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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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# **EXTREME SPORTS: AN ANALYSIS OF WAIVER OF RIGHTS CONTRACT AND COMPENSATION MECHANISM FOR ATHLETES INVOLVED IN EXTREME SPORTS**

AUTHORED BY - VAISHNAVI UPADHYAY

## **ABSTRACT**

The growing popularity of these extreme sports is a result of increased injury and fatality rates, which are spreading like wildfire. Although it may seem that knowing about an accident may discourage other participants, these injuries and mishaps merely serve to encourage people to put on protective gear without thinking about the risk of hurting themselves or other participants. It was shown in one research that individuals under the age of 25 were likely to be aware of these fatalities and injuries.

Extreme sports participation is increasing dramatically, thus someone has to fund, plan, and organise the game for the players as well as produce the full event. The sponsors and event organizers would take steps to minimise their legal responsibility in the sad event that an athlete had an injury, in order to protect themselves. The agreement these organizers or sponsors make is referred to as the 'express assumption of risk', and it states clearly that the defendant is not obligated to defend the plaintiff because the plaintiff has expressly consented to wave off defendant from any associated liability caused through any negligence, which he might be accused of.

Taking into account that playing these dangerous games carries a risk of injury or death. Using psychological research and a novel strategy for including sports compensation, this paper attempts to examine the compensation plan, the risk element, and the thrill-seeking conduct in certain situations.

**KEYWORDS:** Extreme sports, Funds Allocation, Risk Management, Compensation Schemes, s, Remunerations, Injury, Risk

## I. INTRODUCTION

Before 1995, when the Summer X Games in Rhode Island featured twenty-seven different events, including downhill skating, sky surfing, skateboarding, mountain and dirt biking, sport climbing, several water events, and several cross-country orienteering races, the term 'extreme sports' was rarely used in the sports and competition field. These games are considered 'death-defying spots' because they entail unlawful leaps from buildings, cliffs, hills, or antennas, even if the list of games only resembles a shopping list. Men between the ages of 18 and 34 are particularly drawn to these sports, even in light of the danger of death during these activities. This draws more sponsorship and marketing, which raises revenue overall.

The right baby of the player's eye has traditionally been the danger element in these games, but an increasing proportion of male players and a small but rising percentage of female players tend to overlook the term 'extreme' and instead concentrate only on the word 'sport'. Their deft maneuver may increase the danger, but other competitors' poor decisions or environmental factors are some of the primary causes of increased harm in this sport. Reflecting the fact that young people are drawn to this kind of sport intensely and volunteer despite the risks involved. These games continue to attract a sizable volunteer base. Though many examples of damage or death have occurred, they have hardly made an impression on young people's thinking.

The growing popularity of these extreme sports is a result of increased injury and fatality rates, which are spreading like wildfire. Although it may seem that knowing about an accident may discourage other participants, these injuries and mishaps merely serve to encourage people to put on protective gear without thinking about the risk of hurting themselves or other participants. It was shown in one research that individuals under the age of 25 were likely to be aware of these fatalities and injuries.

Extreme sports participation is increasing dramatically, thus someone has to fund, plan, and organise the game for the players as well as produce the full event. The sponsors and event organizers would take steps to minimise their legal responsibility in the sad event that an athlete had an injury, in order to protect themselves. The agreement these organizers or sponsors make is referred to as the 'express assumption of risk', and it states clearly that the defendant is not obligated to defend the plaintiff because the plaintiff has expressly consented to release the defendant from any associated liability for any negligence that he may be accused of.

Taking into account that playing these dangerous games carries a risk of injury or death. Using psychological research and a novel strategy for including sports compensation, this paper attempts to examine the compensation plan, the risk element, and the thrill-seeking conduct in certain situations.

### A. Review of Literature

(i) Scott D & Colin D, The application of risk management in sport sports medicine, 2004<sup>1</sup>

The paper addresses risk mitigation in the recreation and sports sector, emphasising the estimation and assessment of risk levels, the identification of risky factors, and the application of this knowledge to the formulation of preventive and remedial plans. It highlights how crucial participant attitudes are in establishing appropriate risk thresholds.

(ii) Eric B, risk-taking in extreme sports: a phenomenological perspective. *annals of leisure research* (2010)<sup>2</sup>

The research refutes the risk-oriented perspective on extreme sports by showing that participants are aware that mistakes made poorly may have deadly consequences. They also take safety procedures to lessen the possibility of adverse consequences, acknowledging that routine tasks like driving represent a serious risk. This is emphasized by the hermeneutic phenomenological technique.

(iii) Tracy J. D, an introduction to risk, adventure and risk management. *risk management in the outdoors: a whole-of-organization approach for education, sport and recreation*, (2012)<sup>3</sup>

The research refutes the risk-oriented perspective on extreme sports by demonstrating that participants take preventative measures to lessen adverse effects and recognize that mistakes handled carelessly may have catastrophic consequences.

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<sup>1</sup> Scott D & Colin F, The application of risk management in sport Sports medicine, 2004, <https://link.springer.com/article/10.2165/00007256-200434060-00001>.

<sup>2</sup> Eric B., Risk-taking in extreme sports: A phenomenological perspective. *Annals of Leisure Research* (2010), <https://www.tandfonline.com/doi/abs/10.1080/11745398.2010.9686845>

<sup>3</sup> Tracy J. D, An introduction to risk, adventure and risk management. *Risk management in the outdoors: A whole-of-organization approach for education, sport and recreation*, (2012), [https://www.researchgate.net/profile/Tracey-Dickson/publication/236658071\\_An\\_introduction\\_to\\_risk\\_adventure\\_and\\_risk\\_management/links/59eae2794585151983c8021c/An-introduction-to-risk-adventure-and-risk-management.pdf](https://www.researchgate.net/profile/Tracey-Dickson/publication/236658071_An_introduction_to_risk_adventure_and_risk_management/links/59eae2794585151983c8021c/An-introduction-to-risk-adventure-and-risk-management.pdf)

(iv) Amanda G, extreme sport, an extreme liability: the effect of waiver of liability in extreme sports<sup>4</sup>

This article argues that event sponsors should not be held liable for their carelessness when it comes to extreme sports. It proposes changing liability waivers so that the word "negligence" is removed and a comparative blame scheme is added, in which sponsors and athletes share varying degrees of responsibility if that a sponsor's negligence causes an injury.

(v) David H, 'extreme sports and assumption of risk: a blueprint'<sup>5</sup>

The paper makes the case that extreme sports present a problem for the current assumption of risk theory, which permits defendants to shield plaintiffs from hazards that are inherent in sports. It implies that high-risk leisure activities like motocross, which have the potential to cause participant injuries, may not fall under the no-duty rule, which is predicated on the idea that all sports are naturally reasonable.

(vi) Carolyn B. R., homicide on holiday: prosecutorial discretion, popular culture, homicide on holiday: prosecutorial discretion, popular culture, and the boundaries of the criminal law<sup>6</sup>

The link between tort law, popular culture, and the decision to charge risk-takers for recreational offences with felonies are examined in this article. It contends that a carefree mentality has overtaken the appeal of dangerous sports, and that tort reform has reduced the chances of compensation for plaintiffs. The financial clout of service providers has sometimes protected athletes from lawsuits alleging carelessness. According to the paper, prosecutors should seek sentences that make it clear what constitutes "public" injury and differentiate between morally reprehensible indifference and unintentional harm. Finding situations when the prosecution clarifies the criminal law's retributive and condemnatory role is the difficult part.

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<sup>4</sup> Amanda G, 'Extreme sport, an extreme liability: the effect of waiver of liability in extreme sports'; volume 9, issue-1 *fall*, DEPAUL JOURNAL OF SPORTS LAW", DePaul University, 2012, <https://via.library.depaul.edu/cgi/viewcontent.cgi?article=1009&context=jslcp>

<sup>5</sup> David H., 'Extreme sports and assumption of risk: A blueprint', USFL, 2003, [https://heinonline.org/hol-cgi-bin/get\\_pdf.cgi?handle=hein.journals/usflr38&section=33](https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/usflr38&section=33)

<sup>6</sup> Carolyn B.R., 'Homicide on Holiday: Prosecutorial Discretion, Popular Culture, Homicide on Holiday: Prosecutorial Discretion, Popular Culture, and the Boundaries of the Criminal Law; University of Colorado school of law, HEIN ONLINE, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/hastlj54&div=50&id=&page=>

(vii) Stephen L., Edgework: a social psychological analysis of voluntary risk-taking. American journal of sociology<sup>7</sup>

Taking voluntary risks is a big part of American culture, but academics tend to ignore it. The introduction of edgework, a novel categorization idea, offers a social explanation for this practice. This method emphasises the sociological significance of voluntary risk-taking by attempting to link risk-taking behaviour with structural features of contemporary American society. It is based on Marxian and Meadian frameworks.

## **B. Research problem**

Examining the thrill-seeking behaviour that causes a person to focus on taking risks and engaging in risky behaviours, this behaviour is known as the 'personality predisposition'. The number of plaintiffs waiting outside the court, and these aren't your typical litigants either—these are the people who were hurt while playing a riskier activity that put their lives in danger. 'Extreme Sports' is the phrase used to describe these sports. Extreme sports are those that put the athlete who is playing or taking part in them in serious risk. There are instances when the risk is so great that they may perish. However, these people are 'Driven by risk'. According to research with over 4 million occurrences of deadly sports injuries documented between 2000 and 2001

The primary research problem of this research is to examine the contractual application, right waiver, and associated risk when permission is granted for the acceptance of a waiver contract, as well as the athletes' right to compensation that is refused.

## **C. Research question**

1. Whether risks and issues related to safety are appropriately measured to reduce the chances of accidents.
2. Whether or not injured athletes get enough pay and recompense.
3. Whether the general public's acceptance of extreme sports may lead to a change in how sports funds are allocated in light of probable accidents.

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<sup>7</sup> Stephen L., Edgework: A social psychological analysis of voluntary risk-taking. American journal of sociology, , VOL-5, AMERICAN JOURNAL OF SOCIOLOGY, (1990), <https://www.jstor.org/stable/2780644>

### **D. Scope**

The scope is limited to the extreme/dangerous sports which are played on an international level like motor-bike racing, boxing, skiing etc. This paper also intends to touch upon the type of contract signed by athletes for these extreme sports and what kind of remuneration and compensation are provided to them using appropriate case laws.

### **E. Objective**

The objectives of this paper are:

1. To investigate the psychological factors underlying the risk-driven activity approach
2. To determine if the athlete is currently receiving any kind of remuneration
3. To provide recommendations for changing the current risk management procedures while taking into account the problems athletes encounter as a result of the contract they signed.

### **F. Hypothesis**

1. Better compensation plans and the development of more efficient risk management techniques will improve the sports environment.
2. In the event of an injury, athletes are not given the proper compensation or aftercare services.
3. Certain nations allocate their cash improperly, providing their athletes with the bare minimum of recompense in the event of an injury.

### **G. Research Methodology**

The research methodology that this study will use is a doctrine-based approach. For further reference, people will examine pre-published research papers, essays, blogs, news articles, and other journals and publications. In order to conclude, this research also aims to essentially analyze instances of case studies.

## **II EXTREME SPORTS**

### **A. Extreme Sports: An Introduction**

The number of litigants standing outside the court, and these litigants are not just the usual ones, but rather the ones who suffered an injury because of their own wilder act of risking their life for a sport. These sports are commonly termed as 'Extreme Sports'. Extreme sports are the kind of sports that pose a grave danger to the sportsperson playing or participating in them. Sometimes the danger is to the extent that they can lose their life. But these individuals are 'Driven by risk'.

The issue herein is, 'Why are they standing outside the court'. Take into reference, the famous Travis Pastrana, a professional motocross competitor who has suffered ten concussions, twelve operations, more than thirty broken bones, and one-time temporary paralysis.<sup>8</sup> Even after all these incidents, his common reply to the press was 'It was worth it'.<sup>9</sup> Unlike Pastrana, not everyone considers injury to be worth the risk they take for a game. Sometimes the accidents are not because of their fault but rather because of other conditions, which could be other riders' fault or issue with the race track, or the faulty safety equipment, being the reason behind the same players standing in a qua outside the courts. The major problem encountered by the sports competitors is the principle of Negligence and contractual obligations of 'assumption of Risk 'which waives off their right of compensation or any other remedy against the host or the sponsor or against any other entity. Their 'voluntary acceptance 'of the sport and the proposed risk is enough to waive their rights.

However, the assumption of risk and contributory negligence here in these cases go hand in hand, which in most cases backfires the plaintiff if they failed to take the required reasonable care. According to the data collected, there has been a significant rise of 25% in participation in extreme sports since 2009.<sup>10</sup> Indicating the rising interest in the spectators towards these games. These sports have gained popularity to the extent that they are more frequently used for advertisement purposes whether be it for the advertisement of a sport or of a vehicle, Nissan Xterra being the most controversial example of it. The related controversy attached to this vehicle is that in one of their advertisement, they depicted that this car comes with its safety and medical kit which was used by one of the extreme sport competitors who later got injured and used the same medical kit. It was stated by the spectators that this car's advertisement rather gave the message of 'Definitely and Defiantly not for those who are married or have kids'.<sup>11</sup>

The word 'extreme sports 'was generally never used in the sports and competition field until 1995 when in Rhode Island, the summer X games featured twenty-seven events which included several

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<sup>8</sup> David H., 'Extreme sports and assumption of risk: A blueprint', USFL,2003, [https://heinonline.org/hol-cgi-bin/get\\_pdf.cgi?handle=hein.journals/usflr38&section=33](https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/usflr38&section=33)

<sup>9</sup> *ibid*

<sup>10</sup> Kancheva K., "Going beyond 'Because it's there '- Multiple motivations for pursuing high-risk adventure activities", 2017, <https://psyarxiv.com/pqdxo/download?format=pdf>

<sup>11</sup> Carolyn .B.R, 'Homicide on Holiday: Prosecutorial Discretion, Popular Culture, Homicide on Holiday: Prosecutorial Discretion, Popular Culture, and the Boundaries of the Criminal Law; University of Colorado school of law, HEIN ONLINE, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/hastlj54&div=50&id=&page=>

different games including downhill skating, sky surfing, skateboarding, mountain and dirt biking, sport climbing, number of water events and several cross country orienteering race.<sup>12</sup> Even though this list of games just looks like a grocery list, the same games involve near-death risk, where illegal jumps from buildings, cliffs, hills, or antennae are termed as ‘death-defying spots’. Even after knowing the possibility of death during these games men between the ages of 18 to 34 are the most attracted to these sports, which attracts greater advertisement and greater sponsorship, which overall leads to greater money.

The risk factor in these games has always been the right infant of the participant's eye, yet the growing number of male participants and some but very growing number of female participants tend to ignore the work ‘extreme ’and merely focus on the word sport. Their maneuvered moves can push the risk, but natural factors or other contestants' wrong moves, are some of the main factor that leads to greater injury in this field.

### **B. The Risk-Taking Behaviour**

Exploring the thrill-seeking behavior making an individual revolve around risk-taking activities and behavior, the same behavior is referred to as the ‘personality predisposition ’(Lyng, 1990). This behavior creates a dichotomy of two different personalities, one that takes risks, is driven by adrenaline, and seek pleasure from risky activities to the type of personality that avoids risks or fears them. This further creates a diversion of characteristics like ‘introvert and extrovert’, ‘narcissistic and anaclitic’, and ‘philobatic and ocnophilic’, where philobatic type of personality enjoys the uncertainty, the risks, and challenges whereas the ocnophilic are now for their avoiding behavior (Balint, 1959<sup>13</sup>). By these behavior characteristics, the philopatric type of individuals are often termed ‘sensation seekers’ ((Zuckerman et al., 1964).<sup>14</sup>

This theoretical assumption was first applied by Freixanet 1991,<sup>15</sup> to analyze their behavior and their risk-taking attitude, to explore the relationship between their attitude toward participating in extreme sports and their personality, He 27 alpinists, 71 mountaineers, 221 sportsmen and 54

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<sup>12</sup> *ibid.*

<sup>13</sup> Enid B., ‘Distance in space and time. Thrills and regression’, From the book ‘THRILLS AND REGRESSIOS’, (1959) <https://www.taylorfrancis.com/chapters/edit/10.4324/9780429483998-14/distance-space-time-enid-balint>

<sup>14</sup> Zuckerman M, Elizabeth A, Price, Leah Z, Ina, ‘Development of a sensation- seeking scale. Journal of consulting psychology’ (1964), <https://psycnet.apa.org/record/1965-07735-001>

<sup>15</sup> Montserrat. G. F, Personality profile of subjects engaged in high physical risk sports. Personality and individual differences ’(1991) <https://www.sciencedirect.com/science/article/pii/019188699190038D>

subjects who do not engage in any extreme sports activity. His observation was that the sports contentment who are driven by thrill, in. Conformity with social norms, socializing behavior, emotional stability, and pursuing experiences by a socialized structure are more likely to engage in adventure activities. The typical population is capable of inducing the "fight or flight" response even while engaging in safe activities that help people adjust to changes or uncertainties, such as unfair challenges and emotional experiences.

Another study taking into reference the study conducted by Freixanet, it was noted that the psychological profile between the athlete in normal sports like rugby or football to the rock climbers was observed that they possess an 'iceberg profile'. The factors that led to this conclusion were that the rock climbers (57 contestants) were either using Profile of mood states (POMS), Locus of Control Test (LOC), The sports competition anxiety test (SCAT), and Sports attitude inventory Test (SAI). They possessed the following attributes: low anger, tension, depression, mood disturbances, and high vigor.<sup>16</sup>

According to recent research, participating in risky extreme sports accomplishes objectives other than just raising heart rate. Participants in climbing and ocean rowing showed lesser interpersonal agency and increased alexithymia, especially in romantic interactions. Even when sensation-seeking was suppressed, there was an increase in agentic emotion regulation and motivation, indicating that participants' motivation is influenced by variables other than sensation-seeking. The Reversal of the theory of Lyng, Apter, and Csikszentmihalyi challenged earlier research on adventure activities by demonstrating that taking risks is a complex behaviour influenced by a variety of factors. This underscores the need for a more nuanced understanding of motivations in extreme sports.<sup>17</sup>

### **C. Injury, Casualty and Death Rate**

With the observation of how young people are drastically attracted to this kind of sport and volunteer irrespective of the risk attached to it. A large number of people still volunteer and take

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<sup>16</sup> Kancheva K., "Going beyond 'Because it's there' - Multiple motivations for pursuing high-risk adventure activities", 2017, <https://psyarxiv.com/pqdxdc/download?format=pdf>

<sup>17</sup> Stephen L., Edgework: A social psychological analysis of voluntary risk-taking. American journal of sociology, VOL-5, AMERICAN JOURNAL OF SOCIOLOGY, (1990), <https://www.jstor.org/stable/2780644>

part in these games. Even though there have been numerous death or injury cases, they have barely impacted the minds of the youth.

Referring to the study conducted by Vinay K. Sharma and Juan Rango, it was revealed that in 200 and 2001, there were over 4 million reported cases of extreme sports injuries, out of which 11.3% were HNIs. Out of all the reports of HNI cases, 17% were neck injuries and 83% were head injuries. According to the same report, the major 4 sports that recorded this injury rate were motocross, skateboarding, snowboarding, and skiing. The study also revealed that there were 2.5% reported injuries that were of severe cervical and skull injuries. One recent incident is of the famous motocross rider Bence Szvoboba, who died on 14 June 2023 because of a serious injury incurred during the race. He was a ten-time Hungarian, two-time Czech, and one-time Austrian motocross champion.<sup>18</sup>

In another study conducted by Andrew McInton, Lauren Fortington, Declan Patton, and Caroline Flinch in Australia,<sup>19</sup> the study statistics show that the narrowed type of extreme sports, only including the sport of kaya kicking, paragliding, motorbike racing, rock climbing has noted 693 deaths and after expanding the same definition, and including horse racing, and diving, the same death rate hikes to 995 cases. It has also been observed that 88% of the participants were male. The study also analyzed the death rate in extreme sports like paragliding, parasailing, and sky diving, where 50 reported death cases were noted and the case of death was 'sudden force trauma 65%, drowning 20%, and cardiac 11%'. It was further observed that the NCIS (National Coronial Information System) in Australia has closed several cases of injury (including fatal injury cases) from the year 2000 to 2016.

Inspired by the increasing rate of injuries and casualties, the craze for these extreme sports is increasing like wildfire. One might think that the knowledge of an accident will create a deterrent effect in the minds of other participants, yet these injuries and accidents only somehow motivate them to strap their protective gear not considering the possibility of injuring themselves or the other participants. One of the study, it showed that the knowledge about these deaths and injuries is

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<sup>18</sup> 'Motocross Champion Dies of Injuries Sustained during race', HUNGARY TODAY, 15 June 2023, <https://hungarytoday.hu/hungarian-motocross-champion-dies-of-injuries-sustained-at-a-race/>

<sup>19</sup> Andrew M., Lauren V., Declan P, Caroline F., Extreme sports, extreme risks. Fatalities in extreme sports in Australia. British Journal of Sports Medicine, 51(4), pp.360-360, 2017, [https://www.researchgate.net/publication/318962699\\_Extreme\\_Sports\\_Extreme\\_Risks\\_Fatalities\\_in\\_Extreme\\_Sports\\_in\\_Australia\\_Abstract](https://www.researchgate.net/publication/318962699_Extreme_Sports_Extreme_Risks_Fatalities_in_Extreme_Sports_in_Australia_Abstract)

likely to be known by the participants under the age of 25. Also, 47% of the participants are most likely to be unaware of the injury or death of the recent fatalities.<sup>20</sup> This raises the question that, of why should these amateurs be allowed to take part in these games when they are unaware of the attached injury or are unaware of the possibility of injuring someone else. The same question is raised from the statement made by the Skier Nathan Hall who was convicted of fast skiing and killing someone. He made a statement to the court that ‘he did not know that fast skiing could kill someone.’<sup>21</sup>

### III. EXTREME SPORTS AND LEGAL ACCOUNTABILITY

#### A. The Contract And Waiver Of Rights

With the fact that participation in extreme sports is growing tremendously, someone has to sponsor organize the game for the participants, and create an entire event. To protect themselves from any unfortunate event of an athlete getting injured, the sponsors or the event organizers would fly to make a contract that will minimize their legal duty in any of the unfortunate incidents. The contract which these organizers or the sponsors make is also known as the express assumption of risk where it is mentioned in the contract itself that the defendant has no duty to protect the plaintiff, as the plaintiff has given his expressed consent to release the defendant from any of the attached liability towards any negligence which he can be charged of.

For further reference, this paper will analyze the contract drafted by the International Freeskiers Association (IFSA)<sup>22</sup>. Some of the important aspects to note after analyzing the contract drafted by the International Freeskiers Association events list the following clauses that restrict the rights of the contestants and provide complete indemnification only to the Association.

Those classes are as follows:

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<sup>20</sup> Jason Burke and Denis Campbell, ‘Speeding skier sent to jail over death on piste’; 22:46, 19 November 2000; <https://www.theguardian.com/world/2000/nov/19/deniscampbell.jasonburke>”

<sup>21</sup> *PEOPLE v. HALL*, No. 99SC105. (2000)

<sup>22</sup> Amanda G, Extreme sport, an extreme liability: the effect of waiver of liability in extreme sports; volume 9, issue-1 *fall*, DEPAUL JOURNAL OF SPORTS LAW,, DePaul University, 2012 <https://via.library.depaul.edu/cgi/viewcontent.cgi?article=1009&context=jslcp>

- i. Clause three of the contract mentions 'Competitors accept and understand the various forms of hazardous Sports and the possible risk'<sup>23</sup>
- ii. Class three also mentions 'competitors available of the injuries attached with the game and they agree as a condition of being allowed to compete in IFSA sanctioned events and they voluntarily assume all risk of personal injury or death'
- iii. The warning clause states that 'the skier assumes the risk of injury of person or personal property or any result of damage inherent during the scheme may not be covered by the Association'<sup>24</sup> It further includes 'changing weather conditions, existing in changing snow condition, bare spots, rocks, trees, collisions with natural object, man-made object, or with the other skiers, or the failure of skiers to ski within their ability.'<sup>25</sup>
- iv. Clause four states Competitive competitors assume all the risk and indemnify IFSA. Any other person or employee related to IFSA is free from any liability, claim, demand acquisition, and cause of action whichever is related to injury or personal death of the participant. It also does not limit to the damages caused due to negligence or breach of warranty by IFSA.<sup>26</sup>
- v. Clause six mentioned that, in case of any injury during the event, the competitor agrees for the transportation and any medical services provided and it is also mentioned that the IFSA will not have any responsibility to pay all the cost incurred or of the medical care provider during the transportation and what is the point mean hold IFSA free from any of these above-mentioned charges<sup>27</sup>

After analyzing the clauses mentioned in the IFSA contract, it is visible that IFSA has tried to incorporate all the possible clauses that would free them from any of the liability attached in case of any personal injury or death of the participant. It is further notice that clause three which talks about the other circumstances that could be a leading factor towards an injury is not covered by IFSA even though the circumstances cannot be controlled or managed by the participant, but rather should be managed by the Association itself. Another clause related to the medical expenses lacks the factor related to the cause of injury, instead, they made a universal clause restricting all sorts of compensation or medical allowances to be provided to a participant after an injury depicting their intention of 'no involvement in any injury'. This contract also shows

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<sup>23</sup> *ibid.*

<sup>24</sup> *ibid.*

<sup>25</sup> *ibid.*

<sup>26</sup> *ibid.*

<sup>27</sup> *ibid.*

how the association has tried to ignore and eradicate the possible compensation that a participant might claim after an injury caused due to any equipment, failure, or any negligence committed by the Association or an employee of the association being the leading factor of the injury caused.

Some of the cases that show the waiver of liability being upheld by the court because of the strategic drafting of the waiver are the case of *Banfield v. Louis*<sup>28</sup>, where Benfield took part in bicycle racing and got struck and seriously injured by a motor vehicle operated by Louis the court focus on the signed a waiver and stated that being well aware of the fact that the signature to the contract depicts the willingness of, releasing the sponsors, event organizers or the agent from any other liability, later the same participant cannot induce any liability on them. Even though the plaintiff explained the value of public safety, the same was not taken into consideration by the court because of the signed waiver.

In another case of *Gregory v. Alpine Meadows Ski Corp*<sup>29</sup>, In this case, Jessica a famous snowboarder signed a waiver of liability contract with the defendants. Later during her competition because of the icy conditions, she slipped and hit a huge shock due to which she died instantly. Later when can you present a Tips and guardians asked for the liability claims the same claims but denied by the court because she signed a waiver contract with the defendants and was completely aware of the fact that she was freeing them from any liability-induced through any incident or accident, making the plaintiff's claim irrational in the court.

The intention behind the formation and construction of this contract is to avoid any liability that can be induced by any participant because of any negligence committed by him or by the organizers/agent/corporation/Association. Even though the same contracts could be seen as a possible factor in not taking part in these extreme sports, because of the increased participation and the increased possibility of risk, injury, and death, these organizations or associations formed an intention of creating a contract in such a way which could not only restrict the right of the participant but to also save themselves from huge compensation claims and other torches liability. The reason behind the increase in participation is not just that it includes a thrill factor but also that these sports or stunts are commonly used not just for advertisement purposes but also in big-

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<sup>28</sup> *Dare v. Freefall Adventure*, 793, A-2d

<sup>29</sup> *Gregorie v. Alpine Meadows Ski Corp*, 2009

budget, movies or films, making it a factor to attract audience and printing. an image of how risky yet. Fascinating these activities are.

## **B. The Governing Factors And Compensation Scheme**

Whenever there is a debate related to the compensation scheme to be provided to sports athletes who take part in extreme sports, it is highly noticed that the same debate on highly discouraged by the Association or the agent or the organizers because when my screen they would be accountable to pay millions of compensation to the sportsperson being injured during the event. While analyzing the governing factors of different countries to support the claims of compensation and provide a demo compensation scheme, this paper takes into consideration the Western Australia Parliamentary debates related to the Workers Compensation and Rehabilitation Act, of 1981. Taking into consideration the *Commonwealth v. Oliver*<sup>30</sup> case where despite continuous debates and previous judgments stating that the sportsperson should not be allowed any compensation under this act, this case gave a remarkable judgment of stating that the contract signed by the sportsperson with the organizers of the event, managers can be termed as a contract of employment and in spite being numerous cases where the workers have been denied compensation under the same act, in this case, the court mentioned that the act does not specifically restrict sporting activities or any activities related with sports which could cause disabilities from attracting compensation. The court laid that the employer that is the organizers/Association is liable to provide compensation in case of employer-sponsored social event or in case of events where the activities or the main activity equipment for example, the swimming pool or the fitness equipment which is the essential part of the game, and without which the game cannot be played.

In another Australian case *Wolmar v. Travelodge Australia LTD*<sup>31</sup>, the court herein intended to provide a clearance regarding the debate of whether sports activity should be dealt with under the WA Act or not. In this case, the court stated that whenever there is a debate regarding the compensation to be payable to any athlete, the relevant factor is to notice whether the disability is incurred during employment and secondly whether the main contributing factor to the disability is the type of employment itself. The court also stated that when sports activities are sponsored

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<sup>30</sup> *Commonwealth v. Oliver* (1962) 107 CLR 353

<sup>31</sup> *Wolmar v Travelodge Australia Ltd* (1975) 26 FLR 249

and encouraged by the employer, the compensation related to any incidental injury has to be sustained by the employer or the organizer.

Take into reference New South Wales which took an active step towards challenging the clauses of the employment contracts or support contracts that limit or restrict the rights of the sportsperson or specifically limit their insurance protection claims. In the case of *Allen v. Penrith District Rugby League Football Club*<sup>32</sup>, the court failed to determine the intention of the industrial commission by avoiding potential arguments and challenging the restrictions mentioned in the workplace agreement. In this case, the court stated that the contract was not providing the increased benefit of medical expenses and other remunerations to the sportsperson who has incurred an injury. The same judgment was overturned by the full bench<sup>33</sup>.

The rising question of who should be held liable in case of negligence, not committed by the plaintiff, the issue is because of the signed waiver contract. The plaintiff fails to get the appropriate compensation he deserved<sup>34</sup>. In that case, the court stated that one of the main factors in determining the liability is the rules and regulations of the sport. When any act is done by the rules of the game, then the same does not give rise to any legal liability. In another case *Johnston v. Fraser*<sup>35</sup>, where the horse jockey aggressively ran towards the plaintiff due to which the plaintiff incurred serious injuries, in the case because the act was not a part of the game or was not stated in any of the rules, the defendant hearing feel it read that the plaintiff consented for the act.

In another case study of Prichard Colon, a former boxer, whose parents are still seeking a lawsuit with compensation of more than \$50 million. The complaint was filed in the Supreme Court of Columbia where during the match Richard faced illegal and unauthorised punches on his head by the rival boxer. Even though the punches delivered were illegal, the referee continued to ignore them until a moment when he started, feeling dizzy and was rushed to the hospital. Prichard later fell into a coma and suffered several brain injuries, making him disabled for life. The box parents are still fighting the lawsuit yet, no progress has been noticed. In one of the statements given by

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<sup>32</sup> *Allen v. Penrith District Rugby League Football Club (1995)*

<sup>33</sup> Pauline S. & Rob G., Sports Injuries and the Right to Compensation, CURTIN UNIVERSITY OF TECHNOLOGY,

[https://espace.curtin.edu.au/bitstream/handle/20.500.11937/18783/18981\\_downloaded\\_stream\\_73.pdf?sequence=2](https://espace.curtin.edu.au/bitstream/handle/20.500.11937/18783/18981_downloaded_stream_73.pdf?sequence=2)

<sup>34</sup> *Rootes v Shelton (1967) 116 CLR 383.*

<sup>35</sup> *Johnston v Fraser 1989*

the boxes, the mother stated that their family has been Financial problems to sustain the health of their disabled child. This case clearly shows that despite the negligence committed by the opponent box and the referee, the consequences are faced by Colon and his family members every day. It was also noticed that just to shift the liability from the association to any other individual, as per the report released by DPOR, it stated that the medical treatment provided to the boxer during the match is the "sole responsibility"<sup>36</sup> of the doctors and were completely in line with the requisite medical procedures.

#### IV. CONCLUSION

Sports include more than simply a single phase of a two-player game. several sides or parties involved. It's also about the chance we take to live the dream and meet the standards that our family, supporters, and spectators have established. There is a greater component when severe or dangerous sports are taken into account. When we discuss risk, we are talking about more than simply the potential for an injury or a broken bone; rather, we are talking about the potential for permanent disability or, in many situations, even for death.

When someone participates in these extreme activities, we often forget that they might lose their lives due to a serious safety equipment failure or from the host, association, agent, or organizers' incompetence. Even while the neglect may appear little, it might seriously hurt the individual. As the aforementioned cases have already demonstrated, there have been situations in which the organizer was found to have acted negligently rather than on behalf of the participant, but despite this, the waiver contract prevented any liability from being imposed and the participant was not awarded compensation.

It is challenging to say that participants should receive compensation because determining 'who is at fault' in situations where a contract removes participants' ability to sue for damages and places them in a vegetative state where they are 'not able to sustain their medical expenses' is another challenging factor.

It is impossible to overlook the Australian government's proactive approach in broadening the definition of employment agreements to include sports contracts. Several court rulings have

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<sup>36</sup> William W., "Parents of Ex-Boxer Prichard Colon seek more than \$50 Million in lawsuit", ESPN, May 3, 2017, [https://www.espn.in/boxing/story/\\_/id/19301313/the-parents-former-boxer-prichard-colon-suing-ringside-doctor-promoters-more-50-million](https://www.espn.in/boxing/story/_/id/19301313/the-parents-former-boxer-prichard-colon-suing-ringside-doctor-promoters-more-50-million)

established that employers are responsible for paying benefits if that an employee is hurt as a result of their negligence.

Taking this into account, it is appropriate to say that certain clauses that exclude the participants' right to sue should be ruled invalid and that participants who have suffered injuries—and occasionally even lost their lives—should receive compensation and be held liable.

## V. RECOMMENDATION AND SUGGESTIONS

Following an analysis of the aforementioned case laws, research, papers, blogs, newspapers, articles, and various journals pertaining to risk management, extreme sports compensation schemes, who should be held accountable for injuries sustained in these sports, and landmark rulings to bolster injured athletes' claims, this paper makes the following recommendations:

- (i) The weaving contract's provisions that expressly address the organization, agency, or association's waiver of obligation for negligence shall be deemed null and unenforceable, and the appropriate compensation must be given.
- (ii) Governments need to back the notion of incorporating sports contracts into employment schemes and compensation acts, and provide active compensation in situations involving employers, carelessness, and default. A reference for that can be taken from the Workers Compensation and Rehabilitation Act 1981 and the judgement of *Commonwealth v. Oliver*<sup>37</sup> and *Wolmar v. Travelodge Australia LTD*<sup>38</sup>
- (iii) Any failure in the game's organization, including but not limited to racetrack default, non-availability of a medical team, etc., should result in liability of the organization.
- (iv) The legislation should pose a better regulations safeguarding the rights of players and must pose a stringent regulation regarding the accountability of sponsors incase of defaulted products.

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<sup>37</sup> *Commonwealth v. Oliver* (1962) 107 CLR 353

<sup>38</sup> *Wolmar v Travelodge Australia Ltd* (1975) 26 FLR 249