

SPORTS- EDIFYING WOMENS' ERA

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ABSTRACT

“Yatra naryastu puujyante ramante tatra devata

Yatraitaastu na puujyante sarvaastatraaphalaah kriyaah”¹

Mother India is Independent, but Women of India are not Independent yet. They still face discrimination in each and every phase...from birth till death. One such field where discrimination is rampant is 'sports'. What are the reasons for such discrimination, one wonders?

This paper delivers an insight into the History, Constitution and tenacities of the Sports Law with regards to human rights and Gender issues of women and also studies the types of disputes that are succumbed. The paper also tries to cover the various recommendations and suggestions that the Federation of Indian Chambers of Commerce and Industry (FICCI) came up to address the gender inequality and right to humans, especially women. There are various glitches in sports arena which covers a wide range of subject matters overlapping commercial issues, governance, discipline and conduct. Nomination and selection of sports' person and officials for national representation, employment issues, discernment and harassment from where, evolves the question of individuals right and abusing of gender. Also, the researcher would brief about National Sports Policy which was formulated by the Government of India for the first time in 1984 with the objective of raising the standard of Sports in the country and National Commission for Women Act (1990). The law should reconsider the position of 'Women' with respect to sports under the constitution of India. Finally, this paper aims in providing equal opportunity to women as equal to men. The remedy would be by controlling and regulating the sporting authorities such as the Indian Olympic Association (IOA), the BCCI, National Sports Policy and other National Sports

¹ Manusmriti 3.56

Federations (NSFs) by the rights and safeguards enshrined in the constitution for women in India under the **Article 15(1), Article 16(2), Article 39(e), and Article 51-A (e)**. Their regulatory powers are akin to the State, Central authority backed by the laws. A comparative analysis of Indian sports law with that of European Union and USA would be taken by the researcher in furthermore detail in the paper.

Keywords: *Women, Indian sports law, Human Rights, NSFs and IOA, Indian Constitution, European Union and USA, National Commission for Women Act (1990)*



INTRODUCTION

Realizing to wake up and challenging to get through, yet waning to succeed. It is very true in the arena of sports. Yes, very factual in fact it is in accordance to sports and sports life. Sports generates change. A change in social, economic environment pitching towards sustainability. Sports is the potential in creating social cohesion and challenging the prejudices of the social order. Also, sports have the potential to bridge equality in gender. Hitherto, rampant discrimination of gender could be noticed in sports. The common gender-stereotype that women are weak and incapable should be expunged. For this, sports should act as the tool to defy the muddle and women should gain self-esteem to overcome the hurdle. Visibility of women in the inroads of sports should accelerate high in order to break-down gender-stereotypes aiming towards sustainable development goals. Only a world with men cannot be imagined, equal opportunity must be given to both the genders. Sports should promote the value of fairness and equality. Women should be protected from violence and trafficking in sports by proper amendment of laws and measures safeguarding 'Her' integrity. There must be a great consideration and initiation taken by United Nations Organisation to protect women in all arenas. This paper uses doctrinal research methodology as a tool in all means to empower women and encourage them to pursue their careers in the field of sports.

HUMAN RIGHTS AND SPORTS

Simply being human we get human rights. Sports is an institution where human rights is akin to it. It enables a right to survive without discrimination. To a sports person human rights lay around responsibility on the shoulders benefitting the right of humans without violation and discrimination. Actually, sports as turned out to be a business that involves different standards, peculiarities, conventions, indifferent wages, especially gender discrimination which results in social inequality. All these could be put a full stop by human rights. Women become susceptible victims than men compared to their physiological appearances. Yes, it is undeniable due to various circumstances, socio-cultural senses, and societal setups women from the time of history they did

not have enough chance to prove themselves equal to men and compete along with them.² Human rights and UN collaboration can bring about a change in the arena of sports. Women can achieve their rights and freedom to human rights. This can reduce discrimination of women.

FICCI STEP TOWARDS GENDER EQUALITY

FICCI signed a MoU with UN to promote gender equality. The aim is to ensure equal rights and opportunity to women in workplace, market and society. They marched a movement towards the global solidarity to women with a motto “HE for SHE” in creating and employing the vision of gender equality benefitting humanity. This could be taken into consideration even in sports field so as to bring about equal opportunities and rights to women with that of men. Women should have access to every sport, given equal importance to that of men. This MoU aims in promoting research and advocacy on gender equality policies ensuring to build up leadership qualities and self-esteem in women to be professionals in all fields including sports.³

NATIONAL SPORTS POLICY

To promote sports activities in the country and integrate sports and physical education National Sports Policy came into being in the year 1984. To raise the standards of the sports this policy was formulated, which was reviewed every five years to keep a check on the advancement in sports. Government of India and Sports Authority of India in association with Indian Olympic Association and National Sports Federation laid their main focus on accomplishing distinction in sports in national and international level.⁴

National Policy for Women, 2011 was drafted with *vision -A society in which, women attain their full potential and are able to participate as equal partners in all spheres of life and influence the process of social change.* To promote budding talents especially from rural areas by providing

² A Legal Approach to the Interaction between Sports and Human Rights/Shafagh Malekzade Saghezchi/ Mediterranean Journal of Social Sciences MCSER Publishing, Rome-Italy/Vol 7 No 3/May 2016

³ FICCI and UN Women sign MoU to advance gender equality and women empowerment/www.business-standard.com/article/news-ani/ficci-and-un-women-sign-mou-to-advance-gender-equality-and-women-empowerment-115121500457_1.html (last accessed on 26/07/2018)

⁴ National Sports Policy/www.lexuniverse.com/sports-law/india/National-Sports-Policy.html/

medical, scientific, nutritional, financial support along with sports equipment, scholarships, coaching and other facilities to empower them in sports field.⁵

NATIONAL COMMISSION FOR WOMEN ACT, 1990

NWC is an act that came in to force in 1990. It has almost around 17 sections dealing with different aspects of women rights, duties and safety. There would be a commission set up by central government of India. It constitutes a chairman, five other persons with ability, integrity and standing with experience in law, management, social welfare, women welfare associations etc. The functions of the commission to resolve matters relating to women welfare and safeguard them, the same should be reported and notified to government annually. To make effective implementations and to take up cases relating to violation of women, which gives them *suo moto* rights. Also, the commission could undertake research and advancement in order to increase the status of women. Here, even matters relating to sports involving women, gender inequality, human rights violation issues can be raised and sorted out. This is another efficient mechanism in India to resolve women issues.⁶

NATIONAL SPORTS FEDERATIONS OF INDIA

Various number of sports federations are there in India. Amateur Soft Tennis Federation, Athletic federation, All India Chess Federation, All India Sports Council of the Deaf, All India Football Federation Football House, Hockey India, Amateur Kabaddi Federation of India, School Games Federation of India (SGFI)⁷, and many more. It is a wing of All India Council of Sports. Ministry of Youth Affairs and Sports in India who's Preamble clearly mentions the need of sports in the country laying down certain aims and objectives. *Whereas games and sports are essential for development of human resources and play an important role in projecting the image of the country*

⁵ National Policy for Women 2016/Articulating a Vision for Empowerment of Women/wcd.nic.in/sites/default/files/women%20empowerment%20poliy_Final_17May.pdf

⁶ THE NATIONAL COMMISSION FOR WOMEN ACT, 1990/ 30th August, 1990/Chapter 3/ Section 10- Functions of the Commission/

⁷ LIST OF RECOGNISED NATIONAL SPORTS FEDERATIONS FOR THE YEAR 2017/ updated final recognised list 31-7-2017 wid RSFs & amp; nspo.pdf/

at international level, it has been decided to set up “All India Council of Sports” as an advisory body. Sports is a way of life it should be promoted among the youth. Sports should reach every nook and corner of the nation including rural and tribal area. Certain executions made with keeping in mind women and physically challenged, tribes. Provisions to prevent drug abuse, women harassment. Ensuring professionalism, transparency, and proper functioning of Federations. Encouraging sports sciences and medicines. Promoting indigenous sports in the country. Serious action towards malpractices, matching fixing in competitive sports.⁸ This could be a means to protect women in sports field.

INDIAN OLYMPIC ASSOCIATION

Yes, in 21st century we can't deny the fact that women are getting opportunities to showcase their talents in sports arena. In this scenario, they should get proper coaching, enough motivation to reach exemplary heights. Now, there are very few in handful women are able to participate in sports. The society is such filled with stereotypes, negative notions, looking down towards women and her capabilities. An environment should be created to enable girls and women to achieve in national and international level as they possess that caliber. Indian Olympic Association or Bharatiya Olympic Sangh, a non-governmental organisation exercise jurisdiction over whole of India, amended certain rules and regulations regarding sports. *To resist in the realm of sports all pressures of any kind, whether of a political, legal, racial, religious or economic nature.* It aims at opposing discrimination on the grounds of race, gender, religion, legal, politics and also to resist violence. Also, it has special mentions about women in National and International Olympics.⁹

CONSTITUTIONAL AND LEGAL RIGHTS TO WOMEN

Indian Constitution is the culmination of constitutions of the world. It is a framework on fundamental duties, directive principles, rights to its citizens etc. Women are given special position in the Indian Constitution. Article 14 confirms women equality before law. State to make special

⁸ Available at www.sportsauthorityofindia.nic.in/ (last accessed on 26/07/2018)

⁹ MEMORANDUM AND RULES AND REGULATIONS OF INDIAN OLYMPIC ASSOCIATION/
www.olympic.ind.in/images/constitution.pdf (last accessed on 26/07/2018)

provisions in favour of women and children under Article 15(i). Equal pay for women as men under Article 39. Maternity relief under Article 42. Renounce practices derogatory to dignity of women and enhance common brotherhood under Article 51(A (e)). In panchayat not less than one-third women belonging to schedule tribe and caste must take part in election under Article 243(D). Reservations in the office of Municipalities to women under Article 243(T).

Constitution has made mandate to establish legal provisions in favour of women to ensure equal rights and counter social discrimination. There are provisions under Indian Penal Code (IPC). Section 302/304- Homicide for dowry, dowry deaths; Section 354- Molestation; Section 363-373- Kidnapping and Abduction; Section 376- Rape; Section 498- Physical and mental torture; Section 509- Sexual harassment. Also, special initiatives for women are taken like National Commission for Women in January 1992. It is a statutory body enabled to safeguard women and women rights. Reservation for Women in Local Self Government again passed in 1992 by Parliament under 73rd Constitutional Amendment Act, aims at survival, protection and development of girl child and building up a better future for the girl child. Some case laws are *Kirandeep D/O Harwinder Singh vs Chandigarh Rowing Association* (11 March, 2004)¹⁰, *State of Punjab v.V.K. Khanna* (2000)¹¹, *Moshak v. University of Tennessee* case regarding discrimination in College Athletics¹², *Indian Olympic Association Vs Veeresh Malik and Ors*¹³

USA AHEAD OF INDIA IN SPORTS

United States won 61 medals among 121 they participated in Rio Olympics, 2016. Women in US are become empowered force matching their counterparts in the Olympics. The upsurge of women in sports in America was from Title IX of Education Amendments Act of 1972. A federal law prohibiting completely gender discrimination in any educational Programme involving government funding. In US sports law is divided into three:- Amateur sports, Professional sports, International sports. Amateur Sports Act of 1978 exclusively for school and collegiate level.

¹⁰ AIR 2004 P H 278

¹¹ AIR 2001 SC 343

¹² *Moshak v. University of Tennessee: Discrimination Too Common in College Athletics*

¹³ **MANU/DE/0108/2010**

Professional sports governs the professionalism and contractual relations between sports persons. International sports regulates International sports competition like Olympics, FIFA, World Cup. Can a similar law amended in India could it make difference, no one can give definite answer.

As such per se there are no specific sports law and state or central legislation as such for sports is made in India except some sports authority like IOA, BCCI, FICCI to regulate sports. For example, the denial of stadiums by the BCCI can attract liability for abuse of dominant position under section 4(2)(c) of the Competition Act, 2002.

Whereas, compared to UK in 1996 a Royal Charter was established called UK Sport in collaboration with the home country sports councils. The fund is raised for sports by the Department of Culture, Media and Sport.

In China, there is National Legislation on sport as The Law of People's Republic of China Physical Culture and sports, 1995. Regulates sports right from school level without gender discrimination and empowering the sports person may it be men or women.¹⁴

ARBITRATION AND SPORTS

A form of Alternate Dispute Resolution (ADR) is Arbitration. A legal technique for resolving matters outside the court. Where a third party hears and lays on decision which would be legally binding on both parties. In India Arbitration is governed by the Arbitration and Conciliation Act 1996 ("Indian Arbitration Act"), which is based on the UNCITRAL Model Law. Dispute resolution becomes very important as sports is becoming professional and more competitive with involvement of fame and huge sum of money. Not all case could be dealt up by the Indian courts, as they are already piled up with various other cases. So, ADR and Arbitration could serve the purpose by solving the cases out of the court and enabling justice. Even, human rights violation against women could be taken up in ADR. Court of Arbitration for Sport (CAS) is already there in international level, which must be made mandate in national level as well. This is a inexpensive

¹⁴ Emergence of Sports Law in India/Gaurang Kanth/ india law journal/

and less time consuming with flexibility and informal. No public or media interference. This adds up to the advantages.

CONCLUSION

Sports has been camouflaged as corporate entity. An industry with increasing market and opportunity which is the need for proper legal framework. Unlike UK and USA, our country does not have national legislation to regulate sports and authorities. On this issue government should take a look on. US gives equal interest to both genders, their abilities are respected, but not in case of India where women have deprived of their opportunities and given equal respect to that of man. Sports should be brought under legislation and enacted in State List under 7th schedule 33rd entry of India. Unlike women commission there should be a National Sports Commission established to administer sports, human rights and gender equality with special provision dedicated to women only.

Sports should serve as the gateway to empower women. Women are not less than men. Though they have variations in their physiological features they can compete with same pace as equal to man. There are Dowry Act, Succession Act, Hindu Marriage Act likewise Sports Act should come into existence with numerous apt provisions empowering women and enabling her equality in sports field. Any trafficking, sexual harassment, violation, discrimination should be considered seriously and severe punishment should be notified under the sports act. Gender inequality in sports should be penalized and noted under the constitution of India. Social stigmas on women and her capabilities should be up rooted and government and several organisations should join hands in bringing positive vibes in the life of a women. It should be a “HE for SHE era”. Every women must treated equal not only in sports but also in all fields. Women should become more visible in sports creating history in India. Also, there should be regulation on media and advertising while utilizing sportswoman. Finally, women should be encouraged, motivated, recognized and sponsored. Whichever ‘Mega sport Events’ takes place they should spread a word of equality to both gender and introducing women sports in large number. We should challenge to bring about fairness and gender equality in sports world cause it is a tool for sustainable development. Last but not the least, sports should be the medium ‘edifying legitimate women’s’ era.’