

THE CONSTITUTION AND SPORTS LAW DEVELOPMENT IN INDIA

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ABSTRACT

The development of sports law in India has evolved alongside its rich historical association with sports, spanning from ancient times to contemporary global competitions. The Indian Constitution recognizes sports as a state subject, yet national and international sports governance have been interpreted as a union matter through judicial interpretations. The establishment of the National Sports Federations and the implementation of the National Sports Development Code, 2011, aim to bring accountability to the administration of sports. However, challenges such as a lack of enforcement, governance, and disputes between the government and sports federations persist. Judicial intervention has played a critical role in shaping sports law in India. Courts have debated the extent of governmental control over national sports federations, the autonomy of sports bodies, and the applicability of constitutional provisions like Article 12 and Article 226 in regulating sports organizations. Furthermore, emerging issues like gender inclusion, the role of private entities in sports development, and the rise of e-sports highlight the need for a comprehensive and dynamic legal framework. The balance between autonomy and accountability remains crucial for enhancing India's global sports competitiveness. Future reforms must focus on governance transparency, gender equality, and policy updates to align with international standards. A strong and enforceable legal structure is essential to ensure the sustained growth of sports and uphold ethical sports administration in India.

Keywords: Constitution, Sports, Sports Law, Sports Code, Olympics.

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I. Introduction

SPORTS ARE an integral part of society and played the world over since ancient times. The development of sports is connected to primitive skills required by men for hunting and warfare. The origin of most modern sports can be linked to prehistoric athletic events such as fighting, hunting, and warfare activities like archery, throwing, target shooting, combat sports, *etc.* According to article 2.1 of the European Sports Charter, “Sport means all forms of physical activity which, through casual or organized participation, aim at expressing or improving physical fitness and mental well-being, forming social relationships or obtaining results in competition at all levels”.¹

Like other civilizations, sports have been an essential part of India since ancient times. Various mythological books like the Mahabharata have records of games/sports played in those times. The game of chess was invented in India during the Gupta period. With the Mughals and the British arrival in India, new games like polo, cricket and football, *etc.*, became part of Indian sports. During British rule and thereafter independence, India participated in various international sports events including the Olympic Games. By entry 33 in list II of the Seventh Schedule “Sports” was made the state subject under the Constitution of India, 1950. But for national and international sports no specific entry or article was provided in the Constitution. Eventually, the Indian judiciary held the national and International sports development as a union subject by the exercises of residuary power under article 248 with entry 97², entry 10³ and 13⁴ of list I.⁵

Besides the government, National Sports Federations (hereinafter “NSFs”), constituted under the Societies Acts, play an important role in the development of sports. These sports federations are autonomous bodies but can be called NSF only when they have been recognized so by the union government. To make sports federations more responsible the Government of India brought the National Sports Development Code, 2011 (hereinafter “the Code”). But even after ten years of coming into force and upholding the validity of the Code⁶, the actual implementation is still a point of contention between the government and

¹ European Sports Charter, *available at*: <https://rm.coe.int/16804c9dbb> (last visited on Apr. 20, 2022).

² “Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.”

³ “Foreign affairs; all matters which bring the Union into relation with any foreign country.”

⁴ “Participation in international conferences, associations and other bodies and implementing of decisions made thereat.”

⁵ *Mr. Narinder Batra v. Union of India*, W.P. (C) 7868/2005.

⁶ *Indian Olympic Association v. Union of India*, 2014 SCC OnLine Del 2967.

NSFs. There have been a series of public interest litigations filed against the various sports federation for the implementation of the Code.

II. Sports Development in India: Historical perspective

India has a rich history of sports. Most of the present prestigious sports awards, like the *Arjuna* award and the *Dronacharya* award, are named after personalities from *Mahabharata*. *Dehvada* or the body-way, defined as “one of the ways to full realization”, was an important concept in *Vedic* times.⁷ Games like Archery, horsemanship, wrestling, weightlifting, swimming and hunting were practiced and played by men of higher positions during the *Ramayana* and *Mahabharata* periods. “*Chaturanga*”, presently known as chess, was invented by the Gupta Dynasty.⁸ *Malla-Yuddha* or wrestling is believed to have the longest documented history. There are engravings of wrestling dated to the fourth century B.C. During the period of dramatist Bhasa and Jatakas, there existed *mandapams* or sports pavilions for wrestling contests.⁹ Various other games, like archery (*dhanurvedya* or *dhanurvinoda*), weapon duels (*ankavinoda*), and horse games (*vajivahyalivinoda*), find reference in *Manasollasa*, a 12th Century Sanskrit text by Chaluka King Someshwara.¹⁰ A caste of professional wrestlers, “*Jyesthimallas*” from Gujarat have a whole text on wrestling called “*Mallapurana*” dated back to the 15th Century B.C.¹¹ The text, consisting of 18 chapters, contains various forms of wrestling, training regimes, diets and competitions, etc., related to wrestling.¹²

In the medieval period, with the advent of Islamic dynasties, new sports emerged in Indian sports history. Chess, ludo (called *Chaupar*), polo (called *Chaugan*), pigeon fights, and hunting are among various other games played during the Mughal period as mentioned in Abul Fazal’s *Ain-i-Akbari*.¹³ The British introduced Indians to games like cricket, football, tennis, golf, and hockey. However, “Polo” is an Indian game that the British adopted.¹⁴ Qutubudin Aibak died during a polo game by getting crushed under the feet of horses.¹⁵ Wrestling continued to be a part of the medieval period. Some famous wrestlers of those time

⁷History of Indian sports – Information, Facts, Players and Traditional Indian Sports, available at: <https://www.kreedon.com/sports-in-india-history/?amp> (last visited on Sep. 1, 2021).

⁸ *Ibid.*

⁹ Ronojoy Sen, *Nation at Play: A History of Sports in India 20* (Columbia University Press, New York, 2015).

¹⁰ *Id.* at 21.

¹¹ *Id.* at 22.

¹² *Ibid.*

¹³ *Id.* at 26.

¹⁴ *Id.* at 6.

¹⁵ *Id.* at 26.

are, Muhammad Quli, famously called *Sher Hamlah* (“Attacker of Lions”), Sri Ram, Kanhya, Ganesh, and Balbhadra.”¹⁶ Hunting (*qamargah*) was another popular game.¹⁷

When the British came to India they brought with them their most famous sport, Cricket, and the culture of clubs. The match between the Calcutta Cricket Club (the second oldest cricket club in the world) and the British Regiment was played on February 23, 1792, as reported in the Madras Courier.¹⁸ Eventually, various other games, such as badminton, squash, swimming, rugby, billiards, golf, and boxing, were also introduced in India.¹⁹ Initially, these games were played only by the Britishers and Royal families of India, however, later Indian soldiers working in British regiments and cantonments started playing the demand through them the general Indian population. The *Parsis* are believed to be the first community that embraced English sports, especially cricket with great enthusiasm, and eventually, various other Indian cricket clubs came into existence.²⁰ The game of football was also wholeheartedly adopted by Indians and Calcutta became the first hub for this game. Even though there is no record of who is the first Indian to play cricket, it is strongly believed that Nagendra Prasad Sarvadhikari is the first Indian to kick a football.²¹

Sports also have links with freedom struggles and nationalism. During the late nineteenth century, a cult of bodybuilding took part in the revolutionary revolt against the Britishers and the win by the Calcutta football club, Mohun Bagan, over the British regiment was seen as a great triumph over the British rulers.²² Reformers like Swami Vivekananda highlighted the importance of a healthy body and nation. He said, “*You will be nearer to Heaven through football than through the study of the Gita*”²³ After independence, the first great sports

¹⁶Ronojoy Sen, *Nation at Play: A History of Sports in India* 28 (Columbia University Press, New York, 2015).

¹⁷*Ibid.* “Before the emperor embarked on a hunting expedition, some fifty thousand beaters would drive the animals into a ring where they would be trapped. These elaborate hunts were known as *qamargah* during Mughal times.”

¹⁸*Id.* at 32.

¹⁹*Id.* at 33. “The Bombay Turf Club (for horse racing) was founded in 1800, the Royal Calcutta Golf Club in 1829 (making it the oldest golf club outside Britain), the Madras Cricket Club in 1846, the Calcutta Rowing Club in 1858, the Bangalore Club in 1868, the Bombay Gymkhana in 1875, and several more in towns and outposts across the length and breadth of India.”

²⁰ “...with the Bombay Union Cricket Club and the Hindu Cricket Club being founded by Marathi students of the Elphinstone High School in 1861 and 1877, respectively. Elsewhere, the Aligarh Cricket Club was established at the Mohammedan Anglo Oriental College by a Brahmin professor in 1879, and the Madras United Cricket Club was founded by the legendary Buchi Babu Naidu in 1891 to challenge the racially exclusive Madras Cricket Club.” *Id.* at 47.

²¹*Id.* at 50.

²²*Id.* at 7.

²³History of Indian sports – Information, Facts, Players and Traditional Indian Sports, *available at*:<https://www.kreedon.com/sports-in-india-history/?amp> (last visited on Sep. 1, 2022).

victory for India was winning gold in hockey in the 1948 Olympics. Thereafter, the first Asian games were held in New Delhi in 1951, where India won fifteen medals.²⁴

In the 1952 Helsinki Olympics, India won Gold in Hockey and the first-time women participated from Independent India.²⁵ Though some Anglo-Indian women participated in Wimbledon before independence post-independence, in 1952, Rita Davar was the first woman to win as runner-up in the junior women's event.²⁶ The Asian Games have had some success in women's events. Besides, such events, individual games like hockey and basketball were also very famous among the women at the time of independence, especially among Anglo-Indians. In 1953, the first-ever women's hockey team participated in an International Event in England.²⁷ An interesting incident in women's sports is about Hamida Banu, also known as "Amazon from Aligarh", a women wrestler, who challenged male wrestlers to decide on her husband.²⁸ She defeated many male wrestlers which did not go well with many wrestling organizations who eventually banned such matches.²⁹

With time sports have developed as one of the important professions. In the Commonwealth Games of 2022, India performed incredibly well. However, at the same time, with the privatization of sports, legal issues, and complexities have also increased in sports.

III. Meaning of Sports

To understand modern sports, first, it is necessary to understand what is sports and what differentiates it from play and games. There is no one universal definition of sports and defining it is another complex issue. A very interesting argument in respect of sports can be analysed in the case of *R v. Brown*³⁰. The issue was whether bodily harm caused during a consensual sadomasochistic homosexual encounter would be a punishable offence or not. It was argued on behalf of the appellant that since the injured party had given "consent" to harm, the appellant is not guilty of offence. During the arguments, the appellant's counsel drew an analogy between the harm caused during various sports and homosexual activity. It was argued, that "...activities carried on with consent by or on behalf of the injured person have been accepted as lawful notwithstanding that they involve actual bodily harm or may

²⁴*Supra* note 16 at 196.

²⁵*Id.* at 198. "Athletes Nilima Ghose and Mary D'Souza were part of the Indian contingent."

²⁶*Ibid.*

²⁷*Id.* at 199.

²⁸*Ibid.*

²⁹*Id.* at 200. She even appealed to Moaraji Desai, future PM of India, against the decision to ban imposed on her on "grounds of her gender".

³⁰ [1993] 2 All ER 75, [1994] 1 A.C. 212.

cause serious bodily harm. Ritual circumcision, tattooing, ear-piercing, and violent sports including boxing are lawful activities”.³¹ The case also poses the interesting question of “what should be considered a sport?”. However, to understand sport, we need to differentiate it from play and games.

According to historians and philosophers, there are differences in the words play, games, and sports. The term “play” is much wider than “sports”. Johan Huizinga, in his book *Homo Ludens*, has discussed a great deal about “play”. He laid out some important characteristics of play. According to him “play” is, an activity that is not serious yet absorbs the players intensely, has no material interest, has its own boundaries of time and space, and promotes social grouping.³²

On the other hand, “games” are organized playing. It is defined as “...a play activity which has explicit rules, specified or understood goals..., the element of opposition or contest, recognizable boundaries in time and sometimes in space, and a sequence of actions which is essentially “repeatable” every time the game is played”.³³ A well-known sports philosopher, Bernard Suits defined games as, “To play a game is to attempt to achieve a specific state of affairs, using only means permitted by the rules, where the rules prohibit the use of more efficient in favour of less efficient means, and where the rules are accepted just because they make possible such activity”.³⁴

The origin of the word ‘sport’ lies in Latin and French. The French word “*desporter*”, originated from the Latin word “*deportare*” which means “to amuse oneself”.³⁵ However, the modern word “sport” was first used in England in 1440 A.D. where it meant competitions in various games.³⁶ It has general characteristics like, “continuity, division of roles, dynamic interaction with an audience, and a supporting establishment.”³⁷ “Continuity” is explained by Paul Weiss as “a game is an occurrence; a sport is a pattern.”³⁸ For example, cricket has been played for over 100 years and its fixed pattern makes it a sport. So, playing cricket in a

³¹*Ibid.*

³²Johan H. Huizinga, *Homo Ludens: A study of the Play-Element in Culture* 13 (Routledge & Kegan Paul, London, 1980).

³³Robert A. Mechikoff, *A History and Philosophy of Sports and Physical Education: From Ancient Civilization to Modern World* 6 (McGraw Hill, NY, 6thedn., 2014).

³⁴John William Devine and Francisco Javier Lopez Frias, "Philosophy of Sport", *The Stanford Encyclopaedia of Philosophy* (Fall 2020 Edition), Edward N. Zalta (ed.), available at: <https://plato.stanford.edu/archives/fall2020/entries/sport/> (last visited on 4/4/23).

³⁵*Supra* note 33 at 4.

³⁶*Ibid.*

³⁷*Ibid.*

³⁸*Supra* note 33 at 6,7.

locality with certain defined rules will be a “game of cricket” but playing games of cricket under an organization like BCCI with set rules and a huge audience will make it a sport. According to the Suits' definition of sports, it is a “competitive event involving a variety of physical (usually in combination with other) human skills, where the superior participant is judged to have exhibited those skills in a superior way”.³⁹

In India, the Kerala Sports Act, 2000 lays an inclusive definition of sports under section 2(xiv). The definition includes outdoor games, athletics, country sports, indoor games, aquatic sports, and many other sports and other physical activities which the Kerala state government may include by notification on the recommendation of the State Sports Council. The question of as to what is sport also came before the judiciary in the case of *Amit Chaudhary v. State of Uttar Pradesh*,⁴⁰ where the court held “bodybuilding” as a sport because of the physical activity involved in it.

The way the modern legal system defines sports often misses the mark when it comes to the wide range of activities that make up today’s competitive and athletic world. Traditionally, sports have been viewed through a narrow lens, focusing on physical activities that involve bodily effort, skill, and competition. This perspective, rooted in outdated ideas, overlooks the growing prominence of mentally driven competitive activities like e-sports, chess, and other cognitive challenges that demand extraordinary skill, strategy, and stamina. Even though these activities may not be as physical as traditional sports, they share core characteristics like competition and structured games with governing bodies. Unfortunately, current legal frameworks fail to recognize them adequately, leaving participants without the same protections, opportunities, or respect that athletes in other recognized sports enjoy.

IV. The Constitution and Sports

The Constitution mentions “Sports” as a state subject under entry 33 of list II of the 7th schedule. Accordingly, most states have developed state sports policies and schemes for developing sports within their boundaries. For the development of national and International, the union government exercises residuary power under Article 248 with entries 97⁴¹, entries 10,⁴² and 13⁴³ of List I. In *M/s Narendra Batra v. Union of India*⁴⁴, the High Court of Delhi

³⁹*Ibid.*

⁴⁰ 1999 All LJ 2617

⁴¹*Supra* note 2.

⁴²*Supra* note 3.

⁴³*Supra* note 4.

held that the power to make laws for sports as per entry 33 in List II of the State legislature is to be constructed as a power to legislate and regulate sports restricted to the precincts of the state and ending at its boundaries.⁴⁵ It was further observed that “....to represent India as a nation at international sports meets as well as international fora, it is an essential part of Government function that scrutiny is effected by the sporting event or the forum in which participation is proposed. The source of the legislative competence of the Government to do so is derived from entry 10 and 13 of List I”.⁴⁶ Based on above observations it was held, “....sports, when construed from the aspect of Entry 33 in List II has to be confined to sports at the state level alone”.⁴⁷

Therefore, the Ministry of Youth Affairs and Sports’ (hereinafter “MoYS”) with the ‘Sports Authority of India’⁴⁸ (hereinafter “SAI”) works on national and international sports development. The Ministry over the years has come up with various schemes for the promotion of sports but India’s national sports law is still at an embryonic stage. Presently, national and international sports are regulated and promoted through the National Sports Development Code, 2011 (“the Code”), the National Sports Policy, 2001, and various central government schemes. The National Sports Policy, 2001 talks about “twin objectives of “Broad-basing” of Sports and “Achieving Excellence in Sports at the National and International levels”. For said objective, it focuses on the integration of sports with education, broad-basing Sports, infrastructural development, harmonious working of federation and government bodies, etc.⁴⁹

The Code is the amalgamation of government orders/circulars issued before 2011 to incorporate “Good Governance” practices by the NSFs. It lays down conditions for recognition as NSF and other aspects like elections of federations, prevention of sexual harassment, anti-doping, etc. It is based on “based on the Basic Universal Principles of Good

⁴⁴*Supra* note 5.

⁴⁵*Id.* at Para 68. The Court observed, “Sports at the state level is really a minuscule part of the enormous activities which it takes under its ambit. In its larger multi-faceted, inter-state, national and international facets are undeniably beyond the legislative competence of the State Government.... When Entry 33 of List II is so read, it is clearly evident that the general and residuary powers in all matters relating to sports at the national level remain beyond the legislative competence of the State. Hence the same would be clearly beyond the executive competence of the State as well.”

⁴⁶*Id.* at 85.

⁴⁷*Id.* at 89.

⁴⁸ “It is a Registered Society fully funded by the Government of India and is under the Administrative control of the Ministry of Youth Affairs & Sports. The Government of India provides funds to SAI for implementing the Sports Promotional Schemes of SAI throughout the country through its Regional Centres and Academic Institutes.”

⁴⁹The National Sports Policy, 2001, available at: <https://yas.nic.in/sites/default/files/National%20Sports%20Policy%202001.pdf> (last visited on Jan. 20, 2022).

Governance of Olympic and Sports movement and does not, in any manner, contradict or interfere with the autonomy of the national sports bodies in discharging their functions and duties per the International Olympic Charter”.⁵⁰ Even though sports federations are autonomous bodies without recognition as “NSFs” by the Government, the sports organizations cannot represent India at international forums and also cannot receive funds and concessions from the government.⁵¹ Therefore, the implementation of the Code is the main point of contention between the government and NSFs.

The constitutional validity of the Code was raised in the *Indian Olympic Association (IOA) v. Union of India*.⁵² The Delhi High Court held, “international sports and regulation of NSFs, and IOA, in respect of the matters which are the subject of these proceedings, falls within Entry 97 of the First List to the Seventh Schedule to the Constitution of India. The Central Government can insist upon adherence to these provisions, without the aid of legislation. It is also held that the Sports Code does not violate the freedom under Article 19(1)(c) of the Constitution. Neither are its provisions arbitrary. The tenure restrictions impugned in this case can and are insisted upon as a part of the public interest in the efficient and fair administration of such NSFs.” But despite being held as constitutionally valid it has not been implemented in its letter and spirit by some of the important sports federations. This has in turn led to various PILs and the formation of the Committee of Administration (hereinafter “CoA”). In *Rahul Mehra v. Union of India*,⁵³ the Delhi HC held “the NSFs, IOA and other sports bodies recognized by the Government of India would have to bring their constitution in accordance with the Sports Code, as held by the Supreme Court in *Maharashtra Archery Association v. Rahul Mehra and Ors* (2019) 18 SCC 287 as well as by this court in case of *Indian Olympic Association Vs. Union of India*. The court is informed that barring 6, none of the other 56 NSFs are complying with the Sports Code. That being the position, they cannot be deemed to even be the representative body in terms of the Sports Code...”⁵⁴ It was observed, “Perpetuation of control or hegemony of a group over a Society/Association or entity is ex facie undemocratic. All the more, in cases where the entity discharges public functions”⁵⁵ In *S. Nithya v. Secretary*,⁵⁶ Madras High Court held, “Although

⁵⁰The National Sports Development Code of India, 2011, available at: <https://yas.nic.in/sites/default/files/File918.compressed.pdf> (last visited on Feb. 2, 2023).

⁵¹*Ibid.*

⁵²2014 SCC OnLine Del 2967.

⁵³ W.P.(C) No.195/2010, Delivered by Delhi High Court on 17 December, 2021.

⁵⁴*Id.* at para 3.

⁵⁵*Rahul Mehra v. Union of India*, 2022 SCC OnLine Del 2438, Para 42.

⁵⁶ 2022 SCC MAD 318.

these bodies may be registered in different states under the Societies Registration Act or the Companies Act, their authority to function as the NOC or NSF will be dependent on compliance with the government guidelines...”.

V. Indian Judiciary and Sports Law

In *M/s Narendra Batra v. Union of India*,⁵⁷ the Court made an observation, “just as state activity has not remained confined to the narrow issues of governance; private enterprises are also not confined to areas of private activity and there is a tremendous interplay between private players and activity of public nature, with or without direct Government intervention or involvement.”⁵⁸

Status of Sports Organization in India

Article 12 of the Constitution lays down the definition of ‘State’ which includes “other authorities”.⁵⁹ So the important question is whether sports organizations fall under “other authorities” and state within the meaning of Article 12 of the Constitution. The issue came before the Supreme Court of India in *Zee Telefilms Ltd. v. Union of India*⁶⁰ and the Court answered the question negatively. The Court applied the principles laid down in *Pradeep Kumar Biswas’s case*⁶¹ and observed that “the facts”⁶² prove that the BCCI is not under the control of the government either financially, functionally, or administratively.⁶³ Therefore, the sports bodies in India do not fall under the “other authorities” defined in Article 12 of the Constitution and hence are not amenable to writ jurisdiction under Article 32 of the Constitution.

⁵⁷ *Supra* note 5.

⁵⁸ *Id.* at Para 40.

⁵⁹ “226. Power of High Courts to issue certain writs (1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.”

⁶⁰ (2005) 4 SCC 649.

⁶¹ 2002) 5 SCC 111.

⁶² The Facts that led the Court to rule BCCI as private autonomous body and not as State are: “1. Board is not created by a statute; 2. No part of the share capital of the Board is held by the Government; 3. Practically no financial assistance is given by the Government to meet the whole or entire expenditure of the Board; 4. The Board does enjoy a monopoly status in the field of cricket but such status is not State conferred or State protected; 5. There is no existence of a deep and pervasive State control. The control if any is only regulatory in nature as applicable to other similar bodies. This control is not specifically exercised under any special statute applicable to the Board. All functions of the Board are not public functions nor are they closely related to governmental functions; 6. The Board is not created by transfer of a Government owned corporation. It is an autonomous body.”

⁶³ (2005) 4 SCC 649.

Judicial Review Under Article 226 of The Constitution

While *Zee Telefilms Ltd. v. Union of India*⁶⁴, held that BCCI is not 'State' under Article 12, the Supreme Court did not deny its role in performing public function. It was held that duties like the selection of a team that represented India, and controlling the activities of the players are public functions, akin to public duties or state functions, therefore, even if remedy under Article 32 is not available, an aggrieved party can always seek remedy under the ordinary course of law or by way of a writ petition under Article 226 of the Constitution.⁶⁵

Hence, the sports bodies may not come under "other authorities" under Article 12 of the Constitution, but Article 226 of the Constitution has much wider application and will include sports bodies under the term "authority" used in Article 226. In *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Ors. v. V.R. Rudani and Ors.*⁶⁶, the Apex Court held, "The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of the positive obligation owned by the person or authority to the affected party, no matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied." Therefore, any person aggrieved by the decision of the sports bodies can challenge it under ordinary law as well as under Article 226 of the Constitution.

In *Ajay Jadeja v. Union of India*⁶⁷, the Delhi High Court that, "High Courts' jurisdiction under Article 226 is governed by the language in such Article and the meaning assigned to the term "authority" in Article 12 would not apply to such a term in Article 226 of the Constitution."⁶⁸ While dealing with the question of banning the player from playing the Court held, "the instant case not only is a violation of fundamental right complained of but the nature of the duty being discharged by the respondent is certainly a public duty dealing with an activity which is of widest general public interest and is in the furtherance of a sporting activity which is of importance to any civilized society."⁶⁹ The Court rightly held that

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ 1989 2 SCC 691.

⁶⁷ 95 (2002) DLT 14.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

“the Court would not interfere with a wholly contractual matter purely in the private law field unless such contract gives rise to a public duty in the respondent.....or should the act of the respondent result in a restriction on the fundamental right. In either of the cases, the Court’s jurisdiction under article 226 cannot be ousted.”⁷⁰

While taking a cautious approach to the applicability of writ jurisdiction on non-state bodies the court held that the writ can be invoked only when impugned actions are arbitrary and infringe fundamental rights, having wide ramifications of a public nature. The court held, “Since the body/person is brought into the ambit of the writ jurisdiction by the public nature of its duties and the public interest inherent therein, it must follow as a corollary that the action complained of also must be of such a nature that could affect the public in addition to private interest in the wider sense to be amenable to writ jurisdiction.”⁷¹

A similar question, of BCCI being amenable to writ jurisdiction, again came before the Delhi High Court in *Rahul Mehra v. Union of India and Ors.*,⁷² and Court answering the issue affirmatively, retreated the view taken in *Ajay Jadeja v. Union of India*⁷³. The court held, “A body, public or private, cannot be categorized as “amenable” or “not amenable” to writ jurisdiction. The “function” test is the correct one to test maintainability. If a public duty or public function is involved, anybody, public or private, qua that duty or function, and limited to that, would be subject to judicial scrutiny under the extraordinary writ jurisdiction of article 226.”⁷⁴

Approach in Other Countries

Different common law countries have different approaches toward the application of judicial review on sports bodies. In countries like England, the courts have been reluctant to apply judicial review on sports bodies. It has been held in a few cases⁷⁵ that sports bodies do not perform a public function; rights and duties between parties arising out of contractual relations between them, therefore not subject to judicial review. In *R. v. Football Assn. Ltd., exp Football League Ltd*⁷⁶ the Court of Appeal noted that the Association had a monopoly

⁷⁰*Ibid.*

⁷¹*Ibid.*

⁷² 114 (2004) DLT 323.

⁷³ 95 (2002) DLT 14.

⁷⁴*Ibid.*

⁷⁵*Law v. National Greyhound Racing Club Ltd*, (1983) 1 WLR 1302 &*R. v. Disciplinary Committee of the Jockey Club, ex p Aga Khan*, (1993) 1 WLR 909.

⁷⁶ (1993) 2 All ER 833.

and its decisions had an impact on the public but still held it to be outside of public law.⁷⁷ In *R. v. Disciplinary Committee of the Jockey Club, ex p Aga Khan*⁷⁸, the decision of the Court of Appeal to not allow judicial review against the jockey club was much criticized by various authors for giving too much emphasis to contractual terms even though there was “too little to the absence of any real choice on behalf of a racehorse owner but to submit to the Jockey Club’s jurisdiction.”⁷⁹

In Scotland and New Zealand, sports bodies are subject to judicial review. In the *St. Johnstone Football Club Ltd. v. Scottish Football Assn. Ltd.*⁸⁰, the football association was held as amenable to judicial review because of its functions such as the imposition of a fine or expelling a member.⁸¹ Similarly, in *Yuill Irvine v. Royal Burgess Golfing Society of Edinburgh*⁸² and *Stuart Crocket v. Tantallon Golf Club*⁸³ sports bodies were made amenable to judicial review by the Courts of Scotland.⁸⁴ In *Finnigan v. New Zealand Rugby Football Union Inc.*,⁸⁵ one reason the court entertained judicial review was the significant impact of rugby, as New Zealand’s national game, on the country’s community.⁸⁶

VI. Contemporary Issues

Enforceability of Sports Code and Mal Practices of NSFs

Although the constitutionality of the Code was upheld, most NSFs have not enforced it. This has resulted in multiple player petitions highlighting malpractices in federations, leading to the court-appointed Committee of Administrators (hereinafter “CoAs”). The issue is

⁷⁷ The court held “Despite its virtually monopolistic powers and the importance of its decisions to many members of the public who are not contractually bound to it, it is, in my judgment, a domestic body whose powers arise from and duties exist in private law only. I find no sign of underpinning directly or indirectly by any organ or agency of the state or any potential government interest.”

⁷⁸ (1993) 1 WLR 909.

⁷⁹ Micheal Belioff, “Watching out for the Googly: Judicial Review in the World of Sport”, 14 *JUD. REV.* 137 (2009).

⁸⁰ 1965 SLT 171.

⁸¹ 1965 SLT 171 at 173.

⁸² 2004 LLR 334. The Court held “that there was no recognized principle that the court should refrain from exercising the power of judicial review where the body whose decision is under attack is a sporting body.”

⁸³ 2005 CSOH 37. The Court held that “unlike England, judicial review remedies are available in Scotland ‘in proceedings against public authorities as in proceedings against private individuals.’”

⁸⁴ *Ibid.*

⁸⁵ (1985) 2 NZLR 159.

⁸⁶ “The decision affects the New Zealand community as a whole and so relations between the community and those, like the plaintiffs, specifically and legally associated with the sport. Indeed, judicial notice can be taken of the obvious fact that in the view of a significant number of people, but no doubt contrary to the view of another significant number, the decision affects the international relations or standing of New Zealand.... We are not holding that, nor even discussing whether, the decision is the exercise of a statutory power, although that was argued. We are saying simply that it falls into a special area where, in the New Zealand context, a sharp boundary between public and private law cannot realistically be drawn.”

appointments of life members, voting rights and irregular elections. In *Mahipal Singh and Ors. v. Union of India and Ors.*,⁸⁷ the Delhi High Court held, “that the Sports Code does not visualize the post of Life President either as an Office Bearer or otherwise.” Similarly in *Aslam Sher Khan v. Union of India*,⁸⁸ the Supreme Court held, “In NSF the posts of Life President, Life Member and CEO with voting rights (as distinct from an employee or consultant) are illegal, as the same are contrary to the Sports Code.” Hence, there is a need for proper enforcement of the code. An absence of sportspersons, women, etc., in the management of sports bodies is also an important issue. Courts in the above cases have specifically identified these as some of the important changes required in the sports federations. Though the Code lays consequences for not following it in letter and spirit, the government is still reluctant to use these measures against the non-abiding sports federations. The non-action of the government has led to the creation of COAs by the court which violates the principle of international sports law.

Committee of Administrations for Sports and Judiciary

One of the main principles of international sports law is the ‘autonomy’ of sports federations. By creating CoAs, the India Courts are violating the principle of autonomy by ‘third-party interventions. It is creating fear of suspensions of national federations by the international federations from their memberships. In fact, the All India Football Federation (AIFF) was recently suspended by FIFA and could have lost hosting rights for the U-17 Women’s World Cup. In 2017, the Supreme Court in *All India Football Federation (AIFF) v. Rahul Mehra*,⁸⁹ appointed CoAs for the smooth functioning and fair elections as per the Code in the AIFF. Initially, FIFA did not object but eventually, due to unwarranted third-party intervention suspended AIFF. To save the country from embarrassment, the Supreme Court, by its order terminated the CoAs.⁹⁰

Despite this, in 2022, five national federations – the Indian Olympic Association⁹¹ (though got interim relief from SC required to maintain the status quo), the Table Tennis Federation of India⁹², the All India Hockey Federation⁹³, and the Judo Federation of India⁹⁴

⁸⁷2018 SCC OnLine Del 10284.

⁸⁸ 2022 SCC OnLine Del 1569.

⁸⁹ SLP(C) 30748-30749/2017.

⁹⁰ *All India Football Federation v. Rahul Mehra*, SCC OnLine SC 2118.

⁹¹ *Rahul Mehra v. Union of India*, W.P.(C) No.195/2010, Delivered by Delhi High Court on 16 August, 2022.

⁹² *Manika Batra v. All India Table Tennis Federation*, 2022 1 SCC OnLine Del 494.

⁹³ *Aslam Sher Khan v. Union of India & Ors*, 2022 SCC OnLine Del 1569.

have been placed under Delhi High Court-created CoAs. This trend of judicial intervention is not right especially when after their termination nothing fruitful results. Instead of requiring the Government to strictly enforce the Code against all the NSFs, the Court is opting for the creation of CoAs with retired judges as chairpersons.

Gender Issues and Concerns

Women's sports and representation is an important part of the sport's development. Although the participation of women in sports has considerably increased over the years "gender in sports" is a rather least debated subject in the development of sports law. In *Rahul Mehra v. Union of India*,⁹⁵ the Delhi High Court observed "Special representation of women in Governing Bodies is a requirement under Clause 2.4 of the IOCs Code of Ethics. Women comprise about 50% of the country's population..... There is every reason to acknowledge women's significant presence in the sporting world. Sports administration is not a male preserve. It is a matter of record that in all its 95 years of existence, the IOA has never had a woman as its President or Secretary General. Surely, women do aspire to be in significant positions in the decision-making process. Their presence both in the GB, as well as the EC of the IOA, will lend to fruition of their valid aspirations." Besides women's issues, the case of *Dutee Chand v. Athletics Federation of India (AFI) and The International Association of Athletics Federations (IAAF)*⁹⁶ and *National Legal Services Authority v. Union of India*,⁹⁷ has also opened the debate for the participation of intersex and transgender in Indian Sports.

Development of E-Sports

It is a complex convergence of culture, technology, business, and sports. In India, e-sports is a fast-developing industry. It witnessed a whopping investment of \$544 Million from August 2020- January 2021. It is rapidly becoming part of international inter-country sports events. Tirth Mehta brought the first medal for India in E-Sports by winning a bronze medal in the Asian Games of 2018.⁹⁸ In the 2022 Asian Games, E-Sport is going to be a medal event and

⁹⁴*Haryana State Judo Association v. Judo Federation Of India & Ors*, W.P.(C) 3307/2022 & CM APPL. 9641/2022.

⁹⁵2022 SCC OnLine Del 2438.

⁹⁶CAS 2014/A/3759.

⁹⁷ 2014(5) SCC438.

⁹⁸Indian DOTA 2 Team wins' bronze medal at Commonwealth Esports Championship 2022, *available at*: <https://www.timesnownews.com/technology-science/indian-dota-2-team-wins-bronze-medal-at-commonwealth-esports-championship-2022-article-93409516> (last visited on Jan. 12, 2023).

India is sending its 18-member contingent for the event.⁹⁹ At the first-ever, inter-country, Commonwealth E-sports Championship, India DOTA 2 team won a bronze medal by defeating New Zealand.¹⁰⁰ Such performance at the international level will bring more revenue to India in the form of brands, gaming industry setups and broadcastings, etc.

The legality of online games like fantasy sports has arisen in several cases. The issue in all these cases was whether online gaming or fantasy sports were games of skill or chance. High Courts in various decisions like *Varun Gumber v. UT of Chandigarh*¹⁰¹, *Gurdeep Singh Sachar v. Union of India*¹⁰², *Chandresh Sankhla v. State of Rajasthan and Ors*¹⁰³ and *Ravindra Singh Chaudhary v. Union of India*¹⁰⁴ has held that “organized internet gaming events and fantasy games are “games of skill” and “games of chance” like gambling.

Presently, e-sports in India are regulated by the E-Sports Federation of India which is a member of various international E-Sport Federations.¹⁰⁵ Unfortunately, it has not been recognized as NSF by MoYS. In 2022, the Government of India brought amendment to the Government of India (Allocation of Business) Rules, 1961 and officially allocated “E-Sports as a part of Multi-sports event” to the Ministry of Youth Affairs and Sports.¹⁰⁶ With the same amendment “matters related to online gaming” was allocated to the Ministry of Electronics and Information Technology.¹⁰⁷

To move up with the world in sports, India needs to develop the e-sport industry. It can open a new arena of sports for youth and especially for women who are not able to participate in sports due to traditional factors alike physical availability, *etc.* The anonymity and access at home are some of the important aspects of e-sports that are not available in traditional sports and can benefit women who are otherwise not able to participate in sports. Some of the famous female e-sports players, having a huge fan following, are Shafgupta Iqbal aka

⁹⁹Asian Games 2022: India’s 18-member esports team identified, <https://olympics.com/en/news/asian-games-2022-indian-esports-team-athletes-qualified-full-list> (last visited on Jan. 12, 2023).

¹⁰⁰Tasmayee Laha Roy, How India’s first Commonwealth Games Medal in esports will affect brands’ interest, <https://www.cnbc18.com/storyboard18/how-indias-first-commonwealth-games-medal-in-esports-will-affect-brands-interest-14456822.htm> (last visited on Jan. 12, 2023).

¹⁰¹2017 SCC OnLine P&H 5372.

¹⁰²Judgment dated 30th April 2019 in Criminal P.I.L. No. 16 of 2019.

¹⁰³2020 SCC OnLine Raj 264.

¹⁰⁴2020 SCC OnLine Raj 2688.

¹⁰⁵About E-Sports Federation of India, <https://esportsfederation.in/> (last visited on Feb. 3, 2023).

¹⁰⁶The Government of India (Allocation of Business) (Three Hundred and Seventieth Amendment) Rules, 2022.

¹⁰⁷*Ibid.*

“Xyaa”, Payal Dhara, Deepanshi Rawat, aka “Dobby,” Krutika Ojha and Saloni Panwar, the first Indian woman to compete at International E-Sports Tournament held in Thailand.¹⁰⁸

VII. Suggestions and Conclusion

In *Indian Olympic Association v. Union of India*¹⁰⁹, the court summarized the dismal position of sports administration in India. Despite the challenges, sports play an important role in the development of the society and the economy of the country. Games have been part of society since ancient times. Today it has become more commercialized and privatized. A great deal of effort and money is spent on increasing the medal tallies of the countries in the international games/events. India has also, over the period, increased its budget for sports development. To bring Indian Sports up to par with other developed countries, India needs to develop its sports laws and policies. A balance between autonomy and control over NSFs is necessary to control corruption and mismanagement of NSFs. With more private players coming into sports, it has to address sports challenges like other businesses. Some of the important steps which need to be taken immediately are:

- I. There is a need for an independent Ombudsman, Election, and Arbitration Commission having representatives of sportspersons, women, and other stakeholders. Ombudsman and arbitration commission can be instrumental in quick relief which are essential in sports.
- II. Coaches and other people in the administration of sports must not be allowed to run their private academies during their tenure to ensure there is no conflict of interest. Control of politicians over sports administration, as chairpersons and office bearers, needs to be reduced.
- III. There is a need to have a balance between the autonomy and responsibilities of NSFs. Checks are required whenever decisions are arbitrary and unreasonable. In *Sushil Kumar v. Union of India and Ors*¹¹⁰, it was held, “writ Court cannot interfere in the exercise of discretion of National Sports Federation and substitute its judgment except where the discretion is shown to be exercised arbitrarily and perversely or contrary to settled principles and practices”. In *Paralympic Committee of India v. Naresh Kumar*

¹⁰⁸ Michelle, Top 5 female Streamers Conquering the Gaming Industry in India, E:/E%20sports/Gender%20&%20E-sports/Top%205%20Female%20Streamers%20Conquering%20The%20Gaming%20Industry%20in%20India%20-%20FanClash.html (last visited on Jan.12, 2023).

¹⁰⁹2014 SCC OnLine Del 2967.

¹¹⁰ 230 (2016) DLT 427.

*Sharma*¹¹¹ the Delhi High Court held, “that one single performance at one competition or trial cannot be used as criteria for selection of an athlete and the Selection Committee has to take a broader view and analyze the performances of the athletes across different competitions and trials.” Therefore, whenever arbitrary decisions are taken, NSFs must be made responsible.

- IV. Sports policy is the benchmark for sports development in the country. Countries like China keep updating their sports policy every five years interconnected with the upcoming Olympics. But Indian sports policy dates back to 2001 and has not been updated in the last 22 years. Though the draft is pending no actual efforts have been made to update the policy. An updated sports policy with periodic goals is a must.
- V. There is a need to relook at women and other gender concerns in sports. Countries like France, Australia and Canada present a good example in this respect. Women’s participation at all levels of sports, from leadership to sports assistant is necessary. Studies on women’s sports in India are required. It will help in identifying the target areas in women’s sports and the actual participation of women in coaching, administration and other levels of sports. Such studies can form the basis for gender-specific sports policies for the promotion of sports among women.
- VI. Social inclusion is an important aspect of sports. A sports policy must aim for the participation of all without any discrimination based on caste, sex, sexual orientation, or gender. Special focus must be laid on tribal/aboriginal sports and local sports, especially at panchayat levels. It will help in talent identification at an early stage among children.

¹¹¹ MANU/DE/1458/2018.