

JEEJA GHOSH AND THE FIGHT FOR HUMAN DIGNITY

Based on the judgment of
the Supreme Court of India
in Jeeja Ghosh and Anr v.
Union of India and Ors.
(2016) 7 SCC 761

WHO IS JEEJA GHOSH?

Jeeja Ghosh is an award-winning Indian disability rights activist. She was born with cerebral palsy and has dedicated her life's work towards fighting for human dignity and anti-discrimination for persons with disabilities.



WHAT LED JEEJA TO THE SUPREME COURT?

On the 19 February 2012, Jeeja was to travel to Goa to attend an international disability rights conference. After being seated on the flight, Jeeja was approached by members of the crew who requested to see her boarding pass, which she gave them.

Ma'am, can I see your boarding pass ?

Sure

Sorry ma'am, we are going to have to ask you to deboard.

I need to be in Goa for an international conference! I have a ticket!

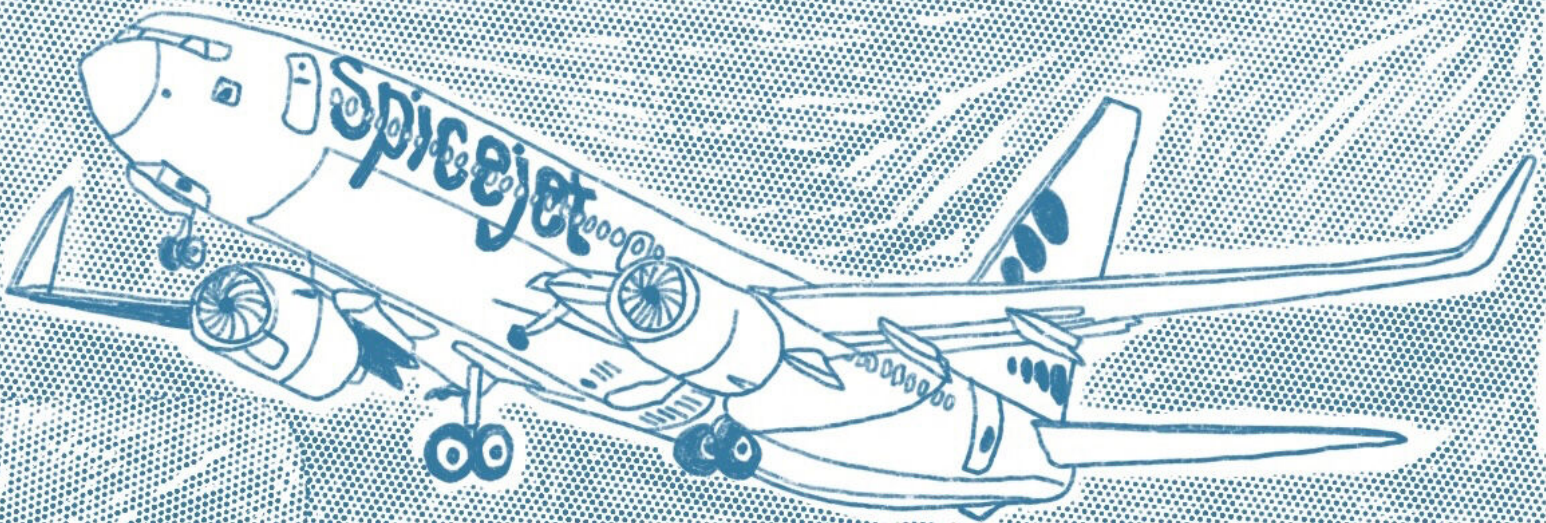
We have been asked by the Captain of the flight to ask you to deboard.



This act of discrimination and humiliation traumatised Jeeja. But she was not one to remain silent.

JEEJA RAISES HER VOICE

BEFORE GOING TO THE SUPREME COURT, JEEJA SUBMITTED A COMPLAINT TO THE MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT ABOUT THE INCIDENT, AS WELL AS TO THE COMMISSIONER FOR PERSONS WITH DISABILITIES, WEST BENGAL AND THE CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES, GOVERNMENT OF INDIA.



Both commissioners issued show cause notices to the airline, SpiceJet. In response, the airline offered to refund the price of the ticket after deducting Rs. 1500 as a cancellation fee.

JEEJA GOES TO THE SUPREME COURT

Ultimately, Jeeja filed a writ petition in the form of a Public Interest Litigation in the Supreme Court under Article 32 of the Constitution of India alleging arbitrary and humiliating discrimination amounting to a violation of her rights under Articles 14 (Right to Equality) and 21 (Right to Life and Personal Liberty) of the Constitution.

Supporting Jeeja as the second petitioner was the NGO ADAPT (Able Disabled All People Together).

In the petition, Jeeja documented real incidents of discrimination against persons with disabilities during air travel highlighting how routine this problem was ...

"Mr. Tony Kurian was repeatedly denied the right to purchase tickets on account of his visual impairment."

"Ms. Anilee Agarwal was forced into signing an indemnity bond before she could fly from Delhi to Raipur."

"Mr. Nilesh Singit was told by one airlines that he could not travel with his crutches."

INVOKING THE CONSTITUTION, DOMESTIC LAW AND INTERNATIONAL INSTRUMENTS

Jeeja argued that ...

"The Government must fulfil its obligations under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 to ensure that those with disabilities can achieve their full potential free from such discrimination and harassment including in relation to transportation systems such as airports and aircrafts".



She also highlighted the clear violation of the Civil Aviation Requirements of 2008 (CAR 2008). The CAR 2008 on the Carriage by Air of Persons with Disability and/or Persons with Reduced Mobility were issued by the Directorate General of Civil Aviation under the Aircraft Act, 1934 to make air travel accessible and inclusive for persons with disabilities.

Finally, Jeeja also made reference to several international instruments that recognise and protect the rights of persons with disabilities such as the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), which India ratified in 2007.

THE MINISTRY OF CIVIL AVIATION INTROSPECTS

While the case was pending, the Ministry of Civil Aviation constituted the Ashok Kumar Committee on 22 March 2012 to look into various issues relating to improving air travel for persons with disabilities and reduced mobility. The Committee consisted of 21 members including members of NGOs working on disability rights.

The Committee submitted its report and highlighted several shortcomings in the CAR 2008.

"The ticketing system needs to be made more accessible."

"A complaints redressal mechanism with a "Complaints Resolution Officer" for persons with reduced mobility must be present at each airport."

"There needs to be standardised training procedures for airline staff."

"The definition of persons with disability needs to be widened to include those with no visible disability."

On the basis of this committee's report, the Ministry of Civil Aviation amended the CAR 2008 to introduce CAR 2014.

THE COURT'S DIRECTIONS



To the Union of India

"The Government is to review and amend the CAR 2014 in line with the specific recommendations of the Ashok Kumar Committee which have not yet been included."



To the airlines

"We arrive at the irresistible conclusion that Jeeja Ghosh was not given appropriate, fair and caring treatment which she required with due sensitivity, and the decision to de-board her, in the given circumstances, was uncalled for. More than that, the manner in which she was treated while deboarding from the aircraft, depicts total lack of sensitivity on the part of the officials of the airlines."

The Court directed damages worth Rs. 10,00,000 to be paid to Jeeja Ghosh for the mental trauma, harassment and humiliation she suffered.



On the obligations of the private sector

SpiceJet tried to shrug off its responsibility, saying that what they did was necessitated due to the consideration for the health and safety of all other passengers.

The Court noted...

"We have already taken note of some of the international covenants and instruments guaranteeing rights to persons with disabilities. Insofar as obligation to fulfill these rights are concerned, the same is not limited to the Government or government agencies/State but even the private entities (which shall include private carriers as well) are fastened with such an obligation which they are supposed to carry out."

WHAT ARE THE RIGHTS OF PERSONS WITH DISABILITIES?

The Supreme Court observed...

"Disability tends to be couched within a medical and welfare framework, identifying people with disabilities as ill, different from their non-disabled peers, and in need of care. Because the emphasis is on the medical needs of people with disabilities, there is a corresponding neglect of their wider social needs, which has resulted in severe isolation for people with disabilities and their families."

"The principle of non-discrimination seeks to ensure that all persons can equally enjoy and exercise all their rights and freedoms. Discrimination occurs due to arbitrary denial of opportunities for equal participation... Equality not only implies preventing discrimination (example, the protection of individuals against unfavourable treatment by introducing anti-discrimination laws), but goes beyond in remedying discrimination against groups suffering systemic discrimination in society. In concrete terms, it means embracing the notion of positive rights, affirmative action and reasonable accommodation."

WHAT IS THE PHILOSOPHY OF HUMAN DIGNITY?

The Supreme Court observed...

"The rights that are guaranteed to differently-abled persons under the 1995 Act, are founded on the sound principle of human dignity which is the core value of human right and is treated as a significant facet of right to life and liberty. Such a right, now treated as human right of the persons who are disabled, has its roots in Article 21 of the Constitution... Thus, human dignity is a constitutional value and a constitutional goal. "

THE LAW TODAY

Jeeja Ghosh set the ball rolling on more sensitised law making. Today for rights of persons with disabilities for purposes of travel there are two important authorities:

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 was replaced by the Rights of Persons with Disabilities Act, 2016 ("PWD Act, 2016"). A significant feature of the new law was imposition of responsibilities on the private sector, which the old Act did not do.

How does it do this?

PWD Act, 2016 → {Section 2(i)} It defines "establishment" → {Section 2(v)} to include private entities → {Section 40} Next, it places an obligation on the central government to lay down standards of accessibility for transportation by including appropriate technologies, systems and facilities → {Section 46} Finally, it places an obligation on private service providers to provide services in accordance with rules on accessibility formulated by the central government under Section 40

Civil Aviation Requirements for carriage by air of persons with disabilities are regularly updated.

How can we track this?

→ The Directorate General of Civil Aviation is the authority incharge of formulating civil aviation requirements → Their website www.dgca.gov.in publishes all updates on the CAR → Section 3 of the CAR on "Air Transport" carries the requirements in relation to carriage by air of persons with disability and/or reduced mobility → The latest revision in CAR 2014 came into effect on 9th July 2021

A LANDMARK JUDGEMENT LATER, THE FIGHT CONTINUES

The Supreme Court's judgment led to far-reaching changes in carrier norms for people with disabilities and compliance by all airlines and major airports in providing facilities to people with disabilities. However, the fight for dignity is a long and continuing one.

As recently as in November 2020, Jeeja was once again stopped from entering a mall in Kolkata for reasons of being unaccompanied. The mall authorities later tendered an unconditional apology.

A 28-minute long documentary titled "I am Jeeja" narrates the life, struggles and successes of activist Jeeja Ghosh. In 2017, the film bagged honours at the 64th National Film Awards.

A 2021 Supreme Court judgment *Vikash Kumar v. UPSC* [(2021) 5 SCC 370] held that an individual suffering from dysgraphia or writer's cramp is entitled to a scribe in the Civil Services Examination (CSE).

"The government needs to shed its fundamental fallacy that only persons with certain specific disabilities need assistance. The Jeeja Ghosh judgment has established that equality is not just limited to prevention of discrimination but also extends to a wide variety of positive rights, including reasonable accommodation."

On 1.12.2021 the Supreme Court passed a further interim order in the Jeeja Ghosh case directing the DGCA to consider Jeeja's feedback on its latest 2021 CAR. The court also asked the DGCA to consider that persons with disabilities not be manually lifted without consent, and those with prosthetic limbs/calipers not be required to remove them for security checks.

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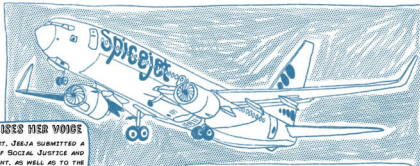
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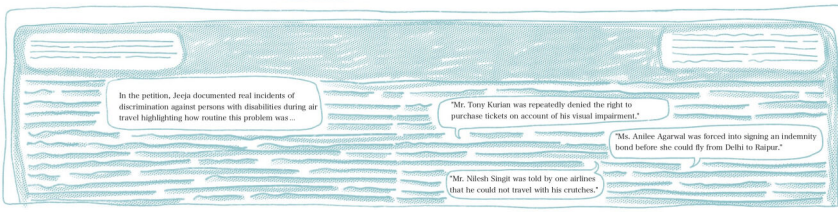
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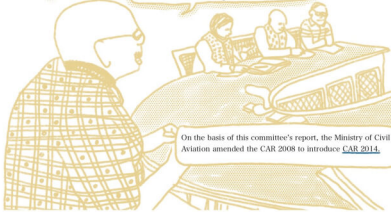
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