

Sports Law in the Indian Society

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INTRODUCTION

The inception of sports can be traced from the initial existence of the human race. Even in those days the objective to play sports was similar to today, the development of the mind and body. Learning the art of offense and defense was a popular sport. We can also find traces and mentions of certain sports in Hindu mythology like the Ramayana, the Mahabharata, Puranas, and also in the archaic excavations of the Harappan and Indus civilizations. Thus, quite evidently, India has a rich history in sports and is believed to be the originator of chess, wrestling, polo, archery, and hockey. Despite a glorious past, the present is a different affair altogether. In India a parent may think a million times before they support their child to pursue a 'career' in sports, the reason being the sheer absence of job security which causes a vulnerability that a sportsperson needs to continually fight throughout his/her life. It's believed that sports is a high - risk profession. This belief is formed due to the risk of injuries that may hamper the entire career of a sportsman, job instability, apparent lack of appropriate facilities, infrastructure, proper mentoring, and so on, and so forth.

Now, the approach of Indian Sports in regards to issues of Labor have been certainly disturbing sportsmen for a long while now and need earnest consideration. Poor compensation, illicit end of agreements, abuse based on working hours are for the most part present in brandishing corners of our country. There is a vast disparity in salaries of men and women in the same sport, men in different sports, women in different sports, etc. Sports have become more capitalistic than one could have ever imagined. Issues like harassment involve major concern and disgrace undoubtedly. Due to all these reasons, a parent doesn't prefer to send their child to the field of sports and the only solution to these problems is the positive intervention of the government by legislating proper laws for sports and sporting events. With the research that is happening in relation to this subject, it has thankfully evolved into a definite position and even a structured jurisdiction in the legal system of majorly all economies, hence it is safe to say that - *lex Sportiva* is expanding. The relevance of sports can be seen in various aspects of law, for instance contract law, tort law, competition law, media law, criminal law, and whatnot. Due to the increasing interaction of these, believed to be mutually exclusive spheres, it was the sine-qua-non to come up with the concept of sports law. However, what's missing till now is a clear set of rules that distinct and regulate this competitive industry with global pervasiveness. Due to the lack of such rules there is complete haphazardness when it comes to disputes and their resolution in the matter of sports. Sports have gained a lot of popularity because of all the recent developments that have taken place. We have seen the government always struggling with either the regulatory part of sports or with infrastructure issues, so it's overwhelming to watch the ingress of the private sector

to encourage sports and sportspersons. Now with the presence of a lot of private money for the development and encouragement of sports, it is of utmost importance that law governing these hefty transactions is competent enough to protect the rights of various stakeholders involved. In the following article we will be discussing how different areas of law interact with the field of sports, different social problems that are faced by sportspersons in their career, and the legal remedies available for the same.

SOCIAL ISSUES FACED IN THE FIELD OF SPORTS

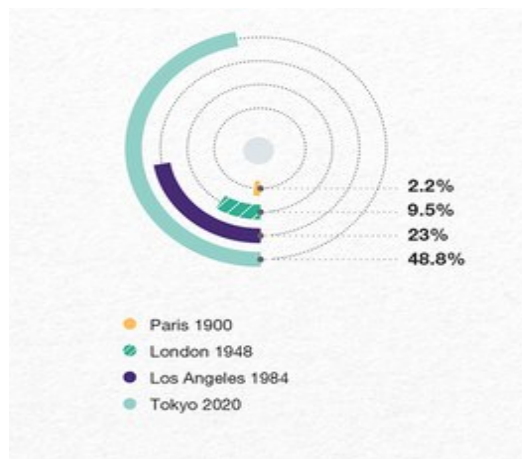
Certain issues emerge from society and are a part and parcel of our day to day lives, these are social issues. One may not see these aspects that evidently as they are so deeply entrenched in our daily functioning that we mostly just let it slide. The roots of such problems develop at our own homes where parents are busy in creating an ideal child who fits perfectly in the mould of gender and status roles that were once understood to be 'appropriate'. This further sprouts into a narrowed vision of several things, restricting one's own capabilities. In today's date, Indian sports have remained mostly underdeveloped not because of a lack of talent but because of a lack of motivation for players to come forth and showcase their potential. A career in sports involves several hurdles, like overcoming gender bias (like the Phogat sisters in wrestling) training oneself for abstinence from drug abuse, continuously fighting their vulnerabilities due to a lack of job security, and several other issues. The following are some of these issues that are faced by sportspersons.

Gender Discrimination and Sexual Harassment

The first-time women took part in the Olympics was back in the 1900 Paris Olympics where 11 women stood abreast 1,319 men. Here is the evolution of 'women in Olympics' according to the data collected from the International Olympics Committee. One must also note that the representation of women on commissions of the IOC has risen to 45.5 percent and as of January 2019, 34.3 percent of Members of the IOC are females.¹ India has mapped a long way since our first female, Kamaljeet Sandhu secured 1st place in 400m race at the Asian Games in 1970. Sports that aren't considered

¹ Women at the Olympic Games, Statistics, International Olympic Committee (Accessed on 20th May, 2020 at 1800 hrs) <https://www.olympic.org/women-in-sport/background/statistics>.

'ladylike' aren't meant for girls. Like several professions are male-dominated, certain sports are too. These can be wrestling, boxing, football, etc.



Following are a few examples of discrimination faced by Indian sportswomen: -

Karnam Malleshwari, the first Indian woman to secure the bronze medal in weightlifting, at the Sydney 2000 Olympic Games, who was only 12 years old when she dropped out of school to pursue gymming. Saina Nehwal, one of India's and the world's best badminton players, comes from a family in Haryana that discriminated against her because of her birth as a girl. Another important example is that of Sania Mirza, former women's doubles world no. 1 in Tennis who was

shunned by several Muslim religious leaders for wearing short skirts and a 'fatwa' was issued on her name. Dipa Karmakar, the famous Indian Gymnast was conveniently ignored by the Sports Authority of India when she requested to see her physiotherapist before her vault finals in the Rio Olympics. Keeping gender discrimination aside, there are several incidents where women in sports have faced sexual harassment as well. The most famous one being from 2010 where thirty-one members of the Indian Hockey Team had filed sexual harassment charges against their coach, Maharaj Krisan Kaushik. Later in 2014, Gymnastics trainer Manoj Rana and athlete Chandan Pathak were reprimanded for explicitly sexually harassing a female acrobat at the Indira Gandhi Indoor Stadium. Andhra Cricket Association (ACA) secretary V. Chamundeshwarnath was sacked by the organization and an FIR was filed after several complaints were raised against him for requesting sexual favors from women in order to be selected. In another event Kanam Malleshwari got Coach Ramesh Malhotra (women weightlifting) suspended on his charges of sexually harassing junior lifters. There have been some cases where the abuses of the system have won the battle. Frequently women athletes are simply viewed as an object for lust, case in point being the highly sexist statement of Former FIFA President Sepp Blatter saying, "*female players could wear tighter shorts*".² The current status of sports law, abuses of the system and the lack of properly centralized regulations have sheltered predatory coaches on a mere

² KhelAdhikar, India closer to egalitarian play: A look at women in sports, Law in Sports, The Bridge (28th September, 2018) (Accessed on 20th May, 2020 at 1500 hrs.) <https://thebridge.in/law-in-sports/india-closer-egalitarian-play-look-women-sports/>.

‘suspension’ basis as these coaches could be in any other institution, school or academy repeating their actions again.

There is no doubt that women in sports are treated as ‘second-class’ members, not just in case of recognition but also in matters of salaries and paychecks. Dipika Pallikal refused to play squash nationals as an act of protest against the disparity between cash prize for men and women.³ Following is a table displaying pay disparity by BCCI between the two genders in the field of cricket. It's important to note that the category of A+ is only for men, and the amount given to women is after a ‘major’ increment recently.

Serial No.	Category	Male (per annum)	Female (per annum)
1.	A+	7 Crore	-----
2.	A	5 Crore	50 Lakh
3.	B	3 Crore	30 Lakh
4.	C	1 Crore	10 Lakh

The Constitution of India recognizes ‘Equal pay for equal work’ for both the genders through Directive Principles of State Policy {DPSP Article 39(d)}. *Kishori Mohanlal Bakshi v. Union of India*⁴ was the first case that mentioned the idea of Equal pay for equal work, however, it only gained popularity following a 1987 case⁵ which brought out the discrepancy between the salaries of female and male stenographers. The judge ruled in favor of the female stenographers who were demanding equal pay and so the principle was established.

The same idea was turned into an act - The Equal Remuneration Act 1976 (ERA) which was recently repealed in 2019. What replaced the ERA is the Code on Wages, 2019 which is an amalgamation of four existing labour enactments.⁶ Section 3 of the code⁷ says, “*There shall be no discrimination among*

³ Rs. 1,20,000 and Rs. 50,000 was the award money for men and women respectively in an India National event.

⁴ *Kishori Mohanlal Bakshi v. Union of India*, A.I.R. 1962 S.C. 1139.

⁵ *Mackinnon Mackenzie and Co. Ltd. v. Audrey D'Costa and Others*, (1987) 2 SCC 469.

⁶ Payment of Wages Act, 1936, The Minimum Wages Act, 1948; The Payment of Bonus Act, 1965 and The Equal Remuneration Act, 1976.

⁷ The Code on Wages, 2019.

employees on the ground of gender in matters relating to wages by the same employer, in respect of the same work or work of similar nature done by any employee.” Despite an existing act and a section that explicitly bans the pay gap on gender difference, there hasn't been much of a positive difference. Therefore, inequality will exist as long as women aren't given the opportunities they deserve along with the same respect and reward as men.

Drug Abuse

Drug abuse in sports, also known as doping is, *“the use of performance-increasing substances, which would place the athlete on a superior position than that he would normally have obtained”*⁸. The term ‘doping’ came into the picture around the 1800s when a substance with opium was being administered in horses.⁹ The abuse of performance-enhancing drugs gained popularity during the 1960s. Performance-enhancing drugs or PEDs are taken by sportspersons to grab an edge over the other competitors. This is against sports ethics as it gives such people an unfair advantage in the tournament and is also detrimental for the health of the user as it can have fatal consequences. Prior to their inclusion in the prohibited list, drugs are checked on three grounds - potential damage on health, the performance-enhancing ability of the drug, and whether its usage is against the spirit of sports. Following is a list classifying doping into methods and substances.¹⁰

Serial Number	Substances prohibited at all times	Substances prohibited in competition	Methods prohibited at all times	Substances Prohibited in particular sports
1.	Non-approved substances	Stimulants	Manipulation of blood and blood components	Beta-Blockers
2.	Anabolic agents	Narcotics	Chemical and physical	

⁸ Beckmann O. Beckmanns Sport-Lexikon: A-Z. Leipzig: Beckmann; 1933. [Google Scholar]

⁹ Malve HO, *Sports pharmacology: A medical pharmacologist's perspective*, J Pharm Bioallied Sci 10, 126-36 (2018).

¹⁰ Prohibited List valid till 31 December 2020, World Anti-Doping Agency (WADA) (Accessed on 18th May, 2020 at 1200 hrs) <https://www.wada-ama.org/en/content/what-is-prohibited>.

			manipulation	
3.	Peptide hormones, growth factors, related substances and mimetics	Cannabinoids	Gene and cell doping	
4.	Beta 2-agonists	Glucocorticoids		
5.	Hormone and metabolic modulators			
6.	Diuretics and masking agents			

The above-mentioned drugs have been banned by WADA (World Anti-Doping Agency) internationally. However, in some cases exceptions are made for certain athletes by offering him/her a TUE (Therapeutic use of Exemption). This TUE goes under major scrutiny to determine whether there is a legitimate requirement of such drugs or not. A player can be suspended by NADA (National Anti - Doping Agency) or WADA for a duration from 1-4 years. If the player still refuses to give up doping then he/she may be banned for a lifetime.

Over the past decades, sportsmen have started using PEDs quite frequently and this has thus led to the establishment of WADA in 1999, an international independent agency financed by the governments of the world. Its main task is to carry out research, spread awareness about doping, develop policies on anti-doping, and to keep an eye on the World Anti-Doping Code (Code).¹¹ This code lays down rules and guidelines for sports organizations across the world. WADA focuses on the implementation and smooth functioning of anti-doping agencies in accordance with this code. WADA is the supreme authority governing matters of Doping at an international level while NADA (National Anti-Doping Agency) is its offspring at the national level in India. In India dope tests are carried out

¹¹ WADA, Who we are, World Anti-Doping Agency (WADA) (Accessed on 18th May, 2020 at 1200 hrs.) <https://www.wada-ama.org/en/who-we-are>

by the NDTL (National Dope Test Laboratory). NDTL carries out blood and urine tests on the players and after analysis of such tests if the results come out positive for a player then the player is sent a notice requiring clarification along with supporting evidence on why and how his/her results came out positive. A player can also be held liable for avoiding and withdrawing from drug tests. The NDTL is supposed to be carrying out its tests in accordance with the guidelines given by WADA's International Standard for Laboratories (ISL) but recently during a visit by WADA, it was found out that such guidelines weren't being followed by NDTL so WADA suspended NDTL's operations effective immediately for 6 months (from 20 August 2019) and said that NADA still has the capacity to collect blood and urine samples for dope tests but these samples have to be sent to another lab accredited by WADA and ISL. NDTL can approach the CAS (court of arbitration for sports) in the following 21 days. More on CAS has been explained in later sections of this article.

RELEVANCE OF LAW IN SPORTS

Contracts law

Just like in business, contracts are necessary even in the field of sports to ensure its continued success. They are agreements between two or more parties that are binding, failing to perform any term of the contract whether written or oral, without lawful justification is considered to be a breach of contract. The term 'contract' has been explained under section 2(h) of the Indian Contracts Act, 1972, and section 10 of the same mentions the essentials of a valid contract. Nowadays there are so many private leagues taking place like Pro Kabaddi League, Indian Super League, Indian Premier League (IPL), etc. With the emergence of these diverse opportunities for sportspersons to showcase their talent, and for these private organizations to make a good amount of revenue it is important for them to get a legal confirmation for whatever is agreed between different stakeholders so as to avoid any disputes in the future. There are basically three stakeholders in these private leagues: the player, the team/team owner, and the event organiser. There are various contractual relationships that each of these stakeholders has, let us understand by an illustration:

- A player like Mahendra Singh Dhoni will have a player contract with Chennai Super Kings, the IPL franchise team, and endorsement contracts with other brands.
- The team owners of Chennai Super Kings will have contracts with different sponsors to generate revenue from their brand and will have a franchise contract with the IPL.

- The IPL, as an event owner will have contracts with TV and media owners for broadcasting rights and also with event management companies to make the running of the event fluently.

Hence it becomes a necessity for sportspersons to get into contracts with the private leagues and the event organisers to avoid any kind of altercation and dispute in the future. And even if any party comes up with a dispute then the written contract which was entered between the parties works as evidence to prove the point that any party is claiming. Needless to say contracts are a very crucial part of sporting culture, to protect the rights of all the stakeholders.

Broadcasting law

The Indian sports broadcasting scenario has significantly evolved over the second half of the last century maybe because of sudden popularity that sports and health care got in the Indian household. Television in India started as a medium of education and public service around 1967 and in 1976 the establishment of India's sole public service broadcaster was formalized which came to be known as Doordarshan. However, talking in relation to sports there came a revolution when India hosted Asian games in 1982. Live games were broadcasted on Doordarshan being the only state-owned service broadcaster in the market.

The Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act was passed in 2007 with an objective *"to reach out the maximum number of viewers and listeners, on a free to air basis, of sports events of national importance through mandatory sharing of sports broadcasting signals with Prasar Bharati and for matters connected therewith or incidental thereto"*.¹² The Supreme Court of India delivered in the case of *Star Sports India Private Limited vs. Prasar Bharti and Ors*¹³ that broadcasters of sports competitions and events of national importance must compulsorily share their broadcasting rights with Prasar Bharti free from all kinds of advertisements, credits and sponsor logos. The series of events that led to this law is quite interesting, we will talk about the landmark case on point, *The Hero Cup case*.¹⁴

This case emerged from a dispute between the Ministry of Information and Broadcasting (MIIB) and the Board of Control for Cricket in India (BCCI). In 1993 Cricket Association of Bengal (CAB) which is a state governing body under BCCI organized an international cricket tournament which was named Hero's Cup. Doordarshan made an offer of 1cr, due to which the expectations of CAB increased and

¹² Sports Broadcasting Signals Act, Act No. 11 of 2007 [19th March 2007].

¹³ *Star Sports India Private Limited vs. Prasar Bharti and Ors*, S.L.P (Civil), No. 8988 of 2014.

¹⁴ *Ministry of Information & Broadcasting, Govt. of India v. Cricket Assn. of Bengal*, (1995) 2 SCC 161.

they sold the broadcasting rights to Transworld International (TWI), which was an all-inclusive agreement encompassing rights for both the foreign television and the Indian market. Now, what CAB thought was that Doordarshan will negotiate with TWI so that the matches can be broadcasted in India as Doordarshan is the only service provider in India having networks spread all over the nation. However, Doordarshan refused to do so which was a big problem for CAB, Doordarshan wanted exclusive rights of broadcasting. This problem went up to the Supreme Court and one of the arguments which were put forth by MIIB was that it was an attempt to protect the monopoly that the state had in this sector. The argument put forward by the CAB was that the gains that the organisation gets from these deals are utilised in improving facilities and spreading awareness about the sport in the country. The CAB mentioning Article 19(1), of the Indian Constitution, said that sports broadcasting is a fundamental right of freedom of speech and expression as it is a medium of education, entertainment, and information.

The Hon'ble SC culminated that frequencies are actually public property which are to be utilized in the utmost interest of the viewers. It also stated absolute control by the state or any private body can be dangerous therefore it recommended an establishment of autonomous agency free from the dominance of any sector. Since then it has been more than 20 years but no such independent body stood up to regulate the broadcasting right in India. There had been two futile attempts: The Broadcasting bill of 1997 and the Communication Convergence Bill 2000. Consensus have taken place in the parliament and even outside, but no action has been taken for implementation on such bills. Even the act of 2007 did not bring a change in the scenario; it just protected the revenue sharing arrangement of Doordarshan. Due to this, private broadcasters continue to be the only option of the viewers increasing the cost of sports broadcasting and the state media like Doordarshan continue to exploit people by using their monopoly and by providing poor services.

Competition Law

Sports accounts for more than 3 percent of the world trade¹⁵ and it is not just an economic activity but a field where the audience enjoys fair and to the edge competition. It is an economic and social movement that has built up guidelines to improve competition as opposed to its confinement. It's quite clear that in the field of sports no single team can create a product which is of national importance, and also in the interest of television, newspaper, and sponsors. Hence, it won't be wrong

¹⁵ Blackshaw, Ian, 'The Court of Arbitration for Sport: An International Forum for Settling Disputes Effectively Within the Family of Sport', Entertainment Law, Vol.2, No.2, Summer 2003, pp.61–83, at page 61.

to say that any sporting event is a joint product. However, in the field of sports without competition it is impossible to create something of individual value. With so much commercialization in this field there comes one more thing that goes hand in hand, that's competition law.

The Competition Act, 2002 (As amended in 2007) is of massive importance to almost all sectors of the economy. This legislation looks to forestall works on having an antagonistic impact on competition, to advance its relevance in business sectors, secure the interests of the buyers, and to guarantee the opportunity of trade carried on by different members in business sectors, in India.

The sports industry has a hierarchical structure in which at the topmost level is the International Federation which has the power to govern and regulate a particular sport, under which lie National sports federations. For example, In the case of cricket, ICC (International Cricket Council) is the apex body with BCCI at the national level. Due to such pyramidal structure the trend of monopoly exists to ensure the probity and consistency in this sector. This reasoning gives birth to an exception, the specificity of sports. This means that certain sports don't fall within the purview of competition laws. This concept is widely used in the EU (European Union) and the USA but gradually since the field of sports is becoming more commercialized, the scope of such exceptions is decreasing. Nowadays even the activities of sports federations are being closely monitored to avoid non-compliance with competition laws. Let us understand the relation of sports with competition law by various interactions that have happened in our country. The case of *Sh. Surinder Singh Barmi v. BCCI*¹⁶ was brought before the competition commission alleging anti-competitive nature of agreements and declarations made by BCCI which according to the complainant were against the policies of fair market in the economy and were violating several competition laws. BCCI holds the position of a private entity and it does not fall under the definition of 'state'.¹⁷ However, the functions performed by the body comprise of public duties and the intervention of government when needed, can be there without any doubts.¹⁸ It was purported that BCCI abused the dominant position that it holds which was in breach of section 4(2)(c) of the competition act.¹⁹ The same was alleged because ICL, an initiative by the Zee group, had the potential to threaten the dominant position which was held by BCCI. Due to this reason, BCCI opted for some harsh policies like banning players for a lifetime from playing India and domestic matches who play ICL. BCCI also prevented ICL from obtaining entry to stadiums as well as other necessary services that were in BCCI's absolute control. Thus, an order was passed by the CCI (Competition

¹⁶ *Sh. Surinder Singh Barmi v. BCCI*, Case No 61/2010, (Competition Commission of India, 08/02/2003).

¹⁷ The Constitution of India, 1950, Article 12.

¹⁸ *Zee Telefilms v. Union of India*, (2005) 4 SCC 649.

¹⁹ The Competition Act, 2002 (As amended in 2007).

Commission of India) that BCCI evidently abused its position of dominance which proved contrary to section 4(2)(c) of the act and reprimanded it with Rs. 52.24 crores.²⁰

LEGAL DISPUTES IN SPORTS AND ARBITRATION

As mentioned previously the field of sports is also regulated by certain binding agreements known as contracts. These contracts are necessary for a smooth understanding between two parties. It's important to take note of the necessity of a contract and what happens if there's a breach in the same. Similar to the case of any dispute between two parties there comes the need to establish who is right and who is wrong and the onus of this decision must lie in the hands of a person capable of understanding both the opposing sides. In the field this person is known as the umpire or the referee, in law, this person is known as the judge or the arbitrator. There's a clear understanding that where there is a legal contract there is a possible lawsuit and where there's a possible lawsuit there's the need for a Law court. However, this is not entirely true. The field of sports faces several issues such as corruption, Sexual harassment, Drug abuse, Discrimination, etc.

The only solution to these problems lies in the procedure of law. However, the whole process of litigation and going to court is actually quite tiresome. One needs a lot of time and a considerable amount of money to go through litigation. It is also very important for a sportsperson to maintain a 'clean' societal image and once the matter reaches court, it's out in the open and people tend to make all sorts of assumptions, which can hamper with the sportsperson's public image. Keeping all these factors in mind, litigation might be somewhat cumbersome for a sportsman because time is quite essential in the field of sports as it's very limited. Hence being caught up in court litigation isn't the best option for a sportsperson. Thankfully there is another option available - Arbitration. Arbitration is a form of alternative dispute resolution, a way of out of court settlement. Mediation, conciliation, and negotiation are the other forms of ADR techniques. Arbitration and Conciliation Act 1996 governs arbitration in India. An arbitration award can be challenged in the court as well which makes it all the more reliable. An arbitrator is appointed by the parties, who acts as a judge in the case, he/she may or may not be of legal background.

In sports arbitration plays a major role as a method of dispute resolution. Due to the above-mentioned reasons, arbitration has shown to be the most effective remedy to disputes in the field of sports. This solution was acknowledged on an international level when CAS (Centre of Arbitration for Sports) was

²⁰ Sh. Surinder Singh Barmi v. BCCI, (Case No 61/2010), (Competition Commission of India, 08/02/2003).

formed and headquartered in Lausanne, Switzerland by IOC (International Olympic Committee) in the year 1983. The CAS is alternatively known as the Supreme Court of sports for the world because it is the apex body for dispute resolution on an international level and the court of last resort for the party which is seeking justice and couldn't get it in their natural jurisdiction. CAS is decentralized with offices in New York and Sydney and recently alternative hearing centres have been established in Kuala Lumpur, Shanghai, Abu Dhabi, and Cairo. With respect to the disputes relating to sports law, this body has an exquisite jurisdiction of it. Just like any other judicial body, even CAS can be divided into two divisions, first one being the Ordinary arbitration division which looks after the disputes which come to the body for the first time and the second one being the Appeals arbitration division, which takes into consideration those disputes which come for the retrial from different federations and national sports bodies.

One of the instances, when CAS interacted with Indian jurisdiction, is when; Ashwini A.C, Tiana Mary Thomas, Priyanka Panwar, and Sini Jose, these four Indian athletes were suspended for a year by NAADP (National Anti-Doping Disciplinary Panel) for steroid violation in Commonwealth games, Delhi 2010. During an appeal in front of NAADP, WADA (World Anti-Doping Agency) cited some rulings of CAS and suggested even more rigorous punishments. Therefore, in case any party is dissatisfied with the ruling at the national level, they can approach CAS.

The Arbitration and Conciliation act, 1996 act consists of two parts, the roots of Part I are from the UNCITRAL Model Law, it is relevant to those arbitrations for which the place of arbitration is India²¹ and Part II which is included to make sure that rulings of New York Convention and Geneva Convention are adhered to and to make sure that Indian courts don't have the power to set aside or challenge any foreign arbitral award. The disparity between domestic and foreign awards was scrapped down in the *Bhatia International case*,²² where the court was of the opinion that since Section 2(2) of the act does not include the word 'only' thus the scope of this section can extend even to the foreign awards. The Supreme Court, in the case of *Venture Global Engineering vs Satyam Computer Services Ltd.*²³ applied the ratio of Bhatia International case to repeal a foreign arbitral award. The court differed from the scheme of Model Law that domestic courts don't have the jurisdiction to adjudicate foreign awards. The Supreme Court said that in case of any ruling by an international arbitration tribunal that

²¹ The Arbitration and Conciliation Act, 1996, Act No. 26 of 1996, Section 2(2).

²² *Bhatia International vs Bulk Trading S. A. & Anr*, Appeal (Civil) 6527 of 2001.

²³ *Venture Global Engineering vs Satyam Computer Services Ltd*, Appeal (Civil) 309 of 2008.

has to be performed and followed in India if such ruling is contrary to Indian law it can be set aside.²⁴ This idea of Indian courts to put the rulings of International arbitration tribunals under judicial scrutiny is in consonance and pursuance to the principle of justice, equity, and good conscience.

ICAS (Indian Court of Arbitration for Sports) was established in India to introduce the ADR mechanism in the field of sports in the year 2011. This was done to make sure that these disputes are resolved in the most efficient and effective way. Hence keeping in mind all the advantages that the ADR mechanism possesses, it won't be wrong to say that it is the best way to solve sports disputes.

Following is the summary of reasons: -

- The arbitrators in these organizations possess expertise in the intricacies of sports law and they also possess the required technical knowledge leading to a fair ruling.
- During the time span when proceedings are in process, maintaining privacy is a must by both the parties and the officials
- The rulings of CAS are accepted universally, and mostly in the bodies which are into sports disputes. Usually even the arbitrators are well associated with the sports community.
- It is a hassle-free and stable process in which the dispute has to be resolved within a stipulated time. So, one doesn't have to worry about wastage of time.

EFFECTIVE STRATEGIES TO DEVELOP SPORTS LAW IN INDIA

Sports law is expanding its scope continuously. As we have seen law is an essential part of sports now. The field will remain unregulated without clear rules and instructions which can cause sheer haphazardness. Sports law doesn't just provide clarity but also acts as a messiah bringing justice to several issues that remain neglected or side-lined in sports. Sports Law in India hasn't developed completely and the main reason for that is not just a lack of legislation but the importance that is given to sports culture in the nation. Sports remain to be a matter under the State list hence there is minimal attention given to it. The government has tried to regulate sports by enacting the National Sports Development Code, 2011 which regulates the functioning of the National Sports Federations in India.

²⁴ The Arbitration and Conciliation Act, 1996, Section 34 - This section sets out limited grounds on which an arbitral award can be set aside. These include the invalidity of the arbitration agreement, a failure to comply with the arbitration agreement, failure of due process during the arbitration, a conflict with public policy, etc.

In the *Indian Olympic Association v. Union of India*,²⁵ the IOA had filed a writ petition in the Delhi High court stating that the legislature was beyond its power to form such a code and that its provisions were violative of its (IOA's) rights.²⁶ This petition was dismissed by the High Court and the validity of this code was upheld.

The government has also formulated several schemes for the development of sports. For instance, the Fit India Movement²⁷ was launched to make people realize the importance of a healthy lifestyle and to inculcate physical activities and sports into their daily lives. The Khelo India Scheme was propelled in 2016 after combining three previous schemes.²⁸ This scheme has by far been the most successful to bring about a positive difference to the field of sport as it aimed at inclusion from the grassroots level and provided a platform to several sportspersons. People from ages 10-18 can be held eligible. Those in need and who show talent at various levels of the sport shall be selected by a committee for a budgetary help of Rs. 5 lakh per annum for 8 years. This scheme has been successful at bringing forth some wonderful sportspersons like PM Tabitha who bagged a gold medal at the third Asian Youth Athletics Championships in Hong Kong, Jeremy Lalrinnuga a weightlifter from Mizoram who won the Asian Youth Championship and got silver in the Asian Junior Championship and many more talented youngsters.

A scheme or campaign is useless until its enforcement is done right. Indian politicians can continue the propaganda of 'development' in sports but India's performance at the international platform says it all. Stringent laws are needed to bring all these issues under the same umbrella and help nurture and grow sports culture in India. The following are certain suggestive measures on how to overcome existing issues in the field of sports in India.

Betting and Gambling

Betting is a part of Indian society since medieval times as it has been mentioned even in Manusmriti. However, people are often disoriented about its legality. Horse racing and rummy are considered to be sports of skill and betting on them is legal.²⁹ Laws relating to gambling differs from state to state because of the Seventh Schedule³⁰ of the Constitution of India which confers states the right to make

²⁵ *Indian Olympic Association v. Union of India*, 2014 SCC Online Del 2967.

²⁶ As guaranteed under the Constitution of India, 1950, Articles 14, Article 19(1)(c) and Article 21.

²⁷ Launched on 29 August, 2019 (National Sports Day) to commemorate Major Dhyan Chand and his achievements.

²⁸ Rajiv Gandhi Khel Abhiyan (RGKA), Urban Sports Infrastructure Scheme (USIS), and National Sports Talent Search Scheme (NSTSS).

²⁹ *State of Andhra Pradesh v. K. Satyanarayana*, (1968) 2 SCR 387.

³⁰ The Constitution of India, 1950, Seventh Schedule Entry 34 List II (State list).

laws according to their discretion. The Government of Goa has made amendments to Goa, Daman, and Diu Public Gambling Act, 1976, so that it can utilize this sector for revenue generation and it has legalized several forms of it. Sikkim was the first state to legalize internet gambling. In June 2018, through a report, the law commission recommended the government to legalize the betting culture through strict norms to limit money laundering in the country. No matter how much the government tries to terminate betting in India as it is based on contingent events and it is against societal norms it is impossible to absolutely sideline it from our country, hence regulating betting under strict and harsh norms seems to be the best course of action so that from its inevitable existence even the government benefits. According to the International Centre for Sports Security the betting market in India is approximately worth billions of dollars, being such an enormous industry working in the grey area of the economy is a great loss because if this sector gets the legal backing it will generate a large amount of revenue for the government in the way of taxes, will create opportunities for employment and will bring the money which is stuck in this sector to the economy increasing liquidity. The anti-gambling framework that our government follows for long has made the system rigid and it needs to be changed. Our law demonstrates an extreme level of indifference towards gambling as it is punishable under the Indian Penal Code (Section 294A prohibits lotteries) and even according to Section 30 of the Indian Contracts Act 1972 agreements of such type are void which completely excludes the question of legality. After the law commission's report, India is moving towards legalization of this sector and hopefully well-structured laws would be formulated to ensure this sector helps the Indian economy to flourish without any negative impact on the sporting spirit.

Broadcasting

In the case of *the Ministry of Information & Broadcasting Government of India v. Cricket Assn. of Bengal*³¹ The Supreme Court clearly stated that this nation is in dire need of an autonomous body that can control and regulate television frequencies. In case either the government or any private body will be in its absolute control then one or the other party will keep approaching the court with the problems they are facing by the decision of the controlling party. Since the pronouncement of this judgment it has been approximately 20 years and our lawmakers still have come up with neither proper legislation nor any autonomous body. There have been two bills in this regard but none of them passed the houses of parliament. At this point of time, it is a sine-qua-non to come up with an autonomous body with a

³¹ Ministry of Information & Broadcasting Government of India v. Cricket Assn. of Bengal, 1995 AIR 1236, 1995 SCC (2) 161.

board that specializes in media law, entertainment law, copyright law, and competition law so that there is an evolution in the broadcasting industry, and even Doordarshan strives for its existence in this competitive market and to survive it starts providing better service to the Indian audience.

Sexual Harassment

As explained previously in this article, the issue of sexual harassment of women in sports is truly a shameful picture. The quantum of punishment for such predatory behavior has been minimal, for instance, the pay of a sports Authority of India (SAI) mentor was diminished by Rs 910 p.m. for being seen as blameworthy of sexual harassment.³² It's important to note that sexual harassment is a criminal offense in the Indian Penal Code³³ which can result in imprisonment for up to three years or fine or both. So, the question arises why the injustice to women in sports? Looking at the sorry state of affairs here one can only wonder if there's recourse available. The only answer is the establishment of a separate branch of criminal investigation that takes rapid action on such matters. Just like the National Anti-Doping Agency there should be an institution specializing in matters of sexual harassment as they cannot be undermined at any cost. The victims of such abuse must be provided with proper compensation and the perpetrator of such crime must be punished in accordance with the law.

Pay disparity between genders

Facts and figures show the massive gap between the remuneration provided to women and men. It's like comparing chicken feed to pedigree. When asked the reason behind the disparity, men tend to land on more money due to better sponsorship and endorsement deals and most importantly media coverage. The simple logic here is that viewership decides the market estimation of a sport and this very factor affects viewership for women's sports. The number of people watching female sports is considerably lesser than the number of people watching male-centric sports and this results in the generation of a smaller revenue for the organizer, hence the lesser pay. One must understand that men and women are biologically different and this difference cannot be ruled out. So what can be the solution to this massive gap? It's a tough road but it must start with women standing up for themselves. For instance, Venus Williams, after winning Wimbledon, sent a letter to the London times about receiving less money in comparison to her male counterpart. This letter created a buzz in the public

³² Crime and Impunity, RTI, The Indian Express (17 January, 2020)
<https://indianexpress.com/article/opinion/editorials/sports-authority-of-india-coach-sexual-harassment-case-crime-and-impunity-6220285/>

³³ Indian Penal Code, 1860, Section 354 A.

opinion and the then Prime Minister took this issue of pay disparity into consideration. The following year the prize money for the winner was made equal to men and women. In India one can take the previously mentioned example of Dipika Pallikal. A cricketer like Mithali Raj earns only 50 lakh while her male counterparts in the same category earn 5 crores per annum. The code on wages 2019, states all essential elements relating to wages - equal pay, bonus, etc. According to section 3 of the code,³⁴ there should be equal pay for similar or the same work and the employer cannot lessen the wages of any employee just ensure compliance with section 3 of the code. Where there is any debate regarding whether a work is of the equivalent or comparable nature, then such a conundrum will be resolved by the authority prescribed by the government. It's interesting to note that cricketers under BCCI are basically employees of the company as they draw salaries annually. Hence, it's not wrong to say that they too are governed by the same rules. So, one can clearly see that despite existing legislation, the implementation has been flimsy, thus the pay disparity lives on.

CONCLUSION

The field of Sports has seen a continuous expansion since its inception. However, this growth has been rather slow compared to the need of the time. From being a country with minimal sporting facilities, India has gone to conduct International Sports events like Commonwealth Games, Asian Games, etc. As the nation gets more and more involved in sports and as the field gets commercialized, there pops up the need to regulate this 'industry'. This is where sports law comes into the picture. In India, there are several social issues circumscribing the field of sports. The only solution to such issues lies in the due procedure of law. The unfortunate part is that there is still a lack of proper legislation that can regulate and resolve these social evils. Sports being a matter under the State list makes it the responsibility of the respective states to come forward with well-drafted legislation and schemes to support and promote sportspersons. If the government does not come up with well-drafted laws to counter these problems then gradually it will start affecting the integrity and probity of sports which will, in turn, discourage people from choosing sports as a career option. India, by far has been successful at producing some of the finest sportspersons in the entire world, and to continue this legacy it is pertinent for the government to improve infrastructure, draft better laws and strengthen

³⁴ Code on Wages, 2019, Section-3, "There shall be no discrimination in an establishment or any unit thereof among employees on the ground of gender in matters relating to wages by the same employer, in respect of the same work or work of a similar nature done by any employee."

the existing laws. In conclusion one can say that India has come a long way in the field of sports but there is a long way ahead as well.