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**SHRI DHARMASTHALA MANJUNATHESHWARA  
LAW COLLEGE & CENTRE FOR  
POST GRADUATE STUDIES & RESEARCH IN LAW**  
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# Legal Opus

Issue No. 12  
July 2019

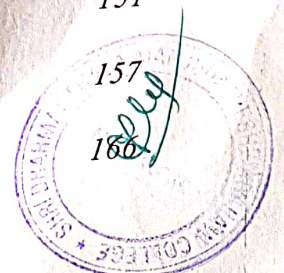




# LEGAL OPUS

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## JUXTAPOSING THE INDIAN SCENARIO OF VYING PLAYERS AND LEGAL ASPECTS OF SPORTS

K. Vinutha \*

*'Do you know what my favorite part of the game is? The opportunity to play.'*

- Mike Singletary

Every progressive society attempts to mould its citizens life for the overall development through its social- cultural aspects. Sportsmanship is an attitude that strives for fair play, courtesy toward teammates and opponents, ethical behaviour and integrity and grace in victory or defeat.<sup>1</sup> Sport being a blend of culture and education captures the broad range of outcomes associated with physical, mental and social wellbeing. Sport and Social Cohesion element in society encapsulates the upliftment in the area of community empowerment, social inclusion/integration, and diversity management.

Sports development is a national priority, as it promotes active lifestyle, child and youth development, social inclusiveness, employment opportunities, peace and development, and above all a sense of belongingness and national pride.<sup>2</sup> Playing sports or engaging in extracurricular activities play an important part in one's character/personality development. One develops management skills, negotiation skills, communication skills, convincing skills, conflict management and confidence. Evidence worldwide suggests that the built environment must be reshaped to improve and sustain engagement in physical activity across communities to secure associated health benefits.<sup>3</sup>

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 of effort, the educational value of good example, social responsibility and respect for universal fundamental ethical principles. Olympic games and sport in general continue to be an expression and promoter of human rights, from their inclusiveness of all to the specific conditions.

\* Assistant Professor, SDM Law College and Centre for Post Graduate Studies and Research in Law, Mangaluru.

<sup>1</sup> Lacey David "It takes a bad loser to become a good winner". *The Guardian*. (10 Nov. 2007).

<sup>2</sup> National Sports Development Code 2011.

<sup>3</sup> Human Kinetics Journal- 7th International Society for Physical Activity and Health Congress, Volume:15 Issue: 10 Suppl 1



The United Nations has officially acknowledged sport as a method for advancing health, education and development. Therefore, there is a need to streamline the field of sports with reasonable law framework. As state subject, sports development comes within the purview of the states up to state level; at the national and international level, it falls within the realm and remit of the Union Government under its residuary powers and within the ambit of Entries 10 and 13 of Union List.<sup>4</sup>

Authority structure / Administration of Sports affair in India have been managed by the Ministry of Youth Affairs and Sports. It is responsible for handling the administration and funding of sports. The cabinet minister heads the ministry and the national sports federation manages it. Sports activities are also managed by autonomous authorities like Indian Olympic Association (IOA), Sports Authority of India (SAI) & Board of Control for Cricket in India (BCCI). Besides, globalization of sports has shifted the focus of legal regulation increasingly onto certain international and national sports federations which controls and governs international sport. They have their own rule books and constitutions, often catering to their own convenience. They take decisions that can have profound effects on the careers of players and that have important economic consequence. They are autonomous organizations and are independent of national governments.<sup>5</sup>

Sports law is the emerging line of law which deals with the legal aspects pertaining to sports persons, teams, management of teams and association of players. It attracts the law of contracts, tort laws (right of reputation, publicity and allied rights), Broadcasting rights and Competition laws and other allied laws but there is no specific legislation regarding sports law in India. National Sports policies were formulated with the objective of raising the standards of sports in the year 1984 and 2001. The threefold objectives of the guidelines of National Sports Policy 2001 are;

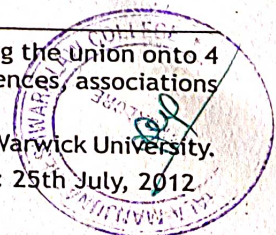
- ① Firstly to define the areas of responsibility of the various agencies involved in the promotion and development of sports
- ② Secondly, to identify National Sports Federations eligible for coverage under these guidelines, to set priorities, and to detail the procedure to be followed by the federations to avail of government sponsorship and assistance.
- ③ Thirdly, to state the conditions for eligibility which the government will insist upon while releasing grants to sports federations.

In *Rahul Mehra s Case*<sup>6</sup>- Hon'ble Delhi High Court took a serious view about the mismanagement of the Sports Sector in the country and expressed deep concern at the inaction on the part of the government in implementing and enforcing its own guidelines, particularly those relating to age and tenure.

<sup>4</sup> Entry 10 and 13 of Union list - Entry 10: Foreign affairs, all matters which bring the Union onto a relation with any foreign country. Entry 13: Participation in international Conferences, associations and other bodies and implementing of decisions made there at.

<sup>5</sup> Ken Foster- Is there a Global Sports Law? Entertainment Law 2.1 2010: 1-18, at 1 Warwick University.

<sup>6</sup> *Rahul Mehra V/S Union of India and others* - PIL no 195/2010 Date of decision: 25th July, 2012





To identify basic universal principles of Ethics and good governance based on the International Olympic Committee (IOC), International best practices, to study draft national, sports development bill, 2011 Supreme court and high courts judgements related to issues of good governance in administration of sports and to make specific recommendations for bringing out a comprehensive national sports code to address the issues of governance pertaining to the national Sports Federations and National Olympic committee the Union Sports Ministry had constituted committee.<sup>7</sup>

In the absence of a specific enactment with regard to sports, the National Sports Development Code of 2011 governs the conduct of the National Sports Federation in India. The high court of Delhi has upheld the validity of the same in Indian Olympic Association Case.<sup>8</sup> There are other draft central bills, National Sports Development Bill 2013, prevention of Sporting Fraud Bill 2013, Draft Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) (Amendment) Bill, 2018 which if promulgated would give further credence to the existence of sports law in India.

The National Sports University Bill, 2018 was introduced<sup>9</sup>, it has replaced National Sports University Ordinance, 2018 that was promulgated on May 31, 2018. The Bill was passed, and it has now led to the establishment of a National Sports University in Manipur. India already has some state universities focusing on sports education namely Tamil Nadu Physical Education and Sports University, Swarnim Gujarat Sports University and a Deemed University named Lakshmbai National Institute of Physical Education but it is first Central University in India focusing on sports education.

A shift from the television era to the digital era is exploiting us Roger McNamee, an early investor in Google and Facebook, now scorches the company's products as a "menace to public health and to democracy" that employ "aggressive brain hacking". The huge power of digital technology influence us to do things that serve their economic interests.<sup>10</sup>

One of the most astounding and largely under appreciated developments accompanying the recent proliferation of mass-market computer technology has been the rise of video gaming.<sup>11</sup> The present market for online gaming is worth \$360

<sup>7</sup> It was headed by Injeti Srinivas, Sports Secretary, members the committee included Abhinav Bindra (Olympian), Anju Bobby George (Olympian), Prakash Padukone (Eminent sports person), Narinder Bhatra (President, FIH), Nandan Kamath (Lawyer), Bishweshwar Nandi (Coach) and Vijay Lokpally (Sports Journalist)

<sup>8</sup> India Indian Olympic Association v Union of India W.P. (C) 2310/2012 Cm Appl. 4 946 & 17545/2012

<sup>9</sup> The National Sports University Bill, 2018 was introduced Lok Sabha by Mr. Rajyavardhan Singh Rathore, Minister of Youth Affairs and Sports on July 23, 2018.

<sup>10</sup> James Poulos: *Imagine all the people*, The New Atlantis, No 58 (Spring 2019), pp 84-90, Centre for the study of Technology and Society.

<sup>11</sup> J.C. Herz, *Joystick Nation: How Videogames ate our quarters, won our hearts, and rewired our Minds* 12-23; Brad King and John Borland, *Dungeons and Dreamers: The Rise of Computer Game Culture From Geek to Chic*, 26-84 (2003)



million, which is expected to rise to \$1 billion by 2021<sup>12</sup>. Online Fantasy sports<sup>13</sup> is seeing massive increase in its user base, Digital Fantasy Sport contests are legal games of Skill.<sup>14</sup> The demand for online fantasy sports has increased by seven times over 2016-2018, whereas the number of users has grown by over 25 times from June 2016 to February 2019.<sup>15</sup>

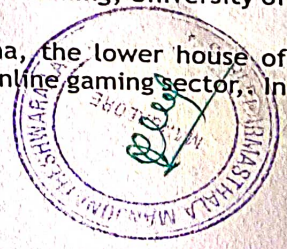
Games<sup>16</sup> and digital games beside their specified roles also inculcate and evolve competencies in its players. The Olympics slogan citius(faster), Altius(Higher) and Fortius (stronger) reflects the idea of competence in an individual to be a player.<sup>17</sup> Millions of People play computer games as avocation or amusement but some exceptionally skilled players are intent on making a living at what has been dubbed "e- sports". Unlike physical sports, where player activity is observed and recorded directly for broadcast and similar dissemination, e- sports competitions are by definition mediated by computer game software that itself is the subject of various Intellectual property Rights.<sup>18</sup> This characteristic of e sports adds to the legal discussion on additional layer of complexity, implicating the interests of additional rights – holding entities not found in negotiations over competitive performances in physical sports.<sup>19</sup>

A private member’s bill was introduced to preserve the integrity of sports as well. Self regulatory practices need to be followed by the industry, there is an urgent need to have a statutory framework with government oversight to ensure service providers are following license conditions, to track suspicious betting patterns and to have some control over the money flow, to curb the generation of black money.<sup>20</sup>

But at the same time deadly games such as Blue Whale were introduced in the recent past. Directions were issued<sup>21</sup> about the blue whale<sup>22</sup> internet online game instigating suicide by trapping, brainwashing and targeting the depressed persons mostly children (Blue Whale)

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<sup>12</sup> The 276th report of the Law Commission of India.  
<sup>13</sup> Fantasy Sport is a type of Online game where participants assemble imaginary or virtual teams of real players of a professional sport, initial legal challenges  
<sup>14</sup> Gouker, Dustin (5-12-2017) Legal Sports report.  
<sup>15</sup> *The evolving Landscape of sports Gaming in India*’ - Report by Federation of Sports Gaming (IFSG) and KPMGIndia  
<sup>16</sup> Games at the most elementary level can be defined as an exercise of voluntary control systems in which there is an opposition between the forces , confined by the procedure and rules in order to produce a Disequilibrium outcome.<sup>16</sup>  
<sup>17</sup> Pradeep Nair-The *Indian Child: Growing Young, Urbane and Liberal with Digital Games*, Indian Anthropologist, Vol 46, No 1 (January- June 2016) pp. 79-92, Indian Anthropologist Association.  
<sup>18</sup> Brett Hutchins, Signs of Meta Change in Second Modernity: *The growth of E- Sport and the world Cyber Games*, to New Media and Society, 851, 857(2008)  
<sup>19</sup> Dan L. Burk -Owning E- sports: *proprietary Rights in Professional Computer Gaming*, University of Pennsylvania Law Review, Vol. 161, No.(May 2013), pp 1535-1578.  
<sup>20</sup> Mr Shashi Tharoor, introduced a private member s bill in the Lok Sabha, the lower house of parliament, seeking a regulatory mechanism for the largely unorganized online gaming sector, in his *Sports (Online Gaming and Prevention of Fraud) Bill*.  
<sup>21</sup> (2018) 12 SCC 674





Increasing interaction between sports and law has led to the development of sports law. Sports touches varied areas of law and the legal principles are adapted to the situation in sports.<sup>23</sup> The grey areas of Sports are-

- ❖ Contractual issues of Sports (Includes standard sport player contracts, Appearance Contracts, Endorsement Contracts, and Indemnity Agreements.
- ❖ Doping test and Policies
- ❖ Harassment issues in sports
- ❖ Policies with regard to Endorsement/ Advertising of products and services.
- ❖ Betting and Fixing Laws.<sup>24</sup>

The debates on legalising betting in Sports, always pave way to the question what moral authority does the state have to ban betting ?. Secondly should inefficacy of law be a valid ground to repeal or change the law?<sup>25</sup> The constituent assembly debates reveal the intention of constitution – makers that prohibition of betting and gambling was opposed on the ground that such insertion might lead to legalisation of such activities. It was when chairman Ambedkar clarified that the insertion of the entry will, in fact, empower the state to prohibit such activities, that the motion to insert the entry was passed.<sup>26</sup>

Though our star players are shining in international sports in a country like India where we have population 130 Crores we lag behind in sports. The reasons behind these are:

- ❖ Talent identification in sports is what we require to have strong base of sport in India. For example: If we can go to rural India there are kids in our country who can give tough competition to national and international swimmers. Those talents getting into main stream of sports are extremely difficult because of inadequate exposure.
- ❖ When I was interviewing a talented sports athlete, who has been awarded individual championship more than thrice at the college level opened up about his grievance where many times when he wanted to enter the stadium he was suspiciously questioned as he appears to be from village background. This sort of demotivating scenario is common, one who comes from village.

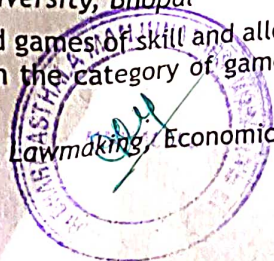
<sup>22</sup> Blue Whale Challenge, is a social network phenomenon dating from 2016 that is claimed to exist in several Countries. It is a "game" reportedly consisting of a series of tasks assigned to players by administrators over a 44-50-day period, initially innocuous before introducing elements of self-harm and the final challenge Requiring the player to commit suicide.

<sup>23</sup> Vijay Kumar Singh-*Issues in Emerging Area of Sports Law: Lex Sportiva -Indian Law Review, Vol 1 No. 1, pp. 114-147, Inaugural Issue 2009 - National Law Institute University, Bhopal*

<sup>24</sup> The court has developed a distinction between games of chances and games of skill and allowed games such as horse racing and rummy to legally exist as falling in the category of games of skill.<sup>24</sup>

<sup>25</sup> Raadhika Gupta-*Legalising Betting in Sports - Some reflections on Lawmaking*, Economic and Political Weekly, Vol No.48 (November30, 2013) pp.13-15

<sup>26</sup> Constituent Assembly Debates, Volume IX, 2nd September 1949





- ❖ At school level itself, physical education teacher's role shifts from physical education teacher to drill masters!! They will be meant to discipline the students. Discipline is one such element of education; my question is why most of the other subject teachers shift this to physical education teachers? ,most of the time the Physical education teachers are not allowed to take their classes and students will be denied the opportunity of playing as it will be occupied by science or maths teachers in the name of syllabus completion.
- ❖ Basic sports equipment like mat(for wrestling , kabbaddi) & sports shoes<sup>27</sup> are still new concept to many schools and colleges.
- ❖ Semi Professionals like army coaches are into sports coaching but their remuneration is less compared to the foreign coach if they are hired to take up the same task in India.
- ❖ Most of the time the quality of team is getting affected by the recommendations from sports Associations.
- ❖ Out of many sports federations – a non sports person is the president or a politician will be holding the main position of the hierarchy.
- ❖ Club Level sports players will be given priority in selection rather than those who have been participated at the state and National Levels.
- ❖ Though the Government assures sanctioning of the amount it takes herculean task to reach the concerned players. Even at university levels the cash prizes announced to a player for his/her achievements reach only after the students finishing his/her degree.
- ❖ Many universities do not conduct all category of sports events, example wrestling, fencing, gymnasium, etc., those sports events by our players at the highest level when they are exposed to such events without adequate training.
- ❖ Sports committee functions are highly confidential, budgetary allocations have to be done according to the different specified categories of the sporting event.

## CONCLUSION

The glory of sport comes from dedication, determination and desire. Achieving success and personal glory in athletics has less to do with wins and losses but more with participation. As an individual I admire sports a lot, the spirit of olympism facing the opponent in a friendly manner with super cool attitude, agreeing to umpire's decision and to bound for the same, the concentration of a sports person while performing in front of many spectators, to consider winning and losing in a right spirit, team spirit are the magnificent elements about sports. I feel, when it comes to sport, there is still a perceivably apathetic approach, conveniently brushing it aside

<sup>27</sup> Way back in 1950s, National Indian Football Team were sent back without allowing them to play because of lack of shoes. Fédération Internationale de Football Association (FIFA) made it clear to India that they would not be allowed to play in the 1950 FIFA World Cup without footwear.



as a means of amusement and ignoring its importance. Henceforth grass root identification of talent has to be undertaken very seriously.

The Public Private Partnership will be the best solution for upgrading, infrastructure and facility .It can uplift the sports from traditional level to global level . In India BCCI is the strongest sports federation because of which it has taken the game of cricket to glory putting back the National game Hockey. Commercialisation of any sports to a reasonable extent is welcoming, it accelerates the growth of economy and uplifts the sports cult by introducing the taste of sports but the advertisements these days are creating hype for example the IPL tournaments or world cup advertisement kills the spirit of sportsmanship, it creates the sense of warlike situation among the players and the fans. The players will become more money driven rather than playing for excellence in case of too much commercialisation.

Sport is one of the best ambassadors to promote human rights and the inclusion of all. Through sport, people learn values that cross gender, creed, nationality, age, economic position and even physical condition so lets give the vying deserving candidates an opportunity to shine at the global level by creating a secure foundation from the elementary level, if not for achievements but for a healthy society because it is always said that a sound mind in a sound body is a prerequisite for a complete life.

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