

DOES THE INDIAN CONSTITUTION TAPER THE RIGHTS OF TRANSGENDERED ATHLETES?

Shreya Lal*

In 2006, Santhi Soundarajan became the first Tamil woman to win a medal at the Asian Games. She belongs to a Dalit family from Pudukottai, Tamil Nadu, and has won 12 international medals for India and 50 for her home country. But after her victory in 2006, Santhi Soundarajan was subjected to an irrelevant and invasive sex test.

WHAT IS SEX TESTING?

Sex testing, additionally called sex determination testing, for sporting events became a current practice in 1950 when the International Association of Athletics Federations (IAAF) began physical examinations, also known as "naked parades," of feminine athletes. The rationale for these tests was the concern that Soviet and communist countries would send men dressed as girls to sporting events. This was supported by the misperception that after men started competing against women, women couldn't beat men. In her book *Seeing sort of a Feminist*, Nivedita Menon talks concerning the attention-grabbing cases of Polish runner Stella Walsh and yank sprinter Helen Stephens. In the 1936 Olympics, Stephens beat Walsh (who is alleged to be the world' quickest lady¹) and set a replacement record. It had been claimed that no woman could run that fast, and Stephens had to endure a sex test. The sex test showed that Stephens was not a woman². The term "transgender" describes a person whose gender is no longer matched with the gender assigned to them at birth, i.e., someone who identifies herself as a lady but is a male at birth, and someone who acknowledges himself as a man but is a woman at birth. The primary problem that arises is the same information being duplicated. A few people recognize that they're trans from an early age, but some are not able to pick themselves out in this way, and they realize this only at a later stage in life. These human beings, be they athletes or non-athletes, frequently face backlash from the society they live in. Even the IOC (International Olympic Committee) is indifferent to them. Sports embody values including

*BLS LLB, SECOND YEAR, KLE COLLEGE OF LAW, AFFILIATED TO MUMBAI UNIVERSITY.

¹ Clevelandmagazine.com. 2022. 1947: Stella Walsh Was One of the Fastest Women in The World. [online] Available at: <https://clevelandmagazine.com/in-the-cle/terminal/articles/1947-stella-walsh-was-one-of-the-fastest-women-in-the-world> [Last visited on 21 July 2022].

² Sharma, I., 2022. Santhi Soundarajan & The Misogyny of Sex Verification Tests in Sports | Feminism in India. *Feminism In India*. Available at: <https://feminisminindia.com/2020/11/25/santhi-soundarajan-gender-determination-test/> [Last visited on 13 July 2022].

brotherhood, teamwork, equality, equality, discipline, equity and respect. It brings human beings from each stratum of life together, wherein they meet, compete, and construct brotherhood. However, it's been shown that it additionally provides a foundation for exclusion through its certain unwanted guidelines and regulations.

SOMEONE WHO STOOD-UP

Dutee Chand is an Olympic jock from India. She is the first Indian girl in thirty-six years to qualify for the 100-meter dash. At just twenty years old, she completed the race in 11.24 seconds. She is one of all the dozens of feminine athletes screened for "masculine qualities." The distinction is that Chand hit back. In 2014, Chand, a 200-meter sprinter, was on her way to what she believed to be a routine drug check once being referred to by the director of the Indian Athletics Federation and asked to return to Delhi. Once she arrived, she was horror-stricken to find her gender being questioned as a woman. The tests she underwent went well on the far side of peeing during a cup. In line with The New York Times, Chand was examined and examined to the point where she was embarrassed while not understanding What the doctors were doing or trying for. Doctors used a 5-scale chart and androgen level tests to see if Chand was "intersex³." The International Athletics Federation (I.A.A.F.) then determined that Chand wasn't female enough to contend as a women's contestant. She would need to take secretions to lower her androgenic hormone levels. "I'm not getting modifications for anyone," Chand told the New York Times 2 years ago⁴. I actually have a sense this can be an equivalent quite primitive, unethical rule. It' going too far. Feminine athletes were subjected to hormone suppression therapy, female reproductive organ mutilation, and human rights violations as a result of gender verification testing. Chand isn't the primary athlete to be asked concerning her gender. Caster Semenya, a middle-distance runner who won silver in the 800 meters at the 2012 Summer Olympics, has somebody accompany her to the lavatory before and when she races. Maria José Martínez-Patio was banned from the 1988 Summer Olympics after a gender verification test revealed she had a Y chromosome; her man dropped her and she or he was stripped of her titles. Instead of returning to and altering the body she was born with, Chand filed an appeal with the Arbitration Court for Sport in Switzerland, which remains confidential.

³ Reynolds, A. and Hamidian Jahromi, A., 2022. Transgender Athletes in Sports Competitions: How Policy Measures Can Be More Inclusive and Fairer to All. National Library of Medicine. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8316721/> [Last visited on 15 July 2022].

⁴ Nytimes.com. 2022. The Humiliating Practice of Sex-Testing Female Athletes (Published 2016). [online] Available at: <https://www.nytimes.com/2016/07/03/magazine/the-humiliating-practice-of-sex-testing-female-athletes.html> [Last visited on 20 July 2022].

In response to the discriminatory "gender verification" policies for feminine athletes, she claimed her genetic variations weren't to blame⁵. In keeping with her attorneys, her high androgenic hormone levels aren't any totally different than those of a male contestant with a genetic advantage like Usain Bolt' average leg length of over.

IS THE LIVING DOCUMENT SHELTERING RIGHTS FOR EVERYONE INVARIABLY, FORSOOTH?

Article 14⁶[viii] talks about the right to equality under the Indian constitution. However, does the sex test performed on athletes exhibit equality? These tests are performed most effectively on female athletes, so that they will ensure fairness. Due to the fact that men impersonating as women may want to dominate the sector of athletics while females posing as males won't benefit from any aggressive aspect over different athletes, subsequently, male athletes are spared this indignity⁷. This is largely based on the concept of male athletic superiority, which is now no longer primarily based on a person's having a better man or woman's capacity, but on sex superiority. But in the 1936 games, Helen Stephens (jogging for the USA) defeated Stella Walsh (jogging for Poland), and while Stephens changed into a request to head for the sex verification test, she passed. But in 1980, while Walsh was killed, her post-mortem revealed that she had male sex organs. The Indian Constitution guarantees a set of rights to each and every citizen of the nation and it has to be mentioned that the right to equality and right to Life are a very inevitable part of the Nation we reside in. People from the transgender community have faced the infamous backlash from almost every authority and organization at every phase of life⁸. Right to Equality⁹ is a statement we all strive for and the same must be inculcated to invariably every aspect of opportunities and growth¹⁰.

⁵ Center for American Progress. 2022. Fact Sheet: The Importance of Sports Participation for Transgender Youth. [online] Available at: <https://www.americanprogress.org/article/fact-sheet-importance-sports-participation-transgender-youth/> [Accessed 21 July 2022].

⁶ INDIA CONST. art. 14

⁷ erymas, T. and wakeam, K., 2022. NPR Cookie Consent and Choices. [online] Npr.org. Available at: <https://www.npr.org/2021/03/18/978716732/wave-of-new-bills-say-trans-athletes-have-an-unfair-edge-what-does-the-science-s> [Last visited on 19 July 2022].

⁸Harper, J., 2022. TRANSGENDER ATHLETES AND INTERNATIONAL SPORTS POLICY. [online] Scholarship.law.duke.edu. Available at: <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5035&context=lcp> [Last visited on 17 July 2022].

⁹ INDIA CONST. art. 14

¹⁰ Human Rights Watch. 2022. "They're Chasing Us Away from Sport". [online] Available at: <https://www.hrw.org/report/2020/12/04/theyre-chasing-us-away-sport/human-rights-violations-sex-testing-elite-women> [Last visited on 18 July 2022].

TO ADD SALT TO THE PLATTER

In connection with this debate, it is important to read Article 14 of the Indian Constitution carefully. The right to equality is one of the most sacrosanct rights enshrined in the Constitution. The focal point of the basis is our positive beliefs in our democracy, in particular secularism, and it becomes the premise of the state's attempt to provide social protection and a stable lifestyle to every citizen. Is the exercise of this right then no longer justified in recognition of those who promote Gender reassignment at the place where sport is practiced? The IOC, after much deliberation on scientific issues, decided that as long as an athlete's gender is legally identified and he or she has undergone at least one year of post-operative hormone therapy, an athlete wished to legally compete in the Games. No one wanted an encore from the Soundarajan controversy, but the past few days' activity regarding African athlete Caster Semenya is evidence that many loopholes and ambiguities plague the site of gender testing and transgender participation¹¹. The famous IOC has finally reached out to other sporting bodies, but there may be some discrimination and controversy surrounding transgender participation in sport.¹²

¹¹ KORNEI, K., 2022. This scientist is racing to discover how gender transitions alter athletic performance—including her own. [online] Science.org. Available at: <https://www.science.org/content/article/scientist-racing-discover-how-gender-transitions-alter-athletic-performance-including> [Last visited on 19 July 2022].

¹² Rupkatha.com. 2022. The Curious Case of Shanthi: The Issue of Transgender in Indian Sports – Rup katha Journal on Interdisciplinary Studies in Humanities. [online] Available at: <https://rupkatha.com/curious-case-shanthi-issue-transgender-indian-sports/> [Last visited on 5 July 2022].