

Maharashtra Prohibition of Obscene Dance In Hotels, Restaurants and Bar Rooms and Protection of Dignity of Women (Working Therein) Act, 2016

MAHARASHTRA

India

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Act 12 of 2016

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Maharashtra Prohibition of Obscene Dance In Hotels, Restaurants and Bar Rooms and Protection of Dignity of Women (Working Therein) Act, 2016(Maharashtra Act No. 12 of 2016)Last Updated 2nd March, 2020(This Act received the assent of the Governor on the 14th April 2016; assent first published in the Maharashtra Government Gazette, Part IV, on the 16th April 2016.)An Act to provide for prohibition of obscene dance in hotels, restaurants, bar rooms and other establishments and to improve the conditions of work, protect the dignity and safety of women in such places with a view to prevent their exploitation.Whereas it is expedient to provide for prohibition of obscene dance in hotels, restaurants, bar rooms and other establishments and to improve the conditions of work, and protect the dignity and safety of women in such places with a view to prevent their exploitation; it is hereby enacted in the Sixty-seventh Year of the Republic of India as follows :-

1. Short title, extent and commencement.

(1)This Act may be called the Maharashtra Prohibition of Obscene Dance in Hotels, Restaurants and Bar Rooms and Protection of Dignity of Women (working therein) Act, 2016.(2)It extends to the whole of the State of Maharashtra.(3)It shall come [into force on such date] [This Act came into force vide G.N.H.D., No. MIS. 0416/CR.65/SPL-5, dated 18th April 2016.] as the State Government may, by notification in the Official Gazette, appoint.

2. Definitions.

- In this Act, unless the context otherwise requires, -(1)"alcoholic beverage" means any potable beverage consisting of or containing liquor or an intoxicant ;(2)"Appellate Committee" means the Committee consisting of the Additional Chief Secretary/Principal Secretary/Secretary =(Appeals and Security), Home Department; Additional Chief Secretary/Principal Secretary/ Secretary of Women and Child Development Department and the Additional Director General of Police or his representative not below the rank of Inspector General of Police or concerned Commissioner of Police ;(3)"bar room" means a place, to which the owner or proprietor admits the public and where dances are staged by or at the instance of the owner or proprietor of such establishment for the entertainment of customers ;(4)"dancer" means any artist performing dance on the stage or in any part of the premises ;(5)"establishment" means a shop, commercial establishment, bar rooms, residential hotel, restaurant, eating house, theatre, or other place of public amusement or entertainment, and includes such other establishment as the State Government may, by notification in the Official Gazette, declare to be an establishment for the purposes of this Act ;(6)"hotel" or "restaurant" means any establishment where alcoholic beverages are sold for the profit or gain of the owner or proprietor for consumption by customers thereat ;(7)"licensing authority" means the authority empowered for granting of licences under section 4 ;(8)"obscene dance" means a dance that is obscene within the meaning of section 294 of the Indian Penal Code (45 of 1860). and any other law for the time being in force and shall include a dance, -(i)which is designed only to arouse the prurient interest of the audience ; and(ii)which consists of a sexual act, lascivious movements, gestures for the purpose of sexual propositioning or indicating the availability of sexual access to the dancer, or in the course of which, the dancer exposes his or her genitals or, if a female, is topless ;(9)"owner" or "proprietor" means any person who owns or has the management, control or charge of the management of an establishment and includes an employer as defined under the Maharashtra Shops and Establishments Act (LXXIX of 1948);(10)"place" includes a establishment, house, building, tent and any means of transport whether by sea, land or air ;(11)"prescribed" means prescribed by rules made under this Act.

3. Permission for hotel, restaurant and bar room.

- No person shall start hotel, restaurant, bar room or any other place where dances are staged, without obtaining a licence under this Act and without complying with the conditions and restrictions imposed by the Act and the rules.

4. Licensing Authority.

(1)The following licensing authority shall have power to grant licences under this Act, namely :-(i)in Brihan Mumbai and other areas for which a Commissioner of Police is appointed under section 7 of the Maharashtra Police Act, the Commissioner of Police; and (XXII of 1951).(ii)in other areas, the Superintendent of Police of the respective district.(2)Notwithstanding anything contained in sub-section (1), the State Government may, by notification in the Official Gazette, appoint such other authorities as it may specify in the notification, to be the licensing authorities for the purposes of this Act.

5. Conditions for grant of licence.

- The licensing authority shall not grant licence under this Act unless it is satisfied that,-(a)the conditions prescribed by this Act and the rules have been complied with by the applicant,(b)adequate conditions of work and provisions for safety in respect of women employed in the hotel, restaurant or bar room as prescribed have been provided, and(c)adequate precautions have been taken in the place, in respect of which the licence is to be given, to provide for the safety of the persons visiting such place.

6. Eligibility for licences.

(1)A person desirous to obtain the licence under this Act shall fulfil the eligibility criteria as prescribed and shall make an application complete in all respect in the format prescribed.(2)The licensing authority may, if it deems fit, grant the licence under this Act to such person, on payment of such fees and on such terms and conditions and subject to such restrictions as may be prescribed. The licensing authority may, after recording the reasons in writing, refuse to grant any such licence :Provided that, the licensing authority shall take a decision on the application within a period of one month from the date of the receipt of application complete in all respect.(3)The licence shall be issued to the eligible applicant in the format prescribed under the signature of licensing authority.(4)Notwithstanding anything contained in the Maharashtra Police Act, no licence shall be granted for Discotheque or Orchestra, in the place for which the licence under this Act is granted, nor a licence shall be granted under this Act for the place for which a licence for Discotheque or Orchestra has been granted (XXII of 1951).

7. Act in addition to other law and not in derogation.

- The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law, for the time being in force.

8. Punishment for offences.

(1)The owner or proprietor or manager or any person acting on his behalf, who uses the place in contravention of section 3 shall, on conviction, be punished with imprisonment for a term which may extend to five years or fine which may extend to rupees twenty-five lakhs, or with both; and in case of continuing offence, further fine of rupees twenty-five thousand for each day during which the offence continues.(2)The owner or proprietor or manager or any person acting on his behalf, shall not allow any obscene dance or exploit any working woman for any immoral purpose in any place and the person committing such act shall, on conviction, be punished with imprisonment for a term which may extend to three years or a fine which may extend to rupees ten lakhs, or with both; and in case of continuing offence, further fine which may extend to rupees ten thousand for each day during which the offence continues.(3)The offences under sub-sections (1) and (2) shall be cognizable and non-bailable and triable by a Judicial Magistrate of the First Class.(4)No person shall throw or shower coins, currency notes or any article or anything which can be monetized on

the stage or hand over personally or through any means coins, currency notes or any article or anything which can be monetized, to a dancer or misbehave or indecently behave with the working women or touch her person, in any place Any person who commits such act or abets the commission of such acts shall, on conviction, be punished with imprisonment for a term which may extend to six months or a fine which may extend to rupees fifty thousand, or with both.(5)The offence punishable under sub-section (4) shall be non-cognizable and bailable and triable by a Judicial Magistrate of the First Class.(6)Any person who contravenes any of the provisions of this Act for which no other punishment has been provided, shall, on conviction, be punished with imprisonment for a term which may extend to three months or fine which may extend to rupees twenty-five thousand, or with both.

9. Power to suspend, revoke or cancel licence.

(1)The licensee or any person acting on his behalf shall follow all the licence conditions prescribed throughout the licence period.(2)In the event of any contravention by the licensee, any of the provision of this Act or the rules made thereunder, or of any of the condition or restriction subject to which the licence has been granted to him under this Act, or in the event of his conviction for an offence under this Act, the licensing authority may, by order, suspend, revoke or cancel the licence for such period as it may think fit :Provided that, no such licence shall be suspended, revoked or cancelled unless, the holder thereof has been given a reasonable opportunity of being heard.(3)In case the licensee commits the offences under this Act for three times, the licence shall be liable to be cancelled permanently.

10. Appeal to Appellate Committee.

(1)Any person aggrieved by an order of the licensing authority refusing to grant a licence under section 6, or suspension, revocation or cancellation of any licence under section 9, may appeal to the Appellate Committee, within such period as may be prescribed, and the Appellate Committee shall on such appeal, make such order as it thinks just and proper, within such period as may be prescribed.(2)The order passed under sub-section (1) shall be final.

11. Revision.

- The State Government may, either on its own motion or, upon an application made by an aggrieved person within such period as may be prescribed, call for and examine the record of any order made by the licensing authority under this Act and pass order thereon as it thinks just and proper :Provided that, -(i)when the application under this section is rejected by the State Government the reasons for such rejection shall be recorded; and(ii)before any order is passed under this section, which is likely to affect any person, a reasonable opportunity of being heard shall be given to him :Provided further that, where appeal is filed under section 10, no revision shall be entertained under this section.

12. Grievance redressal mechanism.

(1)The State Government shall constitute a Grievance Redressal Committee to ensure that the conditions of service of women working in the hotel, restaurant, bar rooms and establishment to which the provisions of this Act apply are duly observed. The committee shall redress the grievances of such women in such manner as may be prescribed.(2)The committee shall consists of such officers of the Government, not below the rank of Group-A Officers as may be prescribed.(3)The manner in which such committee shall exercise its powers and discharge its functions shall be such as may be prescribed.

13. Delegation of powers.

- The State Government may, subject to such restrictions and conditions as it may impose, by notification in the Official Gazette, delegate to the Director General of Police, its powers under section 11.

14. Power to make rules.

(1)The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.(2)Every rule made under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, and notify their decision to that effect in the Official Gazette, the rule shall, from the date of publication of such notification in the Official Gazette, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

15. Power to remove difficulties.

(1)If any difficulty arises in giving effect to the provisions of this Act, the State Government may, as occasion arises, by an order published in the Official Gazette, do anything not inconsistent with the provisions of this Act, which appears to it to be necessary or expedient for the purpose of removing the difficulty :Provided that, no such order shall be made under this sub-section after the expiry of a period of two years from the date of commencement of this Act.(2)Every order made under sub-section (1) shall be laid, as soon as may be, after it is made, before each House of the State Legislature.

16. Deletion of section 33A of the Maharashtra Police Act (XXII of 1951).

- Section 33A of the Maharashtra Police Act shall be deleted.[Maharashtra Dance Bars Law: In the case of Indian Hotel and Restaurant Association v. State of Maharashtra (2019), the court Partially

upheld the validity of the Maharashtra Prohibition of Obscene Dance in Hotels, Restaurant and Bar Rooms and Protection of Dignity of Women (Working therein) Act, 2016 and the Rules made thereunder, the bench of Dr. AK Sikri and Ashok Bhushan held that the State must have an “open mind” in matters relating to staging dance performances in dance bars. The court said : “State cannot take exception to staging dance performances per se. It appears from the history of legislative amendments made from time to time that the respondents have somehow developed the notion that such performances in the dance bars do not have moralistic basis.” The court also held that Installing of CCTV Cameras in these premises is totally inappropriate and amounts to invasion of privacy and is, thus, violative of Articles 14, 19(1)(a) and 21 of the Constitution. The Court, however, upheld the following provisions: Provision disallowing throwing or showering coins and currency notes on the performers. Provision relating to employer and performer entering into a written contract as well as depositing of the remuneration in the bank accounts and Provision prescribing timing of such dance performances only between 6 pm to 11:30 pm.

(<https://indiankanoon.org/doc/113334597/>, <https://www.scconline.com/blog/post/2019/01/17/maharashtra-dance-bars-law-heres-a-list-of-whats-been-struck-down-by-supreme-court-and-why/>)]