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Legal Overview And Policy Framework **Related To Sports Law In India**

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Abstract:

The recent growth in the fields of technology made sports a profitable source through the likes of sale of tickets and jerseys, claiming rights from the channels broadcasting the live matches, revenue generating out of advertisement, etc. not only from a global point of view but also from the Indian subcontinent. India, being a country rich in cultures, showcases its talent in the field of sports, with cricket being the most favourable sport among the Indians, followed by that of football. Sports Law governs sports in India with a mixture of various other laws such as Labour Law, Torts, Criminal Law, Contract Law, Arbitration, and so on. But sports law has failed to live up to the expectation of raising the sporting culture among the Indian youth. The said article focuses on the recent incidents of IPL 2013 match-fixing, the legal dispute of Zee Telefilms with BCCI, the Commonwealth Games debacle, and several fiasco in other sports in India.

KEYWORDS: BCCI, IPL, Commonwealth Games.

Introduction:

For a country with a diverse population and to cope up with the growing population, the sporting industry has now become a huge revenue generating industry through the sources of jersey sales, broadcasting rights of several channels, agents of sports persons, revenue from the media as well. In the previous decade, there has been a rise of several sports leagues

which happened to boost the revenue collection, making it easier for criminal offences such as match-fixing and all.

India is a country having a great passion for sports which can be witnessed by the recent programs like Khelo India Youth Games¹ in the recent years for the betterment of sports among the youth. But what lacks is the commitment of athletes in their representation of India at the International stages, and this incapable mentality has increased over the years just because there is a lack of proper bodies to govern the sporting industry in India. Competing with the likes of the United States, United Kingdom, Australia and many more, India has a long way to go in order to reach the standards set by the said contingents.

The talking point of India's sporting industry is solely on the point that after several years of independence, the primary focus still remains on cricket, followed by football and badminton. India's lack of sports laws for other sporting activities has become a hurdle in the development of such other sports.

Even though programs like Khelo India Youth Games, initiated by the Indian Government Governments, is a step forward for other sports getting exposure, it cannot be considered enough for athletes competing at the international stages in sports other than cricket. Lack of development in the field of football can be witnessed as the dream of every Indian football passionate for spectating the Indian Football team playing at the international competition, i.e. FIFA². The case may be the same for Badminton, Kabaddi, Track and Events, Athletics, Archery, just to name a few. The cases in the last decade, like the Manika Batra case after the 2020 Olympics, the Commonwealth Games 2010 fiasco, the BCCI legal dispute and the arrest of Indian wrestler Sushil Kumar showcases the lack of proper governing authorities in the sporting industry in India.

¹ The Khelo India Youth Games was initiated by the Government of India in the year 2017 and got inaugurated on 31st January, 2018 by Prime Minister Narendra Modi.

² The recent ranking of the Indian Football Team in FIFA is 106th, while their lowest ranking back in the year 2015 was 173rd.

Policy Framework of Sports in India:

The Constitution of India has listed sports as per entry 33 coming under the State List³. This indicates that the State Government has the only say in sporting matters, while the Central Government cannot act upon the said matters.

The Ministry of Youth Affairs and Sports (MYAS)⁴ and the Indian Olympic Association (IOA) are the two major bodies overseeing the conducting procedure and development of sports in India, with the latter being a self-organised authority with the responsibility of selecting athletes capable of representing India at the International stage. The Olympic Charter further states that IOA has to be free from all sorts of administrative control by the Government of India, and has 38 National Sports Federations (NSFs) under its management. On the other hand, the training of athletes is conducted by the Sports Authority of India (SAI) and various other bodies categorised under The Ministry of Youth Affairs and Sports. However, MYAS has its way of supporting the National and State Sports Federations through the political route.

There is a lack of proper legislation for the regulation of governance of the sporting federations and authorities at present. Because of the failure to legislate proper laws, India's efforts, which are not up to the expectations, or even worse to say very poor, to compete with other countries in the Olympics can be seen. India's failure to bring the central government, the IOA and the NSFs together with the state government, for raising the standards of sports in India through the National Sports Policy, 1984 has led to further frustration. The said policy would have made a way for efficient and effective sports integration and would have been a great addition in the education field with the addition of physical education.

Sports law in India corresponds with that of Labour Law, Contract law, Criminal Law, the Indian Constitution, Arbitration, Intellectual Property Law, etc. The Arbitration cases relating to sports are dealt by Sports Arbitration of India while other matters are heard by either High Courts or the Apex Court.

³ Entry 33 of List II (State List), Constitution of India: Theatres and dramatic performances; cinemas subject to the provisions of entry 60 of List I; sports, entertainments and amusements.

⁴ The Ministry of Youth Affairs, in the year 1982, was recognized as Department of Sports; later on 27th May, 2000 it was renamed as the current agency.

Arbitration in sports in India:

As said earlier, the industry of sports and the entertainments related to it witnessed a massive resonance in the past decade because of the rise in the viewership of several sports leagues and investments made from such leagues, to name a few are Pro Kabaddi League, the Premier Badminton League. Sports matters generally come under the purview of the State Government as per Entry 33 of the State List, whereas international matters requiring enactment of laws fall under the jurisdiction of the Union Government as per Entry 10 List 1 of the Indian Constitution⁵. Despite the fact that both the Central and the State Government have the control over development of the sports industry in India, certain private bodies take up the matters for the purpose of practice. The general concern then shifts to any such ambiguity regarding which body will have the control over such sports disputes– the private bodies or the ones who function independently of the Governments?

For example, the Board for Control of Cricket in India (BCCI) cannot be construed as ‘State’ under Article 12⁶ of the Indian Constitution, following its legal dispute with Zee Telefilms. Thus it is necessary to have an entity created by the State to resolve the disputes relating to sports and in order to overcome the said ambiguity, the Sports Arbitration Centre of India was established.

There was a need for development in the field of sports after the Asian Games of 1982⁷, which was followed by the creation of Sports Authority of India (SAI) for the training of athletes and the enactment of National Sports Policy, both occurring in the year 1984. The NSP was considered a step forward in the process of sports development in the country with the sole objective of bringing together the Central Government and the NSFs, IOA with the State Government for further development in the Indian Sports Community. Prior to the year 1984, the country lacked a general interest for developing and adapting sports activities as a skill. Thus, the National Sports Policy was enacted mainly to focus on promotion of sports infrastructure and making physical education an integral part of education curriculum. But

⁵ Entry 10 of List I (Union List), Constitution of India: Foreign affairs; all matters which bring the Union into relation with any foreign country.

⁶ Zee Telefilms vs. Union of India [AIR 2005 SC 2677].

⁷ India hosted the Asian Games in the year 1982, where they ranked 5th with an overall medal tally of 57 which included 13 gold medals, 19 silver medals and 25 bronze medals. It is considered as one of the best performance of the Indian Contingent at the Asian Games.

with this new and fresh ideology, the country neither had proper bodies to enforce the same nor did it focus on designing a more classified and attired environment.

However, the NSP of 1984 did not succeed as planned, and an amendment⁸ was made. With its primary initiative failing, it still had the objective of merging physical education with the already existing academic schedule. The said policy laid down the responsibility of enforcement on both the Central as well as the State Government providing suitable powers to them for instituting necessary legislation, thereby creating a hurdle in the way of implementation of the rules.

The connection of Sports Law with other legal statutes:

1. Labour Law: Sports Industry in India is designed or structured in such a way where the Indian Olympic Committee (IOC) and the National Sports Federations (NSFs) sitting atop and the State and District organisations operating from the bottom, with Sports Authority of India (SAI) and The Ministry of Youth Affairs and Sports (MYAS) playing a major key factor in the industry of sports.

Now, whether sportspersons can be construed as “employees” is the question arising out of the complexity between the relationship of such sportspersons and the above

mentioned organisations. As we know, there are certain Labour laws applicable in India such as the Minimum Wages Act, 1948 and Payment of Bonus Act, 1965. To make certain codifications on the numerous applicable labour laws in India, the Parliament passed three codes along with the wage code on industrial relations, social security, occupational safety, health, and working conditions.

In general, labour law provides better protection for employees but it still raises the ambiguity of what role a sportsperson plays – “employee” or “independent contractors”? The problem is that relationships among sportspersons and the said organisations are governed by contracts and such contracts generally change their directions from the sportspersons towards the organisations and other stakeholders as they carry more powers to bargain. The Indian Courts

⁸ The National Sports Policy was amended in the year 2001.

applied several tests in order to determine whether a sportsperson falls under the category of “employee”. The said proceeding was antecedent that all NSFs should be abiding as per the applicable labour laws in India. “Mutuality of Obligations” is a variable where every contractual party experiences the responsibility for presenting the “employee” status to other persons.

Since the organisations exercise the betterment of bargaining powers as compared to that of sportspersons, there is an imbalance present in the global sphere, and to eradicate such imbalance, “collective bargaining agreements”⁹ has been presented for sportspersons having the same bargaining powers as exercised by their employers, i.e. the clubs and administrations. However, in India, this issue still remains unresolved as the determination of the status of “employee” still remains a challenge having no easy method, so an alternative has been proposed by introducing the creation of unions¹⁰ as per the Indian Constitution and the Trade Unions Act, 1926¹¹.

The method of “collective bargaining” has proven to be a successful process in resolving the imbalance present in the bargaining powers between the authorities and the sportspersons, but it restricts the organisation of unions to participate in such “collective bargaining”. And as a result, current developments in the Indian sporting industry has indicated that if an association of sportspersons’ can be formed, it would effect in a more prominent way, as suggested by the Lodha Committee¹² inside the sports industry framework. Maintaining a balance between the powers exercised by the stakeholders present in the industry, as the junction of labour law and sports law can be a bit complex.

2. Contract Law: In the industry of sports, a contract is generally made between the athlete or the sportsperson, the organisation or the club it is representing and the agents of the athlete. In these contracts, the rights and obligations of the parties involved are specified and that the

⁹ Collective Bargaining Agreements (CBA) is a written legal contract made between an employer and the union who is representing the employees.

¹⁰ Article 19(1) of the Indian Constitution expresses the fundamental right to form unions and associations to deal with the uncertainty of status of workers.

¹¹ Section 2(h) of the Trade Unions Act, 1926 provides the definition of a Union as: Any association, whether temporary or permanent, established principally for the purpose of regulating relations between workers and employers; between workers and workers, or between employers and employers, or to impose restrictions and conditions on the conduct of any trade or business if any.

¹² Board for Control of Cricket in India vs. Cricket Association of Bihar [AIR 1993 SC 892].

parties involved have agreed to the terms and conditions of the contract either by writing or verbally. Since proving the accuracy of implied contracts can be a challenge, contracts nowadays are generally made in the written form which the organisation and the sports persons duly sign, thus making implied contracts hardly credible in the sports industry.

People associated with the sporting industry cross their paths with various types of contracts such as the Endorsement Contract, which unlike other sports contracts, is independent in nature, and does not cater to any employer-employee relationship. With such a contract signed by the athlete, the sponsor obtains the right to gain the athletes' name, image, etc. for sponsor's goods and services marketing, thereby generating revenue from such endorsements.

Another sports contract which can be discussed here is the Appearance Contract, which after signing, the athlete has to appear in public events of any business, along with sports camps and competitions. The main purpose of this contract is to specify the date and time of such a sportsperson to appear in the aforementioned public events. Just like other contracts, sports contracts bear certain clauses, like:

(i) **Morality Clause:** this clause is present in a sports contract if a sportsperson engages himself / herself in any such behaviour which might affect the organisation associated with the player in a detrimental way.

(ii) **Player-Agent Relationship:** for any sports, the relationship between a player and his agent is essential, because if such a relationship is not present, the player may be a target of several scandals and criminal offences. In order to protect the player, the agent needs to trust the player just like the player is required to trust his agent. If such trust is present, there exists a fiduciary agreement between the two parties, which allows the agent to act and make decisions for the athlete that is in his / her best interest in a legally binded manner.

(iii) **Force Majeure Clause¹³:** this clause is included in a sports contract if any circumstance occurs which is beyond the control of the parties involved making the event impossible to

¹³ Force Majeure may be defined as unforeseeable circumstances preventing a person on fulfilling his part of the contract.

organise, then with the help of this clause, the event or program can be rescheduled. The recent incident being the nearly loss of Rs. 10,000 crores broadcasting rights sold to Star Sports for broadcasting the IPL because of the pandemic. As the broadcasters, Star Sports suffered this fear as the BCCI was exempted from any financial responsibility.

3. Torts: In sports, injuries can occur while people are watching an opening ceremony of a tournament, or witnessing a live match in a stadium. There have been certain incidents where people or fans of a team fell from a row of a stadium while celebrating, ultimately leading to the death of such person. Also on the pitch players or sports athletes can attract any kind of injury when an object is thrown towards them out of anger by a spectator. Even construction of a stadium have led to several deaths of the workers. In the latter case, the plea of Volenti Non Fit Injuria¹⁴ can be applied where the plaintiff was well aware of the risks involved in his work, and if this point is proven in the court of law, then the defendant can be released of all the charges pressed against him.

Injuries that come along with sports are of different nature as per the nature of the sports, and the treatment of such injuries may take a lot of time for the athlete to get recovered and might be expensive. Unlike the people present in a field, the person(s) watching them require safety measures, and the sportsperson or the authority is liable for a duty of care towards the audience. Liability in torts can be categorised as follows:

A) Negligence on part of the authority leading to injury: the law of negligence of tort law present in sports is prima facie and somewhat identical to the principle of Lord Atkin's "neighbourhood test" which was the base of the landmark judgement of Donoghue vs. Stevenson¹⁵. To prove that there was negligence involved, it has to be proved that the defendant had a duty of care towards the plaintiff, and the act of the defendant has breached such duty, and the breach of duty has led to the injury of the plaintiff.

B) Vicarious Liability: the principle of vicarious liability is applicable to players portraying professionalism and states that during the course of employment, if an employee has caused

¹⁴ Volenti Non Fit Injuria: a doctrine stating that if someone places themselves willingly in a position where they can bring a degree of harm to themselves, then that party is not liable to bring any claim against the other party in a tort.

¹⁵ Donoghue vs. Stevenson [1932] A.C. 562

any kind of harm towards another person through their act, then the employers can be held responsible for such an act done by the employee.

Law of torts is not a codified law in India, and its evolution in the Indian contingent has been from that of the UK Law. Cases in Indian Tort Law is much lower than the cases registered in the United States and the UK in the same category of law. In the case of Union Carbide Corporation¹⁶, the Supreme Court decided that Section 9 of the Civil Procedure Code, 1908 can be used to deal with the tort cases in India.

The recent sports developments has made it a bit difficult to identify an issue or offence as criminal or civil matter. Furthermore, since the Indian Judiciary system has numerous laws, there are considerable number of civil and criminal cases, but that cannot be said in the case of tort law. The incorporation of tort law in relation to any sports matter has become the need in the recent times for the Indian Judiciary as the number is starting to rise in this area of law.

The Commonwealth Games 2010 debacle:

For the first time the game's history, India hosted the Commonwealth Games in the year 2010. The Games was held in the capital city of New Delhi with high hopes, but it met with the news of corruption and mismanagement. The scam of 2010 is considered to be one of the biggest scams not only in the history of the Games, but also in the Indian Sporting Industry. It involved an whopping amount of Rs. 70,000 and half of the amount was used only on the Indian athletes.

Also the Indian athletes were forced by the authorities to move out of the allocated places to shabby flats. The Central Vigilance Commission submitted a report revealing that the Director¹⁷ of the Organising Committee, was involved with Swiss Timings in a contract of Rs. 141 crore for its time-limiting equipment, which became disproportionate by an amount of Rs. 95 crore. All the suspects involved in this scam were charged with criminal conspiracy, theft, etc. and have been charged with some parts of Corruption Prevention Act.

¹⁶ Union Carbide Corporation & Others vs. Union of India & Others [1992 AIR 248]

¹⁷ Suresh Kalmadi, Indian politician and senior sports director was arrested by the Central Bureau of Investigation (CBI) under charges of Criminal Conspiracy (Section 120B of the Indian Penal Code, 1860) and Cheating (Section 420 of the Indian Penal Code, 1860)

The Central Bureau of Investigation found Suresh Kalmadi liable under the Indian Penal Code, 1860, claiming that he was the principal person behind this scam, along with ten others namely Sheila Dikshit, many bureaucrats like Lalit Bhanot Darbari, T.S. Darbari, Sanjay Mahindroo, BS Lalli, M. Jayachandran, businessmen like R.S.P. Sinha, S.M. Talwar, NK Jain, Jitendra Garg, along with two firms - Swiss Timings and AKR Constructions (based in the city of Hyderabad).

The Commonwealth Games 2010 would be etched in the minds of many sports loving citizen for the glory¹⁸ it brought to the Indian sporting industry, but it will also be remembered for its wrongdoings and mismanagement¹⁹. It was in the news from the starting, headlining the event in the category of controversies which still remains unresolved.

Conclusion:

India and its sporting culture has been one of the talking points over a long period of time, but such positive talks have always come along with the negativity it carries. The lack of a proper legal structure in the sporting industry has become the immediate requirement otherwise, what would it become in the coming days will be unthinkable for an ordinary person. Sports in India is required to be taught from the basic level, like the initiation of the Khelo India Youth Games, and such other programs would act as boost to the sports industry of our country.

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¹⁸ Indian Wrestler Geeta Phogat became the first Indian female to win a gold medal in the Commonwealth Games.

¹⁹ Suresh Kalmadi was in prison for a period of 10 months and in the year 2019 he was asked to pay a fee of \$5,00,000 as security.