



WP No. 16953 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Dated : 20.12.2021

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

Writ Petition No. 16953 of 2021

M. Sameeha Barvin
D/o. Mujith
C/o. Mohammed Ghowe
No.36, Eagavalli Amman Koil Street
Thandurai, Pattabiram
Chennai - 600 072

.. Petitioner

Versus

1. The Joint Secretary
Ministry of Youth and Sports
Department of Sports
Government of India
Shastri Bhavan
New Delhi - 110 001
2. The Director General
Sports Authority of India
Government of India
Jawaharlal Nehru Stadium Complex
(East Gate) Lodhi Road
New Delhi - 110 003
3. The Chairman
All India Sports Council of the Deaf
No.1-B, Institutional Area
Near Janata Flats, Sarita Vihar
New Delhi - 110 076



WP No. 16953 of 2021

4. The Secretary

Department of Welfare of Differently Abled Persons
Government of Tamil Nadu
Secretariat, Chennai - 600 009

5. The Principal Secretary

Sports Development Authority of Tamil Nadu
Government of Tamil Nadu
Jawaharlal Nehru Stadium
Periyamet, Chennai - 600 003

.. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus directing the third respondent to include the petitioner's name in the final selection list and send her to participate in the Fourth World Deaf Athletics Championship, which is scheduled to be conducted at Lublin, Poland from 23.08.2021 to 28.08.2021.

For Petitioner : Mr. R. Prabhakaran

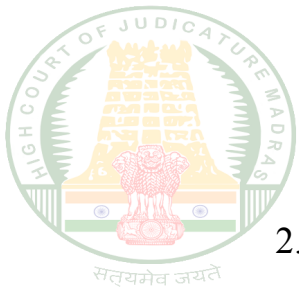
For Respondents : Mrs. N.K. Nithila Vani
Central Government Standing Counsel for RR1 to 3

Mr. G. Krishnaraja
Government Counsel for RR4 and 5

ORDER

“Disabled women struggle with both the oppression of being women in male dominated societies and the oppression of being disabled in societies dominated by the able-bodied”

- Susan Wendell¹,



WP No. 16953 of 2021

WEB COPY

2. That in effect, it explains the tribulations faced by the petitioner, who finds it impossible to speak or listen, but able to achieve gold and silver medals in long jump and high jump at the State and National levels, having been denied the opportunity of participation in the Fourth World Deaf Athletics Championship, 2021, held at Lublin, Poland and being able to participate in the same only on the strength of the interim order dated 13.08.2021, on knocking the doors of this Court.

3. Women athletes with disabilities, aspiring to high levels of sport competition often face double discrimination associated with gender and disability². Being a woman and also having a disability, survival in the world of sport is a kind of double jeopardy in the practical sense, where the barriers faced are not only from the angle of *being a woman*, but also *being disabled*, thereby compounding the problem. Hence, they require more institutional, legal and societal support to achieve success with specific reference to the world of sport.

4. The case at hand is not to be viewed as being limited only to the factual circumstances, in which, the petitioner has approached this Court and the specific narrow relief sought for thereunder. Rather it brings to light the various



WP No. 16953 of 2021

issues faced by the women with disability in the world of sports. There have been diverse studies as well as research on the issues or barriers faced by able-bodied women themselves in sports, which has always been treated as a field dominated by men both due to stereotyped understanding of physical strength and attributes as well as the socio-cultural mindset, which itself acts as a barrier for women to excel in sports. Be that as it may, the cases like the one at hand, would expose the fact that the generalised issues faced by female athletes are quite different when compared to athletes, who are female and disabled. It is significant to note that where the axis of discrimination is not singular, but plural, multiple, cumulative or intersectional, the same has to be viewed with an analytical lens in order to understand the problems and barriers faced by such persons with more than one axis of discrimination which is unique and different and hence, the redressal of such issues needs a more holistic and understanding approach.

FACTS:

5.A brief factual narration may help get a hang of the case. The petitioner is a disabled person with loss of hearing to the extent of 90% and she has also lost her speech ability at the age of six. With such disability, she excelled herself in the sports events by participating in the long jump and high jump in National and State levels. She has several first to her credit. She had so far won 13



WP No. 16953 of 2021

medals viz., 11 gold, 1 silver and 1 bronze in National and State Level

WEB COMPETITIONS. When the petitioner participated in the National selection test

conducted at New Delhi on 22nd July 2021 by the third respondent, among the

12 participants, she excelled herself in jumping a distance of 5.5 meters in the

long jump, surpassing the eligible parameter of 4.25 meters which is the

requirement to get selected. In spite of such performance, she was not selected to

participate in the World Deaf Athletics Championship. The petitioner came to

know that out of the 12 candidates viz., 10 male and 2 female candidates, in the

female category, she secured the first in the selection list. When she sought the

reason for her non-selection, it was disclosed that the selection authorities were

not inclined to send a lone female member to the event and therefore, they have

preferred male members for the event. This, according to the petitioner, is a

discrimination based on gender and thereby her achievement in jumping 5.5

meters over and above the required 4.25 meters has been ignored. Therefore, the

petitioner has filed the present writ petition seeking a mandamus, directing the

third respondent to include her name in the final selection list and send her to

participate in the Fourth World Deaf Athletics Championship, which was

scheduled to be held at Lublin, Poland from 23.08.2021 to 28.08.2021.

6. On 13.08.2021, when the writ petition was taken up for admission, this



WP No. 16953 of 2021

court has directed the petitioner to appear before the third respondent and on

such appearance, the third respondent was directed to declare her as selected

and permit her to participate in the 4th World Deaf Athletics Championship held

at Poland under the women category. Accordingly, she was permitted to

participate in the said event and upon her performance, she is now eligible to

participate in the World Deaf Olympic Championship 2022 as well as

Paralympic 2023.

CONTENTIONS OF THE PARTIES:

7.The learned counsel for the petitioner made an extensive arguments about the discrimination meted out by the petitioner at the hands of the respondents on the grounds of gender as well as disability and hence, sought appropriate direction to the authorities concerned, considering this case as an eye opener for all female athletes with disabilities. According to the learned counsel, the petitioner's merit and ability have been grossly disregarded by the respondents without any reason. Inviting the attention of this Court to the communication dated 28.07.2021 of the third respondent, the learned counsel submitted that in the said communication, the ability and performance of the petitioner was never undermined or questioned, however, the third respondent expressed their inability to select the petitioner purely on gender biased reasons.



WP No. 16953 of 2021

Thus, according to the learned counsel, this is a clear case of gender discrimination, which should not play as it spoils sports.

8. The learned counsel further contended that though this court has granted an interim order on 13.08.2021 in favour of the petitioner, she along with her mother, has been driven from pillar to post without there being any help forthcoming from any body. The State has a deaf sports body in the form of Tamil Nadu Sports Council of the Deaf (TNSCD). It is an incompetent body that is barely functioning with the objectives with which it was formed. The petitioner was not properly treated by the officials of All India Sport Council for the Deaf (AISCD) during her stay at Delhi. She was dismissed from the conversation, when it was her turn to interact with the rest of the team, before leaving to Poland. Further, the petitioner was abused and threatened that if she returns to India without winning a medal, she will not be allowed to be a part of deaf sports in India. Besides that, the officials of the AISCD withheld the passport of the petitioner and failed to get the visa work done for two days. Thus, she was subjected to harsh treatment by the officials of the respondents at every stage, till she participated in the event, which had impacted on her performance adversely. Even after the petitioner returned to India, she was still receiving mal-treatment from the officials of AISCD as well as TNSCD in the



WP No. 16953 of 2021

context of receiving funds that were allocated to other players.

WEB COPY

9.It is also contended by the learned counsel for the petitioner that while the Sports Authority of India (SAI) paid for the petitioner's travel only on the basis of the interim order passed by this Court, no responsibility was taken by them in all other respects and hence, appropriate direction has to be issued to the respondents, so that no one like the petitioner is discriminated on the ground of gender or disability.

10.Ultimately, the learned counsel for the petitioner placing reliance on the decisions of the High Courts, supreme court and the foreign courts, submitted that the inequalities and improper treatment meted out by the petitioner should not be repeated by any similarly placed person in future and the entire system relating to activities in sports has to be revamped and/or streamlined. Therefore, he prayed this Court to issue appropriate guidelines to be followed by the respondents, so that the potentialities of those who are meritorious in any form of sports, should not go unnoticed.

11.Repudiating the averments made by the petitioner in the writ petition,



WP No. 16953 of 2021

the learned Central Government Standing Counsel appearing for the respondents

WEB COPY

1 to 3 submitted that the respondent officials have rendered all sort of assistance to the petitioner in participating in the event and she was not in any manner discriminated by reason of her gender and in fact, she was encouraged to prove the best of her ability and excel well. The learned counsel further submitted that the respondent authorities will continue to extend their unstinted cooperation to improve the sports, without any ill-treatment or gender discrimination as alleged by the petitioner.

12. Adding further, the learned Government counsel appearing for the respondents 4 and 5 submitted that the respondent authorities are rendering all kind of supports to the sport persons, without any discrimination and treating them with equality and dignity, so as to encourage them to participate actively in all the events and achieve success.

13. Heard both sides and perused all the materials placed before this court.

ANALYSIS:

14. As stated earlier, pursuant to the interim order dated 13.08.2021,

<https://www.mhc.tn.gov.in/judis>



WP No. 16953 of 2021

granted by this court, the petitioner participated in the 4th World Deaf Athletics
WEB C Championship held at Poland and she is now, eligible to participate in the World

Deaf Olympic Championship 2022 as well as Paralympics, 2023. In view of the subsequent development that had taken place, the relief sought for in the writ petition no longer survives for consideration. However, the difficulties and problems faced by the petitioner at the hands of the respondent officials, on the ground of gender and disability, at each level, though she was qualified in the National selection test to participate in the event and was also armed with the interim order of this court, cannot be slightly brushed aside, by this court. This is a clear-cut case of gender discrimination attracting the rigour of Article 15(1) of The Constitution of India³ and the petitioner has meted out the double discrimination and hence, this has to be examined with an intersectional lens so as to take appropriate measures by the authorities concerned for the purpose of eradicating all the difficulties / challenges faced and preventing from the injury suffered, not only by the petitioner, but also all the women athletes with disabilities.

Concept of Intersectionality:

15. Due to gender and disability, the women with disabilities confront

<https://www.mhc.tn.gov.in/judis>



various disadvantages which includes not only social divisions, but also poverty, race, class or sexuality. These factors contribute and exclude disabled women

from a uniform category, since each disability suffers by every woman is unique in itself and it calls for a potent tool that can address them all. Intersectionality lends itself to such type of analysis. It can be structural, when it refers to inequalities, which people experience as a result of their position in society. It has been described as one of “the most important theoretical contributions that women studies has made thus far”⁴.

16.The term ‘intersectionality’ was crafted by Kimberle Crenshaw⁵ in 1991, who studied the experiences of those at the intersections of two factors, that is, racial identity and gender. She argued that black women did not face marginalisation, discrimination or violence, because of their race or sex, but because of the intersection of both race and sex, which makes their experience unique and different from a person facing any one factor/marker of discrimination alone. She argued that gender-based discrimination is multidimensional and the singular focus on rape as a manifestation of male power over female sexuality tends to eclipse the use of rape as a weapon of racial terror.

17.In the Indian context, it is often seen that the factors like caste and gender are intrinsically linked. Similarly, disability and gender are linked in a



WP No. 16953 of 2021

way that make females with disabilities more vulnerable to such cumulative or compounded disadvantage and resultant discrimination⁶. Here, it is important to emphasize that the difficulties and barriers faced by a person facing any one axis of discrimination, for example- gender, are different from a person facing multiple axis of discrimination like disability, caste and gender together. The different identities within the same person intersect and co-exist in a way so as to give the individual a qualitatively different experience than any one of the individual markers of discrimination or any of the individual characteristics. Therefore, where the axis of discrimination intersect, it is essential to view such cases from the lens of intersectionality in order to understand that the barriers, the challenges, the stigma as well as the practical difficulties faced by such persons are not only more intense, but also different and unique which call for a more in-depth and all-encompassing approach for addressing their grievances and ensuring substantive equality to them. Intersectionality, therefore, rejects a narrow or limited understanding of equality where the factors or markers of discrimination are isolated or are in singular spheres.⁷

18. In a recent decision in **Patan Jamal Vali v. State of Andhra**

Pradesh⁸, the Supreme Court has held that “*the intersectional identity of a*

<https://www.mhc.tn.gov.in/judis>



WP No. 16953 of 2021

disabled woman from a scheduled caste community would place her in a uniquely disadvantaged position". In the said case, the Supreme Court has overturned the conviction of the accused by the High Court under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 as the prosecution failed to prove that the offence of rape was committed on account of the woman belonging to the scheduled caste community under sections 3 to 5 of the Act. In that case, the Supreme Court applied the concept of 'intersectionality' after having considered that it was a relevant factor in sentencing the accused for the offence of rape under section 376 of the Indian Penal Code, 1860 in the light of the woman's caste and disability. Ultimately, the Supreme Court observed thus:

"12. The experience of rape induces trauma and horror for any woman regardless of social position in the society. But the experiences of assault are different in the case of a woman who belongs to a scheduled caste community and has a disability because the assault is a result of the interlocking of different relationships of power at play. When the identity of a woman intersects with, inter alia, her caste, class, religion, disability and sexual orientation, she may face violence and discrimination due to two or more grounds. Transwomen may face violence on account of their heterodox gender identity. In such a situation, it becomes imperative to use an intersectional lens to evaluate how multiple sources of oppression operate cumulatively to produce a specific experience of subordination for a blind scheduled caste woman".

19. The adoption of this intersectional approach breaks new ground in

Indian jurisprudence as it recognises the specific and unique challenges faced by



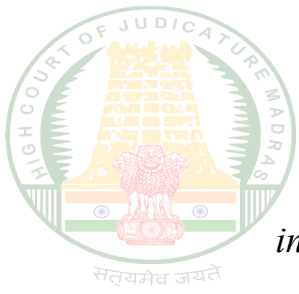
the women with disabilities due to their cumulatively dis-empowered position.

WEB COPY The following paragraphs of the judgement in **Patan Jamal Vali** may be usefully extracted as under:

“17. Intersectionality merely urges us to have “an open textured legal approach that would examine the underlying structures of inequality”. This requires us to analyse law in its social and economic context allowing us to formulate questions of equality as that of “power and powerlessness” instead of difference and sameness. The latter being a conceptual limitation of single axis of analysis, it may allow a certain intersectional claims to fall through the cracks since such claims are not unidirectional in nature.

18. Intersectional analysis requires an exposition of reality that corresponds more accurately with how social inequalities are experienced. Such contextualised judicial reasoning is not an anathema to judicial enquiry. It will be useful to note the comments of Justice L’Heureaux-Dube and Justice McLachlin in the Canadian Supreme Court’s judgement in R v. S (RD) (1997) 3 S.C.R. 484 AT 506-507 that, “(j)udicial enquiry into the factual, social and psychological context within which litigation arises is not unusual. Rather, a conscious, contextual enquiry has become an accepted step towards judicial impartiality... This process of enlargement is not only consistent with impartiality; it may also be seen as essential precondition.”

19. Single axis models of operation are a consequence of how historically movements aiming for the legal protection of marginalised populations developed. Most political liberation struggles have been focused on a sole characteristic like anti-caste movements, movements by person with disabilities, feminism and queer liberation. Many such movements have not been able to adequately address the intragroup diversity leading to a situation where the needs of the relatively privileged within the group have received more than a fair share of spotlight. When these liberation struggles were adopted in law the law also developed into mutually exclusive to a range of different statutes addressing different marginality is failing to take into account the



intersectional nature of oppression.

20. *In India, the fundamental guarantees under the Constitution provide for such a holistic analysis of discrimination faced by individuals. One of us (Justice D Y Chandruchud) in Navtej Johar v. Union of India (2018) 10 SCC 1, applied the intersectional lens to Article 15(1) of the Constitution. In doing so Justice D Y Chandrachud observed that:*

36. *This formalistic interpretation of Article 15 would render the constitutional guarantee against discrimination meaningless. For it would allow the state to claim that the discrimination was based on sex and another ground and hence outside the ambit of Article 15. Latent in the argument of the discrimination, are stereotyped notions of the differences between men and women which are then used to justify the discrimination. This narrow view of Article 15 strips the prohibition on discrimination of essential content. This fails to take into account the intersectional nature of sex discrimination, which cannot be said to operate in isolation of other identities, especially when from the socio-political and economic context. For example a rule that people over six feet would not be employed in the Army would be able to stand an attack on its disproportionate impact on women if it was maintained that the discrimination is on the basis of sex and height. Such a formalistic view of the prohibition in Article 15, rejects the true operation of discrimination which intersects varied identities and characteristics.*

(emphasis supplied)

21. *Noting how the discrimination caused by intersecting identities amplifies the violence against certain communities (gendered /religious /otherwise), the Justice JS Verma committee appointed in the aftermath of the NetWare incident to suggest reforms in Indian criminal law, observed that:*

“34. We believe that while certain measures may have been taken over a period of time but they have been too far and too few and they certainly have not attempted to restructure and transform society and its institutions. If



WEB COPY



WP No. 16953 of 2021

there has to be a society which is based on equality of gender we must ensure that not only does a woman not suffer on account of gender but also not suffer on account of caste or religion in addition. Thus a woman may suffer a double disadvantage-a) because she's a woman, and b) because she belongs to a caste/tribe/community/religion which is disadvantaged, she stands at a dangerous intersection if poor."

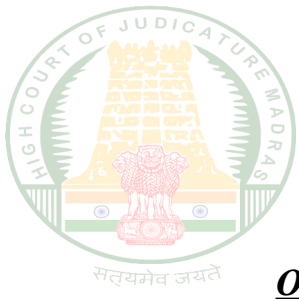
22. *While intersectionality has made considerable strides in the field of human rights law and antidiscrimination law, it has also emerged as a potential tool to understand gender based violence. In 1991, Crenshaw applied the concept of intersectional it to study violence against women of colour. She showed how race, gender, poverty, immigrant status and being from a linguistic minority interacted to place these women in violent relationships.*

23. *To deal with cases of violence against women from intersectional backgrounds, Shreya Atrey proposed a model of intersectional integrity. She notes:*

"Intersectional gender violence is about: (i) rejecting violations of bodily and mental integrity when perpetrated based on people's multiple and intersecting identities (intersectionality); and (ii) recognising that violence should be understood as a whole taking into account unique and shared patterns of violations yielded buys into sections of gender, race, caste, religion, disability, age, sexual orientation etc (integrity)."

24. *She points out that a failure to consider violence perpetrated based on multiple identities and presents an inaccurate portrayal of the violence at issue which may impact the ability to obtain relief. On the other hand a comprehensive appraisal of the intersectional nature of the violence can translate into an appropriate legal response.*

25. *The above analysis stresses on the need for the court to address and unpack the qualitative impact of the various identities and individual might have on the violence, discrimination or disadvantage being faced by them in the society.*



C-2 Disability and Gender: Twin tales of Societal Oppression

WEB COPY

26. *For many disabled women and girls in India, the threat of violence is an all too familiar fixture of their lives, contracting their constitutionally guaranteed freedom to move freely and curtailing their ability to lead full and active lives this threat of violence can translate into a nagging feeling of powerlessness and lack of control making the realisation of the promises held by Parts III and IV of our Constitution a remote possibility for women with disabilities.*

27. *In saying so, we do not mean to subscribe to the stereotype that persons with disabilities are weak and helpless, incapable of charting the course of their lives or to deprive them of the agency and bodily autonomy that we all possess and are entitled to exercise. Such a negative presumption of disability translating into incapacity would be inconsistent with the forward thinking conceptualisation of disabled lives embodied in a law and increasingly, albeit slowly, in our social consciousness. As Saptarshi Mandal notes, in critiquing the fashion in which the Punjab and Haryana High Court dealt with the testimony of a mentally disabled and partially paralysed prosecutrix, stamping a prosecutrix with the badge of complete helplessness, merely on the basis of disability, is an inapposite course of action. He notes-*

The entire rationale behind the conviction of the accused turned on sympathy for the helpless prosecutrix and her inability to physically resist the aggressor. Even if one agrees with the judge that there cannot be a single standard burden of proof for the disabled and the able-bodied, a differentiated scale of the burden of proof must be based on the concept of vulnerability, not victimhood.

28. *Instead, our aim is to highlight the increased vulnerability and reliance on others that is occasioned by having a disability which makes women with disabilities more susceptible to being at the receiving end of sexual violence. As the facts of the case makes painfully clear, women with disabilities, who inhabit a world designed for the able bodied, are often perceived as “soft targets “and “easy victims “ for the commission of sexual violence. It is for this reason that legal response to such violence, in the instant case as well at a systemic level must exhibit*



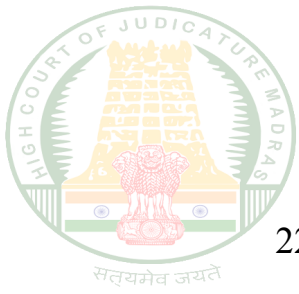
WP No. 16953 of 2021

attentiveness to the salient fact”.

WEB COPY

20. “Intersectionality in policy denotes interaction of reciprocally mutually constitutive inequalities producing an effect which is different from what each of their dimensions would produce separately, and also different from the addition of their separate parts together. When an intersectional approach is adopted, it should be done in combination with focusing on the effects of discrimination generated by the intersection of gender and disability”.¹⁰ There are many dimensions differentiating inequalities among the social categories and these inequalities are not independent, but are influenced by political, historical, social and cultural intersections, which shape individual and collective experiences.

21. In the intersectional analysis, certain elements are required for consideration and they include social divisions, such as organizational, experimental and representational discriminations. Social divisions are witnessed in a daily life of the disabled women in the form of attitudes, ideologies and communities. They are largely attributable not due to the power, but due to cultural dominant discourses and ideas relating to representations of body or theories about disability and normality. These are all the larger factors, which rattle disabled women being disabled.



WP No. 16953 of 2021

22. In 2006, the United Nations adopted the Convention on the Rights of

Persons with Disabilities (CRPD), the first international human rights treaty,

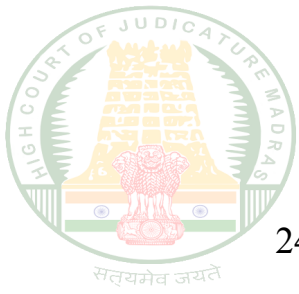
intending to protect the rights and dignity of the persons with disabilities. Its purpose is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. The Convention adopts a comprehensive and holistic approach to raise awareness and to ensure the persons with disabilities' rights to accessibility, independent living and participation in all aspects of society. Discrimination on the basis of gender and disability is a fact officially recognised by CRPD. Its Article 3 focuses specifically on non-discrimination and equality between men and women. Article 6 recognizes that women and girls with disabilities are subject to multiple discrimination, and that State parties shall take all appropriate measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms and to ensure the full development, advancement and empowerment of women with disabilities. Article 16 is about Freedom from exploitation, violence and abuse; and focuses specially on the obligation for states parties to put in place effective legislation. In Article 30, the CRPD perceptively addresses these issues using sports and rights to participation in cultural life, recreation, leisure, and sport as an influential tool for inclusion and



Article 30(5) provides for the right of persons with disabilities to participate “*on an equal basis*” in sports, recreation, and leisure activities. Thus, the CRPD brings to the forefront the right of people with disabilities to engage in sports. Besides that, it calls for state measures, which will safeguard women’s full enjoyment of all their rights and freedoms, such as, equal rights in accessing services, education, employment, health and personal life.

23. During the last two *Ad hoc* sessions of the Convention, the drafters changed the preamble from ‘*States Parties recognize the right of persons with disabilities, on an equal basis with others...*’ to ‘*with a view to enabling persons with disabilities to participate on an equal basis with others ...*’. This change was the result of a comment made by the European Union during the 6th *Ad hoc* session, which reads as follows:

“There is no express ‘right’ to recreational, leisure and sporting activities in the CESC [Committee on Economic Social and Cultural Rights]. The language in the chapeau of para 4 is ambiguous on this point and should be amended accordingly. The chapeau’s wording may have been based on CEDAW Article 10(g), which addresses this issue as a matter of equality between women and men and not as a standalone right. The Report of the Ad hoc Committee (2005) in its sixth session stated that ‘there was general support to amend the chapeau to make it clear that the paragraph does not refer to an existing right to participate in sport and leisure activities.’”



WP No. 16953 of 2021

WEB C

24. Article 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) states, '*all peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development*'.

Article 7 specifically says that the State parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work, which ensure, in particular, remuneration, fair wages, decent living, safe and healthy working conditions, equal opportunity for promotion and rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays. In addition, Article 12 discusses the right to the highest standard of physical and mental health; and Article 13 recognizes the right to education directed to the full development of the human personality and the sense of its dignity. Other Articles of the ICESCR also recognize the rights that essentially embody the right to sport, recreation, play and leisure. For example, Article 15 recognizes the right of everyone to take part in cultural life, which universally includes sports.

25. In the Convention on the Rights of Persons with Disabilities as observed by the Committee in General Comment No.6, "*intersectional*



WP No. 16953 of 2021

WEB COPY *discrimination can be direct, indirect, denial of reasonable accommodation, or harassment*¹¹. This approach has also been reiterated by the Supreme Court in **Vikash Kumar v. UPSC**,¹² wherein, the supreme court has held that “*disability-based discrimination is intersectional in nature and policy of reasonable accommodation thus cannot be unidimensional*”. The Convention on the Elimination of Discrimination against Women Committee (CEDAW), which promotes action in order to support persons with disabilities and their families and caregivers, also recognises that the categories of discrimination cannot be reduced to watertight compartments. In General Recommendation No.25, the CEDAW committee suggests “the adoption of special measures for women to eliminate multiple rounds of discrimination”.¹³

26. Article 25 of the Universal Declaration of Human Rights, which grants to each person the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond their control and its prohibition of discriminations, beyond the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and due to the World Programme of Action Concerning Disabled People (1982), the Convention on the Rights of the Child (1989), and the Standard Rules on the Equalisation of



WP No. 16953 of 2021

WEB COPY Opportunities for People with Disabilities (1993), disability has become a human rights issue. More than 40 nations have adopted disability discrimination legislations since the 1990s. The concept of human rights for persons with disabilities is now accepted internationally.

27. The UNESCO International Charter on Physical Education and Sport states, *“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 consequently be assured and guaranteed for all human beings”*. The United Nations Inter-Agency Task Force on Sport for Development and Peace report states *“Access to and participation in sport is a human right and essential for individuals of all ages to lead healthy and fulfilling lives”*.

28.1. “The legal implications of the convention may be on three levels – international, regional, or national, according to the Article titled: Aiming for Inclusive Sport: the Legal and Practical Implications of the United Nation's Disability Convention for Sport, Recreation and Leisure for People with



WP No. 16953 of 2021

Disabilities”¹⁴ The said Article further proceeds to state that at the international

WEB COPY

level, several barriers prevent a Convention from being enforced. First, it is a horizontal system, where there is no legislature or courts with compulsory jurisdiction, but rather only primary rules without secondary rules of legislative, adjudicative, and enforcement procedures. In addition, only states may bring actions against other states for violations to the International Court of Justice. Individuals or non-profit organizations have no power to enforce at this level. It is also highly unlikely for a State to be concerned with enforcing the right to sport for citizens of other countries. The main reason is that countries understandably reserve such actions for more gross violations of human rights, such as, torture or genocide, despite the fact that a cornerstone principle in human rights is that all human rights are equal.

28.2. Regional human right systems, such as the European Convention on Human Rights, the Inter-American Commission on Human Rights, or the African Court on Human Rights, have been labelled by scholars as far more effective than those at the international level. This can be as a result of operating vertical structure instead of the horizontal structure that the United Nations employs. For example, the European Union and the Council of Europe employ legislative, executive and judicial organs. Besides this, they entertain both



WP No. 16953 of 2021

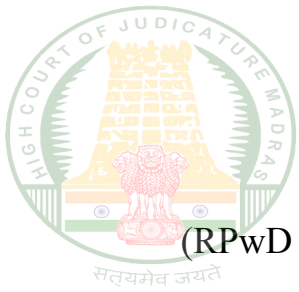
interstate and individual complaints.

WEB COPY

28.3. At the national level, the Disability Convention, like all human rights Conventions, requires that states parties take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities, (Article 4(b) of CRPD). Countries must also refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention, (Article 4(d) of CRPD).

The Rights of Persons with Disabilities Act, 2016 (RPwD Act)

29. While several constitutional exponents have recommended the inclusion of the specific provision 'disability' as a ground for non-discrimination to be included under Article 15 of the Constitution¹⁵, it is also important to incorporate a legal and constitutional recognition of discrimination that may spring from multiple, compounded, cumulative or intersectional markers or factors. Therefore, it is necessary to take a closer look at the disability legislation, i.e. The Rights of Persons with Disabilities Act, 2016



WP No. 16953 of 2021

(RPwD Act), which was passed as a measure of fulfilment of India's ratification of the United Nations Convention on the Rights of Persons with Disabilities

(UNCRPD) adopted in December 2006 and which became effective with effect from May 2008. The RPwD Act is a paradigm shift from a technical model of disability carrying with it the heavy burden of stigma under the 1995, Act to a model of disability that encompasses within its fold physical, mental, intellectual, social, psycho-social and other barriers that accompany disability which lie at the heart of exclusion of the disabled from realising their full potential and participating in society as full and equal members and citizens as contemplated by the framers of our Constitution.

30. Under section 2(s) of the RPwD Act, a "person with disability" means,

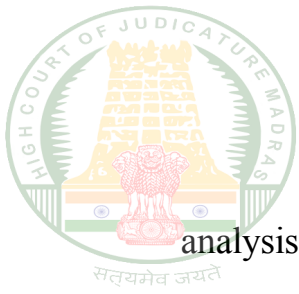
"a person with long-term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others.

(iii) A barrier is defined under section 2(c) in the following terms-

"barrier" means any factor including communicational, cultural, economic, environmental, institutional, political, social, attitudinal or structural factors which hampers the full and effective participation of persons with disabilities in society".

31. The RPwD Act recognises 21 specified disabilities and is definitely

expansive in scope as compared to the earlier 1995 Act. However, a deeper



analysis would show that several factors which affect the day-to-day life of the disabled are yet to be captured either by this legislation or by making specific constitutional provision in this regard. The principle of ‘reasonable accommodation’ has also found specific mention and manifestation in the 2016 Act under section 2(y), which means “*necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others*”.

32. Section 3 of RPwD Act deals with equality and non-discrimination, which reads as follows:

“3. Equality and non-discrimination-

(1) The appropriate government shall ensure that the Persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.

(2) The appropriate government shall take steps to utilise the capacity of Persons with Disabilities by providing appropriate environment.

(3) No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.

(4) No person shall be deprived of his or her personal liberty only on the ground of disability.

(5) The appropriate government shall take necessary steps to ensure reasonable accommodation for persons with disabilities.



WEB COPY

33. According to Section 3(2), it is for the appropriate government to take steps to utilise the capacity of persons with disabilities by providing appropriate environment. In Sub-section (5) of Section (3) it was further reiterated that the appropriate government shall take necessary steps to ensure reasonable accommodation of persons with disabilities. In the opinion of this court, the said provisions of Sections 3(2) & 3(5) of the RPwD Act are directly attracted the facts of the present case.

34. In the recent judgement in **Vikash Kumar**¹⁶, the Supreme Court has analysed in detail the provisions of the Rights of Persons with Disabilities Act, 2016 (RPwD Act), and interpreted the legislation as being a statutory manifestation of a constitutional commitment of equality and non-discrimination, apart from holding that the RPwD Act is a statutory recognition of the constitutional rights embodied in Articles 14, 19 and 21¹⁷ among other provisions of Part III of the Constitution¹⁸. It further went on to hold that ensuring the disabled a life of equal dignity and worth and non-discrimination was important along with reasonable accommodation, which would mandate a positive obligation to the State and private parties to provide additional support to persons with disabilities to facilitate their full and equal

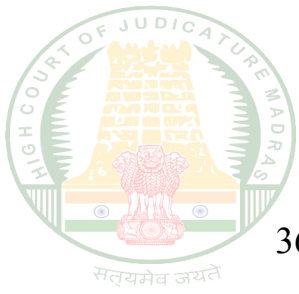


WP No. 16953 of 2021

effective participation in society. On an analysis of the various postulates envisaged under the RPwD Act, the Supreme Court has held that equality, non-discrimination and dignity are the essence of the protective ambit of the Act. If one dwells on what exactly is the source from which the ideals of equality, non-discrimination and dignity which are the perceived goals of the Act along with reasonable accommodation and affirmative action, are drawn, it would not only be purposive, but also necessary to aspire to create a constitutional bulwark for enforcement of equality before the law, equal protection of law as well as equality of status and opportunity to the disabled, in a more articulate manner.

Women with disabilities

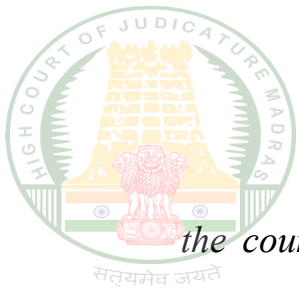
35. Normally, it can be perceived that women with disabilities will be at a higher rate of risk of violence. They can be classified as traditional forms such as physical, sexual and emotional and non-traditional forms, such as deprivation of medication, restriction for access to mobility or communication equipment, personal care and hygiene, medical consultation, fear of institutionalisation, etc. These forms of abuse can best be overcome with increased dependence (physical, emotional and financial) against the perpetrator, comprehension and reactions by police or other professionals.



WP No. 16953 of 2021

WEB COPY

36. According to Rashida Manjoo, UN Special Rapporteur on Violence Against Women (SRVAW), *“violence against women is the most pervasive human rights violation, which continues to challenge every country in the world and the United States is no exception”*. Women with disabilities are always at the receiving end and they are neglected even by their husbands, besides being abused or deserted by citing their disability. Whereas, men with similar disability are always cared by their wives. Therefore, women with disability are vulnerable in terms of discrimination by reason of their gender, age, minority status, convergence and intersect in areas relating to gender-based violence, traditional practices, trafficking etc. It is the words of Senator, Boren that *“Violent crimes against women are not limited to the streets of the inner cities, but also occur in homes in the urban and rural areas across the country. Violence against women affects not only those who are actually beaten and brutalized, but indirectly affects all women. Today, our wives, mothers, daughters, sisters, and colleagues are held captive by fear generated from these violent crimes-held captive not for what they do or who they are, but solely because of gender.”*¹⁹ Senator, William Cohen (D-Me.) followed with a similar statement, *noting that “rapes and domestic assaults are not limited to the streets of our inner cities or to those few highly publicized cases that we read about in the newspapers or see on the evening news. Women throughout*



WP No. 16953 of 2021

the country, in our Nation's urban areas and rural communities, are being beaten and brutalized in the streets and in their homes. It is our mothers, wives, daughters, sisters, friends, neighbours, and co-workers who are being victimized; and in many cases, they are being victimized by family members, friends, and acquaintances”.

Participation of women athletes in sports:

37. The data furnished on the side of the petitioner, during the course of hearing, would show that during the 2018 Winter Olympics, 23 out of the 92 competing countries, did not send any female athletes. The 2018 Winter Olympic Games consisted of 1724 male competitors and 1224 female athletes. The number of women increased from 2014 but it was a small increase of 46. While progress has been made in general, when it comes to inclusion rates for women in the Olympics compared to men, the Paralympics tell a different tale. In 2018, male participants outnumbered female athletes 431-123. In 2021, India had sent its largest ever contingent to the Tokyo 2020 Paralympic Games with 54 athletes out of which 40 were men and 14 were women, which makes it a mere 25%. It is therefore apparent that the sheer lack of numbers in participation by itself acts as a barrier to disabled women athletes. Barriers faced by women athletes with disabilities include socio-cultural, economic as well as knowledge barriers.²⁰ While society as a whole needs to change their mindset towards



WP No. 16953 of 2021

breaking the false correlation between women with disabilities participating in

WEB COPY

sport and treating the same as socially unacceptable, the Government should

also do the needful to support the Paralympic competitors by providing

appropriate, safe and accessible infrastructure as also other support like

prosthetics and adequate clothing, along with campaigning for awareness of the

benefits of physical activity. Further, the Government should also grant adequate

and structured financial assistance to the athletes in order that economic

conditions do not act as a barrier in the fulfilment of the goals of young women

with disability, in attaining success in their respective fields, which in turn

would result in their winning accolades for our country. It is also seen that the

governments offering higher financial rewards and support to sports persons are

naturally performing better on account of the economic support to them as well

as their families allowing them to focus more on the sport while not having to

worry about their livelihood as well as their other financial needs. The State of

Haryana has paid the highest cash reward among all states in India to an

Olympic or Paralympic medallist at Rs. 6 crore for an Olympic gold, Rs.4 crore

for silver and Rs. 2.5 crore for bronze. However after the Tokyo Olympics, the

State has announced that it will also give Rs. 50 lakh to athletes who narrowly

missed out on medals finishing fourth. Further, the State gave Rs.15 lakhs to

every Haryana athlete, who qualified for the Tokyo Olympics regardless of



WP No. 16953 of 2021

performance. In comparison, the Indian Olympic Association gave Rs. 75 lakh

for Olympic gold and Rs.1 lakh for all Olympians.

Doctrine of Reasonable Accommodation:

38. Section 2(6) of RPwD Act defines 'reasonable accommodation' which means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, so as to ensure that persons with disabilities enjoy or exercise all rights equally with others. The said doctrine assumes great significance, as it requires appropriate adjustments in order that persons with disabilities, enjoy and exercise rights on par with able-bodied persons.

39. The 'doctrine of reasonable accommodation' has been given effect to in the judgement of the Supreme Court in *Vikash Kumar*²¹, wherein, the petitioner sought for the facility of a scribe for appearing at the Civil Services Examination. After a detailed and complete exposition on the law on the subject, the Supreme Court held that to deny the facility of a scribe in such a situation would negate the valuable rights and entitlements recognised by the RPwD Act, 2016 and therefore declared that the appellant would be entitled to the facility of a scribe for appearing at the civil services examination and any other competitive selection conducted under the authority of the government.

<https://www.mhc.tn.gov.in/judis> 40. In the same judgement, the Supreme Court also had an opportunity to



WP No. 16953 of 2021

consider the correctness of the judgement in **V.Surendra Mohan v. State of Tamil Nadu**²², where a two judge bench of the Supreme Court had confirmed

the judgement of the Madras High Court upholding the decision of the government that those who are partially blind with 40 to 50% disability were only eligible and the appellant having 70% disability was not eligible to participate in the selection for Civil Judge (Junior Division). The Supreme Court observed in Paragraph 53 thus:

“this judgement was delivered by this court after India became a party to the UNCRPD and the RPwD Act 2016 came into force. The aforesaid view espoused by this court is innocent of the principle of reasonable accommodation. This court did not consider whether the failure of the TNPSC to provide reasonable accommodation to judge with a disability above the impugned ceiling the statutorily or constitutionally tenable. There is no reference in the court’s judgement whether the appellant would have been able to discharge the duties of a Civil Judge (Junior Division), after being provided the reasonable accommodations necessitated by his disability.”

The Supreme Court thereafter went on to declare that the judgement in **V.Surendra Mohan**²³ would not be a binding precedent as it stands on a legally vulnerable footing considering that there was a complete absence of any analysis with respect to reasonable accommodation by the two judge bench. This will show that the emphasis laid by the United Nations Convention and the implementation of the same by the RPwD Act 2016 as interpreted by the Supreme Court on equality, non-discrimination, dignity as well as equal



WP No. 16953 of 2021

opportunity and the resultant reasonable accommodation are all uncompromising ideals especially in view of our Constitution based on the principles of equality and dignity.

41. In the present case, if the respondents would have given effect to the principle of reasonable accommodation as mandated by the legislature, the reason cited for not permitting the petitioner to travel along with her male competitors, smacks of blatant discrimination cloaked in protectionism, which is anathema to the substantive equality as envisaged under the Constitution of India. Rather than citing the reason of unsafe travel, it is incumbent on the State to ensure safety and security of its women, disabled or otherwise, as highlighted by the judgment in **Anuj Garg v. Hotel Association of India**²⁴, where the Court held that *“instead of placing curbs on women’s freedom in the garb of protection and security, and instead of prohibiting women from taking up certain types of employment, the State should focus on factoring in ways through which unequal consequences of sex differences can be eliminated. It is the state’s duty to ensure circumstances of safety which inspire confidence in women to discharge the duties freely in accordance to the requirements of the profession they choose to follow”*.



Protectionism and Romantic Paternalism:

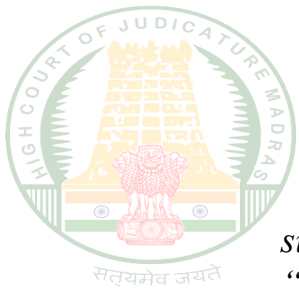
WEB COPY

42. In the legislative background as discussed in the preceding paragraphs, it is also essential to analyse the other aspects of protectionism in the specific circumstances of the present case, where the petitioner was not permitted to travel and participate in the Fourth World Deaf Athletics Championship, 2021 only on account of the fact that she was the only woman athlete as against 10 male athletes.

43. The discrimination caused to women is often couched in 'protectionism' citing traditional concepts of stereotyped roles for women and the purported concern for their safety and security. This is also known as "romantic paternalism" of American jurisprudence [**Refer: Frontiero v. Richardson**²⁵ and **Dothard v. Rawlinson**²⁶]. This has been dealt with at length in the first significant judgment of its kind in **Anuj Garg**²⁷. The relevant paragraphs of the same judgment may be profitably reproduced below:

"42. The description of the notion of "Romantic paternalism" by the US Supreme Court in Frontiero v. Richardson (411 U.S.677, 93 S.Ct. 1764) makes for an interesting reading. It is not to say that Indian society is similarly situated and suffers from the same degree of troublesome legislators passed but nevertheless the tenor and context are not to be missed. The court noted in this case of military service:

"There can be no doubt that our nation has had a long and unfortunate history of sex discrimination. Traditionally,



WEB COPY

such discrimination was rationalised by an attitude of “romantic paternalism” which, in practical effect, put women, not on a pedestal, but in a cage. As a result of notions such as these, statute books gradually become laden with gross, stereotyped distinctions between the sexes”

The court also maintained a strict scrutiny standard for review and repel the administrative convenience argument in the following terms:

“in any case, a prior decisions make clear that, although efficacious administration of governmental programs is not without some importance,’ the Constitution recognises higher values than speed and efficiency’. And when we enter the realm of strict judicial scrutiny , there can be no doubt that administrative convenience is not a shibboleth, the mere recitation of which dictates constitutionality.

On the contrary, any statutory scheme which draws a sharp line between the sexes, solely for the purpose of achieving administrative convenience, necessarily commands “dissimilar treatment for men and women who are similarly situated”, and therefore involves the “very kind of arbitrary legislative choice forbidden by the (Constitution). We therefore conclude that, according differential treatment of male and female members of the uniformed services for the sole purpose of achieving administrative convenience, the challenged statutes violate the Due Process Clause of the Fifth Amendment.”

43. In another similar case wherein there was an effective bar on females for the position of guards are correctional counsellors in the Alabama State penitentiary system. The prison facility housed sexual offenders and the majority opinion on this basis inter alia upheld the bar. Justice Marshall’s dissent captures the range of issues within a progressive paradigm. Dissent in Dothard v. Rawlinson (433 US 321, 97S.Ct.2720) serves as useful advice in the following terms:

“It appears that the real disqualifying factor in the court’s view is the ‘the employees very womanhood’. The Court refers to the large number of sex offenders in Alabama prisons, and to “the likelihood that inmates would assault a woman



WEB COPY

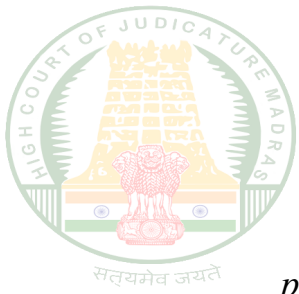
because she was a woman". In short the fundamental justification for the decision is that women as guards will generate sexual assaults. With all respect, this is rational regrettably perpetuates one of the most insidious of the old myths about women that women, wittingly or not, are seductive sexual objects. The effect of the decision, made I am sure with the best of intentions, is to punish women because their very presence might provoke sexual assaults it is women who are made to pay the price in lost job opportunities for the threat of depraved conduct by prison inmates once again, "the pedestal upon which women have been placed has upon closer inspection, been revealed as a cage". It is particularly ironic that the cages erected here in response to feared misbehaviour by imprisoning criminals."

He also notes the nature of protective discrimination (as garb) in the following terms:

"The court points to no evidence in the record to support the asserted 'likelihood that inmates would assault a woman because she is a woman'. Perhaps the court relies upon common sense, or 'innate recognition'. But the danger in this emotionally laden context is that common sense will be used to mask the 'romantic paternalism' and persisting discriminatory attitudes that the court properly esters. To me the only matter of innate recognition is that the incidence of sexually motivated attacks on guards will be minute compared to the "likelihood that inmates will assault" a guard because he or she is a guard.

The proper response to inevitable attacks on both female and male guards not to limit the employment opportunities of law-abiding women who wish to contribute to their community, but to make swift and sure punitive action against the inmate offenders. Presumably, one of the goals of the Alabama prison system is eradication of inmates' antisocial behavioural patterns so that prisoners will be able to live one day in free society. Sex offenders can begin this process by learning to relate to women guards in a socially acceptable manner. To deprive women of job opportunities because of the threat and behaviour of convicted criminals is to turn a social propriety's priorities upside down.

The standard of judicial scrutiny

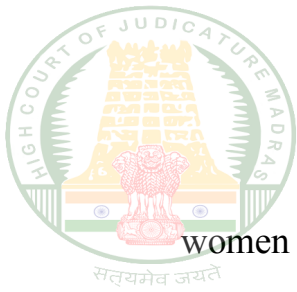


WEB COPY

44. *It is to be borne in mind that legislations with pronounced protective discrimination” aims, such as this one, potentially serve as double-edged boards script strict scrutiny is test should be employed while assessing the implications of this variety of legislations. Legislation should not be only assessed on its proposed aims but rather on the implications and the effects. The new legislation suffers from incurable fixations of stereotyped morality and conception of sexual role the perspective thus arrived at is outmoded in content and stifling it means.*

45. *No law in his ultimate effect should end up perpetuating the oppression of women. Personal freedom is a fundamental tenet which cannot be compromised in the name of expediency until unless there is a compelling state purpose. Heightened level of scrutiny is a normative threshold for judicial review in such cases”.*

44. The above view of the Supreme Court in *Anuj Garg*²⁸, as also in the cited decisions of the United States Supreme Court, would make it clear as daylight that by not permitting the petitioner herein to travel along with her male counterparts, once again the government and the respondents have discriminated against her on the ground that she is a woman and that she also suffers the further cumulative and intersectional disadvantage of being disabled, and that on account of these factors, the justification seems to be that she is at the risk of being assaulted or unsafe, sexually or otherwise. In effect, this rationale is, what has been referred to in the above decisions as perpetuating the dangerous myth that women are seductive sexual objects. Analysing the said factors, it has been categorically held that it is the duty of the State to provide and ensure safety for

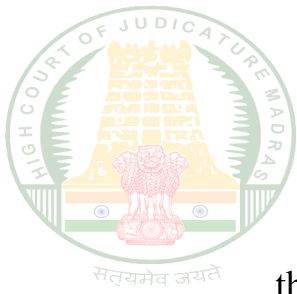


WP No. 16953 of 2021

women in a way so as to inspire confidence to discharge their duty freely in any profession of their choice. The same well applies to the case at hand.

Indirect Discrimination:

45. In the most recent cases, on whether women engaged in Short Service Commission in the Indian Army can claim Permanent Commission, was addressed by the Supreme Court in **Ministry of Defence v. Babita Puniya**²⁹, in which, the Supreme Court has stressed upon breaking of the stereotypes and the duty of the State in this regard. Breathing new life into the concept of substantive equality, the Supreme Court in **Lt. Col. Nitisha and Ors. v. Union of India and Ors**³⁰, has stressed upon the concept of 'indirect discrimination' as a tool of jurisprudential analysis and held that the same can result in the redressing of several inequities by probing provisions, criteria of practice that have a disproportionate and adverse impact on members, who belong to groups that are constitutionally protected from discrimination under Article 15(1). While explaining the concept of indirect discrimination, it has been stated that actions taken on a seemingly innocent ground in-fact have discriminatory effects due to structural inequalities that exist between the classes. Indirect discrimination is caused by facially neutral criteria by not taking into consideration the underlying effects of a provision, practice or a criterion. The relevant portion of the decision of the Supreme Court in **Nitisha**³¹ is as follows:-



WEB COPY

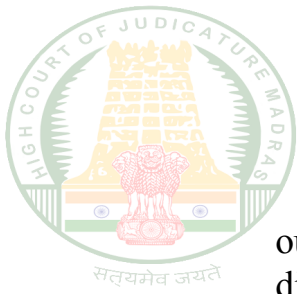
"47. Indirect discrimination has also been recognized by the High Courts in India. For instance, in the matters of public sector employment, the Delhi High Court in Inspector (Mahila) Ravina vs. Union of India (Writ Petition (C) 4525 of 2014 dated 06.08.2015) and in Madhu vs. Northern Railways (2018) SCC Online Del 6660, has upheld challenges to conditions of employment, which though appear to be neutral, have an adverse effect on one section of the society. Bhat, J, while analyzing the principles of Indirect discrimination in Madhu (supra) held:

"20. This Court itself has recognised that actions taken on a seemingly innocent ground can in fact have discriminatory effects due to the structural inequalities that exist between classes. When the CRPF denied promotion to an officer on the ground that she did not take the requisite course to secure promotion, but she was pregnant, the Delhi High Court struck down the action as discriminatory. Such actions would inherently affect women more than men. The Court in Inspector (Mahila) vs. Union of India WP (C) 4524/2014 stated,

'A seemingly "neutral" reason such as inability of the employee, or unwillingness, if not probed closely, would act in a discriminatory manner, directly impacting her service rights. That is exactly what has happened here; though CRPF asserts that seniority benefit at par with the petitioner's colleagues and batchmates (who were able to clear course No.85) cannot be given to her because, she did not attend that course, in truth, her 'unwillingness' stemmed from her inability due to her pregnancy'

48. We must clarify here that the use of the term 'indirect discrimination' is not to refer to discrimination which is remote, but is, instead, as real as any other form of discrimination. Indirect discrimination is caused by facially neutral criteria by not taking into consideration the underlying effects of a provision, practice or a criterion.

49. The facts of this case present an opportune moment for evaluating the practices of the respondents in evaluation for the grant of PC. In this segment of the judgment, we will first



WEB COPY

outline the theoretical foundations of the doctrine of indirect discrimination. We will then survey comparative jurisprudence concerning the doctrine, with a view to understand its key constituents and the legal questions surrounding its application, namely the evidentiary burden to be discharged to invoke the doctrine and the standards of justification to be applied. We will then offer a roadmap for understanding and operationalizing indirect discrimination in Indian anti-discrimination law.

50. In evaluating direct and indirect discrimination, it is important to underscore that these tests, when applied in strict disjunction from one another, may end up producing narrow conceptions of equality which may not account for systematic flaws that embody discrimination. Therefore, we will conclude this section with an understanding of a systemic frame of analysis, in order to adequately redress the full extent of harm that certain groups suffer, merely on account of them possessing characteristics that are prohibited axes of discrimination.

F.1 Theoretical Foundations of Indirect Discrimination

51. Hugh Collins and Tarunabh Khaitan explain the concept of indirect discrimination using Aesop's fable of the fox and the stork. They note;

'Aesop's fable of the fox and the stork invokes the idea of indirect discrimination. The story tells how the fox invited the stork for a meal. For a mean joke, the fox served soup in a shallow dish, which the fox could lap up easily, but the stork could only wet the end of her long bill on the plate and departed still hungry. The stork invited the fox for a return visit and served soup in a long-necked jar with a narrow mouth, into which the fox could not insert his snout. Whilst several moral lessons might be drawn from this tale, it is often regarded as supporting the principle that one should have regard to the needs of others, so that everyone may be given fair opportunities in life. Though formally giving each animal an opportunity to enjoy the dinner, in practice, the vessels for the serving of the soup inevitably excluded the guest on account of their peculiar characteristics.



WEB COPY

be found in the opinion of Advocate General Maduro of the Court of Justice of the European Union (CJEU). He notes that the distinctive attribute of direct discrimination is that the discriminator explicitly relies on a suspect classification (prohibited ground of discrimination) to act in a certain way. Such classification serves as an essential premise of the discriminator's reasoning. On the other hand, in indirect discrimination, the intention of the discriminator, and the reasons for his actions are irrelevant. He pertinently observes: "In fact, this is the whole point of the prohibition of indirect discrimination; even neutral, innocent or good faith measures and policies adopted with no discriminatory intent whatsoever will be caught if their impact on persons who have a particular characteristic is greater than their impact on other persons'

53. Thus, as long as a court's focus is on the mental state underlying the impugned action that is allegedly discriminatory, we are in the territory of direct discrimination. However, when the focus switches to the effects of the concerned action, we enter the territory of indirect discrimination. An enquiry as to indirect discrimination looks, not at the form of the impugned conduct, but as its consequences. In a case of direct discrimination, the judicial enquiry is confined to the act or conduct at issue, abstracted from the social setting or background fact-situation in which the act or conduct takes place. In indirect discrimination, on the other hand, the subject matter of the enquiry is the institutional or societal framework within which the impugned conduct occurs. The doctrine seeks to broaden the scope of antidiscrimination law to equip the law to remedy patterns of discrimination that are not as easily discernible.

F.2 Position in the United States

54. The genesis of the doctrine can be traced to the celebrated United States Supreme Court judgment in *Griggs vs. Duke Power Co.* The issue concerned manual work for which the prescribed qualifications included the possession of a high school education and satisfactory results in an aptitude test. Two facts about the case bear emphasis. First, due to the inferior quality of segregated school education, African- American candidates were disqualified in higher number because of the



WEB COPY

aforementioned requirements than their white counterparts. Second neither of these two requirements was shock to be significantly related to successful job performance.

55. Construing the prohibition on discrimination embodied in Title VII of the Civil Rights Act of 1964, the Chief Justice Burger held:

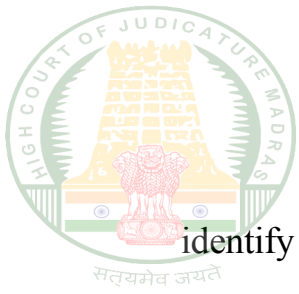
"The Act prescribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation". He went on; "good intent or absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as "built-in-headwinds" for majority groups and are unrelated to measuring job capability.

On the question of the standard of justification for rebutting a charge of indirect discrimination, the Court held as follows:

'The touchstone is business necessity. If an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited.'

Griggs, therefore, laid the groundwork for the thinking that meaningful equality does not merely mean the absence of intentional inequality. A statutory manifestation of disparate impact was codified in US law in the shape of the Civil Rights Act of 1991. Section 105 of the Civil Rights Act of 1991 makes a practice causing disparate impact a prima facie violation. The presumption can be rebutted by establishing that the practice is linked to the job and business. This can be overcome by a showing of alternative, equally efficacious, practices not causing disparate impact."

46. In the present case also, a seemingly neutral instance of discrimination without being propelled by any intent to discriminate as such would fall squarely within the understood definition and meaning of 'indirect discrimination'. While the jurisprudence on indirect discrimination is still growing, it is important to



WP No. 16953 of 2021

identify these instances of systemic and indirect discrimination, couched in neutrality and seemingly innocent reasons perpetuated by social conditioning but which cannot stand scrutiny before law in the teeth of the expansive substantive equality as envisioned and envisaged in our Constitution, and to discard them just as stark instances of discrimination. Such instances of indirect discrimination perpetuate inequality and cripple the salient personal freedom and autonomy available to every citizen of this country, irrespective of their personal attributes and differences and based on variables of gender, disability, caste, sexual orientation, religion, or any other identified site of discrimination, and it is the solemn duty of the Court to stand the ground in fulfilment of the ideals and guarantees and promises held out under the Constitution, with unflinching commitment.

International law qua discrimination:

47(i).Late Justice Ruth Bader Ginsburg, Associate Judge, Supreme Court of United States of America, quoted Sara Grimke, noted abolitionist and advocate of equal rights of men and women, while arguing before the Supreme Court of the United States of America in **Sharron A. Frontiero and Joseph Frontiero v. Elliot L. Richardson, Secretary of Defense, et al.**³², as “*I ask no favour for my sex. All I ask of our brethren is that they take their feet off our*



WP No. 16953 of 2021

“necks.” The said quote was pointed out in the opening line of the decision rendered by the supreme court of India in *Nitisha*³³, wherein it was held that

“the evaluation criteria set by the Army constituted systematic discrimination against the petitioners and this discrimination has caused an economic and psychological harm and an affront to their dignity”.

(ii). **Walter E. Washington, etc., et. al. v. Alfred E. Davis et al.**³⁴, wherein, the case involves the validity of a qualifying test administered to applicants, who are two negro police officers, alleging that the promotion policies of the Department were racially discriminatory, which is violative of the rights under the due process clause of the Fifth Amendment to the United States Constitution. The test was sustained by the District Court, but invalidated by the Court of Appeals. The Supreme Court of United States was in agreement with the District Court and accordingly, reversed the judgment of the court of appeals. While doing so, it was observed that *“a rule that a statute designed to serve neutral ends is nevertheless invalid, absent compelling justification, if in practice it benefits or burdens one race more than another would be far-reaching and would raise serious questions about, and perhaps invalidate, a whole range of tax, welfare, public service, regulatory and licensing statutes that may be more burdensome to the poor and to the average black than to the*

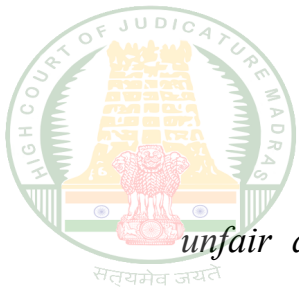


more affluent white”.

WEB COPY

(iii).Council Directive 2000/78/EC (27 February, 2000) defines the concept of “indirect discrimination”. In **S.Coleman v. Attridge Law and Steve Law**³⁵, it was held by the Grand Chamber, UK that “*the prohibition of harassment laid down by the provisions of the Directive 2000/78 is not limited only to people who are themselves disabled; where it is established that the unwanted conduct amounting to harassment, which is suffered by an employee, who is not himself disabled is related to the disability of his child, whose care is provided primarily by that employee, such conduct is contrary to the provisions to the prohibition of harassment*”.

(iv).The South African Constitutional Court in **City Council of Pretoria v. Walker**³⁶, while interpreting and enforcing the Constitution, has held that “*the concept of indirect discrimination,... was developed precisely to deal with situations where discrimination lay disguised behind apparently neutral criteria or where persons already adversely hit by patterns of historic subordination had their disadvantage entrenched or intensified by the impact of measures not overtly intended to prejudice them*”. ... “*In many cases, particularly those in which indirect discrimination is alleged, the protective purpose would be defeated if the persons complaining of discrimination had to prove not only that they were unfairly discriminated against but also that the*

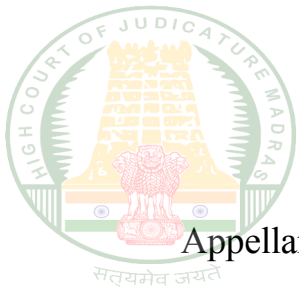


WP No. 16953 of 2021

unfair discrimination was intentional. This problem would be particularly acute in cases of indirect discrimination where there is almost always some purpose other than a discriminatory purpose involved in the conduct or action to which objection is taken". The same was referred to by the Supreme Court of India in **Nitisha**³⁷ and Delhi High Court in **Madhu v. Northern Railway**³⁸.

(v). In a recent decision in **Mahlangu v. Minister of Labour**³⁹, the South African Constitutional Court had to rule on the constitutionality of Section 1(xix)(v) of the Compensation for Occupational Injuries and Diseases Act, 130 of 1993. This provision explicitly excluded domestic workers from the definition of employees under the Act. This had the consequence of depriving domestic workers access to the social security benefits contained in the legislation, in the event of injury, disablement and death. The SACC, inter alia, rendered a finding that the provision was hit by the constitutional prohibition on indirect discrimination.

(vi). In **Ontario Human Rights Commission v. Simpsons - Sears**⁴⁰, the Canadian Supreme Court expounded the doctrine of indirect discrimination, while entertaining a challenge under Section 4(1)(g) of the Ontario Human Rights Code. In analyzing whether a work policy mandating inflexible working hours on Friday evenings and Saturdays indirectly discriminated against the



Appellant on the basis of her creed, in that her religion required her to strictly

Observe the Sabbath, the Court noted as follows:

“A distinction must be made between what I would describe as direct discrimination and the concept already referred to as adverse effect discrimination in connection with employment. Direct discrimination occurs in this connection where an employer adopts a practice or rule which on its face discriminates on a prohibited ground. For example, “No Catholics or no women or no blacks employed here.” There is, of course, no disagreement in the case at bar that direct discrimination of that nature would contravene the Act. On the other hand, there is the concept of adverse effect discrimination. It arises where an employer for genuine business reasons adopts a rule or standard which is on its face neutral, and which will apply equally to all employees, but which has a discriminatory effect upon a prohibited ground on one employee or group of employees in that it imposes, because of some special characteristic of the employee or group, obligations, penalties, or restrictive conditions not imposed on other members of the work force. For essentially the same reasons that led to the conclusion that an intent to discriminate was not required as an element of discrimination contravening the Code I am of the opinion that this Court may consider adverse effect discrimination as described in these reasons a contradiction of the terms of the Code. An employment rule honestly made for sound economic or business reasons, equally applicable to all to whom it is intended to apply, may yet be discriminatory if it affects a person or group of persons differently from others to whom it may apply. From the foregoing I therefore conclude that the appellant showed a prima facie case of discrimination based on creed before the Board of Inquiry.”

(vii). In **Orsus v. Croatia**⁴¹, the allegation raised by the applicants was that

they had been attending separate classes comprising only roma pupils at times

during their primary education and thereby discriminated against in the

enjoyment of that right on account of their race or ethnic origin. The European

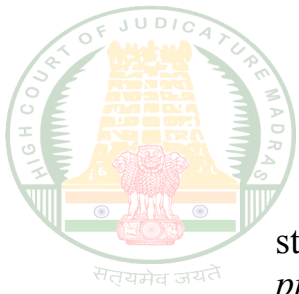


WP No. 16953 of 2021

WEB COPY Court of Human Rights was of the view that “*indirect discrimination shall be taken to occur, where an apparently neutral provision, criterion or practice would put persons of an ethnic origin at a particular disadvantage compared with other persons, unless it is objectively justified by a legitimate aim and the means of achieving that aim are appropriate, necessary and proportionate*”.

(viii).The Supreme Court of Canada, in **Action Travail des Femmes v. Canadian National Railway Company**⁴² analyzed the claim of woman seeking equal employment opportunities in the National Railroad Company. In echoing the mutually reinforcing consequences of direct and indirect discrimination within organizational structures as a systemic feature, the Court observed as under:

“Systemic discrimination in an employment context is discrimination that results from the simple operation of established procedures of recruitment, hiring and promotion, none of which is necessarily designed to promote discrimination. The discrimination is then reinforced by the very exclusion of the disadvantaged group because the exclusion fosters the belief, both within and outside the group, that the exclusion is a result of “natural forces”, for example, that women “just can’t do the job” (see the Abella Report, pp.9-10). To combat systemic discrimination, it is essential to create a climate in which both negative practices and negative attitudes can be challenged and discouraged”.... In prescribing remedies against systemic discrimination, the Court consciously noted that “the remedies do not have to be merely compensatory, but also prospective in terms of the benefit that is designed to improve the situation in the future”. The Court



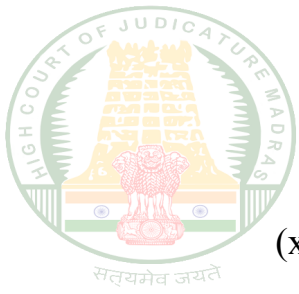
WP No. 16953 of 2021

WEB COPY

structured the remedy as follows: *“An employment equity program thus is designed to work in three ways. First, by countering the cumulative effects of systemic discrimination, such a program renders further discrimination pointless....”*

(ix).The framework provided in **Action Travail des Femmes**⁴³ was followed by the Human Rights Tribunal of Canada, in **National Capital Alliance on Race Relations v. Canada (Health and Welfare)**⁴⁴ wherein the Court had to examine a case against the Health and Welfare Department of Canada for discriminating against visible minorities by establishing employment policies and practices that deprive visible minorities (race, colour and ethnic origin) of employment opportunities in senior management. The Court conducted a holistic analysis of the organization by collating testimonies of workers in the organization and by engaging experts on statistical analysis and human resource management. The evidence of the expert on human resources was analysed to situate systemic issues ranging from ghettoization of minorities in Canada translating into lesser encouragement for professional ambition. Societal impact of discrimination was evidenced in the informal staffing decisions providing fertile ground for unconscious bias and a broader perception of visible minorities as unfit for management. In upholding the claims of the plaintiffs, corrective measures were prescribed to counteract the effects of systemic discrimination in the workforce. The said decision was pointed out by

<https://www.mhc.triliv.in/> the Supreme Court of India in **Nitisha**.



WP No. 16953 of 2021

(x).In **Abdulaziz, Cabales and Balkandali v. United Kingdom**⁴⁵, the

WEB COPY

European Court of Human Rights held: *"As to the present matter, it can be said that the advancement of the equality of the sexes is today a major goal in the member States of the Council of Europe. This means that very weighty reasons would have to be advanced before a difference of treatment on the ground of sex could be regarded as compatible with the Convention"*. Following the said decision, the European Court of Human Rights once again observed in ***Van Raalte v. The Netherlands***⁴⁶, that in the applicant's submission, differences in treatment based on sex were already unacceptable when section 25 of the General Child Care Benefits Act was enacted in 1962. The wording of **Article 14** of the Convention showed that such had been the prevailing view as early as 1950. Moreover, legal and social developments showed a clear trend towards equality between men and women. Further reference was made to ***Abdulaziz***⁴⁷, which stated explicitly that "the advancement of the equality of the sexes is today a major goal in the member States of the Council of Europe" and that "very weighty reasons would have to be advanced before a difference of treatment on the ground of sex could be regarded as compatible with the Convention".⁴⁸ These observations were referred to by the Supreme Court in **Anuj Garg**⁴⁹.



WP No. 16953 of 2021

INDIAN SCENARIO:

WEB COPY

48. In India with burgeoning population, women in general and disabled women in particular, struggle with both the oppression of being women in male-dominated societies and the oppression of being disabled in societies dominated by the able-bodied. Women with disabilities in aspiring to achieve laurels in high levels of sport competition seldom gets encouragement and assistance and often face double discrimination associated with gender and disability. Having disability and being in the world of sports, to which they are not at fault, are compounded by systematic barriers associated with the brand of being female and participating in a male dominated sports arena. At the elite level, disability sport has grown and developed at a rapid pace unprecedented in sport history. The Paralympic Games are the pinnacle of elite competition for athletes with disabilities and a second largest sporting event in the world - second only to Olympic games. Despite the accomplishments of Paralympic movement, serious inequalities continue to exist for women and the case of the petitioner herein is a classic example for the same. Participant numbers have traditionally been skewed, in that two to three times more men than women compete at the paralympic level. Professionals with the adapted physical activity field have speculated on the barriers which exist for women with disabilities in sports. The



WP No. 16953 of 2021

barriers for participation in such momentous events include classification that are insensitive to women. Few women involved in the power structures of the disability sports movement and an under-representation of women athletes in wheel-chair sport. If the potential women are given opportunities coupled with financial support, it will be possible for them to bring more laurels to the Country. Empowering the female athletes to be an active participant could be achieved by providing adequate opportunities to them on par with the male athletes. There needs to be feasible avenues for the female athletes to address their concerns to the decision-makers and it would encourage a united political front that would represent all female athletes, regardless of their disability level, to achieve greater horizons.

49. There are several facets of discrimination exist to women in particular and the Supreme Court time and again has held that such discrimination would infringe the constitutional guarantee conferred to the women under Article 15 of the Constitution of India⁵⁰.

50. In **Babita Puniya**⁵¹, it was held by the Supreme Court that absolute bar on women seeking criteria or command appointments violates guarantee of equality under Article 14 of The Constitution of India. It was also held that both men and women should be given criteria or command. In **Nitisha**⁵² it was held in



WP No. 16953 of 2021

para Nos.119 and 120, as follows:-

WEB COPY

"119. Based on the above analysis, we are of the view that the evaluation criteria set by the Army constituted systemic discrimination against the petitioners. The pattern of evaluation deployed by the Army, to implement the decision in Babita Puniya (supra) disproportionately affects women. This disproportionate impact is attributable to the structural discrimination against women, by dint of which the facially neutral criteria of selection ACR evaluation and fulfilling the medical criteria to be in SHAPE-1 at a belated stage, to secure PC disproportionately impacts them vis-a-vis their male counterparts. The pattern of evaluation, by excluding subsequent achievements of the petitioners and failing to account for the inherent patterns of discrimination that were produced as a consequence of casual grading and skewed incentive structures, has resulted in indirect and systemic discrimination. This discrimination has caused an economic and psychological harm and an affront to their dignity."

51.The Supreme Court also had an occasion to consider the effect of gender bias and discrimination in the Army Service in **Union of India and others vs. Lt. Cdr. Annie Nagaraja and others**⁵³ wherein in para No.76, it was held as follows:-

"76. Performance at work and dedication to the cause of the nation are the surest answers to prevailing gender stereotypes. To deprive serving women officers of the opportunity to work as equals with men on PCs in the Indian Navy is plainly discriminatory. Furthermore, to contend that women officers are ill-suited to certain avocations which involve them being aboard ships is contrary to the equal worth of the women officers who dedicate their lives to serving in the cause of the nation."



WEB C FINDINGS:

52.Sport is always regarded as a potent tool to achieve human development such as psychological and physical rehabilitation. It is construed as a bridge, which would associate with peace and social mobilization by providing a physical foot point. It is an arena, where relationship can be built among the team-mates even in the midst of adversaries in the form of competition. Participation in any form of sports immensely benefits those with disabilities more than those without any disabilities. If a person with disability is provided a socially conducive atmosphere of sport, it will benefit them to develop their skills of teamwork, communication, confidence, leadership qualities, cooperation and respect, so that they will become members, who can contribute to the society. It is an inexpensive form of physical therapy, which is vital for persons with physical disabilities, who need to retain the movement as much as possible. Pope Francis, speaking at an international conference on sport, recognized that “*sport is a human activity of great value, able to enrich people's lives.*” An important characteristic of sport, the Pope noted, is “*the beauty and joy found in sports, whether playing or watching, is something that benefits and unites everyone, regardless of religion, ethnic group, nationality, or disability.*”⁵⁴



WEB COPY53. It is noteworthy to mention at this juncture that the theme designed by the United Nations for the year 2021 is “*Equality – Reducing inequalities, advancing human rights*”. Sports symbolise the spirit of brotherhood, tolerance, mutual respect, leadership quality, command and communication, fostering the spirit of accepting victory and defeat as one and the same. Therefore, it should be made as a platform, where everyone can be given an equal opportunity to prove their might without being discriminated on the ground of gender or disability in any forms or manifestation. A sports person should not be defeated by discriminating him/her from participating in the arena of sports, but the defeat should be the real defeat by allowing all those, who have the potential to participate in the sports, so that they can contribute with their spirit, body, mind and soul ably.

54. In the instant case, the petitioner being a disabled girl, had to overcome the psychological trauma of speech and hearing impairment. Despite the same, she excelled herself in the events of the long jump and high jump at State and National levels and bagged gold, silver and bronze medals, totalling 13. However, she was denied the opportunity of being participated in the 4th World Deaf Athletics Championship, 2021, though she was qualified in the



WP No. 16953 of 2021

National Selection Test. Even after the interim order of this court, the petitioner

has been struggling to participate in the said event held at Poland, in all ways, on account of improper and non-cooperative attitude on the part of the Sports Council of the Deaf both in the State and Central Levels. Though faint attempts were made on the side of the respondents denying the allegations made by the petitioner, the same cannot be countenanced by this court. The concept of fairness and justice, which is the virtue of all, should be crystallised in all the spheres of human activity from education to sports to employment. If such discriminating practices are continued, the constitutional vision of equality and dignity cannot be achieved.

CONCLUSION AND DIRECTIONS:

55. In the light of the aforesaid detailed analysis and findings, this Court has reached the conclusion that this is a case of discrimination based on the gender as well as the disability, due to which, the petitioner has faced several difficulties and barriers to participate in the international event. The State and Central Governments, being the competent authorities to provide and ensure support and safety to the sports women with disabilities, so as to inspire their confidence freely and take part actively in the events at all levels, have failed to do the same in an appropriate manner. Therefore, in exercise of the power



WP No. 16953 of 2021

conferred under Article 226 of the Constitution of India, to render substantial justice, this court issues the following directions to the respondent authorities

for the purpose of streamlining the policy qua woman athletes with disabilities, in consultation with experts, so as to enable them to participate in all the events at State, National and International levels, with equality and dignity:

(i)to prevent or prohibit unfair discrimination against the women athletes with disabilities, on one or more grounds including race, gender, sex, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

(ii)to provide adequate financial assistance and all other requisites to the women athletes with disabilities, so as to participate in all the events.

(iii)to follow proper selection process, so as to enable the meritorious candidates to participate in the events.

(iv)To provide necessary training and free medical facilities to all the women athletes with disabilities, who achieve meritorious level in the respective sports for participation in all the international games.

(v)to provide all possible means to entertain women athletes with disabilities to utilise their fullest potentials and capabilities so as to achieve success in all the events.

(vi)to provide all the disabled friendly materials, clothes, prosthetics and



WP No. 16953 of 2021

other accessories that may be required by the women athletes with disabilities in day today affairs, with incentives so as to encourage and nurture their excellence in the respective sports and to participate in the events at all levels.

(vii)to extend the financial assistance to one of the family members, who accompany the disabled female athletes to participate in the international games.

(viii)To give effect to the principle of reasonable accommodation by providing all assistance that are required / requested by the females athletes with disabilities so as to enable them to participate in the international games, on par with males.

(ix)to ensure safety and security of the female athletes with disabilities during their travel, irrespective of number of participants, so as to inspire their confidence freely and take part actively in the events at all levels.

(x)to sensitize the male counter parts and inculcate the sense of equality in their mind, so as to maintain safe environment for women athletes at all levels.

(xi)to reward all the disabled women participants in the international games, irrespective of their achievements or otherwise.

(xii)Must ensure that all the women athletes whether with or without disabilities, be given equal treatment on par with males, so as to enjoy full and equal rights and freedoms and to maintain their dignity.



WP No. 16953 of 2021

WEB COPY

56. With the aforesaid directions, this writ petition is disposed of. No costs.

20.12.2021

rsh

Index : Yes / No

Internet : Yes / No

To

1. The Joint Secretary
Ministry of Youth and Sports
Department of Sports
Government of India
Shastri Bhavan, New Delhi - 110 001
2. The Director General
Sports Authority of India
Government of India
Jawaharlal Nehru Stadium Complex
(East Gate) Lodhi Road, New Delhi - 110 003
3. The Chairman
All India Sports Council of the Deaf
No.1-B, Institutional Area
Near Janata Flats, Sarita Vihar
New Delhi - 110 076
4. The Secretary
Department of Welfare of Differently Abled Persons
Government of Tamil Nadu
Secretariat, Chennai - 600 009

5. The Principal Secretary

<https://www.mhc.tn.gov.in/judis>



WP No. 16953 of 2021

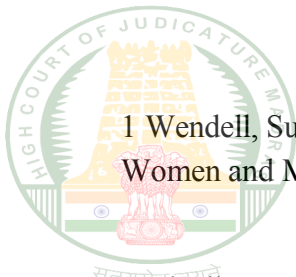
Sports Development Authority of Tamil Nadu
Government of Tamil Nadu
Jawaharlal Nehru Stadium
Periyamet, Chennai - 600 003

R. MAHADEVAN, J

rsh

WP No. 16953 of 2021

20.12.2021



1 Wendell, Susan. "Toward a Feminist Theory of Disability." *Gender Basics: Feminist Perspectives on Women and Men*. Ed. A Minas, Belmont, California: Wadsworth Publishing Co., 1993.

2 Olenik M., Lisa, Matthews M., Joan, Steadward D., Robert. "Women, Disability and Sport", *Canadian Woman Studies*.

3 Article 15(1) Constitution of India, The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them

4 McCall "The Complexity of Intersectionality" *Signs: Journal of Women in Culture and Society* (2005) 30 at 1771.

5 K.Crenshaw, Demarginalizing The intersection of Race and Sex: A Black Feminist Critique of Anti-Discrimination Doctrine, Feminist Theory, And Anti-Racist Policies, *University of Chicago Legal Forum*, Vol. 4 (1989) 149

6 Centre for Law and Policy Research: *Intersectionality: A Report on Discrimination based on Caste with the Intersections of Sex, Gender Identity and Disability in Karnataka, Andhra Pradesh, Tamil Nadu and Kerala* (2019)

7 *The Contemporary Law Forum: Intersectionality in Gender- based violence* (2021)

8 AIR 2021 SC 2190

9 Id

10 Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs; General equality, 'Discrimination generated by the intersection of Gender and disability' – Study, European Parliament, manuscript completed in May 2013.

11 UN – Department of Economic and Social Affairs (Disability), (2007)

12 (2021) 5 SCC 370

13 UN Human Rights Treaty Bodies: CEDAW Committee General Recommendations (2014)

14 Conroy, E., (2016) "Aiming for Inclusive Sport: the Legal and Practical Implications of the United Nation's Disability Convention for Sport, Recreation and Leisure for People with Disabilities", *Entertainment and Sports Law Journal* 5(1), p.4.

15 Article 15 Constitution of India, Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

16 Supra n.12



17 Article 14 of the Constitution, Equality before law, The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

सत्यमेव जयते Article 19 of the Constitution, Protection of certain rights regarding freedom of speech etc.

(1) All citizens shall have the right (a) to freedom of speech and expression (b) to assemble peaceably and without arms; (c) to form associations or unions; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India; and (f) to practise any profession or to carry on any occupation, trade or business (2) (3) (4) (5) (6)....

Article 21 of the Constitution, Protection of life and personal liberty, No person shall be deprived of his life or personal liberty except according to procedure established by law.

18 Part III of Constitution, Fundamental Rights, Articles 12 to 35, Art 12 - The State, Art 13 – Laws inconsistent with or in derogation of fundamental rights, Art 14 to 18 – Right to Equality, Art 19 to 22 – Right to Freedom, Art 23 and 24 – Right against Exploitation, Art 25 to 28 – Right to Freedom of Religion, Art 29 and 30 – Educational and Cultural Rights, Art 32 to 35 – Right to Constitutional Remedies

19 Cong. Rec. S611 (daily ed. Jan. 14, 1991) (statement of Sen. Boren)

20 Women's Sports Foundation: Women in the Olympic and Paralympic Games: An Analysis of Participation, Leadership and Media Coverage (2017)

21 Supra n.12

22 (2019) 4 SCC 237

23 Id

24 (2008) 3 SCC 1

25 411 U.S.677 (1973)

26 433 US 321, 97S.Ct.2720 at page 345

27 Supra n.24

28 id

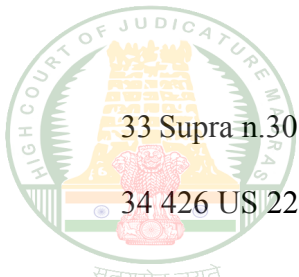
29 (2020) 7 SCC 469

30 AIR 2021 SC 1797

31 Id

<https://www.mhc.tn.gov.in/judis>

32 411 US 677 (1973)



33 Supra n.30

34 426 US 229 (1976)

35 [2008] IRLR 722

WEB COPY

36 (1998) 3 BCLR 257

37 Supra no.30

38 Decision rendered by the Division Bench of Delhi High Court in LPA No.640 of 2017 on 17.01.2018, 2018 SCC Online Del.6660

39 [2020] ZACC 24

40 [1985] 2 SCR 53

41 [2010] ECHR 337

42 (1987) 1 SCR 1114

43 Id

44 (1997) CHR No.3 (CHRT)

45 [1985] ECHR 7

46 [1997] ECHR 6

47 Supra n.45

48 See also: Schuler-Zgraggen v. Swizerland, [1993] ECHR 29; and Petrovic v. Austria, [1998] ECHR 21) Stereotype Roles and Right to Options

49 Supra n.24

50 Supra n.15

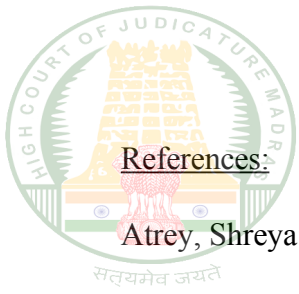
51 Supra n.29

52 Supra n.30

53 (2020) 3 MLJ 388 (SC)

54 Pope Francis: Sport Has Great Value, Must be Honest, VATICAN RADIO (May 10, 2016)

http://en.radiovaticana.va/news/2016/10/05/pope_francis_sport_has_great_value_must_be_honest/12_63027



References:

Atrey, Shreya: Intersectional Discrimination , Oxford University Press (2019)

WEB COPY

Smith, Ben: Intersectional Discrimination and Substantive Equality: A Comparative and Theoretical Perspective , The Equal Rights Review , Volume 16, (2016)

Elise C.Roy Northeastern University, Boston, MA, Aiming for Inclusive Sport : the Legal and Practical Implications of the United Nation's Disability Convention for Sport, Recreation and Leisure for People with Disabilities, ISSN 1748-944X

Convention on the Rights of Persons with Disabilities - Articles