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Sports as a mean for Women Empowerment and Role of Sports Laws to Regulate Sports: Issues and Challenges

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Abstract

Sports plays an important role for women empowerment. Before the independence women were not allowed to take participate in sports but after the enactment of Indian Constitution women got fundamental rights to protect her status and uplift their condition in every sphere of life. Various women sports person had proved herself at international tournament and sports events. For example-P.T. Usha won gold medal in race. After that karnam malleshwari, Marry com, Mitali etc. has won the event on various international sports events etc. Sports may build confidence, team spirit, empowerment among women. Today sports person has to face many challenges during playing a tournament for example-doping, sexual harassment, discrimination, injustice in selection procedure of players, discipline, dispute of sports person with sports authority etc. "There is a need

for enactment of code on sports to regulate all the issues from practicing of sports to remuneration of sportsperson." The career of sports person is very small; if they stuck in litigation against sports authority, it can hamper their career therefore alternate dispute resolution mechanism should be adopted at national as well as international level. The Sports law should be enacted as soon as possible to sort out the disputes between players, authority or any other organization etc. people should encourage their girl child and female members to take participation in sports events for them over all development. Gender sensitization for women sports and sponsorships' contract terms, infrastructure for practicing of sports should be upgraded to meet challenges of national and international events.

Key Words

Sports, Authority, Sports Law, Women empourment.

Introduction

Women empowerment act as an instrument to change the society and family in various manner such as social, political and economic etc. "sports play an important role for women empowerment." It builds team spirit and unity among female with female and female with male. Today sports and women sports person are facing numerous challenges from her thought to become a player to get empowerment opportunities and self-interdependent. "Various issues have to face by players such as selection procedure to mediation etc. "There is a need of separate law to regulate sports."

Meaning and Importance of Women Empowerment and Role of Sports for Women Empowerment

"Empowerment acts as a powerful tool against exploitation and harassment of women." It is a great means to get adequate legal protection for women. But practically women empowerment is still an illusion of reality. We observe in our day-to-day life how women become victimized by various social evils. Women Empowerment is the vital instrument to expand women's ability to have resources and to make strategic life choices. Empowerment of women is essentially the process of upliftment of economic, social and political status of women, the traditionally underprivileged ones, in the society. It is the process of guarding them against all forms of violence. Women empowerment is giving legitimate power or authority to perform the tasks."

"Women empowerment raises confidence of women in their ability to lead meaningful and purposeful lives. It eliminates their dependence on others and makes them individuals in their own right. They are able to lead their lives with dignity and freedom which increase their self-esteem and give them a unique identity." "They are able to gain recognition and form a meaningful contribution to the well-being of society." "Women act as capable citizens to make the country achieve and boost Gross Domestic Product (GDP) growth as they are financially independent, they are able to spend on all their needs and desires and they also get fair and equitable access to resources of the country."

Necessity of Women's Empowerment and Sports⁹

"Without women's empowerment, we cannot remove injustice and gender bias and inequalities. If not socially and economically empowered, women cannot blossom their own identity in society and if they are not employed, the global economy will be adversely affected as women constitute a large extent of the world's population. As women are highly creative and intelligent this makes it mandatory to receive their contributions in socio-economic activities. For a just and progressive society, women need to be provided equal opportunities for work." "Through sports women may get best development of her in true sense for example-physical, mental, economic and social development etc." "11

List of Various Women Players of India

SI. No.	Name of famous female sports players in India	Sports
1	The Phogat Sisters	Wrestling
2	Deepika Kumari	Archery
3	Sania Mirza	Tennis
4	Saina Nehwal	Badminton
5	PV Sindhu	Badminton
6	Mary Kom	Boxing
7	Jhulan Goswami	Cricket
8	Dipa Karmakar	Gymnastics
9	Mithali Raj	Cricket
10	Anju Bobby George	Athletics
11	Sakshi Malik	Wrestling
12	Hima Das	Athletics
13	Dutee Chand	Athletics
14	Karnam Malleswari	Weight lifting
15	Bula Chowdhury	Swimming

(Source-https://www.kreedon.com/women-in-sports-in-india-stories-of-struggle-and-inspiration)

List of Various Women Sportsperson at International Level

Name of some Active women's professional leagues and associations¹²

Country	Sport	League or Association Name	
Australia	Basketball	Women's National Basketball League	
Australia	Golf	ALPG Tour	
Australia	Netball	Suncorp Super Netball	
Australia	Cricket	Women's Big Bash League	
China	Basketball	Women's Chinese Basketball Association	
China	Golf	China LPGA Tour	
Denmark	Handball	HTH Ligaen	
England	Association football	FA Women's Super League	
England	Rugby union	Premier 15s	
Europe	Golf	Ladies European Tour	
France	Association football	Division 1 Féminine	
Germany	Association football	Frauen-Bundesliga	
India	Cricket	Women's Premier League	
Italy	Association football	Serie A (women's football)	
Japan	Association football	WE League	
Japan	Golf	LPGA of Japan Tour	
Mexico	Association football	Liga MX Femenil	
New Zealand	Netball	ANZ Premiership	
Philippines	Basketball	Women's National Basketball League	
Philippines	Volleyball	Premier Volleyball League	
Russia	Basketball	"Russian Women's Basketball Premier League"1	
South Korea	Golf	LPGA of Korea Tour	
Spain	Association football	Liga F	
Turkey	Volleyball	Turkish Women's Volleyball League	
United States	Basketball	Women's National Basketball Association	
United States	Basketball	Athletes Unlimited Basketball (starting in 2022)	
United States	Golf	Ladies Professional Golf Association	
United States	Golf	Legends Tour (age 45 and over)	
United States	Golf	Epson Tour (second-tier tour)	
United States/Canada	Ice hockey	Premier Hockey Federation	
United States	Lacrosse	Women's Professional Lacrosse League	
United States	Lacrosse	United Women's Lacrosse League	
United States	Association football	National Women's Soccer League	
United States	Softball	National Pro Fastpitch	
United States	Softball	Athletes Unlimited Softball	
Worldwide	Tennis	Women's Tennis Association	

(Source-https://en.wikipedia.org/wiki/Women%27s_sports)

Constitutional Aspects for Women Empowerment and Sports

A. Role of Indian Constitution for protection of Women Rights

"Indian Constitution has the following various provisions for the protection of women which are as follows"13:

- 1. "Article- 15(1): The state shall not discriminate against any citizen of India on the ground of sex." 14
- 2. "Article 15(3):The state is empowered to make any special provision for women. In other words, this provision enables the state to make affirmative discrimination in favour of women."¹⁵

- 3. "Article 16(2): No citizen shall be discriminated against or be ineligible for any employment or office under the state on the ground of sex." ¹⁶
- 4. "Article 23(1): Traffic in human beings and forced labour is prohibited."¹⁷
- 5. "**Article 39(a):** The state to secure for men and women equally the right to an adequate means of livelihood."¹⁸
- 6. "Article 39(d): The state to secure equal pay for equal work for both Indian men and women." 19
- 7. "Article 39(e): The state is required to ensure that the health and strength of women workers are not abused and that they are not forced by economic necessity to enter avocations unsuited to their strength."²⁰
- 8. "Article 42: The state shall make provision for securing just and humane conditions of work and maternity relief."²¹
- 9. "Article 51-A(e): It shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women."²²
- 10. "**Article 243-D** (**3**): One-third of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women."²³
- 11. "Article 243-D (4): One-third of the total number of offices of chairpersons in the Panchayats at each level shall be reserved for women."²⁴
- 12. "**Article 243-T (3)**: One-third of the total number of seats to be filled by direct election in every Municipality shall be reserved for women."²⁵
- 13. "Article 243-T (4): The offices of chairpersons in the Municipalities shall be reserved for women in such manner as the State Legislature may provide."²⁶
- B. Position of Sports under Indian Constitution
 - I. Entry-33 of Seventh Schedule of Indian Constitution: "Sports is a subject matter of State List under the Seventh Schedule (Entry 33) in the Constitution of India." Entry 33 in the Seventh Schedule of Indian Constitution has provided a provision for the State as well as the Centre to make and enact laws pertaining to regulation, registration and recognition of associations involved in sports." Rajasthan and Himachal Pradesh are two states where there is a functional sports law at present.
- II. Article-32 of Indian Constitution: Article 32 of the Constitution has a provision of legal remedies. A writ can be file against state example-BCCI. "However, a writ under Article 32 can only be filled against authorities that come within the meaning of 'State' under Article 12 of the Indian Constitution." "The court in its majority judgment ruled that BCCI did not constitute State within the meaning of Article 12 of the Constitution. Although, in his minority opinion Justice Sinha opined that BCCI is a State. And Writ can be filed against if any player's right has been violated or to get remedy against BCCI." BCCI."

Legislative Aspects for Women Empowerment

"To uphold the Constitutional mandate, the State has enacted various legislative measures intended to ensure equal rights, to counter social discrimination and various forms of violence and atrocities and to provide support services especially to working women. These are broadly classified under two categories"³¹:

- (1) The Crimes Identified Under the Indian Penal Code (IPC)³²
 - > Rape (Sec.376 IPC)
 - ➤ Kidnapping & Abduction for different purposes (Sec. 363-373)
 - ➤ Homicide for Dowry, Dowry Deaths or their attempts (Sec. 302/304-B IPC)
 - > Torture, both mental and physical (Sec. 498-A IPC)

- ➤ Molestation (Sec. 354 IPC)"³³
- > "Sexual Harassment (Sec. 509 IPC)
- > Importation of girls (up to 21 years of age)"34

"The Crimes identified under the Special Laws (SLL)"35 (2)

- > "Although all laws are not gender specific, the provisions of law affecting women significantly have been reviewed periodically and amendments carried out to keep pace with the emerging requirements. Some acts which have special provisions to safeguard women and their interests are:
- ➤ The Special Marriage Act, 1954
- ➤ The Hindu Marriage Act, 1955
- The Maternity Benefit Act, 1961 (Amended in 1995)
- ➤ Dowry Prohibition Act, 1961"³⁶
- > The Medical Termination of Pregnancy Act, 1971
- The Equal Remuneration Act, 1976
- ➤ The Prohibition of Child Marriage Act, 2006
- ➤ The Criminal Law (Amendment) Act, 1983
- ➤ Indecent Representation of Women (Prohibition) Act, 1986
- Commission of Sati (Prevention) Act, 1987
- ➤ "The Protection of Women from Domestic Violence Act, 2005"³⁷

Legislation for Sports

"It cannot be denied that the administrative set-up plays a very crucial role in promoting and developing sports. The Indian sports structure is based on a three-tier principle. Club is the basic unit at grass root level. There are District Sports Federations which combine into State Sports Federations. The State Sports -Federation of each discipline from all the states then combine to form the National Sports Federation.

- I. "The Sports activities in India are governed and regulated by Sports Authority of India."38
- II. "National Sports Policy Sports Law and Welfare Association of India." 39
- "The Sports Broadcasting Law in India."40 III.

Role of Sports Legislation, Policies and Organizations

"In the field of sports, the club is the basic unit at the grass root level. At the top of the hierarchy are the international sports bodies for each sport made up of national bodies of different countries. The national sports bodies again consist of the provincial or state bodies of different countries."41 "The provincial state bodies comprise the different districts or clubs."42 "In India, national sports bodies field the national team representing the country for participation in international competitions where good performance is a matter of pride for the entire nation."⁴³ They consider the players for participation and selection. "These bodies also award telecasting and broadcasting rights to the successful bidder for hefty sums and also earn revenues from advertisement in sports events."44 "They also take disciplinary action against the erring players including debarring them from the game."45

"Accordingly in the most countries including India, for enforcement of their public duties and obligations prerogative Constitutional Writs of High Courts lie against these private bodies like any public or Government Authority."46 (Indian Olympic Association Vs Veeresh Malik and Ors MANU/DE/0108/2010)"47

National Sports Policy 1984/2000⁴⁸

"A Resolution on the National Sports Policy was laid in both Houses of Parliament in August, 1984."49 "The National Sports Policy, 1984 was formulated with the objective of raising the standard of Sports in the

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country."50 "The National Sports Policy, 1984 provided inter-alia that the progress made in its implementation would be reviewed every five years to determine the further course of action, as may be necessary, following such review. Over the years, it has transpired that even as the National Sports Policy, 1984 encompasses various facets in respect of encouraging sports in the country, the implementation of the same is not complete."51 "In order to reformulate the National Sports Policy 1984, National Sports Policy 2001, was drafted"⁵²

The Objective of the Guidelines of National Sports Policy 2001 is threefold⁵³

- "Firstly to define the areas of responsibility of the various agencies involved in the promotion and development of sports."54
- "Secondly, to identify National Sports Federations eligible for coverage under these guidelines, to set priorities,"55 and to detail the procedures to be followed by the Federations, "to avail of "Government sponsorship and assistance."56
- "Thirdly, to state the conditions for eligibility which the Government will insist upon while releasing grants to Sports Federations."57

"In accordance with the provisions of the National Sports Policy, 2001, the Central Government pursues the objectives"58 of Broad-basing of Sports and Achieving Excellence in Sports at the National and International levels in a combined effort with the State Government, the Olympic Association and the National Sports Federation. "The Government of India and the Sports Authority of India, in association with the Indian Olympic Association and the National Sports Federations are expected to focus specific attention on the objective of achieving excellence at the National"59 and international levels. "The National Sports Policy aims to pursue inclusion of Sports in the Concurrent List of the Constitution of India"60 "and introduction of appropriate legislation for guiding all matters involving national and inter-state jurisdiction."61

Sports Law and Welfare Association of India⁶²

"The Sports Law and Welfare Association of India is a national nonprofit and professional organization which work with the common goal of understanding, advancement, and ethical practice of Sports Law in India for the promotion of Sports, by bringing Legal Practitioners and Sports persons together. The Association provides consultancy on various matters including regulation of sports governing bodies, general sport and law issues, intellectual property issues in sport, online advocating in legal disputes of sports in court on behalf of sports persons and sports bodies, etc."63 "The Sports Law and Welfare Association of India aims to further the discussion of legal problems affecting sports and to promote the exchange of a variety of perspectives and positions of sports law and provide a forum for lawyers representing athletes, teams, leagues, conferences, civic recreational programs, educational institutions and other organizations involved in professional, collegiate, Olympic, physical education and amateur sports."64

Sports Authority of India

The Sports Authority of India was established to fulfil the need of an apex body to coordinate various sports activities in India. The success of the IXth Asian Games at Delhi has raised sports consciousness and enthusiasm in India which in turn, motivated the Government of India to focus on sports development to encourage physical fitness among youth and to direct their energy towards excellence. The Sports Authority of India has gradually, extended its operations to promote broad base sports. The other thrust areas of SAI include provision of strengthening of inputs for excellence and various supportive programmes, such as Academic Programmes, Coaching and Physical Education Awareness Programmes and Scholarship Schemes as incentives to sportspersons. The Sports Authority of India operates various Schemes at sub-junior, junior and senior level and endeavours to broad base sports and develop excellence by upgrading the skills of Indian sports persons."65

Year-03, Volume-03, Issue-02

The Sports Broadcasting Law in India

The Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act was passed in 2007 with an objective to provide access to the largest number of listeners and viewers, on a free to air basis of sporting"66 "events of national importance through mandatory sharing of sports broadcasting signals with Prasar Bharati and for matters connected therewith or incidental thereto."67 "The Act provides that any content right owner or holder television or radio broadcasting service provider shall not carry a live television broadcast on any cable or Direct-to-Home network or radio commentary broadcast in India of sporting events of national importance, unless it simultaneously shares the live broadcasting signal, without its advertisements, with the Prasar Bharati to enable them to re-transmit the same on its terrestrial networks and Direct-to-Home networks in such manner and on such terms and conditions as may be specified."68

Sports and Competition Law⁶⁹

"Two teams playing against each other are like two corporate firms producing a single product. The product is the game, weighted by the revenues derived from its play. In one sense, the teams compete; in another, they combine in a single firm in which the success of each branch requires efficiency. Unequally distributed playing talent can produce competitive imbalance. Remuneration of the team members largely depends on the level of competition between the teams in the particular sports. sport is generally organized in a kind of a 'pyramid' structure, with a single governing body controlling most regulatory and commercial aspects of each sport, the governing body appears to be de facto 'dominant' and therefore claims relating to the abuse of monopoly."⁷⁰

"Sport's governing bodies such as BCCI, often attempt to preserve for themselves the sole ability to regulate the sport and to organize events. In order to prevent the development of rival organizations, they have sought to tie players in by prohibiting them from competing in other events, on pain of exclusion from 'official' events, and such rules have been the subject of challenge under competition law."71

Sports Law and Arbitration⁷²

"Arbitration, a form of alternative dispute resolution (ADR), is a legal technique for the resolution of disputes outside the courts, wherein the parties to a dispute refer it to one or more persons (the arbitrators, arbiters or arbitral tribunal), by whose decision (the award) they agree to be bound. It is a settlement technique in which a third party reviews the case and imposes a decision that is legally binding for both sides. Other forms of ADR include mediation (a form of settlement negotiation facilitated by a neutral third party) and nonbinding resolution by experts. Arbitration in India is governed by the Arbitration and Conciliation Act 1996 (Indian Arbitration Act), which is based on the UNCITRAL Model Law. The Indian Arbitration Act is broadly divided into two parts. Part I applies to arbitrations held in India, whether domestic or international, and Part II applies to arbitrations held outside India. Part II, incorporates the rules related to international arbitrations governed by the New York or Geneva Conventions. In sports, the disputes are first referred to the federations that govern a particular sport and subsequently the international authorities that govern the sport. e.g. in hockey disputes are referred to the Indian Hockey Federation and after that the International Hockey Federation."73

"With regular increase in the number of sports-related disputes in the country, India requires an independent authority that specializes in sports-related problems and that is authorised to pronounce binding decisions. The disputes when referred to courts take a long time to come up with the final decision since the Indian courts are already piled up with a number of pending cases. There is a need to have an authority for sports that offers flexible, quick and inexpensive method of resolution of disputes. With the inauguration of India's first arbitration centre in Delhi in 2009, India is recognizing the necessity of arbitration for quicker disposal of cases. The increasing use of arbitration in sport over the last decade has challenged the legal framework in which arbitration disputes are addressed in many jurisdictions."74

Court of Arbitration of Award⁷⁵

"Arbitration exists in international sport through the Court of Arbitration for Sport. All international disputes relating to sports are referred to it. The most prominent sports dispute resolution forum is the Court of Arbitration for Sport (CAS) which has its headquarters in Lausanne, Switzerland. The CAS was created by the International Olympic Committee (IOC) in 1983. It also has two permanent outposts in Sydney, Australia and New York, USA. It has a minimum of 150 arbitrators from 37 countries, who are specialists in arbitrations and sports law. They are appointed by the International Council of Arbitration for Sports (ICAS) for a four-year renewable term and need to sign a 'letter of independence'. The CAS also has a permanent President who is also the President of ICAS."

International Law on Sports and Women Empowerment Throguh Sports

- **a. United State of America:** No single federal law in USA. It works on three types of sports, Amateur sports, professional sports and international sports to regulate sports activities.
- **b. Australia:** In Australia, the Australian Sports Commission Act, 1989 has been enacted to regulate sports.
- **c. SouthAfrica:** In South Africa "the South African Sports Commission Act, 1998, National Sports and Recreation Act, 1998 are working to regulate sports."
- **d.** United Kingdom: "Established by Royal Charter in 1996, UK Sport, a Government body, works in partnership with the home country sports councils and other agencies for the promotion of sports in the UK." "78 "There is no charter or legislation for regulation of sports in India." "79"
- **e. China:** "In China there is a national legislation on sports known as the Law of the People's Republic of China on Physical Culture and Sports Act, 1995" "it is working to regulate sports activities in China." 181

OTHER MEASURES FOR WOMEN EMPOWERMENT

- National Commission for Women⁸²: In January 1992, the Government set-up this statutory body with a specific mandate to study and monitor all matters relating to the constitutional and legal safeguards provided for women, review the existing legislation to suggest amendments wherever necessary, etc."83
- Reservation for Women in Local Self-Government⁸⁴: The 73rd Constitutional Amendment Acts passed in 1992 by Parliament ensure one-third of the total seats for women in all elected offices in local bodies whether in rural areas or urban areas."85
- ➤ The National Plan of Action for the Girl Child (1991-2000)⁸⁶: The plan of Action is to ensure survival, protection and development of the girl child with the ultimate objective of building up a better future for the girl child."⁸⁷
- National Policy for the Empowerment of Women, 2001⁸⁸: The Department of Women & Child Development in the Ministry of Human Resource Development has prepared a National Policy for the Empowerment of Women in the year 2001. The goal of this policy is to bring about the advancement, development and empowerment of women in socio-economic and politico—cultural aspects, by creating in them awareness on various issues in relation to their empowerment."⁸⁹
- ➤ Government Enactments⁹⁰: The National Commission for Women has in the last few years introduced several new bills in the parliament from time to time towards eradication of many social evils. Some of the significant enactments are mentioned here.
 - Beti padao beti bacho yojana
 - ➤ The Dowry Prohibition Act, 1961
- ➤ The Child Marriage Restraint Act of 1929: The practice of child marriage was another social evil from which women in traditional Hindu society suffered a lot. Age at marriage for girls was 9 or 10 and after passing this act the minimum marriageable age of women was fixed to 15 years. Later this age was increased up to 18 years."⁹¹

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Issues and Challenges Faced by Sports Person and Women Sports Person

- 1. Doping: It can destroy the career of players.
- 2. Politics in sports events.
- 3. Discrimination in selection of players for any event.
- 4. Sports authority is own judge: if there is any dispute between player and authority.
- 5. Sexual harassment against women players.
- 6. Lack of sports infrastructure to players.
- 7. Lack of women sports infrastructure.
- 8. Lack of women participation in sports.
- 9. Lack of awareness in women to choose sports as career.
- 10. People, media and sponsors don't give too much coverage to women sports in magazine, newspaper and T.V.etc.
- 11. Women players are paid less in comparison to men players.
- 12. If sportsperson fight with sports authority, then it may hamper the true justice and it is against the natural principles rule of justice.
- 13. Lack of legal expert in sports laws.

Preventive Measure to Sort Out Challenges of Sports Person and Women Sports Person and Sports Position in Prsent Scenario

- 1. "Need for proper legislation: sports law should be enacted.
- 2. Sports law should be enacted and amended respectively to meet the challenges of sports with competition law. "The competitions set up for sportspersons should be properly organized and structured." ⁹²
- 3. "Sports law and arbitration should work together as a dispute resolving mechanism. It will decrease the time and money of litigations." 93
- 4. "The National Sports Policy and Associations are established to give all the legal support to the sportspersons whenever they need it."
- 5. "The rights of sportsperson and contracts that they have entered into should be safeguarded and not illegally terminated whenever they want to." 95
- 6. Women and girls should be promoted to take participation in sports.
- 7. Sports events and sports should be regulated for equal treatment with women.
- 8. Players should not do any involved in suspicious activities in terms of social, professional, personal or sponsorship's contract; it may destroy the career and reputation of sports and sportsperson at national and international level.

Conclusion

"The Empowerment of Women has become one of the most important concerns of 21st century not only at national level but also at the international level." "Women Empowerment helps to make the society and world a better place to live in and march forward on way to inclusive participation. It means increase happiness for the family and the organizations where women make a difference." "Government initiatives alone would not be sufficient to achieve this goal." "Society must take initiative to create a climate in which there is no gender discrimination and women have full opportunities of self decision making and participating in social, political and economic life of the country with a sense of equality. Also women need to be given equal opportunities for education and employment without any sense of discrimination."

"Sports Law Authority, Ministry of Youth and Sports, Sports Broadcasting Law in India, National Sports Authority, National Sports Policy 1984/2001 were coming into existence." After the implementation of Indian Constitution and provisions of Indian Contract Act, Law of Tort, Labour law etc. the concept of contract, legal rights, duties and obligations bind players, sports federations and institutions for legal contract. Concept of Arbitration and Conciliation has been applied to resolved the disputes of national and international contract between players and sports authority. But till now no specific legislation has been enacted to regulate sports and women sports in India. There is a need to 103 enact separate sports law to regulate the issues and challenges faced by sports person during and after the retirement from sports. Separate sports law may sort the various challenges faced by sports person and it will regulate the sports in true manner." 105

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