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# THE NEVER-ENDING MARATHON AGAINST DISCRIMINATION: TRANS-WOMEN RIGHTS IN SPORT

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## ABSTRACT

In the historical evolution of the human race, the trans community has always remained an intrinsic part of society in the Indian context. With due course of time, there is flow from gender fluidity to gender binary. The prejudices associated with the trans-community all over the world are often overlooked and have a prismatic effect on the sports culture as well. However, not much academic research is available, scrutinising the aspect of transgender in sports. These sporting events have specific standard rules to be followed by biological male and female sportsperson, and moreover there is no space for transwomen in this classical framework. They are often neglected or are clubbed with cis-women in sports. They had to undergo various therapies to maintain their testosterone level, to be part of the athletic tournaments. The Trans-women like Dutee Chand in India and Caster Semenya in South Africa, confronted these discriminatory standards in sports and broke the ceiling of gender binary. This study emphasises, 'Not One Size Fits for All', with regard to gender inclusivity in sports, in a democratic country like India. This out casting of trans-women in sports inherently defy the provisions of Article 14 and 21 of Indian Constitution. There is a dire need to recognise the inherent equality of Transgender individuals in sports through a separate consortium for them.

**Keywords:** LGBTQIA+, discrimination, trans-women, homosexuality, sports.

## I. INTRODUCTION

In the intricate tapestry of human history, the concept of gender has woven itself through cultures, eras, and civilisations in a kaleidoscope of expressions. From the adorned warriors of ancient civilisations to the fluid identities of contemporary times, the gender spectrum has always been as diverse as humanity itself. Yet, as society progresses, we find ourselves entangled in the web of categorisations and biases, often abandoning the fluidity that once defined us.

Delving deep into history, we uncover a forgotten narrative where gender was not a rigid construct but a fluid essence transcending boundaries. From the jewellery-wearing kings of old to the divine depiction of Ardhanarishvara<sup>1</sup>, a deity embodying both male and female aspects, our history tells of a time when gender distinctions were less defined, if at all.

However, as the wheels of modernity turn, we find ourselves in a paradoxical plight. In our pursuit of what is "trending" and "cool," we have unintentionally woven a fabric of discrimination, casting shadows upon the very essence of gender fluidity. The emergence of gender bias and the imposition of rigid identifications threaten to suffocate the vibrant spectrum of human expression.

In this paper, we delve into the harsh reality of discrimination against the LGBTQIA+ community, a reality that affects every aspect of society, from the everyday to the exceptional. Even in sports, where skill and ability should be paramount, unfair decisions and discrimination can still be found, as seen in cases like that of athlete Dutee Chand and Caster Semenya.

As we navigate the labyrinth of societal norms and expectations, we are compelled to question our collective conscience: Are we willing to perpetuate the seeds of discrimination in the fertile soil of modernity? Can we, in good faith, continue to turn a blind eye to the injustices faced by the LGBTQIA+ community?

In a country that prides itself on progressiveness, the lack of support for the queer community reveals a collective failure. While separate bodies exist for people with

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<sup>1</sup> Strange, M. (2023) *Ardhanarishwar and gender experience in India*, *Misters*. Available at: <https://misters.in/en/blog/ardhanarishwar-and-gender-experience-in-india/> (Accessed: 13 March 2024).

disabilities, the LGBTQIA+ community remains marginalised. This paper aims to expose the injustices and discrimination within our society, emphasising that discrimination is never the answer. Establishing a separate consortium may seem inclusive, but it's just a temporary fix. We aim to shed light on the injustices shaping our nation and work towards a more equal society where gender fluidity can thrive.

## II. THE UGLY FISH OF STEREOTYPE IN THE POND OF MODERN PROGRESSIVE CIVILISATION

We are all the same when we cross paths with one another. LGBTQIA+ is a community that refers to a person's sexual identity, not their social identity or skills. We all have the same colour of blood. We are all humans, and none of us is an alien, but we still discriminate. We, as progressive individuals, thought that we had left the dilemma of discrimination with untouchability in the ancient past, but with modernisation comes modern problems, and yet again, we came up with a new way to violate the rights of one another, which is otherwise stated in the living document of India, the Constitution.

Sports have always been a part of our culture. Earlier, it was not categorised into different categories with a set of rules but was a part of our daily lives, as our ancestors ran miles to save their lives from the wild, hunted to fill their stomachs, and played different games for pleasure. As we progressed into the realm of modernisation, we defined sports with certain rules and established a framework.

Earlier, we were fighting the battle of uplifting women, and now we are fighting for the rights of transgender women. When will this long-standing battle of discrimination end? When will we be really independent with thoughts and ideologies? It gives chills in the spin to see talent getting wasted in the name discrimination; one such star is India's Dutee Chand, who has been banned by *Athletic Federation of India (AFI)* from taking part in any Commonwealth Games.<sup>2</sup>

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<sup>2</sup> PTI / Aug 5, 2017 Dutee Chand says she is living under constant fear of being banned: More sports news - times of India, *The Times of India*. Available at: <https://timesofindia.indiatimes.com/sports/more-sports/athletics/dutee-chand-says-she-is-living-under-constant-fear-of-being-banned/articleshow/59933272.cms> (Accessed: 13 March 2024).

### i. Case Studies

Dutee Chand, the second fastest female sprinter in Asia, and the first transgender athlete from India. She lays down the new discourse on transgender equality in sports. In this turbulent journey, she faced harassment and humiliation. Despite such upheaval, she stood up against an arbitrary decision of the *Athletic Federation of India (AFI)* to pull her out of the Commonwealth Games due to her medical condition known as *Hyperandrogenism*.<sup>34</sup> In 2011, the *International Association of Athletics Federations (now World Athletics)* and the *IOC (International Olympic Committee)* made it mandatory for female athlete to reduce their high testosterone level to a certain range.<sup>5</sup> This has shattered the dreams of Dutee Chand in 2014, with her subsequent ban for one year. Later, she refused to accept this decision and challenged it before the Court of Arbitration for Sport. She claimed her rights by questioning the rationale behind the said policy. Males with lower testosterone levels are not subjected to such discrimination. However, it is a kick in the teeth for her to prove herself to the authorities. Her fight finally came to an end with a verdict of the court in her favour. The court, in 2015, held the rule as unfair and struck it down.<sup>6</sup> Her winning this battle against the discriminatory rules in sports drew the attention of several international sporting bodies to accept the structural faults behind their policy.

Another distressing account of Caster Semenya, an athlete from South Africa, who was compelled to take a gender test and a drug test by *World Athletics (WA)*, formerly known as the *International Association of Athletics Federations (IAAF)*, as she acknowledged herself as a Difference in Sex Development athlete (DSD).<sup>7</sup> This is in compliance with the rule of WA in 2019, to regulate high level of testosterone in DSD athlete. She lost the appeal in the *Court of Arbitration for Sport* and *Switzerland's Federal Supreme Court* in 2019 and 2020

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<sup>3</sup> Any state with an excess production of "male" hormones.

<sup>4</sup> Sharma, A. and Welt, C.K. (2021) *Practical approach to hyperandrogenism in women, The Medical clinics of North America*. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8548673/> (Accessed: 14 March 2024).

<sup>5</sup> *Hyperandrogenism explained and what it means for athletics* (2016) USA Today. Available at: <https://www.usatoday.com/story/sports/olympics/2016/08/02/hyperandrogenism-explained-and-what-it-means-for-athletics/87944968/> (Accessed: 13 March 2024).

<sup>6</sup> Roy, S. (2022) *Dutee Chand and the struggle of women athletes in sports, Feminism in India*. Available at: <https://feminisminindia.com/2022/02/03/dutee-chand-and-the-struggle-of-women-athletes-in-sports/> (Accessed: 14 March 2024).

<sup>7</sup> Hernandez, E. (2023) *Caster Semenya says she went through 'hell' due to testosterone limits imposed on female athletes, CNN*. Available at: <https://edition.cnn.com/2023/11/06/sport/caster-semenya-testosterone-limits-world-athletics-spt-intl/index.html> (Accessed: 14 March 2024).

respectively.<sup>89</sup> Further, she continued her fight for trans women right, appealed in the *European Court of Human Rights (ECHR)* in 2021 against the rule of World Athletic.<sup>10</sup> The argument put forwarded by World Athletic, "Over a decade of research, directly from DSD athletes in our own sport, that show high testosterone levels do provide an unfair advantage in the female category." "If we don't protect the female category, then women and young girls will not choose sport."<sup>11</sup> In her recent work "*The Race to Be Myself*," she described the consequences of medication for reducing testosterone level on her health. She severely suffered from nausea, panic attack and stomach burning, called it as hell. In her book she reiterated, "I'm born a woman, but I'm a woman with no uterus. I have no fallopian tubes. I don't go through menstruation."<sup>12</sup>

Although, she has won the appeal against World Athletics, she is still banned from competing in sports under world athletics regulation.

Both the case studies, contain the greyish aspect discrimination in disguise of equal treatment for all. Likewise, last year in 2023, World Athletics banned transgender women from competing in elite female competitions if they have gone through male puberty, to ensure equality and protection in the women's category. However, the execution of this rule led to violation of right of trans female. Their performance in sports is under scrutiny due to the availability of high testosterone levels in their bodies.<sup>13</sup> Though still, there is a paucity of scientific research, which can determine to what extent testosterone affects the performance in sports. To substantiate this argument, a retired endocrinologist Peter Sonksen told CNN in 2021 that "*there is good evidence to show muscle bulk increases with*

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<sup>8</sup> Morse, B. (2023) *Caster Semenya wins European Court of Human Rights Appeal over 'discriminatory' testosterone limit*, CNN. Available at: <https://edition.cnn.com/2023/07/11/sport/caster-semenya-wins-appeal-discriminatory-testosterone-limit-spt-intl/index.html> (Accessed: 14 March 2024).

<sup>9</sup> *Difference in Sex Development causes variation in reproductive anatomy and chromosomes which is not align with typical binary of male and female.*

<sup>10</sup> Tewari, A. (2020) *Caster Semenya case: The bias against women's 'manly' bodies in sports, Feminism in India*. Available at: <https://feminisminindia.com/2020/09/14/caster-semenya-controversy-testosterone-gender/> (Accessed: 14 March 2024).

<sup>11</sup> Hernandez, E. (2023) *Caster Semenya says she went through 'hell' due to testosterone limits imposed on female athletes*, CNN. Available at: <https://edition.cnn.com/2023/11/06/sport/caster-semenya-testosterone-limits-world-athletics-spt-intl/index.html> (Accessed: 14 March 2024).

<sup>12</sup> Hernandez, E. (2023) *Caster Semenya says she went through 'hell' due to testosterone limits imposed on female athletes*, CNN. Available at: <https://edition.cnn.com/2023/11/06/sport/caster-semenya-testosterone-limits-world-athletics-spt-intl/index.html> (Accessed: 13 March 2024).

<sup>13</sup> *Transgender athletes condemn ban on inclusion in female events* (2023) *The Indian Express*. Available at: <https://indianexpress.com/article/sports/sport-others/world-athletics-tightens-restrictions-on-transgender-dsd-athletes-8515391/> (Accessed: 14 March 2024).

increasing dosage of testosterone,” but added that the relationship between blood testosterone level and performance remains “complex and controversial.”<sup>14</sup>

## ii. *The lens of science breaking barriers*

Now, let's move forward and understand the seed before planting the tree i.e. physiology of Male and Female. They have different physico-anatomy that determines their athletic performance. There is major difference in body mass, weight, height, body fat and genetic hormonal differences as per the study. Israeli Doctor Ira Hammerman, stated women's performance are on average 90% of men's in athletic, cycling and swimming.<sup>15</sup> Although, keeping in mind that every month a woman goes through a menstrual cycle which leads to hormone fluctuation and shows signs of less endurance and strength, low blood pressure and their VO<sub>2</sub> (oxygen consumption level) max level – 35- 40 ml/kg/min, in female.<sup>16</sup> The intricate research also highlights that female body is flexible than male, mentally strong and cope with pressure along with strategic thinking.<sup>17</sup>

Similarly, transgender's have different physiology which has become the basis of their discrimination. Transgender females are born with male counterparts and vice versa male transgenders are born with female genitals. Male by birth transgender have to medically transition into a female to experience their desired sexual orientation through *Cross-Sex hormone therapy (CHT)*<sup>18</sup> and *Gender affirming surgeries (GAS)*<sup>20</sup> for playing competitive sports.<sup>21</sup> However, some transgender athletes do not choose Gender affirming

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<sup>14</sup> Hernandez, E. (2023) Caster Semenya says she went through 'hell' due to testosterone limits imposed on female athletes, CNN. Available at: <https://edition.cnn.com/2023/11/06/sport/caster-semenya-totestosterone-limits-world-athletics-spt-intl/index.html> (Accessed: 13 March 2024).

<sup>15</sup> Pauline, advice writer (2023) The physiological differences between men and women in Sport, THE PHYSIOLOGICAL DIFFERENCES BETWEEN MEN AND WOMEN IN SPORT. Available at: <https://www.quechua.com/the-physiological-differences-between-men-and-women-in-sport> (Accessed: 13 March 2024).

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> *Cross-sex hormone therapy (CHT) changes the physical characteristics of transgender women to match their gender identity and expression.*

<sup>19</sup> Yun, Y., Kim, D. and Lee, E.S. (2021) Effect of cross-sex hormones on body composition, bone mineral density, and muscle strength in trans women, Journal of bone metabolism. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7973405/> (Accessed: 14 March 2024).

<sup>20</sup> *Gender-affirmation surgeries (GAS) aim to align the patients' appearance with their gender identity.*

<sup>21</sup> *UK good practice guidelines for the assessment and treatment ...* Available at: <https://www.gires.org.uk/wp-content/uploads/2014/08/GIRES-RCPsychs-GPG-Key-Points.pdf> (Accessed: 13 March 2024).

surgery due to 'genital dysphoria'<sup>22</sup>

This is the long-standing struggle of spreading the wings of freedom in a paradoxical framework of society. Unlike, trans male who have the privilege to play in the male category; trans females have to go through *Cross-sex hormone therapy*, *Gender confirming surgeries* both combined with *oestrogen therapy*<sup>23 24</sup> and androgen blockers (testosterone) which minimise secondary male characteristics in trans female and change their physical appearance to match gender identity.<sup>25</sup>

The discrimination is based on the physiology, hormones and the presence of and combinations of hormones, but shockingly, no study to date has established the nexus that Androgenic Hormones, which deal specially with testosterone, are an underlying factor that affects the performance of the player.<sup>26</sup>

The fight is that trans females cannot be admitted as a part of the female category as they have a higher testosterone level than cis females, unlike trans males who can play in the male category. If the basis of discrimination doesn't have any scientific established, why are we violating the rights of these star players.

### iii. *The dark side of utopian equality: Violation of the Constitution*

Discrimination against transgender individuals in sports not only violates their fundamental rights but also undermines the principles enshrined in the Indian Constitution. The *Transgender Persons (Protection of Rights) Bill, 2019*, though introduced with the aim of safeguarding the rights of transgender people in all aspects, falls short in addressing the discrimination prevalent in sports.

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<sup>22</sup>A., A.A.M.C. *Desire for genital surgery in trans masculine individuals: The role of internalized transphobia, transnormativity and trans positive identity*, *International journal of environmental research and public health*. Available at: <https://pubmed.ncbi.nlm.nih.gov/35897291/> (Accessed: 14 March 2024).

<sup>23</sup> *Hormone therapy for transgender women to feminize them by changing fat distribution, inducing breast formation, and reducing male pattern hair growth.*

<sup>24</sup> Giltay, E.J. and Gooren, L.J.G. (2000) Effects of sex steroid deprivation/administration on hair growth and skin sebum production in transsexual males and females, OUP Academic. Available at: <https://academic.oup.com/jcem/article/85/8/2913/2853998> (Accessed: 14 March 2024).

<sup>25</sup> Jones, B.A. et al. (2017) Sport and transgender people: A systematic review of the literature relating to sport participation and competitive sport policies, *Sports medicine* (Auckland, N.Z.). Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5357259/#CR23> (Accessed: 14 March 2024).

<sup>26</sup> *Ibid*

The Indian Constitution guarantees every individual the right to equality, non-discrimination, and the right to life and personal liberty under article 14<sup>27</sup> and 21<sup>28</sup> respectively. However, in the realm of sports, transgender individuals continue to face significant barriers and prejudice. While the bill proposes the establishment of a "*National Council for Transgender*," aimed at advising the government and monitoring policies, a similar concerted effort is needed to address the discrimination faced by transgender individuals in sports.<sup>29</sup>

The *Indian Psychiatric Society's* stance on homosexuality further reinforces the notion that sexual orientation and gender identity are not disorders or abnormalities.<sup>30</sup> This scientific understanding challenges the discriminatory practices prevalent in sports, which often exclude transgender individuals based on misconceptions and biases.<sup>31,32</sup>

Discrimination in sports not only deprives transgender individuals of their right to participate but also perpetuates harmful stereotypes and marginalisation. By excluding transgender athletes, sports organizations are effectively denying them equal opportunities and access to platforms for personal growth, skill development, and social inclusion.

To address this issue effectively, a consortium or body similar to the proposed National Council for Transgender could be established specifically to uplift transgender individuals in sports. Such a body would play a crucial role in formulating inclusive policies, monitoring their implementation, and addressing grievances. Additionally, initiatives such as awareness campaigns, sensitivity training for coaches and athletes, and the establishment of support networks can contribute to creating a more inclusive and equitable sporting

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<sup>27</sup> *Article 14 of the constitution of India*. Available at: [https://www.indiacode.nic.in/bitstream/123456789/16124/1/the\\_constitution\\_of\\_india.pdf](https://www.indiacode.nic.in/bitstream/123456789/16124/1/the_constitution_of_india.pdf) (Accessed: 13 March 2024).

<sup>28</sup> *Article 21 of the constitution of India*. Available at: [https://www.indiacode.nic.in/bitstream/123456789/16124/1/the\\_constitution\\_of\\_india.pdf](https://www.indiacode.nic.in/bitstream/123456789/16124/1/the_constitution_of_india.pdf) (Accessed: 13 March 2024).

<sup>29</sup> *Central government constitutes National Council for Transgender Persons*; Press Information Bureau. Available at: <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1648221> (Accessed: 13 March 2024).

<sup>30</sup> Malathy Iyer / TNN / Updated: Feb 7, 2014, Homosexuality is not a disease, psychiatrists say: India News - Times of India, The Times of India. Available at: <https://timesofindia.indiatimes.com/india/Homosexuality-is-not-a-disease-psychiatrists-say/articleshow/29965430.cms> (Accessed: 13 March 2024).

<sup>31</sup> *Ibid*.

<sup>32</sup> *Stop treating homosexuality as an illness, says Indian Psychiatric Society* (2018) *Hindustan Times*. Available at: <https://www.hindustantimes.com/mumbai-news/stop-treating-homosexuality-as-an-illness-says-indian-psychiatric-society/story-EqoFV1KjFE0mxAXoimX8oN.html> (Accessed: 13 March 2024).



environment.

Lastly, discrimination against transgender individuals in sports not only contradicts the principles of equality and non-discrimination enshrined in the Indian Constitution but also perpetuates social stigma and exclusion. Addressing this issue requires concerted efforts from policymakers, sports organizations, and society as a whole to ensure that transgender individuals have equal opportunities to participate and excel in sports without fear of discrimination or prejudice.

### III. SUGGESTIONS AND CONCLUSION

Even today, we follow the most absurd customs which are in place from time immemorial, but we have forgotten to give basic dignity to our fellow citizens. We are discriminating on the basis of the most personal things i.e. Sexual orientation and genitals. The question this research has intrigued us is whether the most important factor, the level of testosterone, doesn't affect the performance of the player, and there is no research or study proving it; then why are we weaving the web of discrimination?

*"New guidelines from the International Olympic Committee in 2016 states there should be no assumption that a transgender athlete automatically has an unfair advantage in female sporting events. It invites individual sports to find the right approach."*<sup>33</sup> This is only one side of the coin; the ground reality is shocking as there's no participation to validate if the guidelines are effective or we're just watering the barren land.

Trans women are the most affected by the policies of international sports authorities such as the International Olympic Committee and World Athletics and domestic committees well which follow the same standards and skilled talent like Dutee Chand and Caster Samanya have been victims of this.

In conclusion, while the 2016 IOC rule represents a step towards inclusivity for transgender athletes, it reveals underlying challenges that persist within sports culture.<sup>34</sup> The distressing experiences faced by transgender females in male-dominated sports, exacerbated by

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<sup>33</sup> *Transgender athletes: What do the scientists say?* BBC Sport. Available at: <https://www.bbc.com/sport/61346517> (Accessed: 14 March 2024).

<sup>34</sup> *Olympics: IOC Heeds calls to embed rights* (2022) Human Rights Watch. Available at: <https://www.hrw.org/news/2022/06/07/olympics-ioc-heeds-calls-embed-rights> (Accessed: 14 March 2024).

revealing costumes and gendered facilities, highlight the urgent need for solutions that prioritise their comfort and well-being. Implementing a separate consortium tailored to their needs could offer a path towards inclusivity and equal participation, ultimately fostering a more diverse and equitable sporting community. By acknowledging and addressing these challenges, we can work towards creating a more inclusive environment where all athletes, regardless of gender identity, can thrive and compete without discrimination.