

**THE SPORT, MONEY AND LAW: TRANSFORMING INDIAN SPORTS
ADMINISTRATION THROUGH COMPETITION LAW**

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ABSTRACT

The Indian sports administration has faced considerable criticism on the grounds of corruption, unaccountability, nepotism, political control and ineffective functioning. The sports industry in its entirety has advanced towards commercialization, which to some extent has addressed the question of infrastructure and funding for the catena of sporting activities. The stark rise in the sports industry also has detractors, which in effect stifles competition and investment due to the administrative inefficacies of the various sport governing bodies.

The unique feature of the application of competition law in the sports industry is that sports law in essence must result in competition, which preserves the interest of the spectators in the inherent values of any sport. The dominant nature of various sports federations, which seek to control the sport rather than ensure fair play, is diametrically opposed to ensuring competition for the development of the sports industry. The stakeholders in this analysis including the spectator and new entrants in the market ensure financial feasibility in the long run rather than the short run aggrandizement, if competition law is strictly applied to sporting authorities. This paradigm of competition law application on the sports sector would improve sports administration and governance, which is the root cause for India's deplorable state of affairs in sports administration. The paper first analyzes the interaction of the competition and the sports law in India and then seeks to highlight the anti-competitive practices prevalent in the sports industry. In conclusion the author suggests the manner in which competition law can render effective sports administration a possibility.

INTRODUCTION: PRESERVING UNCERTAINTY

The quintessential distinctive character of the sport business stems from the limited competition, whereby sports clubs are mutually dependent on each other for sporting competition and uncertainty of outcome.¹In developing countries the markets exhibit

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¹Simon Gardner, Alexandra Felix, Mark James and Roger Welch, Sports Law (1st, Cavendish Publishing Ltd., London 1998) 51.

characteristic features in contrast to developed countries, with higher entry barriers, concentration ratios, market asymmetries of information and fragmentation of the market.²

In international relations, sports diplomacy has aided diplomatic rapprochement, whilst the original Olympic charter vehemently opposed the politicization of sports.³

The Olympic charter imposes restrictions on the Governmental influence over sports federations⁴, but this limitation has also been flouted leading to India's expulsion from the International Olympic Committee.⁵ The financial exemptions provided to sports federations by the Government⁶ results in government appointed observers⁷, which deludes into a form of political nexus rather than a check on the utilization of funds. This form of governance mechanism has time and again manifested in the form of allegations of corruption and bias in team selections⁸, whilst undermining the morale of the athletes.⁹ The self-regulatory sports bodies have always been criticized on the basis of their apathy in protecting the public interest¹⁰ due to the lack of accountability.

The sports governance models that have developed around the world follow an interventionist or non-interventionist model for the Government regulation of sport.¹¹ The interventionist model is favored as a policy goal of the government to regulate a widely market oriented model of sports in order to implement the public functions. The doctrine of the autonomy of sports, proposes that the sports movement alone can effectively understand the distinctive characteristics of sport and hence the self-regulation.¹² The Indian model of sports regulation has been modeled primarily on the developments of the Olympic movement through a

²Vinod Dhall, *Competition Law Today: Concepts, Issues, and the Law in Practice*, Oxford University Press, 2007 New Delhi p.31.

³Zhang Qingmin, *Sports Diplomacy: The Chinese Experience and Perspective*, *The Hague Journal of Diplomacy* 8 (2013) p.213-214.

⁴Jitendra Choudhary and Jayat Ghosh, *Governance of Sports in India*, http://tejas.iimb.ac.in/articles/Tejas_September%20Edition_Article%201.pdf (Last Accessed 4th October 2015).

⁵Business Standard, *Sports' structural problem: India's sports administration is top-down, and thus corrupt*, http://www.business-standard.com/article/opinion/sports-structural-problem-113052801135_1.html (Last Accessed 6th October 2015).

⁶Government of India, Ministry of Finance, <http://www.servicetax.gov.in/notifications/notfn-2012/st12-2012.htm>

⁷*Supra* note 3 at 5.

⁸Avalok Langer, *Indian Sport and the Political Players*, <http://www.tehelka.com/indian-sport-the-political-players/> Iss. 51 Vo 1.5

⁹S. Kannan, *Federations cannot dictate terms anymore*, <http://indiatoday.intoday.in/story/federations-cannot-dictate-terms-anymore-says-s-kannan/1/382739.html>

¹⁰R. Bladwin and M. Cave, *Understanding Regulation: Theory, Strategy and Practice*, Oxford University Press 1999 p.125-129.

¹¹Adam Lewis QC and Jonathan Taylor, 'Government Intervention in the Sports Sector' in (eds), *Sport: Law and Practice* (3rd ed., Bloomsbury, London 2003) 2-4.

¹²*Ibid.*

pyramidal structure of sports federations similar to the European Sports model.¹³ In contrast to the American model of sports organizations, the European model is not completely driven by the entertainment aspect of the sport but priority towards sportive performance.¹⁴ The Indian model has tried to emulate this form of governance but with greater political interference at all levels considering sports as a state subject under entry 33 of the Indian Constitution. Thus the Indian sports model is starkly unique in this aspect of governance, which requires remedying to foster effective administration and governance of sports bodies.

The role of law in the sports industry can be gauged from the fact that there is a lack of a regulatory mechanism for the autonomous bodies in the prevailing sports market. The sports regulatory framework being placed under the ambit of competition law is due to the ever-increasing conflict between players, clubs, governing bodies and emerging associations over mostly commercial interests. The fundamental purpose of competition law emerges from the logic of promoting societal welfare, which is effected by the monopolistic behavior of certain entities in the market. The constitutional origin of competition law can be analyzed from Article 38 and 39 of the Indian constitution, which explicitly provides for the welfare of the citizens. The uniqueness of sports law from other industries lies in the nature of its application, where the rule is not elimination but effective and sustained competition.¹⁵ The diminished competition in the market would not be in the competitor's interest, as it would reduce the viewership or attraction to the consumers as a product. The commercialization of sport has resulted in the sports associations reaping the benefits of investment, with discretionary powers and indulging in unregulated anti-competitive activities, by virtue of them being the regulators.

The sports industry in relation to competition law can be analyzed from the viewpoint of the jurisprudential analysis that has developed in the European Union. The debate with regard to the kind of relationship between the regulatory framework and the European Commission began with the Bosman case,¹⁶ which laid down the application of competition law to sport. In a similar manner the intervention of the Competition Commission of India (CCI) with

¹³ Ian Henry, *European Models of Sport: Governance, Organisational Change and Sports Policy in the E.U.*, Hitotsubashi Journal of Arts and Sciences 50 (2009), pp.42-44.

¹⁴ Committee on the Internal Market and Consumer Protection of the European Parliament, *Professional Sport in the Internal Market*, http://www.asser.nl/upload/sportslaw-webroot/cms/documents/cms_sports_65_1_Professional%20sport.pdf

¹⁵ Michael Beloff, Tim Kerr, Marie Dementriou and Rupert Beloff, *Sports Law* (2nd, Hart Publishing, London 2008) 166.

¹⁶ *Union Royal Belge des Societies de Football Association ASBL & Others v. Jean -Marc Bosman*, [1995] C-415/93 ECR I 4921 (EC).

regard to the BCCI case¹⁷ signifies the transition from autonomy to regulating the regulator in the Indian sports industry, whose decisions have commercial impact in the market. This decision of the Competition Commission of India has been criticized on the criterion of the application of competition law on the understanding of regulatory and commercial functioning of sports bodies. The courts and competition authorities in the European Union¹⁸ have distinguished the understanding of regulatory orders of sports authorities with commercial impact as quintessential for the effective functioning of the sport.¹⁹ In the United Kingdom, the rule against bias is applied to sporting bodies²⁰, which requires –an adjudicator to be free from any interest in the case.²¹ The application of the principle reinstates faith in the administrative justice required to check the activities of governing bodies. The very monopolistic nature of sports bodies²² has necessitated the application of natural justice principles by the courts in England to strict scrutiny.²³ The similar application of such principles though within the bounds of judicial review in India, would facilitate effective grievance redressal of the competitors and athletes in the sports industry.

In the Indian scenario, the role of law in sports has emerged due to the growth of the sports industry as a whole and the dominant position of existing associations, whilst lacking a mechanism to keep a check over their activities. The need for self-regulation is advocated to large extent but such a hypothetical situation can persist only when there is no political involvement as a part of the governing mechanism. The competing interests of sports regulation and the adverse economic effect of such decision making, demarcates the necessity for intervention by the competition authorities. The European Union practice in this regard reconciles these interests by laying down the principle that competition authorities would accept the practices of sports bodies if they were –inherent in the sport or necessary for its

¹⁷ *Competition Commission of India, Surinder Singh Barmi v. Board for Control of Cricket in India (BCCI)*, CASE NO.61/2010' (www.cci.gov.in 2013) <<http://www.cci.gov.in/May2011/OrderOfCommission/612010.pdf>>

¹⁸ *Deliege v. Liege Ligue Francophone de Judo and Ors. (Francophone Judo League) Ligue belge de judo (Belgian Judo League)* ECJ 11.4.00, C-51/96 and C-191/97.

¹⁹ Alex Haffner, Competition Authorities raise Umpire's finger against the BCCI, <http://www.lawinsport.com/articles/competition-law/item/competition-authorities-raise-the-umpire-s-finger-against-the-bcci>

²⁰ *Locabail Ltd. V. Bayfield Properties* (2000) 1 All ER 65-67.

²¹ Simon Gard iner, Alexandra Felix, Mark James and Roger Welch, *Sports Law* (1st, Cavendish Publishing Ltd., London 1998) 198-199.

²² *R v. Football Association ex p Football League* (1993) 2 All ER 830-832.

²³ Simon Gard iner, Alexandra Felix, Mark James and Roger Welch, *Sports Law* (1st, Cavendish Publishing Ltd., London 1998) 200-202.

organization²⁴. This demarcation of the certain practices, which entail the application of competition law, has not evolved in India, in comparison to European Sports law, which lays down certain exceptions to the economic impact of sports bodies in the form of judicial doctrines. The E.U Competition Law applies the sporting exception²⁵ as a rule to balance the competing interests of competition and development of sports.

In the *Deliege*²⁶ and *Meca Medina*²⁷ case, the E.U Competition authority has applied this rule and recognized the domain of federation with regard to the criterion of selection and doping rules framed by the sports body. Moreover the *Meca-Medina* case does provide leeway to sportsmen by holding that sporting rules do not by default fall outside the scope of E.U Competition Law.²⁸ This in effect provides for legitimate reason test in determining the actions of sports organizations on the restrictions imposed on athletes and irrespective of the economic impact, as competition law has to be applied with exceptions to the sports sector rather than in its entirety. The rules which are inherent to the sport are called the ‘‘rules of the game’’²⁹ which create a legal distinction in the application of competition law to sports. Thus a competition law sports policy with rules on the lines of the Helsinki Report on Sports³⁰ would demystify the extent of rule making powers of sports bodies, delineating the abuse of monopolistic power from the legitimate exercise of powers.

This understanding cogently aligns with the requirements of the sports sector in India, where further investment necessitates efficacious sports administration. Hence the paradigm of sports law necessitates the application of competition law in a starkly differentiated manner in comparison to other sectors of the economy, to nurture the distinctive economic functioning of the sports industry. The problem with the sports administration in India arises from the kind of management policy of hierarchical flow of power from national bodies, when the State list contains the subject of administration of sports as per the seventh

²⁴R. Parrish, *The EU’s Draft Constitutional Treaty and the future of EU Sports Policy*, *Int. Sport Law Journal* (2003) p.24.

²⁵*Walrave and Koch v. Union Cycliste Internationale* [1974] ECR 1405, p. 8-9.

²⁶ *Deliege v. Liege Ligue Francophone de Judo and Ors. (Francophone Judo League) Ligue belge de judo* (Belgian Judo League) ECJ 11.4.00, C-51/96 and C-191/97.

²⁷*Meca-Medina and Majcen v Commission* (2004) ECR II-3291, para 40-44.

²⁸An Ve rmeersch, *All’s Fair in Sport and Competition? The Application of EC Competition Rules to Sport*, *Journal of Contemporary European Research*, Vol. 3, No. 3, pp. 238-254.

²⁹ Robert Siekmann: *The specificity of Sport: Sporting exceptions in EU Law*, *The International Sports Law Journal* 2011, No. 3-4, 4/2012 p.701-703.

³⁰ Commission of the European Committees, *Report from the Commission to the European Council*, <http://aei.pitt.edu/4917/1/4917.pdf>

schedule. The top down model of flow of power reduces the scope for the development of rival sports associations due to the dominant position of national sports associations. The state of sports administration in India can be understood from the action taken by the International Olympic Committee (IOC), with regard to the Indian Olympic Association violating the Olympic charter and its subsequent suspension.³¹ The governmental intervention in the sports industry becomes ostensibly clear when politicians chair major sports bodies across India.

Thus the problems that affect quality sports administration in India arise from the issues of accountability, transparency, overarching discretionary powers and accruing benefits of a dominant position, without due concern for a competitive market, due to concerns of profit maximization. The stronghold of the BCCI signifies such of lack of accountability and transparency, with wide discretionary powers with no checks and balances.³² The powers of the BCCI arise from the de facto powers granted as a result of the International Cricket Council (ICC) and the logic behind an autonomous regulator for each sport. This concept of an autonomous regulator in the sports sector in India has remained an exclusive domain with no control over its functioning as well as decision-making. The resolution to the issues plaguing the sports industry lie in the application of competition law and the resulting competition compliance, which has proven to be a successful model of regulation of the unregulated in the world. The Indian sports administration grapples with issues such as Sponsorships, Media Rights, Doping and Drug Abuse, Discrimination and Unauthorized Betting,³³ which can also be tackled through an effective competition policy and the subsequent efficient sports administration arising out of a competitive business environment.

COMPETITION ISSUES IN THE SPORTS INDUSTRY

The sports revolution in India has sparked of a tussle for the economic benefits resulting out of the league system of sports entertainment such as the Indian Premier League. The broadcasting rights for these sporting events have grown as being commercially viable for both the broadcaster as well the regulatory body. The ticketing arrangements, sponsorship allotments and rigging of bids are the major concerns where the realm of competition law and

³¹ Chander Shekhar Luthra , 'Indian Olympic Association's suspension to continue after International Olympic Committee diktat' (www.dnaindia.com 2013) <<http://www.dnaindia.com/sport/1885060/report-indian-olympic-association-s-suspension-to-continue-after-international-olympic-committee-diktat>>

³² Apurv Sardeshmukh, 'Abuse of Dominant Position by the BCCI-CCI decision' (www.indialawjournal.com 2013) <http://www.indialawjournal.com/volume6/issue_1/article5.html>

³³ Andrea Cattaneo, The Nature of Broadcasting Rights in U.S. and Europe, International Sports Law Journal (2012) p. 95-97.

regulation clearly subsume themselves. Thus the separation between the regulatory policies and anti-competitive behavior is of the primary concern for the competition commission.

The issues that the sports industry grapples today are with regard to the domination of single players in the realm of sports. The ambit of the Competition Commission of India, deals with issues that plague sports industries around the world such as broadcasting rights, prejudice in selection procedures, inappropriate deployment of funds and non-accountability in addition to unethical and undemocratic electoral practices.³⁴ The Indian Competition Act, 2002 states that a dominant position arises when the enterprise has the power to function independently of its competitors and effect then and its consumers in its favour.³⁵ The commission then proceeds to identify this dominant position based on section 19 of the Competition Act. This identification of such a position in the market becomes difficult in the sports industry as the sporting exceptions are applied in adherence to the rule of reason. The role of competition law in other realms of the market has resulted in an affirmative balance of creating a righteous market. The lack of competition law in the emerging sports law in India creates a vacuum that cannot be filled through the absence of law. The application of competition law in the European countries has resulted in a positive outcome to the development of sports administration. The BCCI, IOA and the IHF and various other associations in India have a politicized administrative structure, which reduces the scope for competition and sports development.³⁶ Such monopolizing bodies with political heads rebuff the private players that want to enter the emerging sports market in India. The effect of competition law on sports can be gauged from the way in which Competition law impacts the organization, structure and commercial exploitation of sport. The arrangements that exist in India scenario comprise of an autonomous governing body, which acts as the centralized decision-making mechanism for all sport related commercial activities. There is little substance in the argument that sport should be exempt from the application of competition law, considering the way in which decisions of sport bodies impacts other related sectors and industries in the market. The European Commission has classified such a proposition of exemption to be 'unnecessary, undesirable and unjustified'.³⁷ The very existence of such one federation governing bodies instills the logic of clear domination in a monopolistic manner, resulting in making claims of abuse of dominant position an easy proposition. The de facto monopolistic like dominance of

³⁴ Gaurang Kanth, 'Emergence of Sports Law in India ' (www.indialawjournal.com 2009) <http://www.indialawjournal.com/volume_3/issue_2/article_by_Gaurang.html

³⁵ Section 4, Competition Act, 2002.

³⁶ Boria Majumdar and Nalin Mehta, India and the Olympics, Harper Collins Publishers (2010) p.97-99.

³⁷ Adam Lewis and Jonathan Taylor, 'EC and UK Competition Rules and Sport' in (eds), Sport: Law and Practice (2nd, Lexis Nexis Butterworths, London 2003) 337.

the certain bodies in India raises doubt as to their functioning, with no checks and balances as to their decision making and discretionary powers. This issue is merely not the grant of power but the abuse of power, which is the mainframe issue of Indian sports administration. As the European Commission has accurately portrayed this principle –It is not the power to regulate a given sporting activity as such which might constitute an abuse but rather the way in which a given sporting organization exercises such power.³⁸

Apart from this issue, the current scenario demands the flexibility of competition law to adapt to the variant specificities of the sports sector. The sports sector varies from the normal industries, due to certain decisions having economic consequences, though intending to achieve certain said objectives of governance. Thus a balancing act is necessary to allow for freedom of regulation whilst abhorring anti-competitive behavior. The Competition Commission must recognize this co-operative factor required in the sports industry where elimination of inefficient competitors is not the aim but interdependence for competition to exist. This distinguishing factor of the sports industry is difficult to identify considering the domination from a single governing body. The need for competition in the market is to provide for lower prices and wider choices to the consumers. In such a scenario where there is a tendency for indulging in non-competitive activities, the incentive for the sellers to reduce production costs through innovation and other mechanisms is drastically reduced. Thus the role of the competition commission is keeping a check over the economic decisions of these governing bodies, provides for an indirect control over anti-competitive behavior. The rent seeking behavior in the sports industry can be curtailed only when decisions of the Competition Commission as in the BCCI case ³⁹ drastically brought about a counter mechanism for the autonomous and monopolistic behavior of governing bodies in the sports industry. Thus the sporting rules, which are applied in an objective, transparent and non-discriminatory manner do not constitute restrictions of competition. ⁴⁰ The application of the sporting exception and the rule of reason doctrine ⁴¹ also act as a defense to the decisions of the sports association, when they can result to be pro-competitive rather than being anti-competitive. The common law doctrine of restraint of trade provides a useful mechanism to

³⁸ European Commission, 'Commission debates applications of competition rules to sport' (europa.eu 1999) <europa.eu/rapid/press-release_IP-99-133_en.pdf>

³⁹ Competition Commission of India, Surinder Singh Barmi v. Board for Control of Cricket in India (BCCI), CASE NO.61/2010' (www.cci.gov.in 2013) <<http://www.cci.gov.in/May2011/OrderOfCommission/612010.pdf>>

⁴⁰ Jacques Rogge, 'The Rules of the Game' (www.fia.com 2001) <http://www.fia.com/sites/default/files/basicpage/file/governance_sport.pdf>

curb the unregulated sport governing bodies,⁴² whereby the doctrine relies on the basis of a legitimate desirable aim from the restrictions imposed by the sport bodies.

The BCCI decision has invoked the much-needed intervention of the competition commission to regulate the economic aspects of the sports industry, which effect the very future of this sector in India. The sale of broadcast rights of the Indian Premier League (IPL) for a period of 10 years was considered as anti-competitive by the Competition Commission, thus foreclosing an alternative channel from broadcasting the IPL for a prolonged period. Under Section 4 of the Competition Act, BCCI was considered to come under the definition of enterprise enshrined under this section. The CCI ordered the BCCI to –cease and desist from using their regulatory power in arriving at a commercial agreement and directed it to pay six per cent of the annual turnover of the BCCI for the last six years.⁴³ The power that the BCCI derives from the ICC for rules regarding disapproved cricket were used against Indian Cricket League (ICL), which the CCI clearly stated as being used for anti-competitive activities. The judgment of the CCI in this regard, removes the illusions under which the BCCI has been functioning throughout its existence as the sole regulator. The CCI establishes the domain under which the actions of the BCCI will remain under scrutiny and will have a clear application of competition law with some exceptions.⁴⁴ The Indian Cricket League (ICL) a private league organized by Zee Entertainment Enterprises was denied a number of benefits that accrued only to BCCI out of its dominant position in the market. The entry barriers that BCCI creates in its domain of dominance, amount to restraint of trade and unfair competition in effect invoking the essential facilities doctrine, even whilst taking regulatory decisions.

The alleged irregularities in grant of franchise rights, media rights and award of sponsorship rights were contented, wherein the CCI stated - -There is no other competitor nor was anyone allowed to emerge due to the BCCI's strategy of monopolizing the entire market.⁴⁵

Hence, the commercial nature of sports associations in India has brought forth the applicability of the competition act and benefits which accrue out of its enforcement. The

⁴²Adam Lewis and Jonathan Taylor, 'Challenges in the courts to the actions of sports governing bodies' in (eds), Sport: Law and Practice (2nd, LexisNexis Butterworths, London 2003) 173.

⁴³ *Surinder Singh Barmi v. Board for Control of Cricket in India* (BCCI), CASE NO.61/ 2010' (www.cci.gov.in 2013) <<http://www.cci.gov.in/May2011/OrderOfCommission/612010.pdf>>

⁴⁴Sujay Mehdudia, '52-crore penalty slapped on BCCI for abuse of position' (www.thehindu.com 2013) <<http://www.thehindu.com/news/national/rs-52crore-penalty-slapped-on-bcci-for-abuse-of-position/article4393922.ece>>

⁴⁵ *Surinder Singh Barmi v. Board for Control of Cricket in India* (BCCI), Case No.61/2010' (www.cci.gov.in 2013) <<http://www.cci.gov.in/May2011/OrderOfCommission/612010.pdf>>

decision of the CCI in the Hockey India case⁴⁶ reaffirms and demonstrates the ambit of the powers of the competition commission to intervene in matters of even perceived anti-competitive behavior. Under the powers conferred by virtue of Section 18 of the Competition Act, the CCI observed that Hockey India should provide for an 'effective internal control mechanism' to ensure regulatory powers do not impede the process of decision making while deliberating matters of commercial nature. The CCI has rightly stated that 'A regulator must necessarily follow the dictum that Caesar's wife must be above suspicion'.⁴⁷ Though Hockey India was absolved of the charges of anti-competitive activities, but the judgment acts as a warning to the transgressors of the competition act, clearly laying down that the duality of functions have to be exercised with caution. The monopoly status of the BCCI has been recognized by Apex court,⁴⁸ but the court has rendered the exercise of such powers dependent on the doctrine of fairness and good faith. This application is based on the public function that the BCCI exercises in the domain of cricket regulation. Thus the courts have created legal barriers in the absence of specific regulations, but the sports sector still remains largely unregulated in regard to sports administration.

The CCI has also overcome the legal barrier put forth by governing bodies of not coming under the purview of the competition act, by virtue of them being non-profit organizations and not meeting the criterion laid down under Section 2(h) of constituting an enterprise. The commission has overcome this by the application of the principle laid in Hemant Sharma case,⁴⁹ where the Delhi High Court considered the Chess Federation as an enterprise under section 2(h) of the Competition Act. Thus by the way of this precedent and the entrepreneurial conduct of such governing bodies, the CCI has held all sports associations to be regarded as an enterprise in accordance with their commercial activities in the BCCI case.⁵⁰ This landmark ruling holds the potential for bringing at par India's legal mechanism with that of the global order, where competition rules apply to the sports industry. The Competition Appellate Tribunal is still deliberating over the ruling in the matter, with BCCI employing the best of the legal minds in the country.⁵¹ But the ruling initiates the process of

⁴⁶ Competition Commission of India, 'Dhanraj Pillay and Others v. Hockey India (Case No.73 of 2011)' <http://www.cci.gov.in/May2011/OrderOfCommission/732011.pdf>

⁴⁷ *Ibid.*

⁴⁸ *Board of Control of Cricket, India v. Netaji Cricket Club*, AIR 2005 SC 592.

⁴⁹ *Hemant Sharma and Ors v. Union of India and Ors. I.L.R.* (2012) I Delhi Vo l. I Part II p. 620.

⁵⁰ *Surinder Singh Barmi v. Board for Control of Cricket in India (BCCI)*, Case No.61/2010' (www.cci.gov.in 2013) <<http://www.cci.gov.in/May2011/OrderOfCommission/612010.pdf>>

⁵¹ Prachi Shrivastava, 'Amarchand gets Compat to stay \$9.6m CCI penalty on BCCI' (www.legallyindia.com 2013) <<http://www.legallyindia.com/201305093660/Competition-Law/amarchand-gets-compat-to-stay-9-6m-cci-penalty-on-bcci>> accessed 6th October 2015.

the much-needed change in the sports industry by the way of demarcating the boundaries of regulation and commercialization of sports, through the enforcement of the competition act. The forthcoming issues such as All India Chess Federation withholding players from participating in events of other associations can now be dealt with in the purview of the competition act. The European Commission Competition law also provides for rules regarding state aid, which threatens to distort competition. Thus the advantage conferred by the state upon a selected body, puts it in a better position to compete with the rivals in the market. The European Commission as a safeguard requires its sanction for state aid⁵² to be not considered illegal, but such a practice does not prevail in the Indian scenario, serving as an inherent defect.

CONCLUSION

The coming of sports law under the ambit of competition law, whereby the inherently monopolistic like regulators must factor in regulatory and competitive policies in decision making in the sports industry. Therefore no sports regulator would ignore the prevailing competition law when exercising decision-making powers over commercial transactions or whilst framing rules and regulations. The unique features of the sports realm distinguish it from other industries, where elimination of rivals is not the goal, but interdependence, which would sustain demand in this sector. The overriding factor of self-aggrandizing behavior in the sports industry due to little checks and balances, will be curbed due to the perceived intervention of the competition commission. The autocratic and autonomous method of governance of sporting bodies will reduce due to the emergence of the application of competition rules in the sports industry. Thus as soon as the legal mechanism comes into place to counter the growing anti-competitive behavior, it will also prove efficient in sustaining the investment into sports and the appropriate utilization of the resulting profits. The competition commission can help realize the objective of transparency, accountability and good market practices in sports administration. This scenario only envisages the cricket industry and not the sports industry, but the upsurge in viewership can be seen from the diversification of sports investment into boxing, wrestling, badminton and other upcoming sports in relation to the Olympic movement.

⁵²Mukul Mudgal, Law and Sports in India: Development, Issues and Challenges, Lexis Nexis Butterworths Wadhwa, 2011 p.124-6.

Thus, the sport of cricket can be understood as an example of what the league system and investment can do to this realm of the sporting sector, in comparison to other sports, which are treading a similar path of reaching out to the masses through competition and the media. The issues with regard to competition law lie in enforcement as well as its awareness and advocacy, but the emerging need for competition compliance will provide for the advent of good governance in the sports industry. This good governance will result out of the need or greed for domination in the market when the easier method of such dominance through anti-competitive activities is ruled out as an effective option. Thus the eventual result will be competition and efficiency, when rent-seeking behavior is removed as the next best alternative for the governing bodies. The competition act under Section 49⁵³ adds an advocacy feature to the functioning of the commission, through which awareness and enforcement can result complementarily.

As competitive markets need accompanying governance in order to prevent the self-destruction of Competition,⁵⁴ the means to achieve efficiency is coherently linked with competition in the market. The sports industry will improve the functioning of its administration by the environment of competition, to outdo the rival sports association, not through the usage of its dominant position, but its sports management and administration. The effective enforcement of competition law will redefine the grounds of competition and reduce the scope for recurring malpractices that the Indian sports industry. The much needed capital boost to the sports industry is also the problem when governing bodies with political control, often deter private investment in the sports industry. In a way competition law would also protect the interests of the investors and facilitate good sports administration through a competitive environment. Thus the enforcement of competition law in the sports sector would result in the sports administration bodies opting for conforming to the rule of law, rather than approaching regulatory policies at their own whims and fancies. The National Sports Development Code of India,⁵⁵ has also laid down the best practices essential for good governance in the sports industry.

The European Court of Justice in the Meca-Medina case,⁵⁶ clearly laid down that the sporting exception with regard to competition law would not apply, simply as a result of being

⁵⁴ Oliver Budzinski, *The Governance of Global Competition* (1st, Maxwell, 2008) 1 -3.

⁵⁵ <http://yas.nic.in/en/yas2/national-sports-development-code-india-2011>

⁵⁶ *Meca-Medina and Majcen v Commission* (2004) ECR II-3291, para 42.

concerned with organizing sports.⁵⁷ Thus the established global practices of regulating the sports industry would benefit India and the larger stakeholders involved in this sector. The professional team sports in the United States have created a revenue sharing mechanism between clubs, to transfer the benefits to all clubs while maintaining a reasonable degree of competition and uncertainty of outcome.⁵⁸ This scenario promotes competition rather than deter competition, as in the case of India, where monopolistic tendencies inadvertently act against the development of the sports sector in its entirety.

The major controversies that have erupted in the sports sector have resulted in the public opinion being garnered against the commercialization of sports through complete governmental regulation. Though commercialization has led to investment in various sports, but the negative effect can only be tackled by effectuating transparent governance mechanisms in comparison to the corporate sector under the Companies Act, 2013.⁵⁹ The National Sports Development Bill,⁶⁰ which failed to materialize, did provide remedy to the catena of anomalies present in the Sports sector, but its rejection adds to the idea of complete regulation of sports bodies rather than opting for regulation of their functioning. The move towards regulation of the sports sector does remain a political question rather than a question of transforming sports governance in India, considering the political control and vested interests that prevail in sports federations.

⁵⁷ Michael Beloff, Tim Kerr, Marie Dementriou and Rupert Beloff, *Sports Law* (2nd, Hart Publishing, London 2008) 165.

⁵⁸ Simon Gardner, Alexandra Felix, Mark James and Roger Welch, *Sports Law* (1st, Cavendish Publishing Ltd., London 1998) 260.

⁵⁹ Prachi Manekar, *Insights into the New Company Law*, Lexis Nexis p. 4-5.

⁶⁰ Press Information Bureau, Draft National Sports Development Bill, 2013, <http://pib.nic.in/newsite/erelease.aspx?relid=97118>