



## BREAKING BARRIERS: INCLUSION AND CHALLENGES FOR TRANSGENDER ATHLETES IN CONTEMPORARY SPORTS LAWS

**AUTHOR** – NEHAL SHARMA, STUDENT AT MIT WORLD PEACE UNIVERSITY

**Best Citation** – NEHAL SHARMA, BREAKING BARRIERS: INCLUSION AND CHALLENGES FOR TRANSGENDER ATHLETES IN CONTEMPORARY SPORTS LAWS, *ILE FORTNIGHTLY REVIEW (ILE FN)*, 1 (2) of 2023, Pg. 25–29, APIS – 3920 – 0035 | ISBN – 978-81-964391-3-2.

### Abstract

*"Sports have the power to change the world. It can inspire and unite people in a way that little else does." – Nelson Mandela. Sports have emerged as a significant cultural and economic force in India, captivating millions and transforming the entertainment landscape. Behind the scenes, however, sports is governed by a complex web of laws and regulations. Sports extends beyond being a mere source of entertainment and fascination; it encompasses a realm where legal implications play a significant role. The complexities surrounding sports associations and events place additional burdens on legal entities. In contemporary sports, injuries transcend physical boundaries and extend to mental anguish, affecting the players and their families. This article provides a comprehensive abstract of sports laws in India, mainly focusing on the state of transgender individuals in sports worldwide and in India. The paper examines the discrimination encountered by the transgender community within the realm of sports and explores their legal recognition in India.*

**Keywords:** Transgender, Discrimination, Inclusion, Sports, Regulations, Guidelines, Challenges, Equality

### Introduction

Transgender individuals have long faced discrimination and exclusion in various spheres of society, including sports. A transgender individual identifies with a gender that differs from the gender assigned at birth. This internal sense of identity may make them feel trapped in a body that does not align with their true gender. Consequently, their behavior may deviate from societal expectations of their assigned gender. Some transgender individuals may undergo gender confirmation surgeries or medical procedures to align their physical appearance with their identified gender. However, the inclusion of transgender individuals in their identified gender category has been a challenging issue.

The struggle for inclusion began when society started recognizing and acknowledging gender fluidity. Initially, societal acceptance was limited

due to traditional beliefs. Consequently, transgender individuals face exclusion from various social practices and acceptance. Although society has become more open and accepting towards the transgender community than in previous decades, their inclusion in gender categorization within sports remains a highly debated topic. Numerous factors must be considered before deciding on their inclusion or exclusion, ensuring fairness for all athletes involved. The solution should not be at the expense of another group or individual. The separation of men and women into distinct categories in sports is widely accepted due to considerations of fairness and the safety of athletes who may be disadvantaged. In competitive sports, an athlete's competitiveness, dedication, and positive mindset can significantly contribute to success. Acknowledging that biological differences can provide advantages to certain athletes is

crucial. However, the issue is multifaceted and not quickly resolved. To provide an overview of the matter, during puberty, the hormones estrogen and testosterone play significant roles in the development of females and males, respectively. These hormones bring about substantial changes in the bodies of both men and women based on their assigned sex. Including transgender women in competition with cisgender women is a subject of intense debate. Concerns arise regarding the potential advantages transgender women may have due to their larger body structure and internal organs developed during puberty<sup>37</sup>. To address these concerns and ensure a fair playing field, transgender individuals often undergo hormone suppression through medical procedures such as hormone blockers or surgery, aiming to align their hormone levels with those of cisgender athletes<sup>38</sup>.

In the Indian law, Article 14,15 talk about the Right to Equality of the individuals. Article 14 states:

14. Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth<sup>39</sup>

Article 15 states:

15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth, or any of them, be subject to any disability, liability, restriction, or condition with regard to

(a) access to shops, public restaurants, hotels and palaces of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public

(3) Nothing in this article shall prevent the State from making any special provision for women and children

(4) Nothing in this article or in clause ( 2 ) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes<sup>40</sup>

According to these articles, it is against the law to discriminate someone on the basis of their religion, race, caste, sex, place of birth. So is it constitutional to ban transgender athletes from performing in the category they wish to perform in?

Article 19 of India gives the freedom of expression, profession, speech, movements, association, etc., to the citizens of India; so is it constitutional to ban Transstheletes from performing in Sports? Does it not violate Article 19(g) of the Constitution of India?

Furthermore, Article 21 guarantees the right to life and personal liberty; does banning of transgenders from sports take away this right?

If we look at this topic from an Indian perspective, In recent years, India has made significant strides in recognizing the rights and identities of transgender people. However, including transgender individuals in sports remains an evolving aspect with numerous challenges and legal complexities. India took a significant step towards recognizing transgender rights through the landmark judgment in National Legal Services Authority v. Union of India (2014)<sup>41</sup>. The Supreme Court of India affirmed transgender people's right to self-identify their gender and be recognized

<sup>37</sup> ("Why do men and women compete in separate categories in sport?")

<sup>38</sup> (Boskey)

<sup>39</sup> ("Article 14 in The Constitution Of India 1949")

<sup>40</sup> ("Article 15 in The Constitution Of India 1949")

<sup>41</sup> WRIT PETITION (CIVIL) NO.400 OF 2012



as a "third gender." This recognition laid the foundation for greater inclusivity and access to rights for transgender individuals, including participation in sports.

If we look at the challenges faced by transgenders in the sports category, despite legal recognition, transgender athletes face various challenges within the sports ecosystem. One major obstacle is the lack of guidelines and policies addressing transgender participation. The absence of clear regulations often leads to ambiguity, discrimination, and exclusion. Transgender athletes may encounter resistance, prejudice, and unfair treatment from sports authorities, fellow athletes, and spectators.

Transgender athletes also face challenges related to hormone therapy. In many sports, hormone levels are regulated to ensure fair competition. However, the existing policies do not always account for the specific circumstances of transgender individuals who may be undergoing hormone replacement therapy. The lack of clarity in this area creates uncertainty and can result in exclusion or unequal treatment.

To ensure the fair and equal participation of transgender athletes, India's sports laws must adopt inclusive policies that address their unique challenges. Key considerations should include eligibility criteria, hormone therapy regulations, and privacy concerns. Collaborative efforts between sports governing bodies, medical professionals, and transgender advocacy groups are necessary to develop comprehensive guidelines that balance inclusivity and maintain a level playing field.

Sports authorities should consult with experts and research institutions to develop evidence-based policies that are fair and considerate of the physical attributes and capabilities of transgender athletes. It is crucial to recognize that transgender individuals may have different hormone profiles due to hormone replacement therapy, which should be considered when

determining eligibility and competitive categories.

Privacy concerns are another essential aspect to address. Transgender athletes may face challenges related to changing rooms, bathrooms, and medical examinations. Sports authorities should establish protocols that respect the privacy and dignity of transgender athletes while ensuring a safe and inclusive environment for all participants.

The case of Indian sprinter Dutee Chand<sup>42</sup> brought significant attention to the inclusion of transgender athletes in sports. Chand challenged the International Association of Athletics Federations (IAAF) Hyperandrogenism Regulations, which targeted women with naturally high testosterone levels. While Chand's case primarily focused on intersex athletes, it shed light on the broader issues of gender identity and the need for inclusive policies in sports. The Court of Arbitration for Sport (CAS) later suspended the regulations, recognizing the need for further research and evidence regarding the impact of testosterone on athletic performance.

The Kerala High Court recently ruled that transgender individuals have the right to participate in sports following their self-identified gender. The court emphasized the need for inclusivity and recognized the importance of creating an enabling environment for transgender athletes. The judgment highlighted the obligation of sports authorities to ensure fair and equal treatment, protecting the rights and dignity of transgender individuals.<sup>43</sup>

Santhi Soundarajan<sup>44</sup>, a woman from Tamil Nadu, faced a distressing situation that sheds light on the challenges transgender individuals encounter in India. After winning a silver medal at the 2006 Asian Games in Doha, Qatar, she was stripped of her medal upon failing a sex

<sup>42</sup> Writ Petition (Civil) No. 604 of 2015

<sup>43</sup> (Abraham)

<sup>44</sup> ("The Curious Case of Shanthi: The Issue of Transgender in Indian Sports – Rupkatha Journal on Interdisciplinary Studies in Humanities")



verification test. The Indian Olympic Association (IOA) instructed her to cease competing without disclosing the specific details of the test she had failed. Moreover, the Olympic Council of Asia failed to provide all the necessary laboratory tests to substantiate their case against Santhi. This incident highlights the lack of accountability on their part and raises concerns about unjustly stripping an athlete of her medal without sufficient evidence. This disregard for due process resulted in a violation of Santhi's rights, while the government, entrusted with the responsibility of safeguarding the rights of athletes representing the nation, failed to fulfill its obligation.

Promoting awareness and sensitization among athletes, coaches, and sports administrators is crucial for fostering an inclusive sports environment. Education and training programs can help debunk stereotypes, reduce prejudice, and create an atmosphere of acceptance. Sensitization initiatives should focus on understanding gender diversity, respecting self-identified gender identities, and recognizing the rights of transgender athletes.

Sports authorities should collaborate with transgender advocacy organizations, LGBTQ+ community groups, and healthcare professionals to develop educational programs that promote inclusivity. These programs can address common misconceptions, provide guidance on inclusive language and behavior, and enhance understanding of the challenges faced by transgender athletes. By fostering a culture of empathy and respect, the sports community can create a supportive environment where transgender individuals can thrive.

In conclusion, including transgender individuals in sports is a complex and evolving issue in India. While significant advancements have been in recognizing transgender rights, sports authorities and governing bodies face the challenge of developing inclusive policies and guidelines. The absence of clear regulations often leads to ambiguity, discrimination, and

exclusion. To ensure fair and equal participation, it is imperative to establish comprehensive guidelines that address eligibility criteria, hormone therapy regulations, and privacy concerns. Collaboration between sports governing bodies, medical professionals, and transgender advocacy groups is essential to develop evidence-based policies that balance inclusivity and maintain a level playing field.

The case of Indian sprinter Dutee Chand and the recent ruling by the Kerala High Court highlighted the need for inclusivity and recognition of transgender individuals' rights in sports. These cases emphasize the obligation of sports authorities to protect the dignity and rights of transgender athletes, promoting an enabling environment that fosters fair and equal treatment. Education and sensitization programs are vital in creating an inclusive sports environment. Athletes, coaches, and sports administrators should undergo training to increase awareness, debunk stereotypes, and reduce prejudice. By promoting an understanding of gender diversity and respecting self-identified gender identities, the sports community can foster an atmosphere of acceptance and support for transgender athletes. India must align its sports laws with the constitutional guarantees of equality, freedom of expression, and the right to life and personal liberty. By upholding these principles, India can ensure that transgender individuals have equal opportunities to participate in sports, contributing to the overall growth and development of the sports landscape. In pursuing a fair and inclusive sporting culture, India needs to continue engaging in dialogue, research, and collaboration to develop policies that protect the rights of transgender athletes while maintaining the integrity of competitive sports. Only through collective efforts can we create a future where sports genuinely become a platform that unites and inspires people from all walks of life, regardless of their gender identity.



## Works Cited

Abraham, Bobins. "Trans Athletes Can Participate In Their Chosen Gender In Absence Of Separate Category: Kerala HC." *Indiatimes.com*, 30 July 2022, <https://www.indiatimes.com/news/india/transgender-athletes-can-participate-in-their-chosen-gender-kerala-high-court-576049.html>. Accessed 17 June 2023.

"Article 14 in The Constitution Of India 1949." *Indian Kanoon*, <https://indiankanoon.org/doc/367586/>. Accessed 17 June 2023.

"Article 15 in The Constitution Of India 1949." *Indian Kanoon*, <https://indiankanoon.org/doc/609295/>. Accessed 17 June 2023.

Boskey, Elizabeth. "Testosterone Blockers for Transgender Women." *Verywell Health*, 6 June 2023, <https://www.verywellhealth.com/testosterone-blockers-for-transgender-women-4582221>. Accessed 17 June 2023.

"The Curious Case of Shanthi: The Issue of Transgender in Indian Sports – Rupkatha Journal on Interdisciplinary Studies in Humanities." *Rupkatha Journal on Interdisciplinary Studies in Humanities*, <https://rupkatha.com/curious-case-shanthi-issue-transgender-indian-sports/>. Accessed 17 June 2023.

James, Mr, et al. "Untitled." *WordPress.com*, <https://plawyered.files.wordpress.com/2015/09/dutee-chand-v-athletics-federation-of-india-afi-the-international-association-of-athletics-federations-iaaf.pdf>. Accessed 17 June 2023.

Sikri, A. "National Legal Ser.Auth vs Union Of India & Ors on 15 April, 2014." *Indian Kanoon*, <https://indiankanoon.org/doc/193543132/>. Accessed 17 June 2023.

"Why do men and women compete in separate categories in sport?" *Virtual Championship*, 18 April 2021,

<https://virtualchampionship.eu/en/why-do-men-and-women-compete-in-separate-categories-in-sport/>. Accessed 17 June 2023.

## REFERENCES

<https://rupkatha.com/curious-case-shanthi-issue-transgender-indian-sports/>

[https://lawsuperior.com/transgender-athletes-and-the-indian-constitution/#\\_edn1](https://lawsuperior.com/transgender-athletes-and-the-indian-constitution/#_edn1)

<https://www.outlookindia.com/sports/transgender-athletics-ban-bold-move-in-atmosphere-of-political-correctness-news-273228>

[https://lexlife68840978.wordpress.com/2021/10/02/a-dilemma-regarding-transgender-sports-critical-analysis-on-the-issue/#\\_ftn1](https://lexlife68840978.wordpress.com/2021/10/02/a-dilemma-regarding-transgender-sports-critical-analysis-on-the-issue/#_ftn1)

<https://www.indiatimes.com/news/india/transgender-athletes-can-participate-in-their-chosen-gender-kerala-high-court-576049.html>

<https://www.legalserviceindia.com/article/l449-Transgender.html>