

NO GENDER CAP IN ORCHESTRA BARS

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

A Maharashtra law limiting the number of women musicians in Mumbai's orchestra bars was struck down by the Supreme Court as a "masquerade" that stifles women's aspirations in the guise of keeping them safe.

If the government was really concerned about women's safety, the court said in a judgment, it should run the "extra mile" and provide them with a conducive working environment rather than "entombing their aspirations".

A Bench of Justices K.M. Joseph and S. Ravindra Bhat said "paternalism" had no place in a time when "exclusive male bastions" such as the armed forces were opening up for women.

"One hopes that the present judgment would still a lingering and discordant note of a cymbal silenced long back..." Justice Bhat, who wrote the judgment, observed.

The Maharashtra law mandated that only four women musicians can play in an orchestra. The other four should be men.

Asked for an explanation by the Supreme Court, the State said the rule was made to protect women from the sexual advances of customers. It explained that the orchestra bars were formerly dance bars. The women, who now perform as orchestra artistes, had worked in the dance bars. They were made to do "obscene dance moves" and forced into sexually explicit acts with customers. The law was brought to keep the women safe and was in public interest, the State said.

Justification not accepted

The Bench, however, did not buy the government's justification for the new provisions under the Licensing and Performance for Public Amusement including Cabaret Performance, Melas and Tamashas Rule of 1960 framed under the Maharashtra Police Act, 1951.

"In case there were any real concern for the safety of women, the State is under a duty to create situations conducive to their working, to run that extra mile to facilitate their employment, rather than to thwart it, and stifle their choice... Such measures — which claim protection, in reality are destructive of Article 15 (3) as they masquerade as special provisions and operate to limit or exclude altogether women's choice of their avocation," Justice Bhat said.

The court accepted the arguments made by advocates Prasenjit Keswani and Manoj K. Mishra, for petitioner Hotel Priya, that the composition of an orchestra would depend on the band and not the government.

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