

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

EDITORIAL TEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

GENDER TESTING IN SPORTS: AN ANALYSIS OF THE RECENT INTERNATIONAL DEVELOPMENTS

AUTHORED BY - DEEKSHA KATHAYAT

In the sporting world, the scandal in which South Africa's middle-distance runner, Caster Semenya, was caught up with in 2009 shook it to its bones. It was at the World Athletics Championships in Berlin where Semenya left all the competition far behind as she took the 800 meters when still 18 years old. Instead of earning accolades for this Semenya became a victim of intrusive surveillance. Due to her powerful performance and body that raised several questions over her gender, the IAAF World Athletics, then known as the International Association of Athletics Federation, requested her to undergo some testing. The results of the testing returned that Semenya was suffering from hyperandrogenism—a condition in which the female's body naturally produced more testosterone than usual. The question of whether Semenya was to be allowed to compete in women's races unless she lowered her testosterone levels medically threw the case into great court dispute.

Thus, the case of Caster Semenya has become very characteristic for the broader debate on gender testing in sports. The argument of sport authorities rests in the necessity to regulate testosterone level for a level game. Critics counter this by arguing that the rules violated the human rights of athletes and relied on an outdated understanding of gender and biological diversity. It is in this context that recent developments in gender testing draw serious attention to complications spawned by tensions between the ideologies of inclusion and fairness in international sports, which raise critical questions about competitive sports' future.

History of gender testing in Sports

Besides the genetic testing, there were other earlier forms of gender verification that were not only not limited to women but, instead included many athletes in intrusive scrutiny. Here, testers scrutinized athletes and expected them to expose themselves to tests. They would be prepared to submit themselves for testing without disclosing fully what these tests meant. Failure to comply with such calls would subject them to disqualification. Over time, the negative public reaction to these intrusive measures resulted in the testosterone-based

legislations. These were made in an attempt to balance private manners with the notion of justice in competitions.

This, however, is argued by many athletes and scholars who say that such measures are even more scientific but lack the dynamic qualities of athletic performance. One of the contributing factors is testosterone, and most people who naturally have a high level of this hormone face biased judgment by their peers. Athletes from nations other than Western often come from regions where body types and standards related to athletic performance vary broadly compared with Eurocentric norms.

This is not a new thing to talk about-sex testing in sports. The sport back in the 1960s had already started its early stages of competitive athletics, which introduced sex verification practices, especially in the Olympics. The early procedures were largely invasive as well as degrading towards the athletic dignity since genitalia inspections were required. Over the years, these methods emerged into more scientific approaches such as chromosomal testing. Early uses of genetic tests to determine eligibility for women's events arose in the 1990s and were based on the existence of the SRY gene, which is most commonly associated with male development. Gender verification has long been a contentious issue.

While methods of testing changed, many argued that the tests themselves were discriminatory as they targeted female athletes, mainly ones who did not look "western"-idealized. Eventually, the sex testing advanced to testosterone level regulation because scientific studies showed that the testosterone hormone present in men and women equally plays a huge role in athleticism. This has seen a mushrooming of new testing methodologies, for instance the hyperandrogenism rules which have been issued by sports organizations such as World Athletics. The legal policies concerning issues on gender-testing in sport have also witnessed profound changes regarding trans athletes. The IOC established a bunch of regulations that allow inclusion, but individual sport governing bodies often set different criteria for the participation of transgender athletes. For instance, in the United States, the National Collegiate Athletic Association has set rules for involvement of transgender athletes that set out that trans female women with a clinically reduced level of testosterone are allowed into competitions meant for women if their level of testosterone has been clinically lowered for at least one year.

However, despite all these, the regulations remain potent in causing litigation and criticisms.

Critics usually argue that such policies push the balance between scientific backbone and human dignity too far. The strict new policies of the latest sporting bodies, for example, FINA (International Swimming Federation), exemplify the perpetual imbalance between ensuring a level playing field and acknowledging gender diversity.

Key International Developments

The scientific debates about the issue of gender identity versus biological sex are going to be at center stage. Researchers will continue efforts aimed at understanding the effect of testosterone when it comes to performance in athletics and whether the cut-off point of the current threshold level of testosterone does indeed mirror competitive advantage. Therefore, debates over mixed results regarding the effect of testosterone in cisgender and transgender athletes raise the complexity of policymaking. Moreover, studies have shown that while testosterone may give an edge to an athlete in some sports, the effect may be small or nonexistent in other sports. The policy and regulation question that comes from this is whether one size fits all for all sports or if each sport requires a particular policy.

From an ethical stance, the mandatory medical intervention of altering an athlete's hormone levels places deep questions on issues of bodily autonomy and consent. Many sports people argue that such conditions conflict with the right of self-determination, especially where one has proved no direct benefit arising from the natural testosterone levels associated with such persons. It becomes even more complicated when some of the concerned people, like Caster Semenya, have a medical condition leading to higher testosterone levels through no fault of the concerned persons.

International sports organizations have in the past updated their gender-testing policies based on scientific and social progress in recent years. The most significant policy was that implemented by World Athletics to women who participated in middle-distance races, which is having a limit of 5 nanomoles per liter of testosterone. Athletes like Caster Semenya would be required to take drugs to lower the levels of natural testosterone in the body if they wanted to be competed with.

The International Olympic Committee also published new rules according to which transgender competitors are eligible to compete in women's competitions provided their testosterone levels remain below a given value for the last 12 months. Recent cases, like that of Laurel Hubbard,

a transgender New Zealand weightlifter, who competed in the Tokyo 2020 Olympics, have further energized the debate concerning fairness and inclusion worldwide.

Such was the case that led to more stringent regulations by sports bodies such as World Rugby and FINA. These regulations were marginally effective in curbing the entry of transgender women into elite women's categories. The purpose here is to ensure fairness, but critics opine that such policies malign transgender athletes and add more impediments in their participation in sports. One of the most prominent court cases involving a gender testing policy has been the 2018 CAS ruling in the case of Caster Semenya. In one of the landmark rulings, CAS ruled in favor of World Athletics by ratifying its regulation that stated that although these policies were discriminatory, these were needed to be dealt with at all costs to protect the integrity of women's sports. This ruling since then has been a hot debated topic, and the human rights organizations have severely criticized CAS for giving precedence over competitive fairness rather than dignity and rights over the athletes.

More important, however, are the legal implications-the far-reaching effects of these policies on the athletes are overshadowed by their implications for all who are touched by them: indeed, international sports bodies may establish, by these rulings, lawful precedents that will set the stage for further reaches into athletes' lives if they can be shown to have improperly favored one athlete over another. Law, science, and ethics are intertwined in these cases, exposing the difficulty courts and policymakers face in finding a balance when fundamental competing interests within the law are involved.

Scientific and Ethical Considerations

Any discussion on gender-testing policies necessarily involve geopolitical dimensions. The athletes represented by the Global South are, firstly, all those countries with infrastructural facilities and scarce resources at their disposal, mainly those with unavailable healthcare systems. Such nations find themselves at a disadvantage when confronted with the demands of such policies. For example, like that of Caster Semenya, who not only grabbed the attention of the world because of her personal case but also because she had strong support from the government of South Africa presenting the issue as a national matter of identity and dignity.

When looking into athletes from cultures that promote gender diversity or perhaps recognize non-binary identities, those are likely to have more challenges when it comes to international

participation. Thus, the imposition of certain Western-centric norms of gender through global sport regulations poses several important questions as to their justice in a multicultural world. In this context, science and law regarding gender testing must be matched with cultural and social understandings from which regulations stem.

Scientific debates have been raised in the issue of the regulation of testosterone in sports. There is an assumption that testosterone gives physical advantages, such as greater muscle mass and increased endurance that are results in improved performance in different sporting fields. However, scientific research diverges on this advantage and the proportions in which it would be observed compared to other determinants such as training, genetics, or environment.

The scientific ambiguity presents an ethical arena of questions. Many athletes, in fact, including Caster Semenya, have argued that forcing them to endure medical intervention for lowering their natural testosterone levels infringes on their human rights. Critics of gender testing policies claim that the focus is on testosterone, given the fact that this concentration is narrow rather than exploring the broad spectrum of biological and environmental influences on performance. It also raises the question of those policies putting a disproportionate burden on athletes from less-developed countries as well as women of color. The future of gender testing in sports will likely be influenced by continued legal challenges, new scientific study, and shifts in social attitudes toward gender and inclusion. Here lies the challenge for sports organizations, which must balance competitive equity with the ethical considerations of their policies. Ultimately, the decision over gender testing will depend on nuances both of science and of society, combined with a commitment to protecting the rights of all athletes. It is only when these nuances are acknowledged that sports organizations will hope for a more equitable and inclusive environment for generations of athletes to come.

Legal and Human Rights Implications

One of the most important factors in policy development has been the role of legal battles. The Caster Semenya case before the Court of Arbitration for Sport is an excellent example of a clash between the interests of sports bodies seeking fairness in competition and athletes defending their rights to compete. World Athletics won the case before CAS, which declared that the regulations are valid; however, Semenya has filed a challenge against the legality of the testosterone rules at the European Court of Human Rights.

If the ECHR rules in favor of Semenya, it will likely establish precedent for policies regarding gender testing in the future, forcing international sports organizations, especially the IOC, to reassess current policies. Already, human rights activists have criticized such policies as an intrusion into athletes' privacy and violation of their bodily autonomy, raising both a legal and ethical issue that may persist for many years to come.

Impact on geopolitics and culture

The implications go beyond the athletes: for the most part, the athletes affected by the policies come from the Global South. Without much legal representation and scarce support from the medical sector, such athletes face significant challenges in their ability to gain access to fair trial procedures. Athletes like South African Caster Semenya have received general support from their governments, which consider these policies to represent a form of gender-based and racial discrimination.

Even cultural biases lie embedded in the gender testing regulations. The very notion of trying to regulate women's bodies according to western notions of femininity and fairness has been termed 'gender colonialism.' Because not all women/athletes do not fit these norms, they are often hit the hardest by such a system. The variations in the range of testosterone across populations have also made setting a uniform threshold for eligibility not credible.

Conclusion

This also concludes that gender testing, despite being a much debated and developing topic in the sporting fraternity, becomes relevant in the light of full fairness, rightful inclusion, and human rights. Thus, with constant policy refinement among international sports bodies, this thread between a level playfield and individual athlete rights will continue to run. But while the legal battles continue and science researches the issue, what is assured is that the future for gender testing will be shaped by what will be presented, but without an iota of doubt, any solution to this challenge must respect not only the complexity of gender but also biology and the diversified experiences of the athletes around the world.