

The *Devadasi*, Dance Community of South India: A Legal and Social Outlook

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Abstract

The *devadasi* community of south India are originators of a popular dance form called *bharatanatyam*. This paper explores several dimensions of this community including legal and social angles. A misjudged and misunderstood community, the modern-day *devadasis*'s circumstances can be described as fraught with social disabilities ranging from a lack of economic opportunities and the resultant poverty to an increased propensity for delinquency. The paper presents an unbiased view of the history of the *devadasi* system that attempts to use a varied range of sources so as to paint a clear narrative. The paper proposes a mechanism to move forward through truth commissions as a form of restorative justice that is likely to help both policymakers as well as artists.

Keywords

cultural misappropriation – restorative justice for historical injustice – obscenity laws and ethics of censorship on art – effects of colonial laws on art communities – gender inequalities

1 Introduction

When asked about the origins of the popular Indian dance form ‘*bharatanatyam*’, many who teach the dance form answered with a confident smile on their face, saying that it evolved from a dance which used to be practised by a community of women known as ‘*devadasis*’. When asked about who a *devadasi* is, the facial expressions of some altered. The smile on these respondents’ faces changed to one that was trying to cover-up a negative feeling. Almost all described them as a community of prostitutes who mainly belonged to the lower caste. Almost all of these answers were communicated with a sense of urgency, reflecting a desire to distance *bharatanatyam* from *devadasis*.

The vast majority of academic papers on the *devadasi* community in India clarify that the modern *devadasi* and the supposedly ‘traditional’ practices within the modern *devadasi* system are very different from the *devadasis* and their system during earlier times when the Indian subcontinent was untouched by Muslim rule.¹ The modern *devadasi* community is recognised not just by writers,² but also by international expert bodies³ and the judiciary in India⁴ as one that introduces (in other words ‘forces’) underage girls into prostitution and sex slavery after their dedication to a deity. The *devadasi* system is thus seen as an evil and immoral system whose existence today is shameful and tragic.⁵ The United Nations Child Rights Committee, in its Concluding Observations on India (published in 2003) notes that 50 per cent

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- 1 A. Singhal, ‘The Devadasi System: Temple Prostitution in India’, 22:1 *UCLA Women’s Law Journal* (2015) pp. 107, 112.
 - 2 H. J. Lee, ‘Temple Prostitutes: Devadasi Practice and Human Trafficking in India’, 8:1 *Regent Journal of International Law* (2011) pp. 1, 6.
 - 3 For instance, the International Labour Organization’s Committee of Experts linked the *devadasi* system to the “practice of trafficking in girls for commercial exploitation,” especially minor girls belonging to Scheduled Castes and Scheduled Tribes. (ILO Committee of Experts on the Application of Conventions and Recommendations, *Individual Direct Request concerning Forced Labour Convention* (1930 (No. 29), 2010, Geneva, doc. No. (ILOLEX) 092010IND029), para. 4). The Committee on Economic, Social and Cultural Rights also described practices of the *devadasi* system as “harmful and discriminatory to women and girls.” (Committee on Economic, Social and Cultural Rights, *Consideration of Reports submitted by States Parties under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights - India* (UN Doc. E/C.12/IND/CO/5), 8 August 2008, para 25, <<https://undocs.org/en/E/C.12/IND/CO/5>>, visited on 4 Apr 2021.
 - 4 ‘Supreme Court Asks Karnataka Chief Secretary to Take Steps to Stop “Devadasi” System’, *The Times of India*, 13 February 2014, <<http://timesofindia.indiatimes.com/india/Supreme-Court-asks-Karnataka-Chief-Secretary-to-takesteps-to-stop-devadasi-system/articleshow/30334077.cms>>, visited on 4 Apr 2021.
 - 5 *Ibid.*

of the prostitutes in the State of Maharashtra began as *devadasis*, describing it as an example of traditional forms of prostitution in India.⁶ The modern day *devadasi* carries with her the social stigma of inducting young girls into a vicious cycle of forced prostitution. It has been reported that boys belonging to some *devadasi* communities begin pimping for members of their family at the age of 15.⁷ K. C. Tarachand has documented that a significant number of commercial prostitutes in Guam city in Karnataka belong to the *devadasi* community.⁸ He writes that many engage in organised commercial prostitution and exploit their status as “religious functionaries” to enjoy impunity from law enforcement.⁹ The senior *devadasis* own and run brothels, and when in need of prostitutes, go on recruitment drives to nearby villages and induct young girls into the *devadasi* community.¹⁰ Tarachand’s description of their expensive attire, ornaments and their lavish lifestyle¹¹ indicates the profitability of their ‘business’. On the other hand, there are many *devadasis* who are unable to sustain their livelihood through prostitution and suffer miserably on account of caste-based discrimination,¹² poverty¹³ and sexually transmitted diseases such as HIV/AIDS.¹⁴ The modern *devadasi*’s infamy and stigma have marred the narrative surrounding their past and were it not for the reconstruction of their history by enlightened writers such as (but not limited to) Davesh Soneji and Amrit Srinivasan, who knows how many would have conflated the modern *devadasi* cult with the *devadasi* system of the past. From an inspection of the accounts and evidence about the lives of the *devadasi* of the past, we glean a

6 Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention* (UN Doc. CRC/C/93/Add.5) 16 July 2003, ¶236.

7 S. Sen, P.M. Nair, *A Report on Trafficking in Women and Children in India 2002–2003*, June 2004, NHRC – UNIFEM – ISS Project, vol. 1, p. 17. <<https://nhrc.nic.in/sites/default/files/ReportonTrafficking.pdf>>, visited on 4 Apr 2021.

8 K.C. Tarachand (ed.), *Devadasi Custom – Rural Social Structure and Flesh Markets* (Stosius Inc., 1991).

9 *Ibid.*, pp. 129–130.

10 *Ibid.*, pp. 117–119.

11 *Ibid.*

12 Committee on the Elimination of Discrimination against Women, Convention on the Elimination of All Forms of Discrimination against Women, *Concluding observations on the combined fourth and fifth periodic reports of India*, (CEDAW/C/IND/CO/4–5), 18 July 2014, ¶ 20.

13 H. J. Lee, ‘Temple Prostitutes: Devadasi Practice and Human Trafficking in India’, 8:1 *Regent Journal of International Law* (2011) p. 5.

14 ‘Hidden Apartheid, Caste Discrimination against India’s Untouchables’, Human Rights Watch & The Center for Human Rights and Global Justice, 12 February 2007 <<https://www.hrw.org/report/2007/02/12/hidden-apartheid/caste-discrimination-against-indias-untouchables>>, visited on 4 April 2021.

surprisingly different picture of a *devadasi* woman. She is one who, as shall be explained in the subsequent sections of this paper, was able to thrive in society with dignified liberty by dedicating herself to the practice of a traditional dance form known as *sadir*. Admittedly, it is neither abnormal nor uncommon for the same social phenomenon to be described in different ways by different individuals subscribing to varying narratives according to their understanding. Different narratives on the practices of and social role played by traditional *devadasis* exist. However, what is problematic is the overwhelming paucity of unbiased narratives, sympathetic towards the *devadasis* in comparison to ones which tend to villainise them.

The first part of this paper contains an account of the history of the traditional *devadasi* system and its evolution through the times. It elaborates on *sadir*, which was the most important aspect of the *devadasis*' identity. It also examines the available pieces of evidence to infer facts about the society surrounding the *devadasis* as well as the *devadasi*'s dance form, and her economic standing in society. It then delves into the reasons for the decline of the *devadasi* system to elaborate on the 'anti-nautch' campaign against the *devadasis*. A key aspect of this analysis is the juxtaposition with the prohibition of bar dancing in Maharashtra to glean the uncanny similarities between the two approaches, although the two prohibitions took effect in different centuries. The past treatment of *devadasis* and their art form comprises of myriad dimensions, the understanding of which is instrumental to constructing a foundation on which basis their treatment in a manner that is consistent with the existing standards of human rights can be envisaged. While the personal experiences of the *devadasis* and other stakeholders in the expression of social communications are indispensable, by looking at the *devadasi* system from a number of angles, the authors seek to provide a real understanding of the evolution and structure of the system itself.

2 History and Evolution of the Traditional *Devadasi* System

2.1 *Brief Description of the Devadasi System*

The traditional *devadasis* constituted a community of people associated with the traditional dance form of *sadir*.¹⁵ *Devadasis* acquired their status by birth,

15 M. Cohen, *Pride and prejudice: Sadir has stirred scholarly debate in India and abroad, can the dance form finally get its mojo back?*, *Firstpost*, 13 August 2018 <<https://www.firstpost.com/living/pride-and-prejudice-sadir-has-stirred-scholarly-debate-in-india-and-abroad-can-the-dance-form-finally-get-its-mojo-back-4948271.html>>, visited on 4 April 2021.

adoption or assimilation¹⁶ followed by their dedication or marriage to the deity of a Hindu temple. By virtue of their marriage to a deity, they were referred to as 'nityasumangali', or 'always auspicious', as they could never be widowed.¹⁷ Most of the women in the community were exponents of *sadir*, and men in the community were engaged as teachers and musicians accompanying the dancers. This community was organised on matriarchal lines. Most of the children who were subsequently inducted as *devadasis* were adopted girls; and it was common for male children born within the community to be adopted by other upper caste communities.¹⁸

Upon attaining *devadasi*-hood, the women were free to have sexual relationships with any individual of their choice. Notwithstanding their promiscuity, the *devadasis* in particular and their community in general were highly respected in society, and were often also the repository of wealth and land.¹⁹ *Devadasis* were also known to be better educated than women in general.²⁰ For instance, in Andhra Pradesh, *devadasis* were very much a part of the literati. They would interact and work with upper-caste poets on the interpretation of their literary works and the expression of their meaning through *abhinaya* (which means leading the audience towards the experience (*bhava*) of a sentiment (*rasa*)).²¹ Their expertise in various fields of knowledge ranging from literature to mathematics was a by-product of their practice of the *Guru-Sishya parampara*.²²

It is worth mentioning that this does not indicate that the traditional *devadasi* community escaped from being subjected to the repressive effects of a male dominated society.²³ This is on account of the fact that in written²⁴

16 S. Ganesh, 'Renaming "Sadir" as Bharatanatyam: What's in a Name?', 42:2 *India International Centre Quarterly* (2015) pp. 116–117.

17 S. C. Kersenboom, *Nityasumangali: Devadasi tradition in South India* (Motilal Banarasidas, 1987), p. 15; K.C. Tarachand, *Devadasi Custom, Rural Social Structure and Flesh Markets* (Stosius Inc., 1991), p. 94.

18 A. Srinivasan, 'Reform and Revival: The Devadasi and Her Dance', 20:44 *Economic and Political Weekly* (1985) pp. 1869–1876.

19 A. Chawla, 'Devadasis - Sinners or sinned against', *Samarth Bharat*, <<http://www.samarthbharat.com/files/devadasihistory.pdf>>, visited on 4 April 2021.

20 C. Nandagopal (ed.), *Dance and Music in the Temple Architecture* (Agam Kala Prakashan, 1990) p. 48.

21 D. Soneji, 'Living History, Performing Memory: Devadāsī Women in Telugu-Speaking South India', 36:2 *Dance Research Journal* (2004) p. 49.

22 R. Devi, 'Adyar Pamphlet – No. 208', *The International Academy of the Arts, The Theosophical Publishing House* (1936) p. 203.

23 M. Sreenivas, 'Devadasi and the Politics of Marriage in Colonial Madras Presidency', 37:1 *Feminist Studies* (2011) p. 67.

24 Vyasa, *Mahabharata, Book III: Vana Parva*, Section 43.

and oral traditional stories,²⁵ the use of ‘celestial maidens’ as pawns in a battle of power and prestige is a recurrent theme. The reason for this account in this paper is to highlight the similarity that the *devadasis* of the myths, past and present share, in that they were used and abused by the political elite. At the same time, the extent to which their liberties and privileges were suppressed by patriarchal institutions is a matter of debate.

The traditional *devadasis*’ position as respected members of society underwent a change due to certain watershed moments in history. These are explained in a later section that is preceded by a brief account of the various sources of evidence of the *devadasi* system and their dance form, and an analysis of accounts of their economic standing in society and their reliance on royal patronage.

2.2 Sources of Evidence (Primary Information)

2.2.1 Documentary References to the Art

References to the *devadasi* system have been prevalent throughout the post-Vedic period in multiple forms. Although direct explanations of the *devadasi* system largely evaded historians,²⁶ some of the intellectual traditions during the post-Vedic period do mention the art form and appear to present it as female-centric.²⁷ Among the more significant in this respect is the *Natyashastra*, a Sanskrit text written by Bharatamuni on the performing arts, as it constitutes one of the earliest references to the *devadasis*’ traditional dance form.²⁸ While this text does not directly relate to the institutional characteristics of the *devadasi* system, its description of the origin of the art form itself appears to point towards the attitudes and value system possessed by members of the system. Quintessential among these is the respect for and appreciation of erotic/sexualised art.

For instance, according to Chapter 1 of the *Natyashastra*, the principles and practice of *Lasya*, the feminine form of dance, was elucidated by Usha Devi

25 D. Pattanaik (ed.), *The Goddess in India: The Five Faces of the Eternal Feminine* (Simon & Schuster, 2000) p. 67.

26 Richard Schechner (ed.), *Between Theater and Anthropology* (University of Penn Press, 2010) pp. 65–66.

27 M. Khokar (ed.), *Traditions of Indian Classical Dance* (Clarion Books, 1984) pp. 73–76; D. Soneji, *Unfinished Gestures: Devadasis, Memory, and Modernity in South India* (University of Chicago Press, 2011) pp. 30–31.

28 M. Ghosh (translator), *Natyasastram ascribed to Bharata Muni: Treatise on ancient Indian dramaturgy and histrionics (vol. 1)* (Chaukhamba Surbharati Prakashan, 2016) pp. 40–56.

to the Gopikas of Brindavan.²⁹ Despite the existence of *Thandava*,³⁰ a more masculine version of the art form, it appears that the practice of celebrating the highly sexualised female body was integral to the *Natya*.³¹ The reasons for this type of encouragement are manifold and the descriptions of dancers range from lascivious to sacred. The stories of Indra's courtesans also place special emphasis on the sexual nature of the dance as well as the sexuality of the dancers.³²

The sexualisation of the dance form also appears to be based on other ancient texts such as Vatsyayana's *Kamasutra*³³ and Chanakya's *Arthashastra*.³⁴ While the former concerns itself with dance in the context of female sexual pleasure, the latter commits itself to the task of legitimising the source for the sexual pursuits of men in society. The diction and verbiage of these texts suggests a high threshold of tolerance towards sexuality in dance. What this means is that a large number of poetic compositions of the age constituted experiments on the expression of sexuality in various ways.

Unfortunately, these documents are unclear on the details of societal workings in general or on the *devadasis'* place in and relationship with society in particular. Also, it is sensible not to take these writings for more than what they likely are, which is that they can only be construed as ideal standards propagated by intellectuals. In itself, this can be construed as signs of encouragement for the art form.

2.2.2 Sculpture and the System

Apart from ancient texts, sculptures serve as supplementary evidence of the *devadasis'* dance form. The way in which the dance form has evolved through the ages has been captured through the relief sculptures engraved in temples across the country.³⁵

A distinct advantage of studying sculpture as opposed to documents is the element of spontaneity in sculpture that often comes from their creators, who

29 A. Dallapiccol (ed.), *Dictionary of Hindu Lore and Legend* (Thames and Hudson, 2004) pp. 50–86.

30 'Tandava', III *Quarterly Journal of the Andhra Historical Research Society* (1928) pp. 25–26.

31 R. Mitra, 'Living a Body Myth, Performing a Body Reality: Reclaiming the Corporeality and Sexuality of the Indian Female Dancer', 84 *Feminist Review* (2006) pp. 67, 83.

32 'Apsara', *Encyclopedia Britannica*, 20 October 2009 <<https://www.britannica.com/topic/apsara>> visited on 4 April 2021.

33 W.G. Archer (ed.), *The Kamasutra of Vatsyayana* (Diamond Books, 1988) verse 4, ch. 10.

34 Kaṭyāya, *The Arthashastra* (Penguin Books, 1992) pp. 63, 178.

35 M. Arole, 'The Institution of Devadāsīs in Literature and Archaeology', 50 *Bulletin of the Deccan College Post-Graduate and Research Institute* (1990) pp. 135–140.

often hail from non-elite circles.³⁶ In other words, it is highly likely that artistic expressions are not influenced by ideals held by the individuals who actually cast the idea on stone, as they are highly unlikely to have formed a part of the intellectual elite in society.³⁷ While the construction of most temples, and by extension the relief on them, was commissioned by kings or noblemen, they also reflect the thoughts on morality and propriety held by the less rich or powerful. Another pivotal aspect of sculpture as evidence for the *devadasi* system is linked to the fact that *devadasis* often if not always performed their art form in temples.³⁸ This implies that the presence of the sculpture in close proximity to the artists must have provided the need to reflect reality at least partially. Hence, sculptures prove to be indispensable sources in the study of the *devadasi* system.

Three major temples have, by virtue of their sculptural richness, contributed immensely to the study of the *devadasi* systems. These are the *Konark Sun temple*³⁹ located in the north-eastern part of the Indian subcontinent, and the *Brihadhiswarlaya*⁴⁰ and *Chidamabaram*⁴¹ temples located in the south. While the reliefs on the latter two are similar in terms of their approach and content, the former houses some of the more uncommon examples of sculptural interpretations.

2.2.2.1 *Konark Sun Temple*

The *Konark Sun temple* is well known for the use of reliefs depicting illustrations from the *Kamasutra*.⁴² These sculptures may denote one of two things:

- i. that society at that time was liberal, progressive and wholesome (in that it was open to appreciating portrayals of sexuality in an artistic light); or
- ii. that the objectification of women and their bodies was seriously prevalent at the time.

36 *An Imperial Capital Vijayanagara, Book for Class XII*, National Council of Educational Research and Training (NCERT), <<https://ncert.nic.in/textbook/pdf/lehs203.pdf>> visited on 4 April 2021.

37 D. Desai, 'Social Dimensions of Art in Early India', 18:3 *Social Scientist* (1990) pp. 3–32.

38 E. Ruspini et al. (eds.), *Women and Religion: Contemporary and Future Challenges in the Global Era* (Policy Press, 2018) pp. 59–72.

39 'Konark: India', *Encyclopedia Britannica*, 20 July 1998 <<https://www.britannica.com/place/Konark>>, visited on 4 April 2021.

40 'Thanjavur', *Encyclopedia Britannica*, 20 July 1998 <<https://www.britannica.com/place/Thanjavur-India>>, visited on 4 April 2021.

41 T.A. Gopinatha Rao and K.K. Dasgupta (eds.), *Elements of Hindu Iconography* (Indological Book House, 1971) p. 43.

42 A.K. Coomaraswamy (ed.), *History of Indian and Indonesian Art* (Literary Licensing LLC, 1985) p. 116.

From the second possibility, we may loosely infer that the commodification of women or prostitution was not out of the ordinary. It is known today that the *devadasi* system was at its pinnacle during the construction of the *Konark* temple.⁴³ Assuming interpretation (ii) to be true, does it follow that prostitution was an essential characteristic or defining feature of the *devadasi* system of the past?⁴⁴ While prostitution necessarily involves trade in flesh, there is sufficient evidence to show that the *devadasis* liberally exercised the sexual freedom that they enjoyed.⁴⁵ Whether or not this may have led the *devadasi* system to eventually morph into one based on organised prostitution is a contentious issue.

2.2.2.2 *Brihadhiswarlaya and Chidamabaram Temples*

The sculptures and reliefs on the *Brihadhiswarlaya* and *Chidamabaram* temples highlight the more technical aspects of the *Natyashastra*. Both the temples have sculptures of the 108 *karanas* outlined in the *Natyashastra* that form a part of the *Tandava* scheme of dance. They also contain sculptures of female dancers. Rather than the sculptures themselves, the location and the structure of the temple are more useful in order to glean aspects of the prevalent societal structure and the *devadasi* system at that time. Both the temples have large pillared halls that indicate a non-frontal performance structure. Such a non-frontal performance structure implies that the audience was present all around the dancer during the performance. In fact, the *Chidamabaram* temple is particularly famous for its five halls.⁴⁶ As the *devadasis* are said to have performed in the open⁴⁷ it is likely that their performances were viewed by a large and diverse audience. Therefore, the content of their dance must have been easily accessible to the population, or the audience was largely comprised of connoisseurs of the art form. In either case, the relative accessibility of the art and its portrayal in a public space strongly indicates public acceptance of the art form.

Apart from these three, numerous other examples of temples have hosted a variety of different traditions of *sadir*. The entry of the dance form into a sacred space, despite all of its unsavoury associations with sexuality, is indicative of

43 K.B. Tripathy, *Evolution of Oriya Language and Script* (Utkal University, 1964). pp. 300–301.

44 B.V. Sudhamani, 'The Institution Of Devadasis - A Study In The Princely State Of Mysore', 60 *Proceedings of the Indian History Congress* (1999) pp. 667–674.

45 B.t Zon (ed.), *Music and Orientalism in the British Empire, 1780s-1940s: Portrayal of the East* (Routledge, 2007) pp. 540–542.

46 V. Nanda and G. Michell (eds.), *Chidambaram: Home of Nataraja 15* (Marg Foundation, 2004). pp. 55–58.

47 Ghosh, *supra* note 28.

the tantric philosophy, that the profane and the divine are inextricably linked to each other.⁴⁸

2.3 *Economic Standing and Status of Devadasis*

It is reasonable to assume that a better economic position would have contributed, at least in part, to a better social standing. Though the economic standing of individual *devadasis* is unknown to us, there is evidence to show that they generally enjoyed lavish lifestyles⁴⁹ with some exceptions. The donation of land and jewels to *devadasis* is also indicated through copper plates.

Coins and copper plates are important sources of understanding the ways in which revenue was distributed.⁵⁰ These are valuable additions to understanding the economic and social position of the *devadasis* of yesteryear.

One of the primary indicators of *devadasis*' wealth is the elaborate repertoire of jewellery they wore during dance performances, a feature that also characterises *bharatanatyam* performances today.⁵¹ It is said that at a certain point more than 64 pieces of jewellery were worn by a single *devadasi* dancer. Each of these jewels was perfectly crafted by goldsmiths and studded with diamonds, rubies and emeralds.⁵² It is estimated that the total weight of these jewels was more than 1 kilogram when worn together.⁵³

The flow of wealth was not a one-way stream benefitting the *devadasis*. In fact, the system of patronage⁵⁴ which contributed towards the *devadasis*' wealth resulted in a substantial increase in the production of gold and silverware in the Thanjavur region of Tamil Nadu.⁵⁵ This in turn led to the eventual emergence of a different style of jewellery making altogether.⁵⁶

48 N. Kumar, *Tantra: The Art of Philosophy, Exotic India*, Newsletter Archives, September 2001, pp. 1–20, <<https://web.stanford.edu/class/historyusc/pdfs/yantra.pdf>>, visited on 4 April 2021.

49 A.K. Prasad, 'Devadasis In Karnataka', 44 *Proceedings of the Indian History Congress* (1983) pp. 149–154.

50 Archaeological Survey of India, *Annual Report of the Mysore Archaeological department for the year 1929, No. 63* (Government Press, 1930) p. 130.

51 R. Critcher Lyons (ed.), *The Revival of Banned Dances* (McFarland & Company, 2012) p. 13.

52 A. Grau, *Dance: Discover the World of Dance from the Magic of Ballet to the Drama of Flamenco* (DK Children, 2005) p. 49.

53 *Ibid.*

54 T.A. Gopinatha Rao (ed.), *Travancore Archaeological Series*, vol. 1, no. 2 (Methodist Publishing House, 1912) pp. 43–44.

55 Kausalya Santhanam, *A dazzle in the dark*, 7 April 2012, *The Hindu*, <<https://www.thehindu.com/features/magazine/a-dazzle-in-the-dark/article3290876.ece>>, visited on 4 April 2021.

56 *Ibid.*

There are a few literary examples of *devadasis* being paid seemingly exorbitant amounts for their 'services'.⁵⁷ However, there are two issues with these accounts. First, it is impossible to rule out the possibility that the examples in these accounts were exaggerated. Secondly, the accounts do not clarify what they meant by 'services' performed by the *devadasis*. The fundamental question of what role the *devadasis* really played in society at that time remains unanswered by these pieces of evidence.

2.4 *Reliance on Patronage*

Royal patronage⁵⁸ was one of the most important reasons why the *devadasi* system continued to flourish until it was uprooted by another power structure. The Chola,⁵⁹ Pandya⁶⁰ and Pallava⁶¹ dynasties successively contributed to the development of the system in the south of India. It is said that at a certain point, the Chola empire had more than 400 *devadasis* performing within its economic system.⁶²

However, as opposed to an approach based strictly on numbers, a qualitative analysis of royal and noble influences on the *devadasi* system is germane. Through this analysis, we seek to answer three questions: first, whether the art form would have survived at all in the absence of royal patronage; secondly, whether there was a direct or substantial change in the way the art form developed due to royal interference, and thirdly, whether the *devadasi* system was a state-run prostitution ring.

In order to answer the first question, it is pertinent to look at the art forms that have developed without royal or political support. It is relatively easy to find examples of art forms which have either disappeared or on the verge of extinction because of a lack of state support or interest in the art form. Modern discussions on indigenous art forms of native Americans⁶³ or Maori tribes of

57 Gopinatha Rao, *supra* note 54, pp. 43–44.

58 M. Rosenthal (ed.), *Constable* (Thames and Hudson, 1987) p.203.

59 D. Desai (ed.), *Erotic Sculpture of India: A Socio-cultural Study* (Munshiram Manoharlal Publishers, 1975) p. 154.

60 R.N. Nandi (ed.), *Religious Institutions and Cults in the Deccan* (Motilal Banarasidas Publishers, 1973) pp. 168–169.

61 Desai, *supra* note 59.

62 Dr. M. Velmurugan, 'Socio-Economic Status of Devadasis under the Cholas', 2:2 *International Journal of Applied & Advanced Scientific Research* (2017) pp. 343–349.

63 M. Wood, 'Cultural Appropriation and the Plains' Indian Headdress', *Journal of Undergraduate Research and Creative Scholarship, Virginia Commonwealth University* (2017) pp. 2–3 <<https://scholarscompass.vcu.edu/cgi/viewcontent.cgi?article=1042&context=auctus>>, visited on 4 April 2021.

New Zealand⁶⁴ revolve around similar arguments. For an art form to survive close to 2,000 years without some form of support or endorsement from the state (in other words ‘royal patronage’) is difficult if not impossible. That an art form cannot survive over such a long period if it is discouraged by the state and subjected to legal sanctions such as censorship is an even more evident. At the very minimum, the survival of the *devadasi* system and by extension its art form is heavily dependent on the legal permission for its continuation.

However, this does not guarantee that the development of the art form was not influenced by royal requirements. After all, the *devadasi* system can be seen as one constituted by professionals. This profession had a clientele who paid for its existence and survival.

Patronage, if seen as an economic incentivisation scheme, has obvious impact on the art. This becomes more visible if seen through the portrayal of Bhakti traditions through dance. It has generally been observed that dance performances are often arranged in temples and these temples were constructed by kings who had a certain ideological inclination. If performances are attuned to these temples, then it is natural that their content changes with the temple and the ruler. However, the erotic nature of even Bhakti poetry indicates that, although the ends might have differed, the means remained fairly similar.

To answer the third question, regarding whether the *devadasi* system was essentially a prostitution ring protected by the state, we must understand the power dynamics between different players of the system. The first characteristic that is used to describe the system in ancient texts, is the autonomy of the *devadasi*.⁶⁵ While the texts do not describe this autonomy as one that is qualified or conditional, it is unlikely that a high level of autonomy was given to these women, especially after the later vedic age.⁶⁶ This is because of the actual or, as some would argue, supposed rise of patriarchy and the related institutions.⁶⁷ Despite this, women of this social category probably had more sexual, financial and social autonomy than their peers.⁶⁸ It is theorised that their subsequent decline in social status resulted, at least in part, because of the degree of freedom and autonomy they enjoyed. While the rich were

64 D. Wood, ‘Interweaving in New Zealand Culture: a Design Case Study’, 17 *Journal of New Zealand Studies* (2014) pp. 58–72.

65 R.N. Nandi (ed.), *Religious Institutions and Cults in the Deccan* (Motilal Banarasidas Publishers, 1973) pp. 168–169.

66 U. Singh (ed.), *A History of Ancient and Early Mediaeval India: From the Stone Age to the 12th Century* (Pearson Education India, 2008) pp. 58–72.

67 *Ibid.*

68 S. Kumar (ed.), *The Emergence of the Delhi Sultanate* (Permanent Black, 2007) pp. 1192–1286.

locking their women up in sheaths of cloth, these women enjoyed a great deal of freedom.

2.5 *Decline of the Devadasi System and Dance Form*

Two watershed moments in history can be identified as the cause for the decline of the *devadasi* system and its dance form. First, when the Islamic invaders from Persia and Afghanistan arrived (2.5.1) and secondly, with the advent of colonialism that followed (2.5.2).

2.5.1 Islamic Rule in India

At the first of the aforementioned moments, various communities of dancers across India faced significant issues due to the adoption of the Shariat as the state law,⁶⁹ which prohibited certain forms of music and dance as haram. Technically there ought to have been a ban on music and dance meant entirely for entertainment. However, the Sultans and Mughals made substantial changes to the (Hanafi)⁷⁰ school of interpretation in order to cater for the interests of a more diverse subcontinent than their homeland, one that revered culture surrounding the arts. Curiously, dance was viewed as an important cultural aspect during the times of a few Muslim rulers, and therefore a new community of secular courtesan dancers called *tawaifs* emerged and thrived on royal patronage.⁷¹ The *tawaifs* who were not attached to royal courts and thereby did not receive royal patronage worked in salons which catered to the nobility.⁷² Notwithstanding that, they performed similar cultural functions, the *tawaifs'* performances possessed no religious elements unlike those of the *devadasis*.⁷³

This reinterpretation of traditional Shariat gave rise to different trends in *sadir* and the *devadasi* system. In the north, the *devadasi* dancers' attires became more conservative⁷⁴ and the style of dance as well as the themes represented acquired a more monotheist character.⁷⁵ In due course, the freedoms

69 R.A. Khan, 'Jahangir and Muslim Theology Discussions Reported in the "Majalis-I-Jahangiri"', *71 Proceedings of the Indian History Congress* (2010) pp. 236–242.

70 *Ibid.*

71 P. Nevile (ed.), *Nautch Girls of India: Dancers, Singers, Playmates* (Variety Book Depot, 1996) p. 3.

72 *Ibid.*

73 G.E.S. Howard, *Courtesans in Colonial India: Representations of British Power through Understandings of Nautch-Girls, Devadasis, Tawa'ifs, and Sex-Work c.1750–1883* (University of Guelph, May 2019) p. 20, <https://atrium.lib.uoguelph.ca/xmlui/bitstream/handle/10214/16082/Howard_Grace_201905_Ma.pdf?sequence=1&isAllowed=y>, visited on 4 April 2021.

74 D. Akombo (ed.), *The Unity of Music and Dance in World Cultures* (McFarland, 2016) p. 276.

75 M.E. Walker (ed.), *India's Kathak Dance in Historical Perspective* (Routledge, 2016) p.2.

that these women had originally enjoyed was severely restricted by the state and by society in general.⁷⁶ The more negatively their profession was viewed, the worse the actual conditions for the people engaged in the profession became. In other words, the opinions of society about the *devadasis* resulted in the formation of a cyclical link, resembling a self-fulfilling prophecy. There were also short periods of tyrannical reign where being a dancer invited severe punishment.⁷⁷ Although these types of regimes were few and far between, they did create a repressive environment for the dance community.

The south and east of the subcontinent experienced more multidirectional changes in their repertoire during this period. The legal environment in these regions was arguably more progressive and more enlightened than in the northern parts of the country. This, combined with the new ideas of monotheism, led to unprecedented cultural effervescence in the form of the Bhakti movement.⁷⁸ Since the *devadasis* generally relied on existing literature for performances, this content shaped the dance form (the system) as well.

2.5.2 British Era

In stark contrast to earlier times, when *devadasis* were considered to belong to a class of persons protected by the wealth of kings and temples, their standing in the colonial period in India was marked by shame and unscrupulousness.⁷⁹ The British condemned traditional Indian dance forms as 'immoral and repulsive' as they were thought of as representations of erotic temple sculptures.⁸⁰ It seems, however, that they did not form this perception of dancers independently, or immediately upon their colonisation of India. Rather, their views were based on the narratives presented to them by Christian missionaries as well as organisations that advocated for social reform.⁸¹ The latter group (who shall be referred to as 'reformists' for convenience) were constituted by Western educated Indians as well as British writers. Having had their notions on the *devadasi* system solely formed and reshaped by Victorian education, they argued in favour of moral regulation.⁸²

76 B.S. Chandrababu and L. Thilagavathi (eds.), *Woman, Her History and Her Struggle for Emancipation* (Bharati Pusthakalayam, 2009) p. 264.

77 For instance, Aurangzeb had proclaimed an ordinance that dancing girls should either marry or leave the kingdom. See N. Hanif (ed.), *Islamic Concept of Crime and Justice: Political justice and crime* (Sarup & Sons, 1999) p. 158.

78 K.P. Prentiss, *The Embodiment of Bhakti* (Oxford University Press, 2014) pp. 17–49.

79 K. Evans, 'Contemporary Devadasis: Empowered Auspicious Women or Exploited Prostitutes?', 80:3 *Bulletin of the John Rylands Library* (1998) pp. 23–38.

80 Nevile, *supra* note 71.

81 Srinivasan, *supra* note 18.

82 J. Whitehead, 'Measuring Women's Value: Continuity and Change in the Regulation of Prostitution in Madras Presidency, 1860–1994', in H. Bannerji, S. Mojab and

They are said to have begun their attack on the *devadasi* system and *sadir* in 1882.⁸³ Not only did they generate awareness about their views on the *devadasi* system- as a social evil through seminars and journalism,⁸⁴ they also filed a formal memorandum before the Viceroy to appeal to the Queen against the performance of such dance forms. Their Memorandum reads as follows:

“MOST RESPECTFULLY SHEWETH

1. That there exists in the Indian community a class of women commonly known as nautch-girls.
2. That these women are invariably prostitutes.
3. That countenance and encouragement are given to them, and even a recognised status in society secured to them, by the practice which prevails among Hindus, to a very undesirable extent of inviting them to take part in marriage and other festivities and even to entertainments given in honour of guests who are not Hindus.
4. That this practice not only necessarily lowers the moral tone of society, but also tends to destroy the family life on which national soundness depends, and to bring upon individuals ruin in property and character alike.
5. That this practice rests only upon fashion, and receives no authority from antiquity or religion, and accordingly has no claim to be considered as a National Institution and is entitled to no respect as such.
6. That a strong feeling is springing up among the educated classes of this country against the prevalence of this practice, as evidenced, among other things, by the proceedings at a public meeting in Madras, on the 5th May 1893.
7. That so keenly do your Memorialists realise the harmful and degrading character of this practice, that they have resolved neither to invite nautch-girls to any entertainments given themselves, not to accept any invitation to an entertainment at which it is known that nautch girls are to be present.
8. That your Memorialists accordingly appeal to your Excellency, as the official and recognised head of society in the Presidency of Madras, and as the representatives of Her Most Gracious Majesty, the Queen-Empress, in whose influence and example the cause of purity has ever found

J. Whitehead (eds.), *Of Property and Propriety: The Role of Gender and Class in Imperialism and Nationalism* (University of Toronto Press, 2001) pp. 153–154.

83 N.K. Singh (ed.), *Divine Prostitution* (Ashish Publishing House, 1997) p. 164. [hereinafter *Nagendra Kr Singh*].

84 *Ibid.*; Srinivasan, *supra* note 18.

support, to discourage this pernicious practice by declining to attend any entertainment at which nautch-girls are invited to perform and thus strengthen the hands of those who are trying to purify the social life of their community.”⁸⁵

The ‘Hindu Social Reforms Associations’ were motivated to file this memorandum due to their discontentment caused by the Viceroy having been entertained by *nautches* during his visit to India. Interestingly, the Viceroy responded by acknowledging the excellence of the objects upon which the memorandum was addressed to him but refusing to take the measures suggested by the Memorialists.⁸⁶ The reason for this was that he thought that the dance performances did not reflect any impropriety and his interaction with the performers was as a spectator and in their capacity as professional dancers. The Governor of Madras doubled-down on this view, noting that it had never occurred to the Viceroy “to take into consideration the moral character of the performers at these performances which have been carried out by professional dancers.”⁸⁷ The British response to the memorandum indicates the idea of separating the art from the artist, while appreciating the art. The stance taken by the British came under vehement criticism from various newspapers such as the *Indian Social Reformer* and *Lahore Purity Servant*, which endorsed the anti-*nautch*/purity campaign.⁸⁸

The anti-*nautch* movement sought to erase the *devadasis*’ dance along with the *devadasi* system as a whole, as its proponents believed that prostitution pervaded all aspects of the *devadasis*’ life. It is likely the case that the portrayal of *devadasis* by the reformists as prostitutes was a result of a misunderstanding of the practice amongst *devadasis* of being a concubine and freely engaging in coitus with patrons. It is also likely that the ‘denigration’ of *devadasis* to the status of prostitutes was meant to further nationalistic ideas of India as a country where the institution of family and marriage was to be protected. To achieve this it was required to shape the conscience of society to only accept monogamous life-long relationships between a man and a woman.⁸⁹ The pressure on the British Government by this social reform movement was compounded by that of Christian missionaries who believed in the eradication of the *devadasi* system as a logical measure in pursuance of their aim to ‘civilise’ the Indian population.⁹⁰ As a result, the narrative and notion that all *devadasis*

85 Singh, *supra* note 83, pp. 164–166.

86 *Ibid.*, p. 167.

87 *Ibid.*, p. 167.

88 *Ibid.*

89 Sreenivas, *supra* note 23, p. 65.

90 Srinivasan, *supra* note 18.

were fundamentally believers in the occult practice of dedicating minor girls to Hindu shrines as divine prostitutes became crystallised, notwithstanding the fact that prostitution (in the conventional sense of the word) was not an essential feature of the *devadasi* system.

The first success of the anti-*nautch* campaign was seen in the form of a despatch issued by the Government in 1911 calling for nationwide action against *sadir* performances.⁹¹ This was followed by targeted legislative steps such as the enactment of the Bombay Devadasi Protection Act in 1934 by the British Government which criminalised the dedication of women to the temple, irrespective of whether or not she consented to such dedication. The preamble of this Act noted that the practice of dedication, “however ancient and pure in its origin, now leads such women to a life of prostitution”.⁹² The Madras (Devadasis Prevention of Dedication) Act of 1947 came next in the line of targeted legislative action against the *devadasi* system. Just like the 1934 Act, this Act prohibited the dedication of women as *devadasis* in the Presidency of Madras and its preamble noted that the practice led “many of the women so dedicated to a life of prostitution”.⁹³ Apart from this difference in the wording of the preambulatory clause, this law also declared as unlawful the “dancing by a woman ... in the precincts of any temple or other religious institution, or in any procession of a Hindu deity, idol or object of worship installed in any such temple or at any festival or ceremony held in respect of such a deity, idol or object of worship”.⁹⁴ Taken literally, this provision prohibits any kind of dance performed by any woman in any temple or for any ceremony that involves a Hindu deity. However, the preamble of the Act and the context in which it was enacted⁹⁵ reveal that it was intended to target the *devadasi* who wished to practise the art form that she held close to her identity. The question that arises here is, what was nexus between the prohibition on dancing in temples or at religious ceremonies and eradicating prostitution? There is little evidence to suggest such a nexus.

91 S. Tharu and K. Lalitha, ‘Empire, Nation and the Literary Text’, in T. Niranjana, R. Sudhir and V. Dhareshwar (eds.) *Interrogating Modernity: Culture and Colonialism in India* (Seagull Books, 1993) p. 212.

92 Bombay Devadasi Protection Act of 1934 (Act No. 10 of 1934), pmb. ¶2.

93 Madras (Devadasis Prevention of Dedication) Act of 1947 (Act No. 31 of 1947) § 3 (2).

94 *Ibid.*, § 3 (3).

95 It has been indicated by Amrit Srinivasan that the self-respect movement started by E.V. Ramaswami Naicker in 1925 was one amongst the factors that led to the Act coming to fruition. The idea of eradicating the practice of dedication of women as devadasis was one amongst the many social goals of this Movement. See Srinivasan, *supra* note 18, p. 1873.

The criminalisation of *devadasis* reinforced the distinction between respectable and non-respectable female sexuality found in both the British and Brahmanical moral and legal discourses.⁹⁶ Since ‘respectable sexuality’ was that which was contained within a conjugal family unit,⁹⁷ *devadasis* were viewed, at least by most of the middle-class urban society if not society in general, as a morally perverse class of people. The rule on succession of property on matrilineal lines followed within the *devadasi* system was seen as an anomaly when contrasted against the Victorian rule of succession along patrilineal lines, which was also followed by the middle-class in Tamil Nadu owing to their idealisation of monogamous unions.⁹⁸ The Indian independence movement was symbolised by the (monogamous) ‘mother figure’, and the ‘*devadasi* figure’, whose moral worldview did not consider promiscuity to be revulsive, was sought to be expunged from the idealised family of nationhood.⁹⁹

Consequently, the *devadasis* were pushed into prostitution due to poverty and a lack of other economic opportunities. This increased the extent of stigmatisation against the *devadasi* community in the eyes of ‘mainstream’ society. The last blow to the system was the appropriation of *sadir* by the more economically and socially privileged sections and its transformation into the national dance form of India, *bharatanatyam*. The *devadasis* continue to form a part of the population to this day, but devoid of their traditional dance or respect, and just survive in the fringes of society. This leads to innumerable problems in the *devadasi* society such as the high incidence of sexually transmitted disease,¹⁰⁰ poverty, illiteracy, psychological disorders and increased chance of criminality.¹⁰¹

3 Revival and Rebranding of the Declining Dance Form

On account of the constant repression, the *devadasi* system and by extension *sadir* as an art form, were on the verge of fading away. By the early 1900s, the view that dance formed a part of the subcontinent’s cultural heritage became

96 Whitehead, *supra* note 82, p. 154.

97 *Ibid.*

98 *Ibid.*

99 *Ibid.*, p. 155.

100 Srinivasan, *supra* note 18.

101 B. Kidron, ‘Devadasis Are A Cursed Community’, *The Guardian*, 20 January 2011 <<http://www.theguardian.com/lifeandstyle/2011/jan/21/devadasi-india-sex-work-religion>>, visited on 4 April 2021.

an important philosophical trend expressed by numerous nationalists.¹⁰² Generally, when art is viewed as a cultural heritage, people attached to it tend to develop institutions to ‘market’ and ‘preserve’ this heritage. The issue with this notion is that the heritage thus preserved becomes amenable as an instrument of social engineering to those in control of these institutions. As a shared heritage becomes symbolic of the cultural exchanges of the past and the present,¹⁰³ it becomes increasingly important to control the narrative surrounding it in order to shape society.

This type of attitude led to a measure of nostalgia in the diaspora of the Indian classical dance forms.¹⁰⁴ It painted memories of a better past and a golden future. This eventually led to the purification, “sanitization” and “idealization” of the art form.¹⁰⁵ To effect this change, the only viable method open to the cultural elite at that time was to rid this dance form of the dancers. In other words, if the issue that arose had to do with the morality of the dancers, then the best recourse is to bestow this form of dance on those who were considered ‘respectable’ by the standards of the ruling elite. However, this in itself was only the first step because they also found issues with erotic content of the dance form, which was now viewed as inappropriate or even “obscene”.¹⁰⁶

Given this premise, there were two aspects of the revival of *sadir* in the form of *bharatanatyam*. First, the dance needed to be taken away from the people who practised it, to cleanse it of moral impurities. Secondly, it needed to be reconfigured and reimagined in light of a chaste and ‘proper’ audience. Interestingly, in a reply to a petition, the Governor of Madras at that time stated that the dance per se was separate from the subjective and individual morality of the dancer. That is, the *devadasis’* practices outside the scope of their performances were held to be irrelevant in the classification, appreciation and censorship of the art.¹⁰⁷ This good logic was subsequently lost.

The process of modernisation and rebranding of *sadir* as *bharatanatyam* was fraught with many social issues. For example, Rukmini Devi Arundale, one

102 P. Sohoni, ‘Historiography of architectural history in South Asia’, 16:6 *History Compass* (2018) pp. 6–9.

103 M. Shanks, *Classical Archaeology of Greece. Experience of the Discipline* (Psychology Press, 1999) p. 106.

104 M.H. Allen, ‘Rewriting the Script for South Indian Dance’, 41:3 *The Drama Review* (1988) pp. 63–100.

105 *Ibid.*

106 S. Ganesh, ‘How the art of Devadasis was appropriated to create the world of Bharatanatyam’, *The News Minute*, 10 February 2016 <<https://www.thenewsminute.com/article/how-art-devadasis-was-appropriated-create-world-bharatanatyam-38808>>, visited on 4 April 2021.

107 Allen, *supra* note 104.

of the foremost proponents of *bharatanatyam*, is credited with the distancing of *Tala* (the rhythmic aspects of dance) from the *Bhava* (lyrical aspect).¹⁰⁸ Another social issue was that male percussion artists were reluctant to share their knowledge with female dancers from rural areas or lower classes.¹⁰⁹ This necessarily implies that a significant number of women from the *devadasi* background were not able to acquire or amend their skills required to practise dance. This issue coupled with the insistence of such male gurus that the dancer relearn all rhythmic portions of the dance approached by a new artist, made the profession very difficult for the *devadasis*, who were fundamentally accustomed to a flexible and expressive performance style. However, to her credit, Rukmini Devi Arundale did help mitigate the problem by encouraging female teachers to teach dance at Kalakshetra.

Kalakshetra and the Madras Music Academy brought about a performance-oriented and a pedagogical shift in the practice of the dance form around the 1930s.¹¹⁰ With reference to the *devadasis*, Rukmini Devi Arundale commented on her pride on being able to do without them.¹¹¹ Scholars posit that Rukmini Devi Arundale's cultural appropriation took place in three stages.¹¹² First, she introduced a system where the guru-shishya *parampara* no longer existed.¹¹³ This led to the dancer herself dictating the terms of the performance as opposed to the *nattuvanars* (teachers). Then, in *padams*, *javalis* and *ashtapadis* she shifted the focus from Murugan and Krishna, both of whom represented as lovelorn heroes to Nataraja, as a metaphor for the more masculine, emotionally terse dance form that was emerging.¹¹⁴ Generally poems referring

108 Devi, *supra* note 22, p. 203.

109 *Ibid.*

110 *Ibid.*

111 *Ibid.*

112 Allen, *supra* note 104, p. 100.

113 A. Meduri (ed.), *Nation, Woman, Representation: The Sutured History of the Devadasi and Her Dance* (New York University, 1996) p. 299.

114 Kalanidhi Narayan writes that "Murugan and Krishna are the Love Rajas", "Nataraja on the other hand is a deity with a quite different set of resonances. As the respected senior exponent of abhinaya, Kalanidhi Narayanan, quoted above, told me, Nataraja's (and Rama's) resonances are generally more severe than those of Murugan and Krishna - whom she dubbed 'Love Rajas', not having what Indian performers like to call 'scope' for development in the sringara erotic-devotional mode so central to the *devadasi* tradition of dance. Saskia Kersenboom writes of Nataraja, "This form of Siva indicates his Rudra aspect of the cosmic destruction of all impure, gross forces by means of his cosmic dance that burns all impurities to retain only the purest substance, namely gold". A dance that incinerates impurity is quite outside the modality of the *devadasi* dance, a dance preoccupied with cataloguing the infinite shadings of feeling in love." See Allen, *supra* note 104.

to Nataraja were either in the form of *ninda stutis* (hymns in which the deity is teased)¹¹⁵ or were written as love poetry in Chaidambaram.¹¹⁶ Kalakshetra continues to hold the view that love and eroticism needed to be purged from the art form and replaced by Bhakti in order for the art form to be considered respectable.¹¹⁷ This was vehemently opposed by artists such as Balasarswati amma, who famously commented that Bhakti is equivalent to *shringaram*.¹¹⁸

This movement almost completely changed the contents of *sadir*. Given that performances had moved out of temples to secular spaces to increase a sense of respectability,¹¹⁹ *bharatanatyam* began to move away from *sadir* in both form and content and began to resemble a distant cousin of *sadir*. Concomitantly, a slew of questions started being raised about the identity of the art form and who exactly owned¹²⁰ this identity.

A question that Tamil scholar M Vardarajan raised then was whether foreigners were entitled to learn and adopt/adapt the art form at all. A more pertinent question is probably whether the upper-class women who began patronising the art form in the 1930s fall within the category of 'foreigners'. Alternatively, we may ask whether the dance that was being learnt and practised could be associated with the cultural notions surrounding its predecessor at all. These questions were common to most colonial and post-colonial discourses about Asia at that point.¹²¹ At this juncture it is worth noting that the new 'patrons' of the art form, the *sabhas*, were generally organised from London. This gave rise to the need to conform to the Western ideals of propriety.

The art in its present form has lost a lot of fluidity that was originally a part of the repertoire. Strict geometric patterns have become a mainstay in *bharatanatyam*. Some scholars have suggested in respect of artistic expression that, when compliance with a set and rigid form of expression is over-emphasised, the art form begins to tend towards degeneration. While we do not wish to dwell on the correctness of such an argument, we hope for the reader to ask themselves whether the art form has been subject to revival and regeneration, or degeneration and depravity.

115 Ghanam Krishna Iyer (composer), *Ethai kandu nee icchai kondar' (padam)*; Marimuthu Pillai (composer), *Eduku ithanai Modi (padam)*.

116 Muttutt Andavar (composer), *Theruvil varano (padam)*.

117 J. O'Shea, 'Traditional Indian Dance and the Making of Interpretive Communities', 151 *Asian Theatre Journal* (1998) pp. 45–63.

118 D.M. Knight, *Balasaraswati: Her Art and Life* (Tranquebar, 2010) pp. 101–102.

119 Allen, *supra* note 104.

120 A. Iyer, *South Asian Dance: The British Experience*. London (Routledge, 1997).

121 A. Grau, *Report on South Asian Dance in Britain (SADIB)* (Leverhulme Research, 2011).

4 Notions of 'Obscenity' Surrounding the Dance Community in India

The campaign against the *nautch* by the British as well as certain Indians, coupled with activism by institutions such as the Madras Music Academy which passed a resolution which stated "in order to make dancing respectable, it is necessary to encourage public performances thereof before respectable people",¹²² indicates the paradigm shift in the notions of obscenity held by Indians. Considering the analysis in the previous sections, it seems that the British idea of prohibiting that which is 'obscene',¹²³ especially in the context of censorship of art, had gradually occupied the minds of Indians, who once perceived erotic art as beautiful and whose ideas around sex were not parochial.¹²⁴ The discussion surrounding what it actually means for something to be 'obscene' is difficult as it essentially changes with the subjective tastes of the respondent.

In light of this, considering the popular Buddhist parable 'the tale of two monks and a woman' is illustrative. In this story, a senior monk and a junior monk who were travelling together came to a river which they wanted to cross. They noticed a young lady who also wished to cross the river but was unable to do so owing to the strong current. Upon being asked for help the senior monk, without hesitation, assisted the woman in crossing the river by carrying her on his back. The junior monk, who crossed the river after them, was perturbed by the senior monk's actions because they had, as monks, vowed not to touch women. He kept this thought to himself for a while as he continued to travel alongside the older monk. After a while, he could not resist himself from asking the older monk why he touched a woman. "Which woman?" the senior monk asked in response. "The woman you carried on your back across the river," the junior monk responded. To this, the senior monk said "I left her by the side of

122 Arudra, *The Transfiguration of a Traditional Dance: The Academy and the Dance, Events of the First Decade* (1986) p. 20.

123 The Oxford Learners' Dictionary defines 'obscene' as "connected with sex in a way that most people find offensive"; the Cambridge Dictionary defines 'obscene' as "offensive, rude, or shocking, usually because of being too obviously related to sex or showing sex." The word 'obscene' also has another meaning - extremely large in size or amount in a way that most people find unacceptable or offensive. In this paper, the word has not been used in the latter sense. The British notion of 'obscene' has been embodied in Section 292 of the Indian Penal Code, 1860 (which meaning was acceded by the post-independence Indian Government). According to sub-section (1) of Section 292, a thing "shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt person, who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it."

124 Nevile, *supra* note 71, pp. 101–102.

the river. But it seems that you are still carrying her in your mind.” The story reminds us to live in the present and not carry around with us the baggage of our past. However, we may glean something else of value out of this story. It is that ethics of what is right and what is wrong has to do with the conscience of the actor, not on self-imposed limitations and fixed ideas. Upon reading the story, we come to the conclusion that the senior monk was the one who was ‘innocent’ (in the broad sense of the term) of the two. Simply put, as evinced from the general content of fine arts, as well as the reliefs and sculptures in temples at that time,¹²⁵ early Indian society (generally) did not consider erotic content in art as taboo or something that leads to a fall in moral standards.

On the other hand, the Britishers’ portrayed women from diverse dancing communities as immoral entertainers, and spurned *nautch* as a form of entertainment on supposedly moral grounds.¹²⁶ In the perceptions and thoughts of the British, the dancer’s image as a cultural artist were replaced by her representation as a ‘prostitute’,¹²⁷ and the Western educated nationalists as well as the ‘revivalists’ of *bharatanatyam* who constituted the cultural elite of society fell in line with this view.

The purpose of the following section is to demonstrate that the prevalence of this attitude did not result in the victory of the anti-*nautch* campaign. Rather, it has lingered on even into the twenty-first century in the form of a colonial hangover in the mind of the Government of independent India.

4.1 *The Fateful Day: a Landmark Judgment Pronounced by the Supreme Court of India*

Just two weeks into the beginning of 2019 came a moment that many stakeholders had anxiously waited for since 2005. On this fateful day, the Supreme Court of India categorically declared that the legislation enacted by Maharashtra State Legislature entitled Maharashtra Prohibition of Obscene Dance in Hotels, Restaurants and Bar Rooms and Protection of Dignity of Women (Working therein) Act of 2016 was in violation of the Constitution of India. There had been many such instances of the Government attempting to decry public bars and restaurants that engage female dancers, on the score that such practices/performances cause immense negative social consequences. But none of the earlier attempts faced the music from the Supreme Court like the attempts by the Government of the State of Maharashtra cited above.

125 Coomaraswamy, *supra* note 42.

126 Howard, *supra* note 73, pp. 125–127.

127 *Ibid.*, p. 127.

The judgment in question handed down by a Division bench has as part of its context past judgments by the High Court of Bombay and a judgment of the Supreme Court which struck down as unconstitutional similar laws in Maharashtra. The following section will contain a brief history of the tussle, which began in the year 2005, between the Government of Maharashtra and Dance Bars. Then, the 2013¹²⁸ and 2019¹²⁹ judgments of the Supreme Court of India on the dance bar prohibition/regulations shall be analysed in re 'freedom of expression' and 'obscenity'. Lastly, there shall be a comparison will be between the treatment of bar dancing in the 21st century and that of the *sadir* dance during the peak of the anti-*nautch* campaign, to highlight some striking parallels.

4.2 *About Dance Bars in Maharashtra*

The history of dance bars in Maharashtra is interesting to say the least. Maharashtra is regarded as the birthplace of the culture underlying dance bars, with the first dance bar opening in the early 1980s about 75 kilometres away from Mumbai city.¹³⁰ Simply described, a dance bar is an establishment that serves patrons with food and alcohol and engages female dancers on a contract basis for entertainment. Sometimes, the patrons/customers themselves partake in dancing to music but are strictly forbidden from touching or assaulting the dancers in any way. The dance bars also employ bouncers, who are required to ensure that no untoward incident takes place on the premises. It was considered that the culture of bar dancing is an offshoot of the public performance of the traditional dance form of *Lavani*, a form of dance unique to Maharashtra. On the other hand, some hold that it as a symptom concomitant to globalisation.¹³¹ This is because Maharashtra witnessed a meteoric rise in the number of dance bars since the late 1990s. According to one source, the number of dance bars increased from 23 in 1986 and 210 by 1996, to about 2,500 by 2005.¹³²

128 *State of Maharashtra & Anr. v. Indian Hotel and Restaurants (AHAR) Association & Ors*, (2013) 8 SCC 519 [hereinafter 2013 *Dance Bar*].

129 *Indian Hotel and Restaurant (AHAR) Association & Anr v. The State of Maharashtra & Ors*, (2019) SCC OnLine SC 41, 12 January 2019 [hereinafter 2019 *Dance Bar*].

130 IANS, 'Dance bars, a zing in Mumbai's night life', *India Today*, 16 July 2013 <<https://www.indiatoday.in/india/west/story/dance-bars-a-zing-in-mumbai-night-life-170561-2013-07-16>>, visited on 4 April 2021.

131 S. Dalwai, 'The dancer and the dance', *The Indian Express*, 21 January 2019 <<https://www.indianexpress.com/article/opinion/columns/mumbai-dance-bars-supreme-court-judgment-5547572>>, visited on 4 April 2021.

132 *Indian Hotels and Restaurants (AHAR) Association & Ors. v. State of Maharashtra*, 2006 (3) BomCR 705, 12 April 2006.

These bars operated with the prior permission of the Municipal Corporation under the Mumbai Municipal Corporation Act, 1888, after obtaining all the required permissions and licences under rules framed under the Bombay Prohibition Act, 1949. In order to be allowed to have music, dance or both in the establishment, the owner is also required to obtain a Premises and Performance Licence.¹³³ Until 2005, owners of dance bars did not have much trouble obtaining the aforementioned licences and getting them renewed.

In 2005, the Maharashtra State Legislature amended the Bombay Police Act, 1951 through the Bombay Police (Amendment) Act, 2005, which introduced two sections. One of the objectives of the amendment was to address the issue of performance of dances in the eating houses, permit rooms or beer bars which it found to be “derogatory to the dignity of women and are likely to deprave, corrupt or injure the public morality or morals.”¹³⁴ The amendments riled owners of dance bars as Section 33A prohibited the holding of any kind of dance performances in eating houses, permit rooms or beer bars and prescribed a penalty of imprisonment for up to three years and with fine of up to INR 2 lakh. However, Section 33B exempted drama theatres, cinemas and clubs which restricted entry to members from the prohibition specified in Section 33A. The amendment was struck down by the High Court of Bombay April 2006 on the counts of violating Articles 14 and 19(1)(g) of the Constitution of India. On appeal by the State of Maharashtra, the High Court’s judgment was upheld by the Supreme Court.¹³⁵

This did not mean that dance bar owners were permitted to start holding dance performances in their establishments again. The Government of Maharashtra had lost the battle but were still at war against the culture of bar dancing in Maharashtra. The State Legislature immediately rolled out the Maharashtra Police (Second) Amendment Act, 2014, reinserting Section 33A¹³⁶ and deleting Section 33B of the Maharashtra Police Act, 1951, so as to nullify the effect of the Supreme Court judgment of 16 July 2013. Exercising its writ

133 As required under the Rules for Licensing and Controlling Places of Public Amusements (other than Cinemas) and Performances for Public Amusement, including Melas and Tamasha’s Rules, 1960 (‘Amusement Rules’), framed by the Commissioner of Police, under the Maharashtra Police Act, 1951 (formerly the Bombay Police Act, 1951). The preconditions for obtaining the licence are that the establishment must comply with the Amusement Rules and the Rules for Licensing and Controlling Places of Public Entertainment, 1953 which were also framed by the Commissioner of Police under the same Act mentioned above.

134 Bombay Police (Amendment) Act, pmb. ¶6, 2005.

135 2013 *Dance Bar*, *supra* note 128.

136 The new Section 33A which substituted the old provision that the Supreme Court struck down as unconstitutional, was a verbatim copy of the old provision.

jurisdiction upon a petition filed by the AHAR Association, the Supreme Court of India ordered a stay of the prohibition on holding dance performances of any kind in eating houses, permit rooms or beer bars, subject to the condition that the dances shall not be obscene. In the meantime, the State Legislature of Maharashtra enacted the Maharashtra Prohibition of Obscene Dance in Hotels, Restaurants and Bar Rooms and Protection of Dignity of Women (Working Therein) Act, 2016 ('Obscene Dance Act'). It is this legislation and the rules framed under it that constituted the bone of contention in the *Dance Bar* case, which was decided by the Supreme Court on 17 January 2019.

4.3 *The 2013 Dance Bar Judgment*

As mentioned earlier, the 2013 *Dance Bar* judgment was a confirmation of the High Court of Bombay Judgment of 2006, which declared as constitutionally invalid, Sections 33A and 33B of the Maharashtra Police Act, 1951 inserted via amendment. The State Government's position was that the amendment banning all forms of dance performances from being held in eating houses, permit rooms or beer bars but exempting drama theatres, cinemas and clubs with restricted entry was justified on the grounds of morality, public order, protecting the dignity of women and preventing sex trafficking. The High Court had held that the amendment violated Article 14 as it treated eating houses, permit rooms and beer bars differently from drama theatres, cinemas and clubs without any reasonable justification for this distinction. In respect of fundamental freedoms, it held that the amendment unreasonably restricted the right of freedom to carry on trade, business and profession of the bar owners as well as the bar dancers because although it was touted as being a mere regulation, it was *de facto* an absolute ban without any admissible justifications under Article 19(1)(g). However, it held that there was no violation of Article 19(1)(a), which provides for the right to freedom of expression because the restrictions in question were targeted at the conduct of dance as a profession.

The Government of Maharashtra filed an appeal against the High Court's judgment before the Supreme Court wherein they sought that the phrase "all dance" in Section 33A of the Maharashtra Police Act, 1951 be read as "dances which are obscene and derogatory to the dignity of women" instead of being declared unconstitutional. Regardless, the Supreme Court upheld the judgment of the High Court. The judgment pointed out that the presumption which ran through Sections 33A and 33B, that the male crowd visiting the exempted places were not as susceptible to corruption or sexual arousal as the lower class of people who went to dance bars, was elitist, unsupported by empirical data or common sense. This presumption was based on false and questionable notions, myths and stereotypical images. Indeed, in response to the State

Government's characterisation of dance bars as places where unwholesome practices like money being showered on dancers were rampant, the representative of the bar dancers' union retorted with the telling argument that TV clips showing banknotes being showered on dancing women had done immense harm to the image of bar dancers, as such occurrences were few and rare.

The Supreme Court expressed no views on whether 'bar dancing' constituted a form of expression other than being a profession. But by upholding the High Court judgment, it clearly accepted and adopted the latter's view as well. Given the way in which the restriction in question was framed, it appears appropriate to limit the issue to one involving just the freedom to carry on trade, business or profession, rather than the freedom of expression. Nevertheless, the Supreme Court's observations on 'morality' as a ground for restriction of freedoms are relevant to the freedom of expression argument as well, because morality is one of the grounds listed in Article 19(2) of the Constitution of India for restricting the freedom of expression. In this respect, it is of key importance to note the Supreme Court's proposition – that the morality of a person or an audience cannot be judged on the basis of their economic standing. Unfortunately, the Court said nothing more on morality except for alluding to fundamental jurisprudential questions about the relationship between law and morality and noting that it would not dwell on them because the appellants did not make references to studies on them.

Lastly, an unfortunate consequence of the ban on bar dancing was that bar dancers were compelled to seek alternative career options. While some took to *beedi* rolling, work at construction sites, domestic help and rag picking, others (ironically) took to prostitution.¹³⁷ Many even committed suicide.¹³⁸ The Supreme Court therefore ordered the Government to provide such women with a support system and rehabilitation. The State of Maharashtra instead enacted the Obscene Dance Act in 2014, which was challenged before the Supreme Court through a writ petition under Article 32.

4.4 *The 2019 Dance Bar Judgment*

Various provisions of the Obscene Dance Act and rules framed under it were challenged on the grounds of violating Articles 14, 19(1)(a), 19(1)(g) and 21. The first impugned provision was Section 2(8)(i) which provides a definition of 'obscene dance'. The clause provides:

137 W. Mazzearella, 'A Different Kind of Flesh: Public Obscenity, Globalisation and the Mumbai Dance Bar Ban', 38:3 *Journal of South Asian Studies* (2015) pp. 481–494.

138 *Ibid.*

‘obscene dance’ means a dance that is obscene within the meaning of Section 294 of the Indian Penal Code 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;

While petitioners argued that this definition was imprecise as “arouse the prurient interest of the audience” was a vague expression, the Court found that there was no vagueness in the definition as the very same expression appears in the Indian Penal Code, 1860 (‘IPC’) and that the meaning of ‘obscene dance’ could be gleaned by reference to Sections 292 and 294. Here, it becomes relevant to consider how a dance becomes a subject for legitimate suppression due to its obscenity. In this regard, in a case involving a legal prohibition on holding cabaret dances in restaurants, the Andhra Pradesh High Court observed that cabaret dances cannot be regarded as immoral, indecent or obscene *per se*.¹³⁹ The sentiment reflected in this proposition is akin to that which was reflected by Justice Sanjay Kishan Kaul in the case of *Maqbool Fida Hussain v. Raj Kumar Pandey*¹⁴⁰ wherein he observed that art and literature cannot be considered obscene merely because they involve nudity and sex. The Supreme Court in the 2019 *Dance Bar* judgment seems to have missed its opportunity by reaffirming this proposition in the context of bar dancing, although it would amount to *obiter* at best rather than *ratio decidendi*.

On morality, the judgment had a lot more to say than the previous 2013 *Dance Bar* judgment. It pointed out that while the state may, by law, prohibit obscene dance performances as obscene performances are immoral, it must not impose its own moral standards on society and thereby exercise “social control”.

Regarding the requirement of licences, unlike Sections 33A and 33B of the Maharashtra Police Act, 1951 the Obscene Dance Act did not provide for different rules for different types of establishments. It also did not prohibit all forms of dance. It only prohibited obscene dances. The problem with the Act and the Rules enacted under it, as was highlighted by the petitioners, was that it made it virtually impossible for dance bar owners to obtain licences to hold performances. It became impossible to satisfy the conditions for procuring the licence and this was evident from the fact that not even one person had been

139 *Government of A.P. v. Sri Baldev Sondli*, 1975 (2) An.WR 175.

140 *Maqbool Fida Husain v. Dwaipayan V. Varkhedkar, Raj Kumar Pandey, Ajay Singh Nakura*, Crl. Revision Petition Nos. 282/07; 114/2007 & 280/2007 (2008).

granted a licence since the introduction of the Act.¹⁴¹ The Court was able to identify the state's true intention, which was actually to use the cloak of 'regulation' to continue the prohibition on dance bars, which it had attempted to begin in 2005. Therefore, the Court struck down most of the conditions precedent to the procurement of a licence under the Act on account of not constituting reasonable restrictions on the freedom of trade, business or profession.

When we consider the combined effect of the 2013 and 2019 judgments a point to note is that obscene dances may be prohibited legally, but it is unconstitutional to prohibit a dance in advance on the expectation of it being obscene.¹⁴² This proposition is a perfect segue into the question of censorship of dance. Unlike tangible works of art such as paintings and sculptures, cinematographic films and songs, which are censored on grounds of obscenity after being viewed or listened to and judged, censorship of obscene dance can only happen after the fact of the dance taking place. There is no scope for pre-censorship, i.e. censorship before publication. In the 1997 case of *D. P. Anand v. State of Tamil Nadu & Anr.*,¹⁴³ the High Court of Madras held that the executive, e.g. the police, cannot legally prevent a dance from taking place for the reason that it would probably constitute an obscene act as per Section 292 of the IPC. No such action can be taken unless the statutory authority to

¹⁴¹ The conditions for obtaining a licence under the impugned Act were that (i) the establishment must not concurrently hold a licence to operate a discotheque or orchestra; (ii) the person must possess a "good character" and "antecedents"; (iii) the person must not have a history of criminal record in the past ten years; (iv) the stage in the bar room must be separated from the hotel, restaurant or bar-room; (v) the dance bar must be situated at a distance of at least 1 kilometer from educational and religious institutions; (vi) the dancers are required to be employed on a contract basis with monthly remuneration; (vii) liquor cannot be served at rooms where dance performances are staged; (viii) all entrances of the bar room and other places of amusement or public entertainment must be under camera surveillance and the recordings for the 30 days must be submitted to the competent Police Authority if requisitioned. All of the aforementioned conditions except for (i) were part of the Rules framed under the Obscene Dance Act. All conditions were struck down as being unconstitutional - condition (i) for being arbitrary; conditions (ii) and (iii) for being vague as to the meaning of the expressions "good character", "antecedents" and "criminal record"; condition (iv) for having no rational nexus to the objective sought to be achieved by the rules; condition (v) for being arbitrary and unreasonable by virtue of the impossibility of its performance; condition (vi) for limiting the dancers' right to freely adopt their desired modes of employment; condition (vii) for being unreasonable; and condition (viii) for violating the right to privacy.

¹⁴² It must be kept in mind that this proposition relates to dance as a profession rather than dance as art or expression. However, we may logically understand this proposition as relating to dance as art or expression as well because the restriction of obscene dance, be it as an art form or as a profession relies on 'morality' as its constitutional basis.

¹⁴³ *D.P. Anand v. State of Tamil Nadu and Another*, 1998 CriLJ 724 (1997).

do so is conferred on the concerned officer. At best, the concerned officer may initiate a criminal action against a dancer and/or the owner of the establishment under Section 294 of the IPC after the dance takes place. The state may enact a law that prohibits the granting of licences to those who have committed the offence, but in the absence of such a law, the owner cannot be denied the licence despite having previously committed the offence repeatedly. Thus, the executive cannot be the arbiter of whether a particular dance performance (and not an entire class of dances) is obscene or not. If pre-censorship is to be done in this respect, it can only be done after the offence has been committed.

4.5 *Parallels Between the Suppression of Sadir in the Colonial Period and the Prohibition of Bar Dancing in Twenty-First Century Maharashtra*

The case of the prohibition of bar dancing in Maharashtra has uncanny similarities with the way in which the British Government and the anti-*nautch* campaigners went about banning the performance of *sadir*. In both cases, the female dancers were stereotyped as prostitutes and it was argued that the dance form practised by the dancers was essentially connected with prostitution. So, one of the reasons why the dance performed by the *devadasis* and bar dancers was viewed as obscene was because of this stereotypical but unjustified perception surrounding the dancers. Another reason is that there was a gross misunderstanding of the reasons why the women were associated with dancing.¹⁴⁴ The Maharashtra Government postured itself as a body intending to protect the dignity of women, which was supposedly affected by the nature of the profession of bar dancing and the humiliating practices involved in it – such as having money showered on the female dancers. Likewise, the colonial government and the anti-*nautch* campaigners viewed the suppression of *sadir* as forming part of the broader goal of protecting the dignity of women from the supposedly oppressive *devadasi* system. Their own pet notions of morality were imposed on society from above, by the British in the case of *sadir* and by the State Government in the case of bar dancing.

Unironically, the suppressive measures taken, in both cases, resulted in devastating consequences for the innocent dancers. What was intended as the ‘cure’ led only to the worsening of the so-called ‘disease’. Just as the bar dancers were forced into prostitution due to the prohibition of bar dancing and

144 As for the *devadasis*, the British and the anti-*nautch* campaigners grossly misunderstood the religious and sociological complexities in the *devadasi* system. As for the bar dancers, the State Government of Maharashtra misunderstood bar dancers as either constituting a class of girls forced into the profession as minors, or women stuck in a prostitution or trafficking ring.

the social stigma attached to their profession, the *devadasis* became marginalised and began living up to their stereotype by resorting to prostitution. They had been deprived of their creative outlet, which had been their mainstay for generations.

It was just assumed without any supporting data, that the *devadasis* were forced into their profession of dancing against their will, and they would never want to earn a living by performing this form of dance. However, the fact came to light that disenfranchised *devadasis* in South India, as well as women from the courtesan communities, had valued their traditional dance forms and expressed sadness about the demise of the tradition.¹⁴⁵ Some *devadasis* continue to perform behind closed doors as a way of remembering their past lives where they commanded respect and prestige.¹⁴⁶ Likewise, women who come to Maharashtra to become bar dancers mostly belong to the performing castes. This does not mean that they lacked free will in deciding to perform as bar dancers. The Supreme Court in the 2019 *Dance Bar* judgment even noted that there was little evidence to suggest that bar dancers are forced into the profession when they are minors or in the course of trafficking or prostitution.¹⁴⁷ It was pointed out that there is overwhelming evidence that the bar dancers voluntarily embraced the profession to live a dignified life with economic independence. In fact, the Bharatiya Bar Girls Union, the largest Indian trade union of bar dancers set up in the year 2004, has been vociferously asserting just that.¹⁴⁸

There is one important difference between the times of the anti-*nautch* campaign and the recent legislative attacks on bar dancing. It is that the *devadasis* could not fight back against the British and the anti-*nautch* campaigners.¹⁴⁹ The bar dancers, however, have put up a strong fight against the State Government's actions that affect their profession. Seemingly, in their protests and demonstrations they have actively presented their issues as being in the domain of labour rights rather than mere artistic liberty.¹⁵⁰ That said,

145 A. Morcom, 'Courtesans, bar girls, dancing boys and Bollywood dance', *The India Seminar*, <http://www.india-seminar.com/2015/676/676_anna_morcom.htm>, visited on 4 April 2021.

146 D. Soneji, *Unfinished Stories: Devadasis, Memory and Modernity in South India* (University of Chicago Press, 2012) p. 210.

147 2019 *Dance Bar*, *supra* note 129, ¶44.

148 A. Morcom, *Illicit Worlds of Indian Dance: Cultures of Exclusion* (Oxford University Press, 2013) p. 215. [hereinafter *Morcom*].

149 Srinivasan, *supra* note 18, pp. 1873–1874.

150 *Ibid.*, pp. 215–216.

they have advanced both arguments in litigation.¹⁵¹ Their organised and systematic movement also received support from other women's groups in the country.¹⁵² This backing from the rest of society provided a fillip to their success in litigation before the Supreme Court of India. However, it is also worth mentioning that the battle in court was not just between the bar girls' union and the State Government. The Indian Hotels and Restaurant Association was also a key player in the litigation against the State Government and were strongly opposed to the state's propaganda that bar dancing was tantamount to obscenity.

The clash between the State Government of Maharashtra on one side, and bar dancers and dance bar owners on the other lasted for about 14 years. Despite the former's losses in Court, legislative attempts to subvert the Court orders and judgments kept the bar dancers from returning to their profession. This article has already explained some of the adverse effects of the Government's colonial policies. Just like the British, the State Government of Maharashtra had misdiagnosed the problem. But this time, the judiciary has tried to resolve the conflict. We will never truly know whether the State Government understood that it had erred in terms of its colonial policy that was fuelled and tempered by notions of patriarchy. At the very least, for now the bar dancers can dance freely but still within the confines of 'reasonable restrictions'¹⁵³ to their fundamental right to freedom of expression.

5 Restorative Justice

Examples of discrimination and oppression, on grounds of gender, race, occupation, caste, language and type of social organisation as well as other factors, is abundant in the history of mankind.¹⁵⁴ With the passage of time, a shift in global consensus towards the egalitarian values of equality and fraternity have led to the creation of international treaties, such as the International Covenant

151 Before the High Court of Bombay, the Bombay Bar Girls Union argued that Section 33A of the Maharashtra Police Act, 1951 was violative of the fundamental freedoms of expression and profession.

152 Morcom, *supra* note 148, p. 216.

153 Constitution of India, Art. 19 (2).

154 S.L. Rierson, 'Race and Gender Discrimination: A Historical Case for Equal Treatment Under the Fourteenth Amendment', 1:89 *Duke Journal of Gender Law & Policy* (1994) pp. 89–118.

on Civil and Political Rights (ICCPR)¹⁵⁵ and the International Covenant on Economic Social and Cultural Rights (ICESCR).¹⁵⁶ These values have also entered the domestic legal framework of a large number of countries,¹⁵⁷ due to the shift towards liberal democratic polity.¹⁵⁸ Though legal change is essential for the prevention of discrimination of communities and individuals, it often proves to be insufficient and inadequate as a mechanism to prevent informal or social discrimination.¹⁵⁹ This conundrum necessitates that the law is used as a method of social engineering to effect a change in perception in the minds of all the relevant stakeholders.¹⁶⁰ It is also pertinent to note that a group that has been historically discriminated against is also likely to have a diminished social status in the present.¹⁶¹ Since, there are a large number of cases where this discrimination was initiated and orchestrated by the state through the enactment of laws, we may construe both a moral and legal obligation on the part of the functionaries of the state and state-run social institutions to remedy the past wrongs. It is hypothesised that restorative justice is a viable alternative to help historically oppressed groups, especially in the context of the *devadasis* in Tamil Nadu, India.

As elaborated previously, the traditional *devadasi's* means of livelihood was constantly threatened by the forces in power and the institutions of society. Their traditional practices were especially targeted during the colonial era as the British Government espoused the notion of Victorian sexual propriety. Pressure from certain groups eventually led to a ban on not just the *devadasi* system, but even dancing in temples.¹⁶² Consequently, the *devadasis* were

155 UN Human Rights Committee, *General Comment No. 35, Article 9 (Liberty and security of person)*, 16 December 2014, (CCPR/C/GC/35).

156 J. Blau and M. Frezzo, *Sociology and Human Rights: A Bill of Rights for the Twenty-First Century* (SAGE Publications, 2012) p. 18.

157 R. Craggs, 'World Freedom Index 2013: Canadian Fraser Institute Ranks Countries', *Huffington Post*, 14 January 2013 <https://www.huffingtonpost.in/entry/world-freedom-index-2013_n_2440620?rii8n=true>, visited on 4 April 2021.

158 M.G. Marshall, 'Polity IV Project: Political Regime Characteristics and Transitions, 1800–2013', Center for Systemic Peace, <<http://www.systemicpeace.org/polity/polity4.htm>>, visited on 4 April 2021.

159 Amnesty International, 'Discrimination', <<https://www.amnesty.org/en/what-we-do/discrimination/>>, visited on 4 April 2021.

160 J.A. Gardner, 'The Sociological Jurisprudence of Roscoe Pound', 7:2 *Villanova Law Review* (1961) p. 165.

161 A. Hanks et al., 'Systematic Inequality - How America's Structural Racism Helped Create the Black-White Wealth Gap', Center for American Progress, 21 February 2018 <<https://www.americanprogress.org/issues/race/reports/2018/02/21/447051/systematic-inequality/>>, visited on 4 April 2021.

162 Madras Devadasis Prevention of Dedication Act (1947), Chennai, India, Section 3(2).

pushed into prostitution due to poverty and a lack of other economic opportunities. This increased the stigmatisation of *devadasi* community in the eyes of 'mainstream' society. The last blow to the system was the appropriation of *sadir* by the more economically and socially privileged sections and its transformation into the national dance form of India, *bharatanatyam*. The modern *devadasis* continue to form a part of the population to this day, but devoid of their traditional dance or respect, barely survive in the fringes of society.¹⁶³

As has been illustrated previously, the *devadasis* have suffered the brunt of both legal discrimination as well as social ostracism. Hence, ideally, their reintegration into the society should be marked by both legal as well as social changes. The mechanism of restorative justice allows for these two prongs to be used in conjunction with each other. As the name implies, restorative justice enables the restoration of a historically wronged community to the status they enjoyed before the oppression as far as practicable. Unlike most other legal measures, restorative justice not only involves but also hinges on the participation of multiple stakeholders in order to arrive at a solution that is conducive to the social development of all the stakeholders involved in the consultation process.¹⁶⁴ Through the course of human history, restorative justice has taken a number of forms and has been a part of the traditional justice process of a number of indigenous communities. This has resulted in the inclusion of a variety of processes within the umbrella of restorative justice. A common characteristic of all of these methods is a focus on the victim or victims and sensitivity to community dynamics and culture.¹⁶⁵

The United Nations, through its many subsidiary organs, has proposed and advocated the use of restorative justice as a part of international human rights law. This has also taken root in a large number of domestic jurisdictions. Restorative justice has been touted as an appropriate solution in the context of conflicts involving children. The Office of the Special Representative of the Secretary General on Violence against Children characterises restorative justice as a 'peaceful conflict resolution' strategy. It also mentions that restorative justice can increase the level of cohesion and the presence of democratic

163 B. Kirdon, 'Devadasis are a cursed community', *The Guardian*, 21 January 2011, <<https://www.theguardian.com/lifeandstyle/2011/jan/21/devadasi-india-sex-work-religion>>, visited on 4 April 2021.

164 UN Human Rights Committee, *Expert Mechanism on the Rights of Indigenous Peoples, Access to justice in the promotion and protection of the rights of indigenous peoples: restorative justice, indigenous juridical systems and access to justice for indigenous women, children and youth, and persons with disabilities*, (A/HRC/EMRIP/2014/3/Rev.1 at 68–86), 2014.

165 *Ibid.*

values within a community. Similarly, a discussion of the rights of indigenous communities and their enforcement has often yielded restorative justice as a possible answer. Given that there exist innumerable examples of indigenous communities making use of restorative justice in their internal legal systems, the possibility of success is high.¹⁶⁶ Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission, the Waitangi Tribunal in New Zealand and the Australian Apology (2008), among others, have utilised measures inspired by restorative justice.¹⁶⁷ Restorative justice has also been a mainstay in women's rights and has been actively and vociferously endorsed by the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW).¹⁶⁸ It has recommended the use of restorative justice as one of the modes of helping women realise their rights, alongside widely accepted solutions such as provision of free legal aid. Countries such as Italy have been criticised by CEDAW reports for a lack of restorative justice opportunities.¹⁶⁹ Restorative justice has also been extensively used by the South African Truth and Reconciliation Commission (SATRC) and has been alluded to by Jennifer Llewellyn in the *Handbook of Restorative Justice*.¹⁷⁰

These international developments have also been reflected in India. It has ratified the ICCPR, ICESCR and CEDAW. The principle of equality is enshrined in the Constitution.¹⁷¹ In the Indian context, the exercise of equality necessitates a study of whether the different individuals in question have equality of opportunities. It allows for the unequal treatment of persons if there is a pre-existing inequality between them.¹⁷² This is based on Aristotle's definition of equality.¹⁷³ This theoretical idea has manifested itself through the usage of a

166 *Ibid.*

167 UN Economic and Social Council, *Permanent Forum on Indigenous Issues Twelfth session, Study on the rights of indigenous peoples and truth commissions and other truth-seeking mechanisms on the American continent*, (E/C.19/2013/13), 2013; UN Human Rights Committee, *supra* note 164.

168 Committee on Elimination of Discrimination against Women, *CEDAW discusses situation of women in Italy, Thailand, Romania and Costa Rica with civil society*, 3 July 2017, <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21825&LangID=E>>, visited on 4 April 2021; Committee on the Elimination of Discrimination against Women, *General recommendation No. 33 on women's access to justice* (CEDAW/C/GC/33), 2015, at 2–7; International Organization for Self-Determination and Equality, *Silence is Violence: A Shadow Report to UN CEDAW re Sweden*, 22 January 2016, at 15.

169 Committee on Elimination of Discrimination against Women 2017, *supra* note 168.

170 J. Llewellyn, 'Truth commissions and restorative justice', in G. Johnstone and D.W. Van Ness (eds.) *Handbook of Restorative Justice* (Cullompton, Willan Publishing, 2007), p. 358.

171 The Constitution of India, Rrt. 14.

172 *Ajay Hasia v. Khalid Mujib Sehravardi & Ors*, 1981 SCR (2) 79 (1981).

173 *Ibid.*

principle of restorative justice in the Constitution through a policy of affirmative action or positive discrimination.¹⁷⁴ However, this idea is restrictively construed in law to only apply to the categories of people already mentioned in the Constitution. Further, it applies to specific areas of study and employment.

Though the *devadasi* women may claim these reservations by virtue of their gender and caste, assuming that this alone will enable their reintegration into society is incorrect. This is because this type of simplification ignores the intensity of oppression and discrimination these individuals face on three counts: their status as women, their membership of a disadvantaged caste and the attitudes surrounding their profession. This implies that mere reservations turn a blind eye to the fact of social censorship that these women face every day.

Since it is established that legal measures alone are insufficient to tackle the problem, restorative justice and its accompanying tools may prove to be of use in dealing with this community. Restorative justice can take innumerable forms. These include family group counselling, victim offender mediation, circle sentencing, community reparation boards, victim impact panels and truth committees.¹⁷⁵ Choosing an appropriate type of restorative justice is pivotal to the success or failure of the model itself. It has been seen that truth commissions are useful when there is a clash of two or more narratives about the origin, development, purpose and identity of a community.¹⁷⁶ A truth commission is usually an independent organisation that helps consolidate and compile different versions of a historical narratives and attempts to recognise, appreciate and reconcile deep seated differences between different stakeholders.¹⁷⁷

A truth commission is likely to benefit the *devadasi* community because their dismal social and economic status is rooted in the fact that the narrative of classical dance in India is largely dissonant. Most current practitioners of *bharatanatyam* do not know its origins or of the people who preserved the art.¹⁷⁸ What little is known of the *devadasis* is obscured by inaccurate stereotypes and deliberate falsehoods. Secondly, the information available about the *devadasis* is scarce, incomplete and often outdated. Most of the information is apocryphal, anecdotal and oral. Its reliability, veracity and usefulness are questionable. This situation makes it extremely difficult for laws to be made or

174 The Constitution of India, Art. 15.

175 UN Human Rights Committee, *supra* note 164.

176 *Ibid.*

177 *Ibid.*

178 A. Meduri, 'Bharata Natyam - What Are You?', 5:1 *Asian Theatre Journal* (1988) pp. 1–22.

remedial social action to be taken. A truth commission is likely to bridge this information gap enabling better and more informed legislation to be made.

The most powerful change in narrative often stems from the oppressed community itself. This can be hastened through enabling the *devadasis* to perform and gain financially from their art form. Any performance by the *devadasis* presupposes the existence of either alternate platforms for performance or inclusivity in the existing music and dance festivals through the process of social initiative. T.M Krishna, a winner of the Magsaysay Award, did just this by organising a music festival for the community of fishermen at the same time as the traditional Margazhi Mahotsavam, which primarily targets classical musicians.¹⁷⁹ This enables cultural traditions and the stories of those who preserve them to remain in the collective memory of society, thereby motivating a step in the direction of restorative justice.

While restorative justice as a concept shows tremendous potential, it is important to remember that it needs to be carefully and continuously monitored in order to be successful. One of the most pertinent problems that may arise due to improper implementation is the fostering of negative stereotypes and an 'us versus them' attitude through a truth commission.¹⁸⁰ This can be solved by ensuring that an independent third party moderates the proceedings of the meetings and sets goals that motivate the two groups to cooperate and see and understand each other's perspectives. Lastly the progress achieved by of the committee towards its goals must be periodically assessed by an independent third party so that there can be changes in the modus operandi if required. Given, the chequered past history of the dance form and the *devadasi* system, a truth commission may provide much-needed clarity as to the individual experiences of all the stakeholders.

6 Conclusion

The *devadasi* system and the art form it propagated inspired many from both the past and the present to raise questions about art and literature. While the idea of literary prowess and knowledge of the technicalities served as food for

179 T. Sudeep, 'Krishna questions inclusivity of Carnatic music', *Deccan Herald*, 29 December 2019 <<https://www.deccanherald.com/metrolife/metrolife-cityscape/krishna-questions-inclusivity-of-carnatic-music-789665.html>>, visited on 4 April 2021; 'TM Krishna gets Magsaysay Award for "social inclusiveness in culture"', *The News Minute*, 27 July 2016 <<https://www.thenewsminute.com/article/tm-krishna-gets-magsaysay-award-social-inclusiveness-culture-47169>>, visited on 4 April 2021.

180 International Organization for Self-Determination and Equality, *supra* note 168.

thought for audiences and patrons of the art in the past, the question of the *devadasis'* marginalisation and the disappearance of their art form demand our attention today. The delicate balance between art and society that existed when traditional *devadasis* and *sadir* flourished crumbled as their heritage, which formed an important part of the collective past of many Indians, was misinterpreted, truncated and distorted. A radical shift in what was acceptable or even permissible to be showcased to a general audience occurred due to pressures from 'outsiders' to the culture of dance communities in India, and this meant that the function of art itself changed over the course of history. The once independent and empowered artists who used to practise the now forgotten art form of *sadir* declined not because of an evolutionary change in the interests of the audience. Rather, a movement to marginalise these artists was what sounded the death knell to this art form. When notions of a 'good woman' – portrayed as a subservient wife who expresses herself in modest and limited ways, crystallised, the once liberal and independent *devadasis* became stereotyped as prostitutes and were chastised through social exclusion. Stereotyping hardens with time, and the image of the *devadasi* as that of an accomplished dancer and an intellectual became tarnished. Additionally, the issues of illiteracy and poverty amongst the modern-day *devadasis* add a very real economic dimension to the complex social problem of the *devadasi*. The uniqueness of the problem caused by historical injustice meted out against *devadasis* requires the Indian Government and enlightened individuals to use creatively crafted solutions. We believe that the techniques of restorative justice can be used to bring some level of respite to the community in question. These techniques are designed to impact affected communities qualitatively if not quantitatively. A positive change in the story of a group's past and heritage can be immensely liberating and empowering. The *devadasis* and other communities of marginalised artists should be allowed to tell themselves and others a different narrative about who they are and where they hail from.

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