and sexual harassment. Everyone in Bombay was aware that there are some exclusive 'ladies bars'. But, usually, women, especially those unaccompanied by men, are stopped at the entrance. Occasionally, when a bar dancer was raped and/or murdered, women's groups had participated in protest rallies organized by local groups, more as an issue of violence against women than as a specific engagement with the day-to-day problems of bar dancers.

The 20 August 2004 rally in which thousands of bar dancers participated received wide media publicity. The newspapers reported that there were about 75,000 bar girls. Soon thereafter, Ms Varsha Kale, the President of the Bar Girls' Union, approached us (the legal centre of Majlis) to represent them through an 'Intervener Application' in the Writ Petition filed by the bar owners. Varsha is not a bar dancer; she was part of a women's group in Dombvili (in the Central suburbs of Bombay), which had left leanings.

During the discussion with the bar dancers, it emerged that while for the bar owners it was a question of business losses, for the bar girls it was an issue of

human dignity and the right to livelihood. When the bars are raided, it is the girls who are arrested, the owners are let off. During the raids, the police molest them, tear their clothes and abuse them in filthy language. At times, the girls are retained in the police station for the whole night and subjected to further indignities. But in the litigation, their concerns are not reflected. It is essential that they be heard and they become part of the negotiations with the state regarding the code of conduct to be followed during the raids.

As far as the abuse of power by the police was concerned, we were clear. But what about the vulgar and obscene display of the female body for the pleasure of drunken male customers, promoted by the bar owners with the sole intention of jacking up their profits? It is here that I lacked clarity. I had been part of the women's movement that has protested against fashion parades and beauty contests and the semi-nude depiction of women in Hindi films. But the younger lawyers within Majlis had a different perspective. They belonged to a later generation which had a different perspective an sexual agency and sex worker rights.

Finally after much discussion, we decided to take on the challenge and represent the Bar Girls' Union in the litigation. We invited some of the girls who had been molested to meet with us. Around 35 to 40 girls turned up. We talked to them at length. We also decided to visit some bars. This was my first visit to a dance bar. Though I was uncomfortable in an environment of palpable erotica, I realized that there is a substantial difference between a bar and a brothel. An NGO, Prerana, which works on anti-trafficking issues, had filed an intervenor application, alleging the contrary – that bars are in fact brothels and that they are dens of prostitution where minors are trafficked. While the police had raided the bars on the ground of obscenity, the Prerana intervention added a new twist to the litigation because they submitted that regular police raids are essential for controlling trafficking and for rescuing minors. The fact that the police had not abided by the strict guidelines in anti-trafficking laws and had molested the women did not seem to matter to them.

Opposing a fellow organization with which I had a long association was not easy. Prerana had been working with sex workers and had started an innovative project of night crèches for children of sex workers in Kamathipura way back in 1986–87. I had conducted several legal workshops with sex workers to explain to them their basic legal rights. During these workshops, the main concerns for the sex workers was police harassment and arbitrary arrests. I viewed my intervention on behalf of bar girls as an extension of the work I had done with Prerana. But members of Prerana felt otherwise. At times, after the court proceedings, we ended up being extremely confrontational and emotionally charged, with Prerana representatives accusing us of legitimizing trafficking by bar owners and us retaliating by accusing them of acting at the behest of the police.

Under the Garb of Morality

From September 2004 to March 2005, the case went through the usual delays. In March, when the case came up for arguments, the lawyer for the Bar

Owners produced an affidavit by the complainant, upon whose complaint the police had conducted the raids. The same person had filed the complaint against nine bars in one night. The police themselves admitted that he was a 'professional' *pancha* (police witness). The second person who had filed the complaint was a petty criminal. In the affidavit produced by the bar owners, the professional *pancha* stated that he was not present at any of the bars against whom he had filed the complaints and the complaints were filed at the behest of the police.

This rocked the boat for the police and invited the wrath of the judges against them. They were asked to file an affidavit explaining this new development. This turned out to be the last day of the court hearing. Before the next date, the Deputy Chief Minister (DCM) who also happens to be the Home Minister, Shri R.R. Patil had already announced the ban. So in view of this, according to the police prosecutor, the case had become infructuous.

Rather ironically, just around the time when the DCM's announcement regarding the dance bar ban was making headlines, the Nagpur Bench of the Bombay High Court gave a ruling on the issue of obscenity in dance bars. While according to the Home Minister the dances in bars are obscene and have a morally corrupting influence on society, the High Court held that dances in bars do not come within the ambit of Section 294 of the IPC.

The police had conducted raids on a dance bar in Nagpur and initiated criminal proceedings against the owners as well as the dancers on grounds of obscenity and immorality. The bar owners had approached the High Court for quashing the proceedings on the ground that the raids were conducted with a malafide intention by two IPS officers who had a grudge against them. In his affidavit filed before the High Court, the Joint Commissioner of Police, Nagpur stated as follows: 'It is found that certain girls were dancing on the floor and were making indecent gestures. The girls were mingling with the customers, touching their bodies, and the customers were paying money to them.'

On 4 April 2005, Justice A.H. Joshi presiding over the Nagpur Bench of the Bombay High Court quashed the criminal proceedings initiated by the police on the ground that the case made out by the police does not attract the ingredients of Section 294 of the IPC. Section 294 is attracted only when annoyance is caused to another, due to obscene acts in a public place. The court held that the affidavit filed by the Joint Commissioner of Police did not reveal that annoyance was caused to him personally or to any other viewer due to the alleged obscene dancing.

This ruling followed several earlier decisions by the Bombay High Court, which had addressed the issue of obscenity in dance bars. One of the earliest rulings on this issue is by Justice Vaidhya in the *State of Maharashtra v. Joyce Zee alias Temiko* in 1978, where the court examined whether cabaret shows constitute obscenity. The police had conducted raids in Blue Nile and had filed a case against a Chinese cabaret artist, Temiko, on grounds of obscenity.

While dismissing the appeal filed by the state, the Bombay High Court held as follows: 'An adult person, who pays and attends a cabaret show in a hotel

runs the risk of being annoyed by the obscenity. . . .' Interestingly, prior to the raid, the policemen had sat through the performance and enjoyed the same. Only when the show was complete did they venture to arrest the dancer. The court posed a relevant question – when and how was annoyance caused to the police, who had gone in to witness a cabaret performance? Regarding notions of morality and obscenity, the judge commented: 'A cabaret performance may or may not be obscene according to the time, place, circumstances and the age, tastes and attitude of the people before whom such a dance is performed.'

Out of the Closet – Into the Public Domain

The DCM's statement announcing the ban was followed by unprecedented media glare and we found ourselves in the centre of the controversy as lawyers representing the Bar Girls' Union. The controversy had all the right ingredients – titillating sexuality, a hint of the underworld, a faintly visible crack in the ruling Congress–NCP alliance and polarized positions among social activists. Ironically, the entire controversy and the media glare helped to bring the bar girl out of her closeted existence. It made the dance bars more transparent and accessible to women activists.

The controversy was not of our own making but we could not retract now. We threw in our lot with that of the Bar Girls' Union. The bar girls petitioned the Chief Minister, the National and State Women's Commissions, Commissions for Backward Castes, Scheduled Castes and Scheduled Tribes, the Human Rights Commissions and the Governor, Shri S.M. Krishna. We even met Sonia Gandhi, the Congress President, and sought her intervention. Other women's groups joined in and issued a statement opposing the ban.

An equal or even greater number of NGOs and social activists issued statements supporting the ban. The child-rights and anti-trafficking groups led by Prerana issued a congratulatory message to the DCM and claimed that they had won. Then women members of the NCP came on the street brandishing the banner of depraved morality. The Socialists and Gandhians joined them with endorsements from stalwarts of the women's movement like Mrinal Gore and Ahilya Rangnekar to aid them. These statements had the blessings of a retired High Court judge – Justice Dharmadhikari. Paid advertisements appeared in newspapers and signature campaigns were held at railway stations. 'Sweety and Savithri – who will you choose?' goaded the leaflets distributed door to door, along with the morning newspaper. The term 'Savithri', denoted the traditional *pativrata,* an ideal for Indian womanhood, while 'Sweety' denoted the woman of easy virtue, the wrecker of middle-class homes.

Suddenly the dancer from the city's sleazy bars and shadowy existence had spilled over into the public domain. Her photographs were splashed across the tabloids and television screens. She had become the topic of conversation at street corners and market places; in ladies' compartments of local trains and at dinner tables in middle-class homes. Everyone had an opinion and a strong one at that. Saint or sinner? Worker or whore? Spinner of easy money and wrecker of homes or victim of patriarchal structures and market economy? The debate on sexual morality and debasement of metropolitan Bombay seemed to be revolving around the bar girl's existence.

Interestingly, the Gandhians seemed to be only against the dancers and not against the bars that have proliferated. Nor have they done much to oppose the liquor policy of the state, which had encouraged bar dancing. The anti-trafficking groups which had been working in the red light districts had not succeeded in making a dent in child trafficking in brothels that continue to thrive. But in this controversy, brothel prostitution and trafficking of minors had been relegated to the sidelines. The sex worker was viewed with more compassion than the bar dancer, who may or may not resort to sex work.

The bar dancer was made out to be the cause of all social evils and depravity. Even the blame for the Telgi scam was laid at her door; the news story that Telgi spent Rs 9,300,000 on a bar dancer in one night was cited as an example of their pernicious influence. The criminal means through which Telgi amassed wealth faded into oblivion in the fury of the controversy. Was it her earning capacity, the legitimacy awarded to her profession and the higher status she enjoyed in comparison to a sex worker that invited the fury from the middle-class Maharashtrian moralists?

Hypocritical Morality

While the proposed ban adversely impacted bar owners and bar dancers from the lower economic rungs, the state proposed an exemption to hotels which hold three or more 'stars', or 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' of a Hindi film can be screened in public theatres, then how can 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 women's bodies 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 be close down because there is sexual exploitation of women. Bars employ women as waitresses and the proposed ban would not affect this category. Waitresses mingle with the customers more than the dancers who are confined to the dance floor. If the anti-trafficking laws had not succeeded in preventing trafficking, how could the ban on bar dancing prevent it? If certain bars were functioning as brothels, why were the licenses issued to them not revoked? These were several contradictions and hypocrisies in the stand adopted by the ruling party and the pro-ban lobby but no one was willing to listen.

While the hue and cry about the morality of dance bars was raging, in Sangli district, the home constituency of the DCM, a dance performance entitled 'Temptation' by Isha Koppikar, the 'item girl' of Bollywood, was being organized to raise money for the Police Welfare Fund. The bar girls flocked to Sangli

to hold a protest march. This received even more publicity than the performance by Isha Koppikar who, due to the adverse publicity, was compelled to dress modestly and could not perform in her usual flamboyant style. The disappointed public felt it was more value for their money to see the protest of the bar girls than to witness a lacklustre performance by the 'item girl'. The bar girls raised the pertinent question about whether different rules of morality apply to the police and to the Home Minister.

All this was heady news for the television channels and the tabloids. From April to July 2005, the city was abuzz with the dance bar ban controversy. In June, the state tried to bring in the ban through an ordinance. But to everyone's surprise, the Governor Shri S.M. Krishna returned the ordinance and insisted that the ruling party should introduce a Bill in the state Legislature. The pro-ban lobby raised a stink and accused him of taking bribes from the bar owners, the majority of whom come from the southern state of Karnataka and from the beer baron Vijay Mallya, who also hails from Karnataka. Interestingly, before being appointed as Governor of Maharashtra, Shri S.M. Krishna was the Chief Minister of Karnataka and he had been accused of safeguarding the Kannadiga interests.

Legislative Conspiracy

Finally, a Bill was drafted and presented to the Assembly. It was an amendment to the Bombay Police Act, 1951, inserting certain additional sections. On 21 July 2005, the Bill was passed at the end of a marathon debate. Since the demand for the ban was shrouded with the mantle of sexual morality, it was passed unanimously. The debate was prolonged not because there was opposition, but every legislature wanted to prove his moral credentials. No legislator would risk sticking his neck out to defend a lowly bar dancer and tarnish his own image. In the visitors gallery, we were far outnumbered by the pro-ban lobby, the 'Dance Bar Virodhi Manch', who had submitted 150,000 signatures to the Maharashtra state assembly insisting on the closure of dance bars.

It was a sad day for some of us, a paltry group of women activists, who had supported the bar dancers and opposed the ban. We were sad not because we were outnumbered, not even because the Bill was passed unanimously, but because of the manner in which an important issue relating to women's livelihoods, which would render thousands of women destitute, was discussed. We were shocked at the derogatory comments that were passed on the floor of the House by our elected representatives, who are under the constitutional mandate to protect the dignity of women. Not just the bar dancers but even those who spoke out in their defence became the butt of ridicule during the Assembly discussions.

One of the comments was aimed at us. *'These women who are opposing the ban, we will make their mothers dance . . .'* (the comments have to be translated into Marathi to gauge their impact.) During the campaign we had been asked, 'will you send your daughter to dance in a bar?' But on the floor of the House, the situation had regressed, from our daughters to our mothers. *Isha Koppikar . . . she is an atom bomb, attttom bomb* . . . laughter and cheer . . . *the dancers wear only 20% clothes* . . . more laughter and cheering . . . *these women who dance naked* (nanga nach), *they don't deserve any sympathy* . . . a round of applause.

An esteemed member narrated an incident of his friend's daughter who had committed suicide because she did not get a job. He said it was more dignified to commit suicide than dance in bars. And the house applauded! Yet another congratulated the Deputy Chief Minister, Shri R.R. Patil, for taking this bold and revolutionary (*krantikari*) step but this was not enough. 'Hotels with three stars . . . five stars . . . disco dancing . . . belly dancing . . . all that is vulgar . . . every thing should be banned', he urged.

Another esteemed member was anecdotal. He had gone to dinner with a friend to a posh restaurant in South Mumbai which has a live orchestra. Not a dance bar – he clarified. But women there were dressed in an even more obscene manner than the bar dancers. (Comments: 'why had you gone there?' [laughter] 'Was it part of a study tour?' [more laughter]). When licenses were given to bars, the understanding was that it would promote art – performing art. But what actually happens is vulgar dancing, a total destruction of our culture. Belly dancing in five star hotels is also vulgar. That should be stopped too. This Bill deals with the dignity of women. So, all dancing, except *bharatanatyam* and *kathak* should be banned. Schools and colleges are full of vulgarity. We need a dress code for schools and colleges. The bill needs to be made more effective so that it can deal with issues like MMS and pornography.

Then there were comments about films – 'western . . . English . . . Tamil – all are obscene', they argued. But not a word about Hindi and Marathi films. That is *'amchi Mumbai, amchi Marathi'*, I guess!

Then another esteemed member commented, 'we are not Taliban but somewhere we have to put a stop. The moral policing we do, it is a good thing, but it is not enough . . . we need to do even more of this moral policing. . . .' Suddenly the term 'moral policing' had been turned into a hallowed phrase!

These comments were not from the ruling party members who had tabled the Bill. They were from the opposition. Their traditional role is to criticize the Bill, to puncture holes in it, to counter the argument, to present a counter viewpoint. But, on that day, the House was united, across party lines and all were playing to the gallery with their moral one-upmanship. No one wanted to be left out. Even the Shiv Sena, whose party high command is linked to a couple of dance bars in the city, supported the ban on 'moral' grounds. And the Marxists were one with the Shiv Sainiks. The speech by the CPI(M) member, Narsayya Adam, was more scathing than the rest. He went to the extent of casting aspersions on the Governor for returning the bill. To return a bill passed by the cabinet is an insult to the Maharashtra state, he declared. The women members, though a small minority, happily cheered the barrage against bar dancers.

It was a moral victory to the Deputy Chief Minister (DCM), Shri R.R. Patil. In his first announcement in the last week of March 2005, he had said that only bars outside Mumbai will be banned. A week later, came the next

announcement. The state shall not discriminate! All bars, including the ones in Mumbai, would be banned. What had transpired in the intervening period one does not know. But what was deemed as moral, legal and legitimate, suddenly a week later, came to be regarded as immoral, vulgar and obscene.

At this time, the idea of a ban did not go down well even with NCP MLAs, let alone others. It took more than two months to get the Ordinance drafted and approved by the cabinet. Finally, when it was sent to the Governor, he had returned it on technical grounds. By then, it was mid-June. But even thereafter, the Congress Party Chief in Maharashtra stated that the Congress Party had not discussed the ban. In fact, the media hinted that this indicated a rift within the ruling alliance over the dance bar issue.

But gradually everything got ironed out. Not only was the ruling alliance cemented, even the opposition had been won over. Rarely does a bill gets passed without even a whimper of protest. But this bill was showered with accolades. All had done their bit in this endeavour of 'protecting the dignity of women'.

The 'morality' issue had won. The 'livelihood' issue had lost. It was indeed shocking that in this era of liberalization and globalization dominated by market forces, morality had superceded all other concerns, even of revenue for the cash-strapped state.

The demand for the ban was grounded on two premises which are contradictory to each other. The first is that the bar dancers are evil and immoral, they corrupt the youth and wreck middle class homes; they hanker after easy money and amass a fortune each night by goading innocent and gullible young men into sex and sleaze. The second is that bars in fact are brothels and bar owners are traffickers who sexually exploit the girls for commercial gains. This premise refused to grant any 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 for a ban was framed in the language of 'women's liberation' and the economic disempowerment of this vulnerable class of women came to be projected as a plank which would liberate them from sexual bondage.

On 14 August 2005, at the midnight hour, as the music blared in bars packed to capacity in and around the city of Bombay, the disco lights were turned off and the dancers took their final bow and faded into oblivion.

Some left the city in search of options, others fell by the wayside. Some became homeless. Some let their ailing parents die. Some pulled their children out of school. Some were battered and bruised by drunken husbands as they could not bring in the money to make ends meet. Some put their pre-teen daughters out for sale in the flesh market. And some committed suicide. Just names in police diaries – Meena Raju, Bilquis Shahu, Kajol. In the intervening months, there were more to follow. A few stuck on and begged for work as waitresses in the same bars.

The exit of the dancer brought the dance bar industry to a grinding halt. Devoid of glamour and fanfare, the profit margins plummeted and many bars closed down. A 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 rang a warning bell at the increasing number of girls turning up for STD check ups.

Malafide Motives

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

- The dance performances in eating houses, permit rooms and beer bars are indecent, obscene or vulgar.
- The performances are giving rise to exploitation of women.
- Several complaints regarding the manner of holding such dance performances have been registered.
- The Government considers that the performance of dances in an indecent manner is derogatory to the dignity of women and is likely to deprave, corrupt or injure the public morality or morals.

The court overruled each of these reasons stated by the Government on the ground that there is no rational nexus between the amendment and its aims and objectives. Some relevant comments from the judgement are summarized below:

> 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.[7]
>
> 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 and are unlikely to deprave or corrupt public morals. The expression western classical or Indian classical which are used by the State in the affidavit is of no consequence, as the Act and the rules recognize 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.[8]
>
> Dancing is one of the earliest form of human expression and recognized 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.[9]

The right to dance has been recognized 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 summarized as: 'Complaints were received by wives relating to illicit relationships 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, beautiful, knows to dance or tries to dance be 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. 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 part of 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 the public in general and women in the locality feel unsafe. In what manner does dancing by women in dance bars result 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 do not take place.

The state has produced the record that 17403 cases have been registered under section 110 of the Bombay Police Act. These are incidents within the establishments and 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* v. *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 a separate case 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 the dance bars are used as meeting places for criminals. This defies logic: why criminals should meet at the 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 they not meet in other places? It is then pointed out that the nature of business of dance bar 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.[10]

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 performance 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 sequence 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?[11]

Constructing the Sexual Subject

A glaring discrepancy in the arguments advanced by the state was in the realm of the agency of the sexual woman. At one level, the state and the pro-ban lobby advanced an argument that the dancers are evil women who come to the bars to earn 'easy money' and corrupt the morals of the society by luring and enticing young and gullible men. This argument granted an agency to women dancers. But after the ban, the government tried to justify the ban on the ground of trafficking and argued that these women lack an agency and need state intervention to free them from this world of sexual depravity in which they are 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.[12]

Rather ironically, the anti-ban lobby also framed its arguments within this accepted 'victim' mould: single mothers, traditional dancers with no other options. 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 eroticism inherent in dancing had to be carefully crafted and squarely 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 the feminist activists campaigning their cause and was carefully guarded by the bar dancer. Only now and then would it spill over as a defiant statement. So while we were exposed to one aspect of their lives which had all the 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 part of their world in which they are constantly negotiating their sexuality, the dizzy heights they scale while they dance draped in gorgeous chiffons studded with sequins.

Did the problem lie with us and the picture that we wanted to paint for them? Well, perhaps yes. But for now as the state prepares to file its appeal in the Supreme Court, aided with 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 have gained in the Bombay High Court.

Notes

[1] Writ Petition No. 2450/2005 – *Indian Hotel & Restaurants Association (AHAR) and others v. State of Maharashtra and others.*

[2] As per the amended statute, the concerned Section, i.e., 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'.

[3] Para. 61 at page 163.

[4] Para. 68 at page 183.

[5] *Rules for Licensing and Controlling Places of Public Amusement (other than Cinemas) and performances for Public Amusement including Melas and Thamashas, 1960.*

[6] The bar owners functioned under regular licenses issued to restaurants and bars. They paid Rs 55,000 per month for the various permits and licenses to the Municipal Corporation. They also paid an annual excise fee of Rs 80,000. In addition, the bar owners also pay Rs 30,000 per month to the Collector by way of 'entertainment fee'.

[7] Para. 49 at page 130.

[8] Para. 52 at page 135.

[9] Para. 58 at page 155.

[10] Para. 83, pages 222–25.

[11] Para. 84 at page 232.

[12] Para. 86 at page 235.