
Sports Governance In India: A Critical Study On Its Constitutional Framework

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Abstract

Sports have always been an integral part of human civilization and its good governance has always been a matter of important concern. Today sports are not just a subject of leisure or entertainment but have grown into a multi-billion dollar industry, an industry of great significance which provides livelihood to many. Not just that, but sports is also used as a tool for educating and inspiring young minds. Gradually India has becoming one of the important stake holders in global sporting community and it becomes imperative to have effective legal mechanism for promoting and regulating sports within a county.

Henceforth sports have become a subject of immense significance and it encourages an academic study for examining its constitutional framework under which sports is been regulated in India. This study gives an insight on why the role of law is excessively significant for sports regulation and the existing issues and challenges that Indian sports regime is facing.

Keywords: *Sport Governance, Constitution, Issues And Challenges.*

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I. Introduction

Today with the advancement of technology, sports in India have reached to a new feat turning to be one of the significant public entertainment industries, making it as a one of the most lucrative industry for participation. Sports, before being a part of any such industry, it have traditionally been used as a tool for human growth and development since time immemorial. In the said scenario, the supreme court of India also issued a notice to the Centre, state governments and Union Territories on a PIL seeking directions to make sports a part of the Fundamental Rights as well as promotion of sports education in the country.¹ Hence it becomes imperative to bring sports in a constitutional fabric for its effective governance and administration.

The institutions dealing with the task of governance and administration of sports in India needs to maintain the highest standard of transparency democracy and accountability as it has been evident that many a times a sportsmen, and even an officials use an unfair means to meet their urge to win the game or to earn some profit out of such events. This competitive desire of winning often provokes to use unfair means to change the course of event. This is when the interplay of law and sports is been felt to deal with such situation. The role of law in the sports industry can also be gauged from the fact that there is a lack of a regulatory mechanism for the autonomous bodies in the prevailing sports market. The importance of constitutional law is felt for guarantying its principle of promoting social welfare under Article 38 and 39 of the Indian constitution, which is primarily effected by the monopolistic behavior of certain entities in the sports market.

II. Sport's Governance Framework: A Challenge To Meet

Sports governance can be defined as “the exercise of power and authority in sport organizations, including policy making, to determine the organizational mission, membership, eligibility, and regulatory power, within the organization’s scope.”² Today sports is been governed by the Sports Governing Bodies and International Federations and the norms and rules so set for regulating sports is been abided by the national sporting agencies.

¹ The judges sought a response sought response within four weeks on the PIL filed by a law student. **“Sports Should Be Made A Fundamental Right, Says Top Court To Centre”** August 21, 2018 , available at <https://www.ndtv.com/india-news/sports-should-be-made-a-fundamental-right-says-top-court-to-centre-1903547> Accessed on 3/03/23.

² Adam Lewis and Jonathan Taylor, (2014), *Sport: Law and Practice* , 3rd ed., Bloomsbury Professional publications. pg. 2

While these organizations and associations often receive public funding, but consequently they are not subject to any stringent regulation or judicial oversight. This makes it different from other organizations, such as governmental institutions, corporations, and police forces, which are all regulated, monitored, and investigated to some degree. In concurrence to this, public funds so given to the Sports Governing Bodies (SGB) and International Federations (IF), this differs from other organizations of state, such as governments, corporations, and police forces, which are all regulated, monitored, and also investigated if needed.³ Not just that neither of these International sporting agencies and Federations falls under the ambit of any professional associations, unlike legal councils or medical associations.⁴ This creates a gray area resulting in the fallacy of accountability, transparency and integrity in these organizations and federations which consequently weaken the governance system and lead to the corrupt practices in sports.⁵

It is an undisputed fact that these international sporting bodies exercise exclusive private power and it is important both in the terms of the areas of activity that it affects and in terms of the population over whom it is applied.⁶ The source and nature of that power of these international bodies are therefore a secondary issue to be questioned. Accordingly, the particular focus here is on the system of governance and regulation of the people and entities within the scope of the international federations and the activities of the associations as to how they framework. It is important to have a mechanism for regulation, but, as in other areas of societal activity, that system of governance and regulation must rest on a sound legal foundation.⁷

In the recent years the sports have not only remained an activity of physical development of body or an activity of entertainment, but have acquired a professional approach rather a business proportion involving many stakeholders. With high salaries, ticket prices, and profits, professional sports are no longer just a game, but a big business worth billions of dollars.⁸

³ Simon Gardiner, et al, (2012) *Sports Law*, 4th ed ., Routledge publications.

⁴ B Bogusz, A Cygan and E Szyszczak (2007), *The Regulation of Sport in the European Union*. Edward Elgar Publishing,

⁵ Richard H. McLaren, (2013), Governance In Sports Governing Bodies . In (Ed.)Dimitrios P. Panagiotopoulos, Wang Xiaoping (Eds), *SPORTS LAW: Structures, Practice, and Justice - Sports Science and Studies*, Proceedings of 18th IASL Congress (2012), Beijing.

⁶ John Barnes (1996), *Sports and the Law in Canada*, 3rd ed..Butterworth's publication.

⁷ James A R Nafziger(2004), *International Sports Law* ,Transnational Publications.

⁸ Vijay Kumar Singh, Issues in Emerging Area of Sports Law: Lex Sportiva', *Vol 1 No.1, Indian Law Review, National Law Institute University*, (2009)

The plague of corruption has struck in every form of sport. It is fun to watch a sporting event, but adding the ability to bet on the result adds suspense, which although, should be done fairly and without taking unfair advantage during the sporting events.⁹ Apart from the primary goal of making sports enjoyable, it is also critical to eliminate corruption from sport, especially the match fixing and the corrupt practices. Moreover, now the trend is towards international sports providing a fresh area of thought on the legal relationship between the teams, organizers and states in which the game is played. The continuous interactions and involvement of varied aspects of contract, competition, rules of the game, substance abuse by athletes, discrimination has resulted into the need for rules and regulations. This necessitated for the development of sports law. Sports law has developed along different lines of thought and is not a comprehensive one though.

Recognising Human rights in Sport activity has become a complicated issue. A number of sportspeople are turning to the Court as a final appellate adjudicatory authority after being unsatisfied with the private sports justice system and the Courts are struggling to provide effective justice because of the lack of proper and effective Parliamentary enactments. The situation in India differs from the European Nations and the USA because of the neglecting attitude of the Parliamentarian in developing the Sports Law. In general, where there is no clear legislation protecting the victim's rights, it is more difficult to protect the victim's rights per se. There is no effective law to cater and safeguard the interest of athletes and persons related to sports. The federations and institutions are having a rule-making power without any accountability.¹⁰

There are several issues which need immediate attention for the effective development of sports law at national and international level. Commercialisation of sports has led to contractual disputes without any proper platform for readdressal. Doping is one of the grey areas which lessen down the spirit of sport. Another important issue, which is perhaps the most important one, is having an effective mechanism of sports related disputes.

⁹ Khan Muneer Aslam, *Corruption in Sports in India*, 7 (1), INT'L J. SC. RESEARCH PUB. 62 (2017).

¹⁰ Larisa I. Zakharova and Timur E. Melnik, "Some Reflection on Regulating Professional Sports In Integration Associations: A Sphere of Autonomy or an Object of the Union Law Regulation", *Vol.1 ,Comparative Law Review*, (2020).

In recent years, number of national and international governing bodies has been beset with corruption scandals started questioning their legitimacy.¹¹ There is the failure to instil adequate check and balances over the decisions by the boards, and cases of outright failure to govern have led to call for better governance in sports organisation.¹²

III. Role Of Judiciary In Sports Governance In India

As its been understood that Governance of sports in India is primarily done by the independent associations and federations and these bodies gain a huge control not just over the rights and interests of athletes but also over the sports loving enthusiast. Hence it is expected that this sports governing bodies exercises their power with utmost transparency and accountability. Therefore it is needed that the decisions so taken by such sports governing institution be brought under the scrutiny of judicial review. In India, most of the sporting bodies constitute as private bodies, is it registered as societies or as companies, and correspond as they have a contractual relation with the individuals. Remedies like writs can be sought only against public bodies which qualify as “State” under Article 12 of Indian constitution. Hence, if one wishes to seek public remedies against a sporting body, one would have to convince a court that the sporting body was functionally or structurally an “instrumentality of the State.”¹³ It was in the *Board for Control of Cricket in India (BCCI) in Zee Telefilms v. Union of India*¹⁴ this question, whether sports bodies can be considered as ‘other authorities’ under Article 12 of constitution was invoked. Supreme Court has observed that the BCCI is an independent private body which was established as a society responsible for selecting a team which played in Indian cricket team. BCCI enjoyed monopolist status which state do not protect. Critically, the majority ruled that even if BCCI renders to deliver any public duty, the said action cannot bring BCCI within the purview of Article 12. The verdict pointed out that State/Union has not assigned these public duties to the BCCI nor has it legally authorised the Board to carry out these functions under any law or agreement.¹⁵

¹¹ J Norridge, *Playing with the Rules: Influences on the Development of Regulation in Sport*, 24 INT’L JOURNAL HIST.SPORT 843 (2007)

¹² Milena M. Parent et al, “The Impact of governance principle on sports organisation: A systematic review”, *Cognent Social Science Journal*(2012).

¹³ M. P. Singh, *Fundamental Rights, State Action and Cricket in India*, 13 ASIA PAC. L. REV. 203, 209 (2005).

¹⁴ *Zee Telefilms v Union of India*. (2005) 4 SCC 649.

¹⁵ Supra note 9

The majority found that there was neither any de facto nor de jure authorisation or grant of recognition to the BCCI. The Court also noted that there was indeed some control exercised with relation to grant of permission but that was purely regulatory in nature.¹⁶ It can be understood that the judgement in *Zee Telefilms* was not in favour of BCCI because of the factual matrix applicable that the sporting bodies cannot be considered as an instrumentalities of state because it do not have any pervasive control over such institutions. However it is argue that there are other sporting bodies in India, whose internal governance is closely controlled by the Ministry of Sports, may such sporting bodies can be brought within the purview of Article 12 on the basis that such institutions are state control controlled.

In *Giriraj Yadav v State*¹⁷ it was observed by the court that there is no such difference between the status of Rajasthan State Sports Council and that of the state. As the court noted that, however Rajasthan State Sports Council is not created by a statute but is certainly created under a statute. It is 100% financed by the state government and it enjoys a monopoly status by the force of statute. By virtue of this Act there is an administrative control over the Sports Council.

In *Ajay Jadeja v Union of India*,¹⁸ it was been pointed out by Justice Mudgal, that BCCI is the body which is a sole representative of India as a country at all levels of cricket in the international arena; that domestically all the representations of cricket can only be under one aegis; and the said is been recognized as the main body authorised to regulate cricket in India.

It was in the matter of *Cricket Association of Bihar v. BCCI*¹⁹, the strongest assertion was made that BCCI can be brought under the purview of writ jurisdiction. It was observed that the BCCI failed to take a effective remedial measure against the allegation of match fixing in IPL. The Court reiterated that the Court reiterated that the BCCI exercises public functions and is therefore, answerable on the standards generally applicable to judicial review of State action.

¹⁶ ibid

¹⁷ *Giriraj Yadav v State*, S.B. Civil Writ Petition No.4686/2008.

¹⁸ *Ajay Jadeja v Union of India* 95 (2002) DLT 14

¹⁹ AIR 1993 SC 892

In another case of *K. Murugan v. Fencing Association of India, Jabalpur*,²⁰ it is one of the important cases where Supreme Court discussed sports and its importance in an exclusive way. It was the matter concerning with Indian Olympic Association. The issue pertaining to this case was regarding election of executive members of Indian Olympic Association (IOA) where Supreme Court observed that: “*This does not appear to us to be a matter where individual rights in terms of the rules and regulations of the Society should engage our attention. Sports in modern times have been considered to be a matter of great importance to the community. International Sports has assumed greater importance and has been in the focus for over a few decades. In some of the recent Olympic Games, the performance of small States has indeed been excellent and laudable while the performance of a great country like India with world’s second highest population has been miserable.*”

In the course of time country paved many sports organisations and federations, be it from BCCI to Boxing Association of India and amongst all Sports Association of India and Indian Olympic Association is at the centre. Ironically there is no such uniform sports law in country. Ministry of Sports works externally to administer these sports bodies. It has been seen many a times that financially sound bodies like BCCI refused to come under the aegis of ministry to have their independence and financial unaccountability. In *Zee Telefilms v. Union of India*²¹, the said issue of unaccountability was raised and court observed that “the Sports bodies largely remain unaccountable to the state or any other central body inside the territory of India, which however should not be the case considering the importance of sports in the modern arena.”

IV. Constitutional framework for sports regulations in India

There is no explicit law when it comes to sports in India. Sports have been such a subject where both state and central has a power to legislate.²² It was then Government of India realises the need of having a body which is primarily concerned with the sports affairs and in 1986, exercising the power under Article 77 of Indian constitution, Ministry of Youth Affairs and Sports was founded. Its preamble encompasses following function.

²⁰ 1991 SCC (2) 412

²¹ (2005) 4 SCC 649

²² “33. Theaters and dramatic performances; cinemas subject to the provisions of entry 60 of List I: sports, entertainments and amusements.”

- Creating of sports infrastructure,
- Promoting sports activities throughout the country
- Coordinating between the sports activities of different States.
- Promote capacity building for achieving excellence in competitive events at national and international levels.

When it comes for dealing with the sports affair concerning to international arena, it is only the Union which can exercise such a power in terms of Entry 10, List I of the Seventh Schedule of the Constitution. The Union is also empowered with the legislative competence under Entry 97 of the List I to frame the laws pertaining to sports. It is herein after several sports policy has been promulgated to strengthen sports in India. For the first time in the year 1954, the Government of India took the first step in promoting sports by establishing the All India Sports Council (AICS). AICS acted as an advisory body and provided information to the government on a wide range of areas, including national sport policy, government funding for national sport federations, and guidance for elite athletes. Then, in 1984, India introduced the first-ever national sport policy. In addition, the Indian Sports Authority (SAI) was established to promote the development of coaches and PE teachers, participation in sports and physical activity, and infrastructure.²³ With the intent to emphasize the importance of sports and physical education in the education sector, national education policy and two different governing bodies, the Netaji Subhas National Sports Institute (NSNIS) and the Lakshmbai National Sports University (LNCPE), were established after 1986.²⁴ After these underlying strides from 1954 to 1986, India kept on presenting different National Sports Policies, the huge ones being in 2001, 2007 and 2011 (National Sports Policy 2001 Sports Bureau Draft: Comprehensive Sports Policy 2007, Government of India 2011).²⁵ In 2001, India introduced two objectives i.e., public participation in sports and the highest level of excellence. Taking these two points forward, in 2007, mass interest in sport strategy was proposed to incorporate the accompanying elements: sports for all, universalizing sports offices in instructive establishments, sports offices in country and metropolitan regions, mass cooperation for sports culture and contests.

²³ Agarwal, O.P. and Somanathan, T.V., 2005. Public policy making in India : Issues and Remedies. New Delhi, India. *Centre for policy research occasional paper*, 1–28

²⁴ Chelladurai, P. and Nair, U.S., 2017. India. In: E. Kristiansen, M.M. Parent, and B. Houlihan, eds. *Elite youth sport policy and management: a comparative analysis*. Abingdon: Routledge,

²⁵ Ibid note 16

Similarly, objective for attaining excellence at sport in the world class level included ability identification, sports nurseries, sports schools and foundations, focuses of greatness, excellent instructing and other specialized help staff. Giving framework, logical help to each sports discipline, offering monetary help to competitors during and after their vocation, focusing on different benefits, for example, wellbeing, sporting, financial advantages to give a feeling of public pride were additionally included with an intend to embrace a more comprehensive way to deal with sport advancement²⁶.

a) National Sports Policy:

It was in the year 1984 for the first time the national sports policy was promulgated with the intent to develop an organized and systematic framework for the development and promotion of sports in India. By way of this policy framework government creates the ways and modes for strengthening sports governance framework. For instance, in first sports policy, it was realized a need of making sports and physical education an integral part of the school curriculum apart from bringing out the need for establishing a network of sports infrastructure and facilities in the rural and urban areas.²⁷ The 2001 National Sports Policy, approved by the Coalition Government, worked with the State Government, the Indian Olympic Association (IOA), and the National Sports Association to pursue the two goals i.e., mainstreaming sports for the central government and Achieving excellence in sports. The prominent features of the proposed new directive are:

- A more specific definition of the objectives and concrete actions that various institutions should take.
- More clearly define the roles of central and state governments.
- It aim to ensure that the federation operates in a more transparent, democratic, professional and accountable manner.
- Prioritize the promotion of play and sports at school.
- Strive to actively involve Panchayati institutions.
- An attempt to mobilize the mass media for the introduction of sports culture.

²⁶ (Sports Bureau Draft:Comprehensive Sports Policy 2007)

²⁷ Department of Sports, MYAS, Government of India, National Sports Development Code of India 2011, No.F.23-2/2011-SP-I, January 31, 2011, <https://yas.nic.in/sites/default/files/File918.compressed.pdf>

- A sport based on proven possibilities.
- Priority attempts to create an annual calendar in a timely manner to provide the support athletes need to attend major events.
- More emphasis is placed on the scientific support of athletes.
- Provides easy access to international quality sporting goods.
- More emphasis on training and skill development.
- Establishment of the National Sports Development Fund to mobilize resources from sources.

b) National Sports Development Code of India, 2011:

This code was an effort to draw guidelines for tackling malpractices in the sport industry. It was stated in this code that National Sports Federations and Indian Olympic Association shall adopt a good governance framework for National Sports Federations Indian Olympic Association and all such associations which falls under the aegis of Sports ministry. This policy was a comprehensive policy incorporating the guidelines in 1975, 1988, 1997 and 2001 along with all orders/ notifications/ instructions/ circulars issued post 2001 guidelines and several other initiatives taken by the government.²⁸

c) National Code for Good Governance in Sports, 2017

It has been a long time since India's National Sports Development Act was enacted in 2011. There were many developments and many challenges related to ethics and good Governance of sports administration has emerged that needs to be addressed. The Olympic Charter emphasizes impeccable ethical behavior in the practice and reification of sports, that principle should be properly incorporated into constitutional documents and practices. The National Olympic Committee (“NOC”) and the National Sports Federation (“NSFS”) collaborate to have global governance standards. Therefore, the national code of good governance in sports, 2017 establishes good governance, ethics and fair play of the Olympic and sports movements, Mandatory minimum governance standards and norms for the NOC and NSFS based on the Olympic Charter, international best practices, and draft national sports policy Development Act 2011 and 2013, NSDC 2011 and applicable Supreme Court and High Court.

²⁸ Supra note 27

V. Conclusion

Today having a comprehensive sport law is a need of an hour and the so shall be taken as a prerogative by the legislature. It had been evident the government are coming out with the policy framework but its effective execution is a matter to be realized. Sport is no more restricted to amusement alone but is a matter of National pride and the same shall be taken with every possible promotion. The sporting bodies' organisation and federation shall be brought under the scrutiny of court and shall be made accountable. The issues and challenges curving out in sports are many, be it corruption, match fixing, doping, discrimination, fraud, and what not. These problems are the reason which prevents progressive growth of sports in our country. These problems need immediate attention and effective policy frameworks shall be brought into implementation.

Legislature shall provide the entire needed tool to Judiciary for dealing with the emerging problems. All these significant sporting institution shall be brought under the purview of judicial eyes. Despite this, there shall have a independent body or tribunal which must be focussed on dealing with the sports related problems and situation. However, there is also a need for uniformity in the decisions of sporting bodies, which can be realised through the creation of a standing arbitral or judicial tribunal. However, as the National Sports Development Bill, 2013, which proposes such a tribunal, not been enacted into law, the existing system of judicial review must be improved, with judges being made cognisant of the requirements of sport.