

THE PREVENTION OF SPORTS FRAUD BILL, 2013: A MESSIAH TO INDIAN SPORTS?

Ashuti Panjwani⁹¹ & Devika.A.Kumar⁹²

The history of sports extends as far back as the existence of people as purposive, sportive and active beings. It also shows how society has changed its beliefs and therefore how changes in the rules are brought. The history of sports in India dates back to the Vedic era. Chess, wrestling, polo, archery and hockey are some of the games believed to have originated in India. Sports law has a well developed pattern of globalized regulation and overlaps substantially with labour law, contract law, criminal law, public law, administrative law, antitrust law, intellectual property rights law, law of tort, media law, company law, human rights law etc. These laws have been applied to sporting context involving public order, drugs, safety, disciplinary measures, conduct and wider issues relating to restraint of trade, anti competitive behaviour, match fixing and the commercial exploitation of sports. Issues like defamation and privacy rights are also an integral aspect of sports law. In India sports figures in the State list of the Seventh Schedule (entry 33) of the Constitution.

In the wake of the Indian Premiere League (IPL) spot-fixing scandal, media reports claim the proposed 'Prevention of Sporting Fraud Bill' on Wednesday returned to the table of Union Sports Minister Sarbananda Sonowal. This article examines the emergence and growth of sports laws in India alongside a critical analysis of the The prevention of sports fraud Bill,2013.

Introduction to sports legislations in India

There is no national or state legislation for regulation of sports in India. The Ministry of Youth Affairs & Sports was set up by the Govt. of India to create the infrastructure and promote capacity building for broad-basing sports as well as for achieving excellence in various competitive events at the national and international levels. Sports promotion is primarily the responsibility of the various National Sports Federations (NSFs) which are autonomous in nature. The Ministry of Sports and Youth Affairs issues notifications and guidelines from time to time for the purpose of regulation of NSFs.

⁹¹ Student, School of Law, Christ University

⁹² Student, School of Law, Christ University

The Sports Law in India is governed and regulated by ⁹³

- National Sports Policy
- Sports Law and Welfare Association of India
- Sports Authority of India
- The Sports Broadcasting Law in India.

National Sports Policy, 1984/2001

A Resolution on the National Sports Policy was laid in both Houses of Parliament in August, 1984. The National Sports Policy, 1984 was formulated with the objective of raising the standard of Sports in the country. The National Sports Policy, 1984 provided inter-alia that the progress made in its implementation would be reviewed every five years to determine the further course of action, as may be necessary, following such review.

The objective of the guidelines of National Sports Policy 2001 is three fold:

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

Sports Law and Welfare Association of India⁹⁴

The Sports Law and Welfare Association of India is a national non-profit and professional organization which work with the common goal of understanding, advancement, and ethical practice of Sports Law in India for the promotion of Sports, by bringing Legal Practitioners and Sports persons together. The Association provides consultancy on various matters including regulation of sports governing bodies, general sport and law issues, intellectual property issues in sport, online advocating in legal disputes of sports in court on behalf of sports

⁹³ Emergence of sports law in India by *Gaurang Kanth.*, *Indian Law Journal*

⁹⁴ *ibid*

persons and sports bodies, etc. The Sports Law and Welfare Association of India aims to further the discussion of legal problems affecting sports and to promote the exchange of a variety of perspectives and positions of sports law and provide a forum for lawyers representing athletes, teams, leagues, conferences, civic recreational programs, educational institutions and other organizations involved in professional, collegiate, Olympic, physical education and amateur sports.

Sports Authority of India⁹⁵

The Sports Authority of India was established to fulfill the need of an apex body to coordinate various sports activities in India. The success of the IXth Asian Games at Delhi has raised sports consciousness and enthusiasm in India which in turn, motivated the Government of India to focus on sports development to encourage physical fitness among youth and to direct their energy towards excellence. The Sports Authority of India has gradually, extended its operations to promote broadbase sports. The other thrust areas of SAI include provision of strengthening of inputs for excellence and various supportive programmes, such as Academic Programmes, Coaching and Physical Education Awareness Programmes and Scholarship Schemes as incentives to sportspersons. The Sports Authority of India operates various Schemes at sub-junior, junior and senior level and endeavors to broadbase sports and develop excellence by upgrading the skills of Indian sports persons.

The Sports Broadcasting Law in India⁹⁶

The **Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act** was passed in 2007 with an objective to provide access to the largest number of listeners and viewers, on a free to air basis, of sporting events of national importance through mandatory sharing of sports broadcasting signals with Prasar Bharati and for matters connected therewith or incidental thereto. The Act provides that any content right owner or holder television or radio broadcasting service provider shall not carry a live television broadcast on any cable or Direct-to-Home network or radio commentary broadcast in India of sporting events of national importance, unless it simultaneously shares the live broadcasting signal, without its advertisements, with the Prasar Bharati to enable them to re-transmit the same on its terrestrial

⁹⁵ ibid

⁹⁶ Emergence of Sports Law in India by Law Quest, (Advocates and solicitors)

networks and Direct-to-Home networks in such manner and on such terms and conditions as may be specified.

Reason for a New Enactment

The success of the IXth Asian Games held at Delhi has raised consciousness towards sports and enthusiasm in India which has in turn motivated the Government of India to focus on sports development in order to encourage physical fitness among youth and direct them to strive towards excellence in the sport, yet it has also brought with itself issues pertaining to lack of integrity towards sports which has now taken a form of a giant involving spot fixing, betting, match-fixing etc.

The wake of IPL and the many controversies attached with it has highlighted integrity issues towards the sport and a lack of proper coordinated investigation, procedure for handling the complainant, investigation procedure, and fixing of responsibilities amongst others. This also shows the imperative need for revamping the procedure for protecting the integrity of sports in India. Sports should be corruption free and transparent and authorities should be made accountable to the public to maintain credibility.⁹⁷

Recently, the group succeeded in persuading Pallam Raju, Minister of State for Defence, to withdraw from the race for President of the Equestrian Federation of India. But in a setback for the group, the President of Clean Sports India, Pargat Singh, a former hockey skipper, lost to the 83 year old veteran Congress politician, Vidya Stokes, in the election for President of the Indian Hockey Federation; this example illustrates the extent of political hold on sporting bodies in India.⁹⁸

The state of Indian hockey continues to be abysmal. Former world champions and Olympic gold medallist, India now struggles to even win Asian tournaments. Indian Hockey Federation (IHF) President, K.P.S. Gill, a former Indian police officer, has been officiating for many years. Gill's long-term appointment has divided the Federation, the hockey fraternity and players, and over time, has significantly affected the team's performance. The IHF is also involved in a fierce spat with the Women's Federation and Hockey India (HI) over the merger modalities.

⁹⁷ Corruption in sports in India by Ashutosh Misra and Abhishek Vikram

⁹⁸ The Great Tamasha: Cricket, Corruption and the Turbulent Rise of Modern India
By James Astill

IHF's labelling of HI officials as 'highly corrupt' has caused a great deal of squabbling in the media.⁹⁹

In weightlifting, while India has produced world class lifters, the sport has also had its own share of scandals and controversies. In 2005, a bribe scandal surfaced over the selection of dope-tainted lifter, Shailja Pujari, in the Beijing Olympic squad. In July 2010, the Indian Weightlifting Federation had to suspend its coach, Ramesh Malhotra, over charges of sexually harassing junior lifters.

During the Commonwealth Games, the lack of suitable legislation for the organisation of mega sport events deeply affected India's objectives, in contrast to other international models, such as the Sydney Olympics 2000, Melbourne Commonwealth Games 2006, Glasgow Commonwealth Games 2014 and London Olympics 2014. These models enshrine appropriate legislations to regulate the functioning of organising committees and judicious dealing with key issues such as transport, ticketing, land acquisition, intellectual property, broadcasting and licensing rights.

Now corruption has a new avatar, in the shape of a \$4 billion Indian Premier League (IPL), which has seen its former Commissioner, Lalit Modi, resign and flee to London over charges of gross financial irregularities. The 2010 IPL franchise bidding process also led to the resignation of Shashi Tharoor, Minister of State for External Affairs, who was alleged to have received \$15 million in 'sweat equity' from one of the franchises.

On the policy front, in 2011, the Indian Government has proposed a National Sports Bill to curb corruption and ensure that all sport federations comply with the Olympics Charter by subjecting their offices to annual audits. The Bill provides for a Sports Ombudsman to resolve disputes in sports, prevent age and sex fraud and doping, and to make all sports bodies comply with the Right to Information Act, 2005.¹⁰⁰

Critique on the proposed 2013, Bill

Section 3

Under section 3 of the Bill, 2013, 3. *A person is said to commit the offence of*

⁹⁹ Corruption in India: The Roadblock to National Prosperity By N. Vittal

¹⁰⁰ Sports Law By Simon Gardiner, Simon Boyes, Urvashi Naidoo, John O'Leary, Roger Welch

sporting fraud in relation to a sporting event if he, directly or indirectly,-

(i) manipulates sports result, irrespective of whether the outcome is actually altered or not, or

makes arrangement of an irregular alteration of the field of play or the result of a sporting event including its incidental events or deliberately misapplies the rules of the sport, in order to obtain any economic or any other advantage or benefits or promise of an advantage or benefits, for himself or for any other person so as to remove or reduce all or part of the uncertainty normally associated with the results of a sporting event; or

(ii) wilfully fails to perform to his true potential for economic or any other advantage or benefit for himself or for any other person unless such under performance can be attributed to strategic or tactical reason deployed in the interest of that sport or team; or

(iii) being in possession of inside information as a member, discloses such information to any person before or during any sporting event with the knowledge that disclosure of such information is likely to result in financial gain or is likely to be used in relation to betting or manipulation of a sporting event;

But, in this section the term “sporting fraud “ fails to provide for the corruption within the selection committee boards with regard to selection of players, thereby giving a damp to the new and upcoming talent.

For instance, the 2010 Women’s Hockey World Cup, held in New Delhi, was hit by a financial corruption scandal involving the Federation of International Hockey (FIH), Indian Olympic Association (IOA) and HI. Suresh Kalmadi, the Indian Olympic Association (IOA) chief, was again said to be involved in financial corruption during arrangements for the World Cup. IHF, too, was suspended in 2008 by the IOA over an alleged bribery for selection scandal.

Section 4. *Whoever gets any information as to the commission of any of the acts referred to in clauses (i) to (iii) of section 3, shall forthwith or within such time as may be prescribed, give the information regarding the same to the appropriate authority or the team management or the National Sport Federation, in writing: Provided that the team management or National Sport Federation, as the case may be, shall inform the appropriate authority within three working days of receiving such information.*

This section requires any person who receives any information with regard to any offence from section 3 (i) to (iii). However, this section fails to provide for a stronger enforcement of duty as it is left to the volition of such a person.

Section 8. (1) Where any offence punishable under this Act has been committed by a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall to be proceeded against and punished accordingly: Provided that nothing contained in this subsection shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in subsection (1), where any offence punishable under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part, of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. – For the purposes of this section,- (a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

Under this section the explanation for the term “company” is silent on the international companies indulging in sporting frauds in India. This is a major drawback with this section.

Conclusions:

Therefore, in conclusion, by closely analysing the provisions pertaining to The Prevention of Sports Fraud, Bill 2013 it is important to note that it is a valid piece of legislation in the Indian history with regards to sports law. It is landmark legislation in terms of combating the brewing controversy and weeding out the corruption in the Indian sports arena. However, it is also essential to note that this legislation is only knee jerk legislation and provides very limited scope for tackling the issues pertaining to sports fraud.

Even though the Bill provides specifically what constitutes a sporting fraud under section 3, yet in the author's view a loophole during the selection procedure of the new players would also constitute as a sporting fraud which the Bill fails to address expressly.

Section 4 of the proposed Bill imposes the duty on any person who gets any information with regard to the commission or abetment of a sporting fraud as per section 3. This imposition of duty is solely based on the wilful volition of such a person and hence, cannot entirely be relied upon in order to curb such a fraud.

Lastly, with regards to section 8, there is ambiguity with regards to whether the term company encompasses other companies that are not registered under the Indian Companies Act, 1956. Such vagueness tends to weaken the legislation and thereby not being as effective as it is expected to be. The Bill furthermore, fails to take sufficient consideration of any potential sports fraud which may arise in the future. We need a stronger legislation in order to protect the sanctity of every sport played in India.