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Gender Testing In Women Athletics and Privacy Rights

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Abstract

This paper aims to discuss and analyse the terms and connotations that define what exactly is gender testing and how these tests violate the Right to privacy of female athletes and the gap between male and female Athletes created by this testing. How gender testing was conducted from the time immemorial and its implications in the 20th Century. The present clinical approach involving "female identification" in sporting events is discussed within the study through a moral standpoint. It requires the current widespread conversation regarding female competitors who were victimized by similarly offensive behaviors, like Caster Semenya and Dutee Chand. Athletes in the 2009 World Athletics Championships in Berlin, Germany, criticized Semenya for allegedly seeming a "gender imposter." Her gender was verified during a physical checkup that followed. The paper examines if individuals with active lifestyles, such as professionals such as Semenya, might assert their privilege towards biological confidentiality which is universally accepted in medical physiology and protected by global and domestic biological protection regulations. The right's applicability to biological testing in sporting events is debated. In achieving that, the objectives of the affected athletes as well as intermediaries are adjusted in accordance with the advantages or disadvantages anticipated. Numerous instances of damage have been reported, including wrongful exclusion, acute sex and gender identity crises, derogatory responses, societal seclusion, despair, including suicides. Advantages remain questionable because majority intersex instances were dismissed as unimportant for athletic competitiveness. The perks of DNA screening for "sexuality identification" in athletics don't really balance the severe personal downsides. The way sporting organizations currently treat contestants' confidentiality ignoring it, does not adhere to accepted moral standards for the safeguarding of vulnerable private information. Thus, "gender Verification" based on genetics must get banned from competitions.

Keywords-

Gender Testing, Sex verification tests, Female Athletes, Privacy Rights, Gender Inequality, Hormone Testing in Sports, hyperandrogenism, Fundamental Rights violation, Right to Equality, Employment Rights.

Introduction-

Sex verification examinations, often known as gender testing in sporting events, are a sequence of procedures used to determine an athlete's gender. It was initially used in sports by the International Association of Athletics Federation (IAAF) in 1950, after it was discovered that males with a greater physiological benefit started participating in female-only competitions by dressing as women.

Sport has been the sole domain of men for generations, the combative sphere wherein strength was fostered and demonstrated. Sports provided men with the physiological and mental toughness that "masculinity" demanded. Female's athletic ability and conviction expanded well through the early twentieth century, several people started to question if swift, strong players were indeed women.

The first ever case arising out of misrepresenting gender dates back to the Summer Olympics at Berlin in the year 1936 where American Runner Hellen Stephens barely managed to defeat Poland's Stella Walsh in the 100 metres sprint and setting a new fastest time. Due to such amazing agility, "man-like" physique, and sharp looks, both the runners were publicly accused to be masculine pretenders by Polish and American Journalists. During competitions official verification, Authorities Of German Council inspected Hellen's' genital area and certified her female. However four decades later, in an unexpected surprise Polish runner Stella's examination showed she possessed indeterminate genitals.

Introduction To The Practice Of Gender Verification

Testing

Since 1968, a respected organization like the International Olympic Committee (IOC) formally authorized the use of sex verification tests or gender confirmation. In order to guarantee "fair competition," it seemed that males potentially impersonate women in sports competitions for women or that women with "manly traits" will indeed possess an unjustified physiological edge against the rest. Numerous occasions, also in India, whenever the identity of female athletes has been doubted due to prominent musculature, a certain walk, or any particular characteristic that was deemed "not feminine."

In the past, the screening was purely bodily and was conducted by ultrasonography, natural hormone screening, chromosomal mapping, and gynecological examination, as per the International Athletic Association's policy. These examinations assisted in the identification of contestants whose chromosomal, testosterone, genitals, generative parts, or any other supplementary sexual traits did not meet their predefined requirements; these individuals were labeled as intersex or having Disorder in Sex Development. Later, as nanotechnology continued to evolve gradually, additional studies were devised and implemented that evaluated participants based on their DNA and inner genitalia. Women only have two alternatives: whether receive medical treatment or quit from contest with whatever respect is still intact.

Gender Verification Test OVER THE YEARS-

During the initial periods, the female players were compelled to march undressed in before the physicians, which became regarded as the 'nude parade.' Players were often ordered to lay on bare back sides and draw their legs to their chests for a more thorough examination.

Prior to the Summer Olympics of 1968 at Mexico, Chromosome Testing was subsequently established by the International Olympic Committee (IOC). Authorities saw it as a little respectful and impartial means to seek out not just fakers, and moreover intersex competitors, who required to be prohibited to demand equal competition, according to Olympics authorities. This, nevertheless, was abandoned after it was discovered to be ineffective in determining "masculinity". Ewa Klobukowska, a Polish sprinter was one of the earliest to be disqualified after the exam revealed she had both XX and XXY genes.

Effects On Human Rights-

The gender examination laws are abusing and humiliating the selected female track as well as field competitors, who are mostly from all over the world. Such exams contain biased laws and force women to endure costly, disruptive, medically, mentally, and financially destructive clinical treatment. Additionally, by possibly breaching the women competitors' rights to privacy, security, and equality before the law, such examinations are ultimately to blame for possible human rights violations. This ultimately results in the indiscriminate regulation of women's anatomy based on subjective notions of what it means to be a woman and racialized prejudices.

The excessive invasion of a person's personal or any assaults on the person's honor or character are both prohibited by Article 12 of the Universal Declaration of Human Rights (UDHR)¹. Parallel to this, Article 17 of the ICCPR² forbids any such invasion of a person's confidentiality and safeguards their honor and dignity from any illegal assaults. At the federal stage, Article 21 of the Indian Constitution³ recognizes the right to privacy as a fundamental right. The methods used to evaluate the sex traits and testosterone levels of female athletes are fundamentally arbitrary and demeaning. The international sports governing bodies essentially force female athletes to submit to medical tests and procedures that serve no legitimate medical interest or advantage.

These rules contradict the rights to healthcare provided by Articles 25 of the UDHR⁴ and 12 of the ICESCR⁵ since frequently, the women are forced or induced to receive medical treatment in order to be eligible to compete. Such medical procedures are not only costly yet often detrimental to the patient's physiological and emotional wellbeing. Furthermore, gender confirmation tests violates the basic human right to freedom from all forms of inequality because it discriminates not only on the basis of sex but primarily on the grounds of ethnicity because examinations on women of race are conducted far more frequently.

¹ United Nations, Universal Declaration of Human Rights | United Nations United Nations (2022), <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last visited Jun 24, 2022).

² International Covenant on Civil and Political Rights, 7 Human Rights Quarterly 132 (1985).

³ Constitution of India, Constitutionofindia.net (2022), https://www.constitutionofindia.net/constitution_of_india/fundamental_rights/articles/Article%2021 (last visited Jun 24, 2022).

⁴ Article 25 of The Universal Declaration of Human Rights, Humanrights.com (2022), <https://www.humanrights.com/course/lesson/articles-19-25/read-article-25.html> (last visited Jun 24, 2022).

⁵ (2022), <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> (last visited Jun 24, 2022).

Challenges To The Regulation-

Chand and Semenya appealed the restrictions' factual foundation as well as its prejudicial effects before Court of Arbitration for Sports. A thorough examination of relevant instances is helpful for this debate since it highlight underlying serious fundamental flaws throughout the rules that have an influence mostly on women's equality protections for sports. The instances further highlight how the laws are incompatible against fundamental liberties norms and how the present structure for sports cannot address that.

From an international sports viewpoint, the core of such a debate is logical: determining how gender is ascertained in sports, determining yet if androgens is a key indicator of athletic achievement, determining for certain if the raised androgens amounts of non-confirming sportspeople offer people an extra edge atop 'regular' female players, but also determining for certain if it validates one's alienation out via confined female activities. The regulations' need, reasonableness, and proportionality are what determine if regulations seem to be discriminating, required, and legitimate for Court for Arbitration of Sports. Nevertheless, given a judicial standpoint, such problems transcend across games but rather relate to adherence to humanitarian law and responsibility of organizations.

Proposals And Ideas-

The hyperandrogenic approach of the sporting organizations has come under fire from several healthcare organizations including female players who have voiced out regarding the cruel & discriminatory approach. According to statements from human rights organizations, the international sporting organizations should adopt a more humanitarian rights regulatory strategy to properly determine whether female applicants for sports are eligible, which shouldn't be relied on arbitrarily and discriminatorily applied rules. Also addressed should be the mental injury and distress experienced by the female competitors who are put through this examination, including the embarrassment and disgrace they experience.

The UN Guiding Principles on Business and Human Rights⁶, whose major goal is to defend the inalienable civil liberties of anyone that is engaged alongside such commerce organizations, should be adopted by sporting organizations like the World Athletics and International

⁶ The UN Guiding Principles on Business and Human Rights : UN Guiding Principles Reporting Framework, Ungpreporting.org (2022), <https://www.ungpreporting.org/resources/the-ungps/> (last visited Jun 24, 2022).

Olympic Committee. Furthermore, these rules prohibit any actions that would jeopardize their right to privacy or expose them to any form of discrimination. Even authorities must ensure that respective nations have robust anti-discrimination legislation to protect the athletes who are representing their nations on global stages from any type of sex, gender, or race-based prejudice.

Conclusion-

From the first Olympic competitions, the tradition of female identification or gender screening has persisted. But it's past time to put an end to this form of prejudice. It is reasonable as a system is in existence to verify the competitors' credentials to compete in such esteemed sporting events. Nevertheless, it should be assured because such a process is devoid of arbitrariness, disparagement, and discrimination. Additionally, it must be made certain that these qualifying requirements are carried equatable to men and women and are supported by premises that are supported by science. A rising number of people are unhappy about how poorly players' fundamental liberties are protected in sports. This study looked in various gender-related legal flaws which underlie resulting in such outcomes. In addition to being fundamental to convergence and divergence in sports, sex or gender distinctions are indeed fundamental to basic laws, having a robust humanitarian structure in existence to defend the widening range of gendered identification. Due to these, it is now difficult to balance the freedoms of players also against goals of sports.

Whenever this comes to such presence versus absence of non-conforming genders in athletics, the Chand as well as Semenya instances illustrated the main scholarly argument which has plagued game. Our study also moved the conversation further towards area of fundamental liberties legislation over this backdrop of both the disputed research, supporting the idea how such issues transcend past athletics but involves the player's larger interests. There seem to be regulation discrepancies throughout the suitability or applicability of civil liberties regulations in athletics, including an inability to institutionally handle violations, but also alongside little assistance for athletes even before pursuing entry to any lawful alternative while one's privileges had also been breached, amidst a few favorable obligations through athletics organizations.

This is indeed a lofty goal to solve the legislative conundrum through enacting policies that balance individual liberties alongside athletics. This article also provided important ideas that complement the current ideas in order to guarantee the strict implementation of humanitarian law in competition as well as also to aid sportsmen that want to defend their interests. Since there is now disagreement on whether non-normative individuals must be allowed to participate in sports, these might be challenging to get a consensus upon that anti-discrimination issue. Athletics is under burgeoning obligation to not only adjust but also acknowledge the larger cultural alterations in gendered identification, nevertheless. The cause is being advanced, yet organizations possess one responsibility to continuously uphold basic freedoms, or suffer the repercussions.

