Bar Dancers, Morality and the Indian Law

Reprinted from Economic & Political Weekly September 25, 2010 vol xlv no 39 with permission from the author

Sonal Makhija
Lawyer/ Researcher

The Hindu mythological tale of god Shiva defeating goddess Kali in a dance competition is an illustration of how even goddesses have to accept defeat in order to guard their modesty. In the contest, Kali manages to dance in perfect tandem with Shiva but loses when she is restrained by feminine modesty from imitating Shiva's intentional pose of raising his right foot to the level of his crown. She accepts defeat (Hanna 1993). It is this victory that earned Shiva the title of "Nataraja", the king of dance.

The legitimisation of dance[1] by law in India is coded with imperial interpretations of the Indian dance. The manifestation of morality into law bears the influence of colonial morality and the colonial gaze of the native and his culture. The encoding of morality into law first initiated by the British government and later by its successors was a representation of and a comment on the native and his questionable morality. Nevertheless, the legal narrative adopted by the upper class Hindu male in imitation of the coloniser is not merely infused with Victorian morality but is also a product of Hindu puritanical anxiety. This anxiety is expressed in the language of law.

The prohibition on dancing in beer bars is a result of the same anxiety. It attempts to recast and re-clothe the bar dancers in the familiar mould of the pre-modern: that is of the "traditional" chaste "Indian" woman. In this article, I suggest that the prohibition on bar dancing in Mumbai[2] and the encoding of morality into the Indian law, are residual influences of the colonial morality and the imposition of nationalist-Hindu agenda and caste-class purity. By evoking the arguments put forth by the State, I shall study the ban in the light of three interlocking themes: first by examining the encoding of colonial morality into law and the Hindu nationalistic social purity and reform movements. Second, I analyse this moral anxiety of the State by tracing the history of the anti-nautch movement in India and inter- linking it with the State's objection to the bar dancer's contractual gaze that defies class boundaries and gender parameters. I argue that this caste-class anxiety framed in the language of law is an offspring of the past. Third, I demonstrate how the State's rationale for the ban, while couched within the framework of transnational human rights law, has the same "reformist" and purity agenda.I conclude by illustrating how the State, the human rights organisations and the courts employ the same human rights narrative to buttress their conflicting reasoning in favour of or in resistance to the prohibition on dancing in bars.

Moral Politics, Legal Precedents

The present ban on dancing in bars is not new. The prohibition on the singing and dancing girls of India imposed by the British, as a civilising mission, was absorbed by the national leaders towards the close of the 19th century when they started viewing the reform of religion and religious laws in consonance with the British legal system as an imperative to social change (Srinivasan 1998).

The ban eventually affected the cultural identities of the devadasis and the courtesans (Hanna 1993; Vajaisri 2004). The colonisers, notes Vajaisri, essentialised the notion of devadasis and courtesans into prostitutes by using terms like "degradation" and "immoral". This moral condemnation was internalised by English-educated Indians, who in an attempt to eradicate supposed immoral practices and to modernise Hindu and Mughal practices started the "anti-nautch campaign" in the south at the end of the 19th century, which quickly gained ground in the north (Vajaisri 2004) of the country. The movement led to laws abolishing the devadasi dedication practice in 1930.

This abolition led to the revival of the devadasi dance in the form of Bharatanatyam promoted by upper caste reformers as a nationalistic attempt to save and unite Indian art and culture based on a utopian and unified view of the past (Hanna 1993). The "rescued" dance emphasised the sexual purity of the Bharatanatyam dancers (Srinivasan 1998). Similarly, the introduction of the Contagious Diseases Act 1864 and the mandatory medical inspection of the courtesans transformed the reputation of courtesans from cultural custodians and artists to that of common prostitutes (Oldenburg 1990).

The present moral politics of the State has to be placed in the context of the nation's colonial history. The differing moral order led to, what Howell (1997 as cited in Wulff 2003) suggests, a re-examining of moral values and practices. The colonial constructions of "un-holy" Hindu practices triggered nationalistic and post-colonial reinvention of traditional practices to create a culturally-coherent nation.

The invoking of moral indignation of the elite Hindu nationalists, by drawing attention to certain practices prevalent in Hinduism as immoral and savage,

was as much a manipulative act by the colonial administrators to justify their sovereignty as a civilising mission by and an influence of the Christian missionaries. The imperial narrative which presented the colonial culture in opposition to the moral savagery of the "Indian" provoked social reform movements that were initiated by the nationalist Hindu leaders to cleanse cultural practices of any impurity by referring to Sanskrit texts as evidence of the untouched, pure past (Veer 1999; Srinivasan 1998).

Nationalist and Hindu Purity

The construction of the other in opposition to oneself and the embedding of a moral tenor into the law has been reproduced by the natives – the most recent case being the prohibition on the bar dancers. The exemption afforded to the three-star and above hotels, drama theatres, cinema theatres, auditoriums, clubs and gymkhanas, in the present ban, visited by the elite is an example of the belief in the moral supremacy of the upper class. The politics of exclusion distinguishes the elite from the subjects. The objective of codifying sexual control by the British was to curb racial contamination. Likewise, the prohibition on the bar dancers is a manifestation of a similar anxiety.

The alternative lifestyles of the dancing and singing girls threatened the image of the self-sacrificing Indian woman whose sexuality was embodied in marriage and motherhood. They challenged the dominant image of Sita and Savitri used in the nationalist struggle to represent the Indian woman (Katrak 1992).

It is this colonial morality and the impulse to return to an untouched, pure past that is codified into law. The social reform movements were seen as progressive, modern, and humane. The reformation and rehabilitation of the dancing and singing girls was informed by the same narrative. Similarly, the law prohibiting dancing in bars uses the rhetoric of rescuing trafficked women and preventing their exploitation. The difference though is that unlike Gandhi's self- sacrificing Indian woman who endures suffering, the bar dancers protested the ban and joined a union.

In the years following the independence of India, the law has acquired a similar function: of inventing the past and recovering the supposed uncontaminated pure Indian tradition. The law has become a site for construction of a unified past and present. A site for questioning and reasserting what qualifies as "Indian" and what does not. In the case of the prohibition on bar dancing, the source of the law is the imperialist moral code and the Hindu- nationalist purity movements. Law derives its moral content from external sources.

The external source of the law in the case of prohibition can be attributed to the moral anxiety of the coloniser and the Hindu philosophy of purity and pollution, where an individual is polluted when he/ she steps outside the temporal and spatial parameters defined by society (Madan 1985; Marglin 1985).

Class and Anxiety in Law

The will of bar dancers to engage through "eye contact" with patrons in the act of dancing challenges the notion of the female dancer as a spectacle. It is this contractual gaze of bar dancers that the State objects to.

These girls would dance in a peculiar manner with constant eye contact with certain customers and with such body movements so as to attract the attention of customers and entice them, so that they would be showered with currency notes by the customers (Indian Hotels and Restaurants Association and Others vs the State of Maharashtra, para 37).

The contractual exchange transgresses defined caste-class and gender perfomitivity. [3] The objection of the State to women "luring" customers by constant "eye contact" bestows power not merely onto customers, but also invests the dancers with power over customers. This reversal of the gaze upsets the traditional power of the active male-gazer and the passivity of the female object. It is the indeterminacy of the exchange and the dialogue between the dancer and the customer that causes the State moral anxiety. The bar dancer with her initiating gaze and sexuality challenges and negates the traditional, passive dancer.

Nevertheless, the articulation of the female desire by the bar dancer through the gaze is consciously constructed within the male gaze itself. The bar dancer then contests the male gaze, as much as she performs it.

The bar dancer, unlike the traditional dancer (assumed by the State), exacts a response to her "initiation", challenging the notion of dance as merely a spectacle.

The purpose of the "gaze" is to convert a casual visitor into a habitual customer. On stage the gaze results in the showering of money in exchange for the attention given with the "eye contact" during the performance. The nature of contractual exchange offstage, however, is ambiguous. The exchange causes the state moral and puritanical anxiety as they are accompanied by class transgressions. The intermingling of caste/class is not the only concern of the State, it is the "male power" and the control that the female bar dancer exudes by being the proactive initiator in the sexual game. The supposed bargaining and the negotiation that takes place offstage is absent from the public eye. The currency of the transactional exchange, where for the money showered on the bar dancer there is no tangible or visible payback, makes the State suspicious. The communicative process of gazing then does not reveal what is being transacted.

The State anxiety is propelled by the transition of the bar dancer from a public to private woman, defying the notion of the "pure" private woman in opposition to the public woman articulated by law. Unlike the devadasi and courtesan whose profession either impeded their chances of marriage or restricted it, thus distinguishing the wife/ mother from the public woman, the bar dancer upsets and blurs the distinction between the private woman (chaste and controlled sexuality) and the public woman (impure, uncontrolled sexuality) by easily transforming from the public

woman (bar dancer) to the private woman (wife/mother) and vice versa.

Stratification by Exclusion

The hypocritical morality of the State is reflected by the exemption granted to dance performances in certain establishments where entry is restricted to certain members only. The exemption is not merely based on categorisation of class of establishments, but on performers and the visitors they entertain. The hegemony of the upper class is reinforced by law. The class bias is apparent in the reasoning provided by the morally-upright Hindu state functionaries for the exemption afforded to certain establishments:

The class of establishment covered by Section 33(B) are those conducted by responsible persons/ management who are conscious of their social commitments and obligations. These are the types of establishments, which have never conducted any activity of the kind that was being conducted at the dance bars (ibid para 37).

Further:

The persons visiting these hotels or establishments stand on different footing and cannot be compared with people who attend the establishments which are popularly known as dance bar (ibid para 37).

The stratification of class by law and the obscurity and impenetrability of its language to make it inaccessible to a certain class can be studied from the laws enacted in the period of the Emergency as well. The compulsory sterilisation of slum- dwellers of Delhi by the Delhi Development Authority (DDA) as a prerequisite to resettlement or allotment of land plots (Tarlo 2001) proves how the law is "the rhetoric of a particular group or class" (Goodrich 1984: 174). The sheer framing of the regulation exempts the elite of the city, reiterating the need of the State to control the "irresponsible" lower class citizens.

Similarly, the Bollywood actress that the bar dancer imitates in her performance is exempted from the ban. Unlike the Bollywood item girl who receives fame and serves the purpose of the global markets, the bar dancer who dances to the same music becomes an amasser of easy wealth by rousing "the physical lust amongst the customer" (ibid para 37).

The rhetoric of law is exclusionary. Law by exclusion and inclusion infuses meaning into individual acts and rewrites the individual (Goodrich 1984). The manner in which the personae of the bar dancer as a sexual outlaw fabricated by law is internalised and reproduced by bar dancers reveals how the living person becomes a reflex of his/her legal personae.[4]

The Human Rights Narrative

The ban on bar dancers, however, is constructed by the State as not merely being against "Indian tradition", but as exploitation of women which is in conflict with the "modern" human rights values. The State argues both modernist and traditionalist arguments in favour of the ban. The human rights organisations in their arguments against the ban have interestingly invoked "tradition" and "Indian culture" in which dance has played a significant role.

Dancing, as an act of entertainment, is deeply rooted in this Nation's history and tradition… The stone carvings and pictures in "Kailash Temple" at Ellora, Khajuraho and paintings at Ajanta, stands out as an evidence of history, traditions and cultural heritage of India.The Vedas, Upanisadas, Sruties, Smrities, Puranas and other religious teachings or moral codes, along with traditions, followed in Ancient India, bears testimony to the fact that dancing has been considered as a mode of entertainment and has had earned social sanction even in the early vedic age (ibid para 25).

The referencing to India's past by the human rights' organisations alludes that the bar girl's dance is as pristine and uncorrupted as India's pre-colonial "Hindu history". The State, on the other hand, in imposing the ban on bar dancing adopts the "modernist discourse" of exploitation of women. This modernist-emancipatory discourse endorses the relevance of the law.The State employs transnational human rights discourse to prove the legitimacy of the ban.

It transplants the global human rights discourse by reframing its argument around human rights principles of "dignity" and "exploitation of women" in its rationality for the ban.

It is submitted that the State mechanism which controls the sale of intoxicant liquor in bars cannot be misused by the licensees by exploiting women by committing acts which are derogatory to the dignity of women… the administrative policy it is also required to ensure that the dignity of women is preserved and they are not exploited. This is the value which is prescribed in several international covenants (ibid para 10).

The human rights narrative adopted by the State, on the one hand resonates with universal values of human dignity that appeal to international media and donors, and on the other hand to middle class morality. By legislating the ban within the human rights framework it creates the third world "female victim" that interests the global audience. To paraphrase Merry (2005), the State not only remakes the transnational human rights principles in local language, but also reinterprets the ban into national and transnational language of human rights. It constructs itself not as the violator of the bar dancer's right to livelihood but as an upholder of human rights principles. By subscribing to values of equality, rule of law and democracy it projects itself not merely in the modernist light but also as a law abiding nation state.

The feminist human rights' organisations also construct the bar dancers as the third world female victims who do not dance out of choice but to support their families. The court, similarly, in its judgment assigns the same "victim status" to the bar dancer when it reasons:

…the women work in the dance bars because of economic necessity. They need to support their family and most of all to feed, clothe and educate their children… many of these women are widowed, deserted or divorced (ibid para 85).

Conclusions

On 12 April 2006, the court struck down the ban on the ground that it was unconstitutional and violative of the fundamental right of the bar dancer to practise her profession and earn her livelihood under Article 19 (1) (g) of the Constitution. It held that the exemption granted to a class of establishments was arbitrary and violative of the right to equality guaranteed under Article 14 of the Constitution. It observed that there was no nexus between the amendment and the objectives propounded in favour of the ban in the Bombay Police Act.[5]

The law, as Wilson (1997) noted, functions as a medium of social control, coercion and surveillance to preserve power relations. The concealing of its (State) coercion and control by translating it into expressions of human rights is an illustration of how law is dictated by complex relations of power. A close examination of what Merry termed "vernacularisation" of international human rights law, reveals that while the interaction of the local and global introduces plurality into law, it is still caught within the web of power and class politics (Wilson 1997). However, both the State and the human rights organisation challenge the essentialist polarisation of the universalists and relativists, by subverting human rights narrative to achieve their own ends and instilling varying notions of justice and morality into law. The interpretation of human rights law is finally, as proposed by Wilson (1997), infused with local value distinctions. As illustrated by the court that concludes its judgment with a quote from Gandhi, thus marrying the global language of rights with local "values" (Gandhian nationalistic language):

> I hold that the more helpless a creature, the more entitled it is to protection of men from the cruelty of men (ibid para 95).

Law as a normative science adopts a singular narrative sans the multiplicity of voices. By defining the norm, the law invents and adopts the dominant morality. The encoding of morality into law with reference to the bar dancers and the singing and dancing girls of India demonstrates the same dominant morality of the colonisers and the elite. The legal precedents demonstrate that the prohibition on bar dancing is an incarnation of colonial law and dominant puritanical concerns of the "populace". The present law maintains hegemony of the original law and reproduces the global-local human rights discourse of the subjugator/subjugated. Thus, the regulation on bar dancers is an attempt to reproduce bar dancers in the social imagining of the past. The configuration of "moral", "traditional" and "modern" stimulated by the imperial morality and nationalist anxieties of the pure and pious is implicit in the very framework of Indian law. It not only upholds the "traditional" but remakes and recodes it with its rhetoric and imagining.

Notes

[1] It is not merely the legitimisation of dance that law concerns itself with, but also what qualifies as "classical" or "Indian Dance". The construction of Bharatanatyam into India's most renowned classical dance by erasing traces of sadir (the traditional dance of devadasis of the state of Tamil Nadu) is an example of it.

[2] The ban on bar dancing imposed by the state of Maharashtra on 15 August 2005 was challenged by petitions filed in the Bombay High Court by the Bharatiya Bargirls Union, human rights' organisations and Indian hotels/ bars association. The petitions challenged the constitutional validity of the amendment to the Bombay Police Act 1951 ("Bombay Police Act") on the ground that it was violative of the fundamental right to carry on an occupation or profession (Article 19(1)(g)), the right to freedom of speech and expression (Article 19(1)(a)) and the right to livelihood (Article 21) of the Constitution. The newly inserted provision of the Bombay Police Act prohibited dancing in bars, but exempted three star and above establishments, gymkhanas and clubs from the ban.

[3] I use the expression "performitivity" in the Butlerian understanding of the term.

[4] The research conducted on the bar dancers (by Prayas, a Field Action Project of the Tata Institute of Social Science, Mumbai) reveals that 33% of bar dancers were in favour of the ban on dancing in bars despite their livelihood being dependent on it (cited in the case law).

[5] The state has filed an appeal, challenging the decision of the High Court of Bombay striking down the ban, in the Supreme Court. In the interim period the ban, despite being overruled by the court, continues.

References

- Goodrich, P (1984): "Law and Language: An Historical and Critical Introduction", Journal of Law and Society, (Online) 11/2: pp 173-206, available at: http://www.jstor. org/stable/1410039, Blackwell Publishing, accessed 31 June 2008.
- Hanna, L J (1993): "Classical Indian Dance and Women's Status" in H Thomas (ed.), Dance, Gender, and Culture (New York, NY: St Martin's Press), pp 119-38.
- Katrak, K (1992): "Indian Nationalism, Gandhian "Satyagraha" and Representations of Female Sexuality" in A Parker et al (ed.), Nationalism and Sexualities (New York: Routledge), Ch 21.
- Madan, N T (1985): "Concerning the Categories, Subha and Suddha in Hindu Culture: An Exploratory Essay" in M A Marglin (ed.), Purity and Auspiciousness in Indian Society, Brill, International Studies in Sociology and Social Anthropology, Leiden, pp 11-29.
- Marglin, M A (1985): "Types of Opposition in Hindu Culture" in B J Carman and A F Marglin (ed.), Purity and Auspiciousness in Indian Society, Brill, International Studies in Sociology and Social Anthropology, Leiden, pp 65-83.
- Merry, Sally Engle (2005): "Transnational Human Rights and Local Activism: Mapping the Middle", Wellesley College/New York University, (Online) (accessed March 2008).
- Oldenburg, T V (1990): "Lifestyle as Resistance: The Case of the Courtesans of Lucknow, India", Feminist Studies, (Online) (accessed March 2010), 16- 2, pp 259-87.
- Srinivasan, A (1998): "Reform or Conformity? Temple 'Prostitution' and the Community in the Madras Presidency" in B Agarwal (ed.), Structures of Patriarchy: The State, the Community and the Household (London: Zed Books Ltd), pp 175-98.
- Tarlo, E (2001): "The Emergency and Slum Clearance through Forgotten Files" in Fuller and V Benei (ed.), The Everyday State and Society in Modern India (London: C Hurst), pp 68-90.
- Vajaisri, P (2004): Recasting the Devadasi: Patterns of Sacred Prostitution in Colonial South India (New Delhi: Kanishka Publishers and Distributors).
- Veer, D V P (1999): "The Moral State: Religion, Nation ed. Empire in Victorian Britain and British India" in D V P Veer and H Lehmann (ed.), Nation and Religion: Perspectives on Europe and Asia (Princeton, NJ: Princeton University Press), Ch 2.
- Wilson, R (1997): "Human Rights, Culture and Context: An Introduction" in R Wilson (ed.), Human Rights, Culture and Context, Anthropological Perspectives, Ch 1.
- Wulff, H (2003): "The Irish Body in Motion: Moral Politics, National Identity and Dance" in N Dyck and A Eduardo (ed.), Sport, Dance and Embodied Identities, (Oxford, New York: Berg Publishers), Ch 9.
- Case Law

Indian Hotels and Restaurants Association and others Vs the State of Maharashtra Citation: 2006(3), BomCR705.