

**INDIAN HOTEL ASSOCIATION (AHAR) AND ANR vs. STATE OF
MAHARASHTRA AND ORS. [AIR 2019]**

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BENCH: Justice A. K. Sikri and Justice Ashok Bhushan

INTRODUCTION

Article 14 of the Indian Constitution deals with equality before law and equal protection of law. Gender equality is very important as it leads to better legal protection, better racial equality, good economy, decrease in poverty, reduces human trafficking, maintains peace in the society². It is very important to challenge each and every law which creates discrimination in the society so that the principle of equality could be preserved in the society. It is important to protect the law related to equality, gender discrimination. The case of *Joseph Shine v. Union Of India*³ is the best example where section 497 of Indian Penal Code was challenged and the court held that this section violates article 14 and was struck down. Therefore, it is important to challenge the law which is arbitrary to equality, gender discrimination.

BACKGROUND

*Indian Hotel Association (Ahar) and Anr v. State of Maharashtra and Ors*⁴ is a recent case which is related to equality, gender discrimination. This case shows that law is above all and anything which is arbitrary to law will be outlawed. In this case, the Hon'ble Supreme Court abolished the rules which were against equality. Article 14, article 15, article 19(1)(a), article 19(1)(g) and article 20 of the Indian Constitution are dealt in this case.

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² Reasons why gender equality is important, available at <https://www.humanrightscareers.com> (last visited on 4th Oct, 2020).

³ AIR 2018.

⁴ AIR 2019.

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FACTS OF THE CASE

The chaos began with the government, banning the dance performance of women in bars in 2005. The rule had an exception that only hotels with 3 stars and above rating would be allowed to have dance by women. The ban was applied on the basis of section 33A and 33B of the Bombay Police Act. These sections prohibited any kind of dance performance in any eating houses, beer bars and permitted rooms. The reason offered was that these dancing leads to obscenity and is quite immoral in its nature.

The rule was implemented and the licenses for such dance performances were struck off with the instantaneous effect. This resulted in the unemployment of near about 75,000 women workers who in return appealed to the Bombay High Court.

The Bombay High Court ruled the judgment in favour of the petitioners and therefore appeal was made by the government to the apex court, but the Supreme Court affirming the verdict of the High court ruled in favour of the petitioners. However instead of enduring with the judgment of the Supreme court, respondents cunningly stood up with the new statute namely Maharashtra Prohibition of Obscene Dance in Hotels, Restaurant, and Bar Rooms and Protection of Dignity of Women (Working therein) Act, 2016 along with the Maharashtra Prohibition of Obscene Dance in Hotels, Restaurant, and Bar Rooms and Protection of Dignity of Women (Working therein) Rules, 2016. The provision of this new statute was quite parallel to the regulations under the Bombay Police Act and were so constricted that it made getting the licence almost unattainable. Therefore again writ petition was filed under article 32 of the Indian constitution of the Supreme Court challenging the new act and rules made.

ISSUES RAISED

The issue which stood up was whether the sections and rules mentioned below of the Maharashtra Prohibition of Obscene Dance in Hotels, Restaurant, and Bar Rooms and Protection of Dignity of Women (Working therein) Act 2016 and Maharashtra Prohibition of Obscene Dance in Hotels, Restaurant, and Bar Rooms and Protection of Dignity of Women (Working therein) Rules 2016, violates the Fundamental rights of the petitioner granted to them under article 14, 15, 19(1)(a), 19(1)(g), and 21 by the Indian constitution :

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1. Section 2(8)(i): the section defined the 'obscene dance'. The main issue under the section was that it included the dance which mainly arouses the filthy interest of the audience which was regarded as quite vague statement.
2. Section 6(4) and section 8(2): The issue with the above section was that section 6(4) forbids the granting of license under the act where the license for any orchestra or discotheque was given. This section was viewed to be unreasonable without any rational nexus and section 8(2) described punishment for the breach of section 6(4).
3. Section 8(4): The section restricted the throwing of coin or showering of any monetary things on the stage of the dancers and even curtailed the handing of any such things personally to the dancers. It made these activities as offence.⁵

Rules: Part A

1. Condition 2: The condition spoke regarding the type of stage that can be used for dance performance. It provided the framework under which the stage must be made. However it was viewed to be quite unreasonable.
2. Condition 11: The condition stated that the dance bars must be at the distance of 1km from any religious or educational institutions.

Rules: Part B

1. Condition 2: It held that the dancers or other working women must be hired under the written contract on a monthly salary basis which shall be deposited in her bank accounts.
2. Condition 6: The condition was in parallel to the section 8(4) and restricted the throwing of currency notes or coins on the dance stage.
3. Condition 9: The condition limited the time under which the dance would be allowed. It denoted the time between 6.00 PM. To 11:30 PM.
4. Condition 12: This condition curtailed the use of alcoholic drinks at the spot where the dance would be performed.
5. Condition 16: The condition stated that the person who is given the licence must make sure that no employees have any criminal records.
6. Condition 17: It stated that for any modification or alteration in the premises, the permission of the licensing authority would be required as compulsion.

5. Available at <https://www.indiankanoon.org> (last visited on 4th Oct, 2020).

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7. Condition 20: IT held that areas which come under the public place will have CCTV cameras installed along with keeping the 30 days recording.

JUDGMENT OF THE SUPREME COURT

While dealing with the section 2(8)(i), the apex court cited the judgment of *Raj Kapoor & Ors. v. State and Ors.*⁶ and viewed that it cannot be said that the expression dance which is aimed to arise the prurient interest of the people is vague. The court upheld the validity of the section 2(8)(i) of the act.

The Supreme Court, on section 6(4) stated that it is totally unreasonable and arbitrary and therefore it was declared to be unconstitutional and was struck of. However section 8(2) was held to be valid.

Further section 8(4) which restricted the token of appreciation in terms of monetary value could be given only in form of addition tips in the bills was struck down. Court viewed the throwing of currency and personally handing such stuffs to be valid. The court further contented that the state cannot impose any particular manner of receipt as it would lead to denial of rights.⁷

The Supreme Court while further looking into the condition 2 of the Part A of the rules viewed it to be absolutely unreasonable and the same was struck down. Obviously the above mention clause is vague and arbitrary and it's an employer's own discretion regarding its occupation.

Further the condition 11 was also struck down by the apex court as it was arbitrary and unjust in the eyes of the court. The court further provided the liberty to the respondents to prescribe the distance which is reasonable.

Moving towards the Part B of the rules, the court while dealing with the condition 2 upheld the validity of the provision in regards of having written contracts and deposition of salary into bank accounts but struck down the part mentioning, salaries to be given on monthly basis.

6.AIR 1980 SCR (1) 1081.

7.Case Brief: Indian Hotel and Restaurant Association (Ahar) and Anr. v. The State of Maharashtra and ors, available at <https://www.lawbhoomi.com> (last visited on 7th Oct,2020).

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The condition 6 was already dealt by the court while pointing out the section 8(4).

Further the apex court was gratified by the timings mentioned under condition 9 of the rules. The court viewed that the rules are reasonable and enough time is given for dance performances. The condition was upheld.

Further, the Supreme Court rejected the condition 12, stating it to be unjust and arbitrary and the same was struck off. The condition 16 and 17 were also struck down by the Supreme Court on the grounds that it is absolutely unreasonable and unjust which is completely correct.⁸

Further while dealing with the condition 20, the court held that the condition, directing installation of CCTV cameras as compulsion, violate the right of privacy under article 21 of the Indian constitution. Quoting *K. S. Puttaswamy v. Union of India*⁹ court declared the condition 20 to be unconstitutional. The decision was accurate as it would have certainly led to the violation of the right of privacy.

CRITICAL ANALYSIS

The judgment was overall dot on point. Analysing it carefully the court was justified in its verdict. Major importance was given to the fundamental rights of the women dancers. Along with that some powers of the state were held to be valid and were retained to them such as power to define what is obscene dancing. What would make it immoral? What could be the timings for the dance bar?

The court was justified in holding section 6(4) as unconstitutional. The judgment was absolutely on dot as there was no just reason found as to why dance license couldn't be given if there is pre – existence of licence of orchestra or discotheque. Further the court was justified in upholding section 8(2). The contention given was its in conflict with the section 294 of the Indian Penal Code which is baseless as both are different in its nature and same was the view of court which stated it to be different from section 294 and held it to be valid. Analysing the courts view on showering of currency, it is quite valid as if any restriction is placed on manner of receiving tip, it would lead to unjust towards the performer

8. Maharashtra Dance Bars Law: Here's a list of what's been struck down by Supreme Court and why?, Available at <https://www.sconline.com> (last visited on 7th Oct, 2020).

9. AIR 2017 10 SCC 1.

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who has the right of receipt. On the point of distance the Supreme Court was justified as it is unfair to decide what could be the exact distance to be maintained. So far as to maintain a distance, it is correct as such places must be away from dance bars but laying down exact distance (1 km) is not fair. However Court could have given guidelines for the same instead of ruling out the power to the government.

In Part B of the rules, the apex court righteously delivered its verdict on the point of salary. The judgment was accurate on the point of written contract however the part prescribing the salaries to be deposit could have been extended to paying salaries in terms of cash apart from bank deposit. The verdict on 'time given' by the Supreme Court seems correct to some extent and surely state could set the time limits but it could have been relaxed as it might infringe the right of trade and occupation under article 19(1)(g) of the constitution on the ground that other orchestra and liquor shops are given more time to be open. The same was contended by the petitioner but the court rejected this view but it could certainly be the valid point on the ground of freedom of trade and occupation. On the point of serving of Alcohol the decision was appropriate as it would have certainly infringed the right under article 19(1)(g). The respondent's contention that alcohol consumption would lead to misbehaviour by the audience towards the dancer was absolutely vague and the court held the same.

Thus the judgment overall defined the true verdict and was quite accurate. Women dancer's rights were preserved and protected and states power was also recognised. Being the guardian of the fundamental rights of the citizen, it can be said that the Supreme Court maintained its dignity and respect.

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