

NEED FOR A COMPREHENSIVE SPORTS LAW IN INDIA: AN ANALYSIS

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ABSTRACT

*“Sports can unite worlds, tear down walls, and transcend race, the past, and all probability.
Unlike life, sport matters”*

Sports as an integral activity in any organization, needs to be regulated and managed. Therefore, it needs to be interacted with law. These increasing interactions between the sports and law have led to the development of sports law. Sports touch varied areas of law such as contract, competition, torts, arbitration etc. There are regulatory authorities for every sport at international as well as national level. But there are also issues related to sports such as scams, harassments, match fixing, etc. which needs deliberation. This paper makes an attempt to study the functioning of regulatory authorities for sports at national and international level. The paper also attempts to see the application of law in sports in India.

Keywords- Regulation, Management, International-national perspective, Legal issues in Sports

BEGINNING OF SPORTS IN INDIA

The history of Indian sports can be traced around the time of Mahabharata. The elaborate training regimen of the Pandava and Kaurava princes under the guidelines of their mentor Dronacharya is the earliest example of the *guru-shishya* (teacher-pupil) bond which is intrinsic to the relationship between a coach and trainee. They marked the beginning of sports with *Chaturang*.¹ Further sports have the longest documented history in India in wrestling, with references to it going back to at least the thirteenth century. Sports like hunting survived over centuries and become part of modern competitions in the form of shooting and archery. Sports like polo also known as *chaugan* to the Mughals go back to several centuries.² Then a whole range of sports like kabaddi and wrestling influenced parts of rural India.

The British brought many organized sports in India, among which were football or soccer in America, field hockey, tennis, badminton, golf, and cricket. British soldiers, along with administrators, sailors and traders, began playing sports in India as early as 1721. During this early phase, there was little contact between the sporting activities of the colonizers and those of the natives. Thus, clubs were introduced, primarily for 'free associations of gentlemen'. The earliest club was the Calcutta Cricket Club, which was formed in 1792, only five years after the Marylebone Cricket Club (MCC) was established in London. From the late nineteenth century and after the 1857 uprising, there was a conscious effort to get the Indian elites, particularly the royals, to play English games especially cricket.³ That's how Ranjitsinghji the ruler of Nawanagar was taught cricket by Chester Macnagthen. Some of the Indian rulers sponsored tournaments involving men and animals. At that time the popularity of English sports was also taken as an arena for contesting British supremacy.

With one of the event, that is, the win of the Calcutta Club Mohun Bagan over a British regiment in the 1911 Shield was noted as a triumph for the nascent Indian nation. In the 1920's, India also started sending a team to the Olympics, making it the first British colony to do so. India received remarkable success in Hockey and it was the only sport in which India remained

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¹ Chess originated in ancient India and was known as *Chatur-Anga* - Meaning 4 bodied, as it was played by 4 players. From this name we have its current name *Shatranj*.

² Ronojoy Sen, *Nation at Play: A History of Sport in India*, Columbia University Press, 2015 p 6.

³ *Id* p 7

the world champion for several decades. India received a gold medal in hockey in 1928 Olympic games. India also received Olympic medal for wrestling. The early history of Hockey is replete with remarkable individuals like the country's first real sports star, Dhyan Chand.

In independent India cricket became the dominant sport, despite the popularity of football and hockey in the 1950s and 1960s. India also started shining in individual sports like tennis and badminton. With the unexpected winning of the 1983 Cricket World Cup, the sport got limelight in television and radio. During this period the country lost its dominance in hockey, in which it had won a string of Olympic medals right up until 1980s. Now in the Olympics, even a single medal is usually taken up for celebration.

REGULATION AND MANAGEMENT OF SPORTS- INTERNATIONAL PERSPECTIVE

The International Charter of Physical Education and Sport, UNESCO, 1978⁴ states that:

“Every human being has a fundamental right of access to physical education and sport, which are essential for the full development of his personality. The freedom to develop physical, intellectual and moral powers through physical education and sport must be guaranteed both within the educational system and in other aspects of social life.”

Each sport has its own scheme of rules and regulations. It not only deals with the ‘rules of the game’, but also with other ‘commercial aspects of the organization of the sport’. It is this commercialization of the sports which led to the involvement of various legal issues in sport activities. For example, contract law, the law of torts, public law, administrative law, property law, competition law, company law, fiscal law and human rights law, have been applied to sporting contexts involving public order, drugs, safety, disciplinary measures, conduct and wider issues relating to restraint of trade, anticompetitive behavior and the commercial exploitation of sport.⁵ The application of legal issues doesn't stop here. These issues have also

⁴ Available at <http://www.unesco.org> visited on 25th November 2017

⁵ Parrish Richard, ‘The Birth of European Union Sports Law’, Entertainment Law, Vol.2, No.2, Summer 2003, p21

been discussed at international and global level. With this we come to the distinction between 'international sports law' and 'global sports law'. International sports law can be applied by national courts; however, the global sports law implies a claim of immunity from national law.⁶ Global sports law is a kind of *sui generis* set of principles created from transnational legal norms. They come into existence through international sporting federations, and are not governed by national legal systems.⁷

International federation and sports law

The regulation and management of sport at global level led to the development of various international sports federations. These federations and like organizations not only govern international sports but also have an important economic impact on careers of players.⁸ Some of these federations are discussed here-

The International Cricket Council (ICC)

The ICC is a global governing body for cricket. It represents 105 member states and governs and administrates the game and works with its members to grow the sport. The ICC is also responsible for the performance of all ICC Events.⁹ The ICC presides over the ICC Code of Conduct, playing conditions, the Decision Review System and other regulations. The ICC also appoints all match officials that supervises at all sanctioned international matches. Through the Anti-Corruption Unit, it coordinates action against corruption and match fixing.¹⁰

The International Olympic Committee (IOC)

The IOC is a non-for-profit independent international organization of volunteers. The IOC President presides over all its activities, while the IOC session and executive boards are responsible for taking the main decisions for the organization. The goal of the Olympic Committee is to contribute to building a peaceful and better world by educating youth through sport practiced without discrimination or any kind, in a spirit of friendship, solidarity and fair

⁶ Foster, K., 'Is There a Global Sports Law?', Entertainment Law, Vol.2, No.1, Spring 2003, p.18

⁷ Teubner, G. (ed.), *Global Law Without a State* (Andover: Dartmouth, 1997)

⁸ Vijay Kumar Singh, *Issues in Emerging Area of Sports Law: Lex Sportiva*, Indian Law Review, Vol 1 No. 1, p 10

⁹ Available at <https://www.icc-cricket.com/about> visited on 24th November 2017

¹⁰ *Ibid*

play.¹¹ The IOC plays a supervisory role in ensuring and controlling the successful organization of the Olympic Games.¹²

The International Football Federation (FIFA)

The Fédération Internationale de Football Association (FIFA) is an association governed by Swiss law founded in 1904 and based in Zurich. It has 211-member associations and its goal, enshrined in its Statutes,¹³ is the constant improvement of football.¹⁴ The statutes not only deal with managerial committees but also with the legal committee and disciplinary committees. The Laws of the Game provide a common, simple language to support the unique, unifying power of football.

The International Basketball Federation (FIBA)

FIBA, the International Basketball Federation, is the world governing body for basketball. It was founded in 1932, and has a total membership of 213 National Basketball Federations from all over the world. FIBA organizes and oversees international competitions that include the FIBA Basketball World Cup, the Olympic Basketball Tournament and 3x3 basketball. It has five Regional Offices in Africa, Americas, Asia, Europe and Oceania. The International Basketball Foundation (IBF) which was founded in 2008 takes care of the social, humanitarian and educational activities of FIBA.¹⁵

The International Tennis Federation (ITF)

ITF is the world governing body of tennis which looks at the administration and regulation of 210 affiliated national Associations together with six regional associations.¹⁶ It organizes major international team events, such as, two largest annual international team competitions¹⁷ and four grand slam tournaments.¹⁸ The ITF develops the games through its worldwide

¹¹ Available at <https://www.olympic.org/the-ioc> visited on 26th November 2017

¹² *Supra* note 8

¹³ Standard Statutes- Available at <http://www.fifa.com/mm/document/affederation/generic/51/44/76/standardstatutes.pdf> visited on 27th November 2017

¹⁴ Available at <http://www.fifa.com/about-fifa/> visited on 27th November 2017

¹⁵ Available at <http://www.fiba.basketball/> visited on 27th November 2017

¹⁶ Available at <http://www.itftennis.com> visited on 26th November 2017

¹⁷ The Davis Cup by BNP Paribas for men and, Fed Cup by BNP Paribas for women. Available at <http://www.itftennis.com/about/organisation/role.aspx> visited on 26th November 2017

¹⁸ *Ibid*, Australian Open, Roland Garros, Wimbledon and US Open.

development programme. The Grand slam development fund along with ITF invest more than US \$4 million per annum into initiatives for the growth of tennis around the world.

The “Fédération Internationale de Nation” (FINA)

The Fédération Internationale de Nation was founded in London July 19, 1908 during the Olympic Games in London. The eight national federations which were responsible for the formation of FINA were Belgium, Denmark, Finland, France, Germany, Great Britain, Hungary and Sweden. The aims of the federation were, to establish unified rules for swimming, diving and water polo, applicable at Olympic Games, to verify world records and establish an official updated world records list; and to manage swimming competitions at the Olympic Games.¹⁹ It comprises 207 National Member Federations.

International Equestrian Federation (FEI)

The FEI (Fédération Equestre Internationale) is the sole representative of Horse sport at the International Olympic Committee and the International Paralympic Committee where the FEI promotes the Olympic and Paralympic equestrian ideals. The association is established and organized in accordance with Articles 60 of the Swiss civil code. Any dispute in relation to FEI should lie to FEI Tribunal. Particularly, the tribunal may review and decide upon any matter involving abuse of horses.²⁰

International Hockey Federation (IHF)

The Fédération Internationale de Hockey, International Hockey Federation, commonly known as FIH is the international governing body of field hockey and indoor field hockey. Its headquarters are located in Lausanne, Switzerland. FIH is responsible for field hockey's major international tournaments, particularly the World Cup.²¹

International Sports Organizations

There are international organizations which deal with one or the other area of sports. They are-

I. *International Association of Sports Law (IASL)-*

IASL is an international scientific association, whose objective is the cultivation and the development of the Science, the research and the teaching of Sports Law and the

¹⁹ Available at <http://www.fina.org/content/overview> visited on 26th November 2016

²⁰ Available at <http://www.fei.org/> visited on 26th November 2017

²¹ Available at <http://www.fih.ch/> visited on 27th November 2017

institution of the Olympic Games. It was founded during the 1st International Congress on Sports Law, December 11-13, 1992 in Athens and seated in Olympia, Greece. Since then IASL is activated as far as administrative matters are concerned in Athens and in its President's country of origin. Its members may be natural or legal persons, actively participating in the research, teaching and practical application of Sports Law as well as the institution of the Olympic Games.

II. *Court of Arbitration for Sport (CAS)-*

With the regular increase in the number of international sports-related disputes and the absence of any independent authority specializing in sports-related problems and authorized to pronounce binding decisions led the top sports organizations to reflect on the question of sports dispute resolution.²² Therefore the Court of Arbitration for Sports was created. The International Council of Arbitration for Sport (ICAS) is the supreme organ of the CAS, which is composed of 20 members, who are high-level jurists, and whose main task is to safeguard the independence of the CAS and the rights of the parties. It looks after the administration and financing of the CAS.

III. *The World Anti-Doping Agency (WADA)-*

WADA was established in 1999 as an international independent agency composed and funded equally by the sport movement and governments of the world. Its key activities include scientific research, education, development of anti-doping capacities, and monitoring of the World Anti-Doping Code,²³ the document harmonizing anti-doping policies in all sports and all countries.

REGULATION AND MANAGEMENT OF SPORTS- NATIONAL PERSPECTIVE

In India sports was prevalent from ancient times, but for the proper regulation and management of sports activities the Constitution of India in Entry 33 of List II of the Seventh Schedule, put

²² Available at <http://www.tas-cas.org/en/general-information/history-of-the-cas.html>

²³ The World Anti-Doping Code 2015, <https://www.wada-ama.org/en/resources/the-code/world-anti-doping-code> visited on 27th November 2017

the encouragement of games and sports as a state function. Union of India in exercise of its executive functions under Article 77 of the Constitution of India created a separate Ministry of Youth Affairs and Sports for the said purpose. Under Entry 10, List I of the Seventh Schedule, the Union of India is required to promote sports on national and international level. Apart from this India has some major National Sports Federation.

National Sports Policy (NSP)

The National Sports Policy²⁴ was formulated by the government of India in 1984 with the objective of raising the standard of Sports in the country. The policy stated that the progress made in its implementation, would be reviewed every five years to determine the further course of action. The objectives of National Sports Policy includes Broad basing of Sports, Integration with education, development of infrastructure, Development of National Sports Federations, excellence in Sports, Scientific back up to Sports Persons, ensure access to high quality of Sports equipment, training and development of Coaches, Sports Scientists, Judges, Referees and Umpires, Incentives to Sports Persons, Integrated development of the Sports and Tourism sectors and Resource mobilization for Sports.²⁵ Thereafter, the Sports Policy of 2001 came into existence which aimed towards achieving excellence through coordination among various sports federations. The Comprehensive National Sports Policy 2007 also aimed at building on previous sports policies with a view to accomplishing the unfinished agenda and addressing the emerging challenges of India in the 21st century.

The National Sports Policy and Programme of Action for the period 2010 – 2019²⁶ aspires towards good governance, codification and clarity of roles, strategic and sustainable marketing partnership across private, public and non-for-profit sectors with the sporting fraternity, robust monitoring and evaluation, etc.

Board of Control for Cricket in India (BCCI)

The history of BCCI dates back to the pre-independence era, when the political developments in the country mounted the establishment of Board of Control for Cricket in India.²⁷ It was registered under Act XXI of 1860 at Madras on 28-11-1940. The main object of the board is to

²⁴ Available at <https://yas.nic.in/sports/national-policies> visited on 26th November 2017

²⁵ R.K. JAIN - Sports Law Knowledge Lecture & Seminar, The New Development in International Sports Law & CAS Jurisprudence with Perspective Sports Law in India, 2011 - Available at www.sportslawindia.info

²⁶ Available at http://www.moys.gov.gm/sites/default/files/Final_Nat_Sports_Policy.pdf

²⁷ Available at <http://www.bcci.tv/about/2017/history> visited on 27th November 2017

control the game of cricket; encourage the formation of state, regional and other Cricket Associations; to arrange and manage finance; to promote the game throughout India by organizing coaching scheme, establishing coaching academies, holding tournaments, exhibition matches, test matches, ODI's, Twenty/20; to foster the spirit of sportsmanship amongst school and colleges; to frame the law of cricket; to regulate and sponsor matches, etc.²⁸

Sports Authority of India (SAI)

The Sports Authority of India (SAI) was set up as a registered society in pursuance of Resolution No. 1-1/83/SAI of the IX Asian Games held in New Delhi in 1982.²⁹ Its main objective is promotion of Sports and Games as mentioned in the Resolution. It ensures the effective and optimum utilization of various sports facilities and is concerned with sports promotion and management. The main schemes of SAI are: National Sports Talent Contest, Special Area Games, Sports Projects Development Area, and Sports Hostel Scheme.³⁰

The Sports Law & Welfare Association of India (SLAWIN)

It is a nonprofit, national, professional, organization whose common goal is the understanding, advancement, and ethical practice of, Sports Law in India for the promotion of Sports, by bringing Legal Practitioners and Sports persons together.³¹ The Sports Law and Welfare Association of India aims to further the discussion of legal problems affecting sports and to promote the exchange of a variety of perspectives and positions of sports law and provide a forum for lawyers representing Athletes, Teams, Leagues, Conferences, Civic Recreational Programs, Educational Institutions and other Organizations involved in Professional, Collegiate, Olympic, Physical Education and Amateur Sports.³²

National Anti-Doping Agency (NADA)

On 7th March, 2008, the NADA has accepted the World Anti-Doping Code. Anti-Doping Rules, like Competition rules, are sport rules governing the conditions under which sport is played. Athletes and Athlete Support Personnel accept these rules as a condition of participation. The policies set forth in the Code and implemented in these Anti-Doping Rules

²⁸ Memorandum and Rules And Regulations (Revised as on 15 September 2012)

²⁹ Available at <http://sportsauthorityofindia.nic.in> visited on 27th November 2017

³⁰ *Supra* note 9, p 27

³¹ Available at <http://www.sportslawindia.info/aboutus.htm>

³² *Supra* note 26.

represent the consensus of a broad spectrum of stakeholders with an interest in fair sport and are respected by all courts and adjudicating bodies. Anti-doping rule deals with a strict liability on the participant of a sport to ensure that no *Prohibited Substance* enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their bodily Specimens. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation.³³

The Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007

The Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007³⁴ provides for access of sports activities to listeners and viewers so as to encourage a larger audience. It covers the sporting events which are of national importance through mandatory sharing of sports broadcasting signals with Prasar Bharati. The Act provides that no content right owner or holder or television or radio broadcasting service provider can carry out a live TV broadcast of important national sporting events without sharing its live broadcasting signal simultaneously with the Prasar Bharati, excluding advertisements.³⁵

LEGAL ISSUES IN SPORTS LAW

There are several issues in development of sports law like doping-test and complex procedures of team selection, competition qualification and hiring and firing of coaches, trainers, etc. Some of these issues are discussed hereunder-

Contractual issues

Sports association uses contracts in various forms. For example, where the coaches sign employment contracts, the athletes sign participation contracts or, where, participants in recreational sport sign waivers form of contract. These contracts cover everything from conduct and discipline to selection processes and money issues. General principles of contract apply to such contracts. The problem arises only when the players are bound to sign the standard contracts, which sometimes erodes the spirit of sportsmanship. Contracts must clarify expectations and commitments from the players and agents.

³³ Article 2.1, World Anti-Doping Code, 2015

³⁴ THE SPORTS BROADCASTING SIGNALS (MANDATORY SHARING WITH PRASAR BHARATI) ACT, 2007 ACT NO. 11 OF 2007

³⁵ Available at <https://blog.ipleaders.in/emerging-sports-law-india/> visited on 27th November 2017

Restriction of Competition or Abuse of Dominance

According to Competition Act 2002, it is the ability of an enterprise to act independently of the market forces that determines its dominant position. Dominance is not considered bad per se but its abuses are. Abuse is stated to occur when an enterprise or group of enterprises uses its dominant position in relevant market in exploitive manner. The recognition and influence BCCI commands have been judicially acknowledged. Its strong institutional legacy along with its monetary reserves has built an exclusive marketing of sports in India.³⁶

Torts law

Torts law is an area which covers many aspects including civil as well as criminal liability. In sports it can generally be seen under following areas-

- a. Assault, Battery and other Intentional Torts- a person can be held liable for battery if he acts with an intention of having a harmful or offensive contact with another person. In assault a person can be held liable if he acts with intention of causing or creating an apprehension of causing harmful offensive contact.
- b. Negligence- breach of a duty of taking reasonable standard of care results into negligence.
- c. Recklessness- is another branch of negligence, where the player created unreasonable risk of physical harm to another under the influence of his negligent conduct.
- d. Contributory negligence- is generally a defence taken by or against the injured player in the event of injury.
- e. *Volenti non fit injuria*- is the assumption of risk in torts. It is applicable where the player had known or reasonably expected to know or volunteered the risk of harm. It is generally prevalent in games like boxing, wrestling, judo and other martial arts.³⁷

³⁶ Available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.398.6648&rep=rep1&type=pdf> visited on 30th November 2017

³⁷ Available at <https://blog.iplayers.in/can-tort-law-applied-sports/>; see also <http://www.legalservicesindia.com/article/article/sports-&-torts-legal-liability-in-professional-athletics-917-1.html> visited on 27th November 2017

Some grey areas in sports in India

In recent past, sports has witnessed number of illegal activities, major being them is scams, be it the maladministration of the sports leading to Olympic Games Scandal related to bidding, or the IPL scam, FIFA scandal and allegations of sexual assault, etc.

The other grey areas also include labour and employment issues, drug use, broadcasting rights, sports injury and the concurrent liability, harassment in sports, etc.

The constant malfunction of India in different sports events is an indication of widespread corruption and poor infrastructure and therefore, the need of the hour should be to enact a proper legislation and forum to ease the activities of sports in India.³⁸

CONCLUSION

It is clear from the aforesaid discussions that sports have been a neglected area in India. As far as sports law in India is concerned, there are no substantial direct cases dealing with sports and law. However, in a catena of decisions sports organizations and bodies were parties on different issues. Thus, in India the development is in 'sports and law' and not 'sports law.' therefore there is a need for a *Comprehensive Sports Law in India*. The Law should establish and promote rules of ethics and spirit of sportsmanship among competitors and the bodies involved in decision making. Ethical solution to legal issues in sports is the core ideas behind the vision. This will enhance the morale of the players by improving contractual dynamics among them and the administrative bodies. Co-ordination of the legal fraternity and the sporting community is a prerequisite for such a healthy interaction. To check corruption, tenure caps and age restriction on office bearers of federation must be brought in. Denial of essential facilities and exclusionary policies that are intentional for a player or a rival organization should result in the termination of the services of the administrator concerned. Misuse of authority must be severely dealt with. Salary caps on players and teams should be brought in. Practices that create a barrier for new entrants, draw out the existing players and lead to the foreclosure of a competition must not be tolerated.

³⁸Available at <https://blog.iplayers.in/emerging-sports-law-india/> visited on 25th November 2017

The area of sports law is relatively as new in our country. Nevertheless, it is an area of study that is worthy of definition and in depth academic inquiry and practice. A well planned exhaustive competition compliance programme can be of great benefit to all enterprises.

