

Jurisprudence of Sports Law in India

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ABSTRACT

The sports jurisprudence in our country is taking its baby steps. There is no umbrella legislation governing the sports in our country, like Environment Protection Act, 1986 which is the umbrella legislation in our country that is governing the environmental concerns. However, there are many other notable legislations, codes and judicial pronouncements which are regulating the sports and its allied activities in the country. More than all, the Indian Judiciary is playing a vital role in building the new jurisprudential foundation for the sports law through its various landmark judgements. This paper unfolds the entire gamut of the sports law in our country.

Keywords: Policy Making in Sports, Good Governance in Sports, Sports Ombudsman.

INTRODUCTION

The term 'sport' is itself a dynamic word as it showcases the true spirit of an individual to overcome various challenges in order to achieve success either individually or through a team spirit. Every sport differs from one another by its playfulness and dynamism. Sport development in India is regarded as the national priority. Sport has an impact on the growth of a nation as it has a greater influence on the lifestyle of the citizens including children and youth. Sports, as physical activity, always holds a positive impact towards the health of the nation. It being the most significant social tool, simply promotes social inclusiveness amongst the members of the society. On the other hand, sport has become a major stakeholder in employment generation, especially in recent decades. Promotion of peace and development is another important character of sports as it brings the nations across the globe on a common platform. The sense of nationalism and patriotism has perhaps become the hallmark of the 21st century sports era. The regulation of sports and its allied matters is the major concern addressed in this research paper, with special reference to India.

Sports in Ancient India

The ancient land, India has given birth to many sports which are today globally recognised and played. For instance, ‘Chess’ took its birth in our country which is a global endeavour today. Historically speaking, the concept of sport can be witnessed during the Vedic period as well¹. During that time, the profound ‘Chariot Race’ was well recognised and practiced.

The *Gurukula System* of education of those days has contributed immensely towards the birth and development of various sporting games in our country². The best example would be the famous ‘Kalarippayattu’ which is even today thought in many gurukulas’ in our country. Perhaps, Kalaripayttu is regarded as the world’s first martial arts and mother of all martial arts. In 2021, the Ministry of Sports inducted Kalarippayttu into the ‘Khelo India Youths Games’ to encourage its practice as a sport³. On the other hand, Mahabharata has unveiled the entire world about the existence of both indoor and outdoor games. The childhood of Lord Sri Krishna tells us that sports existed even in those times. The incidence where little Krishna gets a handball from the lake which had the poisonous snake called Kaliya tells us that the concept of sports is not new at all. The ever-celebrating incident – ‘*the killing of Kamsa by Sri Krishna in the Malla Yudda*’ (Wrestling) is also one amongst many incidents which confirm the existence of sporting activities on this land. Also, the most remembered and debated *Pagade* gambling of the entire human race which occurred between the Pandavas and the Kauravas has revealed the presence of indoor sports in our country.

Most importantly, the journey of sports in our country has developed inconsonance with the cultural and traditional values. The best example for the previous statement is the famous Vijayanagara Empire which encouraged many sports like Malla Yudda (Wrestling), Malla Kamba, etc which carries the cultural and traditional elements even to this day⁴. Also, ‘Yoga’ which got its birth in ancient India is globally recognised as a sport. Thus, physical culture which we call it as sport in the modern-day world was well recognised in different forms and practices since the ancient time in this punya bhoomi⁵.

¹ Dr. Usha Tiwari, Monika Singh, Dr. Dharendra Tiwari, 2020. Scenario of Sports in India- from Ancient period to Modern period. International Journal of Fitness, Health, Physical Education & Iron Games, ISSN 2349 – 722X, Vol: 7, No: 2, July 2020 to Dec 2020. [Accessed 05 May 2022]. Available from: https://www.researchgate.net/publication/347516570_Scenario_of_sports_in_India- from_ancient_period_to_modern_period/stats#fullTextFileContent.

² Chandwani, Nikhil. The Importance of the Gurukul system and why India education needs it. Times of India, March 08, 2019.

³ S. Priyadershini. Four native martial arts now part of Khelo India Youth Games. The Hindu, January 22, 2021.

⁴ Nandeesh, How can India’s Ancient form of Wrestling (Kusti) be revived?, <https://www.sportskeeda.com/wrestling/how-can-india-ancient-form-wrestling-kusti-revived>, [August, 08 2022].

⁵ Vikram Singh, Yoga for Sports Performance Enhancement: Trends and Practices, Vol. XIII, Entire Research, Pg. 33, January 2021.

Sports in Modern India

The significant milestone in the modern arena of Indian sports was the formation of '*Indian Olympics Association*' ("**IOA**") in the year 1927 on the recommendations made by Sir Dorabji Tata. In its initial years, IOA significantly contributed towards the development of sport consciousness amongst the young Indians. Until 1947, IOA selected the eligible sportspersons to represent India in the Olympic Games⁶. Post-Independence, a separate National Sports Federations for each sport was formed which shouldered the responsibility of selecting and training the Indian sport competitors, while IOA retained the duty of sending the Indian players and teams to the Olympics (principally, this means arranging transport, board, and accommodation for the players representing our country). Thus, for this purpose IOA became the stepping stone for the formulation of various rules and regulations pertaining to the selection process of the players for the Olympics from our nation.

Ministry of Youth Affairs and Sports

India is today recognised as the world's largest democracy with one-fifth of its population being youths. The Government of India along with the State governments is effectively regulating the sports related issues in the country. Though there is a countrywide demand for a separate legislation for sports in the country, various legislations, policies and codes are driving the sports related aspects effectively. The formation of a separate ministry called '*Ministry of Youth Affairs and Sports*' in the year 2008 was one of the dynamic moves made by our government. This ministry has shouldered the entire responsibilities under two different departments namely the '*Department of Youth Affairs*' and the '*Department of Sports*' which are headed by Secretary to the Government of India. This ministry is governing and controlling various other sports governing bodies and programmes like Indian Olympics Association, National Anti-Doping Agency, National Dope Testing Laboratory, National Sports University, National Sports Development Fund (NSDF), Khelo India etc⁷.

Policy Making in Sports

In the year 1984, the primary step taken by the Government of India was the introduction of '*National Sports Policy*'. This policy spoke on the physical aspect of education which focused on the enhancement of pride towards the nation and to inculcate the sense of achievement amongst the youths in the field of sports. However, the poor implementation of National Sports Policy 1984 gave birth to another national policy on sports in the year 2001 which is called National Sports Policy, 2001. This new policy had two-dimensional focus. Firstly, to expand the base of sports in the country and secondly, to

⁶ Manish Kumar, Ajay Kacher, "Relevance of Sports Law in India, Khurana and Khurana, (August 08, 2022, 08:41 PM), <https://www.khuranaandkhurana.com/2022/07/14/relevance-of-sports-law-in-india/>.

⁷ Ministry of Youth Affairs and Sports, <https://yas.nic.in/about-ministry>, (August 01, 2022).

tap the hidden sport talents with help of the State Governments. Currently, the National Sports Policy, 2011 is guiding and governing various sports allied activities in our country. The policy makers have structured National Sports Policy, 2011 to support and develop the sport consciousness amongst the rural talents of our nations.

Good Governance and Sports Law

The formation of National Sports Federations (“NSFs”) including the establishment of IOA, has effectively contributed for the adoption of good governance in sports⁸. The Government of India has issued various comprehensive guidelines on good governance since 1975. However, the post 2001 saw a drastic change in the attitude of the Government towards sports governance. The major step was bringing NSFs under the purview of RTI Act, 2005. Also, various concerns related to the regulation of NSFs including the appointment of its office bearers were addressed by GoI, in order to enhance the good governance in the sports. The notification of National Anti-Doping Agency, Anti-Doping Rules, guidelines for the prevention of age fraud, prevention of sexual harassments in sports etc were introduced by the government to favour the good governance in the sports field. In the year 2001, the GoI introduced the ‘*National Sports Development Code of India*’ (NSCI) with the view to amalgamate all the orders/notifications/instructions/circulars which were issued post 2001. This code incorporated various rules and regulations regarding the categorization of sports, recognition of NSFs, election procedure for officers of NSFs, grants to the NSFs, selection procedures of sportsmen, prevention of sexual harassments and many more in order to regulate the sports authorities.

Thus, in order to promote good governance in the field of sports, the Government of India has indulged itself in the implementation of various sports policies at national level. The sports policies in India are framed in line with the ‘*Basic Universal Principles of Good Governance of Olympic and Sports Movement*’.

Currently, the *National Sports Development Code of India (NSCI), 2011*⁹ addresses the various concerns of sports in our country which broadly includes, the implementation of the ‘Basic Universal Principle of Good Governance of Olympic and Sports Movement’ and recognition of Sports Federations annually.

⁸ Mr. Permod Kumar, Role of sports federation in India, Vol. 2, Academia, Pg. 46, https://www.academia.edu/11999399/Role_of_sports_federation_in_india

⁹ Abhimanyu Chatttree, (2020). Sports Laws in India: A Critical Analysis. An International Journal of Management, Vol 10/ No 1/ Jul-Dec 2020; 23-26.

Further, the Sports Authority of India (“SAI”) is striving towards the achievement of good governance in sports related issues. It also renders necessary support to all NSFs for the identification, training and coaching of sportspersons, including provision of infrastructure, equipment and such other assistance. Also, SAI has shouldered the responsibility of releasing the funds to NSFs from the Ministry of Youth Affairs and Sports.

We know that transparency is the cornerstone of good governance. In order to boost the said transparency in administration of sports in the country, all the NSFs receiving the funds Ten Lakh or more are duly recognised as the *Public Authority* under the Right to Information Act, 2005. Thus, a *Central Public Information Officers* and the *Appellate Authorities* as per the Section 5 of RTI Act, has to be appointed by all the NSFs which duly fall under the purview of RTI Act, 2005.

The Government of India strongly abides the principle of autonomy of organisations responsible for sports governance in the country in line with the fundamental principles of Olympism enshrined in the *Olympic Charter*. There are various other codes implemented by the government to strengthen the good governance in sports. One such code is – ‘*National Code for Good Governance in Sports, 2017*’ (“**NCGGS 2017**”). This code duly recognises that sports organisations have to discharge their responsibilities with objectivity and transparency following the basic universal principles of good governance. The implementation of **NCGGS, 2017** has effectively addressed various issues pertaining to the sports governance in our country. **NCGGS, 2017** enunciates the basic universal principles of good governance, ethics, fair play of the Olympic and Sports movement and also stipulates certain mandatory minimum governance standards and norms for National Olympic Committee (“**NOC**”), international best practices etc. Notably, the mandatory minimum standards and norms prescribed in **NCGGS, 2017** also apply to the Indian Olympics Association (“**IOA**”).

As per the **NCGGS 2017**, the board of NOC/NSF shall have to adopt a ‘*Code of Ethics*’ for the Board Members, Office Bearers, committees, employees, staff, vendors, partners, sponsors, coaches, athletes, officials, members and affiliates. Such Code of Ethics shall be in accordance with the Code of Ethics of the IOC (“International Olympic Committee”) and also in consonance with the laws and principles enshrined in the Indian Constitution. Further, the **NCGGS, 2017** provides for *Vigilance Mechanism cum Whistle-blower Policy* to encourage the Office Bearers, Board Members, staff etc to report to the NOC’s/NSFs about the unethical behaviour of the counterparts. In order to enforce the Code of Ethics, the NOC shall constitute an Ethics Committee which shall comprise of total 3 (three) members holding the office for a term not more than 4 (four) years and not exceeding the age of 70 (seventy) years. The NOC Ethics Committee shall follow its own procedures as maybe determined by the Chairperson in the consultation with the members thereof.

However, the NOC Ethics Committee is not a permanent body and meets from time to time as required.

Ombudsman – As we know that the idea of good governance has always been backed by the concept of Ombudsman. Ombudsmen is the hallmark of good governance as it aims to render fair and timely justice to the aggrieved. Thus, for the purpose of providing an independent dispute resolution mechanism, the '*Sports Dispute Resolution Committee*' ("**SDRC**") is established by NOC through a board resolution which acts as the Sports Ombudsman in our country. **SDRC** consists of not more than 3 (three) panellists, 1 (one) Chairperson and 2 (two) members. It is necessary that the chairperson of **SDRC** will be always a retired judge of the Supreme Court of India or who has been the Chief Justice of High Court. The Chairperson and every other member of **SDRC** shall hold the office for the term not exceeding 4 (four) years from the date of appointment and shall retire on attaining the age of 70 (seventy) years. Thus, **SDRC** is required to function and conduct its proceedings within the parameters of Principle of Natural Justice.

Thus, the above discussed sports codes have established a framework to promote good governance with the mandatory minimum requirements of good practices in the sports world. The good governance in the Indian sports arena can be achieved with the thorough implementation of the above discussed Sport Codes.

Sports and Indian Judiciary

Despite the absence of an umbrella legislation governing the sports law in India, the Indian judiciary has turned itself to be the moulder and the moderator of the sports law in the country. Various landmark judgements of the apex court are acting as the roadmap for the administration of the sports and its allied activities. Most importantly, the Indian judiciary has recognised sports as part and parcel of education since it involves the elements of public health and public function, which in turn contributes to the human resource development. The Supreme Court of India has brought the national sports bodies within the meaning of 'State' under *Article 12* of the Indian Constitution as it carries the public function. Though the sports law jurisprudence in India is at its nascent stage, there are many other legislations *like Public Gambling Act, 2008, Indian Penal Code, 1860* etc which are aiding the Indian judiciary in rendering the justice to the sports aggrieved/s and regulate the sports related activities in the country. The judgement rendered by the apex court in the '*Zee Telefilms and others vs Union of India and others*', drastically changed the entire gamut of sports arena by bringing the Board of Control for Cricket in India ("**BCCI**") under the writ jurisdiction. The court held that BCCI may not be 'State' under Article 12 of Indian Constitution, but it is certainly answerable to the general public under Article 32 and 226 as it discharges the public functions. This recognition has empowered the aggrieved parties to drag BCCI and the sport federations to the court of law for any irregularities caused thereof. Thenceforth, the BCCI is

bound to function in fairness and good faith in all its activities as the higher judiciary has recognised the office bearers of BCCI to be ‘public servants’. The Supreme court of India accepted the Lodha Committee’s report in the year 2016, which spoke on reforming the Indian cricket administration, members of managing committees, executive committees in discharging their official duties.

The Indian judiciary resolved that issue related to sports broadcasting in the famous case – ‘*The Secretary, Ministry of Information & Broadcasting v. Cricket Association of Bengal & Anr*’, 1995¹⁰. In this case the apex court opined that the sports broadcasting cannot monopolised by any commercial companies as broadcastings are public properties involving the public interest. Another turning point for the sports broadcasting was – ‘*Citizen, Consumer and Civic Action Group & Anr. v. Prasar Bharati & Ors*, 2004’. In this case the Indian judiciary fenced the broadcasting rights of Doordarshan which had become helpless at one point of time due to the entry of private broadcasting companies post 1991 LPG reforms. The judgement flipped the entire idea of broadcasting rights as it paved the way for the introduction of a new legislation named – ‘*The Sports Broadcasting Signals Act, 2007*’. This legislation even today regulates the broadcasting rights of both private and public channels in the country. Under this Act, the private broadcasting channel do not have the right to broadcast any sports event which is of national importance until the telecast of the same is been shared with the Prasar Bharti. Likewise, there are many other land mark judgements of Indian judiciary such as ‘*STAR India Private Ltd. v. Akuate Internet Services and Other*’ which recognised that ‘Sports data is not a quasi-property right’ as broadcasting of sports data comes under the public domain, ‘*State of Bombay v. R.M.D. Chamarbaugwala*’ and ‘*State of Andhra Pradesh v. K. Satyanarayana & Ors*’ which gave the clarity on the concept of ‘Substantial Skill’ of the participants engaged in online games like “Rummy”. In these cases, the Indian judiciary differentiated between the ‘Game of Skill’ and ‘Game of Luck’. It held that the game of skill is not a game of luck and hence it has to be kept outside the ambit of gambling. Thus, the Indian judiciary is acting as the present-day moulder and moderator by providing the essential roadmap to the evolving sports law in India.

Sports and Fraud

The most pressing issue in the entire sports world is the fraud related concerns such as age fraud, misappropriation of state funds, wilful non-compliance of official notifications and guidelines related to sports and many more in the list. With the view to eliminate the fraud in the sports arena and for the maintenance of fair play through a effective regulatory mechanisms, the Government of India introduced the ‘*National Code Against Age Fraud in*

¹⁰ 1995 AIR 1236, 1995 SCC (2) 161.

Sports’ (“NCAAFS”) in the year 2010. NCAAFS is a set of rules which forms an integral part of sports rules governing the condition under which the sport is played. Every athlete and athlete supporting personnel has the duty to abide by this code as pre-requisite for the participation in any sport event. The policies and minimum standards set forth in the Code are applicable to all sports federations/associations/bodies in the country. However, it is important to note that the compliance of this code is regarded as an eligibility criterion for the recognition of any National Sports Federation in the country. At the same time, non-compliance of this code would attract a hefty fine or would even result in the de-recognition of NSFs. Thus, NCAAFS aims to promote and preserve the core values of sports which includes honesty, fairness and above all upholds the idea of team spirit in our country.

WADA and India

World Anti-Doping Agency (WADA) is a global non-governmental organisation established by IOC in the year 1999 which aims to promote, coordinate and monitor fair sportsmanship by penalising athletes who undergo medications or treatments or use any kind of drugs to improve their athletic performance. WADA sets the International Standards for Testing and Investigation along with the anti-doping policies for sports¹¹. The first World Anti-Doping Code was adopted by WADA in the year 2003 and was brought into effect in 2004. However, the latest World Anti-Doping Code presently applicable is World Anti-Doping Code 2021 which came into effect from January 01, 2021. The transgression of the code has become a serious concern in the recent times. India is also been pointed out for transgressing the code. In 2021, India was been ranked third amongst the world’s biggest doping violators of WADA code¹². Responding to this, the Government of India introduced National Anti-Doping Bill in the year 2021. This bill ensures the highest standards of integrity while participating and preparing for the sports competition, domestically and internationally. The bill was recently passed by the parliament of India on July 28, 2022¹³. Thus, the responsibility to address issues related to doping not only lies on the shoulders of the Indian Government, but also on the sportsmen and athletes in order to establish an ethical sports environment both at national and international arenas.

¹¹ Urvashi Agrawal and Gauri A. Sharan (2018). ISSUES PLAGUING THE SPORTS ARENA. *Jamia Law Journal*. Vol. 3; 143-166.

¹² The Print, <https://theprint.in/sport/india-ranks-third-among-worlds-biggest-doping-violators-in-wadas-latest-report/785373/>, (Last visited August 05, 2022).

¹³ Press Information Bureau of India, <https://pib.gov.in/PressReleasePage.aspx?PRID=1848085#:~:text=The%20Bill%20was%20introduced%20in,on%2028th%20July%2C%202022,> (Last visited August 05, 2022).

Conclusion

The jurisprudence of Indian sports law is thus getting shaped through the contribution of various judicial pronouncements, along with the series of sports legislations and codes introduced by the Government of India. In order to preserve the spirit of sportsmanship, it is necessary to address issues like racism, prevention of age fraud, prevention child abuse and most importantly the sexual harassment by introducing an umbrella legislation for sports in our country. Laws related to gender equality has to be positively integrated in the field of sports to overcome the ill-treatment of sportsmen based on their gender. However, the prolonged delay in the enactment of 'National Sports Development Bill, 2013' and 'Prevention of Sporting Fraud Bill, 2013' has caused many pressing issues in the India sports arena. Thus, there is a strong requirement for an umbrella legislation in the country to address, regulate and govern the sport related issues in the country.

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