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Title IV: Transgender Athletes V. America

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Introduction:

Title IX of the education amendments of 1972 states that in the United States of America, no person shall face discrimination under an education program or activity that acquires Federal Finance Assistance because of their sex, nor shall one be excluded from participation or face any denial after being a deserved entity of benefits. As per the law, no one should face any discrimination on the basis of Race, Religion, Gender, and Sex Orientation. This unbeknownst to them at the time had a profound impact on athletics. It is not just necessarily that if there is a boy's basketball in the school, college, or university, there must also be a girls' basketball team. Instead, it means that if there are ten male sports. There should be counseling for all, be they male, female, transgender, nonbinary, or any sector of the LGBTQ+ community. Teachers should teach and give attention to everyone regarding students' gender, sex, race, religion, or sexual orientation. The responsibilities and tasks assigned should be for all. Whether parenting or pregnant, women are allowed to participate in every activity in school, college, or university.

While dealing with the concept of Harassment(Pethel, 2022), it should be noted that no one should be discriminated against. Ever. Now American society has evolved, and when Title IX was formed, the debate for LGBTQ was not at the forefront of the minds of the policymakers. Society, although there are still so many faults, we have slowly but surely progressed, against some people's will. In the same way, black women and women of color were left out of the 19th Amendment even though black women were instrumental in the fight. However, after 50 years since the law was implemented, people are demanding that another important segment of society suffering and facing discrimination in different walks of life should be part of the law. Although the law categorically indicates that it protects the rights of every American citizen regardless of

sexual orientation, ambiguities and uncharted territory exist in a society that needs to be addressed through the law. And a good sign is that it is a doable task but requires commitment from the authorities. Society should be more vocal and open to debate and comprehension of the severity of the problem.

Title IX

Title IX was introduced by Congress and signed into law by Alumni of Whittier College and former president, Richard Nixon in 1972. It protected women from discrimination at School, College, and the University level. While talking about discrimination was referred to as discrimination in any federally funded institution. At the time of 1972, when America was in the phase of transformation, and society was facing many challenges and changes. At this time, Congress represented a bill that later became a law known as Title IX(STEVENSON, 2007). Before this law, there was only 15% of college athletes were women, and at the school level, the participation in terms of percentage was only 7%. Title IX suggested that sports should be more equal and that equality means equal participation and treatment. The government decided to define rules of fairness; hence, it was decided to categorize the rules into three tiers.

- a. Proportionality
- b. Progress
- c. Satisfied interest

While describing proportionality, it was decided that if there were 51 percent of girls in an institution, there should be 51% opportunity for them(Boschert, 2022). While progress means an institution would have to develop a sports environment for girls and submit its report to the government, and they would examine their progress(Kaestner & Xin Xu, 2010). Additionally,

there should be new sports for girls. And for Satisfied-interest, the government instructed institutions to conduct surveys on a daily basis in which they would ask questions to girls regarding their specific interest in the sports. It also refers to the activity of the institution in which it had to find out the popular sports as per the locality and the formation of teams based on the interest of girls. While discussing quality, it is quite important to highlight the meaning of "quality."

a. Equality in Equipment or Supply

In Title IX, it has been emphasized that the quality should also be equal. That means that the equipment and the amount supply of sports material should be equal. For instance, if a school, college or university, or any other institution, buy equipment for the boy's basketball team, and it is purchasing tools and kits for a boys' team and maintains the standard in everything related to sports, it is mandatory for the girls' team as well as the same quality, amount, and standard. There should be equality in every aspect of funding. The budget should not be drastically skewed toward the men like it oftentimes has been before Title IX.

b. Equality in Publicity:

There should be equality in publicity, marketing, and campaigning for the sport in which girls participate too. According to Title IX, it would be the ultimate violation of the law if girls' sports don't take full intention, support, marketing campaign resources, and media coverage as the boys' sports get. This is always a tricky section of Title IX because a lot of big Division I football or Men's basketball college have signed media rights with broadcasters like ESPN or Fox Sports. This does not apply because the school is not paying for it and the other companies are not federally funded.

c. Scheduling of game and practice time

It is quite important for the sports to decide the time for the convenience of the audience so that a maximum crowd can come to the stadium to watch sports. The number of audience in the ground encourages sportsmen to play beyond their potential. Hence, if an event is conducted on Friday evening, there is the possibility that a maximum number of crowds will come to watch the match. Thus, Title IX ensures that education authorities should not discriminate in this part as well. If the boys' game is conducted on Friday evening, it is necessary that girls' sports should also be conducted on a similar day so that a maximum number of crowds can watch the sports.

d. Quality of Coaches:

It is also very important to notice that girls should be provided the best quality coaches for particular sports as the boys' sports. Owing to the fact that if boys get quality coaches and girls get poor quality coaches, there will be a difference in the quality of sports they play. Hence, educational institutions will be considered to be committing the heinous crime of discrimination against girls and violating the law mentioned in Title IX. If a coaching job for a women's team earns significantly less than a men's team then the quality of the coaching pool will decrease because there will be no incentive to stay in women's sports.

There are other aspects as well regarding equality in sports for girls. Girls should be allowed to possess their separate locker rooms (McFall & Perkiss, 2022). There should be a proper and equally equipped and facilitated practice spaces. There should be an equal provision of competitive medical facilities. Hence, the implementation of Title IX is also the responsibility of society as well. If people feel that they are getting discriminated against in this regard, they

should highlight the issue to the higher authorities so that they can take result-oriented action to implement the essence of the law against discrimination. Nowadays each NCAA institution is required to have a Senior Women's Administrator to ensure there is a woman in the room with every decision being made.

States Law:

In the United States of America, there is a provincial authority. That means 50 states of the United States of America are independent to make their own decisions except for matters related to Finance, defense, Communication, and Foreign Affairs. Hence, it is quite important to note that Title IX was passed by Congress, and in the beginning, it was the subject of the Federal state, but because of the severity of the issue (as it protects women from any type of discrimination), States transformed their laws according to it because it wasn't the issue of Federal but the Federation. So now, Title IX is also part of State law. Now there is also a debate spurred by society to discuss the matters of LGBTQ and transgender, especially whether they get protection from the law or not.

Currently, eighteen states have a total ban on transgender student-athletes participating in the sport that aligns with their gender identity, mainly from kindergarten through twelfth grade. Over 30 States have introduced bills either banning or restricting transgender youth participation in sports from 2020-2022. There are four different types of policies that I found in my research. The first is a total ban like the Alabama High School Athletic Association (AHSAA) which says participation in athletics should be determined by the student-athlete certified certificate of birth. The next was a restrictive policy like the Virginia High School League (VHSL) new policy eliminates the strict requirement of "sex reassignment surgery,". The policy emphasizes that gender identity must be "bona fide" and requires a process that involves a number of officials

verifying that identity. Then the third is a no-policy state for example States like Hawaii and Alaska have no statewide policy on participation. Alaska allows the school district to make its own policy. Hawaii only has a policy against discrimination against transgender students. The last category is a friendly policy like the California Interscholastic Federation (CIF) policy says "All students should have the opportunity to participate in CIF activities in a manner that is consistent with their gender identity, irrespective of the gender listed on a student's records.

They also face discrimination in every walk of life, generally and in sports particularly. They face harassment as well. According to the survey, 87% of transgender claim to get verbal harassment, and 40% of them mentioned that they had faced physical harassment in their lives. Consequently, 40% of them who faced harassment felt unsafe and tried to commit suicide. This figure is three times higher than the straight people who faced harassment at school, college, or university level. While 29% attempted suicide, and this number is twice that the straight people committed it.

The repercussion of harassment:

There are many forms of harassment. It could be done on Social Media, through texting or email, sexual touching, bad gesture, verbal sexual abuse, sexual contact without the consent of the person, or sexual assault, whether at school or outside the school. Harassment should be discouraged wherever it takes place, and whoever commits this should be punished severely because the harasser could be everyone. It could be a Teacher, Student, or School staff member. The repercussion of this heinous crime is quite alarming for individuals and for society as well. As per the study, of the people who face harassment, 87% of them faced a negative impact on their education and personal and professional lives, and 81% of them said that they have quitted socializing, and now they feel quite insecure in school, college, university and at the workplace.

Harassment, whether in school, college, education, or the workplace, leaves a drastic and devastating impact on the life of the victims. It hurts emotionally, and they feel unsure about making new friends or colleagues. They feel fear of going to public places, and they decide to spend their lives in a state of isolation, and ultimately they become introverts. Furthermore, they couldn't complete their education, and as a result, they got poor grades and faced dropping out or skipping school. Resultantly, they and their families suffer economic damage. People belonging to the transgender community fail to use their potential and become vital players in society, particularly in sports.

Why have states banned transgender people from participating in Sports?

The next battle that Title IX has to fight is against the discrimination faced by transgender in American society. Now the rights of Transgender are a dividing point in America. People are concerned regarding their rights. There is a debate that discusses whether Title IX is capable enough to protect the rights of Transgender or whether there is room for an amendment to the law. At the same time, Biden Administration has given a green signal in this regard. The President in one of his speeches said that "transgender should enjoy the same rights as women do in Title IX." It is quite important to bring this fact to the notice that there are 15.3 million high school students in the United States of America, and 1.8% (275,000) of them are transgender stated to CDC. And a number of transgender participating in sports provide quite a discouraging figure. As the Human Rights Campaign suggests that there should be 15% participation of transgender is mandatory. On the contrary, it is quite a discouraging fact that 18 states in the United States of America have banned transgender from participating in sports. Some states give rationale that transgender people should not for some reason have the rights of people who are

non-transgender. To understand this phenomenon, it is quite important to understand the difference between sex, gender, transgender, and intersex.

SEX:

It is the classification of both males and females in which both entities are recognized by their body parts and organs.

Gender:

It is a classification of males and females based on their self-representation and the way a person is responded to by the social institution.

Transgender:

His, her, or their gender identity is different from the sex assigned at the time of their birth.

Intersex:

It is a situation of a person in which biological sex is ambiguous. It is because of genetic, hormonal, or anatomical variation caused by Klinefelter Syndrome or adrenal Hyperplasia.

The states that banned transgender from participating in sports due to the fact that they feel that because of the sexual orientation of transgender is not defined and restrict people to participate who have definite sexual orientation in sports. Resultantly, authorities of the state decided to allow to participate in the sports activity only those whose gender identity is defined by the state. They justify their argument by saying that transgender should be a separate category and it shouldn't be mixed with women.

Federal Law:

Civil Liberties Union of the American Civil Society has filed a lawsuit against the authorities of Tennessee owing to the fact that they banned transgender from participating in school sports. This act was done on behalf of Lue Esquivel, who plays golf. He was assigned the sex of female at the time of his birth but back in 2019, according to his parents, he identified as male.

As per his statement, he was trying to do something new for the boys' golf team. "If I am approved, it will be a new experience for me to compete with boys and learn from boys, and share a dressing room with them. For this purpose, it is very important that a legislature needs to be passed. Otherwise, people like me will be discriminated against, and we will not be allowed to participate in sports. It will be discouraging and disappointing for us. We want to play and enjoy the game."

There are other examples as well. Kyla Peterson, at the time of birth, was assigned sex as female. She got selected for the Iowa Girls High School Athletic Union. Once the school adopted legislation related to the inclusion of transgender girls in 2014. When she was in school, she had a more masculine physical appearance. Consequently, people called her a "monster."

There is a hot debate on this issue. Different aspects of the legislation are on the table, for instance, the use of school bathrooms for transgender students, Schools should teach regarding sexual orientation and gender identity, and parental consent for gender confirmation. In 2012 citing Title IX, the Obama administration says transgender students at public schools should be allowed to use the bathroom or locker room that matches their gender identity. The central point of the debate is fairness in competition, and to address this issue, long and extensive research is

required because it is a complicated issue to address. In the month of May, Indiana officials asked the Federal government to intervene in the matter to give rights to transgender and transsexual people to participate in sports. They are citizens of this country that claims that every single person is free and equal; they should be provided equal opportunity in sports. They are not only a law-abiding citizen but also good athletes that can contribute tremendously to the state and the country.

Conclusion:

Title IX depicts the true essence of human rights. The United States of America is known as the land of opportunities, for everyone. Thus, the federal government should ensure that every citizen of the country can avail of opportunities in every walk of life. Title IX is for people who face any kind of discrimination. When the law was formed, the right of women was a hot discussion in American society, and Title IX addressed the issue quite comprehensively. As American society has evolved further, now in the contemporary world, America is also concerned about the rights of transgender. Although Title IX does not explicitly mention the rights of LGBTQ people, the essence of the law suggests that people who belong to the transgender community are and should be part of this law. Title IX is the proper roadmap to address the concern of transgender people who are facing discrimination in any form. According to a recent study, there is 1.6 million transgender in the United States of America. The provision of equal opportunity and rights in every walk of life, generally and in sports specifically, is the ultimate right of these people committed by the Federal and the State in the country. There is a dire need to form substantial guidelines on this matter to ensure the inclusion of transgender youth athletes from now on. They should be allowed to play sports for their physical and mental health at least. It is the basic human right of every citizen living in the United States of America.

If they face discrimination, it will have a negative impact on their social, physical, and economic lives. Now transgender people are facing the same discrimination as women were facing before 1972. There is an opportunity for the legislature to amend Title IX and protect the right of transgender people. I do believe that based on my research and precedents (Executive Orders & Rulings) Transgender youth athletes can and should be allowed to play in accordance with Title IX in every state across the United States.

References

- Boschert, S. (2022). *37 Words: Title IX and Fifty Years of Fighting Sex Discrimination*. The New Press.
- Kaestner, R., & Xin Xu. (2010). Title IX, Girls' Sports Participation, and Adult Female Physical Activity and Weight. *Evaluation Review*, 34(1), 52–78.
<https://doi.org/10.1177/0193841x09353539>
- McFall, K., & Perkiss, A. (2022). *Changing the Game: Title IX, Gender, and College Athletics (Reacting to the Past™)*. The University of North Carolina Press.
- Pethel, M. E. (2022). *Title IX, Pat Summitt, and Tennessee's Trailblazers: 50 Years, 50 Stories*. Univ Tennessee Press.
- STEVENSON, B. (2007). TITLE IX AND THE EVOLUTION OF HIGH SCHOOL SPORTS. *Contemporary Economic Policy*, 25(4), 486–505.
<https://doi.org/10.1111/j.1465-7287.2007.00080.x>