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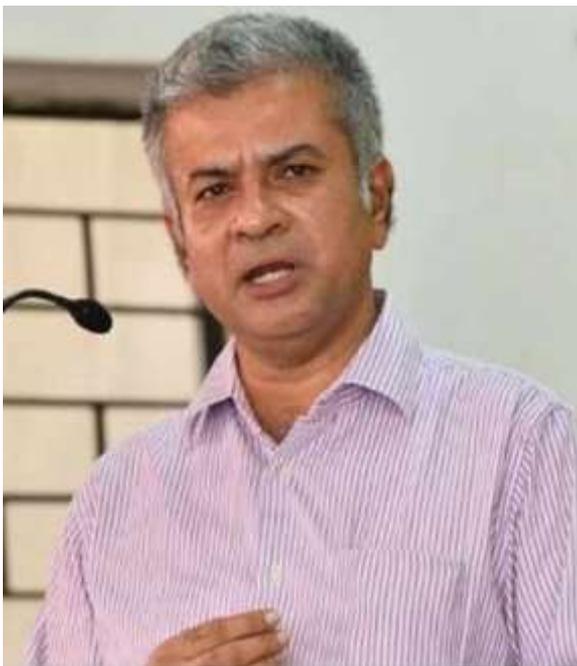
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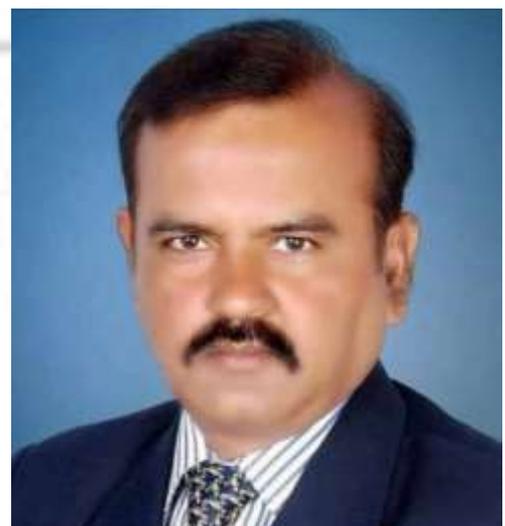
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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **THE LEGAL SPHERE OF GENDER IDENTITY** **WITHIN SPORTS**

AUTHORED BY - DEVRATA SIDDHARTH MORARKA

## **ABSTRACT**

The debate surrounding the inclusion of transgender athletes in competitive sports has led to legislative action, public debate, legal challenges, and a patchwork of laws that add confusion over the rights transgender individuals have in the sport. Both competing narratives rely on distinct rights, with one focusing on the right of transgender athletes to fair participation in sports and the other on the recognition of their identity and the right to compete based on self-declared gender.

The current landscape of regulation on the inclusion of transgender athletes within sport remains fundamentally incoherent, neither protecting the rights of such players nor respecting the principles of fair competition. However, governing bodies of sport must produce inclusive policies that reflect the evolving understanding of gender identity while maintaining the excellence and equity of competition for all involved athletes.

The research methodology will involve extensive doctrinal analysis and review of various legal texts, policies, and judicial decisions related to the participation of transgender athletes in sports. The study will involve a qualitative review of federal and state laws, current policy documents of the sports governing bodies, and peer-reviewed literature on the subject. The differences between legal interpretation and practical implementation will highlight the base for recommending comprehensive policy formulation.

The most recent move by the Biden administration to the Title IX law, which allows schools to bar a certain section of transgender athletes under specific conditions, reveals the contentious nature of this space where the wishes for inclusion come in direct conflict with the considerations of competitiveness and fairness.

There is a time constraint, and empirical methods like interviewing or survey techniques have

not been employed to gather primary information directly from the individuals who are on the receiving end of such decisions. Therefore, this paper available research is doctrinal research, traversing through existing texts and case laws without directly communicating with personal experiences of transgender athletes that would provide necessary perspective.

**Keywords:-Transgender Athletes, Competitive Sports, Inclusion, Fairness, Rights, Gender Identity, Title IX**

## INTRODUCTION

Gender identity in sports is a matter that concerns the realm of sport and brings in complication and multiple factors to participation and inclusivity among athletes. It rather addresses the intersection of societal norms, biological sex, and personal identity in the arena of sport which is primarily a potent factor influencing the experiences of athletes within different sport settings. Even for fair participation in sports, it seeks to provide overall knowledge on gender, biological factors, and the systemic challenges that transgender and non-binary athletes suffer through. To make the environment more inclusive, policies must endorse and validate a wide range of gender identities without compromising competitive structures.<sup>1</sup>

Traditionally, the regulation of gender in sports depended much on binary distinctions, and athletes were strictly considered male or female. Processes of gender verification that developed from the middle years of the 20th century have changed drastically over time-from invasive physical examinations to more biological and even molecular tests aimed at determining eligibility for female categories. As such, they reflect deep-seated societal beliefs about sex and gender that continue to influence athletic regulations today.<sup>2</sup>

## OVERVIEW OF GENDER VERIFICATION PRACTICES

This, in turn, has shaped much of the rights and opportunities for transgender athletes through legal precedent. *Bostock v. Clayton County* is an example of landmark rulings that have broadened interpretations of anti-discrimination statutes into protections based on gender

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<sup>1</sup> Trans, gender diverse and intersex inclusion in sports is a human right, Sport & Rights Alliance (2024), <https://sportandrightsalliance.org/trans-gender-diverse-and-intersex-inclusion-in-sports-is-a-human-right/> (last visited Mar 1, 2025).

<sup>2</sup> Anon, (n.d.). Trans and Nonbinary Athletic Inclusion Policies | GLSEN. [online] Available at: <https://maps.glsen.org/trans-and-nonbinary-athletic-inclusion-policies/>.

identity, a precedent that, by implication, sets a strong footing for future challenges of exclusionary sports policies. Precedents are not just stepping stones toward the judicial but also societal indicators that reflect the blurring or shift in the landscape surrounding gender identity and rights.<sup>3</sup>

In the United States, federal laws like Title IX of the Education Amendments Act of 1972 have explicitly stated that no form of discrimination on grounds of sex would be tolerated in educational programs, including athletics. But its application varies tremendously, mainly because of the increasing number of regulations enacted at the state level to limit involvement by transgender athletes and hold them to the gender they represent. This creates a haze over the state laws, the federal protections available, and the sports organizations.<sup>4</sup>

**State Variations and New Trends** Some states enacted statutes that prohibit transgender athletes from competing in sports according to their gender identity because of some sort of supposed required fairness in women's sports. Such statutes typically do not have a sound basis in law, at least within the more general anti-discrimination schemes enacted and enforced by Congress, which creates all kinds of contradictions among the statutes-even within those states. This creates significant challenges for athletes and sport organizations alike, calling into question and necessitating review of both state and federal legal standards towards a more modern understanding of gender.

## **CHALLENGES FACING TRANSGENDER ATHLETES**

Transgender players face a lot of barriers based on erratic and discriminatory policies, preventing them from engaging in sporting activities. Lack of clear guidelines from most governing bodies results in random judgments affecting these players negatively. These barriers not only harm their physical health but also lead to psychological problems.<sup>5</sup>

The majority of transgender athletes encounter both geographical and structural impediments, such as gendered restrooms and locker rooms and rules that prohibit them from participating

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<sup>3</sup>

Northwestern, [https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1149&context=nulr\\_online](https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1149&context=nulr_online) (last visited Mar 19, 2025).

<sup>4</sup> www.usopc.org. (2022). Transgender Athlete Participation in Sport. [online] Available at: <https://www.usopc.org/diversity-equity-inclusion/transgender-athlete-participation-in-sport>.

<sup>5</sup> Get the facts about bans on sports participation by Transgender &..., HRC, <https://www.hrc.org/resources/get-the-facts-about-transgender-non-binary-athletes> (last visited Mar 1, 2025).

in sports teams that reflect their gender identity. Some transgender athletes have been prohibited from participating in gender-neutral sports. Due to legislative restrictions, transgender adolescents are already less likely than their cisgender counterparts to participate in sports. For example, a presidential order to prohibit transgender women and girls from participating in women's sports was issued in February 2025.<sup>6</sup>

Transgender players tend to experience social stigma, which makes it even more complicated for them to participate in sports. This can be in the form of ignorance from staff members, teammates, and the general public. A few players indicated fear of being "outed" to people who might overhear discussions about their transgender status. The social culture in sports may prove difficult for transgender players to handle.<sup>7</sup>

Transgender athletes have a higher vulnerability to mental illnesses, including depression, anxiety, and suicidal behavior, than cisgender athletes. Discrimination against transgender people and unequal access to sports activities account for these mental illnesses. Unfavorable health care experiences commonly described by transgender people may induce avoidance of medical treatment, enhancing physical and mental illnesses. Transgender sports bans at the state level may deepen existing mental health disparities.

To enhance the experiences of transgender athletes, sports organizations and athletic trainers can do a number of things. Some of these actions are stepped up education about transgender issues, encouraging openness and receptiveness, gender-inclusive language, and respect for patient privacy. Building safety and inclusivity is important, and athletic departments can contribute to social change through the demonstration of inclusion's value. Inclusive policies should be enacted that express unity, opportunity, and the celebration of human potential

## **PSYCHOLOGICAL AND SOCIAL CONSEQUENCES**

Transgender players face a lot of barriers based on erratic and discriminatory policies,

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<sup>6</sup> Transgender Athletes Experiences with Health Care in the Athletic Training Setting, [online] Available at: <https://pmc.ncbi.nlm.nih.gov/articles/PMC7863600/#:~:text=Transgender%20people%20face%20significant,health%20care.&text=because%20they%20may%20face,health%20care.&text=a%20sense%20of%20identity.15,health%20care.&text=of%20inclusion%20and%20modeling,health%20care>.

<sup>7</sup> Transgender Inclusion and girls' sports a look at what's at Stake | American Journal of Law and Equality | MIT Press, [https://direct.mit.edu/ajle/article/doi/10.1162/ajle\\_a\\_00051/117634/TRANSGENDER-INCLUSION-AND-GIRLS-SPORTS-A-Look-at](https://direct.mit.edu/ajle/article/doi/10.1162/ajle_a_00051/117634/TRANSGENDER-INCLUSION-AND-GIRLS-SPORTS-A-Look-at) (last visited Mar 1, 2025).

preventing them from engaging in sporting activities. Lack of clear guidelines from most governing bodies results in random judgments affecting these players negatively. These barriers not only harm their physical health but also lead to psychological problems.

For instance, transgender Australian runner Ricki Coughlan voiced her worries that the Western Australia verdict might strengthen anti-transgender sentiment. According to her, those who are against transgender people's existence will view this ruling as a win and go on to attack other facets of transgender rights. Advocates like Hudson Taylor of Athlete Ally stressed that this decision would expose women with intersex features to discrimination, gender-based violence, needless operations, and intrusive testing procedures.<sup>8</sup>

The national athletics federation of Australia will continue to follow its own rules for the community-level inclusion of transgender athletes even as it plans to abide by the WA ruling. According to the association of athletes in New Zealand, transgender participation is a delicate subject that will take time to understand and evaluate the new rules.<sup>9</sup>

The majority of transgender athletes encounter both geographical and structural impediments, such as gendered restrooms and locker rooms and rules that prohibit them from participating in sports teams that reflect their gender identity. Some transgender athletes have been prohibited from participating in gender-neutral sports. Due to legislative restrictions, transgender adolescents are already less likely than their cisgender counterparts to participate in sports. For example, a presidential order prohibiting transgender women and girls from participating in women's sports was issued in February 2025.

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<sup>8</sup> Globalsportspolicy, Transgenderism in sports in India: Current legal position and analysis GSPR (2023), [https://www.g-spr.com/post/transgenderism-in-sports-in-india-current-legal-position-and-analysis#:~:text=Landmark%20Decision%3A%20Kerala%20HC%20grants,compete%20in%20their%20chosen%20gender.&text=In%20a%20significant%20ruling%2C%20the,absence%20of%20a%20separate%20category.\(last%20visited%20Mar%201,%202025\).](https://www.g-spr.com/post/transgenderism-in-sports-in-india-current-legal-position-and-analysis#:~:text=Landmark%20Decision%3A%20Kerala%20HC%20grants,compete%20in%20their%20chosen%20gender.&text=In%20a%20significant%20ruling%2C%20the,absence%20of%20a%20separate%20category.(last%20visited%20Mar%201,%202025).)

<sup>9</sup> Gender affirming and inclusive athletics participation, GLSEN, <https://www.glsen.org/activity/gender-affirming-inclusive-athletics-participation> (last visited Mar 19, 2025).

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### **ROLE OF NATIONAL AND INTERNATIONAL ORGANIZATIONS**

The International Olympic Committee (IOC) has been actively dealing with transgender athletes' inclusivity, and the IOC permitted transgender athletes to compete at the Olympics since 2004. Although the IOC initially established rules that included the necessity of hormone levels, the IOC has now changed its policy to permit the individual sports to decide on the eligibility of the transgender athletes. This shift represents a step towards respecting the rights and identities of all athletes regardless of their gender identity or sex differences.<sup>11</sup>

The IOC's new framework focuses on the requirements of a safe and harassment-free environment in sport, highlighting respect for personal needs and identities. In January 2024, the IOC substituted its 2015 guidelines, which had included testosterone level restrictions and, prior to 2016, mandated genital surgery. The revised model is based on 10 principles rooted in globally accepted human rights. Individual sports are given the authority to determine their own criteria in terms of fairness, inclusivity, and evidence-based decision-making, as opposed to adhering to one-size-fits-all testosterone levels.

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<sup>10</sup> Transgender athlete participation in Sport, USOPC, <https://www.usopc.org/diversity-equity-inclusion/transgender-athlete-participation-in-sport> (last visited Mar 19, 2025).

<sup>11</sup> Fairness, inclusion and non-discrimination in olympic sport, <https://www.olympics.com/ioc/human-rights/fairness-inclusion-nondiscrimination> (last visited Mar 2, 2025).

Initially, individual colleges and institutions were free to create their own specific rules, and the NCAA allowed transgender athletes to compete in line with their gender identity. However, the NCAA changed its rules to only allow students who were identified as female at birth to participate in women's sports in reaction to President Trump's executive order. The updated regulation allows student-athletes who were assigned male at birth to train with women's teams and get medical treatment and other advantages, but they are not permitted to compete. All student-athletes, regardless of whether their eligibility has been reviewed previously, are now subject to the updated policy.<sup>12</sup>

Even with efforts by the IOC and NCAA to make the environment more inclusive, the policies regarding transgender athletes remain under criticism. Some critic that the IOC's model does not well ensure protection of fairness for women and fails to concur with scientific or medical evidence. Likewise, the NCAA's new policy has also been the subject of controversy, with its critics arguing that it does not do enough to safeguard women athletes. Others have even argued that the policy leaves loopholes in that trans athletes can circumvent the ban by altering the gender on their birth certificates

### **ADVOCACY AND REFORM EFFORTS**

Advocacy organizations have come forward to support transgender athletes, with an emphasis on education and influencing policy reform. GLSEN and the Human Rights Campaign (HRC) are leading the way, creating school and sports organization resources for the implementation of inclusive strategies. The organizations critically analyze the adoption of sports embracing gender diversity, supporting equal access and equal participation for transgender athletes on every level. Their work involves offering advice, training resources, and sample policies to create welcoming settings.

Legal battles against exclusionary policies are yet another effective advocacy strategy. Suits have been brought against states with limiting laws, to protect the rights of transgender athletes and to allow them to continue competing in sports without unnecessary obstacles. These legal cases seek to destroy discriminatory practices and establish legal precedents that reinforce the values of equality and inclusion. Outside the courtroom, advocacy entails educating legislators,

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<sup>12</sup> Michelle Daltry, Trans inclusion in sports Inclusive Employers, <https://www.inclusiveemployers.co.uk/blog/transgender-people-in-sports-why-inclusion-matters/>.

school officials, and the public about the value of inclusion for youth well-being and development.

These advocacy movements also reach the grassroots and community-based level, with groups offering support and visibility to transgender athletes. Through sharing individual stories, hosting inclusive sporting events, and creating dialogue, these organizations break down stereotypes and create understanding. Further, coalitions among advocacy groups, athletes, and allies drive the message of inclusion, creating a more accepting and supportive environment for transgender athletes. The combined effect of these diverse strategies toward a larger cultural change in the direction of broader inclusivity and equity in sports.<sup>13</sup>

## **RECOMMENDATIONS FOR SPORTS POLICY**

In response to the challenges faced by transgender players, it's important to have comprehensive and open anti-discrimination policies both at the government and the sporting body levels. Such policies need to go beyond the shallow binary gender categorizations and explicitly state provisions for non-binary and intersex participants. Such policies must be done through collaborative work with medical professionals, players, and advocacy groups to facilitate fair application without ignoring the rights and dignity of all participants.<sup>14</sup>

The essence of such policies must create clear and consistent terms for participation that align with the most current science regarding gender identity and associated physiological realities. This could mean individualized determination that accounts for hormone levels, physical maturation, and other applicable determinants in order to insure equitable competition. In addition, the policies must address privacy issues so that transgender athletes' private data is safeguarded and they are provided with facilities suitable for their gender identity, including locker rooms and restrooms.

Successful anti-discrimination policies also need to provide continuous education and training for administrators, athletes, and coaches to ensure that they understand and accept transgender

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<sup>13</sup> Transgender athlete participation in Sport, USOPC, <https://www.usopc.org/diversity-equity-inclusion/transgender-athlete-participation-in-sport> (last visited Mar 19, 2025).

<sup>14</sup> Allie Reynolds & Alireza Hamidian Jahromi, Transgender athletes in sports competitions: How policy measures can be more inclusive and fairer to all *Frontiers in sports and active living* (2021), <https://pmc.ncbi.nlm.nih.gov/articles/PMC8316721/#:~:text=This%20category%20would%20be%20considered,athletes%20who%20wish%20to%20participate.> (last visited Mar 1, 2025).

and intersex people. This involves eliminating myths and stereotypes, encouraging empathy, and instilling respect in sports cultures. Additionally, a system for addressing complaints and disputations must exist to guarantee that any cases of discrimination or harassment are resolved quickly and equitably. By implementing these measures, sport organizations and authorities can create a supportive environment that is inclusive and in which any sports person, irrespective of gender identity or sex characteristics, is able to engage and compete. It allows for fair play as well as sustains values of respect, equality, and inclusion that underlie the sport's spirit.

## **GENDER IDENTITY IN THE FUTURE OF SPORTS**

The changing story around transgender athletes mirrors an increasing focus on inclusivity, spurred by raised awareness and activism. Despite much work still to be done, the path is toward greater access for all, from policymakers to educators and sports communities. This change requires a dedication to dismantling discriminatory barriers and creating environments where transgender athletes are accepted and supported.

Technological innovation and sound research design have the potential to move the discussion on gender identity in sports forward. Evidence-based research involving the day-to-day life of transgender sport participants, assessment of the effects of inclusive policies, and quantitative analysis of mental health outcomes can help to guide and influence upcoming practices. As science conducts sound research, most of the myths about transgender athletes can be debunked and demystified, and their special needs and concerns better understood.

This vision can only be attained if there is collective dedication to accountable advocacy that would make the transgender rights discourse in sports be underpinned by equality, fairness, and respect for diversity principles. Open conversation, evidence-driven decision-making, and transgender people's voice amplification should take precedence among advocates. Additionally, building alliances among athletes, scholars, policymakers, and advocacy groups is necessary for creating holistic and effective inclusion strategies. By coming together, all these stakeholders can ensure that society moves towards a sporting environment in which all have the chance to participate, develop, and honor their identities free from discrimination or prejudice. It entails not only lobbying for policy reforms but also confronting societal culture

and attitudes that reinforce exclusion and marginalization.<sup>15</sup>

## CASE LAWS

### 1. Santhi Soundarajan Case

The difficulties faced by transgender people in India are clarified by the instance of Santhi Soundarajan. Because she did not exhibit the usual sexual traits of a woman, she was considered unable to compete in the women's competition.

Without giving precise details about the test she had failed, the Indian Olympic Association (IOC) told her to stop competing. Furthermore, the Olympics Council of Asia was unable to provide all of the lab results required to support their allegations against Santhi. This demonstrates their lack of accountability because they took away an athlete's gold without providing enough proof. Her rights were thus infringed, and the government, which is responsible for safeguarding the rights of athletes who represent the nation, did not carry out its responsibility in this respect.<sup>16</sup>

### 2. Bostock v Clayton County

In the present case, the plaintiff expressed interest in a gay softball league at work, which led to him being fired.

For transgender athletes, this is especially important in light of the now-established notion that everyone has the right to equal treatment and access to opportunities, including sports participation.

### 3. Altitude Express, Inc., et al. v. Melissa Zarda

Altitude Express, Inc. v. Zarda involved the case of Donald Zarda, a skydiving instructor who was terminated from his position at Altitude Express after informing a female client he was gay. He revealed the information in an attempt to make her feel at ease with their close physical contact during a tandem skydive. The boyfriend of the

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<sup>15</sup> Beth Hands Adjunct Senior Research Scholar, Many sports are tightening their transgender policies – can inclusion co-exist with fairness, physical safety and integrity? The Conversation (2024), <https://theconversation.com/many-sports-are-tightening-their-transgender-policies-can-inclusion-co-exist-with-fairness-physical-safety-and-integrity-231597> (last visited Mar 19, 2025).

<sup>16</sup> Globalsportspolicy, Transgenderism in sports in India: Current legal position and analysis GSPR (2023), <https://www.g-spr.com/post/transgenderism-in-sports-in-india-current-legal-position-and-analysis#:~:text=Landmark%20Decision%3A%20Kerala%20HC%20grants,compete%20in%20their%20chosen%20gender.&text=In%20a%20significant%20ruling%2C%20the,absence%20of%20a%20separate%20category.> (last visited Mar 1, 2025).

client complained that Zarda had touched her inappropriately, which Zarda had denied. Zarda subsequently brought an action against Altitude Express for employment discrimination

The District Court originally held in favor of Altitude Express, a decision upheld by the Second Circuit Court of Appeals. The Second Circuit subsequently reheard the case en banc and overruled the earlier decisions, holding that Title VII forbids sexual orientation employment discrimination under the sex category.

The Court's decision was not grounded in constitutional law, but rather in the statutory term of "sex" included in Title VII. Justice Neil Gorsuch, who wrote the decision, made it clear that an employer's definition of a discriminatory conduct is irrelevant.

## CONCLUSION

As the social comprehension of gender changes, legal frameworks and policies that regulate sports participation need to evolve to accommodate this growing awareness and acceptance. Existing laws tend to lag behind in protecting the rights of transgender and gender-diverse athletes, requiring radical overhauls to provide equal opportunity and respect for all identities. Going forward, a convergence of rights-based strategies and remodeled regulatory responses is necessary to ensure that all athletes of whatever gender identity may be are enabled to compete on an equal and non-discriminatory basis in competitive sport.<sup>17</sup>

The use of rights-based strategies entails recognizing and upholding the inherent human rights of all athletes, including the right to equality, to non-discrimination, and respect for their gender identity. This involves dismantling discriminatory policies, countering societal prejudices, and fostering a culture of inclusiveness within sporting bodies. At the same time, regulatory frameworks need to be reformed to tackle the particular challenges of transgender and gender-diverse athletes. This involves setting clear and consistent standards for participation, providing access to suitable facilities, and offering education and training to coaches, athletes, and administrators.

The report highlights the imperative for all stakeholders to come together and change the legal environment and promote more inclusive practices in sports. This can be achieved by athletes,

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<sup>17</sup> Transgender athlete participation in Sport, USOPC, <https://www.usopc.org/diversity-equity-inclusion/transgender-athlete-participation-in-sport> (last visited Mar 19, 2025).

advocacy groups, doctors, policymakers, and sports organizations coming together and creating fair policies that honour the identities of athletes and ensure equitable competition. By adopting a cooperative, rights-based strategy, we can bring about a sporting culture that is fair, accessible, and embracing to everyone. This involves not just resolving legal and policy concerns but also bringing about a larger cultural transformation towards more understanding, acceptance, and appreciation of diversity in the sporting community.

