

# **GENDER/ SEX/ SEXUALITY IN MALE/ FEMALE** **CATEGORISATION IN SPORTS**

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## **ABSTRACT**

*This paper seeks to highlight issues related to the lack of understanding and acceptance of different sexual identities/orientations in the field of sports. Sports, even in the 21<sup>st</sup> century, is rigid in its ardent belief of male-female dichotomy, which it refuses to shed. Promising and even legendary athletes have been and still are on the verge of losing their careers and reputation due to the conventional tests relied upon by international sports authorities. These tests are mostly based on hormone levels and physical appearance that a “true” man or a woman is necessarily supposed to have. A person’s sexual orientation and the gender are treated as matters of sheer personal business. Sports administrators like the Indian Olympics Committee and International Association of Athletics Federation and the courts presiding over the issues, ought to be more accommodating to the concept. Through the article, the author aims to bring to the readers’ attention the difference between sex and gender, different sexual identities people define with, and would trace back the history of the conflicts and disputes faced by athletes and sportsmen around the world, where they were required to prove their gender, while it was being vehemently confused with sex. The non-acceptance of such concepts further gets more complicated when it comes to sports and the sports administration tries very hard to keep a check on men competing in women’s competitions and vice versa, while ignoring the fact that it is not so black and white any more, and it never was.*

**Keywords: Sports, gender, sex, discrimination, policy.**

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## INTRODUCTION

Caitlyn Jenner, former Olympics gold medalist and world famous athlete, transitioned as a woman at the age of 70. She was highly praised and looked up to as an advocate of LGBTQ rights, but the question which then emerges is what would have been the scenario if her transition would have happened in her years as an active sportsman, Bruce Jenner, who was looked up to as everything conventionally masculine. Would the fraternity and administration of sports have welcomed the change, and what shape would her career have taken?

Throughout history, social constructs and tradition have given rise to rigid and unchanging gender roles. Proponents of Male/Female only sports do not recognize, or perhaps do not wish to recognize that a male or a female personality has an indelible link to Social and Cultural factors. The assumption goes further to say that all males and all females are homogeneous, thus denying women the opportunity to express their aggression, dominance, independence, skill, competitiveness and competency legitimately. Sex segregation strengthens the notion of orthodox social conduct with respect to sex, and propagates social constructs, which need to be outdated and to be done away with.

In the field of sports, essentialism or biological makeup would require males to be biologically more competitive, aggressive, and skilled sportsmen than females. On the other hand, females are biologically determined to be more dependent, cooperative, and to have a compulsory inclination to affiliate. These ideas and assumptions laid down the principle as to some sports are more suitable to men, and consequently some to women. Research has found that a more competitive or combative sport is perceived as a predominantly male domain. This goes on to promote the perception of the masculine image.

Defying all conventional norms and straitjacketed compartmentalisations between males and females lies the exemplary story of Renee Richards, who entered the men's draw at the U.S. Nationals under the name Richard Raskind in 1975. 24 years later—and two years after going through sexual-reassignment surgery and with a changed name—Renée was on her way to participate for the very first time in a women's category in the same tournament, now known as the US Open. She made it to the tournament after facing a chromosome test, after being

boycotted by her fellow players, heavily scrutinised by the media, being banned by the sports authorities and battling the ban through a long and contentious legal battle. She said, “*There was tennis to be played, my heart lightened at the prospect. I was about to do the thing that had saved me so many times before—and on the greatest stage in the world, I would do it as Renée.*”<sup>1</sup>

## **THE PERSISTENT SOCIETAL ENIGMA OF SEX AND GENDER**

The difference between sex and gender is that sex is a biological concept based on biological characteristics such as the difference in male and female genitalia. However, gender on the other hand is based on personal, societal and cultural perceptions of sexuality.<sup>2</sup>

In order to understand the distinction, a quick recap on Human Genetics is necessary. Both men and women are made up of 46 chromosomes, and 2 sex chromosomes. Women have 2 X chromosomes, whereas men have 1 X chromosome and 1 Y chromosome. The Y chromosome in men forms their testicles. Different chromosomes are the genesis of different hormones in the male and female body. Women, for instance, have higher levels of estrogen and progesterone, which lead to the development of primary and secondary sex characteristics like breasts, menstruation, etc. Men, at the same time, have much higher levels of testosterone. These hormones can lead to biological differences, but not all ends here.<sup>3</sup>

The issue of gender and sex is far from male and female dichotomy. Sometimes, women are born with a Y chromosome, and men can have 2 or even 3 X chromosomes. This also includes condition like hermaphroditism. However, owing to lack of awareness, or because of it being a numerical minority, they are often excluded. Experts believe that approximately 0.1% of the

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<sup>1</sup> Renee Richards and John Edward Ames, *No Way Renee: The Second Half of My Notorious Life* (Simon & Schuster 2007) 34.

<sup>2</sup> Desiree Pushpeganday Manicom, ‘Gender Essentialism: A Conceptual and Empirical Exploration of Notions of Maternal Essence as a Framework for Explaining Gender Difference’ (DPhil thesis, University of KwaZulu-Natal 2010).

<sup>3</sup> Steve Tignor, ‘40 Years Later, Renée Richards’ Breakthrough is as Important as Ever’ (*Tennis.com*, 20 September 2017) <[www.tennis.com/pro-game/2017/07/40-years-later-renee-richards-breakthrough-important-ever/68064/](http://www.tennis.com/pro-game/2017/07/40-years-later-renee-richards-breakthrough-important-ever/68064/)> accessed 24 September 2019.

population is actually born an intersex individual, which seems small but is roughly 7.5 million people around the world.<sup>4</sup>

Unlike sex, gender does not have a scientific definition as such, though it is characterized by the biological and physiological characteristics we display as males and females. Instead, gender has its basis founded in the societal constructs and prevalent belief systems. Given the prevalence of the perception of there being no distinction between sex or gender in society, a person's gender identity is often forced upon him. It could be seen in colours assigned to children, the desired length of their hair, the toys they are supposed to play with, the jobs they are supposed to aspire for, and the behaviours and interests they are 'supposed' to embrace.<sup>5</sup>

However, even though the society would like to believe the opposite, the reality is not binary. There are different types of sexual identities one can identify with:

1. Agender: a person who does not identify with any gender identity.
2. Bigender: a person who identifies as both male and female, not necessarily in the same proportion.
3. Cisgender: It means a person who identifies with the sex they were born with. It can be followed by the terms like male, female, man or woman or gender.
4. Female to Male (*hereinafter* FTM) or Male to Female (*hereinafter* MTF): a person born either a male or female chooses to live as the other gender, regardless of having gone through a reassignment surgery.
5. Gender Fluid: a person whose gender identity is not restricted to a single gender identity. There are also similar categories of gender nonconforming, gender questioning, gender variant, and gender diverse.<sup>6</sup>
6. Intersex: a person who has chromosomes and other physical manifestations that are not consistent with the expected configurations for a biological male or female.
7. Pangender: 'pan' means every, or all, and this is a person who identifies with people of all genders.

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<sup>4</sup> John Staughton, 'What is the Difference Between Sex and Gender' (*Science ABC*, 4 February 2017) <<https://scienceabc.com/eyeopeners/what-is-the-difference-between-sex-and-gender.html>> accessed 23 September 2019.

<sup>5</sup> *ibid.*

<sup>6</sup> John Bruce Leonard, 'Sex, Gender and Nature' (*ARKTOS*, 18 January 2019) <<https://arktos.com/2019/01/18/sex-gender-and-nature>> accessed 22 September 2019.

8. Transgender: a person of a gender which has not been her gender at the time of his birth. There are other variants within the category such as transgender man, transgender woman, transgender male, transgender female, and transgender person.

9. Transsexual: a person who has opted for and undergone treatment or surgery to change their sex. It is often written with terms like such as transsexual woman, transsexual female, transsexual man, or transsexual male.<sup>7</sup>

## **SEXUALISED LANGUAGE AND MEDIA**

Language is a crucial tool if you want to understand the reality. However, if language is gendered, it can also be easily sexualized. It includes or can include words that directly or indirectly indicate things related to sexual intercourse. How magazines shape adults' perceptions and ideas about sexual intercourse is often difficult to predict.<sup>8</sup>

Today, sex and sexuality have become primary themes in social media. Media literacy is the ability to access, analyze, evaluate, and create content in a variety of forms and has woven in people's lives indispensably. Media is dynamic and complex and even though it is taken with a pinch of salt by most and there are some who might reject it; some might also internalize it.<sup>9</sup>

The effects of media are not always negative; sometimes it may even have a positive, open-minded spin to it. A sign of society's efforts to keep up with evolving gender identities appears on the popular social media site, Facebook. American users of Facebook were given the choice to identify themselves as one of fifty gender identity categories, and the users in United Kingdom had the liberty to choose from seventy-five different type of genders. Ultimately, Facebook adopted a policy to allow its users to have their own customized gender identities.<sup>10</sup>

Similarly, in 2014, Amazon came up with a television series '*Transparent*' centered around a middle aged man who comes out to his children as a trans-woman. In 2015, it was awarded the

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<sup>7</sup> 'Constructing Gender and Sexuality' (Shodhganga)

<<http://shodhganga.inflibnet.ac.in/bitstream/10603/40726/4/chapter%201.pdf>> accessed 21 September 2019.

<sup>8</sup> 'Understanding Non-Binary People: How to be Respectful and Supportive' (*National Centre for Transgender Equality*, 5 October 2018) <<https://transequality.org/issues/resources/understanding-non-binary-people-how-to-be-respectful-and-supportive>> accessed 22 September 2019.

<sup>9</sup> *ibid.*

<sup>10</sup> Eckert P and McConnell-Ginet S, *Language and Gender* (2nd edn, Cambridge University Press 2013).

Golden Globe for best TV series, showing how Trans issues have become part of the mainstream. When the United States' National Soccer team lifted the World Cup in July 2015, the team's Captain Abby Wambach garnered public attention when she ran toward the stands and kissed her wife, a rare public display of affection by a sports personality to his/her same sex partner.

In 2015, the first openly gay basketball player, David Denson of the Milwaukee Brewers, was recognized. Often, most male homosexual professional athletes have waited until the end of their professional sports careers to come out.<sup>11</sup>

## **WOMEN V. MEN; WHAT DO THESE BRACKETS MEAN IN SPORTS?**

The major conundrum which requires addressing is how Female sports have not adjusted to the idea of abolition of male-female dichotomy. The fraternity of judges, participants and authorities have repeatedly raised questions on Trans-participants. Recently, Terry Miller and Raya Yearwood dominated the Connecticut state championships for girls' track and field. Miller competed with the boys' team and ended with a record breaking win in 100-meter and 200-meter race, while Yearwood stood second in the 100-meter. Both of these participants were in-fact Trans-woman. Being as exemplary as it is, the Connecticut Interscholastic Athletic Conference permits student athletes to compete with the sex that they identify them, despite opposition from the other parents.<sup>12</sup>

In New Zealand in 2017, 39-year-old Laurel (previously Gavin) went on to win four National records in women's weightlifting after competing for years in Male sports. Fifty-year-old Gabriella (Robert) Ludwig, standing at 6-feet-6 and weighing 220 pounds, became a member of girls' basketball team at Mission College. Various sports have seen the emergence of dominant

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<sup>11</sup> *Understanding Media and Culture: An Introduction to Mass Communication* (University of Minnesota Libraries Publishing edn, University of Minnesota Libraries Publishing 2016).

<sup>12</sup> Associated Press in Menlo Park, 'Facebook Expands Gender Options: Transgender Activists Hail Big Advance' (*The Guardian*, 14 February 2014) <<https://theguardian.com/technology/2014/feb/13/transgender-facebook-expands-gender-options>> accessed 23 September 2019.

Trans-athletes, who are not hesitant in displaying their skills, smashing records in the face of all objections and criticisms.<sup>13</sup>

Mack Beggs, an 18-year-old has an undefeated record in Senior boxing in Cypress. He is now in the process of transitioning from Female to Male and thus on a low-dose of testosterone. It was his steroid therapy treatment while wrestling girls which caused a debate about whether or not he should be allowed to participate with the girls. His march to a state championship was hindered by a last-minute lawsuit as an attempt to restrict him. Despite many requests, he wasn't allowed to play in the boys' division, as the rules for Texas public high schools require athletes to compete under the gender mentioned on their birth certificate; this infamous birth certificate rule was approved in 2016 by the University Interscholastic League, the governing body for high school sports in sports.<sup>14</sup> The coaches and team-mates had to cajole female participants in the competition to wrestle Beggs, but they often refused. However, in October 2018, Mack Beggs was admitted to his college Men's wrestling team and was welcomed with open arms and open minds, giving him the acceptance he deserved.<sup>15</sup>

## **THE CASE OF CASTER SEMENYA**

A South African Olympic gold medalist and living legend, Caster Semenya, identifies as a woman and has never publicly discussed her medical history. However, ever since the start of her career as a sportsperson and her arrival on the global scene a decade ago, she has been subject to constant scrutiny, as the media, her fellow athletes and administration at many times questioned her anatomy, mis-gendered her, and vehemently argued against her being allowed to play in female sports events. Her career is a reminder of the rather shameful fact that, when

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<sup>13</sup> Scott Miller, 'Denson Hopes Coming Out Paves Way to Achieving MLB Dream' (*Bleacher Report*, 2 March 2016) <<https://bleacherreport.com/articles/2620485-brewers-david-denson-hopes-coming-out-paves-way-to-achieving-mlb-dream>> accessed 22 September 2019.

<sup>14</sup> Madeleine Kearns, 'A Connecticut Girl Challenges Male Domination of Female Sports' (*WSJ Opinion*, 11 July 2019) <[www.wsj.com/articles/a-connecticut-girl-challenges-male-domination-of-female-sports-11562885421](http://www.wsj.com/articles/a-connecticut-girl-challenges-male-domination-of-female-sports-11562885421)> accessed 22 September 2019.

<sup>15</sup> *ibid.*

people challenge perceived ideas about masculinity and femininity; their bodies can become material for public discussion, often unwillingly.<sup>16</sup>

On April 2011, The International Association of Athletics Federation (*hereinafter* IAAF) announced that it has adopted new rules governing the eligibility of females with hyperandrogenism, such as Semenya. The decision set an upper limit for women's testosterone levels at 10nmol/L, anyone exceeding the limit would be required to take hormones in order to lower their testosterone level. Semenya, unaffected by these standards, went to win gold at both London Olympics, as well as at the world championships in the year 2012.

However, six years later, in April 2018, the IAAF announced new set of rules forcing female athletes to reduce and maintain their testosterone levels to no greater than 5nmol/L if they aspired to compete in events ranging from 400m to a mile.<sup>17</sup>

As a consequence of this change in the policy, the 800m Olympic champion lost her landmark legal case against athletics' governing body, the IAAF, in a decision that could potentially end her career as an elite athlete. The ruling by the Court of Arbitration for Sport (*hereinafter* CAS) means that Semenya, who is unbeaten in the events over 800m since 2015, will have to take medication to significantly reduce her testosterone if she wishes to run between 400m and a mile,<sup>18</sup> something which could have long term consequences to her health.

The sports scientist Ross Tucker, a member of Semenya's team of experts at CAS, believes it will mean that she could run the 800m in about seven seconds slower – turning her from a world-beater into an also-ran at that event. However if she wishes, she may decide to step up to the 5,000m, where the IAAF's new rules regarding athletes with differences in sex development

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<sup>16</sup> Tom Barnes, 'Transgender Wrestler Forced to Compete in Girls' Tournament is Booed After Winning in the Finals' (*Independent*, 25 February 2018) <[www.independent.co.uk/news/world/americas/transgender-wrestler-competes-against-girls-forced-mack-beggs-texas-america-a8227601.html](http://www.independent.co.uk/news/world/americas/transgender-wrestler-competes-against-girls-forced-mack-beggs-texas-america-a8227601.html)> accessed 24 September 2019.

<sup>17</sup> *ibid.*

<sup>18</sup> Anna North, 'I Am a Woman and I Am Fast: What Caster Semenya's Story Says about Gender and Race in Sports' (*Vox*, 3 May 2019) <[www.vox.com/identities/2019/5/3/18526723/caster-semenya-800-gender-race-intersex-athletes.com/](http://www.vox.com/identities/2019/5/3/18526723/caster-semenya-800-gender-race-intersex-athletes.com/)> accessed 22 September 2019.



(*hereinafter* DSDs) do not apply. Three arbitrators of the CAS announced the shocking verdict after deliberations over this complex and highly contentious case.<sup>19</sup>

While denying Semenya's appeal, the CAS acknowledged that the IAAF testosterone regulations were, in fact, discriminatory towards those female athletes who naturally have high testosterone. However, the court ruled, "*such discrimination is a necessary, reasonable and proportionate means of achieving the IAAF's aim of preserving the integrity of female athletics.*"<sup>20</sup>

The question of how, if at all, to make gender divisions in sports need to be discussed in a more detailed manner. This takes on increasing importance in light of more and more openly, Trans athletes have begun to compete in recent years as simultaneously the scientific understanding of inter-sex conditions increases.

## **WHAT HAS HAPPENED ON THE POLICY FRONT?**

The Indian Olympics Committee (*hereinafter* IOC) devised a new, revised transgender policy ahead of the 2016 Olympic Games to be held in Rio. It decided; 1) individuals who progress from female-to-male would be qualified to contend as male without limitation; 2) individuals who transitioned from male-to female would be qualified to contend as females on the off chance that they a) announce their sex as female (which status couldn't be changed for least four years), and b) keep their testosterone level in serum under 10 nanomoles per litre for no less than a year preceding her first challenge.

This approach embraced by IOC experiences numerous deformities. Point 2(a) of the IOC approach gives no commonly acknowledged logical support for the multi-year time span. As to Point 2(b), there is no logical premise provided for a subjective limit on the measure of normally happening testosterone in an individual's body, nor is there any clarification as to how this supposed upper hand is disaggregated from other natural competitive advantages. In addition, to conform to this prerequisite, planned members would need to take prescriptions or experience

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<sup>19</sup> 'How the Caster Semenya Controversy Has Unfolded Since 2009 – A Timeline' (*The Guardian*, 1 May 2019) <[www.theguardian.com/sport/2019/may/01/how-caster-semenya-controversy-unfolded-since-2009-timeline](http://www.theguardian.com/sport/2019/may/01/how-caster-semenya-controversy-unfolded-since-2009-timeline)> accessed 24 September 2019.

<sup>20</sup> Sean Ingle, 'Semenya Loses Landmark Legal Case Against IAAF Over Testosterone Levels' (*The Guardian*, 1 May 2019) <[www.theguardian.com/sport/2019/may/01/caster-semenya-loses-landmark-legal-case-iaaf-athletics](http://www.theguardian.com/sport/2019/may/01/caster-semenya-loses-landmark-legal-case-iaaf-athletics)> accessed 23 September 2019.

obtrusive techniques about a centre issue of their own personality—their sex/sexual orientation. The burden to prove the requirement and adequacy of such methods would be on those who want it to be implemented.<sup>21</sup>

In 2011, the International Association of Athletics Federation enacted a policy titled 'IAAF Regulations Governing Eligibility of Athletes Who Have Undergone Sex Reassignment to Compete in Women's Competitions'. The policy does not apply to female-to-male transsexual athletes, as all such athletes wishing to compete are to present documentation that the athlete is recognized by the law as a male. Pursuant to the policy, the athletes who self-identify as Transsexual would be required to undergo a three-level medical process, including:

1. providing medical information to an Expert Medical Panel,
2. submitting urine and blood samples for the purpose of conducting an endocrine assessment and
3. having a review of all of the information by the Panel.

Ultimately, a Medical Panel, thus set up, is to recommend to the IAAF that the athlete should be eligible to compete in women's competitions "*if it determines that her medical treatment following sex reassignment has been administered in a verifiable manner for a sufficient length of time to minimize any advantage in women's competition[s].*"<sup>22</sup> If the Panel recommends that the athlete should be ineligible to compete, it must give corresponding reasons as well as prescribe the conditions under which he would be allowed to participate and additionally monitor the subsequent treatment taken by the athlete. The IAAF Medical Manager then decides on the eligibility of the athlete. The policy remains unworkable, as it provides no guidance as to what is a 'verifiable manner' to treat an athlete following sex reassignment or what is a 'sufficient length of time to minimize any advantage in women's competition.' Presumably, this is intended to refer to androgen levels being below the 'Male' range, however not stated. The policy remains *prima facie* invasive.<sup>23</sup>

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<sup>21</sup> *ibid.*

<sup>22</sup> *ibid.*

<sup>23</sup> Eckert (n 10).

Before the IAAF's decision to use testosterone as a standard the organization followed a policy under which it retained the right to evaluate athletes, in case they decide to change their gender. The policy was under heavy criticism for discriminating against athletes based on their outer appearance. However, even the testosterone standard policy has not been welcomed without criticism from athletes and experts alike, arguing that research on the effects of the hormone in female athletes is flawed. There is no available definite evidence suggesting that high testosterone gives women an advantage in the 400, 800, and 1,500-meter race.<sup>24</sup>

Recently, Dutee Chand, a National level sprinter, won a landmark case against the IAAF in an appeal to the CAS in 2015 and she was finally allowed to compete after facing ban for about a year on the same issue. Along with giving the judgment, CAS suspended the IAAF's policy on hyperandrogenism for 2 years. The International body ended up changing the policy on the subject, which is now applicable only on female athletes competing in the range of 400m to 1500m, thus leaving out Dutee, as she competes in 100m and 200m. She argued that the policy should only target middle distance events as those are the ones in which results can get affected by the levels of testosterone. As a consequence of the verdict, women with elevated testosterone levels will have to take suppressive treatment in order to compete as females in certain events.

Particularly, the Court of Arbitration of Sports found numerous variables other than higher levels of naturally occurring testosterone that could affect athletic performance. They range from nutrition, different coaching and training provided to them, as well as other genetic and biological factors. Chand's case clearly was based on the fact that it was important to maintain the distinction between men's and a women's competition. It unequivocally established that everyone has the right to participate in any sport, which they wish to, and should not lose out on such a right due to their genetic makeup. It, however, could not provide a workable resolution of this issue and instead asked the IAAF to return with additional information about the purported competitive advantage.<sup>25</sup>

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<sup>24</sup> *ibid.*

<sup>25</sup> *ibid.*

## THE LOOPHOLES WITHIN IT

Given the efforts that have gone into these failed solutions, it is fair to argue that currently, there is no non-invasive, scientifically-based solution available. Furthermore, in a gender-fluid era, by what right does an organization or person have to dictate to another on the subject of his/ her sex or gender? The best argument for issuing such mandates, however flimsy it may be, is that the power to issue them is necessary for athletic organizations to assure fair competition. That argument fails for a number of reasons. Individuals should not have to go through invasive, humiliating and degrading procedures about one of the most personal subjects, one's sex or gender. The failed attempt to reach a solution in the Richards, Chand and Semenya cases and the subsequent inapt policies adopted by IAAF, IOC, National Collegiate Athletics Association (*hereinafter* NCAA) and United States Tennis Association (*hereinafter* USTA) have a hint of these procedures while not providing a workable solution.<sup>26</sup>

Second, according to NCAA, *"fears that men will claim to be female to contend in a female sport are outlandish given that in the whole forty years of history of 'sex confirmation' systems in international sports, no fraud of such nature has been uncovered."* For the situation of Renée Richards, for instance, the court found no proof of fakery, remarking that Dr. Raskind thought that it was *"fundamental for his own psychological mental stability to experience a sex reassignment."*<sup>27</sup> Forcing such an individual to contend as a man seems to be, as the court held, is neither coherent nor others conscious, and as per the NCAA *"sex determination tests have been abused to mortify and unreasonably avoid ladies"* and have caused *"horrible harm . . . to individual female participants."*

In sports, hard cases make awful law. Interestingly, also utilizing testosterone as an evidence for organic sex raises some intriguing inquiries. A few investigations have recommended that young solid African-American men have essentially higher testosterone levels than young white American men. The investigation of gathering variety is a full business—and one that dependably brings out more than a lot of quacks and wrenches—at the same time, South Korea's

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<sup>26</sup> North (n 18).

<sup>27</sup> *Dutee Chand v Athletics Federation of India* CAS 2014/A/3759.

national ball crew, when predominant in Asian play, has never put higher than eighth at the Olympics and has not fit the bill to play in the Olympics in the 21st century.<sup>28</sup>

## **THE REDUNDANCY OF THE GENDER VERIFICATION**

After gender verification was introduced in 1960, it became more apparent that inspection of external genitalia was not at all a satisfactory or acceptable process. In 1968 Olympics, the Barr body detection test was introduced for preventing any misrepresentation in sports. It made distinctions based on sex and is named after its inventor. “This supposedly simpler and objective examination involved the cytological analysis of a buccal smear. This Barr body is only found in cells with XX sex chromosomes, and represents a chromatin clump which occurs as a consequence of deactivation of one of the paired sex chromosomes.”<sup>29</sup>

The decision to abandon compulsory gender verification in Olympic competition was taken in 1999, after debating for decades. Though it was thought to be temporary, it gradually became a permanent stance taken by the organization. However, the IOC can still request gender verification individually if they are suspicious of masquerading.<sup>30</sup>

As our understanding about concepts of gender and sexual identity increased in the late 20th century, it became increasingly apparent that there is no concrete basis for requiring these examinations. Eric Vilain said:

*“Sex should be easily definable, but it's not. Our gender identity, our profound sense of being male or female is independent from our anatomy.”*<sup>31</sup>

Gender testing was initially welcomed by female athletes as they wanted to out rule the possibility of cheaters. However, the discrimination against the people suffering with Disorder

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<sup>28</sup> Ronald S Katz and Robert W Luckinbill, ‘Changing Sex/Gender Roles and Sports’ (2017) 215(28) Stanford Law and Policy Review <<https://law.stanford.edu/wp-content/uploads/2017/07/Katz-Luckinbill.pdf>> accessed 21 September 2019.

<sup>29</sup> *ibid.*

<sup>30</sup> *ibid.*

<sup>31</sup> Robert Ritchie, John Reynard and Tom Lewis, ‘Intersex and the Olympic Games’ (2008) 101(8) Journal of the Royal Society of Medicine <[www.ncbi.nlm.nih.gov/pmc/articles/PMC2500237/](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2500237/)> accessed 22 September 2019.

with Sex Development (*hereinafter* DSD) was very apparently unfair and detrimental to the sport.<sup>32</sup>

## CONCLUSION

Sports are an essential form of expression for the sportsman's creativity and enthusiasm. It is often to what they have devoted a large portion of their lives and thus, should have freedom from any bias, any unfavourable prejudice or lack of societal understanding that might hinder their growth. Thus, to question them or their achievements on the basis of their sexual identity or sexual orientation is regressive and derogatory, not only to the person itself but to his/her life-long contributions to the sport. The understanding about the conceptual difference between sex and gender is a concept which society must adapt to and be aware about.

Developments in this field must be found rapidly, at the risk of their effect decreasing and the suffering of athletes increasing. Pretending that the female body does not exist, or that there are well defined boundaries between a man and a woman is unwanted and unnecessary.<sup>33</sup>

The time has come when a person is not labelled Man or Woman based on what sex he is born with, but rather the one he identifies with. Especially when it comes to a Trans-woman participating in woman sports, her characterization as a transformed man or a man in a costume or forcing the Trans-man to participate in woman sports until his transition becomes final are things not needed by this society. Different examinations to determine how much of a man or a woman a transgender participant is, is a practice that we need to do away with. The field of sports is nothing without a clear, unbiased perspective that only focuses on a participant's capabilities and talent and leaves his/her sexual identity or sexual orientation as their personal business.

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<sup>32</sup> *ibid.*

<sup>33</sup> *ibid.*