

Inevitability of Classification and Uncertainty of *Telos* in Distributive Justice: An Illustration from Olympics 2024

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ABSTRACT

While a lot of material is produced on the idea of justice advancing various versions of the same, there is an aspect of justice that is relatively ignored. That aspect is the classification of people. In this paper the author has argued that a debate on justice necessarily demands a debate on the classification of people who are the recipients of justice. At the heart of the problem of justice lies the problem of classification of people. The classification may be reasonably done if there is an agreement on the purpose of the things that are up for distribution or on the purpose of the institution within which the distribution is supposed to take place. However such agreement is not easy to come by. The aim of the author in this paper is not to provide any concrete formula for classification, but only to highlight, taking an example from sports, that classification is necessary and difficult at the same time. There is a need for a deeper and wider debate on what various things that we prize actually mean to us.

INTRODUCTION

Paris Olympics 2024 were granted *Terrain d'égalité* label. It is for the first time in the history of Olympics that there was an equal representation of women. Of ten thousand five hundred athletes standing at the starting line half of them were women. Out of thirty two sports twenty eight were gender - equal. Across various sporting disciplines one hundred fifty two events were for the female athletes, one hundred fifty seven for male athletes and twenty were mixed gender events. It meant that women athletes stood a chance to win more than half of the medals.¹ The importance of this feat can be realized by looking at the duration of time it took to reach at this equal level. It took no less than one hundred twenty

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eight years for women to get equal participation in Olympics. Even at the turn of the century in Sydney 2000 Olympics women participation was a mere 38.2%.²

What does it mean to have an equal participation in Olympics? It is a matter of pride. It boosts confidence of women. It gives greater visibility to women. It shows that women can assume bigger roles in society and successfully execute all the tasks necessary for their role. It does all that, and it has a potential of doing much more than that. A single Olympic medal victory can change the life of a person. And, if it is a Gold medal there is nothing like it. An athlete, male or female, can become a celebrity, an icon, and a multi-millionaire if he or she is able to win an Olympic medal. To understand the value of an Olympic victory and what it can do in the life of a person one should consider that there are about seventy countries in the world that have never won any medal in Olympics - summer or winter. There are many countries that have never won a Gold medal.³ And there are countries that have only a very few medals written against their name.⁴ An Olympic medal can fetch you, from your own governments, thousands (sometimes millions) of dollars in cash, titles, expensive cars, custom made alcohol, your own restaurant, and in some cases an easy entry into politics.⁵ To cap it, successful players get endorsement deals from various businesses worth millions of dollars every year. With just a mere participation in Olympics every sports person stands a chance to better his or her life. A victory in Olympics is a life changing event for sure! So, *Terrain d'égalité* has a high value for women.

Life is no Different from sports

Olympics is just one kind of competition. There is competition going on all around us at all the time. There is competition in job market. There is competition in politics. There is competition in business world. There is competition in schools, universities, art and cinema, fashion world, science and technology, health and fitness. There is competition even among spiritual gurus. In this competitive world what hurts us is that some people are not allowed to enter into the field and compete with others. In a competition, big or small, the field should be open to all.

The participation or the victory in all fields might not be as rewarding as participation or a win in Olympics but it surely means something to the participant or the winner and it makes the life better for him or her. Being able to secure a job howsoever small, to run a business howsoever modest, to get some acknowledgement from wherever, to get some foothold somewhere howsoever temporary, means a lot to a lot of people in a lot of situations in life. Of course, in different competitive fields people can be kept out of race on various reasonable grounds like citizenship, age, technical qualification, criminal conduct etc., which may be totally justified; but any exclusion from competition on the grounds of race, religion, sex, caste, colour of the skin, ethnicity etc. hurts our sense of fairness. Fairness in competition demands that no one should be kept out of the race on such grounds. People should not be unreasonably denied a chance to make some progress in life. *Terrain d'égalité* should be for everyone in every sphere.

But, does it automatically make the competition fair if everyone is allowed to participate? Is it enough to eliminate the race, religion, sex, caste, ethnicity and such like biases and allow everyone to compete? Or, is there something more involved in making the competition fair? Is there something more to be done?

To answer that question, let us go back to Paris Olympics 2024.

BACK TO PARIS

On 1st of August 2024 in women's welterweight category an Algerian boxer Imane Khelif fought against an Italian boxer Angela Carini. It was the preliminaries - round of 16 - match. Angela Carini abandoned the fight just after 46 seconds in the first round of the match. In a very emotional press conference after the match she said, 'I have never felt a punch like this'. This match created a big controversy. The reason behind the controversy was that just one year before Paris Olympics 2024 during the World Boxing Championships held in New Delhi in March 2023. Imane Khelif was disqualified by International Boxing Association (IBA) and was suspended from future IBA events. The reason for disqualification, it is reported, was that 'the boxer failed the gender test'.⁶

Umar Kremlev, the president of IBA, had said that the DNA testing proved that the boxer had XY (male) chromosomes. Three months later in June 2023 IBA was de-recognized by the International Olympic Committee (IOC) and the control of boxing events for Paris Olympics 2024 came totally in the hands of IOC. IOC, on its part, ignored the IBA ruling on ImaneKhelif and allowed her to participate in women's welterweight boxing event in the Paris Olympics 2024.

After her defeat many famous people came out in support of Angela Carini. J K Rowling wrote on X "Could any picture sum up our new men's rights movement better? The smirk of a male who's knows he's protected by a misogynist sporting establishment enjoying the distress of a woman he's just punched in the head, and whose life's ambition he's just shattered."⁷ US Vice Presidential candidate in 2024 elections, J D Vance wrote, "This is where Kamala Harris's ideas about gender lead: to a grown man pummeling a woman in a boxing match. This is disgusting, and all of our leaders should condemn it."⁸ Italian Prime Minister Giorgio Meloni greeted Angela and later wrote on her X handle, "I know that you won't give up Angela, and I know that one day you will get what you deserve through strength and sweat. In a competition that is finally equal." She was also offered \$ 100,000 by IBA - the prize money that IBA was offering to the gold medallists at the Games.

IOC, on the other hand, stood behind ImaneKhelif and defended their own decision to allow Khelif to participate in women's boxing event. Thomas Bach, the IOC president, said that, "We are talking about women's boxing. We have two boxers who were born as women, raised as women, who have passports as women and who have competed for many years as women and this is a clear definition of a woman."⁹ IOC spokesperson, Marks Adams said, "This is not a transgender case. On that there is consensus. Scientifically this is not a man fighting a woman." "I think the question you have to ask yourself is - are these athletes women? The answer is yes according to eligibility, according to passports, according to their history. A test which may have happened overnight was made upon test which is new. I don't think we should give that any credence at all. If we start acting on every issue, every allegation that comes up then we start

having the kind of witch hunts that we are having now." On the process of gender determination by IOC he said, "As with previous Olympic boxing competitions, the gender and age of the athletes are based on their passport."

ImaneKhelif went on to win the Gold Medal beating all her opponents in quarter-final, semi-final, and final match by a margin of 5-0.

This is not the only case of its kind. Such controversies have been erupting in sports for some time now. Even in the same Paris Olympics 2024 another boxer Lin Yu-ting from Taiwan faced the same allegations against her. Failing a gender test Lin was also banned by IBA in the year 2023. Lin also won the Gold Medal in Paris 2024 in the Featherweight category. On her way to podium Lin also defeated all her opponents by a margin of 5-0. Earlier Caster Semanya's case had caught the attention of the world when she dominated the women's 800 meter race by winning two back to back Olympic Gold Medals in London 2012 and Rio 2016, and three World Championship Gold Medals - 2009, 2011 and 2017 only to be banned in 2019 by Court of Arbitration for Sport (CAS) from participating in the international events from 400 meters to One Mile unless she takes medication to reduce her testosterone levels.¹⁰ Caster Semanya's is a DSD (Difference in Sexual Development) case and her testosterone levels were naturally three times higher than any other female athletes.¹¹

Who is a man and who is a woman may not matter when the question is 'who should be participating in Olympics?' But this will matter when the question is 'who should be competing against whom for a medal?' This will matter because this will have a decisive impact on who will win! The competition does not automatically become fair only by allowing everyone to participate. To make the competition fair something more is needed to be done. No one will fret if the victory is fair. But the victory will never appear to be fair to us if the competition is between people who are decisively unequal. The competition, therefore, must be between equals.

CLASSIFICATION OF PEOPLE IS INEVITABLE

Just as in sports, fairness in all other walks of life also demands both the things. First, that everyone

should be allowed to participate and try to make their life prospects better. And second, for the things that people prize there should be a competition among people who are equal in some relevant sense.

In a society there is land to be occupied, there are natural resources to be exploited, there are jobs to be taken, there are prizes to be won, there are positions to be held, there is wealth to be accumulated, and so on. Mostly people value all these things. They believe that having these things in some measure does make their life better. In a society, therefore, there is forever a competition to occupy the land, exploit the resources, take the job, win the prize, hold the position, and accumulate the wealth etc. Justice demands that these things should be fairly distributed. This is often called Distributive Justice - justice in distribution of things that matter to the people. The goal of distributive justice is a fair distribution of things that people prize.

A just society should not exclude anyone from aspiring and trying to attain the things that matter to them. If they aspire and work for it, everyone should have a chance to possess the land, get a job, run a business, win a prize, hold an office, accumulate wealth etc. No one should be presumed to be less worthy to have any of the things that others can have. To keep some people out even before the distribution begins is like saying to them that you are a lesser member of the society. No one should be considered a lesser member of the society. Not excluding anyone from the competition, not preempting anyone's effort to better his or her life in his or her own way is necessary for achieving distributive justice. To have such inclusivity may be a very daunting task in some societies. This requires an elimination of various biases and prejudices that society might be holding against some of their own members. Due to numerous historical, cultural, religious, political and other reasons it might be very difficult for some societies to accept the notion that everyone, irrespective of their inter-se differences in sex, race, ethnicity, colour of the skin, gender orientation, religion, caste etc., should be allowed fairly equal chance to attain things. Just as in Olympics where it took more than one hundred years for women to get an equal participation, in some societies it may take much more time than

that to even allow everyone to stand at the starting line. Those societies which achieve this feat may call themselves liberal societies.

But justice is not only about being liberal. Liberal societies may not necessarily be just societies. Justice is also about fairness in competition. Thus, inclusivity is not the end. It is only one step. Inclusivity is the first condition that must be satisfied. After the initial step of including everyone, the next step is required to be taken. To attain the things that are up for distribution there should be competition between people who are equal in some relevant sense, else the competition shall not be fair. Fairness in competition is that next step. Competition for jobs cannot be fair if it is between people totally unequal in their training and their skills. Competition in business cannot be fair if it is between people having huge wealth differences. Competition for medals in sports cannot be fair if it is between people who are naturally unequal in their strength and stamina. This second condition - that there should be fairness in competition - is perhaps even more difficult condition to achieve. This demands an assessment of 'who are equal in the relevant sense?'. This demands a categorisation of people for various competitions. A set of people may be fairly equal in some relevant sense in one case but the same set of people may appear to be unequal in another case. For example, sex of a person may not make any difference when it comes to a competition for a seat in the parliament but it may make a huge difference when it come to a competition for a medal in a boxing match. Male - Female categorisation may not be necessary in one case but may be most essential in the other.

Scholar like Prof. John Rawls has gone a step further. While arguing that the competition should be under conditions of 'fair equality of opportunity'¹² he says that it is the responsibility of the state to create such conditions. It is the responsibility of the state to **enable** people to compete. And for this end 'the society must also establish, among other things, equal opportunities of education for all regardless of family income', he says.¹³

Irrespective of whether the demands of justice may reasonably extend to 'enabling' people to compete with others or not, the requirement of classification of people for competition in some relevant sense cannot be denied. More than anywhere else, the

classification of people for competition generates controversy when it is done for the purpose of admissions in schools and colleges and for the purpose of jobs. People try to avoid or minimise the competition for them by showing that for one reason or the other they have a prior or greater claim over school/college seats or job vacancies. If the state acknowledges such prior or greater claim it helps making some people's life prospects better but only at the cost of making the life prospects worse for all others.

Classification of people for jobs and schools/colleges seats is so sensitive a matter that it has caused protests, suicides, numerous litigations, amendment in the Constitution and even forced change in the regime by toppling the government¹⁴. The opinion of the people is deeply divided on this issue. The demands and protests are always equally forceful from both the sides.¹⁵

DOES *TELOS* HELP?

One solution that can be reasonably proposed to find out what is an appropriate categorisation of people in the relevant sense is to shift the focus from the people to the institution or to the things for which there is a competition among people. The thinking about justice in distribution, and therefore categorisation of people competing against each other to get a share in the distribution, should begin with a thinking about the things that are up for distribution or with a thinking about the institution itself within which the distribution will take place. Such thinking should be on the lines of determining the purpose of the things or the purpose of the institutions that are involved in the distribution. It is believed that if once the purpose of the things or of the institutions becomes clear to us the distribution pertaining to such things or to such institutions becomes obvious. The problem - who should be competing against whom - becomes easy to solve. Such approach protects the integrity of the things and of the institutions. This is teleological approach to justice.¹⁶

Once we start thinking teleologically the relevance or irrelevance of various factors thrown in the argument become clear to us. For example, even in a free market economy where almost everything may be in the hands of private entrepreneurs and one's access to various facilities may be solely

dependent on his or her purchasing power there might be no disagreement that 'policing' is a state matter which should be under an exclusive state control. This is so because even before the question 'who should run the police business' comes up people might have a consensus on what is the purpose - *telos* - of policing as an institution. The people may agree that the very purpose of the institution of police is to maintain law and order and to provide to everyone, irrespective of any consideration of wealth, race, gender, education, ethnicity or religion etc., a safe environment to pursue their own chosen activity. Once there is consensus on the purpose of the institution of police, the questions regarding 'who should have the control over this activity?' and 'who should be the employees in this organisation?' become relatively easy to resolve.

BUT, IS IT EASY TO DECIDE THE *TELOS*?

When Mr. Sebastian Coe, the Chairman of International Amateur Athletics Federation (IAAF) said that 'we have two categories in our sport: one is age and one is gender age because we think it's better that Olympic champions don't run against 14-year-olds in community sports and gender because if you don't have a gender separation, no woman would ever win another sporting event',¹⁷ perhaps he had some *telos* of athletics events at the world stage decided in his mind. May be he thought that the purpose of competitive athletics events at the highest level was to find out the best male athlete and the best female athlete in various competitive athletic events in various age groups and to recognise their gifts and their hard work and to honour them on the world stage. This required a classification of athletes in two ways: one according to their age and the other according to their sex. Age classification is less controversial. For sex classification he had to identify the key determining factor that separates the male athlete from the female athlete. For him it is testosterone. 'Testosterone is the key determinant in performance' he said.¹⁸ No doubt he has all the reason to believe that male - female categorisation in athletics based on the testosterone levels 'protect the integrity of women's sport'.¹⁹ If a transgender (male to female) athlete competes in female category in sports like boxing or sprinting the chances that the cisgender woman athlete wins the competition are next to negligible.

Thus, in the context of competitive athletics events at the world stage considerations like 'free choice', 'autonomy of gender identity', 'right to privacy', 'human rights of transgender athletes', etc. become irrelevant for Mr. Coe.

While Aristotle²⁰ might have agreed with Mr. Sebastian Coe the IOC does not. IOC declares that its mission is to unite the world in peaceful competition and foster an atmosphere of peace, development, resilience, tolerance and understanding.²¹ IOC believes that no athlete should be precluded from competing or excluded from competition on the exclusive ground of an unverified, alleged or perceived unfair competitive advantage due to sex variations, physical appearance and/or transgender status.²² This will ensure safe and *fair* competition in the context of inclusion and non-discrimination on the basis of gender identity and sex variations.²³ Evidently there is no agreement on the *telos* of competitive sports, and more specifically Olympics, between IOC (currently headed by Mr. Thomas Bach) and the IAAF (currently headed by Mr. Sebastian Coe). Therefore, while IOC requirement for transgender athletes (male to female) is that they need to take medication to bring down testosterone levels under 10 nano moles per litre for at least 12 months prior to the competition,²⁴ the IAAF requires it to be under 2.5 nmol/L for the athletes participating in female category.²⁵

CONCLUSION

Foregoing discussion makes it abundantly clear that at the bottom of this disagreement between IOC and IAAF about the role and importance of testosterone in the competitive sport at the world stage there is a deeper disagreement about the purpose of the competitive sport itself. Is competitive sport at the world stage all about fostering peace and harmony, promoting inclusivity, sensitising people toward human rights, developing tolerance and understanding; or is it about *Citius - Altius - Fortius* (Faster - Higher - Stronger) - encouraging excellence in sports, encouraging people to give their best in sports, and then acknowledging the best men and women in various disciplines of sports and honouring them for their virtue and their hard work?²⁶

Similarly, in a debate on who should be competing against whom for government jobs, for school/college seats, for public offices and for all other things that people prize there is a need for a wider and deeper debate on what these things mean to us? What is the real purpose of government jobs, of schools/colleges, of public offices etc. If distributive justice is what we are seeking, fairness in competition is necessary. There should be a competition only between people who fall in the same category.²⁷ And, therefore, categorisation of people in the relevant sense becomes necessary for distributive justice. Categorisation may become easy if we adopt teleological approach. So, knowing the *telos* may help. But, even though *telos* may help, what is the *telos* itself may be unclear and there may not be any unanimity about it. None the less a debate on distributive justice must involve a debate on what various things and institutions mean to us. What is their real purpose? Without a consensus on such matters there shall never be a consensus on fair distribution.

It is clear that the task of justice in distribution is always a challenge, at the heart of which there lies a problem of classification of people and uncertainty of *telos*!

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- 2 For detailed progression in women participation in Olympics see, <https://www.weforum.org/agenda/2024/04/paris-olympics-2024-gender-parity/> (last accessed 20.10.2024).
- 3 India won its first Gold in an individual event only in 2008 Beijing Olympics when Mr. AbhinavBindra won 10 meter Air Rifle event.
- 4 There is a concentration of medals in some countries and the Olympic victories are not evenly distributed.
- 5 Koh Ewe, "The Different Prizes Olympic Champs Can Win—Depending on Their Country and Sport" see, <https://time.com/6996826/olympic-gold-medal-prize-money-countries-sports-federations/> (last accessed 10.07.2024).

- 6 <https://www.dw.com/en/paris-olympics-whats-behind-boxing-controversy/a-69849580> (last accessed 06.08.2024).
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- 9 <https://www.hindustantimes.com/sports/olympics/gender-row-boxers-imane-khelif-and-lin-yu-ting-disqualified-from-world-championships-after-chromosome-test-iba-101722866906012.html#> (last accessed 08.08.2024).
- 10 CAS observed that 46 XY 5-ARD individuals with a difference of sex development, such as Semenya, enjoy a significant sporting advantage over 46 XX competitors without such DSD due to biology. See, Mokgadi Caster Semenya v. International Association of Athletics, CAS 2018/O/5794.
- 11 Caster Semenya took the matter to ECHR and got a favourable verdict on 11 July 2023 in *Semenya v. Switzerland*, no. 10934/21, 11 July 2023.
- 12 John Rawls, *Justice as Fairness - A Restatement*, (Universal 2004). Refer to his famous principles of justice. The first part of his second principle is about fair equality. Fair equality should be contrasted from formal equality. What he means by fair equality of opportunity is that, "In all parts of society there are to be roughly the same prospects of culture and achievement for those similarly motivated and endowed". People with same talents and motivation levels when put in same amount of hard work should have roughly the same prospects of success regardless of their social class of origin, the class into which they are born and develop until the age of reason. To this end the state should set the free market system within a framework of political and legal institutions that 'adjust the long-run trend of economic forces so as to prevent excessive concentrations of property and wealth, especially those likely to lead to political domination'.
- 13 John Rawls, *Justice as Fairness - A Restatement*, (Universal 2004), p. 44.
- 14 On August 5th, 2024, Ms. Sheikh Hasina, The Prime Minister of Bangladesh who ruled for no less than 15 years, had to abandon her office and take refuge in India when her quota in jobs decision went haywire.
- 15 While in the year 1990 many students committed the act of self-immolation (Mr. Rajeev Goswami is perhaps the most famous of them all) protesting against the implementation of the Mandal Commission Report that proposed additional reservation in jobs and college seats in India, recently it is reported that 19 students have committed suicide demanding quota in jobs and university seats for Marathas in Maharashtra, India. See, <https://timesofindia.indiatimes.com/city/mumbai/19-marathas-ended-lives-for-quota-in-12-days-state-data/articleshow/104954817.cms#> (Accessed on August 10, 2024). Also, <https://www.ndtv.com/india-news/maratha-reservation-activist-manoj-jarange-begins-fast-unto-death-5845061> (last accessed 10.08.2024).
- 16 Telos is the ancient Greek term for an end, fulfilment, completion, goal or aim; it is the source of the modern word 'teleology'. See, <https://www.rep.routledge.com/articles/thematic/telos/v-1#:~:text=> (last accessed 10.08.2024).
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- 20 For a lucid exposition of Aristotle's teleological approach to Justice see, Michael J. Sandel, *Justice : What's The Right Thing To Do*, Penguin Books 2009, Ch. 8.
- 21 IOC has declared Olympic Games : Roles and Responsibilities at <https://olympics.com/ioc/olympic-games-roles-and-responsibilities#> (last accessed 20.10.2024).
- 22 Principle no. 5.1, IOC Framework On Fairness, Inclusion and Non-Discrimination On The Basis Of Gender Identity And Sex Variations.
- 23 Thus 'IOC Framework On Fairness, Inclusion and Non-Discrimination On The Basis Of Gender Identity And Sex Variations' prescribes that the criteria to determine eligibility for a gender category should not include gynaecological examinations or similar forms of invasive physical examinations, aimed at determining an athlete's sex, sex variations or gender. (Principle no. 7.2).
- 24 Guideline no. 2.2, 'IOC Consensus Meeting on Sex Reassignment and Hyperandrogenism' (November 2015).
- 25 Eligibility Regulations for World Athletics requires that transgender athletes must not have experienced any part of male puberty either beyond Tanner Stage 2 or after age 12 (whichever comes first) (Regulation 3.2.2). And, since puberty they must have continuously maintained the concentration of testosterone in their serum below 2.5 nmol/L. (Regulation 3.2.3). See, ELIGIBILITY REGULATIONS FOR TRANSGENDER ATHLETES (Version 2.0, approved by Council on 23 March 2023, and came into effect on 31 March 2023).
- 26 Perhaps in this divide we should also consider the outlook of the sportspersons. What do they think about the true purpose of competitive sports, and more specifically that of the Olympics. What goes on in their mind when they dedicate themselves to a particular discipline in the sport and make all kind of sacrifices for many many years just with the hope that one day they will be able to take part in Olympics and perhaps win a medal. Do they go to the highest sporting events to win friends, or to win medals?
- 27 And there 'must' be a competition among all of them. For fairness sake nobody should be allowed a backdoor entry.