

Dancing around the Supreme Court

The dance bar case yields insights on the institutional interaction between governments and the courts



CHINTAN CHANDRACHUD

On January 17, the Supreme Court struck down several statutory provisions and rules governing Maharashtra's dance bars. This decision forms part of an iterative game that has evolved over 14 years between the Maharashtra government and the courts.

Prolonged interactions

In 2005, the Maharashtra government imposed a ban on dance performances in bars, with the exception of hotels rated three stars and above. The public rationale offered was that these performances were obscene, morally corrupt, and promoted prostitution. Dance performance licenses were cancelled with immediate effect, prompting affected parties to file petitions in the Bombay High Court. The High Court held against the government, resulting in an appeal to the Supreme Court.

The Supreme Court affirmed the High Court's decision in July 2013, pursuing two lines of reasoning. One, the government could not discriminate between luxury hotels and other establishments seeking licenses for dance performances. Two, the ban had proven to be counterproductive, resulting in the unemployment of over 75,000 women, many of whom were forced by circumstances to engage in prostitution.

Rather than implementing the Supreme Court's decision, the government swiftly devised a strategy to sidestep it, imposing an outright ban on all dance performances, whether in street bars or upmarket hotels. Although the government's response addressed the court's first concern, it failed to address the second. This led to fresh proceedings in the Supreme Court. While the court saw through the government's attempt to circumvent its decision, it left room for the government to prohibit obscene dances with a view to protecting the dignity of the dancers.

Once again, the government responded in a matter of months. This time, the government's response was more sophisticated and took cues from the Supreme Court's decision.



The SC's decision is part of a long iterative game between the Maharashtra government and the courts. A dance bar in Mumbai. ■ ARUANANGSU ROY CHOWDHURY

Rather than seeking to impose a ban on dance performances altogether, it only did so to the extent that these performances were obscene or overtly sexual. However, it imposed a number of other conditions on establishments seeking a license for such performances. Applicants were required to "possess a good character" with no criminal antecedents. The establishment could not be within one kilometre of an educational or religious institution. A CCTV camera would need to be fitted at the entrance. Customers could not be permitted to throw coins or currency notes on the dancers, but could add tips to the bill. The permit room (where alcohol was served) and the dance room would need to be separated by a partition. The stage could not be smaller than a prescribed size. Some of these conditions were challenged in the Supreme Court on the basis that they were far too onerous.

On January 17, the court upheld a few of these conditions, but struck down others. For example, it noted that the CCTV requirement violated the right to privacy of the dancers and the patrons, the "good character" requirement was vague, the partition between the permit room and the dance room was unjustified, and the one kilometre distance requirement was impractical.

However, what the court found especially revealing was that amongst the dozens of applications filed since the new rules were put in place, not a single one had been approved by the government. The court therefore saw the government's most recent response as a ban on dance bars mas-

querading as an attempt to regulate them. The court would have none of it: "[The government is] aiming to achieve something indirectly which it could not do directly... [this] cannot be countenanced".

These developments yield insights on the institutional interaction between governments and the courts. Through each iteration of this case, the Maharashtra government has responded more swiftly to judicial decisions than the Supreme Court has to the government's attempts to sidestep them. The final judicial decision in the first round took just short of eight years, while the government's response took about 11 months. In the second round, the court took a year and three months to make its decision; the government responded in six months. In the third round, the court has taken just short of three years. The government's response time is to be seen.

Reasons for disparity

A number of structural reasons may account for this disparity. Despite heavy caseloads, courts must provide an opportunity for a fair hearing, deliberate, and set out reasons for their decisions. Courts will also typically not consider cases unilaterally, but are dependent on parties to bring proceedings in search of a remedy. Separately, the ban on dance bars has also received a disconcerting level of cross-party political support in Maharashtra, despite the regime changes since 2005. This has meant that legislation has often been enacted unopposed, without any meaningful discussion on the floor of

the House. The amendments of 2014, for example, were approved by the Maharashtra Cabinet on a Thursday, and sailed through the Vidhan Sabha and Vidhan Parishad within minutes on the following day.

The practical implication of the government being more nimble than the courts is that even when government responses are imperfect, the court produces significant delays. This case outlines the vulnerability of what is otherwise seen as an all-powerful Supreme Court, especially when it depends on the government to comply with its decisions in some positive way, such as by issuing dance bar licenses. Even when the courts exercise the putatively "negative" function of striking down legislation or rules, the level of compliance with their decisions often lies in the hands of the executive.

These developments should also lead courts to introspect about the existing remedial landscape in cases where legislation is challenged. The Supreme Court often deploys the writ of continuing mandamus (issuing a series of interim orders over a period of time to monitor compliance with its decisions) in public interest litigation cases that test the limits of its jurisdiction. It has chosen not to adopt that enforcement strategy in this case, which falls squarely within the four corners of its jurisdiction. While the court cannot direct the enactment of legislation, it can monitor compliance with an order to issue licenses to qualified applicants.

A further response from the Maharashtra government now seems almost inevitable. The court struck down the one kilometre distance requirement, but did not say that any distance requirement would be invalid. While unconstitutional in its present form, it noted that the "good character" requirement could be defined more precisely. These are only two among the many options that are now available to the government in responding to the court's decision.

The court concluded its judgment with the "hope" that applications for licenses would "now be considered more objectively and with [an] open mind". Similar hopes have been expressed earlier. It is hard to believe that this time will be any different.

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FROM THE READERS' EDITOR

Making the significant interesting

The reason behind explaining one political story a month



A.S. PANNEERSELVAN

As the Readers' Editor (RE), I recognise the crucial distinction between reasonable scepticism and total cynicism. My offer to explain once a month at least one political story published in this newspaper generated not only interest but also a fair amount of reasonable scepticism. Readers wanted to know on what basis the monthly political story would be selected. Why is politics getting prioritised over the economy, they asked. And if readers seek clarification for more than one story, on what basis will the RE choose the story for critical evaluation? The fundamental drive for this initiative is to strengthen the bond between the newspaper and its readers and not permit the external climate to corrode the trust factor.

Earning trust

Trust is not a mathematically quantifiable attribute. It is a qualitative attribute that has psychological and emotional components. When U.S. President Donald Trump started his vicious attack on the press, more than 300 publications in the U.S. came together to run editorials on the freedom of the press. While welcoming this decision, media scholars also asked journalists to defend their work through action. Journalists were told in no uncertain terms that trust in a news organisation develops when people know that they can always turn to a news organisation for reliable information.

There is a tricky aspect in the relationship between the people and journalists. How do people know that they are being heard? The journalistic community always feels that its coverage reflects the priorities and aspirations of the people; hence, journalism itself is proof that the profession is sensitive to the society at large. However, with information on social media being manipulated by those with partisan interests, journalists are forced to walk the extra mile. Trusting News, a joint venture between the American Press Institute and the Donald W. Reynolds Journalism Institute, focuses on one key area of disconnect between the public and journalists. The initiative puts the onus on journalists to

speak about how they do their job, their commitment to accuracy, their motivations to dig deep and present a fairly comprehensive picture. It helps journalists and news organisations anticipate and address criticism in a proactive manner. It wants those in the media to engage with the people when they have questions. Trusting News points out that this effort does not involve a huge technological intervention; it shows a willingness to engage and be transparent. It shows that earning trust is the job of journalists.

Nothing gives a newspaper more pleasure than the fact that its readers retain confidence in its editorial decisions, its journalistic values, and its ethical practices in the newsroom. Every news ombudsman has his or her personal approach to effectively build trust. In its May 2000 issue, *Granta* magazine carried an extract of Diana Athill's excellent memoir



Stet, titled *Editing Vidia*, which, in a way, helped me learn not only about the craft of editing but also about life. Athill said about good editing: "It was like removing layers of crumpled brown paper from an awkwardly shaped parcel, and revealing the attractive present which it contained." She has written extensively about things which life teaches us. Her two valuable lessons – "avoid romanticism and abhor possessiveness" – are also lessons for me as an ombudsman.

Why political stories?

I do not romanticise journalists, though my romance for journalism is deep. I maintain a certain critical distance from the way words are produced in this newspaper. The exercise to talk about one political story a month is not a one-way communication to extol the virtues of journalism. It is a conscious effort to listen and share. I invite readers to suggest the story about which they want to know more. The idea of examining political stories in the run-up to the election is simple: It is these stories that are subjected to misinterpretation the most on social media. Tweak stories through algorithms, using key words in those stories to misunderstand them, and converting the public space into ideological silos are some of the reasons behind this initiative. It is often said that journalism strives to make the significant interesting in an ethical and accountable manner. Talking about the process of reporting is part of this imagination.

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SINGLE FILE

Model for malaria control

Through its DAMaN initiative, Odisha has emerged as an inspiration in the global fight against malaria

PRAMOD KUMAR MEHERDA



The World Health Organisation's World Malaria Report of 2018 turned the spotlight on India's recent strides against malaria. India is the only country among the 11 highest-burden countries that saw substantial progress in reducing disease burden: it saw a 24% decrease in 2017 compared to 2016. This shows that India has assumed a leadership role in advancing global efforts to end malaria. The country's success provides hope to the other highest-burden countries to tackle malaria head-on.

India's progress in fighting malaria is an outcome of concerted efforts to ensure that its malaria programme is country-owned and country-led, even as it is in alignment with globally accepted strategies. The turning point in India's fight against malaria came at the East Asia Summit in 2015, when it pledged to eliminate the disease by 2030. Following this public declaration, India launched the five-year National Strategic Plan for Malaria Elimination. This marked a shift in focus from malaria "control" to "elimination". The plan provides a roadmap to achieve the target of ending malaria in 571 districts out of India's 678 districts by 2022.

The plan requires more than ₹10,000 crore. Adequate investment combined with coordinated action between governments, civil society and philanthropic donors is imperative to achieve this goal. Since health is a State subject, State governments across the country shoulder a special responsibility in tackling the disease.

Among the States, Odisha has emerged as an inspiration in the fight against malaria. In recent years it has dramatically scaled-up efforts to prevent, diagnose and treat malaria through its Durgama Anchalare Malaria Nirakaran (DAMaN) initiative, which has produced impressive results in a short span of time. In 2017, accredited social health activists (ASH-As) helped distribute approximately 11 million bed nets, which was enough to protect all the residents in areas that were at highest risk. This included residential hostels in schools. As a result of its sustained efforts, Odisha recorded a 80% decline in malaria cases and deaths in 2017. DAMaN aims to deliver services to the most inaccessible and hardest hit people of the State. The initiative has in-built innovative strategies to combat asymptomatic malaria. DAMaN has been accorded priority in the State's health agenda. There is financial commitment for a five-year period to sustain and build on the impact created by the initiative.

The new country-driven 'high burden to high impact' plan to reduce disease burden in the 11 countries reflects the global sentiment that business as usual is no longer an option when it comes to fighting the disease. By prioritising malaria elimination, India, and especially Odisha, is showing the world the way.

The writer is the Commissioner-cum-Secretary, Department of Health & Family Welfare, Government of Odisha



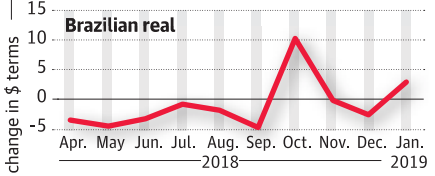
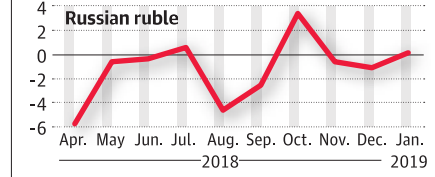
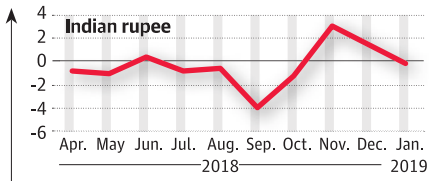
DATA POINT

Rupee rebounds

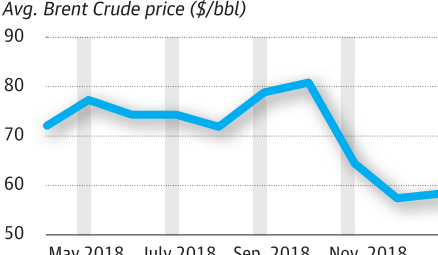
The rupee and other currencies took a beating against the dollar in Quarter 2 of 2018, but they have recovered since, on account of falling oil prices and domestic factors like Foreign Portfolio Investments (FPIs) and narrowing trade deficit.

By Varun B. Krishnan

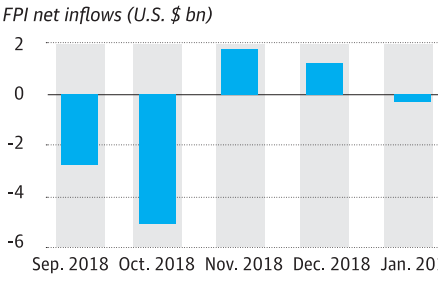
\$ vs others | Values of all BRICS currencies showed sharp dips in the first half of 2018, with the Ruble registering the biggest fall among them in April. India registered its biggest month-on-month fall in value in September



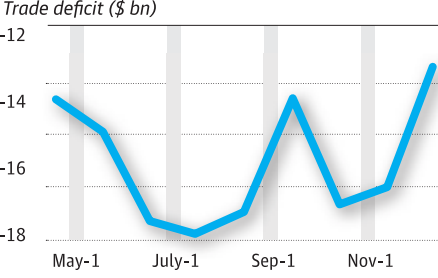
Crude drops | Waivers granted by the U.S. from Iran sanctions, oversupply of crude by OPEC countries, and increasing U.S. shale production resulted in lower oil prices after October 2018



FPI flows in | After two months of outflows in Sept. and Oct. 2018, FPIs (equity and debt investments made by foreign investors) witnessed net inflows later, improving forex reserves



Deficit narrows | The trade deficit (import costs minus export costs) reached a high of \$18 bn in July 2018. However, it narrowed to \$13 bn in Dec. 2018, helped by a decline in oil import prices



FROM The Hindu. ARCHIVES

FIFTY YEARS AGO JANUARY 28, 1969

Portuguese release Goan freedom fighter

Mr. Mohan Ranade, a Goan freedom fighter who had been under Portuguese imprisonment for the last 14 years, was released on Wednesday [January 22] and will arrive in India in the second week of February. A letter to this effect was received to-day [January 27] by Mr. Sudhir Phadke, noted Music Director and Secretary of the Ranade Vimochan Samiti, from Mr. Shankar Kamat, Mr. Ranade's advocate in Lisbon. Mr. Phadke said Mr. Ranade left Lisbon for Rome on Saturday. The letter was written on January 22, the day of his release. The first news of Mr. Ranade's release reached India when Mr. Phadke received a cable from Mr. Kamat yesterday. The letter said that Mr. Ranade's appeal, which was filed after he had completed half the period of his 26-year term of imprisonment was heard by a court in Lisbon on January 22 and the same day he was released from jail in Lisbon.

A HUNDRED YEARS AGO JANUARY 28, 1919

The Late Mr. Guptan Namboodiripad.

An esteemed and eminent Malayalee Brahmana gentleman has passed away by death, at Desamangalam, Shoranur, at the age of 67, of Mr. A.K.T.K.M. Guptan Namboodiripad, the Karanavan of his large illom since 1908, when he succeeded his illustrious predecessor, the late Mr. Narayanan Namboodiripad. The deceased was profoundly learned in Mathematics and Sanskrit and is known to have produced an excellent translation of the larger portion of the Bhagavat Gita. Early in life, he adopted Banking as a serious business and his Bank at Trichur was a well-known business institution in the Namboodiri world. He always took a deep and practised interest in the spread of English education among his own community and as one result, all the members of his own family have acquired a useful knowledge of English.

CONCEPTUAL

Hypsometric curve

GEOLOGY

This refers to a graphical representation used to show the share of the earth's land area that is at various heights above or below sea level. The curve suggests that most of the earth's land area is located at predominantly two levels. In contrast to the normal distribution curve, the vast majority of the earth's land area is a little over sea level, while a little less, but still considerable, proportion of the remaining land is located at about 5,000 m below sea level. The hypsometric curve has been attributed to the significant difference in the densities of the materials that make up the continents and the sea bed.

MORE ON THE WEB



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<http://bit.ly/BrazilVale>