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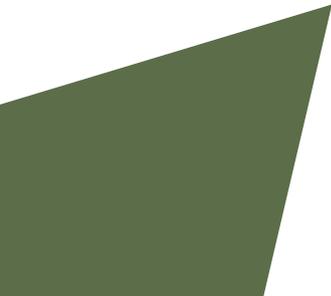
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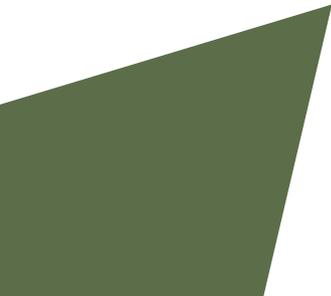
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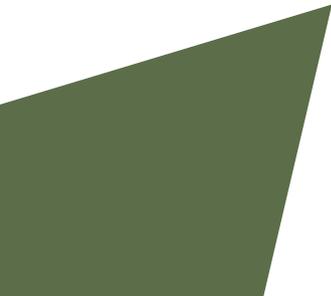
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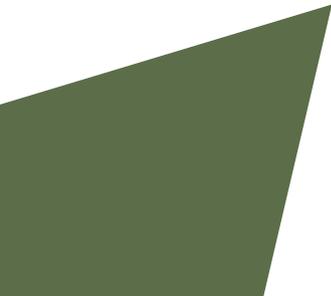
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Contemporary Legal Issues in the field of Sports

Pooja

ABSTRACT

In this world, people dodge the cover page of the newspaper and directly land to the sports section to explore more exciting things. Sports is not just constrained to an amusing and fascinating thing; it goes beyond the limits when the law is involved. The issues in sports associations and events put more pressure on legal bodies. In modern sports, there are many kinds of injuries which not confined only to physical but also extends to mental injuries to the player and even to his family. Some of the legal issues faced by the sports organizers and players are sexual harassment, discrimination, taxation, match-fixing, betting, gender-fraud, doping. The vital reason behind the vacuum in the existing system is that there is a lack of consistent regulations for sports in India. This paper also tries to highlight the widely contested question, whether transgender people should participate and compete in sports according to their gender identity? Transsexual in sports is not yet been recognized as a legal issue but has been great stress over society. This paper illustrates the discrimination faced by the transgender community in the sports field and the legal recognition which is given to them by our country.

BIRTH OF SPORTS LAW

The first page of the newspaper usually has about the topmost news stories of the day, it has all the significant things that happen around the world. The news is usually related to the idiocy of people like dishonest, rape, theft, murder, drug abuse, and corruption. Therefore, many dodge the cover page of the newspaper and directly land to the sports section to explore more exciting things. Sports has received its charisma and has earned an unusual spirit in the minds of the people. The memoir of sports extends to far back when people diverged into sportive, purposive and active beings. It all began in the Vedic era with few games like polo, archery, chess, hockey, and wrestling.

The slow and steady development of the amusement of sports paves way for many national and international sporting events. But the need was a narrow framework of law which governs such sporting authorities. In India, sports has taken its place in the Seventh Schedule (entry 33) of the State List of the constitution. Sports law is one of the fields of pure law that governs sports and physical education departments. It usually gets overlapped with the other types of laws.

In modern sports, there are many kinds of injuries which not confined only to physical but also extends to mental injuries to the player and even to his family. The commotion occurs when the legal rights of the players are disturbed. Even though there are many federations for providing sports facilities, our nation is largely failing in major events like the Olympics. The vital reason behind the vacuum in the existing system is that there is a lack of consistent regulations for sports in India. The hour of need in the nation is strict legislation that governs the sports and its authorities under one roof.

The Evolution of Sports Law has brought many governmental and quasi-government authorities like National Sports Policy, Sports Authority of India, Sports Law and Welfare Association of India, The Sports Broadcasting Law in India. These bodies do administrative and judiciary functions like telecasts, taking punitive actions, conducting and regulating various domestic matches and leagues. Even though sports form a part in the state list, it is also been governed by the National Sports Development Code, 2011.

LEGAL ISSUES

Sports organizers, event management, sportsmen, and sportswomen confront many challenges. Some of those issues are like sexual harassment, discrimination, taxation, match-fixing, betting, gender-fraud, doping. Here, the paper tries to highlight three vital issues faced by them.

SEXUAL HARASSMENT

Sexual harassment includes tease, torment with offensive comments, or bullying based on sex, race, gender, or sexual orientation. A lot of sportswomen face sexual harassment. In a few cases, the female athletes committed suicide because they were used for sexual purposes by coaches.¹ Many associations and federations have been arrested for this ill-treatment. Around 2 to 8 percent of minor-age sportswomen are victims of the abuse and perpetrators of such abuse of most of the cases were the coaches and instructors.² All athletes have the right to participate in a safe environment where they are not exposed to non-accidental violence. Both national and international level, have recognized the importance of women's rights.

Sexual harassment in the workplace violates gender equality and right to life and liberty³. The legal body considers sports under the category of the workplace. The Vishaka guidelines⁴ has provided the basic procedural guidelines which can be applied in the sexual harassment cases in the workplace. It contains definitions, preventive conditions, and remedy of sexual harassment. Before 1997, the law was constrained, a person who is sexually harassed at the workplace can take action by complaining about Section 354 or Section 509 of the Indian Penal Code. In the absence of any domestic law or provision for protecting them and to formulate effective measures against the evil acts, this guideline was formed. The Court has decided this guideline based on gender equality and human dignity to work in Articles 14, 15, 19(1) (g) and 21.

As per Vishaka guidelines, the employer has the following duties:

1. To provide a clean and safe working environment.

¹ EMILY ROBERT, GENDER RELATIONS IN SPORT (Sense Publishers, edn.1, 2013).

² SANDRA L KIRBY ET AL., THE DOME OF SILENCE (Fernwood, edn.1, 2000).

³ Apparel Export Promotion Council v. A.K. Chopra, A.I.R. 1999 S.C. 625.

⁴ Vishaka v. State Of Rajasthan, A.I.R. 1997 S.C. 3011.

2. To prominently display in the workplace about the consequences that will be faced if indulge in sexual harassment. It should also include the layout of the Internal Complaints Committee
3. To organize orientation programs and spread awareness about sexual harassment.
4. To treat sexual harassment as a misconduct
5. To monitor the periodical submissions of the Internal Complaint Committee.

In a leading case, Medha Kotwal (an NGO) highlighted that the Vishaka guidelines were not that effectively implemented in many individual cases.⁵ A bill was passed by Lok Sabha was the protection of women in the workplace.⁶ Vishaka guidelines were used symbolically until the legislative act comes into play.

Sexual Harassment of Women at Workplace Act, 2013 protects women from sexual harassment at the workplace. It superseded the Vishaka guidelines. The workplace is defined in Section 2 (o) of the act. Workplace also includes sports events, venue, complex, stadiums. But the problem is that many sports federations capitalized by the government are out of the ambit of the workplace of the Act. The sports federation has to adopt the provisions of this Act and they have to form an Internal Complaints Committee to address the sexual harassment complaints.

The abuse and harassment in sports are termed as non-accidental violence in sports. Psychological and sexual harms are always correlated. Many researchers have found that athletes get psychologically affected by the coach-athlete relationship. The coaches tend to involve in abusive training and practices. The high power of the perpetrator and high vulnerability of the athletes are the two main reasons behind the non-disclosure of such abuses. Perpetrators seek to gain opportunities in places where they have no chances to be exposed, for example, the field, locker room, etc. In sports, athletes body is the integral weapon, so if they are sexually harassed, it results in both physical harm and psychological harm to their body. Homophobia is also a type of sexual harassment, it is an act of prejudice or hatred towards gay, lesbian and bisexual individuals.

The impact of non-accidental violence in sports can be long-term or short-term in the carrier of their sports life. Moreover, it also affects the victim's family, peer groups, and colleagues.

⁵ Medha Kotwal Lele v. Union of India, 2012 I.N.S.C. 643.

⁶ Bill No. 144-C of 2010.

The mental health of the athlete is destroyed and they lose the self-esteem and confidence in their game, so in a few circumstances, it may cost them to quit sports. The impact of abuse extends beyond health issues, the athletes are also deprived of their sponsorships, opportunities, medals, and fame. The athletes are completely pulled into a trauma.

The top priority is to frame clear and effective remedies to protect the athletes from such abuses. Athletes of all ages and impairments should be protected. Mechanisms should be built for free disclosure of such abuses encountered by the athletes. Campaigns should be held to spread awareness among the athletes about their rights and sports organizations should encourage the whistleblowers. The sports federations have to adopt and maintain policies and measures to conduct safe sports.

DOPING IN SPORTS

In sports law, another major challenge faced is doping. Doping is an act of sportsperson to consume drugs or prohibited substances for enhancing their performance which gives them an unfair advantage over the others. Muscle growth, stamina, and the ability to play sports increases if such substances are consumed. In the worst-case scenarios, the side effects of doping are premature heart diseases. The drug usage has started at the origin of sports itself. In 688 BC, many sportspersons had used special diets with drugs and participated in the Olympic Games in Greece. Many extracts from plants were used as drugs for boosting their growth. Sports is not only about winning the game, but it also includes the main concept of healthy competition.

The International sports federation had banned doping in the year 1928, but they didn't have enough technology for conducting the dope test. In 1950, the continuance usage of these substances resulted in synthetic hormones.⁷ International Sports federation faced another major challenge called "Blood doping", it was followed after the 1970s. They remove and infuse the blood to increase the capacity of blood to carry oxygen. To win the competition in milliseconds, the athletes are lured into the concept of doping.

The IOC had established a body to ban such drugs, it is known as the World Anti-Doping Agency (WADA). The WADA code has a basic structure to maintain and monitor drug usage in sports. It also includes the international standards for testing and finding the drugs used by athletes. In 2005, the National Anti-Doping Agency (NADA) was established for following the

⁷ DEBORAH HEALEY, SPORT AND THE LAW (UNSW Press, edn. 1, 2009).

policies and principles of Anti-doping rules (ADR) and WADA. It was introduced with a vision of dope free sports. Along with humans, even the horses go under the dope test.

THERAPEUTIC USE EXEMPTION

TUE is a process by which a sportsperson is allowed to consume a prohibited substance, but if only it is necessary for the treatment of a health condition. The criteria to be satisfied are:

- A health issue that can be worsened if the substance is not used
- No alternative available for treatment
- Usage of that substance will not give performance enhancement

For example, if an athlete has cancer and he had to lose his testicles and needed testosterone injections for killing cancer. The injection contains an anabolic steroid, so he has to provide the authorities with TUE. The TUE Committee has sufficient knowledge of sports medicine and they work at different levels, like, NADA, International Federation (IF), and other event organizations. NADA issues TUE only for domestic level events and IF and MEO provide for international level events.

SPORTS PHARMACOLOGY

The health of the sportspersons should always be maintained and treatment should be given whenever needed. The study of medicine in sports plays a vital role. Even athletes should know about the medicines they consume, they should be aware of its consequences in the body. Pharmacists should be aware of the banned drugs, in and out of the competition. They should be aware of the policies of the WADA code. They should help in restoring and maintaining the integrity and healthy competition of sports with a good spirit.

The important factor of sports pharmacology is that they may prevent the sportsperson from consuming any drug which may reduce or enhance their performance in the game. This reduces the chances of them getting into trouble. It helps the athletes to achieve their goals in a quality way with the help of standardized drugs which is helpful for the treatment of their health.

PUNISHMENT AND APPEAL

According to WADA, if any sportsperson violates the anti-doping regulations then he may be given a lifetime ban. The period of the ban may depend on each case and the type of violation or repetition of the same violation. The sports organization may even strip the medal that

belongs to a sportsperson if anti-doping regulations are violated. The athletes can appeal for a fair hearing and request a re-test (B sample analysis).

INTELLECTUAL PROPERTY RIGHT

Sports being a social and recreational activity has become a commercial activity that generates a huge amount of profits. Money has played an important role in every sports event. Branding, licensing, and merchandising of sports leads to the flow of revenue which involves exploitation and violation of Intellectual property rights. Commercialization of sports and marketability of sports equipment are some of the vital elements which changed sports into a commodity in the market. The business of sports intersects with intellectual property rights, and both eventually evolves when a sports event is conducted or sports organization is formed.

Every sports team has its name, color, the theme song for identification. Fans of the particular sports team recognize them with that identity. The commercial elements put into the sports have to be protected. The various species of intellectual property which are created during the creation of a sports team or organization are trademarks, trade secrets, patents, copyrights, domain names, ambush marketing, personality rights, licensing, and broadcasting rights. Most of the sports organizations are exploiting these intellectual property rights, but they have to be protected by proper registration, condition, terms, and agreements. This is one of the major legal issues in sports which is evolving at a faster pace.

TRADEMARKS

Trademark is a common intellectual property right which is being used widely in sports. It can be a word, distinctive sign, letter, number, logo, taglines, etc. to represent a sports organization or event or team. The sports business becomes more popular with the help of brand building and advertisements. Trade marks aids in giving distinctive identification to each element in the sports business. If a trademark is granted then it will have exclusive rights over that unique identity. This also helps in gaining popularity among the public. The sponsorships are given to a particular brand name then it adds more value to it. Identification and brand value are the two main core results given by trademarks.

For safeguarding the commercial value of the brand name in the business of sports, the trademarks have to be protected. The sports clubs or organizations can register their brand name under the Trademarks Act, 1999. Each sports team can register with a unique name with

a symbol as its trademark. Indian Trademarks Act, 1999 contains both civil and criminal remedies for infringement of trademarks.

In case, if the trademark of a sports team or event is not registered then they can seek remedy under common law, for which they have to satisfy 3 conditions:

- The owner of the trademark should have acquired goodwill over the brand name in the market.
- Misrepresentation of the brand name should have taken place.
- That misrepresentation should have caused damage to the owner.

TRADE SECRETS

There is some information which belongs to one sport's team which cannot be revealed to their competitors because they may gain an advantage over that. A trade secret is a piece of confidential information that belongs to a sports team or event organizer. But many a time this confidential information gets leaked and exposed by their team members itself.

Unfortunately, in India, there is no separate legal provision for the protection of trade secrets. So to avoid leakage of such information the sportsman and the association enter into proper agreements. These agreements will contain confidentiality clauses that give protection to trade secrets.

PATENTS

A new invention can be made only through a process of work. Patents protect the inventions and the innovative process used for inventing it. Several inventions have evolved in the field of sports like new methods and training systems, all these are given a patent right. A team or a player belonging to a sport gains exclusive control over their method or technique which gives them a competitive advantage over the other teams. They can gain a license over their invention. A patent has to be registered under a proper agent or attorney. In India, patents have a time limit of 20 years and it is governed by the Patent Act, 1970 which provides remedies for infringement.

COPYRIGHT

When a job is done, then the copyright comes into play. This right allows the owner to reproduce or make copies of his work. These copies can be sold and a license is assigned to the

particular work. In sporting events, the logos, materials for advertisements, and promotions are protected under copyright. A copyright owner cannot avail of the service of civil and criminal remedies under section 44 if the copyright has not been registered under the Copyright Act. Hence registration of copyright was mandatory.⁸ The Copyright Act, 1957 provides remedies like seizure, injunction, prohibition, and claim of damages.

BROADCASTING RIGHTS

Indian Copyright Act, 1957 has provisions for broadcasting rights. When the screening of a sports event takes place, the broadcasting rights comes into play. The time limit of these rights extends to 25 years. The broadcasting company owns these rights and they can rebroadcast any event. Any person who broadcasts or sells the recording of the broadcast without a license then the right is said to be infringed. Section 43 under IT Act, 2000, any person downloads the broadcast without authorization then the penalty will extend up to 1 crore rupees.

AMBUSH MARKETING

It is an attempt taken by the rival company to capitalize on a well-known product without consent. To create a direct or indirect intervention over a property in a market that belongs to someone else is known as ambush marketing. The customers get attracted to the brand names which have been attained from ambush marketing. They use unauthorized brand names, theme songs, logos, and falsely claim to be the official owner of those. There is no separate body that governs and prevents ambush marketing. Nowadays many of the agreements between the sports event organizers and sponsors contain a clause of anti-ambush marketing. The classic example of ambush marketing was is a case where the advertisement depicted the product "Pepsi" in a derogatory manner. So the court issued a permanent injunction and ordered restraining of that advertisement.⁹

Intellectual property in sports has created a huge legal issue. It can be protected only if stringent laws are implemented by the Government. The owners of Intellectual property rights should be aware of their rights and duties. They should properly register their rights under the Act accordingly and should own a license for the right. Furthermore, the contracts entered by the sports teams or the event organizers and the sponsors should include the provisions of intellectual property rights and punishment for an infringement of such rights. The sports business model should be created for the protection of sports intellectual property rights.

⁸ Brundaban Sahu v. B. Rajendra Subudhi, A.I.R. 1986 O.R.I. 210.

⁹ Pepsi Co v. Hindustan Coca Cola Ltd, 2003 (27) P.T.C. 305 Del.

TRANSSEXUAL IN SPORTS

This paper also tries to highlight the widely contested question, whether transgender people should participate and compete in sports according to their gender identity?

GENDER IDENTITY

Every gender has its own identity and generally described as male or female or neither. The gender which a person belongs to is described based on how they appear, for example, their dressing style shows the interests of a particular gender. Then the pronoun which prefixes their name is determined and they are called by that identity. When anyone transgresses the general gender identity, then they are protected under the umbrella of a category called transgender. It includes both male to female and female to male transsexuals. The first is when someone is assigned as male at birth and the second type is when someone is assigned to female at birth, but in both cases, they later self-identify themselves with their opposite genders. Cisgender means a person whose self-identity conforms with their gender assigned to them at birth. The main aspect of self-expression and individual autonomy, in the domain of personal liberty guaranteed under article 21 of the Indian Constitution, is that self-determination of their sex.

There is an athletic advantage to some participants because of their gender identity, so many of the sports event organizations make it compulsory for the transgender competitors to undergo a gender-confirmatory surgery before they compete with other fellow participants. Many transgender people who participate in sports events complain about the discrimination and victimization they face. There is no proper structure for transgender in sports participation and there is a lot of inconsistencies in the sports policies for transgender people. Sports are sex-segregated and labeled into two categories like "men" and "women" and there is no proper recognition given to transgender people in sports.

GENDER TESTING AND EQUALITY.

Gender testing or sex verification is used to determine the gender of an athlete to check if they are eligible for a particular sport. The restrictions are imposed on the players if the game is constrained to a single-sex. Multiple issues have been aroused over time, in the Olympics and other competitions, where the male players have competed personating themselves as female and intersex conditions imposed on female athletes which resulted in an unfair advantage.

International Association of Athletics Federations (IAAF), the field governing body, issued the first imperative gender determination test in European Athletics Championships, 1996. This test was in response to the allegations made by some of the female athletes. These allegations were based on the suspicion on certain best women athletes who were men, they mostly belonged to the Soviet Union and Eastern Europe. In a few circumstances, the athletes went under sterilization, female genital mutilation, and many other unnecessary surgeries. The sex tests pave the way in identifying the abnormal hormonal levels and can cause a sexual identity crisis. So, they receive demeaning reactions from the public which leads to isolation of them socially, and sometimes it may result in suicide due to aggregated depression.

This policy of sex test persistently continued and its intrusive factor affects the privacy of the athletes who participate in the sports event. But the major target of these tests was women and men didn't undergo sex tests. IOC Medical association has a practice called "Gender parade", in which women athletes had to walk naked in front of the commission members, for assuring that they have female sexual characteristics. This is was the major discrimination that occurred in the field of sports which violated Article 15 of the Indian constitution. Article 14 provides every person are equal before the eyes of laws, but sex tests ignored the aspect of equality. The female athletes were targeted invariable, they were forced to undergo visual testing, DNA, and bodily fluids testing. The gender tests are vastly rejected by medical doctors because the tests are immoral and discriminative towards the female gender. The test rise questions on a person's gender which may hugely disturb the privacy of an individual.

The main issue was that few men personated them as women with chromosomal abnormalities which made them appear like women but they genetically molded them for unfair competitive advantage. The fear of men masquerading as women will result in the domination of them in the field of women's sport. But the main aspect which should be clear is that the issue of transgender should not be confused with gender-fraud. The circumstantial evidence help in differentiating them.

To participate in sports is a right and privilege of a person, so no one shall be denied from participating, if denied, it leads to discrimination based on gender. Many transsexual athletes face negative experiences in competitive sports. They undergo many surgeries for gender shift and results in variations of their hormone levels. Athletes should be allowed to participate in sports based on their birth sex without any restrictions even though their gender identity does

not match with the birth sex. This can be implemented only on one condition, the athlete should not have consumed or undergone any hormones or any sex swap surgery.

Test for doping does not violate of right to privacy and equality because both the sexes are tested. But when the female athletes undergo physical torture then their right to privacy and equality are affected. Article 14 is the root of many ideals of our Indian constitution, therefore the sex tests conducted only on female gender should be abolished. Social security to every person of the nation is the aim of secularism, this applies to all three genders including the transgender community.

THE HYPERANDROGENISM REGULATIONS – THE CHAND AWARD¹⁰

A landmark ruling was delivered by the Court of Arbitration on 27th July. This case was about a track and field athlete Dutee Chand. She challenged the validity of Hyperandrogenism regulations of the International Association of Athletics Federations (IAAF). The "biological reality" is explored in this case, that is, every sport is divided based on sex. Dutee Chand is a female sprinter who was suspended from the international competition after a hormone test. Her body produced more amount of testosterone than the natural level of a female body. The hyperandrogenism regulation of the IAAF deemed a high level of testosterone in a female, as unacceptable. The federation had a regulation to measure the androgen level in a body with the help of total testosterone in serum. When an athlete does not satisfy the condition then the panel will recommend under which criteria the female competitor can participate. One of the criteria is undergoing surgery for reducing the testosterone level.

Dutee Chand refused for surgery and she challenged the ban on her before the court of arbitration. She was the first athlete to challenge the IAAF regulations. The regulations were the outcome of gender testing or sex determination which was based on hormone level. The four main contentions that were placed before the court was:

- The regulations are discriminatory on female athletes. The testosterone limit was not considered for male athletes and it concentrated only on female athletes.

¹⁰ Dutee Chand v. Athletics Federation of India, CAS 2014/A/3759.

- The regulation is based on flawed science. There was no scientific link between the athlete performance and the testosterone levels. There is insufficient data to prove that the regulations were scientifically valid.
- There is no justification in support of these regulations. The levels of testosterone are an inherited trait to a human body, so it unfair to exclude them based on their natural trait.
- The regulation was disguised under the mask of doping rules. But this regulation was not approved by the WADA code and therefore should be abolished.

To ensure fairness to the competitive female athletes, the Court of Arbitration suspended the Hyperandrogenism regulations for 2 years. During those 2 years, the IAAF can bring more evidence concerning the link between female athlete performance and androgen level. If the evidence cannot be submitted then the regulations will be held void. Regulations introduced in sports have to be deeply evaluated and considered many times before implementation. This award of the Court of Arbitration has brought sports Governance to the next level.

LEGAL RECOGNITION

Article 14, Article 15 and Article 21 includes the transgender community and they take into consideration the rights of "Hijras". The third gender should be given a distinct legal category. If the transgender community is given a recognition then it prevents from violation of Article 14, Article 15, and Article 21. Like the other two genders, even transgender should express their identity freely. They should be provided with all basic facilities like an election card, ration card, driving license, etc., which are denied.

In a landmark case, through a PIL these contentions were laid and the court held that transgender will exercise all the fundamental rights that are exercised by the other two genders, which is male and female. The bench directed the government to consider the third gender as neutral gender and they were also included in the socially and economically backward class of people.¹¹

People in our nation are governed by the rule of law. Most rights are for every person and certain rights are for citizens only. But every person is entitled to the right under Article 14,

¹¹ National Legal Services Authority v. Union of India, WP (Civil) No 400 of 2012.

which is equality before the law. Every person is considered equal before the eyes of the law.¹² Therefore even transgender should be recognized as the other two genders.

CONCLUSION

Sports have conquered a large place in the minds of the people. Sports law governs the sporting events both at national and international levels. It has its domain in the Seventh Schedule (entry 33) of the State List of the Indian Constitution. There are many legal issues faced by people who belong to the field of sports. Some of the issues are sexual harassment, discrimination, taxation, match-fixing, betting, gender-fraud, doping. Sexual harassment in sports is considered as harassment in the workplace. The Vishaka guidelines elaborate on the basic procedural guidelines that can be used to protect the dignity and social security of the women. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 superseded the Vishaka guidelines. Doping is also a method in which the sportspersons consume prohibited substances for enhancing the performance. WADA and NADA are the two major body for regulating drug consumption in sports. The new method or innovations brought into sports has to be protected, so there are many acts which regulate these intellectual property right in sports. Transsexual in sports is not yet been recognized as a legal issue but has been great stress over society. The discrimination faced by the transgender community in the sports field and the legal recognition which is given to them by our country.

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