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R. K. Jain
Sports Law Knowledge
Lecture & Seminar

The New Development in International Sports Law & CAS Jurisprudence with Perspective of Sports Law in India

Saturday, 26-27 February, 2011

**Plenary Hall, Indian Law Institute, (Opposite Supreme Court of India)
Bhagwan Das Road, New Delhi-110001**

UILS
Universal
Institute of Legal Studies
International Sports Law Centre

<http://www.unilawinstitute.com>

All India Council of Physical Education is an Apex body of Physical Education constituted as per the Rajya Sabha (Upper House) of Indian Parliament to look after the Physical Education programmes in the country. It has been constituted by the Academically highly qualified professionals of the Physical Education in wake of the recommendation of the Parliamentary Advisory Committee of the Rajya Sabha to promote and encourage physical education, moral education, health education, cultural education and the interdisciplinary subjects for research and studies to the boys, girls and teachers of physical education for the development of good health and better citizenship.

The Non-professional persons with their political clouts are managing the highest institution of the Physical Education. Whereas they do not have any academic professional qualification as per the University Grants Commission. The AICPE will also be taking care of the Academic, Economic, Professional and Pay revision of the Academician and Professionals of the Physical Education. Wherein it is committed to promote and encourage the other allied subjects of Physical Education for the career prospects of the duly qualified professionals of Physical Education viz a viz;



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| 1. Adapted Physical Education | 23. Physical Education at the Primary Level |
| 2. Aerobics | 24. Physical Education at the Secondary Level |
| 3. Aging | 25. Professional Preparation and Certification in HPERSD |
| 4. Aquatics | 26. Professional Standards and Ethics |
| 5. Coaching | 27. Research |
| 6. Comparative Physical Education and Sport | 28. Sport and Recreation Facilities |
| 7. Computer Applications to HPERSD | 29. Sport Biomechanics |
| 8. Dance and Dance Education | 30. Sport For All |
| 9. Fitness and Wellness | 31. Sport Counseling Psychology |
| 10. Girls and Women in Sport | 32. Sport Governance, Organizations and Law |
| 11. Health Education | 33. Sport Management and Administration |
| 12. History of Physical Education and Sport | 34. Sport Marketing and Economics |
| 13. International Curriculum Standards and Development | 35. Sport Medicine |
| 14. Legal Liability in HPERSD | 36. Sport Pedagogy |
| 15. Leisure and Recreation | 37. Sport Physiology |
| 16. Martial Arts Education | 38. Sport Psychology |
| 17. Mass Media and Sport | 39. Sport Sociology |
| 18. Measurement and Evaluation of Physical Education | 40. Sports Laws |
| 19. Nutrition and Physical Activity | 41. Yoga and |
| 20. Olympic Education | 42. Any other scientific Research and Studies in Physical Education, Health Education and Sports Sciences for the development of good health and better citizenship. |
| 21. Philosophy of Physical Education | |
| 22. Physical Education at the College Level | |

अजय माकन
AJAY MAKEN



22/05/2024
युवा कार्यक्रम एवं खेल
राज्य मंत्री (स्वतंत्र प्रभार)
भारत सरकार
नई दिल्ली-110 115
MINISTER OF STATE (INDEPENDENT CHARGE)
FOR YOUTH AFFAIRS & SPORTS
GOVERNMENT OF INDIA
NEW DELHI-110 115

MESSAGE

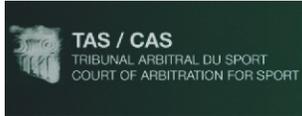
I am happy to know that **All India Council of Physical Education** along with Sports Law India and R.K. Jain Lawyer's Welfare Society is organising a Sports Law Knowledge Lecture and Seminar on "The New Developments in International Sports Law & CAS Jurisprudence with Perspective of Sports Law in India" at New Delhi and is also bringing out a souvenir to mark the occasion.

I am also happy to know that this Sports Law Knowledge Lecture and Seminar will provide, educational opportunities regarding specific area of Sports Law and create a forum for Lawyers, representing Athletes, CAS Arbitrators, Staff and officials of Legal department of Ministries of Law and Youth Affairs & Sports.

My best wishes for the success of the event.


(AJAY MAKEN)

To,
Prof. Dr. Amaresh Kumar,
Secretary General, All India Council of Physical Education.
Organising Secretary, R. K.Jain Sports Law Knowledge Lecture and Seminar



Dear Prof. Dr Kumar,

I note from your email of 4 February 2011 that the Seminar will be important due to the state of Indian sports due to the Governmental interference.

Thank you for your invitation to attend the Sports Law Seminar in your country on 26 February 2011.

Be assured ICAS continues to consider decentralised offices of CAS in Asia.

While other commitments prevent me from attending, I wish you a successful seminar.

Regards

John Coates
President
International Council of Arbitration for Sports
CAS Head office
Château de Béthusy
Avenue de Beaumont 2
CH-1012 Lausanne, Switzerland



Prof. (Dr.) Ranbir Singh
Vice-Chancellor

February 10, 2011

MESSAGE

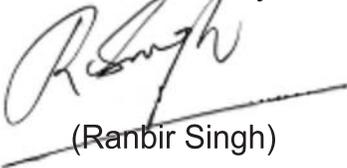
I am happy to note that R. K. Jain Lawyers' Welfare Society has decided to organise a R. K. Jain Sports Knowledge Lecture and Seminar on the topic, "The New Developments in International Sports Law & CAS Jurisprudence With Perspective of Sports Law in India"

With so many issues of diabolic nature revolving around the Sporting events and associations, I am sure this Seminar will pave the way to address all such issues. This pivotal platform should provide educational opportunities regarding specific area of Sports Law and enable all those connected with the Sports fraternity to discuss their problems which are of common concern and suggest suitable solutions.

I wish the seminar all the success.

With best wishes

Yours sincerely,



(Ranbir Singh)



INTERNATIONAL
ASSOCIATION *of*
SPORTS LAW



Dear Prof. Amaresh Kumar,

Thank you very much for your reply. I was very happy to see in your e-mail that you are planning to organise an International Seminar on August 28-29 2011 on the birth anniversary of the hockey legend Maj. Dhyan Chand.

Please find attached my message for publication in the Souvenir of the Seminar as you asked.

It is now an accepted fact that sports law is one of the most dynamic fields of law, especially when it comes to the everyday legal praxis, as well as regarding its academic aspect.

As a relatively new academic discipline, based on developments in the field of professional sport and the advancing commercialization of the field, it would appear that sports law is constantly expanding its scope and penetrating further into the extensive field of what we call "financial law".

However, in the field of theory there's still an open subject for discussion: the relationship between the autonomous system of Lex Sportiva rules and traditional legal orders and the resolution of problems which arise where several rules of law of different legal orders may apply to the same facts of a case. The resolution of those problems is proved to be of vital importance for the further development of sports law as a branch of knowledge and scientific discipline.

These issues form the essence of sports law and provide us the opportunity to discuss upon the existence and extent of application of the international sports law, as well as upon issues of conflicts that rise from the claim of application of the traditional legal orders in the field of sport.

Kind Regards,

The President of IASL
Dimitrios P. Panagiotopoulos
Associate Professor of the University of Athens,
Advocate, Attorney-at-law



T.M.C. ASSER INSTITUUT



Dear Prof. Dr. Amaresh,

I herewith, would like to express my sincerest congratulations to you towards spreading the knowledge of Sports Law and CAS Jurisprudence in India by organising R.K. Jain Sports Law Knowledge Lecture and Seminar, you have taken the important Initiative to organise the Sports Law Knowledge Lecture and Seminar on **“New Developments in International Sports Law and CAS Jurisprudence from The Perspective of Sports Law in India”**, to take place in New Delhi, 26 February 2011. I wish you and your fellow members of the Organising Committee and all other participants a very successful conference. The results of which, I am sure will essentially contribute to the further development of sports law in India, the Asian region and the world at large.

I thank you for this important information which will be published at www.sportslaw.nl

I very much would like to publish the text of papers which will be presented in the seminar.

Best regards,

Rob

The Hague, 14 February 2011

Prof. Dr Robert C.R. Siekmann,
Director, ASSER International Sports Law Centre, The Hague,
& Professor of International and European Sports Law,
School of Law, Erasmus University Rotterdam, The Netherlands.”

Dear Prof. Amaresh,
Dear Colleague,

I am an Italian attorney-at-law working in Lausanne/Switzerland in one of the world leading law firm specialised in sports law. In particular we advise athlete, clubs, coaches, federations (national and international) both in judicial and in contractual matters. You can find my personal profile on www.libra-law.ch and in LinkedIn at: <http://www.linkedin.com/in/lucatettamanti>

In order to avoid any loss of your time, I shall go directly to the issue of my e-mail. While I was making some searches on the web I noticed your interesting event organised for the next 26 February 2011 in New Dehli, i.e. :

“The New Developments In International Sports Law & CAS Jurisprudence With Perspective of Sports Law in India”

Unfortunately I shall not be able to attend personally.

However I would be really interested to know whether in the Statutes and/or Regulations of Indian Federations does exist nowadays a jurisdiction clause in favour of CAS or if the Governing Bodies are eager to insert such type of clause to instruct CAS as Body of last instance for international but also for internal matters.

In this sense, and for your convenience, I can also let you know that I had already the opportunity to work on some internal disputes of National Federations which were decided by the Court of Arbitration for Sport during the last year, due to jurisdiction clauses inserted in their Statutes.

Professionally speaking, this could be an interesting starting point for an eventual future cooperation.

Should you have any further doubts or should you need any further information in this regard, please feel free to contact me.

I thank you in advance for your attention and, looking forward to hearing from you, I send you my best regards.

Luca Tettamanti

Avvocato - Attorney-at-law
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IOC Threat to Indian Sports

13 JANUARY 2011 - News EXECUTIVE BOARD CONCLUDES FIRST MEETING OF THE NEW YEAR



The Executive Board (EB) of the International Olympic Committee (IOC) wrapped up its first meeting of 2011 in Lausanne today, coinciding with the one-year-to-go mark until the first Winter Youth Olympic Games in Innsbruck, Austria, from 13 to 22 January 2012.

As celebrations commemorating the milestone were taking place in Innsbruck, EB members at the IOC headquarters were busy making decisions on a number of issues ranging from bidding timelines for the 2020 Olympic Games to matters affecting National Olympic Committees (NOCs).

Athletes and Entourages

The EB kicked off its two-day meeting by convening with the IOC Athletes' Commission. Topics on the agenda included the promising development of the IOC Athlete Career Programme – which has so far involved 6,800 athletes from 27 NOCs; the fight against doping; the success of the first Youth Olympic Games last August in Singapore; and the 5th International Athletes' Forum, which will take place in Colorado Springs (USA) in October. The EB and the athletes' representatives also exchanged their views on the Entourage Commission, which was recently established based on the recommendation of the 2009 Olympic Congress and met for the first time last month. The Commission is tasked with addressing matters related to managing all aspects of an athlete's career, which includes those related to coaches, managers, parents and sponsors.

Bidding timelines agreed for 2020 Games

The EB agreed on a timeline for the bidding process for the 2020 Olympic Games that the IOC will distribute to all

National Olympic Committees (NOC) later this month. The NOCs have until 1 September to submit the name of an applicant city, and these cities will then be required to submit their application files and guarantee letters to the IOC by 15 February 2012. The election of the Host City of the 2020 Olympic Games will be made on 7 September 2013 during the 125th IOC Session in Buenos Aires, Argentina.

Ethics Commission welcomes new member

Spanish Ambassador and Secretary General of the Union Latine Jose Luis Dicenta Ballester was appointed for a four-year term as a member of the Ethics Commission, replacing Peruvian Ambassador Javier Pérez de Cuéllar.

National Olympic Committees

The EB also discussed several NOC-related issues, including those affecting Netherlands Antilles, Ghana, India and Panama.

Netherlands Antilles: The IOC Executive Board carefully examined the situation of the NOC of the Netherlands Antilles and the athletes of the five islands in the light of the new institutional and constitutional structure that has been effective as from 10 October 2010.

In view of the Olympic Charter and having noted that, as a consequence of the formal dissolution of the Netherlands Antilles on 10 October 2010, this territory no longer legally exists as such, the IOC Executive Board took the following decisions:

1. Propose that the forthcoming IOC Session in Durban (July 2011) withdraw IOC recognition from the Netherlands Antilles NOC (with a number of accompanying measures for the athletes linked to the 2012 Olympic Games in London).

2. Ask for close cooperation from the IFs concerned aimed at (i) safeguarding the interests of the athletes and facilitating a smooth transition in the framework of their competences and competitions and (ii) ensuring the application of the measures for the athletes that will be taken by the IOC vis-à-vis the 2012 Olympic Games.

3. Confirm that, pursuant to the rules of the Olympic Charter currently in force, no new NOC can be recognised for any of the five islands which made up the "Netherlands Antilles" until 10 October 2010.

These decisions were taken in the legal scope of the Olympic Charter, but also with a view to preserving and protecting wherever possible the interests of the athletes of these islands.

Ghana: The IOC has deployed every possible effort in order to help resolve the situation that the NOC of Ghana has been facing for 18 months and find a long-term solution with all parties concerned.

However, the obvious lack of cooperation of the government authorities in Ghana and lack of respect of the Ghana public authorities' written commitment to take all necessary actions to revise the sports legislation in Ghana before the end of 2010 in a sense that would allow the NOC and the Olympic Movement in Ghana to operate in full autonomy and in accordance with the Olympic Charter have forced the IOC Executive Board to decide to suspend the NOC of Ghana in order to protect the Olympic Movement in Ghana (pursuant to the applicable rules of the Olympic Charter, in particular Rule 28.9), with all consequences provided for in the Olympic Charter.

India: As discussed and agreed during a meeting between the IOC, the NOC of India and representatives of the government of India which took place on 18 June 2010 in Lausanne, it was recalled that:

(i) On the one hand, the NOC will convene a General Assembly to consider and adopt the new NOC Draft

Constitution that was revised together with the IOC in line with the Olympic Charter and with a view to improving the governance of the NOC; and

(ii) On the other hand, the government of India must fully respect the autonomy of the NOC and the Olympic Movement in India in accordance with the Olympic Charter.

After careful analysis of the situation, the IOC Executive Board noted that a number of points have still to be resolved. Consequently, if the situation does not evolve positively, the IOC Executive Board will consider taking appropriate measures and actions which might seriously affect the representation and participation of India at the Olympic Games and forthcoming international sports events.

Panama: The latest developments in the situation of the NOC were reported to the IOC Executive Board. The IOC Executive Board took note with great satisfaction of the recent decision rendered by the justice authorities in Panama to legally reinstate the NOC and the legitimate office bearers recognised by the IOC. The IOC Executive Board will continue to closely monitor this case until the implementation of this decision.

Important dates *in the* CAS history

1981:

- The creation of a specialised sports jurisdiction envisaged for the first time by HE Juan Antonio Samaranch, former IOC President ;

1983 :

- Statutes of the Court of Arbitration for Sport (CAS) officially ratified by the IOC on the occasion of its 86th session in New Delhi in March 1983 ;

1984 :

- 30 June 1984, implementation of the CAS Statutes ;
- Beginning of the CAS activities under the presidency of HE the Judge Kéba Mbaye and of the Secretary General, Mr Gilbert Schwaar ;

1986 :

- First case submitted to CAS ;

1987 :

- First award rendered by CAS ;

1991 :

- Publication by CAS of a Guide to Arbitration including several standard arbitration clauses ;
- Adoption of the first arbitration clause referring to CAS by the International Equestrian Federation (FEI) ;

1993 :

- 15 March 1993, Publication of the judgement of the Swiss Federal Tribunal (TF) recognising CAS as a true arbitral Tribunal but expressing doubts regarding its independence towards the IOC ;
- September 1993, International Conference « Law and Sport » organised by CAS in Lausanne with the aim of reforming the CAS structure in order to guarantee its independence ;

1994 :

- Appointment of Mr Jean-Philippe Rochat as CAS Secretary General in replacement of Mr Schwaar ;
- 22 June 1994, creation of the International Council of Arbitration for Sport (ICAS) enshrined in the « Paris Agreement » : the CAS has a new structure with the ICAS as supreme body ;
- 22 November 1994, implementation of the Code of Sports-related Arbitration confirming the CAS reform, in particular the creation of ICAS and of two arbitration divisions, the ordinary arbitration division and the appeals arbitration division ;

1996 :

- Creation of two decentralised Court Offices by ICAS, one in Sydney (Australia) and one in Denver (USA). These offices are linked to CAS Lausanne and constitute administrative branches ;

- Creation by ICAS of the first CAS ad hoc Division which has the mission to settle as a last instance disputes arising during the Olympic Games in Atlanta within a time limit of 24 hours (since 1996, creation of ad hoc Divisions for each edition of the OG) ;

1998 :

- Creation of an ad hoc Division for the Commonwealth Games in Kuala Lumpur ;
- Creation of an ad hoc Division for the Olympic Winter Games in Nagano ;

1999 :

- Appointment by ICAS of Mr Matthieu Reeb as CAS Secretary General in replacement of Mr Jean-Philippe Rochat ;
- The CAS decentralised Office of Denver moved to New York ;
- Amendment to the Code of Sports-related Arbitration in order to create a mediation procedure;

2000 :

- Creation of an ad hoc Division for the European Football Championship in Belgium and in the Netherlands ;
- Creation of an ad hoc Division for the Olympic Games in Sydney ;

2002 :

- Creation of an ad hoc Division for the Olympic Winter Games in Salt Lake City ;
- Creation of an ad hoc Division for the Commonwealth Games in Manchester;
- Recognition by FIFA of the CAS jurisdiction ;

2003 :

- Acknowledgement of the CAS independence by the Swiss Federal Tribunal further to an appeal filed by two Russian cross country skiers, Larissa Lazutina and Olga Danilova, against a CAS award disqualifying them from the Winter Olympic Games in Salt Lake City. After having carefully analysed the organisation and the structure of ICAS and CAS, the TF admitted the independence of CAS towards the IOC and any other party using its services (Judgement of 27 May 2003, first civil Court, TF, Lazutina et Danilova v. International Olympic Committee (IOC), International Skiing Federation (FIS) and Court of Arbitration for Sport (CAS)) ;
- Designation of CAS as last instance Tribunal in relation to international disputes related to doping by the World Anti-Doping Code published by the World Anti-Doping Agency (WADA) ;

2004 :

- The new Code of Sports-related Arbitration entered into force ;

- Creation of an ad hoc Division for the European Football Championship in Portugal ;
- Creation of an ad hoc Division for the Olympic Games in Athens ;
- Publication of the Digest of CAS awards 2001-2003;

2005 :

- Inauguration of the new CAS headquarters at the Château de Béthusy in Lausanne;

2006 :

- Creation of an ad hoc Division for the Olympic Winter Games in Turin ;
- Creation of an ad hoc Division for the Commonwealth Games in Melbourne;
- Creation of an ad hoc Division for the FIFA World Cup in Germany;

2007 :

- Death of the Judge Kéba Mbaye ;
- Nomination of Mr. Mino Auletta as ICAS/CAS President ad interim.

Origins

At the beginning of the 1980s, the regular increase in the number of international sports-related disputes and the absence of any independent authority specialising in sports-related problems and authorised to pronounce binding decisions led the top sports organisations to reflect on the question of sports dispute resolution.

In 1981, soon after his election as IOC President, H.E. Juan Antonio Samaranch had the idea of creating a sports-specific jurisdiction. The following year at the IOC Session held in Rome, IOC member H.E. Judge Kéba Mbaye, who was then a judge at the International Court of Justice in The Hague, chaired a working group tasked with preparing the statutes of what would quickly become the "Court of Arbitration for Sport".

The idea of creating an arbitral jurisdiction devoted to resolving disputes directly or indirectly related to sport had thus firmly been launched. Another reason for setting up such an arbitral institution was the need to create a specialised authority capable of settling international disputes and offering a flexible, quick and inexpensive procedure.

The initial outlines for the concept contained provision for the arbitration procedure to include an attempt to reach a settlement beforehand. It was also intended that the IOC should bear all the operating costs of the court. Right from the outset, it was established that the jurisdiction of the CAS should in no way be imposed on athletes or federations, but remain freely available to the parties.

In 1983, the IOC officially ratified the statutes of the CAS, which came into force on 30 June 1984. The Court of Arbitration for Sport became operational as of that time, under the leadership of President Mbaye and the Secretary General, Mr Gilbert Schwaar.

20 Questions about the CAS

P.K. Jain

What is the Court of Arbitration for Sport ?

The Court of Arbitration for Sport (CAS) is an institution independent of any sports organization which provides for services in order to facilitate the settlement of sports-related disputes through arbitration or mediation by means of procedural rules adapted to the specific needs of the sports world.

The CAS was created in 1984 and is placed under the administrative and financial authority of the International Council of Arbitration for Sport (ICAS).

The CAS has nearly 300 arbitrators from 87 countries, chosen for their specialist knowledge of arbitration and sports law. Around 200 cases are registered by the CAS every year.

What is the function of the CAS ?

The CAS has the task of resolving legal disputes in the field of sport through arbitration. It does this pronouncing arbitral awards that have the same enforceability as judgements of ordinary courts.

It can also help parties solve their disputes on an amicable basis through mediation, when this procedure is allowed. In addition, the CAS gives advisory opinions concerning legal questions related to sport.

Lastly, the CAS sets up non-permanent tribunals, which it does for the Olympic Games, the Commonwealth Games or other similar major events. To take into account the circumstances of such events, special procedural rules are established on each occasion.

Where is the CAS based ?

The CAS head office is in Lausanne, Switzerland.

Two decentralized offices are also available to the parties: one in Sydney, Australia, the other in New York, United States (see General Information/Addresses & Contact).

What kinds of dispute can be submitted to the CAS ?

Any disputes directly or indirectly linked to sport may be submitted to the CAS. These may be disputes of a commercial nature (e.g. a sponsorship contract), or of a disciplinary nature following a decision by a sports organisation (e.g. a doping case).

Who can refer a case to the CAS?

-Any individual or legal entity with capacity to act may have recourse to the services of the CAS. These include athletes, clubs, sports federations, organisers of sports events, sponsors or television companies.

Under what conditions will the CAS intervene ?

For a dispute to be submitted to arbitration by the CAS, the parties must agree to this in writing. Such agreement may be on a one-off basis or appear in a contract or the statutes or regulations of a sports organization. Parties may agree in advance to submit any future dispute to arbitration by the CAS, or they can agree to have recourse to the CAS after a dispute has arisen.

What are the working languages of the CAS ?

The procedures are conducted in French or English. Under certain conditions, another language may be used.

What are the CAS procedures ?

-For disputes resulting from contractual relations or torts, the ordinary arbitration procedure or the mediation procedure is applicable.

For disputes resulting from decisions taken by the internal bodies of sports organisations, the appeals arbitration procedure is applicable.

Lastly, there is a consultation procedure which allows certain organisations to request an advisory opinion from the CAS, in the absence of any dispute, on any legal issue concerning the practice or development of sport or any activity relating to sport. The advisory opinion does not constitute an award and is not binding.

How does one set the arbitration in motion ?

The party wishing to submit a dispute to the CAS must send the CAS Court Office a request for arbitration (ordinary procedure) or a statement of appeal (appeals procedure), the contents of which are specified by the Code of Sports-related Arbitration.

In the case of the appeals procedure, a party may lodge an appeal only if it has exhausted all the internal remedies of the sports organisation concerned.-

Can one be represented during the proceedings?

The parties may appear alone. They may also be represented or assisted at CAS hearings by a person of their choice, not necessarily a lawyer.

How are the arbitrators chosen ?

Generally speaking, the arbitration is submitted to a panel of three arbitrators.

Under the ordinary procedure, each party chooses one arbitrator from the CAS list, then the two designated arbitrators agree on who will be the president of the panel. Failing such agreement, the President of the Ordinary Arbitration Division makes this selection instead of the two arbitrators.

Under the appeals procedure, each party chooses an arbitrator, and the president of the panel is selected by the President of the Appeals Arbitration Division.

If the parties agree, or if the CAS deems this appropriate, a sole arbitrator may be appointed, depending on the nature and importance of the case.

The arbitrators must be independent, that is to say have no particular connection with any of the parties, and must not have played any role in the case in question.-

How does CAS arbitration procedure work ?

Once the arbitration request or statement of appeal is filed, the respondent submits a reply to the CAS.

After any additional exchange of statements of case, the parties are summoned to a hearing to be heard, produce evidence and argue their case.

The Final Award Is Communicated To The Parties Some Weeks Later, Unless It Is Pronounced The Same Day (Under The Appeals Procedure).-

What law do the arbitrators apply ?

In the context of ordinary arbitration, the parties are free to agree on the law applicable to the merits of the dispute. Failing such agreement, Swiss law applies.

In the context of the appeals procedure, the arbitrators rule on the basis of the regulations of the body concerned by the appeal and, subsidiarily, the law of the country in which the body is domiciled. The procedure itself is governed by the Code of Sports-related Arbitration.

How much does the arbitration cost ?

The ordinary procedure involves paying the relatively modest costs and fees of the arbitrators, calculated on the basis of a fixed scale of charges, plus a share of the costs of the CAS.

The appeals procedure is free, except for an initial Court Office fee of CHF 500.-

How long does CAS arbitration last?

The ordinary procedure lasts between 6 and 12 months.

For the appeals procedure, an award must be pronounced within four months of filing the statement of appeal.

In urgent cases and upon request, the CAS may, within a very short time, order interim measures or suspend the execution of a decision appealed against.-

Are the arbitration proceedings confidential?

The ordinary arbitration procedure is confidential. The parties, arbitrators and CAS staff are obliged not to disclose any information connected with the dispute.

In principle, awards are not published. The appeals arbitration procedure does not specify particular rules of confidentiality, but the arbitrators and CAS staff have a similar duty of confidentiality during the proceedings. Generally speaking, unless the parties agree otherwise, the award may be published by the CAS.

What is the scope of an award pronounced by the CAS?

An award pronounced by the CAS is final and binding on the parties from the moment it is communicated. It may in particular be enforced in accordance with the New York Convention on the recognition and enforcement of arbitral awards, which more than 125 countries have signed.-

Is it possible to appeal against a CAS award?

Judicial recourse to the Swiss Federal Tribunal is allowed on a very limited number of grounds, such as lack of jurisdiction, violation of elementary procedural rules (e.g. violation of the right to a fair hearing) or incompatibility with public policy.

What is CAS MEDIATION?

Mediation is a non-binding and informal procedure, based on a mediation agreement in which each party undertakes to attempt in good faith to negotiate with the other party, and with the assistance of a CAS mediator, with a view to settling a sports-related dispute.

How does CAS mediation work?

The party wishing to institute mediation proceedings addresses a request in writing to the CAS Court Office. Then, a mediator is appointed by the parties from among the list of CAS mediators or, in the absence of any agreement, by the CAS President after consultation with the parties.

The mediation procedure is conducted in the manner agreed by the parties. Failing such agreement, the mediator determines the manner in which the mediation will be conducted. The mediator promotes the settlement of the issues in dispute in any way that he believes to be appropriate. To achieve this, he will propose solutions. However, the mediator may not impose a solution of the dispute on either party. If successful, the mediation is terminated by the signing of a settlement by the parties.

LEXSPORTIVA

SPORTS LAW INDIA PRESENT AND PERSPECTIVE

Prof. Dr. Amaresh Kumar

SPORTS LAW

Human beings are involved in sports activities since times immemorial. From the earliest days of human civilization till date, sports have developed from a mere source of personal entertainment to a global industry comprising more than 3% of world trade. In the UK, sports provide employment to more than 420,000 people. It is one of the largest revenue generating industries of the world and with the proliferation of the Internet and other forms of media, the sports industry is set to grow even at a faster pace in the future. An industry of billions of dollars with a pervasive global presence is bound to breed its own disputes and this resulted in the growth and development of sports law as a separate discipline in its own right.²

Sports law is no longer an applied law or an amalgam of laws in some jurisdictions, which have taken the lead and enacted separate legislation concerning sports. For instance, in India sport has still to figure in the Concurrent list or Union List - I of the Seventh Schedule of the Constitution. However the sport has been entered at list 33 on state list - II as such only the state legislatures are competent to make laws³. There are already 4 States; Kerala, Rajasthan, Himachal Pradesh and Uttar Pradesh, which have enacted laws on regulating sports activity including registration, regulation and recognition of Sports Associations (Uttar Pradesh has since repealed the Act)⁴.

In the field of sports, the club is the basic unit at the grass root level⁵. At the top of the hierarchy are the

international sports bodies for each sports made up of national bodies of different countries⁶. The national sports bodies again consist of the provincial or state bodies of different countries. The provincial state bodies comprise the different districts or clubs⁷.

In many countries, (such as India), national as well as provincial sports bodies, clubs, associations or societies are usually set up under the law of societies. These are autonomous non-profit making private bodies⁸. Further, many of these are also established as non-profit associations under the company law jurisdiction in the UK and commonwealth countries including India⁹. These organizations cannot distribute their surplus or make payment of dividends to members. Their surplus, if any, has to be solely and wholly applied for furtherance of organizational objectives¹⁰.

In many countries, (such as India), these 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 nation¹¹. They consider the players for participation and selection¹². These bodies also award telecasting and broadcasting rights to the successful bidder for hefty sums and also earn revenues from advertisement in sports events¹³. They also take disciplinary action against the erring players including debarring them from the game. These bodies control even domestic matches or games within the country¹⁴.

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An act of "Sports Tribunal of India" has been drafted under the provision of Rule - 59 of the Olympic Charter of the International Olympic Committee and in compliance of the Judgment passed by the Supreme Court of India by the author on the request of the Secretary General of the Indian Olympic Association..

² Department of Culture, Media and Sport figures - see www.culture.gov.uk.

³ Constitution of India, SEVENTH SCHEDULE (Article 246), List - II, "entry - 33"

⁴ The Hindustan Times, "UP Sports Act - 2005 Repealed" July 14 2007

⁵ Masteralexis, Lisa Pike & et. el, "Principles and Practice of Sport Management" The Club System: Sports and Community; Massachussetts :Jones and Bartlett Publishers; 2nd Ed. 2005:2

⁶ Ibid; The Modern Olympic Games: An International Club Event : 5

⁷ Mandell, R. "Sport : A Cultural History" New York : Columbia University Press; 1984 : 46

⁸ Grayson, E. former President of the British Association for Sport and Law, in his inaugural presidential address (1993) 1 (1) Sport and the Law Journal

⁹ Hums, M.A & MacLean, J.C. "Governance and Policy in Sport Organisaition" Scottsdale, AZ : Holcomb Hathway (2004): 115

¹⁰ ibid

¹¹ Kumar, Amaresh (Dr), Seminar Proceeding Report - 2004, "All India Council for Sport"

¹² Annual Report 2007 - 08, "Ministry of Youth Affairs & Sports (Govt. of India)" : 59

¹³ 2005(4)Supreme Court Cases 649;Zee Telefilm Ltd and Others Vs. Union of India & Others

¹⁴ Ibid

Though in the narrow legal sense these are private bodies, yet in reality they are performing important public functions in the field of sports where national or public interest is at stake, similar to public or governmental authorities as regulators and facilitators of the game in the field of sports. Accordingly in the said countries including India for enforcement of their public duties and obligations prerogative Constitutional Writs of High Courts lie against these private bodies like any public or Government Authority¹⁵.

In the USA and UK the sports bodies have multiple obligations under the sports law. They are under the law bound not to make any gender discrimination among the players¹⁶. For instance, Title IX in the USA is an important Act of 1972, which prohibits a federally funded institute to discriminate on the basis of gender¹⁷.

They must also allow the players to unionize and negotiate collective bargaining agreements with the management on their terms and conditions of work including pay, hours of work etc¹⁸.

In cases involving allegations of drug abuse and use of performance enhancing drugs these bodies must give the concerned player the right of being heard before taking any punitive action against him¹⁹.

Since players are nowadays under public and media attention, these bodies must be careful not to cause any damage to the reputation of the players and not to exploit the celebrity status of the players without their consent. In default, these bodies become liable in damages to the aggrieved player. Spectators can also sue the sports bodies or clubs for negligence under the law of torts when they suffer unexpected injuries, given the nature of the game²⁰.

OLYMPIC LAWS

The Olympic Laws derive their sources from the Olympic Charter which is the combination of the fundamental principles and laws implemented by the International Olympic Committee (IOC)²¹.

It manages and controls the organization and the propagation of the Olympic Movement and formulates the rules, terms and conditions for the commemoration of the Olympic Games²².

Though the IOC uses French and English as its official language, however, at the International Olympic Committee Sessions, synchronized translation is also provided into German, Spanish, Russian and Arabic.

“Olympism is a philosophy of life, exalting and combining in a balanced whole the qualities of body, will

and mind. Blending sport with culture and education, Olympism seeks to create a way of life based on the joy found in effort, the educational value of good example and respect for universal fundamental ethical principles.”

(Olympic Charter, Fundamental Principles, paragraph 2) (See http://www.olympic.org/uk/index_uk.asp)

The Olympic Movement is a sum total of the International Olympic Committee, Organising Committees of the Olympic Games, the National Olympic Committees, the International Federations, national associations, clubs and the participating athletes.

Jacques Rogge is the present and the 8th International Olympic Committee President. He was elected on 16 July 2001 at the 112th IOC Session in Moscow. He was formerly the President of the Belgian National Olympic Committee from 1989 to 1992. He has also served as the President of the European Olympic Committees in 1989, IOC member in 1991 and Executive Board member in 1998.

The IOC Sport and Law Commission was created in 1996 with the aim to provide a platform for discussion on contemporary legal issues which affect the different organizations which constitute the Olympic Movement²³.

The IOC Juridical Commission was created in 1974. Its objectives can be grouped as in below:-

To provide legal opinions to the IOC President.

To provide opinions concerning draft amendments to the Olympic Charter.

To formulate actions or defenses relating to the IOC.

To perform any other task of legal nature entrusted upon the Commission by the IOC President.

US SPORTS LAW²⁴

‘Sports Law’ is a compilation of laws that apply to athletes and sports. It is not confined to any particular legal topic with generally accepted principles. Rather this is an umbrella term used to discuss legal issues confronting the arena of both amateur and professional sports.

Sports Law intersects considerably with other branches of law since it has to touch on a wide variety of issues concerning agreements and contracts, torts, agency, constitutional rights, due process norms, trade mark, sex discrimination, antitrust measures, privacy rights, defamation, criminal and tax matters etc.

The applicable law in a particular case depends on the status of the athlete and the concerned sport.

This branch of law emerged as a separate entity in its own right only a few decades back with the rise of player agents and increasing sponsorships, endorsements and media attention on players

¹⁵ Ibid

¹⁶ Pangiotopoulos, Dimitrios P. “The Law of the Olympic Athletes” Sports Law (Lex Sportiva) in the World Regulation and implication; Athens – KOMOTINI, 2004 : 365

¹⁷ Title – IX, Education Amendment Act, 1972, <http://www.dol.gov/oasam/regs/statutes/titleix.htm> Section 1681 Sex,

¹⁸ American Football League Vs. National Football League, 323 F.2d 124(4th Cir 1963)

¹⁹ Gardiner, Simon & et el; “The Regulation in Doping in Sport” Sports Law, London. 3rd Ed. 2005: 269

²⁰ Blackshaw, I.(ed), Sports Image Rights in Europe (2005), The Hague: TMC Asser Press

²¹ Pangiotopoulos, loc cite :

²² Ibid

²³ http://www.olympic.org/uk/organisation/commissions/index_uk.asp

²⁴ United States Olympic Committee Code of Conduct:2006

TORTS IN SPORTS

Any one who sustains sports related injury is entitled to recover medical expenses from the person whose negligence caused the same. In case of injuries from intentional torts such as battery or assault, the guilty is also liable to pay compensation to the injured.

The degree of care that the concerned person is liable to exercise is a material consideration. Dangerous sports call for a higher degree of care than others. Expectations and probabilities in a particular situation also have a role in this regard.

For instance, a spectator in a base ball game hit by a foul ball while sitting in the stands is not entitled to damages for injuries since such stray balls are very likely in base balls.

On the other hand, any body standing on the interior path of a stadium hit by a stray ball would be entitled to recover compensation for injuries, since such an unlikely event was never in his contemplation.

In contact sports when contacts outside the scope of the game cause injury, the guilty player might be held liable in damages.

In suits for damages on account of sports related injuries, the following defenses might be available to the defendant depending on the facts of the case. Defendants may plead that the plaintiff was negligent or callous or assumed the risk of injury inherent in the game under the circumstances.

Since players are nowadays under public and media attention, these bodies must be careful not to cause any damage to the reputation of the players and not to exploit the celebrity status of the players without their consent. In default, these bodies become liable in damages to the aggrieved player.

Public institutions defending such suits may take recourse to the doctrine of sovereign immunity to escape from any possible liability. This doctrine prohibits suits against government organizations unless expressly permitted by the government. However, in many cases the courts have refused to apply the said doctrine on the ground that the action complained of does not fall within the sovereign governmental functions.

SEX DISCRIMINATION ISSUES²⁵

Girls and women had long been shut out from many sports. However, eventually Title IX was modified to ban sex discrimination in sports in schools that receive any amount of federal funding. Such schools are obliged to give women and girls equal access to sports.

In terms of the provisions of the said Title IX federally funded schools must give athletic opportunities to females that are proportionate to those provided to their male counterparts. However, courts do not expect complete equality to be achieved overnight. A roadmap to reach such goal of equality in a phased manner should be firmly in place.

²⁵ <http://bailiwick.lib.uiowa.edu/ge>.

²⁶ <http://www.whitewaterslalom.org/rules/asa-1978.html>.

Courts adopt a three-tier approach to examine whether a school is fulfilling its obligations under the provision. Firstly, the court checks if participation opportunities are available to members of both sexes in proportion to the number of enrolments.

In the absence of such proportional representation, the court examines if there is expanding opportunity for the underrepresented sex to make up for the shortfall.

If not, finally the court examines if the concerned school has accommodated the interests and abilities of the underrepresented sex fully.

In case the school in question has not done so, the court would hold it guilty of violation of the provisions of Title IX and direct the school to take affirmative action in compliance thereof.

Conventionally, the courts have not interfered with the under representation of women in contact games as long as the same is not due to any paternalistic view of women. Though traditionally the courts have been hesitant to direct the formation of a female team or squad in such contact games, yet they have passed mandatory orders for inclusion of eligible female players in exclusively men's teams.

Gender based classification by publicly funded entities is liable to be struck down under equal protection claims by virtue of the Equal Protection Clause of the fourteenth amendment. However, the courts make exceptions in those cases where such sex based classification serves important government interest.

AMATEUR ATHLETES²⁶

A popular misconception is that while the professional athletes are paid, the amateurs are not. Now even amateur athletes frequently receive some compensation for their efforts. The main difference is that professional athletes are awarded prizes of great or substantially higher values. Successes in high profile amateur events lead to corporate sponsorships and advertising deals for the victor.

The Amateur Sports Act of 1978 (36 U.S.C.A. § 391) set up the Athletic Congress, a national governing body for amateur athletes, which manages a trust fund that allows them benefits and sponsorships without affecting their amateur status.

Amateur sports can either involve restricted or unrestricted competition. Restricted competition covers school, college, university meets. Unrestricted competition is open to all amateur athletes with some basic minimum eligibility criteria.

The highest example of unrestricted competition is the Olympics. Any body meeting the minimum qualifications is welcome to participate through the qualifying rounds.

Usually amateur athletes do not have an absolute or automatic right to participate in sports events. Disputes arise in amateur sports when the aggrieved athlete claiming the right to play is denied the same by the concerned institutional authorities. Courts decide such disputes in case

of private institutions on the basis of the contract with the concerned athlete or in the absence of such agreement according to the law of torts.

When public institutions receiving federal or public funds are involved, the courts examine if the public institution in question has observed the Due Process norms and the provisions of the Equal Protection Clause of the Fourteenth Amendment. This includes notice and audience to the aggrieved on the action complained of. The court also strikes down discriminatory regulations debarring participation. The fourteenth amendment requires that similarly placed persons should be treated equally under the law.

If any classification hurts a fundamental right such as the freedom of religion or the right to marry or is founded on suspect parameters like nationality or race, the same is liable to be struck down, unless the same promotes some compelling interest of the institution.

On the grounds of public policy there can be reasonable restrictions on the rights of student athletes. For instance no pass-no play rules may be invoked in the overriding concern of the government to educate children. Rules may provide for disqualification of athletes guilty of drug or alcohol abuse or can limit the number of sports that a student can participate in.

The National Collegiate Athletic Association (NCAA) is the apex body administering sports at the college level. It exercises control and takes disciplinary measures over student athletes, coaches and other functionaries involved. Under the said NCAA rules athletes participating must secure specified minimum grade points in academic program.

College athletic scholarships are in the nature of binding agreements that require the student athletes to perform in sports as well as secure certain minimum grade points in academic programs in exchange of tuition, books and other academic expenses.

College athletics also enjoy sponsorships and get advertising deals from corporate and business circles. It is a multimillion-dollar entertainment industry. Despite this college athletes are not treated as employees by the courts. As such, relief under the worker's compensation laws is not available to them.

PROFESSIONAL ATHLETES

Professional athletes charge and are paid for their services on a regular basis. They have employment contract with their clubs. These agreements are bargained for and reflect the bargaining capacity of the respective parties to the contract. Athletes of average caliber usually get a contract for salary. Athletes of higher standing enjoy larger benefits under the employment contract.

Most professional leagues with a players' union negotiate or bargain a 'standard player's contract' that sets out the basic rights and privileges for the athletes. It represents the barest minimum benefits or rewards that the players in the concerned league are entitled to under any employment contract. Those club managements providing

a lower package are guilty of violation of their contractual obligations.

The burdensome and oppressive provision of 'reserve clause' in an employment contract prevented a player from playing for another team for at least one year even after the expiry of his contract. However, the owners of clubs were free to sell off players to other teams who had no say as to where they would play in. Such restrictive covenants held back the players from freely marketing their skills and deprived them from realizing their proper value or worth in the market.

After protracted movements of the aggrieved players, eventually in 1976 reserve clause was removed from 'standard player's contract' of professional base ball teams in the USA.

Another limb of the reserve clause that still finds place in some contracts is the options clause. When a new contract cannot be finalized with a player on the expiry of the current agreement, the owner of the club has the option to retain the player at 90% of his previous salary for one more year. Players having bargaining capacity do not sign such humiliating agreements with options clause.

Moreover players who have played out or served their options find no takers for them at their fair market value.

In course of time players organized themselves into unions and through collective bargaining agreements started realizing some of their legitimate demands.

Collective bargaining agreements are in force for specified periods on the expiry of which these have to be renewed from time to time through fresh negotiations and bargaining. In case such agreements with the club management or league authorities cannot be renewed or extended through collective bargaining, players take recourse to strike as a last weapon in their armory.

Arbitration of disputes between the player and the management is a fruit of collective bargaining. Here the disputes are referred to a private judge of the parties for settlement by whose decision or award they agree to be bound by. In the absence of voluntary compliance with the award, it can be enforced through the courts against the party who suffers the award.

The process of arbitration is used to address and redress the grievances of the players over salary issues, disciplinary matters, fines, suspensions, sports related and other injuries, termination of contracts, denial of retirement and insurance benefits etc.

In the complex arena of professional sports many athletes utilize the professional services and expertise of a skilled agent to negotiate personal service or employment contracts, take care of finances, carry out tax or estate planning, manage sponsorships and endorsements and so on.

Such agents must act in the best interests of the client athlete and avoid actions that conflict with the interests of the concerned player. Many states or jurisdictions require such agents to obtain a license before functioning and furnish security bonds as may be specified in this respect.

Overview of Sports Law in India

Sports law is employed in the field of Sports, physical education and its related field. It is referred to as a complete law which governs the area where law interacts with Sports. Nowadays, there is growing trend of interaction between law and the world of Sports which in turn, has created demand for a greater understanding of the relation between Law and Sports.

The Legal Consultation Center within the premises of the Lakshmi Bai National Institute of Physical Education has been established in 1996 with an initiative to create awareness about the laws regulating the field of Sports and offer expert consultations in diverse disciplines, such as sports law and policy, contract, tort, taxation, labor, competition, TV rights, match fixing and related criminal laws. The mass media plays the fundamental role in popularizing Sports. The State has taken suitable measures to mobilize the Electronic Media, including the National Broadcasters, the Private Channels and the Print Media for strengthening a Sports Culture in the country. The National Sports Policy of India seeks to raise the standard of Sports in India. As per the terms of National Sports Policy, 2001 the Central Government, in association with the State Government, the Olympic Association (IOA) and the National Sports Federation seeks to pursue the objectives of "Broad-basing" of Sports and "Achieving Excellence in Sports at the National and International levels". The Policy attempts to promote the Sports activities in which the country has potential strength and competitive advantage. The National Sports Development Fund was created by the Government with an objective to mobilize resources from Government as well as other Non-Governmental sources for the promotion of sports and games in India. There are various Schemes formulated and implemented by the government of India as regulatory measure for the Sports Sector, such as Scheme relating to infrastructure, Scheme relating to Events of Sports, Scheme relating to Awards, Scheme of incentive for promotion of Sports Activities, Scheme relating to talent search and training, Scheme of Dope Test and Scheme of State Sports Academy.

National Sports Policy²⁸

The National Sports Policy was formulated by the government of India for the first time in 1984 with the objective of raising the standard of Sports in the country. This Policy stated that the progress made in the implementation of the Policy would be reviewed every five years to determine the further course of action, as may be necessary, following such review. In spite of various encouraging measures, the implementation of the goals and objectives of the National Sports Policy, 1984 could not be substantially realized. Therefore, the Policy has been

reformulated several times laying down the specific measures to be taken by the various agencies, which are involved in promoting sports in the country. In accordance with the provisions of the National Sports Policy, 2001²⁹, the Central Government pursues the objectives of "Broad-basing" of Sports and "Achieving Excellence in Sports at the National and International levels" in a combined effort with the State Government, the Olympic Association and the National Sports Federation. In view of the potential strength and competitive advantage of Sports in India, the Sports Policy mandates the State to promote Sports activities in the country and integrate Sports and Physical Education more effectively with the Education Curriculum. The Government of India and the Sports Authority of India, in association with the Indian Olympic Association and the National Sports Federations, are expected to focus specific attention on the objective of achieving excellence at the National and International levels. The National Sports Policy aims to pursue inclusion of "Sports" in the Concurrent List of the Constitution of India and introduction of appropriate legislation for guiding all matters involving national and inter-state jurisdiction. In specific terms, the objectives of National Sports Policy includes Broad basing of Sports, Integration with education, development of infrastructure, excellence in Sports, Development of National Sports Federations, Scientific back up to Sports Persons, ensure access to high quality of Sports equipments, training and development of Coaches, Sports Scientists, Judges, Referees and Umpires, Incentives to Sports Persons, Integrated development of the Sports and Tourism sectors and Resource mobilization for Sports.

Sports Law and Welfare Association of India³⁰

The Sports Law and Welfare Association of India is a national nonprofit and professional organization which work with the common goal of understanding, advancement, and ethical practice of Sports Law in India for the promotion of Sports, by bringing Legal Practitioners and Sports persons together. The Sports Law and Welfare Association of India has developed links and carries out consultancy work with many organizations and partners. The Association provides consultancy on various matters including Regulation of sports governing bodies, General sport and law issues, Intellectual property issues in sport, Online Advocating in legal disputes of sports in Court on behalf of sports persons and sports bodies, etc. The Sports Law and Welfare Association of India aims to further the discussion of legal problems affecting sports and to promote the exchange of a variety of perspectives and positions of sports law and provide a forum for lawyers representing Athletes, Teams, Leagues, Conferences, Civic Recreational Programs, Educational Institutions and other Organizations involved in Professional, Collegiate, Olympic, Physical Education and Amateur Sports.

²⁷ <http://yas.nic.in>.

²⁸ <http://sportal.nic.in/nsp.asp>.

²⁹ Panagiotopoulos, Dimitrios (ed) Sports Law (Lex Sportiva) in the World; Kumar Amaresh (Dr), "Order of the Government of India (Allotment of Business) Rule, 1961" Athens – KOMOTINI, 2004 : 147

³⁰ <http://www.sportslawindia.info>

Aims of Sports Law and Welfare Association of India are:

- To provide Educational Opportunities and disseminate data and information regarding specific areas of sports law
- To provide a forum for lawyers representing Athletes, Teams, Leagues, Conferences, Civic Recreational Programs, Educational Institutions and other Organizations involved in Professional, Collegiate, Olympic, Physical Education and Amateur Sports. SLAWIN's role is to foster the discussion of legal problems affecting sports and to promote the exchange of a variety of perspectives and positions of sports law
- To promote and, where necessary, establish rules of ethics for sports persons and practicing professional of law, its members involved in sports law
- To produce high quality research in the field of sport and the law
- To publish widely and disseminate research findings
- To provide up to date information on current sports law issues including a resource of sports law material
- To provide consultancy to sportsmen and sports bodies concerning sports law issues
- To promote undergraduate and postgraduate study, research and continuing education in sports law
- To promote ethical solutions to legal issues in sport and notions of "Fair-Play"
- To positively address all issues of discrimination in sport.

What Sports Law India Does

We have developed links and carry out consultancy work with many organizations and partners. We provide consultancy on:

- Indian sports policy - competition law etc.
- Regulation of sports governing bodies
- General sport and law issues
- Sports injuries - issues of liability
- Health and safety issues in sports
- Employment issues in sports - e.g. discrimination
- Working with children in sport
- Intellectual property issues in sport
- Online Advocating in legal disputes of sports in Court on behalf of sports persons and sports bodies
- Harassment in Sports
- Organizational matter
- Alternate dispute resolution

Indian sports policy - competition law etc.

- We will be conducting the National Conference of Sports Law India and view the ideas of Sports lovers, sportsmen, lawyers, sports administrators and sports educators to prepare the draft policy of Indian Sports Act to ensure that they provide proper structure and liabilities of the sports bodies to the Parliament and Public at large.
- We will prepare key policies for sportsmen/ sportswomen/ sports bodies/ associations

administrators including code of conducts, policies for discipline, selection, harassment, conflict of interests, recruitment and awards, etc.

- We will prepare policy manuals for you as well as orientation packages and presentation for new board members.
- We can assist you in interpreting policy clauses and advising on proper procedure where there is ambiguity in any policy.

Sports injuries - issues of liability

- Our risk management service can provide advise on potential liabilities problem, claim and compensation, consultation to prepare a detail risk assessment and risk management plan for your organization or program.
- We will prepare the insurance provisions, reviews and recommendations to ensure that you have the proper type of scope and levels of insurance coverage as a sportsperson/organizer and program coordinator.
- We will draft waiver assumption of risk and informed consent agreement for your participant and advise you on the proper for their execution.
- Consult with us when establishing or organizing any contract or agreement for any kind of sports risk management.

Employment issues in sports - e.g. discrimination

- Advise on recruitment and interview questions
- Draft employee or independent contract agreements
- Ensure that all contractual agreement accrues to you in the matter of intellectual property agreement between employee and employer
- Conduct employment search in sports for various employers
- Keep you informed the vacancies available for sportspersons in India and also for employment data.
- Intellectual property issues in sport
- We can select and register a trademark or an official mark
- Ensure that your organization controls all copyrights in material it might distribute, sell or license
- Explore what marketing use can be made of an individual personality
- Design and implement variety of license programs
- Draft letter to unauthorized users of your trademark, know-how or copyright material
- Draft legal letters for breach of agreement and contract in the matter of
- Sue or conduct litigations on your behalf in disputes related to sports

Advocating in legal disputes of sports in Court on behalf of sports persons and sports bodies

- We can help ensure in all the matter related with the disputes in sports or any kind of activities related with sports be it contract agreement, organization, policies making, drafting of bylaws, legal letters or even appointing advocates/lawyers for you at various High Courts in India, Supreme Court of India and abroad.

Harassment in Sports

- We can suggest and review the draft policy for preventing sexual harassment in sports
- We can suggest and review the laws and policies for the harassment of fair sex in sports
- We can suggest the means and methods for equality rights for fair sex, girl child and female participants of sports
- We can conduct internal investigations and inquiries for you on the harassment in sports
- We can suggest humanitarian and constitutional law for prevention of racial and gender harassment

Organizational matter

- We advise on organization structures and forms of sports organizations, conduct of National Championship in various sports.
- Arranging for sponsorship for various sports meets and organizations
- We take the work to incorporate a new company, trust or foundations form a partnership design related with sports events
- Incorporate a nonprofit association/societies or obtain registration for the Act of Sports
- Update minute books and ensure all records and resolutions as complete
- Advise administrative liabilities and due diligence investigations
- Review and interpret bylaws and other key governing documents
- Assist to conduct Annual General Meeting with contentious issues for sports organizations

Alternate dispute resolution

- We administer the Alternate Dispute Resolution (ADR) for amateur sports in India as well as all appeals and adjudication under the Indian law on penalties for doping in sports and sports related disputes like match fixing, corruption, breach of contract, violence, etc.
- We can advise on the best method for resolving within your organization and where appropriate can intervene to try to negotiate acceptable solution
- We will appoint mediators and arbitrators under the provisions of International Courts for Sports Arbitration to help you resolve disputes in a professional, effective and timely manner
- We can advise internal panels or sit on a panel as your appointee
- We can carry neutral fact-finding investigation using skilled and trained investigators

Constitutional requirements³¹

The Contingent Constitutional, Legal and Institutional measures to operationalise the Comprehensive Sports Policy, by confining the role of the Union Government to merely

supplementing the efforts of Sports Bodies in promoting elite performance and in assisting them to hold mega sporting events, completely leaving the primary task of building a healthy national through, 'Sports for All' to the State Government, has led to both the uneven development of Sports across the country and the non-emergence of sports as a national priority. Only a few States have been able to find the required resources for sports development whereas the remaining have not been able to afford it. As a result, even today, the bulk of Indian population has virtually no access to sports and games. On the other hand if one look at the Health and Education sectors, the India had relatively, succeeded in achieving minimum national standards. The reason is that 'Health' and 'Education are in the Concurrent list, which enables States to receive fully policy and financial support from Union Government to target and achieve national goal.

There has been under consideration in Parliament of India, since its Twelfth Lok Sabha a Bill aimed at transferring the subject of "Sports" from the State List to the Concurrent List in the Seventh Schedule. The consensus for such an approach has not been received to provide such a holistic and comprehensive approach by the States and members of the National Sports Organisations. It has therefore, proposed to pursue in Parliament the need to shift the emphasis on Sports from its present Constitutional position where it is clubbed with 'entertainment' and 'amusements' to treating sports as a key instrument of youth development for accelerated and inclusive national development, the overreaching goal of the Approach to Eleventh Five Year Plan endorsed by the National Development Council, a goal that clearly requires a concurrent effort by the Central and the States just as in the case of Health and Education, both of which are in the Concurrent list. Accordingly, the Eleventh Five Year Plan document recommends the inclusion of 'Sports' in the Concurrent list.

Sports Arbitration and Mediation Commission of India (SAMCI)³²

The Government of India, Ministry of Youth Affairs & Sports is in ardent need to facilitate Sports Bodies and national Sports promotion organisation to reform and modernize themselves to meet the challenges of modern day sports, which have become both highly competitive and commercialized. Moreover, with the increasing commercialization of sports, in the wake of the XIX Commonwealth Games, 2010, Delhi, the need to regulate sports has also become a necessity of a 'Sports Regulatory Framework' prevailing in different countries. The intervention of the Indian Courts, in Indian Sports regulatory organisation, made it even more necessary, that they modernize their structures, systems and processes, and become more sportsperson – centric and more transparent and accountable in their functions. Therefore, a robust – dispute resolution mechanism, especially a strong grievance

³¹"Comprehensive Draft National Sports Policy 2008" Government of India, Ministry of Youth Affairs & Sports, New Delhi:p.33

³²Ibid;p.34 - 35

redressal mechanism for athletes is being thought to be framed. It is neither feasible nor desirable that Government shall take upon itself the burden of intervention when dispute arise with in National Sports Federations (as they do disturbingly often) or when complaints are received about ineffective or inappropriate deployment of funds, mistakes in management, non – accountability for results achieved or not achieved, prejudice or bias in the selection of national teams / athletes, undemocratic or unethical electoral practices and lack of openness and transparency in functioning. To resolve such dispute and ensure the development of sports in conformity with the Olympic Charter and in keeping with the aims and objects of Comprehensive Sports Policy, and an independent arbitration and mediation mechanism may be established on the lines of similar initiatives taken in the United Kingdom (The UK Sport Dispute Resolution Panel) and Australia (The National Sports Dispute Centre). The Union Cabinet Minister for Youth Affairs & Sports of Government of India had assured the Members of Rajya Sabha in the Parliament of India that there have been recommendations for enactment of a separate Sports Law by the Central

Government³³. The Minister has further assured the Parliament that Government has carefully studied the sports regulation systems prevalent in different countries and is considering several options, including that of enacting a National Sports law for better governance and management of sports³⁴.

A draft of the, “Sports Tribunal of India Act, 2010” has submitted on behalf of the Sports Law India and All India Council of Physical Education, to the Indian Olympic Association on their request. The Indian Olympic Association has incorporated the Sports Arbitration as the, “Arbitration Commission of the Indian Olympic Association” in their General Board Meeting held at Jharkhand. This Arbitration Commission of the Indian Olympic Association has also been accorded by the International Olympic Committee. Now on the promulgation of the, “Arbitration Commission of the Indian Olympic Association” all the Sports Dispute will be resolved in accordance with the, “Arbitration Commission of Indian Olympic Association” and there after as per the, “Court of Arbitration for Sports” of the Rule – 59 of the Olympic Charter in India.

³³ Dr. M. S. Gill, Minister of Youth Affairs & Sports, Govt. of India, on 12th August 2010 to answer the Question No. 2105 in the Parliament of India (Rajya Sabha).

³⁴ Ibid

“The New Developments in International Sports Law & CAS Jurisprudence with Perspective of Sports Law in India”

ABSTRACTS OF DELEGATES

SEXUAL HARASSMENT IN SPORTS

By - Sai Teja Vangala

In sports, women and girls are frequent victims of harassment. Many females drop out of sport rather than continue being subjected to the undermining effects of constant harassment and abuse.¹ Sexual harassment and abuse is just as much a problem in sport as it is elsewhere in society and that many sports organisations do not have adequate mechanisms in place to help protect frightened athletes and to exclude harassers and abusers. Dealing with harassment in sports is a major challenge haunting the field of sports. Not only can it reflect badly on the sport, it can deter participation at all level.

Establishing rules of ethics and conduct for sports persons will support the sports industry and will go a long way in combating the menace of sexual harassment in Sports. The government will have to come out with a National Sports Legislation that would force the sports federations in India to handle cases of sexual harassment strictly. Such a national legislation is the need of the hour and is very necessary to tackle the problem of sexual harassment in sports industry.

HARASSMENT IN SPORTS

Arshdeep Singh & Arpita Latta

Sport plays a major part in the lives of many Indians who are often participants or spectators. For many people sport is a source of personal achievement and national pride. For some, however, the sporting experience is marred by the presence of harassment that creates an environment that is neither welcoming nor enjoyable. Legislation and policy developments have discouraged harassment in areas of public life, such as employment and education. However, it is not until recently that it has been recognised as a problem in sport. The cost of harassment is high. For an athlete it may result in a loss of self esteem, reduced performance or ultimately, force someone to leave the sport they love. Through this research paper we have thrown light on the different aspects of harassment prevalent in sports i.e. harassment of fair sex in sports; racial and gender harassment, disability discrimination means and methods for equality rights for fair sex; humanitarian and constitutional law for prevention of harassment. We have also suggested a Harassment Policy and Guidelines that should form part of a coordinated set of policies related to appropriate behaviour in sports.

HARASSMENT AND DISCRIMINATION IN SPORTS

By - Jishu Dhir and Poonam kashyup

Dealing with harassment can be a major challenge for clubs. Not only can it reflect badly on the sport, it can deter participation at all levels. To help you understand the types of behavior that form the basis of harassment and discrimination, here are some useful definitions and references. The topic of sexual harassment is often controversial due to differing perceptions and definitions. Broadly, sexual harassment is defined as a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. However, like other forms of sexual assault, “sexual harassment includes a wide range of behaviors including unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when submission to or rejection of this conduct explicitly or implicitly affects an individual’s performance in Sports, unreasonably favour to an individual’s to select in the teams performance or creates an intimidating, hostile or offensive work environment for granting undue favour for including in a team to a weaker sex.

ARBITRATION IN SPORTS: ANALYSIS OF THE COURT OF ARBITRATION FOR SPORTS (CAS)

By - Aditya Mohanty

Sport is big business accounting for more than 3 per cent of world trade and 1 per cent of the combined GNP of the 15 member states of the European Union. With the amount of money at stake, it is not a surprise that the number of sports-related-disputes is on a gradual rise.

In response to the rise in the number of disputes in International sport, the International Olympic Committee created the Court of Arbitration for Sport (hereinafter referred to as CAS) as the ultimate authority to adjudicate on issues relating to the rights of athletes, governing bodies and federation.

This paper provides an insight into the history, constitution, working and purposes of the CAS and also analyses the types of disputes that are submitted. Furthermore, an examination of the scope of the awards on the Indian sports is done. The paper also tries to cover the various recommendations and suggestions that the Federation of Indian Chambers of Commerce and Industry (FICCI) came up with in its report titled “India’s Sports Scenario” with reference to the suggested sports legislation.

It concludes with highlighting some of the main issues relating to the legal conflicts that exist because of its procedures and constitution, in light of International Commercial Arbitrations that it essentially dwells upon.

NEED FOR SPORTS OMBUDSMAN IN INDIA

By - Abhinav Anand & Neelabh Krishna

Disputes are somewhat usual in the sport and recreation sector and cover a wide range of subject matters spanning commercial issues, governance and operational issues, discipline and conduct, nomination and selection of athletes and officials for national representation, employment issues and other matters such as discrimination and harassment. A number of features of this sector are not always well placed to prevent disputes from emerging or deal effectively with them when they arise. As a result, it is important that safeguards exist, particularly where the issues affect people's livelihoods. This paper gives an overview of the use of mediation for resolving sports disputes. Arbitration and mediation in this specialist area is in its early years, especially in India. The Court of Arbitration for Sport ("CAS") introduced its arbitration rules in May 1999 but has not carried out any sports as yet in India.

CHANGES IN CONTRACTUAL DYNAMICS IN PROFESSIONAL FOOTBALL

By - Deep Ray

It can be said that Indian football is moving in the right direction. With FIFA looking to tap the India market and providing funds for development of the sport in the country it is only a matter of time before India becomes a force to reckon with in world football. The future of Indian football looks bright, but what about the footballers, are their rights secured? Do they have any rights in relation with their profession? Professional players are dependant on the sport as a source of their earning. For that very reason it is important that the source of earning is protected against arbitrary or unjustifiable sanctions imposed upon them. There needs to be a change in the contractual dynamics in professional football in India.

The contracts which are offered to professional footballers often contain arbitrary clauses which seriously affect the rights of the footballers. There are hardly any rights given to the footballers to safeguard their rights. Unlike USA, UK, Australia or other European countries there is no scope provided for collective bargaining by the footballers with the governing body and the clubs in case of disputes. With All India Football Federation looking to professionalize the football clubs in India, as per the guidelines laid down by AFC one needs to put some serious thoughts into this issue. This paper will examine the legal nuances of the contracts the footballers sign with clubs and the AIFF; it will also discuss the international norms of contracts and the rules

of the country's apex soccer governing panel, All India Football Federation. At present, there is no standardized format for a player's contract in India and mostly the footballers reach a verbal agreement with the clubs before signing on the dotted line. There is a requirement of having a standard contract for footballers, that all the clubs can use.

EMERGING SPORT LAW IN INDIA

By – Abhimanyu Singh

With the largest youth population in the world and one of the fastest developing economies, India has witnessed progressive growth in its sports industry in the past few years. Global events like Commonwealth Games, thriving new infrastructure and large fan following for diverse sports is making India a major sports destination. From a mere source of entertainment and personal recreation, Sports has grown into a highly competitive industry with global pervasiveness. It is one of the largest revenue generating industries in the world comprising 3% of the world trade. The emergent interaction between sports and law has shaped a new need for a greater understanding of how the law relates to the sporting world.

The area of sports law is relatively new and at the nascent stage of conception in our country. Nevertheless, it is an area of study that is worthy of definition and in depth academic inquiry and practice. India needs expert sports law consultants to meet an amalgam of diverse legal disciplines such as sports law and policy, contract, tort, taxation, labor, competition, TV rights, match fixing and related criminal laws. In my opinion – legal practitioners and sports persons must come together to understand, advance, promote and ethically practice sports law in India.

Research must be undertaken to promote, encourage and support the law fraternity. The research topics may include: drafting Sports Act of India; contribution of Indian legislative body for support of Indian sports; Constitution of Indian Sports Services like Indian Medical or Indian Engineering Services; Appointment of the duly qualified Professionals on the post of Secretary, Joint Secretary, and at other responsible posts in the Ministry of Youth Affairs & Sports and Sports Authority of India; development of risk management programmes for safety in sports; concerns of racial discrimination and national identity in sport; changes in contractual dynamics in professional football; legal support for women's participation in sport; judicial pronouncement of Indian in addition to International Courts.

LEGAL ASPECTS IN INDIAN SPORTS BAN ON ADVERTISEMENT BY PLAYERS DURING WORLD CUP

By - Manisha Narula,
Advocate, District Courts,
Faridkot, Punjab

From a mere source of entertainment and personal recreation, Sports has grown into a highly competitive

industry with global pervasiveness. It is one of the largest revenue generating industries in the world comprising 3% of the world trade. In India though Hockey is the national game, it's Cricket that is being followed as a religion. No other game in India today has the craze that cricket generates.

The World Cup 2011 which is on verge of a grand start in the nation that follows it religiously and has created much hype. The governing council that is the ICC has prescribed certain rules regarding the commercial activities of players during the world cup. As per the Council "it has put these restrictions to protect the interests of ICC's commercial partners. It is these commercial partners who provide the revenue which enables ICC to stage international events, which in turn provides funding for the development of the game in our 105 Member countries. Without the investment of our commercial partners, there can be no event and hence no sustainable financial support to ICC Member countries".

Under the standardized Squad Terms for the event there are various restrictions around commercial activity around the event. Any Squad Member that knowingly or unknowingly breaches the Squad Terms may face sanctions ranging from financial penalties through to being excluded from continued participation in the Event. The questions that arise are- are these restrictions reasonable, who is going to decide if they are or not, is this not a violation of freedom of trade of the players. If a player is endorsing a product of a company which is not on the list of commercial partners of ICC then won't that affect the commercial and financial interests of the player as well of the company? Can a proper law on sports be an answer to all these questions?

DIRECT TO HOME- BROADCASTING PIRACY

By - Vaibhav Dixit & Spandan Srivastava

The primary aim behind any sport is to provide entertainment to its audience. As the civilization developed, a very important mode of watching sports was by sitting behind the television sets. However like every successful industry, this industry also became a victim of piracy. In this paper firstly we have dealt with the definition and meaning of Broadcasting Rights in the global perspective. Broadcasting Rights which are part of Intellectual Property rights are often encroached upon by the pirates and this leads to a very big problem of Broadcasting Piracy. At times this is done intentionally but it also happens when there is ambiguity related to the rights of broadcasting between two parties. We have also discussed the reasons behind this industry of piracy.

This industry is flourishing because of major reasons like: unavailability of access to sports entertainment to complete audience and the fact that pirated information is available at cheaper price in this expensive world. Then we have tried to distinguish between the TV broadcast and Broadcast piracy. We have discussed in this as to how some giant broadcasters, with the help of strong fiscal support, are able to bid for high TV rights and converge maximum

rights in their own hands. The major harm out of broadcasting piracy have also been discussed. They are often in the form of money for temporary period and clientele-reduction for a significantly larger period. In the end we have discussed the methods adopted by Ministry of Information and Broadcasting in India to stop film piracy. We can implement similar laws with suitable modifications and reduce piracy in broadcasting field.

TOWARDS A BETTER SPORT-INADVERTENT DOPING AND THE WADA CODE

By - Yatharth Nath Pathak & Sudhir Kumar Singh

Sports is the fabric which connects the society and even it can be used to maintain friendly ties between two countries like India and Pakistan, however, Doping is the thing which is causing damage to the reputation of sports.

It was preceded by Pierre De Coubertin only and he raised his concern over protecting sports from the jaws of doping.

Doping is not just a scientific triumph put to application but is essentially the consequence of the various personal, sociological, psychological and economical factors. The mental will to win, pressure and expectations, constant push to excel and discrepancy in the facilities available are just a few to mention.

Efforts to eradicate the use of doping in elite sports have been discredited as a losing battle so many times it is all but impossible to believe in an ultimate victory against the cheats. As WADA continues its crusade against the dark side of sporting life, more authorities, experts and fans start to question the meaningfulness of the whole battle.

Performance enhancing substances have always been part of sports and always will be, as will be the efforts to set limits to them and catch the wrongdoers. Lately, however, in this seeming endless race, the drug agents have seen a new shift of balance.

The war against doping may be tough but adoption of proper strategy and implementation of Government plans through an independent Sports Arbitration Tribunal needed to be framed. The time will definitely lead the country towards a better sport.

THE DIVIDING LINE BETWEEN AMBUSH MARKETING AND LEGITIMATE ADVERTISEMENT OR JOURNALISTIC CONTENT IN SPORTING EVENTS: FOCUS ON ICC'S CONTENT AND BRAND PROTECTION GUIDELINES

By - Varun Chablani & Alok Nayak

The 2011 ICC Cricket World Cup, just like any major worldwide sporting event, is susceptible to surrogate or ambush marketing by commercial brands whose

competitors have become *exclusive sponsors* of their respective product categories. The International Cricket Council's *Brand and Content Protection Guidelines for the ICC Cricket World Cup – 2011*, has listed in detail the scope of its anti-ambush marketing initiatives vis-à-vis legitimate journalistic content. This paper attempts to establish that the abovementioned anti-ambush marketing guidelines violate the *Right to Free Speech and Expression* under Article 19(1) (a) of the Constitution of India. Besides, these non permissible activities do not fall under the *reasonable restrictions* doctrine under Article 19(2) of the Constitution. This paper further seeks to redraw the battle lines between an anti-ambush marketing activity and legitimate journalistic content.

Furthermore, this paper establishes that these guidelines are also *unreasonable* and hence violative of the *right to equality* under Article 14 of the Constitution of India.

Many of the non permissible activities under the guidelines fail the test of the *rational nexus* doctrine under the said Article. This paper establishes that the intentions of the ICC are not satisfied by such strict nature of these guidelines. In fact, they get rebounded and further deteriorate the intentions. This paper further makes a historical and economic analysis of major sporting events and studies the impact of the relevant anti-ambush marketing guidelines to the event and the athletes associated with the event.

The paper concludes with recommendations and suggestions to the ICC on being an equilibrist between the interests of the exclusive sponsors, the interest of the event, the interests of the media, and most importantly, the interests of the cricket crazy Indian public.

SPORTS LAW: COMBATING FOR THE SPIRIT OF INDIA

By - Sandeep Kumar Passi

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Baba Farid Law College, Faridkot, PUNJAB

Human beings are drawn **in sports** activities since times immemorial. From the early days of human civilization till date this industry of sports growing with leaps and bounds. Earlier it was rare that on any newspaper's front page is loaded with sports activity, but now the situation in India has arisen where the players are being bided in an open market and we see it on the front page that who is being sold to whom at what price. The area that was usually considered to be for fun, now being taken as a career to make big money. There are number of companies and sports centre which are involved in it day and night and has created number of jobs at a large scale. With all this back ground its not only players but also big multinationals who are being involved in the competition of making huge money. But till today in India we don't have any sports legislation to take care of number of problems. Although we have Entry 33 in the State List under Schedule VII of the Indian Constitution for "Sports, Entertainments and Amusements" and some of the decided case under the Tort law (which again is un

codified law) and also under Indian Contract Act to govern the Players contract. But still what we are lacking is a concrete Act to cover all the problems of the players and to protecting their rights also.

BROADCASTING AND TV RIGHTS (SPORTS) IN INDIA: A CRITICAL ANALYSIS

By - Prahastha.M; Tridib Bose

The telecast of sports in popular media has comprehensively evolved to keep in line with the enormous commercial and public media tapping the popularity of sports among the population of viewers. Various broadcasting agencies in India are often locked in a battle vying for the telecast rights of major sporting events, the most prominent of them being cricket. This has led to the drafting of extensive and in some cases sophisticated legal rights for the exclusive or shared telecast of sport by these agencies. The paper intends to critically analyse the laws and acts in force to effectively distribute the broadcasting rights for sporting events in tele-media.

The Sports Broadcasting Signals (Mandatory sharing with Prasar Bharati) Act (commonly referred to as the 'Sports Broadcasting Act') lists various provisions that speak about the mandatory sharing of broadcasting information by the commercial media with the state owned media. This paper aims to examine the relevance of this act to cater to the huge viewer base in the rural areas of India. The Central Government of India is vested with the sole authority of determining events of national importance and laying down the criteria for formulating guidelines for the same. So far, none have been laid down. The paper discusses the importance of swift resolve with regard to this issue which compromises on the evolution and reform of broadcasting rights in India. It also aims to discuss the other prominent intricacies of the act which deal with the broadcast of sports clippings, time span of the same, and the defence of fair dealing. The act fails to address these issues effectively.

STRICT LIABILITY IN WADA

By - Sooraj Sharma and Shujoy Mazumdar

In the International Sporting events the number of the cases involving doping, are on an alarming rise and at this juncture, where the law of sport regarding doping are in a premature state it is very important that the law not escape critical analysis. The law of sport as it is being developed has taken a lot of elements from various other branches of law, and one these branches are the common principles of the law of Tort. The inception of the concept of strict liability lies in the jurisprudence of the English courts and now has found its way into different legal systems and branches and thus warrants criticism and suggestions as it attains acceptability in this field of sports law. The first document to harmonise anti-doping regulations around the world recognized the fundamental rights of athletes to participate in a doping-free sport and applied the principle of strict

liability to maintain high standards of fairness. The object of this paper is to examine the inconsistencies associated with doping control and explains the inequity which results from such inconsistent application of the principle of strict liability. This is achieved through an analysis of the WADA code and the interrelationship with the principle of strict liability and an examination of a recent case of the much celebrated Spanish cyclist Alberto Contador.

HARASSMENTS IN SPORTS: NEED FOR EFFECTIVE IMPLEMENTATION (SPONSORSHIP AGREEMENTS)

By - Anirudh Soman & Saksham Marwah

In recent years, sponsorship has become an increasingly important part of sport and recreational industry. To sponsor something is to support an event, activity, person, or organization financially or through the provision of products or services. A sponsorship agreement or contract governs the legal relationship between a sponsor and the individual who is entitled to enforce the sponsorship obligation. Companies sign sponsorship agreements with sports entities because they believe that an association with them will generate an increase in the goodwill and resultant increase in the sales. As such there have been various disputes concerning the enforceability of such agreements.

SPORTS LAW : RETICULATION OF COMPETITION AND INTELLECTUAL PROPERTY LAW

By - Lauv Kumar

The Competition laws have relative nexus to various dimensions of sports. The sports activities are concerned with fair and unhindered competition at International, National, Domestic or Individual level. Doping , Discrimination on basis of nationality or race, withdrawal or non-recognition by International federations of national federations, eligibility criteria's, bans or suspension of athletes, contractual disputes between athletes and sports club, all these pose hindrances for the purpose of competition . Further analyzing the trend for a structured pattern of international administration and dispute resolution under the auspices of Court of Arbitration for Sport (CAS) and tracing the development of CAS jurisprudence endeavoring for uniformity in international sports law.

In India, competition regime with regard to sports activities is at a new born stage and the paper gives its comparative analysis with legal systems of other countries. The need for structural and managerial changes in sports organizations to improve their responsibility and accountability to general public and sportsperson, specifically referring to anti-competitive practices by BCCI and controversy between Indian Hockey Federation and Hockey India.

In India discrimination on the basis of Sex, Religion, Race, Caste or disability, sexual harassment, doping, poor infrastructural facilities, lack of dispute redressal mechanism, low salary caps, are impediments to competition in sports. In India, due to rapid privatization and commercialization of sports activities problems connected with IP Law has grown which include Trademark and Copyright protection, Right to Publicity, and Ambush marketing. IP law is constantly being invoked by Sports associations, Broadcasters and Sportsperson's in courts of law and the paper presents a case analysis of ICC Development (International) Ltd. vs Arvee Enterprises.

LEGISLATOR'S HAS TO KICK HARD AND FAST INDIA NEEDS MOST AWAITED 'SPORTS LAW' IN THE LARGER INTEREST OF INDIAN SPORTS

By: - Abhinav Kumar, & Nishant Bhaskar

Sports Law became the Need of the hour. Sports Law is an umbrella term used to describe the legal issues applicable to amateur and professional sports. This concept of Law has drawn from elements of labor law, media law, contract law, competition law and tort law, sports law has emerged as a distinctive discipline of legal practice. Interestingly, sports law originated because of increased public dissatisfaction and media scrutiny of a variety of conflicts in franchise based leagues. Today sport is one of the largest revenue generating industries in the world comprising 3% of the world trade; Cricket Control Board of India is one of the richest cricket clubs in Cricket World. The successful bidding to host an international sporting event is a unique opportunity for developing countries to showcase their progress, development and their world standing through their soft power. Similarly this common Wealth Game was having huge impact for India; it spread the message that India is country who is ready to lead at all front. CWG in India was the platform through which India gave the message to the World about Incredible India, Indian Army, Highest Developing Nation, and of course about its Developing Infrastructure progress inside the country.

But this change and fast development in sports field needs a protection from the problems of anti-doping, sexual harassment and age fraud. In India sports is synonymous of controversy. Our National Game Hockey and recent sexual abuse in these sports also made our head down because for the sake of Money there is no ethics, No rule to follow, and recent scam in cricket named IPL scam and Lalit Modi issue was shocking for us. Cricket Match Fixing concept was shameful for whole sports world. In india sexual assault in different games, Corruption in Olympic federations and the famous Ruchika molestation case by DGP Rathore, recent Death of National Kabaddi Player Manisha Devi shows that India need an immediate and well balanced and Hard Law to protect the sports in the Country. Absence of sports Law shows our Failure to protect Indian

Sportsperson that is why we are struggling hard to survive in Others Game except Cricket. India is such a diverse country and in this era when the whole world has become global village, transportations and communication is not an issue. So development of sports has rocked the India. India is now emerging hub of Sports, So to protect this atmosphere of healthy sportsmanship we need immediately a law to protect the rights of sports player, sports club etc.

SQUARING THE OLYMPIC CIRCLE: HOW NATIONAL, INTERNATIONAL AND GLOBAL LAWS CAN CO-EXIST WITH SPORT

By - Kris Lines (United Kingdom)

To some, sport represents an informal, recreational activity played by neighborhood children; to others, sport is a multi-billion dollar global industry. Somewhat paradoxically, both viewpoints are correct. The global draw of mega sporting events such as the Olympics and the Football World Cup has stripped away many of the traditional national boundaries and tournaments such as the Indian and English Premier Leagues are no longer the sole preserve of their respective countries. Instead, each league is a successful global brand in its own right with a truly internationally fan-base. However while a sport may have its roots in a national state, much of its governance, particularly in anti-doping, can only be decided with reference to global sports law issues.

What this paper will discuss is the framework underpinning sport in the twenty-first century. Various described as *Lex Sportiva*, *Lex Ludica*, International Sports law, and Global Sports law, the paper will show how a complex web of public and private governance exists, with the Court of Arbitration for Sport (CAS) sitting at its apex.

REGULATION OF SPORTS IN INDIA - AN OVERVIEW: CONSTITUTIONAL AND OTHER MUNICIPAL LAWS

By – Kartik Seth

Bodies controlling sporting activity around the world find themselves increasingly involved with the law. The situation is no different in India with sporting bodies such as the Indian Olympic Association (IOA), the BCCI and other National Sports Federations (NSFs) have been subjected to legal scrutiny over the past decade.

Sports governing bodies are powerful organizations. Their regulatory powers are sometimes akin to the State. They lay down rules that affect not only the on-field activities of sportspersons but also commercial transactions they may conduct, their employment relationships, personal conduct and drug use. Despite carrying out a range of activities usually reserved for organs of the State, the issue of whether sports governing bodies are elements of the State is a controversial one, with no definite answer. The reason this debate becomes important is because it raises the

question as to the extent that sports governing bodies are accountable for their actions, and the ability of individuals and entities to obtain redress against them.

SPORTS LAW : A CONCEPTUAL VIEW

By - Dr. Mukesh Agarwal & Dr. Benu Gupta

Sports have become the life line of entertainment in general public. It provides a platform to attain glory, name and fame with career and money to the aspiring competitive athletes. A country is said to be progressive if it can maintain its law and order and can provides an opportunity to the stake holders to improve their living standard with the rise of economy. Now mega sports events added to the progress of any of the Nation. That's why; Nations are bidding to the host the mega events like Olympic, World Camps, a said, Common Wealth etc.

The importance of law could not be ignored in the sports equally to the society effective execution of sports laws not only enhance the glory of the mega event but also spread the message of ideal nation in the world.

NECESSITIES AND AGENDA FOR THE COMPARATIVE STUDIES OF SPORTS LAW

By - Kee-Young YEUN

Professor of Law, Dongguk University, College of Law
President of the Asian Council of Arbitration for Sports
& Korean Association of Sports & Entertainment Law

The interchange of sports has been acknowledged as an effective means of exchange regardless the differences between politics, language, and religion among the world. The International Sports Games such as Olympic Game, World Cup Games influenced the national sports industry, laws and policies. The enormous cooperation and promotion of mutual understandings among nations during the International Games also demonstrate the influence of sports. To advance from this grassroots level of understanding in the area of sport law in each country, it is vital that we take a look at various legal systems that have more sports laws in place and analyze them to see what aspects of those systems might be suitable or adaptable to our own needs.

The economical cooperation has twice as much effective result when the interchange and cooperation of culture including sports are stimulated. Therefore, it is obvious that sports play a grave role in economy as well. If the comparative studies of Sports Law and the activities of academic community are stimulated, the National Sports Laws and the International Sports Law will gain their identities and independence

THE AGENDA OF ASIA SPORTS LAW

By - Kee-Young YEUN

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Asian countries with diverse legal, social, and economic ideologies and customs could create the Asian Sport law that is consistent throughout the region. Of course the answer is yes; as mentioned above, the scholars who specify in Asian law already have been trying hard to establish unique legal system that fits social, economical, and regional characteristics of Asia. Especially the Asian Sports law is easier to develop comparing to other laws since it has less possibility that other political, religious, and regional factors intervene in the development of the law. Regionalization of Asia should be practiced in order to build an Asian Community. In Indonesia 2004, 10 ASEAN nations and Korea, China, and Japan have agreed to economically cooperate by founding Asian bank. Such economical cooperation has twice as much effective result when the interchange and cooperation of culture including sports are stimulated. Therefore, it is obvious that sports play a grave role in Asian economy as well. If the studies of Asian Sports Law and the activities of academic community are stimulated, the Sports Laws of each Asian country and the Asian Sports Law will gain their identities and independence.

DOPING AND CAS JURISPRUDENCE: SPORTS LAW

by - S.K. Mohanty,

Advocate, Supreme Court of India;
Abhishek Kumar & Meghna Pattnaik

The Olympic Charter and the constitutions and bylaws of international sports federations have made it the use of illegal enhancement drugs contravenes the spirit of fairness in sports. Drug use is forbidden in all Olympic competition, and competitors are subjected to examinations carried out in conformity with IOC medical competitors. Teams that benefit from their members use of drugs are disqualified and excluded under Olympic rules.

The IOC requires that each competition site have adequate testing facilities and that each competitor agree to submit to a possible examination at the risk of examination. If an athlete refuses to submit to an examination or is found to have used a drug, he is excluded from competition.

When a team member is involved, the competition in which the infringement occurred is forfeited by the team. There are degrees of variance in the range of penalties that shift according to whether the use was deliberate or accidental or whether the uses constituted a first or second offense. An offense during competition leads minimally to suspension and forfeiture of all medals won.

EMERGING TRENDS OF SPORTS LAW IN INDIA

By - Avinash Mohapatra

Sports Law, being an emerging area of practice triggers the need for Dispute resolution mechanism and enforcement of the same. With the commercialization of sports like cricket and football at the club level (e.g. IPL and EPL), the need is felt to regulate Players' and teams' Contract management.

- (i) Standard Players' Contract: is generally in the form of standard wording which differs with the salary and bonus payable to the players. There is a need for skilled lawyers while including addendums to the same.
- (ii) Endorsement Contract
- (iii) Appearance contract

The establishment of the Sports Authority of India needs to be backed by equitable regulations and procedures of enforcement.

Betting in sports: Is it time for India to be more liberal and permit legal betting ?

Drafting the terms of contract while employing an athlete or a sportsman. The safeguards:

- (i) The terms of hiring
- (ii) The duties and obligations of a sportsman
- (iii) Amounts of compensation
- (iv) Payment of bonus
- (v) Compliance with the rules of Sports Authority of India
- (vi) Right of employer to assign the contract
- (vii) Right of employer to prevent from playing for others

Applicability of Workmen's Compensation Act on sportsmen and athletes.(during injuries faced in the course of employment)

Sports Insurance Provisions: This would involve risk assessment insurance provisions for potential liabilities, claims and compensation.

Sports Insurance would not relieve an athlete or event from negligent behaviour. However, having insurance does ensure that if a jury believes that damages be awarded, the insurance company steps in to do the same. (e.g. Harbhajan Singh's indiscipline in IPL 3)

The way forward: Learning from other jurisdictions' legal framework, introducing sports law as a subject at the law school level, to promote research on drafting The Sports Act of India.

Agreement related to the constitution of the International Council of Arbitration for Sport (ICAS)

between

1. The **International Olympic Committee**
2. The **Association of Summer Olympic International Federations** represented by the President of the ASOIF
3. The **Association of the International Olympic Winter Sports Federations** represented by the President of the AIWF
4. The **Association of National Olympic Committees.**

It is preliminarily stated that, with the aim of facilitating the settlement of disputes in the field of sport, an arbitration institution entitled the "Court of Arbitration for Sport" (hereinafter the CAS) was created, and that, with the aim of ensuring the protection of the rights of the parties before the CAS and the absolute independence of this institution, the parties decided unanimously to create a Foundation for international arbitration in sport, called the "International Council of Arbitration for Sport" (hereinafter the ICAS), under the aegis of which the CAS will henceforth be placed.

IN VIEW OF THE ABOVE, THE PARTIES EXPRESSLY AGREE TO THE FOLLOWING:

Article 1

The parties agree to constitute and set in operation the International Council for Sports Arbitration (ICAS).

Article 2

The twelve initial members of the ICAS are appointed as follows :

- a. four members by the IOC,
- b. three members by the ASOIF,
- c. one member by the AIWF,
- d. four members by the ANOC.

Article 3

The parties agree mutually and vis-à-vis the ICAS to finance its activities and those of the CAS to the extent determined by the ICAS and according to the following proportions :

4/12 by the IOC

3/12 by the International Olympic Summer Sports Federations

1/12 by the International Olympic Winter Sports Federations

4/12 by the ANOC

12/12

The International Olympic Summer Sports Federations, the International Olympic Winter Sports Federations and the ANOC for the National Olympic Committees agree that the funding thus apportioned be effected through deductions made by the IOC from the sums allocated to them as part of the IOC's revenue from the television rights for the Olympic Games. The first deduction will be made at the time of the constitution of the ICAS.

The above-mentioned parties shall be informed of the amounts of the deductions thus made by the ICAS, and this notification shall be accompanied by a copy of the budget duly approved by the ICAS.

Article 4

Any International Federation or association of Federations may sign the present Agreement or accede to it under the conditions determined as agreed between the parties.

Article 5

The present Agreement is for an indefinite period; each party has the right to terminate the Agreement at any time for the end of a calendar year, by giving notice two years beforehand by registered letter to the President of the ICAS and all the other parties. In such case, the present Agreement ends only insofar as it concerns the outgoing party, the other parties agreeing herewith to assume all the obligations and rights of the outgoing party with immediate effect on the day of termination, in proportion to their own rights and obligations, with no further action or formal notice required.

Article 6

The present Agreement is subject to Swiss law. Any dispute arising from its execution or interpretation shall be settled by arbitration in accordance with the provisions of Chapter XII of the Federal Law of 18th December 1987 on private international law.

Paris, June 22nd, 1994

Signed by :

The President of the International Olympic Committee

The President of the Association of Summer Olympic International Federations

The President of the Association of the International Olympic Winter Sports Federations

The President of the Association of National Olympic Committees

R. K. Jain Sports Law Knowledge Lecture & Seminar on The New Developments in International Sports Law & CAS Jurisprudence with Perspective of Sports Law in India

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INTERNATIONAL SPORTS LAW AT THE T.M.C. ASSER INSTITUTE

Substantive developments in ISL

The following issues are currently topical within the field of International Sports Law at the Asser Institute and its International Sports Law Centre:

- legal aspects of the organisation of and participation in the Olympic games and world and European championships
- the prevention of fraud and corruption
- the regulation of sporting competitions
- social dialogue between employers and employees
- the regulation and functioning of intermediaries
- comparative research into national sport legislation and jurisprudence
- the jurisprudence of CAS
- sports and nationality
- sports marketing

In many "interventionist" countries, where there is a strong factual and legal relationship between government authorities and sport governing bodies, the national, general Sports Act plays an important role. International comparative research is necessary to support the continuing process of the revision and updating of such Acts. In recent years, the Asser International Sport Law Centre (AISLC) undertook fundamental and contract research on this topic and is presently preparing a book publication on national models of sports governance in the European Union.

With regard to sports governance, much attention is currently being paid to the process of bidding for international sporting mega events such as the Olympic Games and the Football World Championship. At the Sports Law Chair of Erasmus University, the study of the legal aspects of the organization of and participation in international sporting mega events is chosen as the main theme of research.

The study of sports betting is an important issue also in the coming years, not only because of the question of its liberalization in the European Union, but also because of its link with fraud and corruption issues. The Centre has produced a volume on this topic which contains fifty country studies worldwide and will appear in the Asser International Sports Law Series in 2011. In EU Sports Law, the main question currently is the legal assessment of the meaning of Article 165 TFEU (the 'sports provision' in the Lisbon Treaty). This debate will continue in the coming years, in particular against the background of the development of an EU Sports Policy. The Centre coordinated an international study on this subject which was commissioned by the European Parliament and published in September 2010.

In-house expertise

The Institute's research in sports law is of an interdisciplinary as well as comparative law character, covering all fields of law in which the T.M.C. Asser Instituut specialises, i.e. public international law, including the law of international organisations, private international law, international commercial arbitration and the law of the European Union. The ASSER International Sports Law Centre (AISLC).

The main areas of expertise of the members of the cluster are: international comparative sports law, and European sports law.

Specific expertise regards the following themes: labour law and sport, social dialogue in sport, sports agents, sport mediation and arbitration, legal aspects of international sports boycotts, transnational football hooliganism, doping in sport, Olympic Games, broadcasting rights and sports image rights.

Experience and activities

The Institute has been carrying out pioneering work in the field of sports law with respect to both academic and applied research. The ASSER International Sports Law Centre (AISLC, <http://www.sportslaw.nl>), which was established in 2002, emerged from these activities.

The mission of the ASSER International Sports Law Centre is to provide a centre of excellence in particular by providing high quality research, services and products to the sporting world at large (sports ministries, international -intergovernmental- organisations, sports associations and federations, the professional sports industry, etc.) on both a national and an international basis. The Centre has a worldwide network of academics and practitioners and cooperation agreements with various sports law institutes and centres in Europe and beyond, including Asia, South Africa and North and South America. Whereas in previous years, much attention was paid to EU-supported advice and assistance to the new EU Member States and candidate countries in Eastern Europe, recently the Centre focuses on cooperation with the rapidly "sports law developing" Asian region (in particular, China, India, Indonesia).

The Centre is the co-founder and coordinator of the newly established Hague International Sports Law Academy (HISLA) the purpose of which is the organization of academic conferences and workshops of international excellence which are held in various parts of the world.

The Centre edits and publishes The International Sports Law Journal (ISLJ) (spring and autumn) and the Asser International Sports Law Series of books. It is also the organiser of a whole range of seminars, conferences and events, in The Netherlands and abroad.

In the Low Countries, the cluster of sports law will embark, in the first half of 2011, on the establishment of an inter-university research cooperation with:

- Erasmus University Rotterdam (Prof. Dr. R. Siekmann)
- University of Amsterdam (Mr. R. Branco Martins)
- Tilburg University and University of Leuven (Prof. Dr. Frank Hendrickx, Dr. Steven Jellinghaus)
- Free University Amsterdam (Dr. M. Olfers)
- Leiden University (Prof. Dr. S. van den Bogaert, also visiting professor at Free University Brussels)
- University of Leuven (Prof. Dr. R. Blanpain)

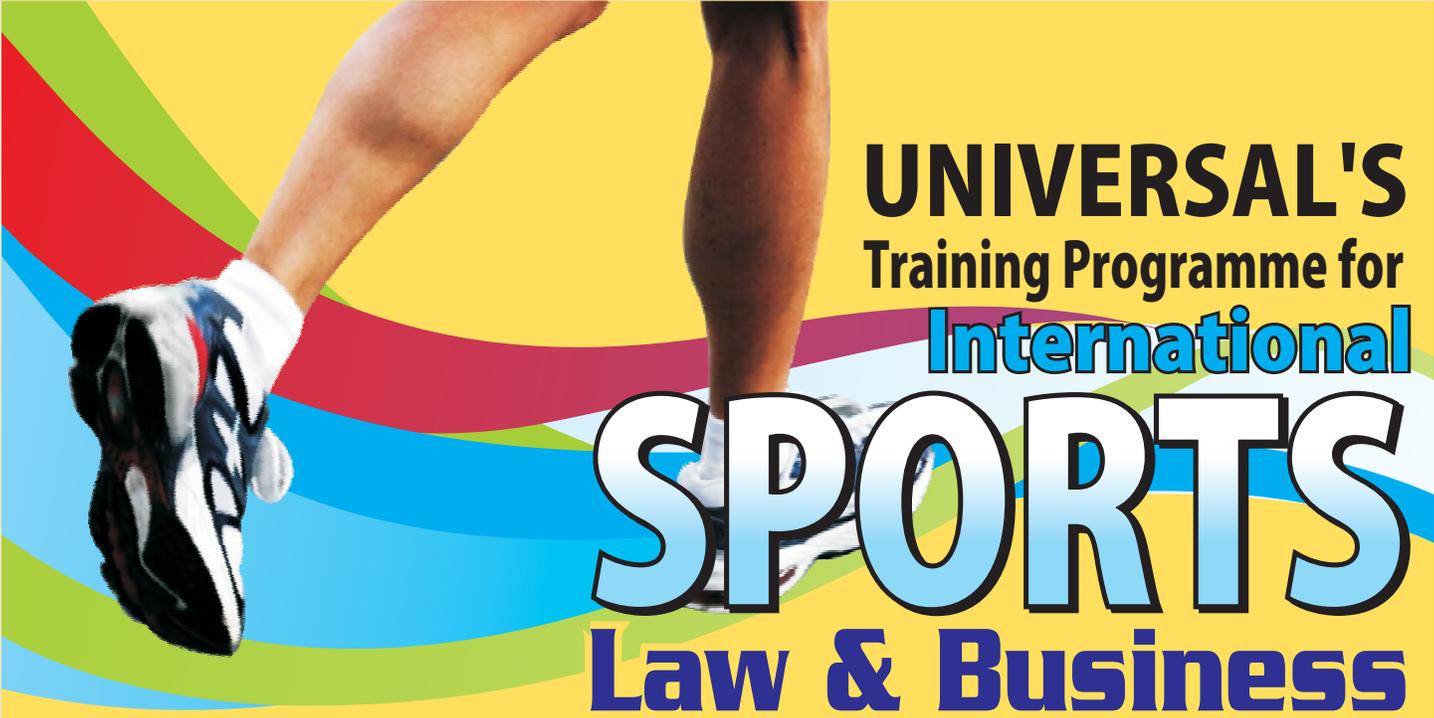
The application of EU law on professional sport takes a central place in the activities of the Centre. An important feature associated with the contract research carried out by the Centre is the collection of relevant legal data from the EU Member States.

For additional information, please contact:

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