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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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GOVERNANCE OF SPORTS BODIES IN INDIA – **A CRITICAL LEGAL STUDY**

AUTHORED BY – ARNAV KADIAN & BHAVLEEN UPPAL

ABSTARCT

The subject of this study is the governance of sports organizations in India, which is critically examined from a legal standpoint. The study tries to emphasize the significance of governance in contemporary sports and how effective governance could contribute to the overall growth of the sports. The research primarily focuses on the issue of governance issues in Indian sports associations. In doing so, it raises issues such as a lack of transparency and accountability, irregularities in the election process, improper financial management, and the influence of political figures in these associations, as well as how these issues have affected India's performance on the playing field.

The study investigates the problem's resolution as well as the issue itself, which it covers in great detail in the first four chapters. The Lodha Committee report, which was established by the nation's Supreme Court to review the governance of India's most powerful and wealthy sports body, the BCCI (The Board of Control for Cricket in India), is also examined in the research.

The primary objective was to back up the claim made in this study since the Lodha Committee report also echoed the need for reforming BCCI's governance system and establishing a system of accountability, legitimate and clean elections, audits, and other key components of good governance.

I. INTRODUCTION

1.1 WHAT IS SPORTS GOVERNANCE?

Sport governance can be defined as the process of oversight and direction of a sport organization. Oversight refers to ensuring an organization is run in accordance with the relevant rules and policies (e.g., legislation, organizational constitutions, codes of conduct, etc)¹ Direction refers to

¹ Roles of the board in amateur sport organizations. Journal of Sport Management, 1997. 11(2): p. 160-176.

the mission, objectives, and strategies of an organization². Governance is central to any sport system as it involves envisioning the future and overseeing progress by setting the parameters for different elements of the sport system including talent identification and development, facilities, sport science, competition opportunities, and financial support³. Thus, “good governance does not in itself guarantee success but its absence almost certainly guarantees failure.”⁴

Systemic and organizational governance are the two main types of governance that take place in the sport industry.

Organizational governance focuses on how an organization governs itself and is usually focused on the executive committee. This may include elements such as structures, group dynamics, composition, and the roles and responsibilities of the executive committee.

Systemic governance describes how impacts from the broader sector can influence the governance of an organization. These influences include pressures from government and other stakeholders, global trends, and relationships with other sport organizations⁵. Overall, governance seeks to ensure that the sector, as a whole and as individual organisations, is collaborating towards a shared outcome while monitoring and evaluating organizational performance.

1.2 CURRENT SCENARIO

Today, as a result of technological advancements, sports in India have achieved a new level of success, emerging as one of the most lucrative sectors for participation and one of the major sources of public enjoyment. Sports have historically been used as a tool for human growth and development before they were a part of any such enterprise. 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 country⁶. Therefore, it is crucial to incorporate sports within a constitutional framework for its efficient governance and management.

The delivery and management of sports in India are handled by a variety of organizations,

² Shilbury, , L. Ferkins, and L. Smythe, Sport governance encounters: Insights from lived experiences. *Sport Management Review*, 2013. 16(3): p. 349-363.

³ De Bosscher, , et al., (SPLISS 2.0) in 15 nations. 2015: Meyer & Meyer Sport.

⁴ Australian Sports Commission, *Governance reform in sport*. 2016, Canberra:

⁵ Hoye, and G. Cuskelly, *Sport governance*. 2007

⁶ “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>

including governing bodies, the government, for-profit and nonprofit organizations, and private businesses. This increases the sector's complexity.

The institutions charged with regulating the governance and administration of sports in India must uphold the highest levels of transparency, democracy, and accountability because it often becomes the case that athletes and officials will use unfair tactics to satisfy their competitive urges or make a profit from such events. This competing will to succeed frequently drives people to employ unethical tactics to alter the outcome of an event. When a situation like this arises, it is felt that law and sports collide.

The absence of a regulatory framework for the autonomous entities in the current sports market is a further indication of the importance of law in the sports sector. Articles 38 and 39 of the Indian Constitution guarantee the importance of constitutional law in promoting social welfare, which is largely impacted by the monopolistic practices of some corporations in the sports sector.

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.”⁷ Today, sports are managed by international federations and sports governing bodies, and national sporting organizations adhere to the standards and guidelines established by these organizations to administer sports. Even though these associations and organizations frequently receive public financing, they are not held to a high standard of control or judicial supervision. This sets it apart from other organizations like governmental bodies, businesses, and law enforcement agencies, all of which are subject to a certain kind of regulation, oversight, and investigation.

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.⁸ Not just that neither of these International sporting agencies and Federations falls under the ambit of any professional associations, unlike legal councils or medical associations⁹. This

⁷ Adam Lewis and Jonathan Taylor, (2014), Sport: Law and Practice, 3 rd ed., Bloomsbury Professional publications.

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

⁹ B Bogus, A Cygan and E Szyszczak (2007), The Regulation of Sport in the European Union. Edward Elgar Publishing

leaves a hazy region and leads to a false sense of transparency, accountability, and integrity in these organizations and federations, which weakens the governance structure and encourages corrupt behavior in sports.

It is an undeniable fact that these international athletic organizations hold exclusive private authority, and this power is significant in terms of the activities it influences as well as the people it impacts. Therefore, it is just a secondary issue and it should be questioned where and how the strength of these multinational organizations comes from. As a result, the system of governance and regulation of the individuals and entities are within the purview of the international federations as well as the operations of the associations as to how their framework are given particular attention here.

In recent years, sports have evolved into more than just a physical activity for body development or a form of entertainment. They now include a professional perspective and a business component with several stakeholders. Professional sports are now more than just a game attributable to high salaries, high ticket prices, and profits; it's a huge industry worth billions of dollars. Every type of sport has been affected by the corruption disease. It's entertaining to watch a sporting event, but the option of placing money on the outcome increases the anticipation. This should be done honestly and without taking unfair advantage of the sporting events. In addition to the basic objective of making sports entertaining, it is crucial to eradicate corruption from sports, particularly match-fixing and other corrupt practices.

Additionally, the current trend in international sports offers a new perspective on the legal interaction between the participating teams, event organizers, and the states where the game is being played. Rules and regulations are necessary as a result of the ongoing interactions and involvement of numerous aspects of contract, competition, game rules, substance abuse by athletes, and biases. This made the establishment of sports law necessary. Though not complete, sports law has evolved along various lines of thinking. Recognizing human rights in sports has grown to be a challenging problem. As a result of their dissatisfaction with the private sports justice system, a lot of athletes are turning to the Court as their last resort appeals adjudicatory authority. However, because there aren't any proper or effective parliamentary enactments, the Courts are finding it difficult to deliver effective justice. Due to the Parliamentarians' careless approach to creating the Sports Law, the situation in India is different from that of the European Union and the United States. It is generally more challenging to safeguard the victim's rights in

general where there is no explicit legislation protecting those rights.

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 accountability¹⁰. Many national and international governing entities have recently faced questions about their legitimacy due to corruption scandals. The lack of proper checks and balances on the boards' decisions as well as instances of outright mis governance have prompted calls for better governance in the sports industry.

III. GOVERNANCE MODEL OF OTHER COUNTRIES

USA: Every sport's governing body operates as a separate system in the USA; there is no unified paradigm of sports governance. In the country as a whole, there is no official framework in place to oversee sports. The majority of the institutions that drive the growth and development of sports are not part of the government. The sports sector is another example of its open economy and autonomous administration. Only three federal policies make reference to sports in an informal manner.

CHINA: Before adopting the open-door policy by China, the sports sector was extensively influenced and governed by the state. Along with providing funding and sponsorship, the Chinese government also established a centralized structure and planning for sporting events. New policy led to the change and transformation in sports system in the country¹¹. The new governance style and policies made the sports system more self-sufficient. The State General Administration (SGAS) of sports replaced the Sports Commission, but the government still maintains authority over all tiers of the nation's sports system.

AUSTRALIA: Australian Sports Commission (ASC), the federal government entity is the responsible body that looks after sports in the country¹². The federal minister of sports is in charge of it. It has an independent board. After it announced its initial policy, only seven sports were required to abide by it; however, in 2015, the number of sports required to abide by the ASC

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).

¹¹ Dali L. Yang, Alan Leung, China: the Politics of sports antidoping in China: Crisis, Governance and International Compliance, China: An international Journal, Vol. 6 No. 1, March 2008.

¹² John Mullins, sports governance in Australia and the leadership of the Australian sports commission, (December 2015).

governance model was expanded.

IV. JUDICIAL APPROACH

In India, national sports bodies field the national team representing the country for participation in international competitions where good performance is a matter of pride for the entire nation¹³. These bodies also give telecasting and broadcasting rights to the successful bidder for hefty sums and also earn revenues from advertisement in sports events¹⁴.

The case of *Ajay Jadeja v. Union of India*¹⁵ began a new era of legal reforms in the field of sports. Lack of proper coordinated investigation, integrity issues toward sports, procedure for dealing with the complainant and several other controversies attached with it. It was held in this case that as the sporting bodies perform public functions and therefore, are subject to the writ jurisdiction of High Court. The above-mentioned principle was upheld in the case of *Zee Telefilms and Others v. Union of India & Others*¹⁶ by the apex court. In India, this case is known as the Magna Carta of sports law. The issue in this lawsuit was BCCI's capricious cancellation of the agreement over broadcasting rights. Here, Zed Telefilms, the party that felt wronged, petitioned the Supreme Court under Article 32 of the Indian Constitution. But only against the powers designated as "State" by Article 12 of the Indian Constitution may a writ under Article 32 be lodged. According to the Supreme Court, BCCI did not meet the requirements of Article 12 of the Constitution to be considered a "State." On the other hand, Justice Sinha (minority opinion) believed that BCCI was a "state."

Therefore a specific enactment is required for the entire nation, though there are certain enactments such as the National Sports Development Code, 2011 which governs the National Sports Federation of India, but as sports is held to be a part of the State List of Seventh Schedule of the Indian Constitution, the above-mentioned Code's validity was upheld in the case of *Indian Olympic Association v. Union of India*¹⁷ by the Delhi High Court. At present there are two draft Central Bills i.e. the Prevention of Sporting Fraud Bill, 2013 and the National Sports Development Bill, 2013, which are to be promulgated, and if did then it would give further belief and acceptance in the existence of Sports Laws in India.

¹³ Grayson E. former President of the British Association for Sport and Law, in his inaugural presidential address 1 (1) *Sport and the Law Journal*, 1993.

¹⁴ Annual Report - 08, Ministry of Youth Affairs & Sports (Govt. of India). : 59, 2007

¹⁵ 95 (2002) DLT 14

¹⁶ *Zee Telefilms*, (2005) 4 SCC 649

¹⁷ W.P. (C) 2310/2012, CM APPL.4946 & 17545/2012

V. INDIA'S CONSTITUTIONAL FRAMEWORK FOR SPORTS REGULATIONS

Sports are covered by the Indian Constitution's state list, 33 of the seventh schedule. This implies that governmental authorities are responsible for any sports regulation.

In the case of Indian Olympic Association vs Union of India, the Indian Olympic Association contested the constitutionality of the National Sports Development Code of India, 2011, arguing that one of the codes' goals was to ensure that, both domestically and internationally (including fulfilling treaty obligations), sports development falls under the purview of the Union Government's residuary powers under 10 and 13 of the Union List.

The Supreme Court held the particular provision unconstitutional and thus, the central government has no locus standi to legislate on sports. It can be concluded that every state has exclusive competence over sports within their territory i.e. in the state/province and this makes it difficult to address reforms relating to sports law at the national level.

VI. ALTERNATIVE DISPUTE RESOLUTION AND SPORTS LAWS IN INDIA

Arbitration is a form of Alternate Dispute Resolution technique which is preferred to resolve disputes outside the courts. This legal technique exists in international sports through the Court of Arbitration for Sports (CAS) in order to resolve international sports disputes as are referred to it. It is considered as the most prominent forum which was created by the International Olympic Committee in 1983¹⁸.

The efficacy of alternative dispute mechanisms in resolving international sports conflicts is reflected in the attainment of the goal of CAS in Australia, Canada, and Australia. However, it is important to ascertain the causes of the unanticipated and abrupt influx towards these institutions at this time. Due to the lack of prominent sports bodies in India, sports conflicts are settled here by looking to international rulings.

The main disadvantage has been the general reluctance of sports officials to address the numerous shortcomings in sports litigation and submit the matter to the authority of national courts.

¹⁸ Gaurang Kanth, Emergence of Sports Law in India, INDIAN LAW JOURNAL, (last visited Jan. 28, 2021) <https://www.indialawjournal.org/archives>

For example, the track star Butch Reynolds case successfully initiated a four-year legal action that involved about fifteen levels of litigation and arbitration. The International Amateur Athletic Federation (IAAF) ultimately declined to participate in the proceedings, which led to Reynolds being awarded a \$27 million judgement.

ADR measure permits the parties to get convenient and timely hearing, confidentiality, low overall costs and flexibility. Further, arbitrators have prowess in the field. Aside from the success pace of the Sports dispute resolution, bodies specialized in alternate dispute resolution mechanism such as Court of Arbitration of Sports; these are some of the benefits of having resort to Alternative Dispute Resolution (ADR)¹⁹

VII. SUGGESTIONS FOR INDIAN SYSTEM

In a nation like India, reforms are necessary to establish excellent governance for sports.

- **Transparency:** Information on the composition of the board, the appointment of administrative personnel, and compensation details must be available to the public in order to preserve transparency regarding the use of funds and expenditures.
- **Women's Representation:** To preserve the diversity of the board, it is imperative that there be a sufficient number of women in both sports and administrative bodies. These administrative bodies also have an obligation to guarantee that there are enough women on the board.
- **Plans:** fixed timetables that are to be implemented by sports organizations in order to further the growth and development of sports in the future and that are to be accomplished within a specified time frame should be made public. Players and bodies alike would find incentive from these kinds of schedules and plans. Future targets must be predetermined so that they may be closely watched over and governed by the government. Future success would stem from effective implementation.
- **Committees:** to establish specialized committees for particular sports-related tasks, such as budgeting, organizing, and research and development. These committees would handle the specific task, promoting transparency in the workplace and accomplishing the shared goal.

¹⁹ Shubham Borkar and Parimal Kashyap, Sports Law in India, KHURANA & KHURANA ADVOCATES

- **Rules and Regulations:** regulatory organizations address disciplinary, administrative, and management challenges in sports, just as they do in other disciplines. must establish a tribunal, or common court, to handle concerning disputes pertaining to sports.
Additionally, to provide guidelines and policies to support the judiciary body supports tribunals in order to ensure their smooth operation.

VIII. CONCLUSION

Sport law in India must flourish in order for sports and sportsmen to prosper; legislative action is essential. India has to understand that "sports" is more than just a group of athletes competing for the top spot; it also involves complex legal issues and puts the athletes' entire careers on the line. This field is giving rise to a unique legal system that needs careful attention.

Undoubtedly, practicing sports law is a fulfilling job. With the help of the law, an effort should be made to enhance the sporting environment. Sport is an issue of national pride rather than just being for entertainment. In recent times, the growth of the Indian Premier League and Indian Cricket League has brought important questions about competition law.

The Indian sports sector has come a long way. Sports now have a corporate structure that includes a variety of business interests. Sport-related issues are gradually becoming a significant concentration due to the growing market development and the need for clear and comprehensive legal documentation. Agreements should ensure the competitive and brand's long-term interests and take into account the regulatory, legal, and various risks inherent in the industry. Additionally, agreements should have the option to explain parties' expectations and responsibilities. The country has reached a point when sports law management legislation is required. Promoting a consistent code for sports is important in order to meet the growing demands of the changing circumstances on both a national and international level.

Similar to India, the United States and the United Kingdom lack national legislation governing sports and their respective sports federations. Nonetheless, the athletes' interests are protected by the creation of laws covering amateur, professional, and international athletes in the US, according to the three categories of sports law. The following are the main problems that Indian sports face:

- Errors in the management Lack of accountability for outcomes.
- Inadequate or improper use of finances.
- Unethical or undemocratic election procedures in sports organizations.

Indian culture and our perspective on sports can serve as a hindrance to the advancement of sports standards. It is imperative that changes be made not just at the state or federal levels but also at the block and district levels, which are mostly disregarded in the context of sports education. There isn't a sports training centre or academy at the block or district level where kids or athletes can go to receive the required instruction. This would undoubtedly result in the development of an athletic culture in our nation, similar to other nations where children are solely taught sports from a very young age. Students need to receive sports education in schools in order to raise their knowledge of sports-related activities.

To encourage those who wish to play or advance in the future, the state must actively participate in providing basic and minimal amenities at the block level. Infrastructure for sports activities should be developed at the state level for individuals who wish to continue playing sports. Enough facilities and guidance ought to be offered to them. Coaches and other support personnel need to be encouraging and educate athletes on maintaining a healthy diet and abstaining from the use of any supplements or illegal drugs.

Sports administration must also adapt; the current model system must be completely redesigned to include adequate representation of women and retired players. Transparency is required in the election process for higher-ranking positions in the bodies, such as president.

creation of numerous committees to examine particular problems and topics. Additionally, a sports tribunal to settle sports-related disputes and deliver justice quickly. All of these adjustments are required for India to compete internationally and to improve the transparency of the country's sports governance system.

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