

AN APPRAISAL OF LAW RELATING TO SPORTS IN INDIA: A CRITIQUE

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ABSTRACT

The history of sports in India dates back to the ancient times in the time of Indus Valley Civilization and Vedas. There were some well defined the values mantras in the Athrava Veda saying "Duty is my right hand and the Fruit of victory in my left". Sports has a v.ery prominent role in modern society. It plays very important role to recreate and develop the individual, group and a nation. Sport is a physical activity carried out under an agreed set of rules with a recreational purpose, for competition or self enjoyment or a combination of these.ⁱ The word sports derived from old French word "desporter", which literally means "to carry away", as in carry away from work. The French word "desporter" was formed from the Latin word "desportare", "des" means "away" and "portare" means "to carry", thus the word sport was used to denote pleasant time as well as it was use to mean game involving physical exercise.ⁱⁱ The British Sports Council provides wider definition of sports which includes physical skills, physical effort, accessibility, strategy and tactics, essential purpose, physical challenge, risk, uniqueness, political, moral or other ethical considerations.ⁱⁱⁱ According to Sports Charter of the Council of Europe, sport means all forms of physical activity through causal or organised participation aim at expressing or improving physical fitness and mental well being forming social relationship or obtaining results in competition at all levels.^{iv} After Independence, we adopted written Constitution in 1950 and sports has been classified in State List, Schedule VII in Entry 33.

KEYWORDS: Sports Law, Council, Schedule and Constitution.

INTRODUCTION:

Besides of other laws in India, Kerala Sports Act, widely defines the term sports which includes such activity organized as outdoor games, athletics, games conducted in open place or country sports, indoor games and acqatic sports and popular games such as equestrian, show jumping, cycling, motor racing, mountaineering, boat racing, rifle shooting, kalaripayattu, fencing, yoga and such other outdoor and indoor sports and games, chess, gymnastics, wrestling, weightlifting, cycle polo and other Olympics disciplines and include other physical activities which the state government may, by notification in the gazette specify as sports or games on the recommendations of the state sports council.^v

HISTORICAL EVOLUTION OF SPORTS:

In terms of an ideal these words hold the same sentiments as the traditional Olympic oath, “For the honour of my country and glory of the sports.”^{vi} The golden history of sports in India is also evident in the immortal Indian epics like Ramayana and Mahabharata etc. whereas during the period of Ramayana, hunting, archery, horse riding, swimming were the royal games. Mahabharata made a mark in the sports like gymnastics, wrestling and chess (Shatranj).^{vii} There is also fascinating link between Greece and Indian when stretches back to the 975 B.C. the zest of the chariot racing and wrestling was common to the both countries.^{viii} Thus, the historians believe that many sports like chess, hockey, wrestling, archery were originated in the India. Today, sports in India have achieved a zenith in terms of popularity and as a carrier option.

The history of sports started in the world from the origin of the Olympics Games. The Olympics Games were supposed to start in the Peloponnese, in Greece, some 3000 years ago. Nobody no exactly when they began but the first written mention of the competitions is dated to 776 BC years before the birth of the Christ. The first successful modern Olympics Games were held in London in 1908, since then games have been held in cities throughout the world.^{ix} On the other hand, first Commonwealth Games held in 1930 in Hamilton, Ontario, Canada, fifty four common wealth countries were participated in these games. Firstly, these games were called the British Empire Games afterwards games known as British Empire Commonwealth Games and from 1978 onwards they have been simply known as Commonwealth Games.^x As per Asian Games, it is commonly known as “The Asiad” is a multi sport event of only the Asian Continent. It was firstly held in New Delhi in India in 1951. Since then it is regularly been held in the various cities of Asian countries once every four years.^{xi}

SPORTS AND THE CONSTITUTION OF INDIA, 1950:

As per the Indian framework, sports as a field or genre have not been clearly defined. The term sports has been classified in List II (State List) of Schedule VII, in Entry 33 under the Constitution of India, which reads, theatres and dramatic performances, cinemas subject to the provisions of Entry 60 of List I, sports, entertainments and amusement, under the field of

entertainment.^{xii} Thus, it is recognized by the Constitution of India that management, development and encouragement of sports is currently on the State List, along with, the Constitution of India, empowered the State Governments to take decisions and make laws relating to sports in India.^{xiii}

INTERNATIONAL LAW AND SPORTS:

International Sports Law aspires to be an autonomous transactional legal order created by the private bodies that govern sports law at the world level. The International Sports Law is the body of internally applicable law and procedure that has been developed by International Olympic Committee (IOC), International Sports Federations (ISF), Court of Arbitration of Sports (CAS) and World Anti Doping Agency (WADA) through the operations of Tribunals to which they allow the disputes affecting relating sports to be submitted.^{xiv} These are the International Conventions and Bodies which make the law relating to sports in International level:

a) International Conventions on Human Rights and Anti-Discrimination, relating to Sports

Convention on Elimination of All Forms of Discrimination Against Women states that women shall have the same opportunity to participate in sports and physical education^{xv} as well as this convention states that woman shall have right to participate in recreational activities, sports and all aspects of cultural life.^{xvi} On the other hand, European Sports for all Charter prohibit discrimination in sports on grounds of sex, race, color, language and religion.^{xvii} Along with International Olympic Committee Charter^{xviii} and United Nations Educational, Scientific and Cultural Organization (International Charter of Physical Education and Sports)^{xix} prohibit discrimination in sports on the basis of human rights. The Convention on Right of Persons with Disability, encouragement to the disable persons and children to participate in sporting activity.^{xx}

b) International Olympic Committee (IOC)

The International Olympic Committee is domiciled in Lausanne in Switzerland. IOC make rules and regulations for Olympic, Commonwealth Games and all sports federations are working

under the IOC. IOC is the supreme authority of the Olympic movement and its decisions including interpretations are final relating to the disputes in Olympic and Commonwealth Games.^{xxi}

c) World Anti Doping Agency (WADA)

The World Anti Doping Agency (WADA) was founded in Lausanne in Switzerland by International Olympic Committee (IOC). The objective of WADA is to promote, coordinate and supervise on International basis the fight against all forms of doping in sports.^{xxii} WADA has coordinated the development and drafting the world anti-doping code in articles, which harmonizes regulations relating to doping in all sports as well as existence of WADA are validated by an International Convention adopted by member states of United Nation Educational Scientific and Cultural Organization (UNESCO) in 2005.^{xxiii}

SPORTS AND INDIAN LAWS:

National Sports Law is a development of body of law and legal principles that is applied directly to sport by Parliament and the judiciary or we can say national sports law is the Act of Parliament and decision of the courts that affect the governance, administration, consumption and the participation in the court of India.^{xxiv} These are the national law, which deals with the sports in India:

a) Laws Relating to Gambling and Betting Laws

Before coming into force of the Constitution of India, 1950, betting and gambling were governed by the central legislation namely the Public Gambling Act, 1867^{xxv} which governed all aspects relating to gambling and betting in India. Various States of India have made their own laws on gambling and betting, after enactment of Constitution.^{xxvi} The Foreign Exchange Management Act, 2000, prohibited the overseas online betting in India^{xxvii} as well as this Act barred on the resident of India will not be able to maintain an account in foreign currency without the permission of the Reserve Bank of India.^{xxviii}

b) Laws Relating to Income Tax

Sports persons who are resident in India as well as those who are non residents in India are liable to pay tax under the Income Tax Act, 1961. Tax deducting on salary of the sports person on the basis of the rate of the financial year^{xxxix} on the flip side tax deducting on non-resident sportsmen or sports associations income at the rate of ten percent.^{xxx} Indian sports person did not pay double tax under this Act if they pay tax in another country.^{xxxii} Horse racing income is also come under tax deductible income in this Act.^{xxxii}

c) Law Relating to Doping

World Anti-Doping Agency (WADA) is a recognized body which maintains a check on doping in sports at international level. India became also part of the WADA after signing the “Copenhagen Declaration”,^{xxxiii} afterward Government of India has established the National Anti-Doping Agency (NADA) and National Dope Test Laboratory (NDTL).^{xxxiv} There are ten rules described by NADA, when any sports person prohibited any rule out of these ten rules then they will charged as a doping^{xxxv} as well as its duty of NADA to provide prohibited substance list to each national federation^{xxxvi} and NADA can take testing, any time or place with or without advance notice to sports person through their blood or urine samples.^{xxxvii} NADA can select only those sports person for test which got one of the top three, four placements in the competition.^{xxxviii} Afterward NADA send these samples to WADA- Accredited Laboratory (WAL), when (WAL) report mentioned that these samples were negative then NADA put sanction on the sports person.^{xxxix} Every sports person has right to appeal that are banned under violations of anti-doping rules.^{xl} After 20 days of the appeal decision, NADA must publicly declare the name of the sports person which violates the anti doping rules.^{xli}

d) Narcotics Drugs and Psychotropic Substances Act, 1985 (For Criminal Proceeding and Imprisonment in Doping)

NADA declare that marijuana, opium, cocaine, pophusks, alcohol, caffeine etc. are totally banned by the sports person thus sports person use or supply that drugs, they are criminal penalize under the NDPS Act, 1985.^{xlii}

e) The Sport Broadcasting Signals (Mandatory Sharing with Prasar Bharti) Act, 2007

The purpose of the Sports Broadcasting Act is that any event of national importance should be available to the maximum number of viewers in the country. When sport event (national or international) is of national importance then private broadcast notify the Prasar Bharti at least 45 days prior of telecast and broadcast of this sport event and offer to share the live signals of that event with the Prasar Bharti.^{xliii} If the private broadcast (television or radio broadcasting service provider) did not provide information relating event to the Prasar Bharti then central government may impose penalty by way of suspension or revocation of license of these broadcaster.^{xliv}

INDIAN STATE LAWS RELATING TO SPORTS:

As per Indian Constitution, it is recognized that the management, development and encouragement of sports is in the State List and only the state governments are empowered to make laws and take decisions on it.^{xlv} To provide for the registration, recognition and regulation of sports various States have formulated State Laws like the Kerala Sports Act, 2000^{xlvi}, the Rajasthan Sports Act, 2005, Uttar Pradesh Sports Act, 2005^{xlvii}, Himachal Pradesh Sports Act, 2005^{xlviii} etc. For tackling the problem of gambling, betting etc, several States also enacted their own laws^{xlix} like Uttar Pradesh Gambling Act, 1961^l, Delhi Public Gambling Act, 1955^{li}, the Kerala Gambling Act, 1960^{lii}, the J&K Public Gambling Act, 1977^{liii}, the Meghalaya Prevention of Gambling Act, 1970^{liv} for tackling the problem of gambling and betting etc.

DISPUTE SOLVING AGENCIES AND SPORTS:

The dispute is solved in sports by Arbitration or by the Sports Federations and with the help of On-field, Umpires and Referees. There are different ways by which the disputes solved in sports:

a) Court of Arbitration in Sports (CAS)

The CAS was set up to resolve disputes concerning by means of arbitration. It made possible to avoid turning to State Courts, which were often slow and expensive and not always well informed regarding the specific characteristics of sport. CAS handles cases that oppose an athlete with his or her federation (notably question for doping)^{lv} or those between sports organizations' and commercial enterprises.^{lvi} The decisions of CAS are binding arbitration agreements, which

are legally enforceable by each of parties to the dispute.^{lvii} The decisions and opinions of the CAS are becoming increasingly important as a source of sports law because there are number of application which hears by CAS use as *stare decisis* in national and European Courts.^{lviii}

b) International Sports Federations (ISF)

International Sports Federations (ISF) operate their own independent dispute resolution chambers and arbitral panel to hear disputes arising out of their own sports, for instance dispute between Hockey India (HI) and Indian Hockey Federation (IHF) solve by the International Hockey Federation (FIH) and declare that HI as the National Federation of Hockey in Sports.^{lix} Thus, it is seen that rules of the various International Sports Federations are the primary source of law for various clubs and for national federations of sports.^{lx}

c) National Sports Federations (NSF)

All regional federations and the clubs of a particular country are under the jurisdiction of the National Sports Federation and National Sports Federations are obliged to follow rule and regulations formulated by International Sports Federations for solving dispute related to any matter of sports.^{lxi}

d) On-Field Dispute Resolution

The primary dispute resolution body for sports dispute, if it is take place during the playing of a sport, it is designated official under the rules of sport. There can be Umpire in Cricket, Referee in Hockey and Football. It is the official present on the field that is responsible for enforcing the rule of particular games.^{lxii}

JUDICIAL ATTITUDE:

Indian laws patently and latently deals with sports so the Indian judiciary solves the disputes relating to sports with provisions of these laws. When any case related to spot fixing came before the Court then Court can decide that case under Section 419, 420, 120B of Indian Penal Code. In *State v. Ashwani Aggarwal & Others*,^{lxiii} the Patiala House Court held that even if for the sake of arguments, it is accepted that they did accept Rs. 60,00,000/- for spot-fixing but itself cannot lead to any inference that he did not play to best of his ability. Thus, this case did not suitable

under the provisions of cheating defined under Indian Penal Code. The Court also held that the offence of spot fixing and match fixing which is discussed above did not fit in any penal statute, thus the court discharged all accused in spot fixing.

On the other hand, age fraud is common in sports but for prevention from fraud of age, Delhi High Court directed to different sports associations in case of *Lokniti Foundation v. Union of India*,^{lxiv} the Court directed to DDCA to set up examination panel of three medical experts, a dentist, a radiologist and an orthopedic or a general physician, which may help in reducing chances of manipulation relating to age. After that direction of the Court the DDCA made proper mechanism to choose a player and disqualified eight players which were earlier selected because that players manipulate their ages on behalf of two birth certificates.

We all know, Constitution of India guarantees to its citizens the right to equality and not to be discriminated against the basis of caste, creed and sex. But in the case of *S.P.S Rathore v. Central Bureau of Investigation*,^{lxv} the Court held that Rathore was guilty under Section 354 of IPC and sentenced him to six months but the CBI Court on 25th May 2010 had enhanced his sentence from six months to two years. In *Mohan Lal & Anothers v. State of Punjab*,^{lxvi} a school girl was molested and raped by their teacher and others, who attended the sports, meet in Fatehgarh Sahib. In appeal, the appellat court held the same conviction to 10 years, which gave by the lower court in this case.

CONCLUSION:

Sports has an undeniable role in societal development because person can learn co-operation, honesty, self-discipline, self-reliance, fairness, respect for rules etc. During the Vedic Period, sports was the part of Bramcharya School of Aryans, where every child learned niti, shastra, yoga and sanheet etc. With the passage of time, like in Mughal era, Colonial era role, nature and form of sports has been changed in India.

After Independence, we adopted written Constitution in 1950 and sports has been classified in State List, Schedule VII in Entry 33. We also adopted international standards in sports through International Conventions, rules and regulations and our country have also enacted several state

laws relating to sports. But gender discrimination, sexual harassment, use of drug, degree of violence, commercialization, betting, match-fixing etc. are the main threats and there is urgent need to tackle these types of problems in India.

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