

**SPORTS AND INTELLECTUAL PROPERTY RIGHTS: POLICY  
ISSUES AND CHALLENGES**

**A DISSERTATION TO BE SUBMITTED IN PARTIAL  
FULFILMENT OF THE REQUIREMENT FOR THE AWARD OF  
DEGREE OF MASTER OF LAWS**

**SUBMITTED BY**

**SHIVAM SONKAR**  
**UNIVERSITY ROLL NO. 1200990024**  
**SCHOOL OF LEGAL STUDIES**

**UNDER THE GUIDANCE**

**OF**

**MS. MUDITA TRIPATHI**  
**ASSISTANT PROFESSOR**  
**SCHOOL OF LEGAL STUDIES**



**BBD UNIVERSITY**

**SESSION 2020-21**

## **CERTIFICATE**

This is to certify that the dissertation titled, “**SPORTS AND INTELLECTUAL PROPERTY RIGHTS: POLICY ISSUES AND CHALLENGES**” is the work done by **Shivam Sonkar** under my guidance and supervision for the partial fulfilment of the requirement for the Degree of **Master of Laws** in School of Legal Studies Babu Banarasi Das University, Lucknow, Uttar Pradesh.

I wish him success in life.

Date- 05.07.2021

Place-Lucknow

**MUDITA TRIPATHI**  
ASSISTANT PROFESSOR

## **DECLARATION**

Title of Dissertation “**SPORTS AND INTELLECTUAL PROPERTY RIGHTS: POLICY ISSUES AND CHALLENGES**”

I understand what plagiarism is and am aware of the University’s policy in this regard.

I Shivam Sonkar declare that

- (a) This dissertation is submitted for assessment in partial fulfilment of the requirement for the award of degree of **Master of Laws**.
- (b) I declare that this **DISSERTATION** is my original work. Wherever work from other source has been used i.e., words, data, arguments and ideas have been appropriately acknowledged.
- (c) I have not permitted, and will not permit, anybody to copy my work with the purpose of passing it off as his or her own work.
- (d) The work conforms to the guidelines for layout, content and style as set out in the Regulations and Guidelines.

Date: 05.07.2021

Place- **Lucknow**

**SHIVAM SONKAR**

University Roll No.- 1200990024

LL.M. (2020-21)

(Corporate and Commercial Laws)

## **ACKNOWLEDGEMENT**

A research work of such great scope and precision could never have been possible without great co-operation from all sides. Contributions of various people have resulted in this effort. Firstly, I would like to thank God for the knowledge he has bestowed upon me.

I would also like to take this opportunity to thank **Ms. Mudita Tripathi** without whose valuable support and guidance, this assignment would have been impossible. I would also like to thank my seniors for having guided me and culminate this acknowledgement by thanking my friends for having kept the flame of competition burning, which spurred me on through these days.

And finally, my parents, who have been a support to me throughout my life and have helped me, guided me to perform my best in all interests of my life.

**SHIVAM SONKAR**

University Roll No.- 1200990024

LL.M. (2020-21)

(Corporate and Commercial Laws)

## TABLE OF CASES

### A

- AbhinavBindra (Shri) v DCIT, Central-2, Dehradun ITA No. 2219/Del/2013
- Agassi v Robinson (2006) UKHL 23
- Anirudh Singh Katoch v Union of India 2011 (266) E.L.T. 321 (S.C.)

### B

- Board of Control for Cricket in India v. Netaji Cricket Club, AIR 2005 SC 592

### C

- Commissioner v Parksons Cartamundi Pvt. Ltd 2015 (320) E.L.T. A102 (S.C.)
- Chandrakant Hargovinda Shah v Deputy Commissioner of Police SLP (c) No. 8729 of 2007;(2009) 7 SCC 186
- CIT v Tarun R Tahiliani 232 CTR 289
- CIT v Eli Lilly and Co. India P. Ltd. (1009) 312 ITR 225 (SC)

### D

- DCIT, Central Circle-4, Hyderabad v Mohd. Azharuddin ITA Nos.194/Hyd/2002

### J

- J Ray Mc Dermott Eastern Hemisphere Ltd. (ITAT Mumbai), All ITAT (5938) ITAT Mumbai (1824)

### K

- Krishan Lal Gera v. State of Haryana AIR 2011 SC 2970; (2011) 10 SCC 529

### L

- Lilley v Elk Grove Unified School District

## N

- NarinderBatra v Union of India W.P.(C) 7868/2005

## P

- PILCOM v Income Tax Officer 2000 77 ITD 218 Cal
- Pleasantime Product v Commissioner 2009 (243) E.L.T. 641 (S.C.)

## R

- R v Jockey Club exp. Massingberd-Mundy (1993) 2 All ER 207, following Law v National Greyhound Racing Club Ltd 119831 1 WLR 1302

## S

- Sachin Tendulkar v ACIT, Range 193, Mumbai ITA Nos. 428 to 430/Mum/2008
- Secretary, Ministry of Information and Broadcasting, Government of India and Ors v Cricket Association of Bengal and Ors AIR 1995 SC 1236

## V

- Venzor v. Gonzales 936 F. Supp. 445 JARVIS, ROBERT & PHYLLIS COLEMAN, SPORTS LAW: CASES & MATERIALS 796-803 (1999)

## Z

- Zee Telefilms Ltd. &Anr. v Union Of India & Ors AIR 2005 SC 2677, (2005) 4 SCC 649

## LIST OF ABBREVIATIONS

NADA	–	National Anti-Doping Agency
SAI	–	Sports Authority of India
NSP	–	National Sports Policy
IOA	–	Indian Olympic Association
BCCI	–	Board of Control for Cricket in India
IPL	–	Indian Premier League
IAAF	–	International Association of Athletics Federations
NFL	–	National Football League
AIFF	–	All India Football Federation
WBO	–	World Boxing Organisation
NLRB	–	National Labour Relations Board
MLB	–	Major League Boxing
NHL	–	National Hockey League
UNESCO	–	United Nations Educational Scientific and Cultural Organization

# **TABLE OF CONTENTS**

CERTIFICATE.....	i
DECLARATION.....	ii
ACKNOWLEDGEMENT.....	iii
TABLE OF CASES.....	iv
LIST OF ABBREVIATIONS.....	vi
TABLE OF CONTENTS.....	vii

## **CHAPTER- 1: INTRODUCTION**

1.1 Introduction .....	1
1.2 Aim & Objectives of Research.....	2
1.3 Hypothesis of Study.....	3
1.4 Literature Review.....	3
1.5 Research Design & Methodology.....	6

## **CHAPTER- 2: EVOLUTION OF SPORTS**

2.1 Defining ‘Sports’.....	7
2.2 History of Sports in India.....	10
2.3 Position of State.....	13
2.4 ‘Law’ Illumined: Is it Sports Law?.....	26
2.5 Sports Law vs. Sport & Law.....	27
2.6 Sports: Unveiled Promises.....	31

## **CHAPTER- 3: SPORTS & INTELLECTUAL PROPERTY RIGHTS**

3.1 Interjection of Sports & IPR.....	32
3.2 Position in India.....	33
3.3 Stumbling block.....	34

## **CHAPTER- 4: ISSUE IN SPORTS VIS-À-VIS IPR**

4.1 Sports ‘n’ Courts.....	36
4.2 Positions in Other Jurisdictions.....	43
4.3 Position in India.....	53
4.4 Stakeholders.....	63

## **CHAPTER- 5**

1. Sports Dispute Resolution.....	64
5.1 Sports Arbitration in India.....	67
5.2. Court of Arbitration for Sports (CAS) in the Indian Context.....	58



Conclusion & Suggestions.....65  
Bibliography.....72

# CHAPTER 1

## INTRODUCTION

### 1.1 INTRODUCTION

People are drawn into sports activities since time immemorial and from passion it has evolved into a global industry with unlimited trade opportunities. Sports have created communities of players and fans alike and it is also an economic engine that provides jobs around the world. The sports industry being a massive sector across the world has helped to bring various cultures and economies together in the past century. The sports industry has a growing impact on the world economy, creating jobs, investing in public infrastructure and mobilizing resources. Money has acquired an enormous role in all sporting events as corporatization of sports made sporting events no more sporting events worldwide. The scope of Intellectual Property Rights is of immense importance in the sporting arena.

Sports are showing Intellectual Property in action and the Intellectual Property in turn powers the business of sports. World Intellectual Property Organization (WIPO), a Geneva based specialized agency of the United Nations promotes innovation and creativity for the economic, social and cultural development of all countries through a balanced and effective Intellectual Property system. Intellectual Property Rights are usually associated with manufacturing industry and the main aim of Intellectual Property is to protect the mercantile community. Apart from easing the way for protection of Intellectual property such as patents, copyrights, trademarks, designs around the world, WIPO works to ensure that the benefit of the sports industry are spread wide and deep. Intellectual property carries commercial value for sporting clubs and organizations and covers the range of intangible assets covered by copyright, trademarks, and designs.<sup>1</sup> Intellectual Property Rights such as copyrights, trademarks, and designs became a source of significant value to the sporting arena. Sporting gears may be the subject of patent, design, copyright and trade mark rights. The technology used in a swim wear is inventive in nature and therefore can be registered as a patent, the logo printed on the swim

---

<sup>1</sup> Guidelines for recognition of a sporting activity',  
[http://archive.sportengland.org/about\\_us/recognition\\_of\\_sports\\_and\\_ngbs/recognised\\_sports\\_and\\_ngbs.aspx](http://archive.sportengland.org/about_us/recognition_of_sports_and_ngbs/recognised_sports_and_ngbs.aspx),

wear can be a registered trade mark, the designer can get copyright and the physical design can be registered as an industrial design. These registrations help to protect the value of the unique design and marketing capabilities associated with the sporting gear.<sup>2</sup> Another example is a simple sports shoe which could be protected by several IP rights: patents protect the technology used to develop the shoe and designs protect the look of the shoe and trademarks distinguish the shoe from similar products and protect the reputation of the shoe and the copyright protects any artwork and audiovisual creations used to publicize the shoe.<sup>3</sup> Also Intellectual Property Rights are associated with many other aspects of sporting business, such as event promotions, athletes, sponsorship deals and merchandising. Intellectual Property Rights are used as marketing tools towards the branding of sporting games, sponsorship, teams, celebrity status, broadcasting and media deals etc.

Various football clubs around the world such as Manchester United, Real Madrid, Barcelona and Liverpool are a perfect example of intellectual property brand capitalization.<sup>4</sup> Intellectual Property promotes the growth of the sports industry and enables sporting organizations to finance sporting events and assists in the development of the sports. In this era of globalization, protection of intellectual property rights is of utmost importance and there are different national legislations as well as international laws and treaties, which governs Intellectual Property Rights. Through this article, the author tries to examine the current state of affairs in India and how are the specific rights being guaranteed in Indian sports industry.

## **1.2 AIM & OBJECTIVES OF RESEARCH**

The purpose of this dissertation is same as that of any research<sup>5</sup> to study the interface of Sports and Intellectual property rights and also to find out the ways for better protection through proper

---

<sup>2</sup> James A.R. Nafziger, *International Sports law: A Replay of Characteristics and Trends*, 86 Am. J. Int'l L. 489 1992

<sup>3</sup> Jenkins, Simon P.R., *Sports Science Handbook: The Essential Guide to Kinesiology, Sports and Exercise Science 2*(2005,UK: Multi Science Publishing Co. Ltd.)

<sup>4</sup><http://www.mondaq.com/india/x/164974/Trademark/Intellectual+Property+Rights+In+SportsIndian+Perspective>.

<sup>5</sup> “..research as a scientific and systematic search for pertinent information on a specific topic.” C.R. Kothari, *Research Methodology: Methods and Techniques 1* (New Age International (P) Ltd., Publishers, 3<sup>rd</sup> ed. 2004)

application of the statutory laws governing the concept of IP laws and Contracts which govern Sports arena.

As According to Clifford Woody research comprises defining and redefining problems, formulating hypothesis or suggested solutions; collecting, organizing and evaluating data; making deductions and reaching conclusions; and at last carefully testing the conclusions to determine whether they fit the formulating hypothesis. The Project is aimed at incisive analysis of the IP issues in Sports perusing various concepts viz. definition of Sports, sports and law, IP fronts in sports, and issues pivotal to it, comparative legal status of the Sp1orts and IPR and development in India. This project is aimed at exhibiting nuanced legal analysis of the concept, focused to unbolt the doors to the learning of the trademark laws for common man.

### **1.3 HYPOTHESIS OF STUDY**

- Whether there are any existing regulations with respect to Sports and IPR regime, safeguarding the interests of the Sports world?
- Whether the existing situation around the globe plays an important role in strengthening the relation between IPR and Sports Laws?

### **1.4 LITERATURE REVIEW**

Sport has commonly been heralded as a universal language that brings competitors and fans together with no distinction of class or race. This public inclusion has been particularly evident in football/soccer, where fans created most English clubs and the sport is often referred to as ‘the beautiful game’ open to everyone of all walks of life and belonging to the people. The professional game has come a long way since then, particularly since the creation of ‘The Premier League’ in 1992, which ensured total club revenues of over £1.3 billion in 2003–04.

Football Clubs now act as businesses as have therefore recognized the value of intellectual property rights (IPR’s) and have striven to privatize anything possible of profit, using IPR’s to protect materials from pictures to fixture lists. This total business approach is inappropriate and

it is reducing the public domain and forcing fans with a very distinct and unique moral claim, to now pay for the materials that once belonged to them. This greed is an exploitation of fan loyalty and a failure to recognize the innovative market strategies that have become available through the development of technology such as the Internet.

IPR's within Sport have become an extremely important asset, as is the case for many modern commercial businesses. This commercial recognition within football and the reliance upon IPR's such as Copyright can be shown by Manchester United F.C. recently losing its crown to Spanish giants Real Madrid, as the football club with the biggest annual income in the world. These below data shows that IPR's are in fact the biggest asset and stream of revenue a major football team can have.

It is important to be aware of the origins and the social significance of the sport of league football, as when contrasted with the commercial game that exists today it adds weight to my arguments that IPR's should be limited.

Sports events are marked by the fan following and clubbing in the name of their favorite teams, sportspersons, and in other similar fashions which seems to be a consumer potential market to the IP holders. This gives an opportunity to the brand owners to associate their brands with potential players, teams for promoting their identity and as a consequence of this, contracts are entered into by and between such proprietors and sports faculty. It is not the only upshot of sports marketization as it covers a vast ocean of broadcasting of events – all the rights related to it, licenses for broadcasting, etc.

Sports events become a brand as such, companies start promoting their products by associating themselves with the respective sports event and prospects of ambush marketing tower in such events where a sponsor may wish to commercialize events against the interests of owners. Even there may be false endorsement cases (*Irvine v. Talk sport radio*, 2003).

The Researcher has reviewed various books on the Research topic for better understanding. The book on Character Merchandising, authored by Adams J N, analyses the problems on merchandising of fictional characters in the United Kingdom, besides highlighting the significance on licensing agreements. Though many books have been authored on Trademarks and Passing Off, however, books on the Research subject, especially by Indian authors is far-

off. A review of a lot of online international Journals provides for a vast understanding and in-depth analysis of the study.

As the law in India is emerging or yet to be developed, contrary to the well-established and developed laws in other advanced countries, there are not many books on this study to rely upon. The legal websites in the internet has nevertheless, made it easier to access and collect the secondary data through e-journals, articles and other e-resources. Lack of a codified law on Publicity forces the Indian Judiciary to approach the issue of Personality Merchandising from various angles such as constitutional law, copyright, trademark law and other common law principles. Nevertheless, the Indian judiciary has by and large provided reliefs in cases, despite lack of a specific statute, though the cases are quite negligible in number.

Education is the most vital input for the growth and prosperity of a nation. It provides strength and resilience to enable people to respond to the changing needs of the hour. Education is the backbone of all national endeavors. It has the power to transform human beings into human resource. We cannot build a sustainable and prosperous nation without human resource development which mainly depends on the health and vitality of higher education. Apart from primary and secondary education, higher education is the main instrument for development and transformation. Higher education has the omnipotent role of preparing leaders for different walks of life: social, political, economic, cultural, scientific and technological. Higher education has special value in the contemporary knowledge society which contributes both directly and indirectly to the wealth of a nation (Report to the People on Education, 2010-11).

Traditionally, higher education catered to the requirement of few select communities like priests, lawyers and doctors. The objective of higher education was to provide specific skills. During the medieval age, emphasis of higher education was laid on liberal arts and study of religion. In the late 17th and 18th century, with the industrial revolution there was a need for education in science and technology. However, during the 20th century, education started acquiring an open character. With a knowledge force 'becoming an essential requirement for national development, there was an increased demand for professional education. With the advent of information and communication technology, higher education saw a paradigm change in both philosophy and pedagogy (Powar, K B, 2012).

In the 21st century, we stand poised between a collapsing past and uncertain future, when established landmarks are disappearing and new ones have yet to appear. We find the world facing both quantitative and qualitative changes – quantitative in terms of economic growth and technological innovations, and qualitative in terms of a new paradigm of an evolving society governed by altogether different values and ethos. With the end of Cold War and the fall of communism, we are left with a world that is more fluid, fragmented, and multi-polar than ever before. The process of trade liberalization and privatization has also led to economic integration of markets at the global level. Moreover, technological innovations in transport, information, and communication have already led to the compression of the economic ‘and learning space’ (Gupta P V, 2004).

#### **1.4 RESEARCH DESIGN & METHODOLOGY**

The project is descriptive in nature, as the author aims at obtaining the relevant information regarding Sports and IPR Laws. The research is cardinal based on the doctrinal as well as empirical method of research. The whole project is made with the use of secondary sources. The following secondary sources of data have been used in the project Articles, Books and Websites. The method of writing followed in the course of this project is primarily analytical.

There is less subject matter available in this area. Since ‘tis an emerging sector (Sports and IP), so disputes keep on arising due to recent technological advancements, innovations, new and unique type of sports events, etc. Most of the times, they are dependent only on the contract that is entered between the stakeholders, ignoring the IP issues involved. However, through some case laws the judiciary has been trying to settle the positions but yet a large amount of work needs to be done in this area.

Ergo, the researcher has looked for and found relevant subject matter in areas viz. Trademark, Patents, Copyrights, Designs, etc. upon which substantial amount of work is there in India as well as in foreign jurisdictions.

## CHAPTER- 2

### EVOLUTION OF SPORTS

*“Sports has also engendered many problems and controversies which have serious legal implications<sup>6</sup>”*

*- Soli Sorabjee*

Once, a form of entertainment and, now, a way of commercialization in today’s world, Sports, has been one of the most dynamic spheres where social and economic rights of various stakeholders have been cobwebbed together. It is a cause of pleasure for the young, a channel of recreation for the working persons and for those who sit at home and watch television; it is the perfect partner to spend time with.

#### 2.1 DEFINING ‘SPORTS’

The term ‘sport’ is being subjective as are the taste experiences, of same fruit, of different people. Sport is many, a time, defined around the bush since no one claims to perfectly kit it up. The situation is like, one, after saying, what he feels it like to be, says “hey! The ball is in your court now”, ‘tis your turn to take up the task of defining it. Some may have ripple effects on others’ definition but they also end up giving their understanding of sport instead of something that might have a sweeping praxis. Do you know an encyclopedic denotation of ‘Sport’ or your guess is as good as mine? (*Confusion symbolic*)

That may seem to be a stupid question since the term has, over the years, been endorsed with various definitions, out of which, some are prohibitory, a few all-encompassing and some expository. The term ‘sport’ derives its origin from a French determined Middle English verb ‘*sporten*’, literally meaning ‘to divert’<sup>7</sup>, and also the Latin term ‘*desport*’, which means ‘to carry away’<sup>8</sup>.

---

<sup>6</sup> Soli Sorabjee, *Law & Sports in India*, foreword, LexisNexis Butterworths Wadhwa, 2011

<sup>7</sup> *Webster’s New Collegiate Dictionary*, Webster’s, 1995

<sup>8</sup> S Gardiner et al, *Sports Law*, 2<sup>nd</sup> Ed., Cavendish, 2001



Predominantly, Sport, like religion, defeats definition. In a manner, it goes beyond classic terminology. They not at all have the marrow to be diagnosed. In a sense, both sport and religion are beyond essence<sup>9</sup>. In order to define a paradigm of sports law, the British Sports council has listed the following requisites for being qualified as ‘sports’:

1. Physical skills,
2. Physical effort,
3. Accessibility,
4. Strategy and tactics,
5. Essential purpose,
6. Physical challenge,
7. Risk,
8. Uniqueness, and
9. Political, moral or ethical considerations<sup>10</sup>.

In today’s scenario, there have also been debates regarding the inclusion of motors-sports like auto racing, motorcycle racing or air racing (generally considered to be technology driven), in the arena of sports. This debate recently came into limelight in India, when the government declared, before it was decided that India would stage the 18<sup>th</sup> Grand Prix in 2011, that Formula 1 (F1) racing was only a form of ‘entertainment’ and not a sport. The direct implication of this decision was that JKSP Sports (promoters of F1 in India) were not allowed to pay Rs, 1.7 billion to the F1 administration for the proposed Indian Grand Prix<sup>11</sup>. This conjecture was placed on the credo that it is technology and not sporting skill that determines the offshoots of the F1

---

<sup>9</sup> Howard Slusher, *Men, Sport and Existence: A Critical Analysis*, Lea & Febiger, 1967

<sup>10</sup> ‘Guidelines for recognition of a sporting activity’, [http://archive.sportengland.org/about\\_us/recognition\\_of\\_sports\\_and\\_ngbs/recognised\\_sports\\_and\\_ngbs.aspx](http://archive.sportengland.org/about_us/recognition_of_sports_and_ngbs/recognised_sports_and_ngbs.aspx),

<sup>11</sup> ‘Gill Snubs Mallya; Calls F1 entertainment’, <http://www.timesnow.tv/Gill-snubs-Mallya-calls-F1-expensive-entertainment/articleshow/4326111.cms>, The Times of India, 31 Aug 2009

races. F1 can aver that it is innocent on the allegations since a mix blend of technology in the automobile industry and the human skills involved can vindicate the former claims. There's some streak of strength, speed, suppleness, stamina, and spirit in an F1 driver.

Various definitions of the term 'sport' have been framed through several legislations, sports bodies, and work of scholars, of which some are stated below:

**2.1.1 Olympic Programme** – Sport is being recognized by the International Olympic Committee as something with few types like 'team or individual sport', 'indoor or outdoor sport' and also something which has different natures<sup>12</sup>. Regarding legal implications, it says that the adjudication must reflect the imbibing of the principles of natural justice<sup>13</sup>. One of the unique criteria jotted down was that in order to be competent to qualify as a 'sport', it should be a wieldy activity for both, men and women.

**2.1.2 Webster's Dictionary**<sup>14</sup> defines 'Sport' as:

*“Any activity or experience that gives enjoyment or recreation; pastime; diversion”*

Young people can learn team work, sportsmanship, and perseverance and develop many other admirable qualities when participating in sports. Sporting greats have existed in every field. To appreciate sports is to appreciate the people who play sports. A plethora of athletes, both professionals and amateur, have provided exciting moments for millions of fans over the last hundred years. There are too many athletes and great teams to list, but a few should be acknowledged to gain a greater appreciation of sports and the effect sports have had on American culture and society. But sports are something more than mere entertainment.

Another council of Brobdingnagian scale, the **International Paralympic Committee**, has attempted to classify Sports in particular, devising out stratification schemes for each the eligibility of sportsperson under each sport.

---

<sup>12</sup> Review Of The Olympic Programme And The Recommendations On The Programme Of The Games Of The Xxix Olympiad, Beijing, *The general composition of the Olympic Programme*, [http://www.olympic.org/Documents/Reports/EN/en\\_report\\_527.pdf](http://www.olympic.org/Documents/Reports/EN/en_report_527.pdf), Rule 2.1, 2008

<sup>13</sup> Id., *Sports specific considerations*, p.4

<sup>14</sup> *Webster's New World Dictionary of the American Language*, College Edition, 1968

**2.1.3 Sport Accord** – Sport Accord uses the following definition<sup>15</sup> of a sport:

- The sport proposed should include an element of competition
- The sport should not rely on any element of “luck” specifically integrated into the sport.
- The sport should not be judged to pose an undue risk to the health and safety of its athletes or participants.
- The sport proposed should in no way be harmful to any living creature.
- The sport should not rely on equipment that is provided by a single supplier.

## **2.2 HISTORY OF SPORTS IN INDIA**

### **Historical Background**

Sports have been the most mainstream type of amusement for individuals since time immemorial. To follow down the convincing history of games in an exact way is a troublesome assignment. For increasing genuine knowledge, one needs to burrow generally to achieve each niche, corner and township in various pieces of the globe. The extension of games and its history make it difficult to point to a date that marks D-day in the realm of games.

In spite of the fact that it is difficult to know without a doubt, it is typically viewed as that wrestling and boxing were the main games each played. Rivalries utilizing the basic method of human transport, running, would likewise have been among the main games played. Rivalries including hitting, kicking, tossing a ball like item, just as games identified with chasing and tossing would likewise be relied upon to have been played in early occasions.

Sports have constantly enraptured the human heart and it very well may be positively expressed that humankind has enjoy wearing exercises from most punctual days. Proof can be found in pre-noteworthy cavern painting in numerous pieces of the world. The well-known games as

---

<sup>15</sup> <http://www.sportaccord.com/about/membership/definition-of-sport.php>, *definition of Sport*, Sport Accord

they exist today like cricket, hockey, football and so forth did not grow all of a sudden. Starting point of these games can be followed to fundamental exercises and simple diversions. For example, tossing, getting, hopping and battling. The hints of aggressive games were first followed from the relics of settle networks of Egypt,<sup>16</sup> divider artistic creations at Beni Hassan and in tomb of Egyptian youngster, where are set of skittles had been discovered like ten-stick bowling.

History of games can likewise be followed back to the old Greeks. Amid those days' appreciation for the solid human body is appeared in their figure and makes just about a religion of aggressive sports. It was their custom on grave events, including even memorial services, to take part in races. This enthusiasm prompts the world's first athletic apparatus - the diversions at Olympia, set up as indicated by convention in the year 776 BC and held like clockwork. Towards the starting this was a one-day athletic gathering with a solitary aggressive occasion. The whole day is taken up with warm-ups for a running race - a dash the length of the arena, the likeness around 200 meters. In later years more occasions are included. In the game's history, the critical occasions that are incorporated into the Olympic Games are plate toss, spear toss, long hop, boxing, wrestling, chariots, horse hustling and a test-to-test all-round capacity - the pentathlon. The pentathlon really begins with challenge in four criteria - running, hopping, tossing the plate and the spear. The victors from these experiences need to meet in a fifth and selective challenge, wrestling. Be that as it may, the champ gets a straightforward token of their triumph, a laurel of new olive to wear on the head. This is basically a religious celebration, out of appreciation for the best of the Greek divine beings, Zeus whose asylum is at Olympia<sup>17</sup>.

### **2.2.1 Sports Culture in India**

In early India, diversions and sports were particularly worried about the improvement of physical make-up and for the specialty of offense and safeguard. Additionally, diversions were considered as a sort of entertainment and assumed an imperative job being developed of man's

---

<sup>16</sup>Sports in Egypt of 2000BC, Available at: <http://www.historyworld.net/wrldhis/PlainTextHistories.asp?historyid=ac02> (last visited on 01<sup>st</sup> April, 2021).

<sup>17</sup>History of sports, Available at: <https://www.pinterest.com/pin/507921664205377696/> (last visited on 01<sup>st</sup> April, 2021).

identity. From Vedic writing, The Ramayana and The Mahabharata and the artistic works of Kautilya, Kalidas, Panini and Dandin just as Buddhist and Jain Literatures it very well may be said that India had a rich legacy of exercises worried to sports. History of games in India can be followed from different civilizations:

- Indus Valley Civilization (3250 B.C to 2750 B.C) -

From the remaining parts found in Mohenjo-Daro, for example, statuette and "Mesh Bath" produce the solid proof for games like swimming. Marbles balls and bones utilized for amusements and dicing was the critical diversion as is clear from heaps of dices uncovered. Alongside these distinctive sorts of prepackaged games like chess and ludo were additionally common.

- Vedic Period (2500BC to 600BC)-

Vedic ladies got a decent amount of manly consideration in physical culture and military preparing. The Rigveda disclose to us those numerous ladies joined armed force and played numerous games back then. Individuals were partial to swimming and playing patio recreations, for example, "Find the stowaway" and "Catch and Run". From Rigveda, it creates the impression that Vedic Aryan knew the specialty of boxing.<sup>18</sup>

- Early Hindu Period (600 BC to 320BC)-

From the writing of The Ramayana, we can presume that in this period individuals began looking into games. Diversions played in this period were horse-riding and chariot-riding. Chasing was considered as an illustrious diversion. Betting with dices was additionally played by numerous individuals. Chess was additionally created amid this period and India is glad to be known as the country of this extraordinary game.

From the writing of The Mahabharata, they have referenced diversions like arm-battling, wrestling and find the stowaway. As we know Lord Krishna used to play "kabaddi" with his companions at the bank of Yamuna. "Gulidanda" was likewise one of the amusements played

---

<sup>18</sup> History of sports", Available at: <http://www.indianmirror.com/games/gam1.html>(last visited on01st April,2021).

and it includes one long and one short stick. Kauravas and Pandavas were partial to playing gulidanda among them<sup>19</sup>.

The Mughal leaders of sixteenth and seventeenth hundreds of years India were additionally known to have an inalienable preference for outside activities and sports. Babar was known for swimming over the waterway. Humayun was additionally known for climbing unfavorable statures. The Mughal heads were sharp seeker of wild recreations. They likewise played recreations like polo, wrestling and pigeon climb.<sup>20</sup>

In seventeenth century when East India Company came to India, British additionally conveyed their conventional games to India. English acquired cricket to India late eighteenth century. The Parsees were the first to grasp the amusement, yet the credit of advancing cricket can be given to Indian rulers, who advanced this diversion. In current India, as various religions and races, conventional and mainstream sports exist one next to the other and are accordingly prospering. Next to the prevalent game like cricket, hockey, yard tennis, football and so forth, there are different other customary games like dhopkhel, kang Shanaba, gella-chutt, kho kho, Hiyang Tannaba, Lamjei, and so on, that are likewise played.

## **2.3 POSITION OF STATE**

### **2.3.1 Need for State Intervention in games**

Sports construct character, solidarity, faithfulness, feeling of reasonable play and the ability to assume a misfortune in one's walk<sup>21</sup>. Sports consolidate society's current qualities and strengthen these qualities on the playing field, through its principles and set up organizations. The most significant part of games is that it can possibly transmit its standards and the exercises

---

<sup>19</sup> Sports in Ancient India”, Available at: [http://sports.indianpress.org/ancient\\_indian\\_games.php](http://sports.indianpress.org/ancient_indian_games.php)(last visited on 01st April,2021)..

<sup>20</sup> Mughal Rule India, Stephen Meredyth Edwardes, Herbert Leonard Offley Garret, Atlantic Publishers and distributors, New Delhi, 1995, pp 279-285.

<sup>21</sup> Anneliese Nelson, “When, where and why does the State intervene in Sport : a contemporary perspective” ,Sports law ejournal, faculty of law, Bond University.  
<http://epublications.bond.edu.au/cgi/viewcontent.cgi?article=1000&context=slej>.

gained from interest of competitors in different occasions and its administration to society when all is said to be done.

Sports have likewise assumed a key job in country building and cultivating solidarity and companionship between warring countries and unfriendly networks. For example, amid the 1955 India-Pakistan Test cricket arrangement, an expected 20,000 Indians were offered authorization to go to the Third Test in Lahore making what one paper portrayed as 'the greatest mass movement over the wilderness since Partition'. It has additionally been utilized to kill ethnic conflict.

Critical instructive and physical advantages have been distinguished as emerging from athletic investment at focused and recreational dimensions. Cooperation in competitive games is undifferentiated from investment by numerous understudies in any instructive class in school, preparing for memorization and essential scientific abilities. The legal executive i.e. judiciary everywhere throughout the world has recognized the positive qualities related with games. One such model is the situation of *Lilley v Elk Grove Unified School District*<sup>22</sup>, in which California Appellate Court found out the qualities related with games and underscored:

"For some, sports are a piece of the school learning knowledge, in addition to other things showing understudies how to manage both achievement and disappointment, and imparting in them a comprehension of the significance great sportsmanship, control, and regard for mentors, colleagues and contradicting players. Another critical piece of the experience is that understudies and their folks find out about tolerating duty regarding the outcomes of one's decisions and activities. By partaking in a game that represents the undeniable plausibility of damage, the understudy competitor must figure out how to acknowledge an unfriendly aftereffect of the dangerous characteristics in the game. At the end of the day, utilization of the tenet of essential supposition of the hazard in the extracurricular school sports setting is reliable with, as opposed to hostile to, the objectives and duties of rudimentary and optional schools."

On account of *Krishan Lal Gera v. State of Haryana*<sup>23</sup> Delhi High Court said that-

---

<sup>22</sup> (1998) 68 Cal App 4, 939.

<sup>23</sup> AIR 2011 SC 2970; (2011) 10 SCC 529.

"Sports advance wellbeing, soul of rivalry, and social mix. The games offices in the Stadium are intended to be utilized by occupants and sports people of the city/town and encompassing territories. The nation requires world class foundation to prepare potential competitors and sportspersons. It isn't adequate if foundation is made, however such framework and offices ought to be legitimately kept up and ideal use of the framework ought to be guaranteed."

The Parliamentary Standing Committee on Human Resources Development has noted:

"Under-usage of framework Optimum use of our current games foundation has likewise been one of regions of worry before the Committee. We have raised enormous stadia and different games framework in the metros and urban areas, which are utilized just when national or worldwide competitions happen. For the remainder of the period, stadia remain unutilized or are leased for social projects and other non-games. The general population everywhere for the most part does not approach such gigantic stadia. A ton of cash is being spent on their upkeep including security. Sports Federations and different bodies having workplaces there don't pay the lease too. In addition, astounding foundation is made in various States by method for sorting out National Games there. The Committee came to realize that these for the most part stay inert most piece of the year and States thought that it was hard to keep up. The Committee thinks that it is unexpected that from one viewpoint, we experience the ill effects of huge absence of foundation and then again, our framework remains un-used or under-used. This is terrible that should be redressed. The Committee unequivocally prescribes to have an arrangement arranged for this reason in counsel with all the State governments, Federations, Sports Authority of India, and so forth to put our framework to greatest use".

The Supreme Court of India on account of *Zee Telefilms Ltd and Anr. v Union of India (UOI) and Ors.*<sup>24</sup> saw that, 'Game is viewed as a piece of Education. Game has been incorporated into the Human Resource Development as a bigger piece of instruction'. In *Secretary, Ministry of Information and Broadcasting, Government of India and Ors v Cricket Association of Bengal and Ors*<sup>25</sup>, the Supreme Court held that sports are a type of expressive lead, framing a piece of

---

<sup>24</sup> AIR 2005 SC 2677, (2005) 4 SCC 649.

<sup>25</sup> AIR 1995 SC 1236.



the crucial ideal to the right to speak freely and articulation under Article 19(1)(a) of the Constitution, and expressed:

"The facts may confirm that what is secured by Article 19(1)(a) is an outflow of thought and believing and not of the physical or scholarly ability or expertise. It is likewise evident that an individual wanting to broadcast games when he isn't himself a member in the discipline, does not look to practice his privilege of self-articulation. Be that as it may, the privilege to the right to speak freely and articulation additionally incorporates the privilege to instruct, to illuminate, and to engage and furthermore the privilege to be taught, educated, and engaged. The previous is the privilege of the broadcaster and the last that of the watchers. The privilege to broadcast game will in this way likewise incorporate the privilege to teach and advise the present and the forthcoming sportsmen keen on the specific diversion and furthermore to illuminate and engage the admirers of the amusement: Hence, when a broadcaster wants to broadcast a game, it is erroneous to state that free-discourse component is missing from his right."

Sports have likewise been recognized as a binding together instrument that gives a feeling of network among progressively various constituents of bigger bodies, for example, a locale or country. This critical capacity of games is suitably portrayed by Professor Rodney K Smith<sup>26</sup> in the accompanying selection of his article.

"In our various cultures, described by a wide assortment of ethnic, religious, financial, and different gatherings, there likely could be no other power very like game, as far as bringing individuals of differing foundations together in quest for a typical reason. Individuals from varying backgrounds can detect some solidarity of direction as they accumulate to take an interest in or watch aggressive sports. With developing disruptiveness based on ethnic, religious, and social contrasts, the limit of game to solidarity might be of expanding importance, especially if groups are not isolated based on race, religion, or culture. Profound companionships that rise above such contrast are frequently fashioned in the cauldron of athletic challenge. The requirement for such a feeling of association or network is noteworthy, in spite

---

<sup>26</sup> R Smith, 'When Ignorance is Not Bliss: In search of racial & gender equity in Intercollegiate Athletics', Missouri Law Review, 61(2), 1996, p 329.

of the fact that the limit of game to add to connectedness might be limited by the individuals who will not hold onto sport as anything over simple pointless fooling around."

This sort of an impact of games, particularly of a game like cricket in India, is to such an extent that when the Indian cricket joint efforts a match, all social, religious, and station contrasts are overlooked and individuals get together to watch the match and relate to one another, whatever the destiny of the group be.

As opposed to the idealistic vision of games talked about above there are a couple of viewpoints, which likewise reflect negative social properties, for example, childishness, undue animosity and failure to accommodate to an exploration. Sports, along these lines, replicate the strain between qualities which support unhindered individual independence and those that support outer guideline as a method for setting up network standards in the domain of games. This strain prompts a worry about how sports ought to be guiding a contention among games and qualities, what ought to be given priority? What is diverse about games as an object of guideline?

In spite of the fact that it is favored that sports ought to stay outside the control of the State, State intercession in a nation like India is fundamental as most games notwithstanding cricket, golf and tennis are not sufficiently worthwhile and do require infrastructural support from the State<sup>27</sup>. Fundamentally, the state needs to guarantee that all games hold fast to the societal qualities and standards. In this way, the state needs to intercede so as to maintain the estimations of the general public by advancing games and regarding it as instruction. Sports have additionally been utilized in the public eye to ingrain territorial and national emotions. For instance, Adolf Hitler utilized the Olympics in Germany to advance his plan of racial matchless quality. Also, amid the virus war, the American Olympic group boycotted the Moscow Olympics because of political contrasts between the two countries, which was responded by Soviet Russia in the Los Angeles Olympics. Indian cricket group's blacklist of the cricket arrangement in Pakistan over political plans of war and fear-based oppression likewise

---

<sup>27</sup>Anneliese Nelson, "When, where and why does the State intervene in Sport : a contemporary perspective", Sports law ejournal, faculty of law, Bond University. Available at: <http://epublications.bond.edu.au/cgi/viewcontent.cgi?article=1000&context=slej> (Last visited on 15<sup>th</sup> April, 2021).

unmistakably demonstrate that there is sure control kept up on games by the state, especially with regards to national suppositions. Different games bodies practice power over Sports by—

- Ensuring that the traditions that must be adhered to are not abused;
- Enforcing the guidelines of the amusement over the span of play; and
- Evolving the way toward assessing choices through bodies like National Anti-Doping Authority and sticking to the tenets and guidelines of the overall administering bodies like the International Olympic Association and the Court of Arbitration for Sports. The State as a sovereign element assumes a definitive job in the association and advancement of physical exercises and sports, as it regulates the endorsed donning alliances. It advances the games alliances alongside their lapsed organs like associations and boards by giving them budgetary help and HR and foundation, which bolsters their exercises at both neighborhood and national dimension and gives self-ruling status to the donning organizations for directing different games.

Till now state intercession in directing in game, competitors and their lead is exceptionally restricted. It is exceptionally troublesome for any state to draw line between lead of any game individual or any typical individual. Battle between two sportsperson and battle between two typical individuals is directed in a different way altogether. In the event that a player punches a rival over and over amid a rugby competition bringing about a broken nose, the player might be sent off the field. Even under the least favorable conditions, they might be suspended from play for a timeframe by a disciplinary set up. On the off chance that this equivalent demonstration was to happen in the city, the culprit would be captured for ambush occasioning materially hurt or even substantial damage in the form of grievous hurt.

There are five fundamental ways the State manages sport. Right off the bat, the tax assessment of games individuals and brandishing elements is immovably administered. Second, a few locales have enactment administering specific games, for example, boxing. Many have solid guideline on medication use in game. Third, betting and wagering rules influence a wide range of games with which betting is related. Fourth, the State supports sport through subsidizing, different wellness routines and general wellbeing activities more often than not set forward by

Health Departments. Finally, there are a few conditions where the criminal law is summoned. This is to a great extent to make a display of especially unsafe or hard conduct on the brandishing field and is in no way, shape or form reliably connected. Moreover, the criminal law is utilized in the donning setting to secure and maintain one of the primary elements of government: counteractive action of breaking the harmony.

Occasions like Hillsborough catastrophe and Heysel Stadium<sup>28</sup> calamity constrained the controlling organization to direct the lead of groups, sportsperson and onlookers. The Hillsborough catastrophe brought about the passing of 96 individuals and wounds to 766 others, at a match among Liverpool and Nottingham Forest at Hillsborough Stadium, Sheffield, England on 15 April 1989. The fiasco has since been accused principally on the police for giving such a large number of individuals a chance to enter the arena. It remains the most exceedingly terrible arena related debacle in English games history, and one of the world's most exceedingly awful football calamities<sup>29</sup>.

The Heysel Stadium catastrophe happened on 29 May 1985 while getting away fans were squeezed against a falling divider in the Heysel Stadium in Brussels, Belgium, before the beginning of the 1985 European Cup Final between the Juventus of Italy and Liverpool of England. 39 individuals for the most part Italians and Juventus fans were murdered and 600 were harmed in the encounter<sup>30</sup>.

These two occasions stunned the world and let the world to understand the requirement for managing the games to evade these sorts of occasions. Administrative forced unforgiving punishments and criminal punishments on the crooks.

### **2.3.2 The Ministry of Youth Affairs and Sports**

---

<sup>28</sup> Eason, Kevin (13 April 2009). "Hillsborough: the disaster that changed football". The Times (UK). Retrieved 1 October 2009.

<sup>29</sup> Eason, Kevin (13 April 2009). "Hillsborough: the disaster that changed football". The Times (UK). Retrieved 1 October 2009.

<sup>30</sup>Heysel: Liverpool and Juventus remember disaster that claimed 39 lives, <http://www.mirror.co.uk/sport/football/news/heysel-football-stadium-anniversary-of-disaster-852138>.

The Ministry of Youth Affairs and Sports was set up in 1982 as the Department of Sports and turned into an autonomous Ministry in 2000. The Ministry has been operating as the Department of Youth Affairs and Department of Sports under two separate Secretaries since 2008. The particular subjects of the two divisions begin from the Order of the Government of India (Allocation of Business) Rules, 1961.

The objectives and goals of the Ministry of Youth Affairs and Sports are:

- Maintaining and improving India's situation on the world stage of games through noteworthy cooperation in world-class disciplines.
- Supporting alliance approaches to expand investment in focused games.
- Creating the foundation and advancing the working for wide basing games just as required for accomplishing brilliance in different focused occasions at the national and worldwide dimensions.

The National Sports Federations are in charge of sorting out, creating, and organizing almost all state sports. There are at present 56 National Sports Federations that are recognized by the Indian central government. They facilitate players to speak to the government, and mentors to oversee the Indian squads. They are assigned with the obligation to improve the assets apportioned to various games by starting preliminary preparing for players and by helping different groups to participate in a few global competitions. The Federations additionally have the assignment of taking up activities for further revelation of ability and advancement of the game's exercises, with accentuation on the social and instructive job of games. In any case, in spite of the fact that these leagues are required to assume an imperative job in the quantitative and subjective improvement of games exercises, especially for individuals with inabilities, younger students, ladies and the old and so on, just as in the advancement and wellness of each person, they more often than not don't.

### **2.3.3 The Indian Olympic Association (IOA)**

India even before achieving autonomy partook in the Olympics. Interest as a different element encouraged the soul of India's autonomous presence<sup>31</sup>.

### **Establishment of IOA-**

Sir Dorabji Tata spearheaded in 1920 the Olympic development in India and in 1927 alongside Dr. A.G. Noehren established the Indian Olympic Association (IOA). The household ability without the framework, preparing and assets bit by bit began prospering<sup>32</sup>. A little unexpected of six individuals, four competitors and two wrestlers partook in the Antwerp Olympic Games in 1920. Sir Dorabji Tata was chosen individual from the International Olympic Committee (IOC)<sup>33</sup> amid these recreations. A group of 14-15 players including 2 women was chosen for the Paris Games of 1924. The Indian competitors performed better with two of them, TK Pitt in the 400 meters, and Dalip Singh in the event of track and field, performing especially well. The Indian investment in the Olympics summoned a national inclination and a feeling of pride as Indian sportsmen took part on equivalent terms with the other country.

Not long after in the wake of assuming responsibility as President of the Indian Olympic Association, Maharaja Sir Bhupinder Singh of Patiala confronted the troublesome errand of sending a group to the Amsterdam Games of 1928. It was because of his work and impact that India figured out how to send seven competitors and fifteen hockey players to Amsterdam<sup>34</sup>.

### **Job of the IOA-**

The onus for the readiness of competitors and their cooperation in the Olympic Games just as in occasions like Commonwealth and Asian Games is with the Indian Olympic Association. At the national dimension each game has a different organization which chooses sportspersons dependent on their exhibitions. The national leagues are helped by the Netaji Subhas National Institute of Sports, Patiala, and Sports Authority of India which give offices not exclusively to

---

<sup>31</sup>Majumdar.B and Mehta.N, 'Games of self respect: A colony at the Olympics'; 'Social and cultural diversity in the sporting world'; Emerald Group Publishing, edition 2008.

<sup>32</sup> B Majumdar and N Mehta, '100 yards round a bend: To Antwerp Peasants on Athletics track', 'Olympics: The India Story'. <http://www.outlookindia.com/article.aspx?237954>.

<sup>33</sup> B Majumdar and N Mehta, India and the Olympics, Taylor and Francis, 2009.

<sup>34</sup>Majumdar.B and Mehta.N, 'Games of self respect: A colony at the Olympics'; 'Social and cultural diversity in the sporting world'; Emerald Group Publishing, edition 2008

prepare sportsmen yet in addition mentors and care staff related with the specific games. Olympic Associations at the state levels likewise endeavor to accomplish similar destinations.

### **2.3.4 The Responsibility of the State**

In India, the support of diversions and sports is the duty of the states regarding Entry 33 of List II of the Seventh Schedule of the Constitution of India, which peruses, 'theaters and stage exhibitions; films subject to the arrangements of Entry 60 of List 1; sports and entertainments'.

The Union of India, in exercise of its official capacities as far as the designation of business rules confined under Article 77 of the Constitution of India, has made a different Ministry of Youth Affairs and Sports. One of the objects of the Ministry is to work in close coordination with national organizations that direct games<sup>35</sup>.

It is perceived that the administration, advancement and consolation of games is at present on the State List and just the State Governments are engaged to settle on laws and take urgent choices identifying with it. To accommodate the enlistment, acknowledgment, and guideline of games affiliations, different states have defined individual Acts like the Himachal Pradesh Sports Act, 2005; Uttar Pradesh Sports Act, 2005; Kerala Sports Act, 2000; and the Rajasthan Sports Act, 2005. Notwithstanding, keeping in view the fluctuated job of games in our nation and its significance in the worldwide field, the Government and other concerned organizations, and the leagues or affiliations need to cooperate amicably and in a planned way to satisfy the targets of accomplishing greatness in games.

In perspective on the above eccentricity, Justice S.B. Sinha on account of *Zee Telefilms Ltd and Anr v Union of India (U01) and Ors*<sup>36</sup>, in his different disagreeing judgment watched:

"The Union of India is required to advance games all throughout the India, it, as of need is required to facilitate between the exercises of various states and moreover having respect to the International field, it is just the Union of India which can exercise such a power as far as Entry 10, List I of the Seventh Schedule of the Constitution of India and it might likewise be held to

---

<sup>35</sup> As observed in the case of *Zee Telefilms Ltd & Anr v Union of India & Ors* AIR 2005 SC 2677, (2005) 4 SCC 649.

<sup>36</sup> AIR 2005 SC 2677.

have essential authoritative ability as far as Entry 97, List I of the Seventh Schedule of the Constitution of India."

The National Sports Policy, 2001, likewise seen that, the 'subject of consideration of games in the Concurrent List of the Constitution of India and presentation of proper enactment for managing all issues including national and between state will be sought after'. The discussion regarding who is enabled to enact in issues identifying with games in India has been given another measurement by the Delhi High Court in *M/s Narinder Batra v Union of India*<sup>37</sup> settled on March 2, 2009. By applying the guideline of amicable development, it has been held that the field of games with every one of its tones and hues is one such subject which, for various purposes would be canvassed under various passages in various Lists in the Seventh Schedule to the Constitution of India. The essence of the discoveries through which the intensity of Parliament is followed to enact on the said subject is as per the following:

- The execution, improvement, and consolation of games, alongside the proclamation of games law in India falls inside the ambit of the state work as far as Entry 33 of List II of the Seventh Schedule of the Constitution of India.
- Sports have been generally viewed as an essential and indivisible piece of training. Measures in regard thereof fall inside the purview of the Department of Education under the Ministry of Education and Social Welfare of the Government of India under the Allocation of Business Rules confined by the Legislature in exercise of forces under the Constitution of India<sup>38</sup>.
- From as far profoundly back as 1975, the Government profoundly worried about Press and the developing analysis in Parliament, press and generally of the low benchmarks of games and diversions had expressed this in the round no. F.11-4/74-SPI I dated the 20 September 1975. It was held that essential obligation regarding the advancement particularly of games and recreations in the nation as the important base for capability in competitions abroad rests with

---

<sup>37</sup> W.P.(C) 7868/2005.

<sup>38</sup> Entries 10 and 13 of List I of the Constitution of India read: 10. Foreign affairs, all matters which bring the Union into relation with any foreign country.



the Indian Olympic Association, the National Sports Federations, Sports Federations, or Associations.

- As the endeavors of these fallen associations had shy of the nation's desires, prompting across the board open concern, issues of fundamental improvements were raised. The Government was worried about the failure to raise guidelines to universal dimensions. It was additionally mindful that the different national associations managing sports and diversions had independent working. In this round, the Government had obviously demonstrated that it wanted to meddle either with the inside working or with the self-governance of these associations.

- However, predictable with its commitments, it was felt that the Government needed to set out specific standards with reference to which the Government's help and its instrumentality should, on events, be made accessible to the Indian Olympic Association, the National Sports Federations or the National Sports Associations.

- In this foundation, the Government of India had considered the issue cautiously in conference with the All India Council of Sports and in this way chosen in light of a legitimate concern for advancement of games and diversions, the Government's money related and other help will be stretched out just to those national associations managing sports and amusements which satisfied certain conditions set down in its rules titled 'Improvement of Standard of Sports and Games in the nation—Conditions For Financial and Other Assistance to National Sports Federation/Associations and so on'.

- National Sports Federations as perceived by the Government might be built up as private bodies However, so as to end up agent bodies; a national organization speaking to the nation, it is basic that they be so perceived by the Government. They would have no expert to implement any level of guideline or command over the different state bodies however for the specialist which is vested on them just by temperance of the acknowledgment allowed by the Government<sup>39</sup>.

---

<sup>39</sup> Guidelines for assistance to National Sports Federations.' <http://www.ispsquash.com/guidelines%20for%20assistance%20to%20national%20sports%20federations.htm>.

- It might be attractive that sports organizations have self-rule in zones of the real direct administration of games, however when a sports person represents India at the worldwide forum, it is a basic capacity of the Government not exclusively to supervise the examination technique for determination for a game but in addition the discussion in which such choice system happens. The wellsprings of the administrative skill of the Government to do as such are Entries 10 and 13 of List I<sup>40</sup>.

There can be no contention that worldwide games have been viewed as a fundamental piece of political relations of the countries. Subtleties of threatening vibe in political relations, issues of protection, security worries of players, protests by virtue of strategies of separation, politically-sanctioned racial segregation, and saw human right infringement have guided countries in choices to take an interest in games in various nations. Political and discretionary leeway is required by the Indian groups before investment in the worldwide competitions and gatherings. No State Government would have the resources or the jurisdiction to attempt such exercise. This is obviously the area for the Union Government.

The above perceptions and different legal declarations plainly perceive that the administration, improvement, and consolation of games and the proclamation of games law in India explicitly falls inside the ambit of the states as far as Entry 33 of List II of Seventh Schedule of the Constitution of India. Notwithstanding, keeping in view the differed job of games in our nation and its significance in the global field, the focal and the state governments and other concerned organizations and the alliances or affiliations need to cooperate agreeably and in facilitated way to satisfy the destinations of accomplishing perfection in games.

### **2.3.5 Judicial Review**

In a few nations, sport's governing bodies practicing regulation and imposing business model status are progressively going under legal examination. The way that the donning affiliations are playing out some open capacities and influencing imperative open intrigue can't be denied. Legal practice in Scotland, New Zealand, and Canada is as of now for legal supervision of

---

<sup>40</sup> Entries 10 and 13 of List I of the Constitution of India read: 10. Foreign affairs, all matters which bring the Union into relation with any foreign country.

donning bodies, while in England, change is being pushed<sup>41</sup>. The expansion of the extent of legal audit as of late to bodies that are not really thought of as sports bodies has been the most intriguing and promising advancement in the field of sports law. Furthermore, the developing acknowledgment of the reasoning that each one of the individuals who employ power ought to be responsible and ought to be liable to general standards of good organization demonstrates conceivable outcomes for building up the job of the court in controlling the intensity of private partnerships and self-administrative bodies. In India, a sports law justice in writ purview can, in given cases, be quick. Fourteen cricketers of India including the then captain was punished for their unapproved cricketing trek to the USA, by being prohibited from global cricket. This punishment was tested in the Supreme Court in Vineet Kumar v BCCI. In about a range of about a month and a half, by two hearings in the Supreme Court, the boycott was disavowed and the cricketers restored. Since the restriction on the cricketers was renounced and the question settled comfortably, the Supreme Court did not have the event to go into the issue of the viability of the writ request. The Writ Courts' supervisory power guaranteed that sports bodies don't manhandle their capacity and don't act discretionarily, impulsively, irrationally, or unjustifiably. Whatever other administrative controls they might be exposed to, it is ending up progressively attractive that private bodies employing controlling supervision. Suit and the likelihood of review by court can assume a valuable administrative job.

#### **2.4 'LAW' ILLUMINED: IS IT SPORTS LAW?**

Contracts are being entered into by and between various stakeholders of this vast industry. These agreements may range from endorsing of players by brand-owners to broadcasting deals, selling tickets, lease for service and usage, merchandise and license, and players and coaches. For such contracts, the dominating principle in India is the Indian Contract Act, 1872. The role of a lawyer remains a prominent one in the way he is needed for contract management life cycle. Another need is of a player's agent, who must be familiar with the terms of the standard player contract as well as other supporting documents to properly represent his or her client. Once an issue was there with respect to the approval of league commissioner for the formation of a valid

---

<sup>41</sup> R v Jockey Club exp. Massingberd-Mundy (1993) 2 All ER 207, following Law v National Greyhound Racing Club Ltd 119831 1 WLR 1302.

contract<sup>42</sup>? Hold back, why are we putting our head together in these contracts? What pipeline connected us to the universe of law of contracts guiding from the realm of sports?

## **2.5 SPORTS LAW VS. SPORT & LAW:**

There is a compelling reason to argue the viability of linking sports with law or here, some people may put forward a claim that it is Sports and law and nothing like “Sports law” exists.

Given the centrality of this issue of “Sports and Law”, we may deliberate upon now what it takes for a subject to be called as a law. A broad term<sup>43</sup>, which can be understood in various and frequent<sup>44</sup> manners, the meaning of ‘Law’ is again and again to be subjugated by its context<sup>45</sup>. The usage of the word law is illimitable<sup>46</sup>.

Law denotes a set or system of rules or principles, or it may signify an individual rule.<sup>47</sup> For sports, there is no single written set of rules or principles to make it a whole “Sports law”. There are rather local laws dealing with specific spheres which in turn deal with the complexities of sports sector. For example, law of contracts which governs enforcement of contracts is to guide the contracts that are signed by and between those in sports.

Although there is ample support for the first claim but as a rebuttal to this point, it might be convincingly argued that there is an area called International Sports Law<sup>48</sup>. Also, the developing legal framework has important implications for participants and spectators in sports.<sup>49</sup> For example, television has caused ups and downs of global economics of sports. Along similar lines, issues relating to broadcasting have been arising from such telecasts. This is where international sports law has to be settled with.

---

<sup>42</sup> Detroit Football Co. v. Robinson, 186 F. Supp. 993 (E.D. LA 1960)

<sup>43</sup> Ohio, Hoffrichter vs. State, 130 N.E. 157, 158, 102 Ohio St. 65

<sup>44</sup> Pa. – *In re Baldwin Tp. Allegheny Country Annexation*, 158 A 272, 305 Pa. 490

<sup>45</sup> Ohio, Thrailkill vs. Smith, 138, N.E. 532, 536, 106 Ohio St. 1

<sup>46</sup> Cal. Miller vs. Dunn, 14 P. 27, 28, 72 C. 462, 465, 1 Am.S.R. 67

<sup>47</sup> 52A C.J.S. Law

<sup>48</sup> James A.R. Nafgizer, *International Sports law: A Replay of Characteristics and Trends*, 86 Am. J. Int'l L. 489 1992

<sup>49</sup> Id.

A closer look at the history indicates that sport has played an important role in all societies, like once mentioned by **Swami Vivekananda** when he said ***“You will be nearer to Heaven through football than through the study of Gita<sup>50</sup>”***. At that time as well, the definition of sports was not clear as is the position today. All the zealous and competitive physical engagements with an enthusiastic desire to win were considered to be a form of sports. With the emergence of sports throughout the globe, people started defining what sport is. **Simon Jenkins defines sport as ‘a subset of leisure and work activities that involves both physical activity and competition’.**<sup>51</sup>

According to the Encyclopedia Britannica, *‘Sports are games, recreational or competitive activities that involve some amount of physical strength or skill’*<sup>52</sup>. These definitions are confirmatory evidence that sports were usually considered to encompass only the outdoor amusing pastimes, such as fishing, shooting and hunting counter to games, which were regarded as an organized athletic contest played by teams or individuals according to prescribed rules. They were completely ignored about the indoor games or games which require only mental ability such as Chess, carom etc.<sup>53</sup> Further, some of the author sports in terms of institutionalization. Sports are Institutionalized *‘competitive activities that involves vigorous physical exertion or the use of relatively complex physical skills by individuals whose participation is motivated by combination of **Intrinsic** and **Extrinsic** factors.’*<sup>54</sup> However, now the definition of sports has widened its scope and includes variety of activities suitable to and enjoyed by people of all age and abilities, with specific values of sports. **Sports is a ‘human activity that involves specific administration, organization and an historical background of rules which define the object and limit the pattern of human behavior. Sport is all forms of usually competitive physical activity which, through casual or organized participation, aim to use, maintain or improve physical ability and skills**

---

<sup>50</sup> This quotation is a part of Vivekananda's book *Lectures from Colombo to Almora*, Chapter: *The Work before us* (in 1897, while returning to India from the West, Vivekananda delivered a series of lectures. He delivered his first public lecture in the East at Colombo on 15 January 1897. The last lecture of this series was delivered at Dhaka on 31 March 1901.

<sup>51</sup> Jenkins, Simon P.R., *Sports Science Handbook: The Essential Guide to Kinesiology, Sports and Exercise Science* 2(2005,UK: Multi Science Publishing Co. Ltd.)

<sup>52</sup> *The New Encyclopaedia Britannica* (1997) 112

<sup>53</sup> Jenkins, Simon (n2) 228.

<sup>54</sup> Hughes, Robert & Jay Coakley. *Positive deviance among athletes: The implications of over-conformity to the sport ethic.* *Sociology of Sport Journal* 8, 4: 307-25

**while providing entertainment to participants, and in some cases, spectators.**<sup>55</sup> In 2003, the UN Inter-Agency “*Task Force on Sport for Development and Peace*” defined sport, for the purposes of development, as “*all forms of physical activity that contribute to physical fitness, mental well-being and social interaction, such as play, recreation, organized or competitive sport, and indigenous sports and games.*”<sup>56</sup> This definition is considered as most prompt in present era and accepted all over the world. Though the concept of sports has got a long history, the area of sports law is relatively new in India comparatively other countries.<sup>57</sup>

We can say that certain legal expressions are common in everyday usages both in doctrine and in practice, as though their meaning were obvious, despite the conceptual vagueness that continues to surround them. The notion of ‘sports law’ undoubtedly falls into that category.<sup>58</sup> The foremost reason for the debate is that now the sport is not only a source of entertainment or personal recreational but has grown into a highly competitive industry with global pervasiveness.<sup>59</sup>

There has been an inconclusive debate on sports law and sports and law, for which it has to be kept in mind that it doesn’t have uniform character across the globe. This debate is very much in line with generally common law jurisdictions, which has, unsettlingly, not adapted legislations in the sporting domain. However, in civil law territories have drafted for this arena.<sup>60</sup> However, the idea of ‘sports and law’ theory is ‘*state oriented*’, snubbing the law developed by the sports bodies. However, these bodies were involved in organizing the countless sports activities even before the state. This theory has its roots in state positivism<sup>61</sup>

---

<sup>55</sup>Dr. S.T.N. Rajeshwaran & J.Loura, ‘*Impact of Type of Sports on Selected Motor Fitness Components and Co-ordinative Abilities of Women Sports Participants at Inter-Collegiate Level*’ *International Journal of Recent Research and Applied Studies*, Volume 1, Issue 5(4) October 2014

<sup>56</sup> *Sports for development and peace Towards Achieving the Millennium Development Goals Report from the United Nations Inter-Agency Task Force on Sport for Development and Peace* (United Nations, 2003)

<sup>57</sup>Gaurang Kanth, ‘*Emergence of Sports Law in India*’,  
[http://indialawjournal.com/volume3/issue\\_2/article\\_by\\_Gaurang.html](http://indialawjournal.com/volume3/issue_2/article_by_Gaurang.html)

<sup>58</sup> T Davis, ‘*What is Sports Law*’ (2000-01) 11 *Marquette Sports Law Review* 211

<sup>59</sup> Francis Kuriakose & Deepa Kylasam Iyer, ‘*Need for Sports Law in India*’

<sup>60</sup> In France, since the second half of the 20th century, has developed an increasingly dense body of legislation that now grouped together in the sports code which cover numerous aspects of sporting activities. See also: T Davis,

<http://www.legifrance.gouv.fr/affichcode.do?cidtexte=LEGITEXT00006071318&dateTexte=20120928>

<sup>61</sup> Hart, H. L. A. ‘*Positivism and the Separation of Law and Morals*’ (1958) 71(4) *Harvard Law Review* 593–629. <http://doi.org/10.2307/1338225>

that necessarily links the law to the state, the sole authority entitled to impose compliance by means of law.<sup>62</sup> There is only one international institution [The Court of Arbitration in Sports (hereinafter CAS)] at international level whose sole purpose is to settle the dispute related to sports.<sup>63</sup>

Further, it can be assumed that sports have been commercialized because of its demand by the people as an entertainment. This commercialization led to juridification<sup>64</sup> of sports, where the relationship of sports with society became a legal relationship and the moral or social norms inherent in sports become legal norms.<sup>65</sup> The extent of the relationship between sport and law has led some academics to extend their legal analysis beyond the confines of sport and the law by identifying a distinct body of sports law.<sup>66</sup> The second question comes into the mind that who creates sports law. Two distinct views have been expressed by two set of scholars. One set of the scholars believe that it is a creation of law passed by parliament or the court applied directly to the field of sports. The contrary view taken is that it involves in the various rules, principles, and procedures and organizations governing cross-border sports activities,<sup>67</sup> some scholars believe that it is a system of rules adjusting sports practice and resolving sports disputes, and also some scholars believe that it is regulations of autonomy for some civil sports organizations.<sup>68</sup>

---

<sup>62</sup> *ibid*

<sup>63</sup> Nishita Medha '*Alternative Dispute Resolution in India*', [http://fdr.cc/publications/AlternativeDisputeResolution\\_PR.pdf](http://fdr.cc/publications/AlternativeDisputeResolution_PR.pdf)

<sup>64</sup> LC Blichner, '*What is juridification?*' (1996) 97 *Northwestern Journal of International Law and Business*, 354-97, 'Juridification' refers to the process through which the general laws of the land penetrate the internal laws of sport. It accelerated interest in the idea of sport and the law as an area of legal study.

<sup>65</sup> Gardiner, S. '*Birth of a Legal Area: Sport and the Law or Sports Law?*' (1997) 5(2) *Sport and the Law Journal* 10-14. The juridification of sport has established general legal principles deriving from, for instance, criminal law, contract law, the law of torts, public law, administrative law, property law, competition law, EU law, company law, fiscal law and human rights law, have been applied to a wide number of sporting contexts including: public order and sport, drugs and sport, safety in sport, disciplinary measures in sport, conduct in sport and wider issues relating to restraint of trade and anti-competitive behaviour in sport. See Also: Beloff, M., Kerr, T. and Demetriou, M., '*Sports Law*' (1999 Oxford: Hart Publishing). Blackshaw, I. 'The Battle for a Sports Protocol Continues' (2002) 5(1) *Sports Law Bulletin*, 14-15.

<sup>66</sup> Allison, L. (ed.) *The Changing Politics of Sport*, (1993, Manchester: Manchester University Press)

<sup>67</sup> Robert, S. C., & Sideman, R. S. '*What Is Sports Law: A Reassessment of Content and Terminology.*' (2012) 10 *Asser International Sports Law Series* 18

<sup>68</sup> Han, Y. (2006). *Study on sports discipline*. Beijing Sport University

Few scholars advance their argument that sports law forms a substantive area of law and may showcase following conditions: -

*"1. no separately identifiable body of law exists that can be designated as sports law and the possibility that such a corpus of law will ever develop is extremely remote;<sup>69</sup>*

*2. although sports law does not presently represent a separately identifiable substantive area of law, recent developments suggest that in the near future it will warrant such recognition;<sup>70</sup>  
or*

*3. a body of law presently exists that can appropriately be designated as sports law.<sup>71</sup>"*

## **2.6 SPORTS: UNREVEALED PROMISES**

But what lies at the heart of the discussion is the interface of law with sports. And more than that, the substance of sports which acquires centrality when it causes issues to take place, needs to be looked upon. What is this substance? What do you infer when you see Virat Kohli outperform stars like Messi, Hamilton or Neymar in marketability<sup>72</sup>? Now, suppose you are a brand owner and now feel your proclivity for getting him sign your brand to make a dent in your business market. Yes, you have nailed it right.

---

<sup>69</sup> K. Foster, *Developments in Sporting Law, in The Changing Politics of Sport* (L. Allison ed., 1993)

<sup>70</sup> Professor Gardiner adds that "in the past, sport has been seen as an area of social life that was removed from normal everyday life and as such should be treated as a separate area largely excluded from legal intervention.

<sup>71</sup> Timothy Davis, 'What Is Sports Law?' (2000-01) 11 Marq Sports L. Rev. 211

<sup>72</sup> <http://www.indiatimes.com/play/virat-kohli-named-third-most-marketable-athlete-in-the-world-beats-lionel-messi-lewis-hamilton-neymar-255773.html>



## **CHAPTER- 3**

### **SPORTS & INTELLECTUAL PROPERTY RIGHTS**

#### **3.1 INTERJECTION OF SPORTS AND IPR**

Any of the sports can be said to be a developed form of enjoyment created by someone with all its intellectual attributes like designs of equipment, techniques about how to play, personality of sportspersons, broadcasting of sports events including fixtures, scores (data) to fans across countries, etc. Sports events are marked by the fan following and clubbing in the name of their favorite teams, sportspersons, and in other similar fashions which seems to be a consumer potential market to the IP holders.

Such lucrative cynosure potential in the industry gives a chance, without a miss, to the brand owners to associate their brands with potential players, teams for promoting their identity and as a consequence of this, contracts are entered into by and between such proprietors and those in the sports faculty. It is not the only upshot of sports marketization as it covers a vast ocean of broadcasting of events – all the rights related to it, licenses for broadcasting, etc. Now, owners may be interested in promoting their teams, clubs, etc. for which they use off-center ads embracing event team songs, slogans, images, audiovisual footage, cinematographic films, etc. These all are part of Copyright and need to be confronted by the IP laws.

The Sports industry has always been a massive sector across the world bringing together entertainment, games, culture and monetary business, right from the barbaric era through the glorious days of Caesar to the twenty first century money making sports industry. Sporting games have always been encouraged by rulers, governments, private individuals and entities interested not only in the games themselves but more in the monetary business quotient that sports entail.

The Sporting Events are no more Sporting Events, what they used to be. Worldwide, Money has acquired an enormous role in all sporting events. Corporatization of sports has become monumental. Marketing through franchising, as well as brand building of the sports, sportsmen and the event has gained gigantic importance, surpassing all other major aspects of a game.

With the business angle of sports growing by the day, dormant intellectual property rights (IPRs) vesting in almost every component of the sports industry are being tapped into and capitalized. IPRs are valuable assets that are used as marketing tools towards the branding of sporting games and connected events, sports clubs, teams, celebrity status etc. Marketing techniques are applied in creation, maintenance, popularization and sustenance of distinctive marks, logos and personalities, while copyrights vesting in brand and image creation etc. are protected to reap benefits on an exclusive basis considering the very nature of competition in sports.

Various football clubs around the world are a perfect example of intellectual property brand capitalization. Manchester United, Real Madrid, Barcelona and Liverpool are a few examples of football clubs that have been developed and marketed as huge brands worth millions of dollars.

### **3.2 POSITION IN INDIA**

In India also, the industry of sports is becoming bigger and bigger over the years with certain sports getting unimaginable mileage over others due to the commercialization and investment interest. Cricket has for decades been a gentleman's sport, which has now transitioned into a monumental commercial game attracting huge capital, investments and profits. The latest T20-20 format and IPL (Indian Premier League) have taken off the veil to boldly announce that it is the commerce, which is now on the forefront of the game. The money in the games has led to huge scams in the recent past due to large monetary stakes, fixing, betting, doping and gambling issues. The Indian government is also trying to streamline the industry keeping every party interest in mind including the players, teams, sponsors and the public at large, through the introduction of the Sports Bill, 2011, which is soon likely to become a reality, and hopefully will be able to control the management of sports to some extent.

The recent success of the FORMULA ONE RACE organized in India shows the vast commercial interest generated in the corporate world with respect to branding and event management. The organization and smooth execution of a race of such international standard in India for the very first time has brought the nation into a select league, putting further focus on the sports law and the intellectual property rights which can be used to create branding leading to immense value generation.

### 3.3 STUMBLING BLOCK

From the legal perspective the intellectual property rights in the form of trademarks, copyrights, industrial designs, personality and image rights, advertising and publicity rights, licensing and franchising opportunities have acquired immense value for protection, commercialization and exploitation of commercial aspects of sports, sportsmen and sporting events. In India, IPL teams are an example of value creation through branding and intellectual property exploitation.

Trademarks in games assume a critical part in the games business. With the beginning of marking of games occasions through the nearness of elements like a logo, subtitles, taglines, trademarks and group names and so forth (all things considered alluded as trademarks), brand worth is made in wearing groups, clubs, players, stock and so forth. Group names and images make a level of relationship with the general population and fan following helping the ubiquity evaluations of any given group, club, player and so forth. Indeed, even the names of the players have procured the status of trademarks because of their VIP status. This prominence and brand picture in the long run changes over into financial benefit through ads, brand diplomats, goodwill and notoriety of the backers and so forth.

Identity (or Personality) Rights in games assume an essential part in the brand formation of individual games players and groups. Superstar status prompts different types of picture creation, brand support and income era benefiting from notoriety. It is attractive that the alliances, coordinators, group proprietors and games gear producers must settle on enrollment of their group names, logos, venues, subtitles, taglines and mottos enlisted as trademarks under the (Indian) Trademarks Act 1999, which will make their life simple for ensuring their trademarks in Indian courts. An activity with respect to the players to enlist their names, photos and exaggerations as trademarks/brands ought to likewise be the standard of the day. Negligible relationship of the name of a group, their logo or a cooperative person, could offer exceptional mileage to the individual or element utilizing such name or logo. It is a misfortune to the group, group proprietor, the player and an outlandish increase for the element partner such name or logo for their own business advantages, without taking any authorization, or paying any permit expense or sovereignty. An unapproved utilization of the trademarks by an outsider without the assent or permit of the particular proprietors of such trademarks, may likewise bring about harm

to the goodwill and notoriety of the partners, additionally adding up to out of line exchange hone, out of line rivalry and weakening of goodwill and notoriety.

Under the (Indian) Trade Marks Act, 1999 both civil and criminal protections are at the same time accessible against encroachment and passing off. It is fascinating to note that for looking for insurance under the Indian laws REGISTRATION OF TRADEMARK IS NOT MANDATORY, so even the individuals who have not acquired any enlistment can implement their rights in the official courtroom. Strangely infringement of a trademark is a cognizable offense in India, and criminal procedures can be started against the blamed. Such requirement systems are relied upon to support the assurance of imprints in India and diminish encroachment and contradiction of trademarks.

Copyright in games may vest in different parts of donning occasions incorporating into the work of art associated with the logos and trademarks, advancements, mottos, pictures of a player or occasion and so forth., which might be secured in India under the procurements of the Copyright Act, 1957. The enlistment of copyright additionally not being compulsory and the same is relatively simple to ensure under the Indian laws. In spite of the way that the enlistment of copyright is not compulsory in India, and global copyrights are protectable in India as India is a signatory to Berne Convention of 1906 for the Protection of Literary and Artistic Works and the International Copyright Order, 1999, it is prudent to enlist the copyright in India as the copyright enrollment testament is acknowledged as a "proof of proprietorship" in courts and by Police powers, and followed up on easily by them.

The law of copyright in India not just accommodates common cures as changeless directive, harms or records of benefits, conveyance of the encroaching material for pulverization and expense of the legitimate procedures. and so forth additionally makes an occurrence of encroachment of copyright, a cognizable offence culpable with a term which might not be under six months but rather which may stretch out to three years with a fine which should not be not as much as INR 50,000 but rather may reach out to INR 2,00,000. The (Indian) Copyright Act, 1957 offers energy to the police powers to enroll the Complaint (First Information Report, i.e., FIR) and follow up on its own to capture the blamed, look the premises of the denounced and grab the encroaching material with no intercession of the court.

## CHAPTER- 4

### ISSUES IN SPORTS vis-à-vis IPRs

#### 4.1 SPORTS ‘N’ COURTS

In 2011 Cricket World Cup, ICC has sued NDTV and won the case. The ratio was “even as a journalist, you don’t get unlimited rights”. Here the question arose that can one transmit the score without paying to the person who has organized it? Don’t they possess what is called as Quasi-Property Rights<sup>73</sup>? (Data rights) – The person who wants to commercialize on the dorsal of scores should pay to the event organizer? Besides this, catch phrases of athletes, their names, logos, nicknames (CR 7 – Cristiano Ronaldo, Leo for Messi) etc. also make a difference to it (players and trademarks – “Lightning bolt”, “to di world”, Jordan’s “jump man” pose, etc. are all registered trademarks).

Sports events become a brand as such, companies start promoting their products by associating themselves with the respective sports event and prospects of ambush marketing tower in such events where a sponsor may wish to commercialize events against the interests of owners. Even there may be false endorsement cases (Irvine v. Talk sport radio, 2003). Technology in sports is a determinant to be reckoned with e.g., Goal line technology<sup>74</sup>, hawk eye, trackable hockey puck, sports equipment- stem guard helmet, mongoose bat, football boots. Even a whole league may come under patentable subject matter, (e.g., Jim foster, Arena Football League 1990) – New or innovative moves – patentable or not? (Fosbury flop, Helicopter shot or *Dusra* bowling technique).

Designs of safety equipment’s (e.g., Speedo fast kin swimwear collection – way it fit on swimmer; aero cricket thigh guard – since it has guards for both sides). Should safety equipment prescribed be subject matter of design protection? (When you incentivize innovation, you have to keep in mind competition, and through competition-more innovation). Personality and publicity is a facet

---

<sup>73</sup> Certain legal rights and licenses have come to possess many of the qualities and aspects of intellectual property and property itself, although they are not statutorily or by definition regarded as intellectual property rights, for example aircraft supplemental type certificates and airline slots. Such rights are often referred to as quasi-intellectual property, or as intellectual quasi-property.

<sup>74</sup> Goal-line technology (sometimes referred to as a Goal Decision System) is a method used to determine when the ball has completely crossed the goal line in between the goal-posts and underneath the crossbar with the assistance of electronic devices and at the same time assisting the referee in awarding a goal or not.

as well. After Sourav Ganguli's successful stint at Lord's, Tata tea ltd. Was promoting its brand by offering the consumers a chance to congratulate Sourav- case was settled out of court. Can you use the name and/or likeness of a player in a video game without his/her license? (Fantasy sports). Obviously, one cannot as it was put by the Gaming Control Board which banned DraftKings and FanDuel internet based daily fantasy sports from operating in Nevada without obtaining a gaming license.

#### **4.1.1 Comparative Abstraction**

Though we are rolling over the identification of Sports and IPR but still we lag far behind few developed countries in this sector as they are already higher on the pedestal of deciding which legal framework to choose to best protect these IP Rights in Sports and whether or not should they fall for westernized IPR laws and international treaties<sup>75</sup>. Also, the amount of expenditure. that was budgeted in the Beijing Olympics of 2008 was over seven times of that of Sydney Olympics of 2000<sup>76</sup>. It, if not implies, then showcases China's picture as one of the powerful economically developed and technologically advanced country somewhere less affected by the West. Now, to keep our pace with the fast-moving societies in IP industry, we need to lift up the individuals and pool in them along with the nations' efforts in the sector. There have been stupendous performances in Sports' events in the past that, for the sake of incentivizing and motivating apart from mere appraisal in the spirit of sportsmanship, call for some sort of fixation or right over such moves/acts of the concerned sportsperson.

Lack of awareness IS A BLISS for every one of the individuals who need to appreciate and profit from IPRs of others by guaranteeing to be unmindful about even the presence of their IPR. Obliviousness BECOMES A CURSE when the IPR proprietors neglect to instruct open, and pull out to the outsiders who perhaps wanting to abuse the IPR of another person without installment of any eminence or expense, or bringing about any commitment. This makes the Brand and Content Protection Guidelines giving do's and don'ts, a compulsory device for all IPR proprietors

---

<sup>75</sup> Jeffrey F. Levine, *Meeting the Challenges of International Brand Expansion in Professional Sports: Intellectual Property Enforcement in China through Treaties, Chinese law and Cultural Mechanisms*, 9 Tex. Rev. Ent. & Sports L. 203 2007-2008

<sup>76</sup> Stacey H. Wang, *Great Olympics, New China: Intellectual Property Enforcement Steps Up to the Mark*, 27 LOY. L.A. INT'L & COMP.L. REV. 291, 312 (2005)

connected with games. Support organizations that compensation tremendous measures of cash as capital and interest in the advancement of certain games and the association of donning occasions, must have an involved brand and substance security rules, which ought to be engendered through their official sites and notices, for averting misbranding, distortion and abuse of IPRs in lacking honesty.

#### **4.1.2 Ambush Marketing**

What's more, the last yet not minimal, protection against AMBUSH MARKETING, which is a standout amongst the most vital parts of IPR in games. One of the finest case of snare showcasing is the popular discussion between Coca Cola and Pepsi over the official status of the cola for the World Cup Cricket competition of 1996-97, wherein Coca Cola drew out a promotion asserting to be the OFFICIAL COLA of the competition and Pepsi drew out a contending advertisement with the motto "there is NOTHING OFFICIAL about it". In this way, OFFICIAL-COLA and UN-OFFICIAL-COLA might be a major issue.

To counter the charming idea of 'Games MARKETING', AMBUSH MARKETING has obtained an immense space in donning occasions. Trap showcasing alludes to organizations advancing their brands or items by partner them with a group, class or occasion without paying for the benefit. As a rule, Ambush signifies "An assault from Hidden Position". In Ambush Marketing, Company underwrites to publicize themselves on the occasions, in which it's not an official backer. There has been various case in which different organizations dragged the spotlight, without being an official supporter. Some basic trap strategies incorporate the accompanying:

- Putting set up ads and flying marked zeppelins around venues, which are then seen by onlookers and got by TV scope;
- Handing out free marked stock to observers at venues;
- Running advertisements wishing groups "good fortunes" or "congrats"; and
- Using occasion tickets as prizes in purchaser sweepstakes.

In any wearing occasion, next to the methodology to counter the risk of trap battles is to secure trademark and copyright enrollments for all imprints, logos and pictures connected with an up-and-coming occasion in all dynamic markets, Contractual commitments, and express terms and conditions for utilization of the IPRs identified with such occasions are alternate method for controlling snare showcasing.

The new form of business games charges center IPR issues like Trademark, Copyright, Design, permitting and franchising and so on. This portrays IPR security in occasions like the above are unavoidable. Lawful authoritative understandings must be set up ensuring all types of licensed innovation made in donning occasions, groups, singular players and so forth to secure all the partners and their money related premiums. There are different types of income era through the games business and it is imperative for the administration to advance its national games and culture in order to raise it to global benchmarks, clearing India's way forward into the selective group of created nations over the world.

## **4.2 POSITION IN OTHER JURISDICTIONS**

### **4.2.1 Trademark and Sports (U.S.):**

The Federal Trademark Act of 1946, known as the Lanham Act, governs the law of trademarks and their registration and provides causes of action that protect trademark rights from infringement. The purpose of the Lanham Act is to protect the owner of a mark by preventing others from using the owner's mark without permission or in a way that will cause confusion as to the actual source of the mark.

According to the act, a **trademark** includes "any word, name, symbol, or device, or any combination thereof . . . used by some entity to identify and distinguish the services of one person, including a unique service, from the services of others and to indicate the source of the services, even if that source is unknown" (15 U.S.C. § 1127, 2008).

Because of these functions, trademarks are known by many different names (see figure 9.1). The strongest marks that an organization can have are **arbitrary or fanciful marks**. These have no direct relationship to the product itself, such as NIKE for sports apparel; instead, they are



inherently distinctive because they indicate the source of the goods rather than describe the goods themselves. **Suggestive marks** may hint at the characteristics of the goods or services but require some imagination to understand the product they stand for. For instance, although some consumers would understand that Hot Pockets (a suggestive mark) refers to a warm food item, it takes a bit of imagination to understand that the name stands for a meal wrapped in a flaky crust.

Marks that are merely descriptive only identify a characteristic or quality of a good or service. For example, a golf ball that produces a loud screeching sound when hit is named the Screech Golf Ball, which is a **descriptive mark**. Descriptive marks can only be given trademark protection if they obtain secondary meaning. **Secondary meaning** refers to when a mark has received widespread use and public recognition so that it indicates the source of the good or service instead of the good or service itself. For example, team logos and color schemes, although not inherently distinctive, can obtain secondary meaning once they have been associated with a particular team in the marketplace.

**Generic marks** do not receive trademark protection because they refer to the name or class of the good or service and are so common that they do not clearly indicate the source of the good or service. Some companies that create distinctive names or logos eventually lose their trademark rights to some names or logos because they become so well known. The classic examples are Kleenex for facial tissue and JELL-O for gelatin. When both products were first introduced, their names were merely the company names for the particular brand of facial tissue and gelatin. Now both marks are so generic that people often refer to facial tissue as Kleenex and gelatin as JELL-O regardless of what particular brand they have purchased.

The Lanham Act also protects collective marks and service marks. A **collective mark** is a trademark used by the members of a cooperative, association, or other collective organization to indicate membership in that organization. Examples of collective marks in sports are widespread, from sports league initials such as NBA and NHL to college conference names such as Big Ten and SEC. A **service mark** is used in the sale or advertising of services to identify and distinguish the services of one entity from the services of others. Whereas a trademark identifies the source of a product, a service mark identifies the source and quality of an intangible service. For example,

the mark NCAA, as it stands for events and services related to the National Collegiate Athletic Association, is a service mark.

#### 4.2.2 Sports and Patents (U.K.):

Patent system has proved to be a powerful incentive to innovate with a no less important societal benefit of enhancing the common pool of knowledge and stimulating others to build on and improve the current state of the art—setting a virtuous cycle in motion. Sports are a sector that directly uses and benefits from the patent system. Sporting equipment is continuously evolving. New technologies help athletes jump higher, swim faster, cycle longer, and hit a ball harder and farther. Safety also improves with technologies that lessen impact and stress on athletes' bodies. There are literally tens of thousands of utility patents relating to sports. A search of the Google patents public datasets reveals hundreds of thousands of utility patents related to sports and making reference to such terms as “athletic” or “athletes”.<sup>77</sup>

A patent is a monopoly right granted for a period of up to 20 years<sup>78</sup> to the proprietor or inventor<sup>79</sup> (the ‘patentee’) of an invention if, subject to certain limitations, it is new and industrially applicable. Few would object to sports apparatus receiving patent protection, possibly because apparatus is tangible. Offering a monopoly right to the inventor of a revolutionary new golf shoe or hockey stick is already accepted practice. However, for some, it is the patenting of sports moves which is a step too far. What was previously simmering below the surface finally erupted into a maelstrom which truly rocked the patent boat when Kunststadt’s<sup>80</sup> article on patenting sports moves was first published. A good example of this is the Fosbury flop which will be discussed in detail later. A sports move would seem to be a method of playing a game. Using their ordinary definitions found in the Oxford English Dictionary<sup>81</sup>:

1. “method” is defined as “a way of doing anything”,

---

<sup>77</sup> The data produced by Google patents is from the respective patent offices, not from Google patents itself. See <<https://cloud.google.com/blog/big-data/2017/10/google-patents-public-datasets-connecting-public-paid-and-private-patent-data>>.

<sup>78</sup> Patents Act 1977, s.25

<sup>79</sup> Patents Act 1977, s.7(2)

<sup>80</sup> R. M. Kunststadt et al., *Are Sports Moves Next in IP Law?*, Nat’l L.J., May 20, 1996 at C1

<sup>81</sup> *Oxford English Dictionary*, <http://www.dictionary.oed.com>,

2. “rule” is defined as “a regulation determining the methods or course of a game or the like”
3. “scheme” has several different definitions, many of which are partially or wholly appropriate.

Detailed information about how to hold and then throw the ball is the method. Combined with other rules and methods, these become a scheme for the game of baseball. If this assumption is correct then sports moves could not be granted patent protection as the UK law currently stands.

#### **4.2.3 Arguments for Granting Patent Rights**

Harmonization is a compelling argument in favour of sports moves. The US have already begun to offer patent protection for sports moves, and as co-members of TRIPS<sup>82</sup> it could be argued that we should offer that protection in the UK, especially as harmonization is already occurring within Europe as a result of conventions, treaties and WIPO.<sup>83</sup> Additionally, patents are territorial rights which must be applied for in each of the territories where the owner seeks to protect their invention. Sports have worldwide appeal, a sportsperson will have to ensure that he obtains a patent not only for each country in which he may play but also in each country where his move may be seen on various media and copied. The effect of the European Patent Convention (EPC) also raises interesting issues in terms of enforcement and interpretation. The EPC’s role is purely in the granting of patents not enforcement, this can result in a patent which has been granted in two separate member states being interpreted differently in each one. This also has wide reaching implications for sports moves. Sports Moves The main proponent of granting IP rights to sports moves is Kunststadt.<sup>84</sup> However, even his argument is limited in respect of granting patent rights and he concentrates mostly on copyright and trademark protection. In terms of patent protection, his argument is mainly one of economics. He argues that sportspeople and their moves are part of the “fuel that drives the sporting economy” and as such they should reap some of the rewards.

---

<sup>82</sup> *Trade Related Aspects of Intellectual Property Rights Agreement 1994*

<sup>83</sup> *World Intellectual Property Organisation*

<sup>84</sup> Kunststadt et al, Op. cit.

Kukkonen suggests that although the movement of a human body is natural, by refining it to create a useful process [such as a faster ball pitch]<sup>85</sup> then it should rightly be caught by patent protection.<sup>86</sup>

The majority of arguments for granting intellectual property protection to sports moves focus primarily upon economic terms. The argument is that a sportsperson's career is generally short, compared to regular careers in commerce and industry, and as such they should be entitled to ensure that their years in retirement are financially secure. This argument carries much less weight when you consider that only the very top sportspeople earn large sums from sponsorship, advertising and merchandising. Many sportspeople, and especially amateurs, earn little or nothing other than prize money from their sporting endeavors and achievements. Therefore, it cannot be equitable to develop intellectual property law in a way that offers higher earning potential to the already financially successful sporting elite. Combined with this inequality is the 20-year term of a patent which gives an unacceptably high level of monopoly right for use in sports where careers are usually short. In addition, there is an argument that says low-cost inventions should not be patented because the inventor already acquires an advantage, that is, no financial outlay and a head-start against competitors.

#### **4.2.4 Arguments Against granting Patent rights**

Those who argue that sports moves should be patented to protect the sportsperson's brand identity for use as a marketing tool should be looking at trademarks, rather than patents. Their argument is based upon a connection which is drawn between the sportsperson and their move, which can be commercially exploited. Consequently, it is more akin to a trademark and should more appropriately be applied for as a motion trademark.

#### **4.2.5 Sports Apparatus**

The sporting world accounts for a large percentage of the world patents in respect of sporting apparatus. Certain sports, such as golf, have built a thriving commercial marketplace where manufacturers seek to outsell their competitors with ever more varied golf clubs and golf balls

---

<sup>85</sup> Kunststadt et al Op. cit. p. C3

<sup>86</sup> C. A. Kukkonen III, *Be A Good Sport and Refrain From Using my Patented Putt: Intellectual Property Protection for Sports Related Movements*, (1998) 80 J. Pat. & Trademark Off. Soc'y, pp. 808-829 at pp 819-820

appearing on the market. Such manufacturers seek to protect their latest technological advancement by using patents. Sports apparatus patents are a major source of finance for manufacturers and it is true that innovation in this area continues to grow as a result. In terms of sports apparatus, this area also benefits from harmonization. There are certain to be few objections to the use of patents in respect of sports apparatus. This may be due in part to the tangible nature of sports apparatus. The average sports fan can see why a particular piece of equipment is different or special when compared to other similar items. He can appreciate its novelty and will invariably understand why its inventor might want to protect their product through the intellectual property system. However, the same cannot be said of sports moves.

The US is one of the world's three largest producers of patents, the other two being Germany and Japan. It cannot be a coincidence that these three are also the world's largest economies. One could argue that this is due to their liberal viewpoint on patents and the encouragement that this gives to industry and those inventors willing to make technological leaps. The US's liberal granting of patents to what the UK courts would likely consider spurious applications has certainly not hindered their economy, and some might suggest that this has actually helped to strengthen it.

A further difficulty arises where a sports coach invents a move with the cooperation of the sportsperson. How much input from the sportsperson will entitle him to be a co-inventor? There are bound to be circumstances where the coach is the inventor of a new move but the only way in which he can assess its efficacy is to practice, develop and refine it with the aid of the sportsperson. Alternatively, the sportsperson requires the assistance of his coach to hone the move.

There are two problems which arise in these circumstances. Firstly, one person claims to be the inventor, rather than the person named in the patent. Secondly, where either the coach or the sportsperson is recognized as the inventor and the other is not a question about contribution arises. The courts are often called to determine the identity of the true inventor where more than one person claims the right. In doing so, the courts look "to the 'inventive' elements of the invention. Consider if the claimant was responsible for the development of some or all of those elements"<sup>87</sup> as a means of determining entitlement.

---

<sup>87</sup> L. Bently and B. Sherman, *Op. cit.* pg 528-529

A sport which benefits greatly from the patentability of sporting apparatus is that of Formula 1 motor racing. There are issues when the employee inventor takes knowledge of inventions to his new team and can use this inside knowledge to invent around inventions which he developed for the previous employer. Competing teams can reverse engineer inventions, a method often used by other industries to negate a competitive advantage. Despite the migration of knowledge between teams Formula 1 thrives on innovation and continuous development. Governing bodies, such as the FIA, have been known to take a hard-liner approach to policing infringement in an attempt to protect the reputation of the sport.

#### **4.2.6 Sports and Copyright:**

Whether athletes are able to claim copyright in the sporting events that they participate in is an interesting question, and one to which the answer has crucial implications, not only for the athletes and their teams, but also for the entities that usually lay exclusive claim to the rights to exploit the event (typically national sports federations, sponsors and broadcasters).

For the purposes of copyright protection then, the term “*literary and artistic works*” is understood to include every original work of authorship, irrespective of its literary or artistic merit.

Berne Convention - Under the Berne Convention for the Protection of Literary and Artistic Work, the term “artistic work” includes every production in the artistic domain; whatever the mode or form of its expression.

#### **4.2.7 Can Sporting Events Be “Works” That Qualify For Copyright Protection?**

**The Position in Europe** - The question was raised and addressed in the context of football in the joined cases of *Football Association Premier League Ltd (FAPL) and others v QC Leisure and Others*, and also in *Karen Murphy v Media Protection Services Ltd*.<sup>88</sup>

FAPL, who run the Premier League, marketed and distributed the television broadcasting rights for the matches based on territorial exclusivity. Certain undertakings in the United Kingdom begun to use foreign decoder cards, issued by a Greek broadcaster to subscribers’ resident in Greece, to

---

<sup>88</sup> ECLI:EU:C:2011:631

access Premier League matches, instead of paying FAPL for broadcasting rights. The FAPL took the view that such activities undermined the value and exclusivity of their television broadcasting rights.

The ECJ stated: “*FAPL cannot claim copyright in the Premier League matches themselves, as the matches cannot be classified as works.... [t]o be so classified, the subject-matter concerned would have to be original in the sense that it is its author’s own intellectual creation*”.<sup>89</sup>

The Court continued to conclude:

“*Sporting events cannot be regarded as intellectual creations classifiable as works within the meaning of the Copyright Directive. That applies in particular to football matches, which are subject to rules of the game, leaving no room for creative freedom for the purposes of copyright. Accordingly, those events cannot be protected under copyright. It is, moreover, undisputed that European Union law does not protect them on any other basis in the field of intellectual property*”.<sup>90</sup>

Notwithstanding that conclusion, however, the ECJ interestingly went on to say: “*...none the less, sporting events, as such, have a unique and, to that extent, original character which can transform them into subject-matter that is worthy of protection comparable to the protection of works, and that protection can be granted, where appropriate, by the various domestic legal orders.*”

#### **4.2.8 What Defines A “Work” That Qualifies for Copyright Protection?**

##### ***DIRECTIVE 2001/29/EC (THE COPYRIGHT DIRECTIVE)***

Analysing the Copyright Directive,<sup>1</sup> the European Court of Justice (ECJ) stated in *Infopaq International* <sup>2</sup> that:

“*...copyright within the meaning of Article 2(a) of the Copyright Directive is only applicable in relation to a subject-matter [work] which is original in the sense that it is its author’s own intellectual creation...With respect to the scope of such protection of a work, it follows from*

---

<sup>89</sup> <http://ipkitten.blogspot.in/2016/03/check-but-not-checkmate-agon-sues-for.html>

<sup>90</sup> Andre M Louw, *Ambush Marketing and the Mega-event Monopoly – How Laws are abused to Protect Commercial Rights to Major Sporting events*, p. 411, T.M.C. Asser Press, 2012

*recitals 9 to 11 in the preamble to Directive 2001/29 that its main objective is to introduce a high level of protection, in particular for authors to enable them to receive an appropriate reward for the use of their works, including at the time of reproduction of those works, in order to be able to pursue their creative and artistic work."*<sup>3</sup>

Sport has commonly been heralded as a universal language that brings competitors and fans together with no distinction of class or race. This public inclusion has been particularly evident in football/soccer, where fans created most English clubs and the sport is often referred to as 'the beautiful game' open to everyone of all walks of life and belonging to the people. The professional game has come a long way since then, particularly since the creation of 'The Premier League' in 1992, which ensured total club revenues of over £1.3 billion in 2003–04.

Football Clubs now act as businesses as have therefore recognized the value of intellectual property rights (IPR's) and have striven to privatize anything possible of profit, using IPR's to protect materials from pictures to fixture lists. This total business approach is inappropriate and it is reducing the public domain and forcing fans with a very distinct and unique moral claim, to now pay for the materials that once belonged to them. This greed is an exploitation of fan loyalty and a failure to recognize the innovative market strategies that have become available through the development of technology such as the Internet.

The strong property right awarded has allowed companies to recognize their business potential at the expense of the paying customer. As shall be evidenced below, football clubs are also becoming commercially aware and are realizing their particularly large business potential through IPR's and in particular through the use of Copyright. This awareness has effectively privatized sporting materials, which are significantly different in character to the subject matter IP law originally had in mind. This privatization is in clear tension with football fans desire to interact with the sport and their club. The IPR regime is effectively a system of "*private gain in service of the public good*"<sup>91</sup> which is a particularly inappropriate system in regards to sport and more specifically football.

---

<sup>91</sup> Keith Aoki, "From Signal of Source to Frozen Signs" in "Authors, Inventors and Trademark Owners: Private Intellectual Property and the Public Domain" 18 Columbia-VLA Journal of Law and the Arts 1994 191



## 4.3 POSITION IN INDIA

### 4.3.1 Copyright and Sports:

The term copyright refers to the rights granted to a creator of an original literary, musical, artistic or dramatic work. In India, computer programmes, photographs, sound recordings and cinematographic films are also protected<sup>92</sup>. Associated rights such as Broadcasters' rights and Performers' rights are also addressed. Copyright protects the expression and not the idea itself. Facts cannot be subject of copyright. Term of copyright is life of the author plus 60 years and after that the work is in the public domain.

When it comes to sports, performers, e.g., acrobats, have rights in the performance of works. Performers' rights are infringed if a performance, or a substantial part of a performance, is exploited without the performers' consent.

Also, there are broadcasting rights to the official broadcasters of any sports event. They have special right known as Broadcast reproduction rights. They may re-broadcast, license it, make any sound recording or visual recording of the broadcast, sell or hire to the public, or offer for that.

Remedy for infringement are civil remedies – injunctions, damages, accounts. Criminal penalties may be imposed wherein imprisonment may be from 6 months to 3 years and fine may extend from 50,000 INR to 2,00,000 INR in each instance.

In sports, the following properties may be copyright protected in the context of sports: -

- a. Event or team songs (lyrics, sound recordings, composition);
- b. Promotional material;
- c. Slogans;
- d. Images and audio-visual footage;
- e. Cinematographic films

---

<sup>92</sup> Copyright Act, 1957

Issues, Measures Required and Implications: -

Latest issues include using of applications like Meerkat, Periscope to stream a live sports event, where it is hard to prevent them from doing so since they do not use signals to stream it and the law requires it to be through signals for bringing it to knees. To make it concrete with respect to protection and to be in dominant position, one should get it registered as a copyright. It will help the holder use that as evidence in court and claim.

#### **4.3.2 Data Rights and Sports:**

Right of possession or use, title, or proprietary interest in unpublished data or information which (while not copyrightable or patentable) gives the holder a competitive advantage or exclusive consideration. Event organizers and broadcasters are the two stakeholders who may own data rights, depending upon the contractual arrangement.

Data rights include the right to license and commercially exploit rights arising out of or in relation to events, specifically sporting events, including internet and mobile rights.

In sports, fixtures, live score cards, match updates and score alerts make up data for such protection.

A lot of issues arise like do one needs to pay the event organizer to use or commercialize scores from a sporting event. This was heard in various cases, *Football Dataco & oth. Yahoo! UK & others*<sup>93</sup> and *Star India Pvt. Ltd. vs. Piyush Agarwal & Ors*<sup>94</sup> are leading cases on this issue. Also, “Hot News Doctrine” can be applied which refers to written material or the live televised events,

---

<sup>93</sup> Football Dataco (and others) ran the English and Scottish football leagues. In doing so, they drew up and made public their lists of all the fixtures to be played each year in their respective leagues. Yahoo! UK (and others) used those schedules to provide news and information and in organising betting activities. Football Dataco and their friends couldn't see why Yahoo and their friends shouldn't pay for the rights to use the football fixture lists which they had compiled -- and from which the others were making all that lovely money. But were Football Dataco and their friends entitled to claim protection for thir fixture lists under the Database Directive, claiming either copyright or the 'sui generis' right?

<sup>94</sup> the defendant should not use the original audio and/or visual recording except for fair dealing, but so far as the information which comes in public domain, there cannot be any bar upon the defendants to use the same.

often “facts”, that have value for a short duration, and which will soon move into the “public realm” losing their value completely.

### 4.3.3 Trademarks and Sports:

Branding plays an essential role in creating value, interest, and vitality in sports. It drives consumer loyalty and confidence in the quality and features of sporting goods. It also generates allegiance to sports teams and sportswear styles. The sports sector presents a unique opportunity to create a “domino effect” in trade mark value creation.<sup>95</sup> Consider an individual athlete who becomes a dominant player in a team sport and develops his or her own individual brand. The dominance of this athlete drives the growth and popularity of the athlete’s team as well as the entire professional league in which he or she plays. There are numerous examples of athletes who raise teams and entire sports leagues to national and even global prominence and strengthen the brand and goodwill associated with both.

A trademark is a sign capable of distinguishing the goods or services of an entity from those of other entities. It can include words, numerals; letters (or a combination thereof); logos; colours; shapes; sounds; smells; and holograms.<sup>96</sup>

In sports, athlete names, logos, nicknames and catch phrases, e.g., “CR7” – Cristiano Ronaldo, Leo for Messi) etc. also make a difference to it (players and trademarks – “Lightning bolt”, “to di world”, Jordan’s “jump man” pose, etc. are all registered trademarks). Below are few examples of such logos: -



---

<sup>95</sup> See <<http://www.wipo.int/ip-sport/en/>>

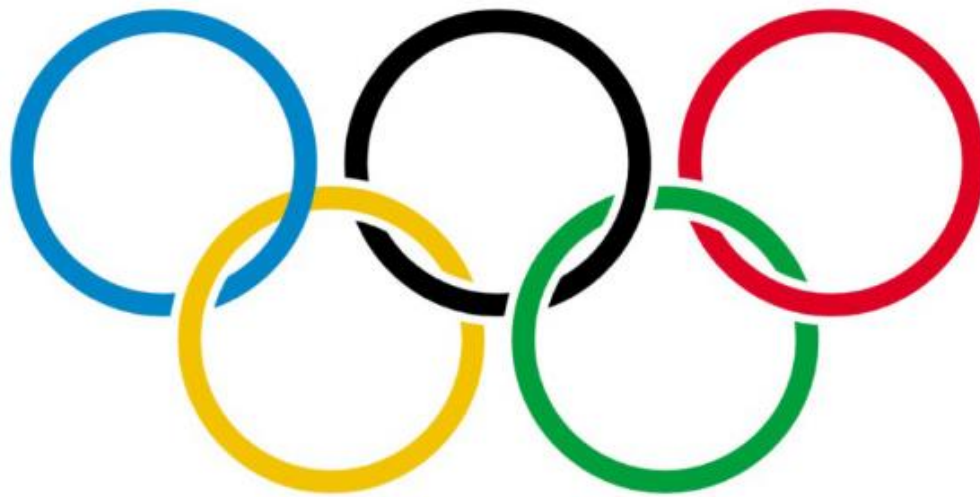
<sup>96</sup> Trademarks Act, 1999



- Cristiano Ronaldo has registered “CR7”.
- Lionel Messi has registered “LEO MESSI”.
- Shaquille O’Neal has registered “Shaq”.
- Sachin Tendulkar and Yuvraj Singh have also registered their respective names.

There are logos and names of teams and sports events like INDIAN SUPER LEAGUE, NORTHEAST UNITED FC, IPL, THE CHAMPIONSHIPS WIMBLEDON, etc. The logos as trademarks are also used by event organizers like:





The biggest boom of trademarks in sports industry can be seen in its usage by the proprietors of brands like Yonex, Adidas, Puma, Reebok, etc.

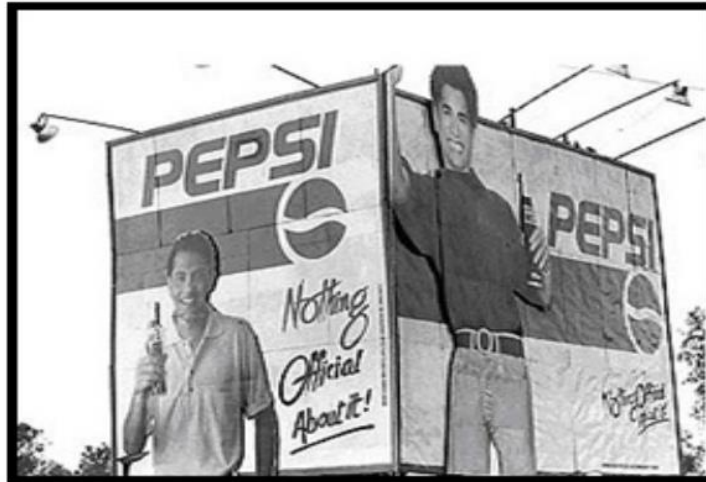
Issues like unofficial sponsoring of a sports event to get customers by some brands are highly common in this sector.

Cricket Australia has registered a trademark “63 not out” post Phil Hughes’ death, in an attempt to prevent people cashing in on Phil Hughes’ death.



Along similar lines, domain names and cybersquatting have also got an important applicability to sports. In 2002, Huw Marshall registered the domain names Waynerooney.com and Waynerooney.co.uk, before Wayne Rooney had registered his trademark. The WIPO Panel

hearing the case ordered that the domain name be transferred to Wayne Rooney, since the registration was in bad faith<sup>97</sup>. Ambush marketing<sup>98</sup> may be another offshoot of trademark exploitation as we have seen the popular case of Pepsi and coke<sup>99</sup>.



Further research in this area may bring in three types of ambush marketing:-

- (i) Direct ambush marketing,
- (ii) Associative ambush marketing, and
- (iii) Incidental ambush marketing.

There is ample space of passing off<sup>100</sup> as well in sports industry. There was a case of such false endorsement, *Eddie Irvine v. Talksport*, 2003<sup>101</sup>.

Under the Trade Marks Act, 1999, trademarks are required in order to be protected. Unregistered TMs are also afforded some protection under intellectual property regimes, such as copyright, design rights, and through the tort of passing off. However, registration offers a few advantages that unregistered trademarks cannot avail of. They are as follows:

---

<sup>97</sup> <http://www.wipo.int/amc/en/domains/decisions/html/2006/d2006-0916.html>

<sup>98</sup> An entity seeks to create an association between their brand and a sporting event, in order to create positive publicity for their own products or services.

<sup>99</sup> <http://www.hindustantimes.com/cricket/those-jarring-notes/story-eUSITWWYQihUXn8A5c3aJ.html>

<sup>100</sup> It's a common law tort, and an action arises when an unregistered trademark is used by a person who is not the proprietor of the trademark.

<sup>101</sup> Eddie Irvine, a F1 racing driver sued Talksport Radio for passing off and in particular, for using his image in an advertisement for the radio station without obtaining his consent. Talksport had distributed brochures with an image of Irvine holding a radio bearing the Talksport name. This was the first instance of a false endorsement being held as passing off.

- The goodwill of the brand is protected;
- Third parties are discouraged from promoting identical or similar marks;
- Registered trademarks may be assigned/licensed/transferred for commercial means;
- Trademark registration is admissible as evidence in a court of law;
- Counterfeit or infringing merchandise can be seized on the basis of a trademark registration.

#### **4.3.4 Patents and Sports:**

An exclusive right granted for an invention, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem. Four tests of patentable subject matter are:

- (a) It must relate to a process or product or both;
- (b) It must be novel;
- (c) It must involve an inventive step;
- (d) It must be capable of industrial application.

In sports, patents can be seen in the form of technology being used for such sports. for example:  
 – “Goal – line technology”, “Hawk – eye” and “Trackable hockey puck”, or patents for sports equipment like – “stem guard helmet”, “mongoose bat” or “football boots”.



Even the entire league can be patented, e.g., Jim Foster, a promotions manager for NFL properties was awarded a patent for the Arena Football League in 1990. “The invention relates to an apparatus and method for playing a game and more particularly to a new game incorporating many aspects of traditional American football”. This is the only patent of its kind in the world.

Questions like whether new or innovative moves be protected under intellectual property law or not? In 1997, Dale Miller patented a method of putting, through which the golfer can improve control over putting speed and direction. For protection under the Patents Act, 1970, application for patents in respect of the product or process must be made at the earliest. Only inventions for which patents have been granted are capable of protection. A patent guarantees monopoly in the

market in respect of the product or process. A patent may be assigned/licensed/transferred for payment of royalty.

#### 4.3.5 Design Rights and Sports:

Design rights protect the **aesthetic** and **visual** appeal of a product (shape, colour, pattern, configuration, etc.) and **not its functionality**. Any design can be registered, unless the design:

- Is not new or original;
- Has been previously disclosed to the public;
- Is not distinctive in nature; or
- Contains scandalous or obscene content.

Registered designs can be protected under the Design Act, 2000.

In Sports, design rights can be obtained for design of products, e.g., “Speedo fast kin swimwear collection” or “Aero cricket thigh guard”. In 2002, Arsenal Football Club was engaged in a long-drawn legal battle in relation to a trademark dispute and the use of the Arsenal logo on unlicensed merchandise. Arsenal was seeking to stop the sale of replica goods which made unauthorized use of the club logo – a heraldic crest with a picture of a cannon. As a result of difficulties, it was facing in enforcing its rights, Arsenal took the decision to re-brand, changing its logo. The new logo is protected under both trademark and design rights.



Old Arsenal Logo



2002 Arsenal Logo



Should safety equipment prescribed be subject matter of design protection? Only registered designs are protected under the Designs Act, 2000. A registered design compliments the protection available to an entity under trademark law. A logo with artistic elements may also be registered as a design. Although some unregistered designs may be afforded protection under other intellectual property regimes such as copyright and patents, infringements based solely on the visual appearance may continue.

#### 4.3.6 Personality Rights and Sports:

Personality rights refer to the right of every individual to control the use of his/her **name, likeness, image, voice or any other identifiable facet** of the individual's personality. There is no specific law on the subject matter of Personality rights in India and all advancements have been through judge-made law. Personality rights are deemed to include both the right to privacy and publicity rights.

A handwritten signature of Sachin Tendulkar in black ink, written in a cursive style.

Sachin Tendulkar

In sports, names, signs, nicknames, etc. may form matter of this category of rights. For example, After Sourav Ganguly's successful stint at Lord's, Tat Tea ltd. was promoting its brand by offering the consumers a chance to congratulate Sourav Ganguly, intending to benefit from Sourav's popularity. The case was eventually settled out of court, but Sourav alleged an infringement of his personality rights in the instance<sup>102</sup>.

But, can you use the name and/or likeness of a player in a video game without his/her license? Registration of a trademark in relation to the facets of an individual's persona is advantageous in this respect, as the individual may then be entitled to license his/her persona for a fee, and prevent unlicensed commercial exploitation.

---

<sup>102</sup> <http://spicyip.com/2009/12/publicity-rights-sourav-ganguly-vs-tata.html>

#### **4.4 STAKEHOLDERS**

Following are the persons that are the related parties of or stakeholders of IPRs in Sports:

1. Athletes;
2. Event organizers;
3. Sponsors;
4. Sports equipments/apparel manufacturers;
5. Team Owners;
6. Broadcasters.

So, it is the duty and utter most responsibility of these stakeholders to get their IPs registered for better protection, commercial exploitation and preventing others from using it in an unauthorized manner.

## CHAPTER 5

### SPORTS DISPUTE RESOLUTION

#### 5.1 IT'S GENESIS

This chapter gives a brief overview of sports dispute resolution system and discusses the history of court of arbitration of sports. Firstly, the question arise what is arbitration and then how it can be used in sports world?

The word 'arbitration' means a procedure by which disputes between the parties are peacefully settled. The decision given through arbitration is binding upon the parties. It is one of the various methods of alternate dispute resolution which in a way gives the parties an alternative way to settle their grievances without knocking the doors of the court. The principal advantages of arbitration are<sup>103</sup>:

- Private forum
- Confidentiality
- Quick remedy
- Expert panels.

When arbitration takes place on an international scale the term international is suffixed to the word arbitration.

Mediation is a form of alternative dispute resolution system whereby two parties settle their dispute peacefully without knocking the doors of the court through a neutral person i.e., mediator. Such proceedings are fully confidential, informal in nature and suggestions are given at the end of the day for settling disputes.

Conciliation is a form of alternative dispute resolution system whereby two parties settle their dispute through a neutral person i.e., conciliator. The proceedings herein are formal in nature, purely confidential and the decision given at the end of the day for settling disputes. However, such final decisions are not binding on the parties.

---

<sup>103</sup> A Report on "SPORTS DISPUTE RESOLUTION SYSTEM: A NEW GAME IN INTERNATIONAL ARBITRATION" Available at: [https://www.academia.edu/13013105/SPORTS\\_DISPUTE\\_RESOLUTION\\_SYSTEM\\_A\\_NEW\\_GAME\\_IN\\_INTERNATIONAL\\_ARBITRATION](https://www.academia.edu/13013105/SPORTS_DISPUTE_RESOLUTION_SYSTEM_A_NEW_GAME_IN_INTERNATIONAL_ARBITRATION) (last visited on 15th April, 2021).

The above-stated three forms of ADR are also used to solve the disputes arising in the world of sports. The very word 'sports' binds the nation through various international sporting events; it provides the enthusiasm among the nationals regarding their country. Having said that, the sport world has been growing to be a major contributor to the world economy too, thereby any dispute related either to the athlete or federations needs to be quickly settled in a confidential way else the career of the sportsman as well the sports world will suffer a serious setback. E.g., instances of doping, breach of contract between the player and the club, dispute between sports man and the national federation. Hence in this kind of problems need to be settled peacefully by person who has the knowledge of sports arena as well as quick disposal of the dispute is required so the sports dispute resolution system comes into play.

Sports arbitration is a form of SDR which specifically deals with matters of sport of all kind. This would be the main focus of the particular research study conducted by the researcher herein. The parties in sport arbitration are mainly, the clubs, athletes, federations etc. The hierarchies of decision makers in sporting disputes are as follows:<sup>104</sup>

1. National Governing Bodies and their Subsidiaries: The primary responsibility for avoiding and resolving sporting disputes lies with national governing bodies (NGBs) or sports organizations (NSOs) and their subsidiary organizations (clubs, leagues, regional and provincial organizations). Majority of them are private tribunals who have the power to make rules and regulations which are binding on its members. They derive their power from their governing documents-rules, regulations, by-laws and constitutions-which form a contract between the organization and its members. The contract thus both establishes the legal basis for the organization to exercise its authority, as well as the rights and obligations of membership. The authority to act and make decisions on the basis of such above-stated documents, it is in the best interest of every organization to have sound policies relating to the areas of governance that are often most contentious, such as eligibility and team selection, discipline, and especially hearings and appeals.

---

<sup>104</sup>Graeme Mew and Mary Jane Richards, "More than just a game: resolving disputes in modern sport" Available at <http://www.arbitrationroundtable.com/mew/Alternative%20Dispute%20Resolution%20in%20the%20Sports%20Field%20-%20G%20Mew.pdf> (Visited on 15<sup>th</sup> April, 2021)

2. The Conflicting Roles of the Sporting Body as Rule Maker, Prosecutor and Judge: Initially, disagreements between the organization and its members should be resolved by internal administrative review within the body, independent arbitration or a combination of the two. The organization should also establish appeal policies from its own decisions.
3. International and National Sporting Federations: At the top of the hierarchy, is the international federations who perform a governing function over sport for the development and regulation of sport at an international level, and National Sporting Organizations do the same on a national level.

Sports Dispute Resolution system is an alternative forum which comes in form of arbitration, mediation and conciliation. Let's take brief overview of SDR systems prevailing in countries like UK, Canada, New Zealand, and South Africa is given below:

In U.K., the Sport Dispute Resolution Panel (SDRP) was formed in 1997<sup>105</sup>, and began its work in 1999.

The Sports Disputes Tribunal of New Zealand was established in 2003.

South Africa's Sports Commission Dispute Resolution Centre (SCDRC), which operates under the South African Sports Commission, was created in 1998.

In Canada, the Sport Dispute Resolution Centre of Canada (SDRCC), was launched in 2004.

The issues which are dealt by the SDR system in these countries are:

- The South African SCDRC deals with are team selection and criteria; noncompliance with the policies or constitution of an National Sporting Organization; poor communication between executives and members and the unification of federations.
- The UK SDRP deals with issues such as discipline, doping, suspension, eligibility, selection, child welfare, funding, commercial contracts or any other sports related matters.
- The Sport Dispute Tribunal of New Zealand is competent to hear any sports related dispute, particularly anti-doping issues, appeals against decisions made by an NSO, selection

---

<sup>105</sup>Graeme Mew and Mary Jane Richards, "More than just a game: resolving disputes in modern sport" Available at <http://www.arbitrationroundtable.com/mew/Alternative%20Dispute%20Resolution%20in%20the%20Sports%20Field%20-%20G%20Mew.pdf> (Visited on 15<sup>th</sup> April, 2021)

decisions, and assistance with matters of “national significance” or “interpretation” or other special cases.

- In Canada, the SDRCC is authorized to deal with any dispute with “national impact.” Disputes at the international, provincial, municipal and local levels fall outside the jurisdiction of the Centre.

Mediation, Arbitration and Conciliation are offered in all the above stated tribunals for settlement of disputes. The SDR systems although settles disputes in sports arena through various modes in like of mediation, conciliation and arbitration, but the most prevalent and used mode is that of arbitration and which is the main protagonist of the research work.

## **5.1 SPORTS ARBITRATION IN INDIA**

The researcher has titled the event of sports arbitration in India to be a developing one because till date no such dispute resolution body has been established. Having said that certain private bodies are present and an overall effort by the government is also on course to set up a sport tribunal which shall be independent of the national organizations and even bring a standard sports law in force for the country.<sup>106</sup>

A brief summary of steps taken in relation to sports arbitration in India:

- The Sports Law and Welfare Association of India, in short known as “SportslawIndia” was founded under the enable Patron ships of Late Shri R. K. Jain, Senior Advocate of the Supreme Court of India and Hon’ble Mr. Justice Shri Arun Kumar Mishra, presently Judge of the Supreme Court of India in the year 1986. It developed links and carries out consultancy work with many international organizations and partners. “SportslawIndia” provides consultancy on various matters including regulation of sports governing bodies, general sport and law issues, intellectual property issues in sport, online advocating in legal disputes of sports in Court on behalf of sports persons and sports bodies, etc. It further aims for the discussion of legal problems affecting sports and it too promotes the exchange of a variety of perspectives

---

<sup>106</sup>A Report on “Effectiveness of Sports Arbitration for Promotion of Sports in India, 2015” was presented in 1st National Games Sports Congress cum Workshop. Available at- <https://www.linkedin.com/pulse/sports-arbitration-prof-dr-amaresh-kumar> (Visited on 15<sup>th</sup> April, 2021).

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.

- The Court's intervention in Indian Sports regulatory organisation, made it imperative, that structure, systems and processes need to be modernized, and need to be more sportsperson oriented and more transparent and accountable in their functions<sup>107</sup>. Therefore, a robust dispute resolution mechanism, especially a strong grievance redressal mechanism for athletes is need of the hour. E.g. Due to court's intervention International Olympic Committee had imposed ban on the Indian Olympic Association as they had not evolved any international Mechanism for the disposal of the Sports Related Disputes among Indian Olympic Association and its affiliated National Sports Organisation. It is neither feasible nor desirable that Government shall take upon itself the burden of intervention when dispute arise with in National Sports Federations or when complaints are received about ineffective or inappropriate deployment of funds, mistakes in management, non-accountability for results achieved or not achieved, prejudice or bias in the selection of national teams / athletes, undemocratic or unethical electoral practices and lack of openness and transparency in functioning. Hence to resolve such kind of dispute and ensure the development of sports a sport dispute resolution system involving arbitration, mediation and conciliation needs to be established like that of The UK Sport Dispute Resolution Panel operating in U.K. etc.
- The Secretary General of the "SportslawIndia" had submitted a draft of the, "Sports Tribunal of India Act, 2010", to the Indian Olympic Association. International Olympic Committee also accorded the draft Act and directed to enact in the mid of the August, 2010. But the Organisation of the XIX Commonwealth Games, 2010 was in process; as a result, the Indian Olympic Association could only promulgate the same on February 18, 2011 during the National Games at Jharkhand in their General Body Meeting. But the same has not been made active till date, because of the lack of knowledge of the Sports Related Laws by the members of the Indian Court of Arbitration for the Sports promulgated by the Indian Olympic

---

<sup>107</sup> Seminar on "The New Development in International Sports Law & CAS Jurisprudence with Perspective of Sports Law in India", Available at: [http://iasl.org/media/File/Souvenir\\_RKJain\\_Sports\\_Law\\_Seminar.pdf](http://iasl.org/media/File/Souvenir_RKJain_Sports_Law_Seminar.pdf) (last visited on 15th April, 2021).

Association. Even the then UPA government had also drafted a separate Sports Dispute Redressal Ombudsman in their draft National Sports Development Bill 2011.<sup>108</sup>

- The R. K. Jain Sports Law Knowledge Lecture & Seminar on the topic, “The New Development in International Sports Law & CAS Jurisprudence with Perspective of Sports Law in India” was organised on 26 – 27 February, 2011 at New Delhi recommended the Govt. of India, Ministry of Youth Affairs & Sports to constitute an independent Court of Arbitration for Sports for the quick redressal of the Sports Related Disputes.<sup>109</sup>
- Presently, the BJP government led by Honorable Prime Minister Narendra Modi promised in a bill to set up sport tribunal as soon as possible.

## **5.2 Court of Arbitration for Sports (CAS) in the Indian context:<sup>110</sup>**

In India, the international forum provided by the CAS has been scarcely utilized. However, recently the relevance of CAS as a global forum of dispute resolution in sports was realized in the case of four athletes, Ashwini A.C., Sini Jose, Priyanka Panwar and Tiana Mary Thomas. These athletes who represented India at the CWG and the Asian Games were suspended for a period of one year by the National Anti-Doping Disciplinary Panel (“NAADP”) for steroid violations in December, 2011. During the appeal before NAADP, World Anti-doping agency (“WADA”) cited several rulings of the CAS while arguing for a more stringent punishment.

Suggestive Measures by the researcher for development of sports dispute resolution system in India:

Sports Dispute Redressal Mechanism must be independent of Indian Olympic Association, National Sports Organisation and Role of Government of India as per Rule - 61 of the Olympic Charter and Court of Arbitration for Sports, Lausanne, Switzerland<sup>111</sup>.

---

<sup>108</sup> A Report on “Effectiveness of Sports Arbitration for Promotion of Sports in India, 2015” was presented in 1st National Games Sports Congress cum Workshop. Available at- <https://www.linkedin.com/pulse/sports-arbitration-prof-dr-amaresh-kumar> (Visited on 15th April, 2021).

<sup>109</sup> Ibid.

<sup>110</sup> Devyani Jain, “Judicial trend of intervention in sports arbitration and its future in India”, 1(1) *IJAL*, 3, 2012.

<sup>111</sup> Seminar on “The New Development in International Sports Law & CAS Jurisprudence with Perspective of Sports Law in India”, Available at: [http://iasl.org/media/File/Souvenir\\_RKJain\\_Sports\\_Law\\_Seminar.pdf](http://iasl.org/media/File/Souvenir_RKJain_Sports_Law_Seminar.pdf) (last visited on 15th April, 2021)



- The sports law in India is still in darkness due to lack of awareness and knowledge hence the researcher opines more research study is required in field of sports law in India. In that way people, sportspersons, concerned authorities will be aware of the technicalities of sports law, understand the grievances of the sports persons and lastly, they will learn about the status of sports law which has been operating worldwide.

## CONCLUSION & SUGGESTIONS

### CONCLUSION

The role of IPR in sports must be balanced so as to ensure the conflicting interests of these holders of such rights and the fan club of individuals that make the sports potential of being a property. Restricting the use of any equipment or materials on economic grounds would be unjustifiable as all these are attributable to the development of any sports in a society. And this helps prosper the career of sportspersons as well in such society.

It is even suggested that “these types of inventions would exist anyway in the absence of a patent system”.<sup>112</sup> This is an interesting view in respect of sports moves which are most likely entirely financially free, other than the cost in time. This supports the argument that for those already successful sportspeople, the incentive should be to develop their art with the knowledge that they will continue to benefit financially from marketing opportunities.

Sports people seek ways to ensure that they have a competitive advantage over their fellow competitors. Lockean theory says that “everyone has a property right in his own body’. Kunstadt<sup>113</sup> argues that a sportsperson who by their own labour invents new sports move which enhances their sporting ability should be entitled to protect it.

The invention, by its very nature is new, therefore not in the public mind before they invented it. Therefore, he is not taking something away from society, but adding a benefit to society whilst providing him with a competitive advantage which he should be able to enjoy a monopoly right over, albeit for a limited time. Patents encourage innovation and if patents were not granted for sports moves, it could be argued that there would be no development and improvement in sports. If we take Fosbury as an example; prior to the 1968 Mexico City Olympics in which Fosbury displayed his new move the sport had remained static. Following his Gold Medal win (could it be argued that had he obtained a patent, then high-jump competitors may have been more inclined to develop and innovate new methods of jumping?) one would have assumed that there was an almost overnight change however, he is quoted as saying in an interview that The problem with something

---

<sup>112</sup> U. Suthersanen , G. Dutfield, Kit Boey Chow, *Innovation Without Patents*, (Cheltenham, Edward Elgar, 2007) p. 196

<sup>113</sup> Kunstadt et al, Op. cit., C3

revolutionary like [the Fosbury Flop] was that most of the elite athletes had invested so much time in their technique and movements that they didn't want to give it up, so they stuck with what they knew. It took a full decade before the flop began to dominate the sport. Interestingly, it seems that it was the younger generation who were most able to explore this method of clearing the bar, rather than the already established athletes.

However, it is Fosbury's competition whom you think would most want to enhance their chances of success by using his method. Patents last for 20 years; it took 10 for others to use it as standard. Therefore, a patent would not have caused problems in the sport. Also, Fosbury could have licensed it and given classes in how to use it as ways of making money from it and developing it. This could actually have helped the flop to become used sooner than it was. What this tells us is that in the 4000 years since the Olympics began, we still only have two ways of high-jumping, it is not exactly at the cutting edge of technological advancement. If Fosbury had wanted to license his method, he would have had no takers. We know this because even though it was free it took ten years to become commonplace.

The courts are often called to determine the identity of the true inventor where more than one person claims the right. In doing so, the courts look "to the 'inventive' elements of the invention. Consider if the claimant was responsible for the development of some or all of those elements"<sup>114</sup> as a means of determining entitlement. A sport which benefits greatly from the patentability of sporting apparatus is that of Formula 1 motor racing. There are issues when the employee inventor takes knowledge of inventions to his new team and can use this inside knowledge to invent around inventions which he developed for the previous employer. Competing teams can reverse engineer inventions, a method often used by other industries to negate a competitive advantage

The focal of European Union Nice Declaration 2000 that has compelled the UEFA governing body of football to act also highlights the social aspects of football. It kicks in the social, educational and cultural values of sports. Similar restrictions might come handy if they are to bar further commercialization of the sports industry. Particularly the events can be organized with their sui generis regulations of Intellectual Property rights like copyrights in the events being organized, patents arising out of such contracts between the players and their managers, etc.

---

<sup>114</sup> L. Bently and B. Sherman, Op. cit. pg 528-529

Patent law is at the forefront of innovation and development. As such it must respond to changes and technological advances before society has an opportunity to be able to accept or appreciate it. This inevitably leads to debate about the merits for granting patents to particular inventions. In recent times we have seen the debate feature around biotechnology and, of particular interest in the context of this essay, sports move.

Had Dick Fosbury tried to patent his method of clearing the high jump bar he would most likely have succeeded on both novelty and inventive step. Not only was he the only person at the time who performed the high jump in that way, but he is quoted as saying that it was a further ten years before other professional high jumpers were using the method. He put this down to the fact that the scissor jump was so ingrained in professional high jumpers that they were reluctant to give it up to try something new. This clearly defines the notion of inventive step by virtue of the fact that no-one else was likely to come up with the Fosbury flop because they were more than happy with the status quo. It is interesting that the only people he said were keen to try his new method were children and college kids, i.e. those who were not shackled by custom and practice. Patents may really only be possible for certain types of sports moves, such as those ‘which provide a useful result, such as faster races or longer jumps.’<sup>115</sup>

Kunstadt’s article advocates the use of the full spectrum of intellectual property rights for sports moves, not just patents. Abromson<sup>116</sup> believes that sports moves should be afforded copyright protection on the basis that they “satisfy the conditions required of copyrighted works.”<sup>117</sup> However, we must remember that Abromson is writing not only from a US perspective, but in particular about section 102(a) of the Copyright Act of 1976, not the Patents Act. It has been suggested<sup>118</sup> that intellectual property is a term which has negative connotations and that it should be more appropriately called “Intellectual Objects”. If sports enthusiasts saw intellectual property rights as something other than ‘property’ this might make it easier for them to appreciate the need for the patentability of sports moves. What is clear is that the use of patents as a way of protecting sports

---

<sup>115</sup> Kunstadt et al, Op. cit. p. C2

<sup>116</sup> Henry M Abromson, *The Copyrightability of Sports Celebration Moves: Dance Fever or Just Plain Sick?* Marquette Sports Law Review, Vol. 14:2, pp571-601 at p576

<sup>117</sup> Ibid. at p.572

<sup>118</sup> Hettinger, E., C., *Justifying Intellectual Property, Philosophy and Public Affairs*, Volume 18, Issue 1 (Winter, 1989) p. 34

moves is a method at the cusp of development. Those brave enough to embrace it now may be reaping the rewards ahead of the race. Presently, there is no argument against the patenting of sports apparatus, so long as each invention meets the requirements of the respective acts as set out above. Applying UK law, sports moves cannot constitute patentable subject matter for the reasons as follows: there are more appropriate and enforceable means of protecting the earning potential of sportspersons. These are contract law, copyright and trademark provisions. The patent system should not be used for sports moves.

Similarly, when it comes to Sports and Copyrights, the crux is whether the athletes are, in the context of their sporting event, performing or producing a qualifying “*work*” in the eyes of copyright law. If they are, then they would have a claim over the exclusive rights to control the distribution of their “*work*”.

Recently the discussed social aspects of football were emphasized by the 2000 European Union Nice Declaration, and the governing body of football UEFA have been ordered to act. The declaration called upon those in power to ensure that sports social, educational and cultural functions are respected. It is my belief that this action should come in the form of limits on the commercialism of the game, and a start could be through the use of UEFA or FIFA IPR regulations (especially those relating to Copyright). If governing bodies such as UEFA were to implement more balanced regulations across the football world with a sufficient notice period, then clubs could not claim their particular country would be unequally affected. Players’ wages would therefore have to decrease equally, and clubs would focus on income through non-prohibited avenues, which may require price caps as to ensure clubs were did not merely offset IP losses. I suggest that this would be in the best interests of the game on a long-term basis<sup>119</sup>.

Earlier this year, we noted that with the rise of the ability to film and broadcast video directly from mobile phones, it was only a matter of time until we ran into some about fans filming and "broadcasting" a live sporting event. Now, while those who control the venues can certainly put their own restrictions about what you do while on their property, it's going to become increasingly

---

<sup>119</sup> [http://www.fc-utd.co.uk/feature.php?feature\\_id=43](http://www.fc-utd.co.uk/feature.php?feature_id=43) this outlays Sepp Blatter, the head of UEFA’s views on issues of commercialisation and an idea for the future where he disagrees with my recommended solution

impossible to stop people from filming with their mobile phones. The next question, though, is what happens to that footage?

This actually raises a lot of questions. I'm not sure of the details on UK copyright law here, so perhaps it's different, but in the US, the copyright on the video would belong to Cellan-Jones, since he took the video. The league would have every right to demand he stop or to remove him from the stadium, but it's not clear if it could stop him from posting it online afterwards -- and it certainly wouldn't be allowed to file a copyright notice demanding it be taken down, as that would be falsely representing themselves as the copyright holder on the content. It doesn't sound like Cellan-Jones is looking to fight this, but this question isn't going to go away, and I'm sure eventually we'll see some lawsuits on this very topic.

### **SUGGESTIONS WITH RESPECT TO SPORTS LAW IN INDIA**

Indian Sports Act must ensure proper structure and liabilities of the sports bodies; and key policies for sports bodies including code of conducts, policies for discipline, selection, harassment, conflict of interests, recruitment and awards, etc. This comprises potential liabilities, claims and compensation; and risk assessment insurance provisions. Employee contract agreements must ensure that all contractual agreement accrues matters of intellectual property between employee and employer.

Players and Owners have to negotiate mandatory issues relating to hours, wages and working conditions. The agents entrusted to conduct business on player's behalf have to be loyal and ethical serving the best interests of the game. The problem of performance enhancing drugs is an integral aspect of drug policies. Drug testing, list of banned drugs, penalties, privacy issues and right to appeal must be clearly stated by the nodal agency concerned.

Development of risk management programmes for safety in sports; concerns of racial discrimination and national identity in sport; changes in contractual dynamics in professional football;

The goal of Sports Law should be to provide: educational opportunities and disseminate data an information on specific areas of sports law ; and to create 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. The Government must encourage discussion of legal issues impacting sports and encourage the exchange of a variety of sports law outlooks and positions. The sports industry will be supported by the organisation of ethical rules for sport people and the practice of law professionals involved in sport law.

Additionally, Sport law should endeavor to: produce high quality sport and law research; provide up to date information on corresponding sport law issues, including a resource of sport law content. provide consultancy to sportsmen and sports bodies concerning sports law issues; promote undergraduate and postgraduate study, research and continuing education in sports law; promote ethical solutions to legal issues in sport and notions of "Fair- Play"; and positively address all issues of discrimination in sport.

The emerging interaction between sport and law has shaped a new need for a better understanding of how sporting world is related to the law. India needs expert sports law consultants to meet a variety of legal disciplines, including sports law and policy, contract, tort, tax, labor, competition, TV rights, match-fixing and related criminal law.

In crux, it could be said that:

The law should establish and promote rules of ethics and sportsmanship between competitors and decision-making bodies. The fundamental idea behind the vision is the ethical solution to legal issues in sports. By improving contractual dynamics between them and the administrative bodies, this will enhance the players' morale. Contracts need to clarify expectations and commitment from the players and agents.

Sports bodies and players must be provided with consultancy services. Coordination of legal brotherhood and the sporting community is a precondition for such a healthy interaction.

National identity and the spirit of representation of India must prevail over political decisions. Including a former player of a game at the helm of business rather than a mere administrator or politician with vested interests would be highly advisable. It is must to introduce tenure caps and age restrictions on federation office holders in order to check corruption. Denial of essential facilities and exclusionary policies intended by a player or a rival organization should result in the termination of the services of the relevant administrator. Authority misuse must be dealt with severely.

Players and teams should receive salary caps. It is necessary to tolerate practices that create barriers for new entrants, draw existing players and lead to the foreclosure of a competition.

Women players must be given greater sensitivity and legal support. Harassment and discrimination perpetrators should be punished severely.

Excellent quality research in the field of sport must be encouraged through continuing education. The area of sport law in our country is relatively new and at the beginning of conception. However, it is a study area worthy of definition and academic investigation and practice in depth. A well-planned compliance program for exhaustive competition can be of great benefit to all businesses. The need for the hour is a fresh perspective, an independent authority and an overall law.

There is no doubt that the field of sport dispute resolution is evolving. Sport disputes are therefore inevitable, so the needs of the sporting community are better met by speedy and cheap forms of arbitration and mediation than by litigation.

Sporting disputes requires certainty, consistency, neutrality, fairness and respect for the principles of natural justice which can be achieved through arbitration. And such attributes can be achieved when it gains the support of all the parties involved in the dispute. Jan Pauls son even referred sports arbitration to be only form of international arbitration which is preached in reality. He further opined that sports arbitration is operating with great efficiency and mentioned in an article that the mechanism of Court of Arbitration for Sports to be a remarkable one in the context of contractual disputes.

The researcher concludes that sport is such a common passion throughout the world that it inspires the mentality of having judged the same rules in both spectators and competitors, so that uniformity is maintained throughout and a fair result is achieved.



## **BIBLIOGRAPHY**

### **BOOKS**

1. Christopher May, *A global political economy of intellectual property rights : The new enclosures*, Routledge (11 May 2000)
2. Christopher R Leslie, *Antitrust law and intellectual property rights : Cases and materials*, OUP, 2010
3. N R Subbaram, *Demystifying intellectual property rights*, Lexis Nexis Butterworths Wadhwa, 2009
4. M M S Karki, *Intellectual property rights : Basic concepts*, Atlantic Publishers & Distributors (P) Ltd. (November 15, 2009)
5. Eugen Ulmer, *Intellectual property rights and the conflict of laws*, Springer; 1 edition (January 1, 1978)
6. R Annand, H Norman: '*Blackstone's Guide to the Trade Marks Act 1994*' London: Blackstone, 1994
7. Anthony Mason: *Association football and English society* (Harvester Press Atlantic Highlands, 1980)
8. James Walvin: *The only game: football in our times* (Longman, 1975)
9. James Walvin: *The People's game: a social history of British football* (Allen Lane, 1975)

### **JOURNALS**

1. J. Adams: *Trespass in a digital environment* (IP Quarterly, 2002)
2. K. Aoki: "From Signal of Source to Frozen Signs" in "Authors, Inventors and Trademark Owners: Private Intellectual Property and the Public Domain" 18 Columbia-VLA Journal of Law and the Arts 1994 191
3. R.A. Baron: *Making the public domain public* (VRA Bulletin 2001)
4. D. Booton: *Framing Pictures: Defining Art in UK Copyright* (IP Quarterly, 2003)
5. R. Coombes "Objects of Property and Subjects of Politics: Intellectual Property Laws and Democratic Dialogue" 69 Texas Law Review 1853 (1991)

6. M. Lemley “*Romantic Authorship and the Rhetoric of Property*” – 75 Texas Law Review 871 (1997)
7. P. Samuelson: *Digital information, digital networks, and the public domain* (2001) Berkeley Technology Law Journal

## ARTICLES

1. *Professional Sports and the Law A Study by the Committee on Professional Sports* (HeinOnline (<http://heinonline.org>) Sun Apr 3 06:29:17 2016)
2. K. Aoki: “*From Signal of Source to Frozen Signs*” in “*Authors, Inventors and Trademark Owners: Private Intellectual Property and the Public Domain*” 18 Columbia-VLA Journal of Law and the Arts 194 191
3. P. Samuelson: *Digital information, digital networks, and the public domain* (2001) Timothy Davis, *Teaching Sports and the Law: The Relevance of Law*, 1 Va. J. Sports & L. 250 1999
4. John Merriman, Jim Hill, *Ethics, Laws, and Sport*, Valdosta State College, 2 J. Legal Aspects Sport 56 1992
5. Harry Hibschan, *Winter Sports and the Law*, Illinois Bar, 2 Legal Chatter 6 1938-1939
6. Larry Carp and Mark Goldman, *Key Entertainment and Sports Law Provisions in the New Immigration Law*, 9 Ent. & Sports Law. 9 1991-1992
7. Robert E. Fraley and F. Russell Harwell, *Sports Law and the “Evils” of Solicitation*, 9 Loy. Ent. L.J. 21 1989
8. Paul L. Nelson, *Professional Sports and the Non-Statutory labor Exemption to Federal Antitrust Law: McCOURT V. CALIFORNIA SPORTS, INC.*, 11 U. Tol. L. Rev. 633 1979-1980
9. Gerard-Rene De Groot, *Sports and Unfair competition via Nationality law*, 13 Maastricht J. Eur. & Comp. L. 161 2006
10. Adam Epstein, *The ADEA and Sports Law*, 16 J. Legal Aspects Sport 177 2006
11. Robert D. Manfred, Jr., *Labor Law and the Sports Industry*, 17 Hofstra Lab. & Emp. L. J. 133 1999-2000

12. Leslie Ann Dougiello, Casenote, *Inequitable Procedures Win Gold in Olympic Arbitration*, 24 QLR 887 (2006)
13. Eric T. Gilson, *Exploring the Court of Arbitration for Sport*, 98 LAW LIB. J. 503 (2006)
14. Cristin T. Kist, Comment, *Blocked Airwaves: Using Legislation to Make Non-Compete Clauses Unenforceable in the Broadcast Industry and the Potential Effects of Proposed Legislation in Pennsylvania*, 13 VILL. SPORTS & ENT. L.J. 391 (2006)
15. Robert T. Razzano, Comment, *Intellectual Property and Baseball Statistics: Can Major League Baseball Take its Fantasy Ball and Go Home?*, 74 U. CIN. L. REV. 1157 (2006)
16. Mark James and Guy Osborn, *Criminalising Contract: does ticket touting warrant the protection of criminal law?*, Crim. L. R. 4(2016)
17. Jessica K. Foschi, Note, *A Constant Battle: the Evolving Challenges in the International Fight Against Doping in Sport*, 16 DUKE J. COMP. & INT'L L. 457 (2006)
18. Ola Olatawura, *The "Theater of Dreams "?-Manchester United FC, Globalization, and International Sports Law*, 16 MARQ. SPORTS L. REV. 287 (2006)
19. Matthew Levine, Comment, *Despite His Antics, TO. Has a Valid Point: Why NFL Players Deserve a Bigger Price of the Pie*, 13 VILL. SPORTS & ENT. L.J. 425 (2006)
20. Tyler Pensyl, Comment, *Let Clarett Play: Why the Nonstatutory Labor Exemption Should Not Exempt the NFL's Draft Eligibility Rule from the Antitrust Laws*, 37 U. TOL. L. REV. 523 (2006)
21. Geoffrey Christopher Rapp, *Affirmative Injunctions in Athletic Employment Contracts: Rethinking the Place of the Lumley Rule in American Sports Law*, 16 MARQ. SPORTS L. REV. 261 (2006)
22. Stephen M. Yoost, Note, *The National Hockey League and Salary Arbitration: Time for a Line Change*, 21 OHIO ST. J. ON DisP. RESOL. 485 (2006)
23. Richard H. McLaren, *An Overview of Non-Analytical Positive & Circumstantial Evidence Cases in Sports*, 16 MARQ. SPORTS L. REV. 193 (2006)
24. Susan K. Menge, et al., *2005 Annual Survey: Recent Developments in Sports Law*, 16 MARQ. SPORTS L. REV. 381 (2006)

25. Darren R. Merten, Lead Articles Editor, *Index: Sports Law in Law Reviews and Journals*, 16 MARQ. SPORTS L. REV. BI-BVI (2006)
26. Joshua A. Stein, Comment, *Hitting Below the Belt: Florida's Taxation of Pay-Per-View Boxing Programming is a Content-Based Violation of the First Amendment*, 14 J.L. & POL'Y 999 (2006)
27. Nicolas P. Terry, *Foreword*, 50 ST. Louis U. L.J. 1 (2005)
28. Leonard Koppett, *Sports and the Law: An overview*, 18 N. Y. L. F. 815 1972-1973
29. Bowie K. Kuhn, *Symposium: Professional Sports and the Law*, 18 Wm. & Mary L. Rev. 677 1976-1977
30. David A. Frenkel, *Sports Medicine and the Law*, 21 Med. & L. 201 2002
31. Matthew J. Mitten, *Seventh Circuit and Wisconsin Sports Law Jurisprudence*, 25 Marq. Sports L. Rev. 207 2014-2015
32. adam epstein, *ohio and sports law*, 25 marq. sports l. rev. 363 2014-2015
33. Jeffrey Kravitz, James Nguyen, Dennis Loomis, Joseph M. Gabriel, Travis Kasper, Alexander Kargher, *There Is Something In The Air: The Legal Implications Of Podcasting And User Generated Content*, 27 Loy. L.A. Ent. L. Rev. 299 2006-2007
34. Susan Smailes, *Sports Law and Labour Law in the Age of (Rugby) Professionalism: Collective Power, Collective Strength*, 28 Indus. L.J. Juta 57 2007
35. Jennifer Davis, *Intellectual Property, Unfair Competition and Publicity: Convergences and Development*, IIC 501 46(4), 501-504, 2015
36. Nick Shi Qiang Sim, *Ambush marketing in major sports events: war minus the shooting?*, J.I.P.L.P., 10(7), 536-550, 2015
37. Earl Gray and Raymond Scott, *Blowing the whistle on copyright in public sculptures*, J.I.P.L.P., 10(1), 10-11, 2015
38. Theodore Koussouris, *Ambush marketing protections to be part of every competition*, S.L.A. & P., Oct, 1-3, 2015
39. *Entertainment and Sports law*, 30 GPSolo 21 2013
40. John T. Holden and Ryan M. Rodenberg, *The Sports Bribery Act: A Law and Economics Approach*, 42 N. Ky. L. Rev. 453 2015
41. Michael A. McCann, *Social Psychology, Calamities, and Sports Law*, 42 Willamette L. Rev. 585 2006

42. Robert Alan Garrett and Philip R. Hochberg, *Sports Broadcasting and the Law*, 59 Ind. L.J. 155 1983-1984
43. James A.R. Nafziger, *International Sports Law: A replay of Characteristics and Trends*, 86 Am. J. Int'l L. 489 1992
44. Daniel M. Satorius, *Entertainment and Sports Law: From Book to Screen*, Vol. 24, No. 2, GPSolo, pp. 32-33, Mar 2007
45. Poonam Majithia, *How successful were FIFA and its sponsors at protecting their brands during the World Cup?*, LawInSport, Aug 13, Internet, 2014
46. Tom Burrows, *How social media and smart devices are influencing the negotiation of sports media rights agreements*, LawInSport, Nov 13, Internet, 2014
47. Alex Kelham and Rahmat Ash, *Ambush marketing and the legal issues to consider at the RWC 2015 and Euro 202*, LawInSport, Sep 25, Internet, 2014
48. Brian Nicholson, *Countdown to the world Cup*, IBA Global Insight, Feb/Mar, 58-60. 2014
49. Maura O'Malley, *INTA the new presidency*, I.P.M, Feb, 13-14, 2014
50. Arthur Artinian and Sarah Naisby, *Dodging the ambush*, I.P.M., Feb, 26-27, 2014
51. Neil Coulson and Zarah Rasool, *Ambush marketers kicked into touch*, I.P.M., Feb, 28-29, 2014
52. Mark Bone-Knell, *Offside rule: ambush marketing in the Gulf States*, I.P.M., Feb, 30-31, 2014
53. Catherine White, *Blowing the final whistle on IP infringements*, I.P.M., Feb, 32-34, 2014

## **STATUTES**

### **LAW IN INDIA**

1. The Patents Act, 1970 (as amended up to Patents (Amendment) Act, 2005) (2013)
2. The Copyright (Amendment) Act, 2012 (2012)
3. The Trade Marks (Amendment) Act, 2010 (2010)
4. The Competition (Amendment) Act, 2009 (2009)
5. The Competition (Amendment) Act, 2007 (2007)

6. Patents (Amendment) Act, 2005 (Act No. 15 of 2005) (2005)
7. The Trade Marks Act, 1999 (2003)
8. Patents (Amendment) Act, 2002 (2002)
9. The Designs Act, 2000 (2000)
10. Copyright (Amendment) Act, 1999 (Act No. 49 of 1999) (1999)
11. Patents (Amendment) Act, 1999 (1999)
12. Copyright Act, 1957 (as consolidated up to Act No. 49 of 1999) (1999)
13. Copyright (Amendment) Act, 1994 (1994)

### **LAW IN U.K.**

1. Digital Economy Act 2010 (2010)
2. The Patents Act 1977 (Chapter 37, as amended by the Tribunals, Courts and Enforcement Act 2007) (2007)
3. The Patents Act 2004 (An Act to amend the Patents Act 1977) (2004)
4. Copyright, etc. and Trade Marks (Offences and Enforcement) Act 2002 (Chapter 25) (2002)
5. The Broadcasting Act 1996 (Chapter 55) (1996)
6. Patents and Designs Act 1907 (Chapter 29, as amended up to the Trade Marks Act 1994) (1994)
7. The Broadcasting Act 1990 (Chapter 42), Section 175 and 179 and Schedule 21 (1990)
8. Copyright, Designs and Patents Act 1988 (Chapter 48) (1988)
9. The Registered Designs Act 1949 (as consolidated 1979) (1979)

### **LAW IN U.S.**

1. Stevenson - Wydler Technology Innovation Act of 1980 (Public Law 96-480, 94 Stat. 2311)
2. U.S. Patent Law, 35 U.S.C. §§ 1 et seq. (consolidated as of May 2015) (2015)
3. Leahy-Smith America Invents Act (AIA) (2011)

4. Stevenson – Wydler Technology Innovation Act of 1980, as amended through America Competes Reauthorization Act of 2010 (Public Law 111-358, 124 Stat. 3982), 2011 (2011)
5. U.S. Copyright Law, 17. U.S.C. §§ 101 et seq. (Consolidated Copyright Laws as of December 2011) (2011)
6. 28 U.S.C Chapter 91-United States Court of Federal Claims (2011)

## **EUROPEAN UNION LAW**

1. Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks (Text with EEA relevance) (2016)
2. Regulation (EU) 2015/2424 of the European Parliament and of the Council of 16 December 2015 amending Council Regulation (EC) No 207/2009 on the Community trade mark and Commission Regulation (EC) No 2868/95 implementing Council Regulation (EC) No 40/94 on the Community trade mark, and repealing Commission Regulation (EC) No 2869/95 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs) (Text with EEA relevance) (2016)
3. Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (2014)
4. Regulation (EU) No. 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No. 1383/2003 (2013)
5. Council Regulation (EU) No. 1260/2012 of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements (2012)
6. Directive No. 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works (2012)

7. Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (2012)
8. Council Directive of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer (79/112/EEC) (1978)
9. Council Directive of 15 October 1963 implementing in respect of the film industry the provisions of the general programme for the abolition of restrictions on freedom to provide services (63/607/EEC) (1963)
10. Regulation No. 17 of the Council of February 6, 1962 (First Regulation Implementing Articles 85 and 86 of the Treaty) (1962)

## **INTERNET RESOURCES**

1. WIPO – IP and Sports: Background Brief,  
[http://www.wipo.int/pressroom/en/briefs/ip\\_sports.html](http://www.wipo.int/pressroom/en/briefs/ip_sports.html), accessed 3.3.2016
2. NBA National Basketball Association website, <http://www.nba.com/>, accessed 5.4.2016
3. NFL, National Football League, website: <http://www.nfl.com> accessed 5. 4.2016
4. MLB, Major league Baseball. website: <http://mlb.mlb.com> accessed 5.4.2016
5. Dallas Cowboys website, <http://www.dallascowboys.com> accessed 05.4.2016
6. Washington Redskins website, <http://www.redskins.com> accessed 05.4.2016
7. NRL National Rugby League,  
website: <http://www.nrl.com.au/fanzone/bigleague.cfm> accessed 05.4.2016
8. Super 12's competition website, <http://www.super12rugby.com/>, accessed 05.4.2016
9. Bradford Bulls website,  
[http://www.bradfordbulls.co.uk/bb\\_experience\\_full.asp?experienceid=11](http://www.bradfordbulls.co.uk/bb_experience_full.asp?experienceid=11) accessed 05.4.2016



10. UK Patents Office <http://webdb4.patent.gov.uk/tm/> accessed 05.4.2016
11. The Premiership' TM# 2277054, date. 3.8.2001 Patent Office website <http://webdb4.patent.gov.uk/tm/number?detailsrequested=C&trademark=2277054> accessed 05.4.2016
12. thepremierleague.com  
[http://www.premierleague.com/fapl.rac?command=forwardOnly&nextPage=homepage\\_tue&today=3](http://www.premierleague.com/fapl.rac?command=forwardOnly&nextPage=homepage_tue&today=3) accessed 05.4.2016

## **CASES**

1. Star India Private Limited and another v Roy Ma and others, CS(OS) 3319/2014
  2. Physique Vs. Physique India Limited, 2015(64)PTC15(Mad)
  3. Espn Stars Sports vs Global Broadcast News Ltd. And ... on 18 February, 2008, 2008 (36) PTC 492 Del
  4. Quintessential Designs India Pvt. Ltd. and Ors. Vs. Puma Sports India (Pvt.) Ltd. and Ors., 2015(64)PTC17(Mad)
  5. Star India Private Limited and another v Roy Ma and others, CS(OS) 3319/2014
  6. Star India Private Limited and others v Haneeth Ujwal and others, 2014 (60) PTC 504
  7. Pasco Sports Vs. Respondent: Capital Sports Pvt. Ltd., I.P.A.B., CHENNAI CIRCUIT BENCH SITTING AT AHMEDABAD ORA/246/2009/TM/AMD
  8. Jules Rimet Cup Ltd v Football Association Ltd [2007] EWHC 2376 (Ch); [2008] E.C.D.R. 4 (Ch D)
- Percept D'mark (India) Pvt. Ltd.V.Zaheer Khan & Anr. (2006) 4 Scc 227