

FOREWORD

Justice Dr Mukundakam Sharma

Development of sports in India is a matter of national importance and relevance as it supports and encourages child and youth development and thereby laying the foundation of a robust, healthy and vibrating future generation of the country. India is a young country as presently the children and the young generation constitutes the largest number of total population of the country.¹ Sports development is basically a state subject yet as provided for under entries 10 and 13 of the Union List in the 7th Schedule of our Constitution, the Central Government has the responsibility to work for development of sports in the national and international level.

The Hon'ble Delhi High Court in *Civil Writ Petition No. 7868 of 2005*,² in the matter of *Indian Hockey Federation* vide its order dated 02.03.2010 held that the Central Government is fully competent to make regulations on National Sports Federations and Indian Olympic Association. While observing in the aforesaid manner, the Hon'ble Delhi High Court relied upon the aforesaid two entries namely entry 10 and 13 of List I of Union List. By making reference to the aforesaid entries the Hon'ble Delhi High Court observed that while a National Sports Federation has autonomy in the actual conduct of sports, government recognition is necessary to represent the country. It also observed that international sporting events are an essential part of diplomatic relations of the nations and several considerations like security concerns of players, apartheid and perceived human rights violations have guided notions in decisions to participate or not to participate in sporting events in different countries. In that context, it was also observed that political and diplomatic clearance are therefore required by the Indian teams before participation in the international tournaments and forums for which mostly government has the competence or the jurisdiction to undertake such exercise.

¹ Ministry of Statistics and Programme Implementation, 'Youth in India' (Central Statistics Office 2017) <https://www.thehinducentre.com/multimedia/archive/03188/Youth_in_India-201_3188240a.pdf> last accessed 7 February 2022.

² *Narinder Batra v Union of India*, 2009 SCC OnLine Del 480.

Basing on such sources, the National Sports Policy of 1984 was framed by the Govt. of India which was reformulated in the year 2001.³ Thereafter, the Ministry of Youth Affairs and Sports issued the formal guidelines to regulate sports through National Sports Development Code 2011⁴, which made an effort to shift the entire responsibility of redressal of grievances in an inhouse format on the National Sports Federation (NSF) requiring them to constitute an internal machinery function. Thereafter, a Committee was again setup by the Central Government for revising the earlier Draft Bill for bringing about transparency and good governance in National Sports Federation. The Committee submitted the draft National Sports Development Bill, 2013,⁵ wherein for the first time, a recommendation was made for setting up an Appellate Sports Tribunal.⁶ While the draft bill made provision for the Central Government to prescribe the jurisdiction to be exercised by this Appellate Sports Tribunal but it also explicitly provided what the Tribunal could not adjudicate upon such as doping related cases for which the National Anti Doping Agency has been given the exclusive jurisdiction.⁷ It also prescribed that this Tribunal would not have any jurisdiction on matters concerning international federations for which appeal lies directly to court of arbitration for sports established in Switzerland.⁸ This Appellate Sports Tribunal therefore is the final Tribunal which jurisdiction could be invoked for redressal of grievances, once a person has exhausted the remedy of in-house format provided.

The aforesaid Bill, 2013 however was not formalised and implemented. The same continued to be in the draft form only without completing the process of forming and making a legislation on the subject. The Central Government setup another committee in the year 2017 for drafting a National Code for good governance in sports. The said Committee deliberated upon and submitted a draft code titled

³ Ministry of Youth Affairs and Sports, 'National Sports Policy 2001' (Department of Sports 2001) <<https://yas.nic.in/sites/default/files/National%20Sports%20Policy%202001.pdf>> last accessed 7 February 2022.

⁴ Ministry of Youth Affairs and Sports, 'National Sports Development Code of India' (Department of Sports 2011) <<https://yas.nic.in/sites/default/files/File918.compressed.pdf>> last accessed 7 February 2022.

⁵ Ministry of Youth Affairs and Sports, 'Draft National Sports Development Bill, 2013' <<https://yas.nic.in/sites/default/files/File921.pdf>> last accessed 10 February 2022.

⁶ ibid 21-22.

⁷ ibid 22.

⁸ ibid 22.

“National Code for Good Governance in Sports 2017”.⁹ The aforesaid effort of the Central Government found a way to the Hon’ble Delhi High Court. A detailed order in that regard was passed by the Hon’ble Delhi High Court in **CM Application No. 32770 of 2017 in Writ Petition (C) 195 of 2010**.¹⁰ In the said order, a reference was made to the request of the Central Government to take back the draft policy with a statement that the Union Ministry of Sports would take further consultations from the concerned stakeholders and finalise the policy. While allowing the aforesaid request, the Hon’ble Delhi High Court in its order dated 16.11.2018 held that the final policy would be framed in the light of the relevant judgements of the Supreme Court and the Hon’ble Delhi High Court as well as the stand of the Central Government in the affidavits in the court. A liberty was also granted by the Hon’ble Delhi High Court to the Writ Petitioner that it can approach the Hon’ble Delhi High Court once again, if it feels aggrieved by the policy or any element thereof.

In order to complete the aforesaid process and statement made before the Hon’ble Delhi High Court, the Central Government constituted a Committee in the year 2019 to review the Draft Code, 2017 and give its recommendations.¹¹ The aforesaid constitution of a new Committee was challenged before the Hon’ble Delhi High Court by filing a fresh application being **CM Application No. 52582 of 2019**.¹² The Hon’ble Delhi High Court after hearing the Counsel appearing for all the parties passed an order on 06.12.2019 wherein it *prima facie* held that the court has failed to understand why another Committee had to be constituted to review the draft National Sports Code unless it intends to undoing the work already undertaken by the Central Government to prepare the Draft National Sports Code and good

⁹‘(Draft) National Code for Good Governance in Sports, 2017’ <<https://yas.nic.in/sites/default/files/Draft%20National%20Code%20for%20Good%20Governance%20in%20Sports.pdf>> last accessed 10 February 2022.

¹⁰*Rahul Mehra v Union of India* (Delhi HC, 16 November 2018) <http://delhihighcourt.nic.in/dhcqrydisp_o.asp?pn=272858&yr=2018> last accessed 10 February 2022.

¹¹ANI, ‘Sports Ministry forms expert committee for reviewing National Sports Code draft’ *Business Standard* (28 November 2019) <https://www.business-standard.com/article/news-ani/sports-ministry-forms-expert-committee-for-reviewing-national-sports-code-draft-119112800222_1.html> last accessed 10 February 2022.

¹²*Rahul Mehra v Union of India* (Delhi HC, 6 December 2019) <http://delhihighcourt.nic.in/dhcqrydisp_o.asp?pn=296545&yr=2019> last accessed 10 February 2022.

governance code for sports.¹³It was also observed that the same would delay the process of finalising the draft code which has been available with the Central Government since 2017.¹⁴Consequently, the order of the constitution of a new Committee was stayed by the Hon'ble Delhi High Court with a direction to the secretary to file an affidavit in that regard. These background facts are stated in order to show that the efforts of the Central Government to formulate legislation or specific guidelines with regard to sports did not and could not fructify and the same is still in a fluid stage.

The fact remains that the sports environment in our country has improved tremendously. However, sports related issues have also become complicated and assumed various disturbing facets involving regulatory, legal and other risks. There are concerns expressed by various individuals and sports enthusiasts that there should be a proper national legislation to regulate sports and the Sports Federation in the country. Mr. Aruneshwar Gupta, a senior advocate of the Supreme of India, has stated that there is certainly a need for enacting a National Sports Act in our country.¹⁵ According to him, the compilation of several orders on the existing rule structure under National Sports Development Code of India, 2011 is wholly insufficient and incapable of dealing with future of the sports industry. He categorically emphasises that without a National Sports Association (Registration, Recognition and Regulation) Act, Sports Industry in India would be unable to expand. His opinion definitely has relevance and importance in the present scenario. There was a further study in this regard which was published in India Law Journal (ILJ) wherein a similar suggestion is given that we must have a uniform code for sports in order to meet the increasing demands of the changing scenario.¹⁶The study opines that there are several issues faced by the Indian sports including inefficient or inappropriate deployment of funds, mistakes in management, non-accountability for results, prejudice in selection procedure for national teams and undemocratic or unethical electoral practices in sports bodies.

¹³ibid [5].

¹⁴ibid [9].

¹⁵ 'Senior Advocate Aruneshwar Gupta on Sports Law, the BCCI & more' *Bar & Bench* (7 June 2021) <<https://www.barandbench.com/apprentice-lawyer/senior-advocate-aruneshwar-gupta-on-sports-law-the-bcci-more>> last accessed 10 February 2022.

¹⁶GaurangKanth, 'Emergence of Sports Law in India' *India Law Journal*<https://www.indialawjournal.org/archives/volume3/issue_2/article_by_Gaurang.html> last accessed 10 February 2022.

In order to root out these unwarranted issues, the study suggested that India needs a national legislation for promotion, development and uniform regulation for sports in India. The other suggestion is that sports being in the State list, the same should be brought to the concurrent list so that the Central Government can make appropriate legislation so as to regulate and promote sports industry in the country.

When such a legislation is brought the same could definitely include provisions for promotion of sports right from the school level by integrating sports with education by making it a compulsory subject of learning up to the secondary school level. The suggestion was also to constitute a Sports Commission in India to discharge an advisory role to help and guide the Ministry of Sports and Youth Affairs regarding sports and also to support talent identification and to promote a faster development and participation in sports at all levels, to ensure an adequate allocation of funds and resources through various national and provincial sports federations, to monitor and to take measures to ensure proper use of funds allocated by the Sports Commission to Sports Federations and also to oversee the implementation of sports policies in India. These are definitely concrete suggestions given which should be considered by the appropriate authority after consulting all the stakeholders. A decision in that regard could be taken by bringing in an all comprehensive legislation so as to meet the present day demand of sports development and promotion in the country.

The Central Government also constituted the National Board for Anti-Doping in Sports (The National Anti-Doping Bill, 2021) for exclusively dealing with the matters relating to doping related cases.¹⁷ However, the international body namely the International Anti Doping Agency derecognized and suspended the said National Anti Doping Agency on the presumption that the said agency is a part of the Government Agency.¹⁸ However, subsequently upon pointing out with strong reasons that said National Anti Doping Agency of India is totally or separate legal entity and works of its own and not under the instructions of the Central

¹⁷National Anti-Doping Bill, 2021, LS Bill No. 160 of 2021, ch III.

¹⁸PTI, 'WADA suspends India's National Dope Testing Laboratory' *The Economic Times* (23 August 2019) <<https://economictimes.indiatimes.com/news/sports/wada-suspends-indias-national-dope-testing-laboratory/articleshow/70797395.cms?from=mdr>> last accessed 10 February 2022.

Government and the said International body being satisfied with the aforesaid stand taken by the National Anti Doping Agency has restored back its affiliation and recognition to the National Anti Doping agency once again by communication sent by it to the National Anti Doping laboratory.¹⁹ This National Anti Doping laboratory is now governed by a policy framed called the National Anti-Doping Bill, 2021. This paves the way for the agency to carry out its work independently and also enables it to garner some resources from its functioning, so as to enable it to use such resources for its development.

Similar efforts are also being taken by the Central Government to establish a regulatory framework on the online gaming industry and also for addressing the menace and fallout of sports fraud by framing a bill called the Sports (Online Gaming & Prevention of Fraud) Bill, 2018.²⁰ The gaming laws, in specific, date back to the colonial era when the Public Gambling Act was enacted in the year 1867. The same was the only central legislation on the subject of gaming. The said law mainly focussed on prohibiting gambling and betting by drawing up an exception for games of skill. However, the law at that stage did not bring out any distinction between a game of skill and a game of chance. However, now there is a tremendous growth in online gaming and fantasy sports. Huge monetary prizes are being offered which is making and bringing a significant element of competitions, but they are still governed by the Prize Competitions Act, 1955.²¹ This legislation fails to recognise and deal with the various continuous development in this sector. In view of the above shortcomings, the aforesaid Sports (Online Gaming & Prevention of Fraud) Bill, 2018 was introduced in the Parliament in order to bring about recognition to the various continuous development in that arena and to establish a regulatory framework for the online gaming industry and to root out the incidents of sports fraud in India. The aforesaid Bill when introduced in the Parliament could not be passed but thereafter the same has not been re-tabled. Besides in 2018 itself, the Law Commission of India prepared a report titled "Legal

¹⁹ PTI, 'Suspended NDTL gets back WADA recognition: Sports Minister Anurag Thakur reveals' *The Times of India* (23 December 2021) <<https://timesofindia.indiatimes.com/sports/more-sports/others/national-dope-testing-laboratory-suspension-revoked-sports-minister-anurag-thakur-reveals/articleshow/88454241.cms>> last accessed 10 February 2022.

²⁰ Sports (Online Gaming & Prevention of Fraud) Bill, 2018, LS Bill No 259 of 2018.

²¹ Prize Competitions Act, 1955, Act No 42 of 1955.

Framework: Gambling and Sports Betting including in Cricket in India”.²²This report highlighted the need to regulate the gambling industry, thereby suggesting and recommending for the growth of the industry. The Law Commission of India in the said report suggested the need for formulating and adopting a regulation in view of the fact there are instances of unauthorized betting and gambling and that such unauthorized betting and gambling has brought about a very adverse effect in our society.²³ Such illegal betting and gambling activities has given rise to growth of illegal trade and commerce and corrupt practices such as spot fixing and match fixing being employed in sports particularly in cricket.

Therefore, there have been discussions amongst various stakeholders seeking for regulating the gambling and betting industry by pointing out some of the advantages of such regulation such as generation of considerable revenue, generation of employment, development of tourism as it may work as a complementary industry and would also work for protection of the vulnerable sections of the society.

The same was also followed by the draft discussion paper released by NITI Aayog in 2020 titled “Guiding Principles for the Uniform National Level Regulation of Online Fantasy Sports Platforms in India”.²⁴ This discussion paper was framed and released so as to bring about formalisation of certain guidelines for this fantasy sports industry in India. However, all these efforts remained incomplete and did not bring about the desired objectives.

Therefore, it is evident that both in the arena of sports development and gaming industry, no concrete legislation or positive and all-round guidelines governing all the areas are formulated or enacted or adopted. In contrast to this position, the countries and regions like the European Union, People’s Republic of China and South Korea had begun formalising national legal frameworks for their sports and gaming sectors. The central idea of such legal frameworks by those countries aimed at increasing accountability and enabling governmental support for growth

²²Law Commission of India, ‘Legal Framework: Gambling and Sports betting including In Cricket In India’ (Report No. 276, 2018).

²³ ibid ch. IV, para 4.6-4.18.

²⁴ NITI Aayog, ‘Guiding Principles for the Uniform National Level Regulation of Online Fantasy Sports Platforms in India’ (Draft for Discussion, 2020) <https://www.niti.gov.in/sites/default/files/2020-12/FantasySports_DraftForComments.pdf> last accessed 10 February 2022.

and development of such sports and games. In the recent past, there have been cases of match fixing and betting sites particularly, in relation to cricket and other sports activities. In order to deal with this menace of high profile corruption in the sports and gaming industry and also doping concerns proactive legislations and regulations are the need of the hour.

In this regard, it is seen that some states such as Uttar Pradesh, Madhya Pradesh and Delhi have adopted the legislation namely the Public Gambling Act, 1867, whereas some other states made their own amendments to the same. Some other states have enacted their individual legislations to regulate gaming and gambling activities within their territorial jurisdiction. The states of Sikkim²⁵, Nagaland²⁶ and Meghalaya²⁷ have licensing regime for online games whereas Meghalaya and Nagaland have licensing regime for online skill games. Most of such state laws grant specific exemption for games of mere skills. Similarly, the states of Telangana²⁸, Andhra Pradesh²⁹ and Tamil Nadu³⁰ recently amended their respective state gaming laws by diluting to express exemption provided to skill games. On 3rd August, 2021, the Madras High Court struck down the Tamil Nadu Gambling and Police Laws (Amendment Act), 2021, as being ultra vires to the Constitution. The Kerala High Court relying on the decision of the Madras High Court in its recent Judgement of September, 2021 set aside the notification issued by the State Govt. which banned online Rummy for stakes declaring the same to be arbitrary/illegal and violative of Fundamental Rights guaranteed under the Constitution. The court in this regard held that states cannot be a criterion to decide whether a game is based on a skill or chance. Casino, in general, has been considered to be a game of chance and therefore hit by the prohibition under most gaming laws. Very recently, a Division Bench of Karnataka High Court struck down an amendment to the Karnataka Police Act, 1963 banning all forms of gambling in the State including online gambling in the state in order to “curb menace of gaming through the internet, mobile apps.” There are varying

²⁵ The Sikkim Online Gaming (Regulation) Act, 2008, Act No. 23 of 2008.

²⁶ The Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2015, Act No. 3 Of 2016.

²⁷ The Meghalaya Regulation of Gaming Act, 2021, Act No. 9 of 2021.

²⁸ The Telangana Gaming Act, 1974, Act No. 27 of 1974.

²⁹ The Andhra Pradesh Gaming (Amendment) Act, 2020, Act 43 of 2020.

³⁰ The Tamil Nadu Gaming Act, 1930, Act 3 of 1930.

opinions with regard to recognition of Poker as a game of skill. The states of Nagaland and Meghalaya have categorised Poker as a game of skill whereas the High Court of Gujarat has opined that Poker is a game of chance.³¹

The Supreme Court has held betting on horse racing to be a game of skill and consequently entitled to skill game exemption in the gaming laws. Further, there is a specific exemption for betting on horse racing in most gaming laws. The Hon'ble Supreme Court in the case of *Dr. K.R. Laxmanan v. State of Tamil Nadu*³² held that betting on horse races exist independently as a skill game without having to rely on specific exemption available to such betting in gaming laws. Then again the issue whether sports betting is a game of skill or not is pending adjudication before the Hon'ble Supreme Court in the case of *Geeta Rani v. Union of India*.³³ The Petitioner therein has sought for a comprehensive legislation for regularisation of sports both by the Central Government as also by the State Governments. The High Courts of Punjab & Haryana³⁴, Bombay³⁵ and Rajasthan³⁶ have upheld the fantasy sports as a game of skill thereby exempting such sports from the prohibition under the Gaming Laws. The states like Nagaland and Meghalaya have enacted licensing regimes for offering fantasy sports.

One facet of this discussion is to highlight the fact that the Indian Courts have generally accepted the dominant factor test that has been followed in the courts in the USA³⁷ distinguishing between games of skills and that of games of chance. This test requires assessment and determination of the issue as to whether chance or skill is the dominating factor while determining the outcome of the game. However, certain categories of gaming through gambling are regulated by specific legislations such as Lotteries (Regulation) Act, 1998 and Prize Competitions Act of 1955 etc.

Considering the ambiguity that still persists in these areas and also in view of prevailing conflicting ideas and decisions, it is absolutely necessary for the Central

³¹*Dominance Games Pvt. Ltd v State of Gujarat* 2017 SCC OnLineGuj 1838.

³²*K.R.Laxmanan v State of Tamil Nadu*(1996) SCC 2 226.

³³*Geeta Rani v Union of India* WP(C) No 000287 / 2017.

³⁴*Varun Gumber v Union Territory of Chandigarh* 2017 Cri LJ 3836.

³⁵*Gurdeep Singh Sachar v, Union of India and Ors.* (2019) 75 GST 258.

³⁶*Chandresh Sankhla v State of Rajasthan* 2020 SCC Online Raj 264.

³⁷*Morrow v State*, 511 P.2d 127, 129 (1973).

Government to go ahead and to frame legislations/guidelines determining the criteria for determination of what constitutes game of skill including the criteria that would satisfy the preponderance test of skill versus chance that has been historically adopted by the Indian Courts. While doing so notice should be taken of all the decisions rendered by the various courts and an attempt should also be made to get the case pending in the Supreme Court decided as the laws laid down by the Supreme Court are the laws of the country.

Therefore, in order to eliminate all disputes and controversies and to plug all the loopholes in the sports and gaming industry and to make both the areas hassle free, India needs pro-active effort from the Ministry of Sports and Youth Welfare for framing a cohesive and all comprehensive legislations which could be in the format of a legislation/code or guidelines both in the arena of sports and gaming industry in India, so as to tap the abundant scope, skills and talents that are available to us and spread all over.

In this context, I appreciate the enthusiasm expressed and efforts taken by the RGNUL Student Research Review to highlight the dire need of comprehensive legislations/adoption of regulations code or guidelines both in the field of sports and also in the arena of games and their mechanism. They have done immense research on the subject with genuine interest for betterment and taking forward the concept of Sports and gaming industry of our country to a new height.



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