

**DE JURE NEXUS LAW JOURNAL**

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**INDIAN HOTEL AND RESTAURANT ASSOCIATION  
(AHAR) VS. STATE OF MAHARASHTRA (DANCE BAR CASE)**

De Jure Nexus

**Court-** Supreme Court of India

**Citation-** (2019) 3 SCC 429

**Coram-** Hon'ble Judges A.K. Sikri and Ashok Bhushan

**Appellant-** Indian Hotel & Restaurant Association (AHAR) & Anr.

**Respondent-** The State of Maharashtra & Ors.

**Theme-** By what factor did the Maharashtra Prohibition of Obscene Dance and Protection of Women's Dignity (Working Therein) Act, 2016 and the Maharashtra Prohibition of Obscene Dance and Protection of Women's Dignity (Working Therein) Rules 2016 benefited the employees of dance bars and its establishments?

**Subject-** Constitutional law

**Judgement-** India

**Case decided on-** 17<sup>th</sup> January 2019

**Brief facts of the case:**

The beginning of the scenario of this case dates back to 2005 when a ban had been sanctioned by the government of Maharashtra on the dancing acts and performances as under the ambit of Bombay Police Act under the sections 33 A and 33 B, where the exception stood for the hotels rating 3 stars and above. The reason or rationale that was put forward for said ban was the obscenity involved in the dances and that they were socially immoral. Subsequent to the aforementioned ban followed the cancellation of licenses of the dancers, bar owners which led to around 75,000 women workers being unemployed. As this was a serious concern for the women workers, petitions were filed by the vulnerable women in the High Court of Bombay. The decision came out to not be in favour of the government which resulted in an appeal to the Supreme Court of India. But the Supreme Court actively in 2013, upheld the High Court's judgement. The Maharashtra Prohibition of Obscene Dance in Hotels, Restaurants, and Bar Rooms and Protection of Dignity of Women (Working therein) Act, 2016 and the Maharashtra Prohibition of Obscene Dance in Hotels, Restaurants, and Bar Rooms and Protection of Dignity of Women (Working therein) Rules, 2016, both of which contained provisions similar to those found in section 33 A and 33 B of the Bombay Police Act was enacted by the defendants very cleverly and brilliantly instead of conforming to the order of the Supreme Court. The Act was so carefully crafted with provisions that it was almost not possible for anyone to live up to the requisites. Following such act of the government or the defendants, three writ petitions were filed under Article 32 of the Indian Constitution, which lets us file writ petitions to the Supreme Court of India, to challenge it. All the three writ petitions were in a way pointing towards the same motive and outcome, so the Supreme Court decided to work upon them together and deal them with a single judgment.

**Case Commentary-**

This case is considered to one of the landmark judgements of India as here the Supreme Court's open-minded stance on the topic was highly appreciated. Sanctioning a ban on the bar dancers by the Maharashtra government in 2005 was done in order to protect women as they had the notion that them dancing in the bars leads to them being objectified. Maybe the ban was done in a good faith, but its consequences were definitely not kept in mind while designing it. After the ban, a sudden wave of unemployment had hit the late-night workers who had performing

in the bars as their sole source of income and only place to work at. And to counter the government's stance, the imposition of ban had increased human trafficking as an outcome as women who had nowhere to work, chose prostitution as their last option. But the workers did see their success in 2013 when the SC removed the ban. The adamant government to prove their point, in 2016, brought a new act called the Maharashtra Prohibition of Obscene Dance in Hotels, Restaurant and Bar Rooms and Protection of Dignity of Women (Working therein) Act, 2016, which again limited the bar dancers' work but this time on the grounds of obscenity. The act even went up to the limits of creating offences within it which were non bailable as well as cognizable. It was found that many of the sections in the acts were in violation of the golden triangle of fundamental rights. So, to take care of the same, an appeal was filed before the Supreme Court for justice. And the Supreme Court, indeed, provided it. The judgement came out in the favour of the bar dancers and workers again. The 3 petitions that were accepted from a hotel association, Bhartiya bargirls union and R.R. Patil foundation. The ruling seemed much of a comfort to restaurant owners and professional female dancers who relied only on restaurant performances. It was a defining moment in the history of women's rights, supporting women's rights by knocking down arbitrary portions of the applicable legislation.

### **Issues Raised Before the Court in Indian Hotel and Restaurant Association (AHAR) & Anr Vs. State of Maharashtra & Ors. –**

- a) As a result of the overall legal changes, dance has been prohibited at all of the district's local breweries. Would that be a breach of Articles 14, 15, 19, and 21 of the Indian Constitution, which deal with individual rights?
- b) The Maharashtra government enforces stringent requirements for obtaining a permission. Would that be in violation of article 19(1)(g), which provides the freedom to pursue any profession, occupation, or trade?
- c) Despite the fact that the penalty for ludicrous activities was already included in the Indian Penal Code of 1860, this current law contains harsh penalties. Would not that be a violation of Section 14?
- d) Is it possible that the installation of surveillance cameras at nightclubs infringes on an adult's right to live and human dignity, as guaranteed by Article 21 of the Indian Constitution?

The Maharashtra government took the defence of women's safety. It was acclaimed by them their sole motive was to protect them.

**Provisions and sections in the Act challenged-**

1. *“Section 2(8)(i): It was concerned with the definition of ‘obscene dance’. The issue was that it includes ‘a dance which is designed only to arouse the prurient interest of the audience’ which was totally a loose expression.*
2. *Section 6(4): It barred the grant of licence under the Act in respect of a place where licence for discotheque or orchestra is granted.*
3. *Section 8(2): It provided punishment for contravening section 6(4).*
4. *Section 8(4): It made throwing or showering coins, currency notes or any article or anything which can be monetized on the stage or handing over personally such things, etc. to a dancer as an offence.”*

**Judgement-**

The decision of the Supreme court in this case was such that the court didn't quash the act as a whole but validated it after altering some of the provisions. The alterations were such that though alcohol is not beneficial as such but its consumption cannot be totally restricted and therefore a total ban on it would be inconsistent with the fundamental rights of a person. There was some relaxation for obtaining a license. Dance can't be totally restricted as it is a source of income for many. Putting up the surveillance or CCTV cameras was found to be inconsistent with the 2017 judgement of K.S. Puttaswamy which talked about the right to privacy and therefore cameras can only be installed at the respective entrances of the bars as otherwise it will be inappropriate as it will result in the breach of privacy of the customers. One of the conditions in the act was that the bars cannot be opened or set up in a proximity of one kilometre from religious institutions and educational institutes such as schools, colleges but the same was struck down by the apex court. The prohibition on showering of notes or any currency on the dancers was considered to be valid though it was contended that it was a major source of income from them but small and legal tips were acceptable. The time constraints that were envisaged in the act were deemed to be valid as they are consistent with the timings provided. The condition that there should be a written contract between the employer and employee seemed to be valid as it was required for enforcing their rights as and when required. The salary

and wages were to be provided to them in their respective bank accounts. And the employment contracts were to be in accordance with the licensing authority. As it was contended there already are provisions relating to obscenity in the Indian Penal Code of 1860, any other law or provision created pertaining to the same will not be consistent with the Article 14 of our Indian Constitution.

**Conclusion-**

The present position or status of this case is that it is still followed and very much applicable. This judgement was seen as a very progressive stance by the Hon'ble Supreme Court and was rightfully hailed for the same as it was one of those cases which actually recognized the liberty and freedom of occupation for women. This came to be as a balanced judgement as it didn't stick to just one side, it looked into the account matter of both the parties and ruled in such a manner that no one's rights are compromised ensuring the holy trinity of article 14, article 19 and article 21 of the Indian Constitution. Audi alteram partem, an offshoot of natural law was duly followed in this case as both the parties were heard in a just and fair manner and justice was served.



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