

**Celebrating and Encouraging ‘She-roes’: In pursuit of promoting gender equality in Sports Law**

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**ABSTRACT**

*Women's participation in sports has been marked by discrimination on the basis of gender. It has not been an easy journey for successful sportswomen to achieve the growth that they did. What were the various challenges faced by these women? How deeply is the problem of sexual harassment engraved in the sports field? How are these women portrayed by the media and what is the impact of such portrayal? Why are some of these sportswomen 'glorified' and 'objectified'? Are the laws and rules relating to sports accommodating enough to encourage participation of women and girls at various levels? How come till date there isn't a specific legislation addressing these issues? These are some of the key issues that are discussed in this paper. In this paper the authors have along with the Indian perspective included the American and the English developments and have also concluded with certain suggestions.*

**Key Words:** discrimination, gender, law, sports, women

## **I. INTRODUCTION**

*“Gender is a matter of culture; it refers to the social classification of men and women into ‘masculine’ and ‘feminine’. That people are male or female can usually be judged by referring to biological evidence.”<sup>1</sup>*

Discrimination on the lines of gender is rampant in the society. It is a deep rooted belief in our culture that humans should be treated differently on the basis of their visible physiological attributes. Today sexual discrimination is being recognized as a wide spread and intractable phenomenon. In the context of sports, such discrimination is taken for granted,<sup>2</sup> and it continues to permeate our society and social institutions. The body and hegemonic notions of femininity and masculinity<sup>3</sup> are central to the discourses and representation of both men’s and women’s sport: ‘Sport especially at the elite level, plays an integral role in the assemblage and protection of the endangered and sexualized postmodern bodies.’<sup>4</sup>

Women particularly in India are still viewed as the ‘weaker sex’ and this mentality continues to impact women in a big way, especially in the arena of sports. Sports in India have long been dominated by men and women have been deprived of participation in games and sports by direct or indirect social inhibitions. Though these women may dream of excelling in their pursuits rarely do they receive any encouragement from home, even when there is encouragement from home women still have to contend with lack of adequate facilities at schools and colleges compared to their male counterparts.<sup>5</sup>

### **1.1.HISTORY OF WOMEN’S PARTICIPATION IN SPORTS**

It is a known fact that earlier, women were not allowed to engage in any athletic or sporting activities. They were barred from competing in various sports events, especially in the Olympics, which was known to discourage women participation, athletes and trainers, participated in the nude. Even during the 19<sup>th</sup> century, it was a common belief that sporting activities were detrimental to a woman’s psychological, physiological and social development, and thus women were dissuaded from taking part in vigorous activities. Some believed women engaging in sports would become sterile or age prematurely. All the 295 athletes at the first modern Olympics at Athens in 1896 were male. At the 1900 Paris Games, only eleven competitors were female and only six athletes competed at the St. Louis Olympics four years later. Women’s track events did not become Olympics events until 1928 Amsterdam Games.<sup>6</sup> It was not until 1992 that the international Olympic Committee (IOC) decided to include women’s ice hockey in the Olympic program.<sup>7</sup> Although, modern Olympics have been in existence for more than a century, women athletes have only recently begun to gain equality.

### **1.2.WOMEN AND SPORTS IN INDIA**

Indian women have shown exemplary results in many sports and have brought various laurels to the nation. However, women athletes have generated less publicity through their performances have outshone their male counterparts. There are many Indian women who have made the

country proud such as Mary Kom, Sania Nehwal, Karnam Malleshwari, P.T. Usha, Mithali Raj, Sania Mirza, Jhoolan Goswani and several others.<sup>8</sup>

## **II. CHALLENGES FACED BY SPORTSWOMEN TODAY**

'If a woman, or a group of women, does well in any sport in India, it is not because of the State and its establishment but due to a lot of commitment and hard work despite social and infrastructural inhibitions.'<sup>9</sup> But who are these women? Where do they come from? How long have they played? What are they paid? The average reader of the sports page of any major newspaper in this country would be hard pressed to answer any of these questions.<sup>10</sup>

The victory of a women's hockey team in Manchester, the achievement of Sania Nehwal in Badminton, and the worldwide laurels achieved by Mary Kom in Boxing heralds a new dawn for women participating in sports in India. However, encouragement by the Government, families, corporate houses and, in particular, the media is required to encourage a greater participation of women in sports.<sup>11</sup>

Even the mindset of those who are liberal as compared to those who oppose or overlook women's participation, it is such that it is difficult for them to believe that Indian women can compete at international level and represent India. Kaveri Prakash, was a young, bright female athlete, is a prime example of women who faced adversities and issues related to participating in sports in India because of lack of finances and instances of sexual harassment.<sup>12</sup> Prakash was coached by a former athlete who agreed to train her for free, she participated in various district level competitions and all her trips were self-financed. Eventually she gave up, and with that her ambition to become an athlete and participate at the international level representing India collapsed.

### **2.1.SPORTS AS A SOURCE OF EARNING FOR WOMEN**

In India sports are not considered as a source of earning for women. The job prospects for professional women, sportspersons in India are extremely limited. Apart from cricket, lawn-tennis and golf, women participating in various other sports cannot possibly become financially independent by adopting sports as a career.<sup>13</sup> The Indian Railways and some Public Sector Undertakings are the only few organizations that enable women to have a profession as well as give the liberty to practice sports. However, Netaji Subash Chandra National Institute of Sports provides scholarships for women under the scheme framed by the Sports Authority of India, under the aegis of the Ministry of Youth Affairs and Sports. The scheme was in pending revision for many years but the government decided to implement the women component of the scheme in the year 2008-09.<sup>14</sup>

### **2.2.PROBLEM OF SEXUAL HARASSMENT**

One of the main contributory factors that hinder women's participation in sports, especially in India is the problem of sexual harassment. Sexual vulnerability is the biggest challenges for women in sports and the careers of many young sportswomen have come to a halt because of this reason.<sup>15</sup> The situation in India is so grim that families do not allow their women to be trained by male coaches or participate in competitions that are held elsewhere than their own hometowns. A

negative mindset is prevalent and in a majority of cases, male coaches are viewed with suspicion, and women too prefer the idea of being coached by a woman.

The reason that many women have discontinued playing sports is in order to protect themselves from constant harassment and abuse. They endure and suffer harassment from coaches due to the fear of not being selected, social inhibitions, and lack of knowledge of the appropriate forum to redress their grievances. The sexual harassment case involving the hockey coach<sup>16</sup> has brought attention to the vulnerability, susceptibility and hardships that women face in the arena of sports. This risk of sexual harassment and sexual vulnerability arises from many factors like weak organizational control within sports clubs, dominating attitudes of coaches, as well as factors like insecurity, low self-esteem, and the high ambition of the athletes. These issues need to be addressed by framing guidelines along the lines of the international convention.<sup>17</sup>

### **III. WOMEN IN SPORTS AND LAW**

#### **3.1. THE INTERNATIONAL SCENARIO- COVENANTS AND GUIDELINES**

Sports and physical activities were first recognized as a 'human right' in the International Charter of Physical Education and Sport, adopted in 1978 by the UNESCO. The Preamble of the Charter states that:

“One of the essential conditions for the effective exercise of human rights is that everyone should be free to develop and preserve his or her physical, intellectual, and moral powers, and that access to physical education and sport should be assured and guaranteed for all human beings.”

UNESCO has, recognizing the central role of the IOC, called for national enforcement of the Olympic Charter, particularly the principles of 'non-discrimination'. Article 1 of the UNESCO International Charter of Physical Education and Sports<sup>18</sup> states that “the practice of physical education and sport is a fundamental right for all.” The International Olympic Committee (IOC) has a critical role in providing an additional impetus toward equality of women in all sports and not only the Olympics. Its non-discrimination principles are a part of the international conventions for equality of opportunity for women in sports as reflected in the current Charter, which was adopted in 2004. It states that one of the roles of the committee is to:

“Strongly encourage, by appropriate means, the promotion of women in sport at all levels and in all structures, particularly in the executive bodies of national and international organizations with a view to the strict application of the principle of equality of men and women.”

The IOC Charter also mentions:

“The practice of sport is a human right. Every individual must have the possibility of practicing sport, without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play.”

The Beijing Platform for Action was adopted at the Fourth World Conference on Women in 1995. It has been used to draw the attention of various countries to the problems women face; it

contains mechanisms that could be used to highlight the specific issues of sport with the Platform that has recognized as important, and has led to changes in the laws of some countries. Under the list of actions to be taken, clause 107(f) calls on governments to “create and support programs in the educational system, in the workplace and in the community to make opportunities to participate in sport, physical activity and recreation available to girls and women of all ages on the same basis as they are made available to men and boys.”

In March 2010, the United Nations Commission on the Status of Women conducted the 15 year review of the Beijing Platform Action. Further the International Covenant on Civil and Political Rights provides that women and men enjoy all the civil and political rights in the convention on the basis of equality. On this basis of equality of opportunities, this is fundamental right, civil and political rights to incorporate athletic participation, as well as leadership positions in various sports governing bodies. This covenant has a broad application, contains an enforcement mechanism, and has been used to secure greater gender equality in areas that are analogous to sport.

- Article 26 provides that all people are equal before the law, are entitled to equal protection of the law without discrimination and that the law shall guarantee equal and that law shall guarantee effective protection against discrimination.
- The Covenant has an enforcement mechanism, namely that 1<sup>st</sup> Optional Protocol, under which individuals can submit written communications to the UN Human Rights Committee.
- The Human Rights Committee has decided that Article 26 prohibits discrimination in law or in fact in any field regulated by public authorities and that its scope is not limited to civil and political rights. In *Broeks v Netherlands*<sup>19</sup> it was applied to a gender context security law, where the then valid Netherland law made the applicant a victim of violation, based on sex, because she was denied a social security benefit on an equal footing with men.

Rules under customary International Law can be universally binding and the domestic law comes to incorporate them once there is a fairly uniform and consistent use of the international customary laws and practices. Non discrimination and equal opportunity principles have emerged as a principle of international customary law.<sup>20</sup> The Supreme Court of India in the case of *Vishaka v State of Rajasthan*<sup>21</sup> cited the Beijing Platform for Action, in addition to CEDAW, in strengthening women’s protection against sexual harassment in the absence of any specific legislation.

### 3.2.THE UNITED KINGDOM

In the United Kingdom, the Sex Discrimination Act, 1975 (SDA) prohibits discrimination on the basis of any ground; but has however recognized sports as an exception. The Act offers equal opportunities to women, particularly in employment. In relation to sports, section 44 of the SDA restricts females from competing with males where the physical strength, stamina, and physique of the average woman would put her at a disadvantage as compared to the average man.

In the case of *The Football Association Limited and the Nottinghamshire Football Association v T Bennett (Ms)*<sup>22</sup> the Football Association prohibited Bennett from playing for a boys team as

they did not support the idea of mixed teams competing in organized league matches. Bennett was therefore denied the chance to compete on the grounds of sex. The principle laid down in this judgment was that the test would be whether the average women would be at a disadvantage playing a particular sport. Football was identified as a sport belonging to this category.

The court felt that putting an end to this distinction between the sexes in the case of game like football would be stretching the bounds of judicial creativity beyond the permissible limits. This judgment emphasized the difficulty of breaking down the rigid notion of sexual divisions in sport. Lord Denning in particular opined “It is plain as can be that football is not within the Sex Discrimination Act. If the law should bring football within it, it would be exposing itself to absurdity. The statue would be ‘an ass- an idiot ‘if it tried to make girls into boys so that they could play in a football league.’”

In the decision of *London Council v Farrar*<sup>23</sup> it was held, that in support of the judgment that Section 44 of the Sex Discrimination Act only dealt with situations where men and women might be playing in the same competition stressing that it did not apply to competitions where women were playing against other women. This legally validates the separation of women in sports. Women competing with each other are not subject to Section 44 of the Act.<sup>24</sup>

In June 2005, Euro 2005 was hosted, which was the Women’s Football Championship. The high quality of sportsmanship in this tournament was itself enough to demonstrate eloquently that section 44 of the Sex Discrimination Act was perhaps outdated. The law has been successful in avoiding sex discrimination off the pitch, in overruling a decision wherein the FA refused to award the coach qualification to a woman.<sup>25</sup> The law was also successful in overturning the barring of Rachel Anderson from attending the Professional Footballer’s Association annual awards dinner at a ‘men’s only’ venue.<sup>26</sup>

Further Article 39 of the European Communities Treaties holds that any measure which is likely to constitute an obstacle to the free movement of workers, is likely to be a violation of the free movement principle. The restriction on the same when it comes to the difference in gender, however, seems like a less obvious violation. In the *Bosman case*<sup>27</sup>, the European Court of Justice determined that any rule prohibiting or, more broadly discouraging nationals of a member state from exercising their right to freedom of movement within the Community, acts as a limitation on that freedom, even when it takes effect irrespective of nationality and is still indirectly a discriminative restriction.

Drawing an inference from this, it can be questioned whether the prohibition of women from participating in men’s sporting events is a violation of this provision? It has been broadly understood that the sporting exception holds good so long as it is being followed for the benefit of the game. Even though the demand for participation of women in all sports gains momentum, it is pertinent to mention today that most of the rules and regulations are being framed keeping in mind the physical limitation of a female, which women do not object to. For example in tennis Grand Slam tournaments, the men’s tennis matches comprise of five sets, while the women’s comprise of three sets; and in Golf, women’s tee is at a lesser distance from the hole as compared to men.

### 3.3.THE UNITED STATES OF AMERICA



In the United States, where sports enjoy a commercial status value and market, it is significant that women's participation grew only after a deliberate legal intervention. Title IX to the Educational Amendments was enacted by the government in 1972 which states that there could be no sex discrimination in educational programs. To provide more opportunities for women the US Department of Health, Education and Welfare bought the Athletics Regulation in 1975 to ensure that women were not denied any opportunity that was available on the playing fields.<sup>28</sup> The passage of Title IX in 1972 and the subsequent Regulation created a new world for female athletes, and the consequent growth of girls and women's sports programs and their standard has been spectacular.<sup>29</sup>

These simple enactments paved the way for hundreds of young women to gain higher education and pursue sports.<sup>30</sup> However, even in the midst of growth, female athletes still face instances of sexual harassment, low salaries, and resistance to their presence on the playing fields.<sup>31</sup> There are various NGOs in different countries that are working towards promoting equality of women in sports.<sup>32</sup> The organizations are in a position to use international tools, as well as the laws in their own countries, to continue to press for equality of women in sports and make it a reality.

### 3.4.INDIA

Despite the recognition of women's rights at the international and national levels, the discrimination against women continues unabated in India. Lacunae in various enactments, absence of effective executive machineries to ensure the women's rights and increasing caseload shows the authorities' failure to uphold women's rights in various parts of India.<sup>33</sup> In India, although laws prohibiting gender discrimination in education and employment are prevalent and general laws have provided strong tools for eliminating discrimination against women, laws with specific focus on sports are still not formulated, which could be a great significance for a positive change.<sup>34</sup>

There is a host of legal provisions relating to equality and empowerment in India. Article 14 of the Indian Constitution mandates that the 'State shall not deny to any person, equality before law and equal protection of laws within the territory of India.' Article 15, 16 of the Indian Constitution prohibits discrimination on gender basis. But the area of equality on the basis of gender like in domain of sports is still to be addressed in India.

In *Vishaka v State of Rajasthan* the Supreme Court held that sexual harassment of working women at her work place amounts to violation of rights of gender equality and right to life and liberty which are guaranteed under Article 14, 15 and 21 of the Indian Constitution.

The National Policy for Empowerment of Women, 2001, is also relevant and its goal is to bring advancement, development and empowerment of women. The objectives of this policy include full development of women, enjoyment of all fundamental freedoms, equal access to participation and decision making in health care, quality education, employment, and elimination of all forms of discrimination against women, changing societal attitudes, elimination of all forms of violence against women and strengthening partnership with civil society, particularly women's organization.



One common example of discrimination, which does not relate to the participants in various sports, but is a part of social reality is the vast gender-wise difference in the wages that are paid in the sports industry. The discrimination practices at stitching units which manufacture footballs are blatant examples. The wages received by these women in these units are much less as compared to men in the same unit. Thus equal remuneration for the same work does not seem to be the practice in sports equipment manufacturing units.<sup>35</sup> *In Randhir Singh v Union of India and Ors*<sup>36</sup>, it was held that 'Equal Pay for Equal Work' is not a mere demagogic slogan but a constitutional goal capable of attainment through constitutional remedies by the enforcement of constitutional rights.<sup>37</sup>

India is also a signatory to CEDAW (Convention for Elimination of all kinds of Discrimination against Women). CEDAW lays down certain guidelines which the signatories are obliged to follow and contains a broad and comprehensive prohibition against gender discrimination and promotes equality in employment, education, health and social participation. It contains specific provision, Article 10(g), which explicitly addresses sports:

“Each party shall take all appropriate measures to eliminate discrimination against women and to ensure to women equal rights with men in the field of education and in particular to ensure, on the basis of equality of men and women..... the same opportunities to participate actively in sports and physical education.”

Further, article 13 of CEDAW states that:

“States parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of women and men, the same rights in particular.....the rights to participate in recreational activities, sports and all aspects of culture life.”

The Constitution of India, in consonance with the principles of international law, clearly envisages that women have the same right as men, clearly enumerating in letter and spirit that there should be no discrimination against women in any sphere of life including sports. Thus bearing in mind the provisions of Constitution of India, the decision of the Indian Supreme Court as well as the courts of other countries, women sportsmen in the country are now capable of bringing legal action against their sports federations and clubs if they are subject to discriminatory practices without any valid jurisdiction.

#### **IV. DEPICTION OF WOMEN BY MEDIA**

Gender based discrimination is also evident from the depiction of women in sports by media. The negative portrayal of women by media is also a problem plaguing this area. Apart from sports like gymnastics and tennis, women sporting events receive less coverage from the media, which is more interested in covering the male events of the same discipline much more vigorously, the prime example being cricket itself.

Indian women fail to get recognition in the media, but it cannot be denied that even Indian men in sports other than cricket, also face the same problem. However, the denial of opportunity to be recognized is more glaring in the case of Indian women excelling in sportsman example can be given of the leading sports magazine 'Sports Star'.

#### 4.1. SEVERAL INSTANCES OF GENDER BASED DISCRIMINATION

In August 2003, long jumper Anju Bobby George became the first Indian woman athlete ever to win a medal at the World Athletics Championship, within a leap of 6.70 meters. The Sports Star issue in August 2003 featured a total of ten sports persons in its cover including Bechkam, Steve Waugh, and Sharne Warne etc. However, Anju Bobby George failed to make it to the cover page despite the significance of her effort. Koneru Humpy won the world under-10 Chess Championship in Cannes (1997), the world under-12 title in Spain (1998), the world under-14 in Spain (2001) and the world junior Championship in Athens (2002). She became Asia's youngest Women International Master in 1999.<sup>38</sup> But she did not receive the admiration from the media, the way her, male counterparts did. There needs to be a significant change in the attitude of the media, or else it shall become difficult for Indian women to relate to and emulate a female sporting idol.

Another example of gender discrimination is the meager media coverage given to the Indian women's cricket team which defeated the Australians in the World Cup and went unnoticed by the majority of the country. Similar was the fate of the Indian hockey team which won the Commonwealth Games Gold Medal in 2002. In the T-20 Cup held in London in the year 2009, the media coverage of the men's defeat was far more intense as compared to the women's team which reached the semi-final in the women's competition.<sup>39</sup>

#### 4.2. 'PHYSICAL ATTRACTION' AND 'GLORIFICATION OF SPORTSWOMAN'

This discriminatory attitude is also evident in the way women athletes are portrayed through the print and the electronic media, both in India and abroad. Coverage, marketing and promotion of women sports are often highly sexualized.<sup>40</sup> The value of the female athlete is often determined in terms of her body, attractiveness, and sex appeal, rather than in terms of qualities that define her as an athlete. A glaring example is of tennis in which women are given great importance and competitors like Maria Sharapova and Anna Kournikova attract more attention globally than only their male counterparts, but also much more successful women tennis players who are less glamorous.

The All-England Club has admitted that 'physical attraction' is taken into consideration. When it comes to choosing which women play on Centre Court at Wimbledon, good looks count far more than big shots.<sup>41</sup> An example of glorifying glamour in India can be seen in the popularity which Sania Mirza generates. 'Such aspects of sports leading to glorification of the bodily aspects degenerates the societal values and has an adverse affect on the psyche of adolescent girls.'<sup>42</sup>

There is a strong focus on the 'ideal type of women', which usually creates a stereotype. This sends across a wrong message to the younger generations, in terms of their perceptions of sports as well as gender equality. Capitalizing on attractiveness is one way through which women athletes are earning more than through scholarships, this has led to changed cultural expectations from women in the sports field. Instead of empowering women, it has led to objectification and reinforcement of gender inequalities which is a graver problem, especially, in a country like India.

Media is a powerful tool to create public awareness which mould the opinion of the people. There is thus a need for effectively utilizing media for an increased participation of women in sports. An ideal start to the process would be increased media coverage of the women's sports events and an appropriate appraisal of their achievements in the sports field.<sup>43</sup>

## **V. CONCLUSION**

The reason why women have still not gained their rightful position in the arena of sports is because of the lack of a specific and effective legislation. There is a need for a law that deals with ensuring compulsory participation of women in sports at all levels especially schools, colleges, etc. and an effective mechanism to tackle discrimination. A change in the policies related to sports is also necessary with specific attention to the concerns of women in sports.<sup>44</sup>

This should not be limited only to ensuring equality but should be holistic and also focus on other issues which have an impact such as health issues, prevention of sexual harassment and violence towards women etc. sports organizations, its members and other people associated with sports have an enormous responsibility to ensure that no form of sex discrimination occurs on and off the field. It is their responsibility to educate all those concerned about sex discrimination, its aspects and its legal consequences.<sup>45</sup>

### **5.1.SUGGESTIONS FOR ENCOURAGEMENT AND PARTICIPATION OF WOMEN IN SPORTS**

Sports programs should take into consideration the particular needs of women. Specific actions that would further the cause of successfully designing a sports policy which focuses on and strives to encourage female participation in sports would require:

- Adoption of 'women-centric' approach, which would seek to learn directly from women about their needs and interests, and seek their inputs in the design and content of various programs.
- Encouragement of female participation in sports at school level.
- The inclusion of women in important positions of authority in sports governing bodies.
- The restrictions of physical attributes should not be made a barrier to women participating in sports.
- An atmosphere should be created where women feel physically and emotionally safe, and have freedom of expression, unhindered by male dominance.
- A talent pool of female coaches, referees, and trainers should be developed.
- Effective implementation of guidelines of sexual harassment as laid down in the *Vishaka* judgment to prevent sexual harassment from becoming a hindering factor for women participating in sports should be carried out. National commitments for gender equality made under CEDAW and the Beijing Platform for Action must be effectuated.
- National legislation that guarantees equal access and opportunities in sport must be enacted.
- Relevant national health and educational policies must be implemented to ensure that barriers to the participation of women are reduced.

Equal participation of women and girls in sports, is a tool in the hands of the government to promote gender equality and empowerment. In particular participation of women in sports can

shape attitude towards women's capabilities, especially in traditionally male domains. Thus, concerted efforts are needed to ensure gender equality in sports for the empowerment of women and girls through sports to fulfill the goal envisaged in the Preamble of the Constitution.

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