

THE NECESSITY OF HUMAN RIGHTS IN SPORTS LAW

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1. The World of Sports Succumbs to the Wave of Commercialisation

We inhabit the epoch of commercial transformation where the sporting fraternity has snowballed into a commercial behemoth. The meteoric rise of the sporting guild into a golden turf brimming with glory and affluence can be attributed to the unflinching support transfused by the swarming sports enthusiasts. Excessive emotional attachment displayed by the sports aficionados has given a fresh lease of materialistic life to the erstwhile principled battlefield where battles of unmatched integrity and triumphant glory were fought. Enthralled by the acrobatic glitters and physical prowess, sports enthusiasts regard athletes as extraordinary beings endowed with virtues that go beyond physical competencies. As an unfortunate consequence, the aficionados, vehemently rummage through the life history of the revered sporting stalwarts to glean attributes of rectitude and morality, thereby capsizing their sense of privacy, invading their personal space and violating the human rights relating to dignity and personal integrity. The regulating mechanisms and arbitral bodies in the sporting arena have assumed the robes of a patronising institution that stringently contrives inhumane strategies and debunks the noble and transcendental purposes that pledge to transform the world into a healthy battlefield through the playful device. Adopting an identical tone, the Indian Supreme Court, in *Board of Control of Cricket v. Cricket Association of Bihar and Ors*¹, pronounced that "commerce has overtaken the enjoyment of the sport, with advertisement continuing many a time, even after the first ball and again commencing even before the last ball of the over is played, thereby interrupting the full and proper broadcast of the game. Regardless of the wicket that has fallen, century having been hit or other momentous event, full liberty is granted to maximize the broadcaster's income by cutting away to a commercial, thereby robbing sport of its most attractive attribute – emotion."

In the instant verdict, forbearing itself from engaging in stifling legal stringency, a hackneyed legal course adopted by regular Courts, the Apex Court, took a progressive leap by declaring that basic human emotions underlying fundamental human rights shall not escape the vigilant eyes of an otherwise rigid legal edifice.

¹ 3 SCC 251 (2015).

Since times of yore, the playing kit has been cherished as an instrument that produces marvels of fraternity and magnanimity. The world of sports refuses to be labelled as a commodity that mints money. Sports can rather, be emphatically termed as a pious spirit which preaches that bravery and kindness can run in tandem and their conglomeration begets the hallmark of sportspersonship. As a result, sports lies couched within the protective frontiers of Human Rights Law, garnering recognition as a human right.

Law, being the guardian of society fastidiously cultivates a sporting environment as "participation in organised competitive sports provides several significant tangible and intangible benefits to athletes, while unifying members of an increasingly racially, culturally, and religiously diverse populace."² The premise that sports is a hefty contributor to societal prosperity makes it imperative for the legal armours to regulate the sporting arena. Accordingly, the framework of *lex sportiva* is being gradually nurtured by the triangular arms of constitutional law, contractual law and the human rights campaign.

2. The Ancient Contract Bird: Protecting Lex Sportiva From the Wrath of Subjectivity

The emergence of sports law as an assortment of various branches of law has been a recent phenomenon designed to plug in systemic fallacies. In spite of the overwhelming presence of administrative law, constitutional law, international law, criminal law and competition law in the domain of sports law, it is observed that contractual law stands firm at the epicentre of all sporting activity. The predominance of contractual law in sports law can be ascertained by inspecting the foundation on which the Court of Arbitration for Sports (CAS) towers. The Court of Arbitration for Sports is a private, specialised arbitral body committed to resolve sports related disputes at the global forum³. In spite of being an arbitral body, the functioning of CAS is embedded in contractual law by virtue of the fact that it relies on the agreement between parties. More so, the CAS acquires its very jurisdiction through the mutual consent of the parties involved. A dispute may be submitted to the CAS only if there exists an arbitration agreement between the parties which specifies recourse to the Court of Arbitration for Sports. It

² Rodney K. Smith, When Ignorance is Not Bliss: In Search of Racial and Gender Equity in Intercollegiate Athletics, 61 (1996).

³ Court of Arbitration for Sport, Code of Sports Related Arbitration, (14 July 2019, 2:43 PM), <http://www.tas-cas.org/en/arbitrage-statuts.asp/4-0-1075-4-1-1/5-0-1089-7-1-1/>.

is a celebrated principle of contractual law that the stage of agreement is the primeval ingredient in the formation of a contract. Two kinds of disputes may be submitted to the CAS:

(a) Commercial Disputes - This classification essentially involves disputes relating to the execution of contracts, such as those relating to sponsorship, the sale of television rights, the staging of sports events, player transfers and relations between players or coaches and clubs and agents (employment contracts and agency contracts). Disputes relating to civil liability issues also come under this category (for instance, an accident to an athlete during a sports competition). These so-called commercial disputes are handled by the CAS acting as a court of sole instance.

The disputes that are commercial in nature would merely attract cursory attention during the course of this academic expedition. The second category of disputes would garner academic interest as it helps us ascertain the role of Contractual Law in dissipating subjective considerations from the adjudicatory mechanism pertaining to unethical behaviour and doping,

(b) Disciplinary Disputes - The second classification is premised on disciplinary cases, the bulk of which are related to doping and unethical behaviour. Cases relating to unethical behaviour would include disciplinary concerns of CAS such as violence on the field of play, abuse of a referee, among a coterie of other misdemeanours. Such disciplinary cases are generally dealt with in the first instance by the competent sports authorities, and subsequently become the subject of an appeal to the CAS, which then acts as a court of last instance⁴.

The bilateral characteristic of contractual law ensures that neither do the unilaterally established eligibility rules preclude individuals from athletic participation nor do they condition his or her right to participate on compliance with several requirements⁵.

⁴ Gaurang Kanth, *Emergence of Sports Law in India*, ILJ.

⁵ Matthew J. Mitten, Timothy Davis, *Athlete Eligibility Requirements and Legal Protection of Sports Participation Opportunities*, Marquette University Law School, 2008.

2.1 Dispelling the Clouds of Ambiguity in the Term ‘Unethical Behaviour’

With the cascading glory and affluence the sporting world is endowed with, the clarion call has been raised for the establishment of a central regulating mechanism. The terms of contract tie the unbridled success of the sportsperson within a lawful bundle of enforceable conditions. While apprehensions for want of regularity and reasonability have been raised in the previous segments with respect to the subjectivity ingrained in the term ‘unethical behaviour’, the principles of interpretation of contracts enunciated by Lord Hoffmann in *Investors Compensation Scheme Ltd. v. West Bromwich Building Society*⁶ ward off the irregularity,

1. Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge,
2. The background means “matrix of fact”,
3. The law excludes from the admissible background, the previous negotiations of the parties and their declarations of subjective intent.

A studied analysis of the conditions laid down in the verdict would adumbrate that a behaviour cannot be termed as ‘unethical’ unless the conduct is scrutinised with reasonable eyes that adopt a holistic approach by perusing the chain of events forming the background. The second point emboldens the first by giving primacy to the matrix of fact that animated the act. We may deduce that unethical behaviour should not be viewed in isolation but must be extrapolated by giving due regard to the historicity.

The writings on *lex sportiva* that present a taut dichotomy between moral and legal laws adduce that sports law stands well-equipped to tackle the bogus allegations imputed by frenzied enthusiasts upon sportspersons. Subscribing to the distinction, Professor Marios Papaloukas⁷ opines that “there are many rules governing a person’s behaviour. These can be moral or social rules, to name a few. Of all these rules only some are so vital for society that must be upgraded to the status of legal rules. Legal theory provides a set of requirements in order for any rule to be considered rule of law. All legal rules dictating human behaviour have the following characteristics:

⁶ 1 WLR 896 (1998).

⁷ Assist. Professor of Sports Law University of Peloponnese, Attorney at Law, Greece.

1. They are of a general and abstract nature and they do not apply to a specific person,
2. They dictate the external behaviour of a person,
3. They are obligatory in the sense that a specific authority will ensure its application
4. They are issued by an external authority and not by an abstract set of persons driven by caprice⁸.”

Hence, arbitrary rules of morality contrived by sports enthusiasts cannot delineate the standards of responsibility imposed on sportspersons. Moreover, given the fact that sports laws have been essentially identified with a level of seriousness that appears akin to the rule of strict liability implanted in criminal and tortious disciplines, they have to be drafted in a meticulous manner to shield the privacy and integrity of responsible sportspersons. While sanctioning improper behaviour and checking the occurrence of unethical practices by sportspersons, the patrons of sports law must resist the temptation of converting the vigilant legal forceps into an instrument of policing. More often than not, sports jurists, themselves being enthusiasts of the concerned sport, fall prey to the vice of sentimental aggression. Excessive attachment with the performances and personal standards of an athlete subject the sportsperson to constant scrutiny. *Lex Sportiva* builds rigid contours to avert events of misdemeanour and substance abuse in the sacrosanct sporting arena. In order to wield the power of sanction, in an arena as resplendent as the world of sports, *lex sportiva* has to distance itself from malleability of structure. Henceforth, those wishing to relate to any part of the sports sector have to abide to all of its rules. The penalty for breaking the rules can be as harsh as life-long suspension. A suspension from the sports community for an athlete is often a career-ending punishment that ravages the gentle peace of life for the concerned sportsperson. Due to the principle of monopoly, there is no other alternative for the ostracised sportsperson. This would also reveal that the global sports establishment based on its monopolistic status, its self-governance as the exclusion penalty for non-compliance with the existing rules, emerges as a global sports regime. Within the frontiers of this global sports regime, there lies a central authority adopting rules (due to sports self-governance), that are imposed upon all its subjects (by virtue of the exclusion rule) and although an exclusion penalty theoretically could be perceived as nothing more than a dismissal from a position, in reality (due to the monopoly) it is a professional catastrophe⁹. Furthermore, contrary

⁸ Marios Papaloukas, ISLR/Pandektis, (2013).

⁹ Ibid.

to the rules of *Lex Mercatoria*, the rules of *Lex Sportiva* acquire binding force by the coercive power of sports authorities and they never need a formal act of a sovereign state¹⁰. Since contractual terms in sports law that form the basis for *lex sportiva* are pre-eminently agreement-based, interpreters of sports related disputes must consider the impermeable frontiers of the contractual agreement to resist from licensing post-contractual subjectivity. Moreover, non-fulfilment of the terms and conditions of the contract or presence of an unlawful object renders the contract void, hence there exists no scope for impassioned criticism. The boundaries delineated by the contractual terms, must by no means be overstepped. Taking recourse to the manoeuvre of purposive interpretation, it is inferred that athletes should not be subjected to moral frisking. It has been gathered that sports laws are governed by the contracts entered into by the contracting parties. Hence, it becomes essential that these terms be devoid of arbitrariness. The Indian Courts underscore the view that rapacity and commercial pursuits often introduce the vice of partiality and arbitrariness in sports related appointments where neutrality is earnestly desired. The Indian Supreme Court, in *Board of Control for Cricket v. Cricket Association of Bihar & Ors*¹¹, expressed concern over the dearth of representation to players. It solicitously held that, "it is only by accident that players are elected to the Working Committee of the BCCI. Their views are, more often than not, ignored, and the lack of an assured position at the governance table leaves the players gravely hamstrung. With arbitrary contracts and salaries that are dwarfed by those playing for franchises, it is full credit to the national players that they continue with enthusiasm and patriotic fervour to do their best for the country when they have no say in the affairs of the very body towards which they are the primary contributors."

The appointment of laypersons in primary sporting posts drains the essence of impartiality in a field that thrives exclusively on skill, talent and objective abilities. The entrustment of the decision-making baton onto individuals lacking an eye for detail and devoid of keenness of spirit often entangles the athletes in a trap of frivolous accusations. The allegations are fuelled by dishonouring the segregation between moral and legal obligations. Progressive judicial pronouncements have highlighted that the construction exercise concerning sports disputes must be approached objectively, not subjectively¹². Moreover, the meaning of the terms of a

¹⁰ Panagiotonoulos. Sports Law, *Lex Sportiva & Lex Olympica*, 128-132 (2011).

¹¹ 3 SCC 251 (2015).

¹² Toll (FGCT Pty Ltd v. Alphapharm Pty Ltd 219 CLR 165 (2004)).

contractual document is to be determined by what a reasonable person would have understood them to mean. Determining what a reasonable person would have understood the terms of a contract to mean normally requires consideration not only to the text, but also of the surrounding circumstances known to the parties and the purpose and object of the transaction. The task is thus one of construing the text of the contract in its permissible context¹³. The law of contract is the cornerstone on which 'Sports Law' has been built. Contractual law exerts primary importance in forming an interface between sports and law. Whether sport is being played at an elite level or at a more humble one there is always a contract working somewhere. Usually it is an enforceable one. Inevitably it is to the law of contract that one needs to turn first when one is considering matters such as disciplining of athletes including but not confined to, commission of doping offences¹⁴. Drawing a symmetry to the omnipresence of contractual law in the field of sports, Allan Sullivan remarks that where the sporting body in question has a virtual monopoly in controlling the right of athletes or participants to compete or participate in the particular sport and can impose disciplinary sanctions upon the competitors and participants, it is likely that the Court will find that the parties intended the contract between them to be legally enforceable¹⁵.

The enforceability of sporting agreements was affirmed in a resounding fashion in *Rush v W. A. Amateur Football Club Inc.*¹⁶ by Templeman J., "although a registered player has no proprietary right or interest in the league, as I understand it, his right to play or participate in Australian Rules Football in this State, as an amateur, is governed exclusively by the league. While no pecuniary value can be placed on that right, it nevertheless has considerable value to those who play the game for the love of it. No greater control could be exercised by an association over its members than to deprive them permanently of that enjoyment." Further, in *Modahl v British Athletic Federation*¹⁷, the Court reiterated its stance of giving primacy to a contractual setup by substantiating the prerequisite factor constituting intention, "the submission that no one can have intended to create a legally enforceable relationship in a sporting context seems unrealistic in relation to the modern sporting scene, which, whatever the labels of amateurism, has aspects affecting substantially the career, livelihood and prosperity of participants."

¹³ Ibid.

¹⁴ Allan Sullivan QC, *The Role of Contract in Sports Law*, ANZSLA, 2010, 3.

¹⁵ Ibid.

¹⁶ WASC 154 at [54] (2001).

¹⁷ 1 WLR 1192 at 1222 [105] (2002).

Demarcating the silhouette of contractual law in crystal clear terms, the Court in *McClelland v Burning Palms Surf Life Saving Club*¹⁸, inscribed the unassailability of contractual terms in the domain of sports law, "where the sporting body in question is incorporated (either as a company or under the Incorporated Associations legislation in the various Australian jurisdictions) and the disappointed athlete is a member of the incorporated body then a court may feel free to find that the athlete has locus standi to take proceedings against the company or association to restrain it from treating as valid any purported decision which is contrary to the rules of the corporation or association."

The canons of contractual law infuse the sporting world with hues of arithmetic precision. Apart from penalising the conduct of sportspersons, sports law expends its devotion and legal energies in protecting the employment of players. Contractual law prohibits employers from unreasonably dismissing players. Conversely, where a player is found to be at a fault, sports law dictates that a regulated body looks into the matter. It is indisputable that contractual terms create a balance and thereby endeavour to avoid malicious practices in the sporting industry. For contracts to be legal, unambiguous and binding guidelines must be spelt out. In the absence of a stringent body of laws, regulating the conduct of players and the bodies that oversee them, sports would be in a state of disarray¹⁹.

3. Coalescing Contractual Law and the Sacrosanct Principles of Natural Justice: A Path to Redress?

In a backdrop, where the emotionally aggressive sports enthusiasts have bombarded the personal space and sense of private and reputational safety of the sports celebrities by constantly dragging the personal life and professional performances of the latter under radar, the fusion of contractual law and natural justice comes to their rescue. Administrative and Public law ensure that the principles of natural justice stand supreme, while Contractual Law delineates the rights and obligations of the concerned parties and elucidates the sanctions that may be imposed. At this juncture, it may be noted that, "at every stage of the disciplinary process contract plays the central role in determining the rights and obligations of the respective parties and the sanctions which may be imposed. Whilst, by analogy to public law principles, or by the process of

¹⁸ 191 ALR 759 at 786 - 788 [103] – [109] (2002).

¹⁹ Roger Day, AEG Media, (11 July 2019, 4:23 PM), <http://www.aegmedia.com/importance-of-sports-law/>.

implication of terms, courts may, in some cases, seek to amplify or modify what the contract says the fact remains that it is the express language of the contract which will govern such matters in the overwhelming majority of cases.”²⁰

Emboldened by the forces of constitutional law and administrative law, the developing *lex sportiva* underscores the unassailability of the principle of fair hearing, famously known as *audi alteram partem*, “whenever an athlete’s eligibility to compete may be adversely affected, the CAS (Court of Arbitration for Sports) imposes an obligation on the IOC (International Olympic Committee) and other international sports governing bodies to provide the athlete with a fair opportunity to be heard. Thus, the CAS recognises an athlete’s procedural “right to be heard as one of the fundamental principles of due process.”²¹

The sporting arena does not confine itself to a heated battlefield yearning victory, it rather streamlines the coming together of different nations on a global platform to inscribe magnificent tales of sportspersonship. It becomes certain that in such an unblemished sheet, replete with virtues, the slightest trace of trickery and deceit would be disregarded with disdain. Inferably, indulgence in substance abuse and psychotropic drugs is condemned and strictly discouraged in the virtuous world of sports. Furthermore, in an arena where the melodies of humility and solidarity reign supreme, instances of misdemeanours such as engaging in skirmishes, altercation, violence and provocation would entail strict consequences to deter all possibilities of recurrence. More often than not, sports enthusiasts and decision makers succumb to overzealous intervention and emotional aggression while trying to save the pristine sporting fields from precarious vices. Driven by unfounded robustness, self-proclaimed saviours of the sporting world, overstep personal boundaries to castigate an alleged act of unethical behaviour. Since, we endeavour to regulate the burgeoning world of sports, the conflation of sports and law is imperative. In order to cocoon the gushing fountain of sports within the watchful embrace of law, an adhesive band comprising reason and pragmatism is essential for holding the conflation together. Law must not fall prey to the subjectivity infused in the term ‘unethical behaviour’. In order to dispel clouds of ambiguity and subjectivity, we may take recourse to the principles of natural justice that have been dotingly nurtured by the legal lexicon over a vast expanse of fertile

²⁰ cf Sullivan (n 14) 24.

²¹ Arbitration CAS 2000/A/317, A. v. Federation Internationale des Luttes Associees, 2001, Vol. 3 Digest of CAS Awards 2001-2003 159, 162 (2004).

intellect. In most simplistic terms, unethical behaviour would mean a conduct that mounts on the vice of unjust enrichment and an ensuing unequitable deprivation to the party at the receiving end resulting in a betrayal of the principles of natural justice. The prerequisites consisting of elements of unjust enrichment to one and unequitable deprivation to another acknowledge the indispensability of the concept of 'Rule of Law' to fathom reason and regularity in the elastic term, 'unethical behaviour'. The Supreme Court, elucidating the components of the concept of Rule of Law, highlighted in *Som Raj v. State of Haryana*²² that a conduct fraught with 'arbitrariness' would run contrary to the doctrine of Rule of Law, "the absence of arbitrary power is the first postulate of the rule of law upon which whole constitutional edifice is based. If the discretion is exercised without any principle or without any rule, it is a situation amounting to the antithesis of the rule of law."

In particular, the contractual discretions with respect to imposition of penalty must be exercised in the same manner as discretions relating to selection employed. However, as it is the interface between application of contract law and the rules of procedural fairness which merits particular attention²³. Since the rules of procedural fairness are governed by the characteristic feature of elasticity, they can be accommodated within the boundaries of sports law to embolden justice. Concurrently, in *Llyod v. McMohan*²⁴ the Court hailed that, "the rules of procedural fairness (or 'natural justice') are not engraved on tablets of stone." Rather, the principles of natural justice or fairness must adapt to their context and be approached with a measure of realism and good sense²⁵. The rules of procedural fairness are touted as the part and parcel of the contract animating the sports agreement unless otherwise expressly excluded. Adopting an identical tone, the conglomeration of contractual law and principles of procedural fairness was reinforced in the verdict, *McClelland v. Burning Palms Surf Life Saving Club*²⁶. It may be deciphered that the contractual terms act as sentinels for safeguarding the rights of a bonafide athlete. The contract between the sporting body and the athlete has a central, decisive role in determining the athlete's rights to be notified of the charge, the form of the hearing, the athlete's right to representation at the hearing, the duty of the disciplinary body to give reasons or not and the nature of the

²² 2 SCC 653 (1990).

²³ cf Sullivan (n 14) 22.

²⁴ AC 625 at 702, (1987).

²⁵ Nadahl v. British Athletic Federation 1 WLR 1192 at 1230 (2002).

²⁶ 191 ALR 759 (2002).

evidence to be heard at the hearing. They also may play a role in determining the grounds upon which members of the disciplinary body may be recused from hearing the matter. The orthodox view, in this respect, is that actual bias must be shown in order to have such a member removed from hearing a disciplinary matter²⁷. The aforementioned pronouncements illuminate the fact that there exist adequate safeguards to shield the personal integrity and sense of privacy of athletes from uncalled for disciplinary action. Moreover, under the bower of the contractual regime, the World Anti-Doping Code (WADC) operates in the international circuit. Hundreds of sporting associations and bodies have adopted the WADC as the core of their anti-doping policies. The WADC is intended to apply throughout the world in a consistent fashion even though the rules of contractual construction may differ from one jurisdiction to another²⁸. Acquainted with the paternal adjudication mechanism followed by the WADC, we shall divert our focus to the methodology adopted by the World Anti-Doping Code (WADC) in alleviating the grievances of responsible sportspersons who often find themselves entrapped in unfounded accusations of engagement in substance abuse and unethical behaviour. The WADC provides protective provisions to the concerned athletes to break free from the spurious shackles of disciplinary actions. Article 8 of the WADC ensures that rules of procedural fairness and fair hearing are upheld. The provision strives to provide a fair hearing within a reasonable time by a fair and impartial hearing panel and a timely reasoned decision specifically including an explanation of the reason or reasons that must be publically disclosed²⁹.

4. The Canopy of Human Rights: Dignity Registers a Thumping Victory

The world of sports, apart from producing acrobatic marvels, ardently nurtures various human rights by orchestrating a stage that brings together contrasting nations yet converging aspirations and human values. It is a distressing revelation that the practice of sports has, even in the modern age of enhanced human sensibilities, not been acknowledged as a human right. Sporting rights shall be elevated to the status of core human rights to underscore the inviolability of the sporting regime as a harbinger of human unity. Heralding the inclusion of sporting rights in the arena of human rights discourse, the pioneer of modern Olympic Games, Pierre de Coubertin remarked,

²⁷ Maloney v. National Coursing Association (1978) 1 NSWLR 161 at 171; Re Maggacis 1 Qd R 59 (1994); Kovacic v. Australian Karting Association (Qld) Inc QSC 344 (2008).

²⁸ cf Sullivan (n 14) 17.

²⁹ Article 8.1, World Anti-Doping Code (WADC), Amended in 2015.

"Sport is part of every man and woman's heritage and its absence can never be compensated for."³⁰

Further, the fourth Fundamental Principle of Olympism embodied in the Olympic Charter declares,

"The practice of sport is a human right. Every individual must have the possibility of practising sport, without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play."³¹

Furthermore, the sixth Principle states that,

"The enjoyment of the rights and freedoms set forth in this Olympic Charter shall be secured without discrimination of any kind, such as race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status."³²

It is noteworthy that the Olympic Charter unswervingly, scathes the evil of discrimination in the domain of sports. Bereft of the backing of concrete legal recognition, it may appear that the wordings of the fourth Fundamental Principle are fraught with levity and impotence, however, it must be realised that obedient adherence to the dictum of legal rules of interpretation and consequent broadening of the horizons of human rights campaign, would underline the faith in the canons of purposive interpretation. Assigning the sparkles of purposive interpretation to the provisions of the International Covenant on Civil and Political Rights³³, sports rights stand firm on the pedestal of safeguards provided by Article 1 of the Covenant³⁴. Clause one of Article 1, being imbued in the fervour of self-determination, reposes belief in the cultural and social development of mankind. Sports, assuming the role of a catalyst, facilitates the untrammelled physical, moral, cultural and intellectual development of an individual. This leads us to the deduction that the norms characterising the literature on interpretation of statutes would embrace

³⁰ Commission of the European Communities, White Paper on Sport, 391 (2007).

³¹ IV Fundamental Principle of Olympism, Olympic Charter (OC), 2015, IOC.

³² VI Fundamental Principle of Olympism, Olympic Charter (OC), 2015, IOC.

³³ International Covenant on Civil and Political Rights (ICCPR), 1966.

³⁴ ICCPR, Article 1 (1), "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

sports as a progressive pursuit that guarantees self-determination. Furthermore, clause two³⁵ ordains freedom in matters pertaining to the disposal of man's natural wealth and resources. Subservient to the noble cause of global unity, the world of sports harmonises the relations among the myriad nations by convening a pyrotechnic dialogue of conviviality where determined representatives hailing from different countries deliver flamboyant spectacles to engage in a fierce battle of acuity and brawn. On the sporting platform, nationalistic aspirations are sublimated into rhythms of global unity and solidarity by buoyant expenditures of physical energies. Hence, clause 2 of Article 1 corroborates the claim of sports to be accommodated within the comprehensive frontiers of Human Rights.

Sports rights stood scalloped in the landscape of Human Rights under the spotlight of the twenty-first edition of the FIFA World Cup held in 2018. While the grand spectacle was underway, Zeid Ra'ad Al Hussein, the UN High Commissioner for Human Rights endorsing the "unifying power of sport" elucidated that sports is a platform place where peoples and nations can come together.

It was against this backdrop that the Centre for Sports and Human Rights was launched as a vigilante for sporting activities. The Centre, which will be based in Geneva, will work with all sides involved in sport and human rights to build capacity, share knowledge and help strengthen and shape ways to improve transparency and accountability. The Centre's goal is to be a driving force in transforming the global landscape of all sports to align with international human rights standards. In addition, David Grevenberg, Chief Executive of the Commonwealth Games Federation, the organisation which is a member of the Advisory Council of the centre, enumerates that "sport is seen as neutral ground, where affiliations like race, religion, nationality, are ignored in favour of the performance of athletes. Sport promotes friendships, human connection, tolerance and fair play, while developing positive attitudes towards our fellow human beings. Most significantly, in the closing statements of his address, Zeid averred that the independent centre plays an integral role in scaling up the Commission's efforts in ensuring that sporting events are grounded in and integrated with the Universal Declaration on Human Rights (UDHR) that wields the status of an indispensable component of the International Bill on Human

³⁵ ICCPR. Article 1 (2). "All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence."

Rights. He reiterated that the chief ingredient of Human Rights is equal dignity which can, by no stretch of imagination be overlooked in the arena of sports law.³⁶

The frightening levels of affection displayed by the sports aficionados often disrupt conceptions of privacy and integrity held together by the Human Rights Campaign for individuals. Riding a wave of obsession, the enthusiasts tend to turn a blind eye to the fact that sportspersons are human beings characterised by human fallacies. At times, when the athletes they adore, fail to deliver results, the frenzied fans transform into precarious admonishers. Such a reprehensible act attracts the collective agony of the human rights campaign and the sports law regime.

As pronounced in the following excerpt, the honour and respect that athletes command by virtue of their heroics must not dangle at the behest of caprice,

“The concept of *dignitas hominis* in classical Roman parlance signified ‘status’. Honour and respect should be accorded to someone who was worthy of that honour and respect because of a particular status that he or she commanded. *Dignitas*, as it was then understood, denoted worthiness and it was accepted that it was the outer aspect of a person’s social role which evokes respect, and embodies the charisma wielded by performers and office bearers.”³⁷

Furthermore, the dignity and sense of privacy of athletes stand guarded by the protective frontiers of the Human Rights Campaign.

5. Divorcing the Apparition of Strict Liability from the Domain of Sports

Sports Law primarily imposes its faith in the ideals of contractual law. The procedure and entailing remedies envisaged under the contractual law texts are civil in nature. It is an accepted dictum of the legal field that cases of a civil nature cannot attract criminal remedies and vice versa. It is most disheartening that on several occasions, criminal remedies have been invoked to resolve civil disputes in the sporting arena merely owing to the humongous emotional sentiments staked by the swarming fanbase. A situation similar to that created by the exigencies witnessed in strict liability cases must not mar the civil spirit of the sporting regime. The doctrine of Strict

³⁶ United Nations Human Rights Office of the High Commissioner, 2018 (July 25 2019) <https://www.ohchr.org/EN/NewsEvents/Pages/CentreForSportandHumanRights.aspx>.

³⁷ Cancik, “Dignity of Man” and “Personal” in Stoic Anthropology: Some Remarks on Cicero, De Officiis, Kretzmer and Klein.

Liability is attracted by those crimes or torts which do not require intention, recklessness or even negligence as to one or more elements in the actus reus.³⁸ It is academically traceable that the doctrine of strict liability predominantly applies to acts or omissions that affect the public at large or imperil the sense of security of the society as a whole. It is implausible how the bleakest canard of engagement in substance abuse can sway the jurists to disregard elements of intention, circumstances or medical necessities and punish the innocence athletes by taking recourse to the unwarranted device of strict liability. The decision of the Doping Hearing Panel of the Badminton World Federation to withdraw the World Championship silver medal won by badminton great Lee Chong Wei revealed the invasive tendencies of strict liability in matters of sports adjudication. A dismal picture was painted for future verdicts as the three judge panel failed to consider the inescapable fact that Chong Wei was under medication when he ingested the drug (Dexamethasone) inadvertently. In spite of the fact that Dexamethasone is not a performance-enhancing substance, the World Championship medal earned by the badminton star was callously disqualified³⁹. Blatantly mirroring the attributes of strict liability, brushing aside the chain of circumstances animating the concerned act, the Panel held that even the absence of decisive elements of *mens rea*, intent to defraud and an infallible reputation would not exonerate the Chong Wei. The Panel, stoically disregarded the fact that the episode scarred the glorious shuttling career of Lee by side-lining him for eight long months from the circuit. Moreover, the enforced hiatus prompted him to slide down the world ranking where he once reigned supreme as numero uno.

6. Conclusion

It is befuddling how the sporting world has turned into a commercial behemoth. There was a time when fierce emotions and convivial fervour were conduits of sporting prosperity. With fluctuating tides characterising the modern age, profit and commercial expansion became the supreme drive to engineer the world of sports. Soon, the world of sports yielded to the imperialistic ways of the current age and gave way to the obsession of frenzied enthusiasts. The aggressively affectionate enthusiasts pledge to dig out unprecedented layers of sports fanaticism

³⁸ K.N. Pillai, Strict Liability, (July 24 2019)

<http://14.139.60.114:8080/jspui/bitstream/123456789/742/11/Strict%20Responsibility.pdf>.

³⁹ Doping Hearing Panel of the Badminton World Federation, delivered on 25 Apr 2015 (July 24 2019)

(https://system.bwfbadminton.com/documents/folder_1_81/folder_1_210/Hearing-Panel-Decisions/6.%20Lee-Chong-Wei---ADRV%20-%2025-April-2015.pdf).

to support and lambast their heroes, in equal measure. As the sporting world soon turned into a fanatical burgeoning star, it became imperative for Law, the societal guardian to step in and regulate the unwarranted zeal. This marked the beginning of the multi-dimensional journey of *Lex Sportiva*, known famously as 'Sports Law' that reveals itself as an assortment of various branches of law. While sports law is dissolved in the colours of various legal branches, such as, constitutional law, public law, administrative law, contractual law, competition law and the human rights campaign, the most plausible solution is hinted by the triangular army comprising sentinels of constitutional law, contractual law and the human rights campaign. Constitutional law ensures that innocent athletes are not entrapped in the shackles of uncorroborated disciplinary action by taking recourse to the concept of Rule of Law and principles of procedural fairness and fair hearing. The cradle of sports law is anchored by the canons of contractual law that embraces the spirit of reasonable objectivity and blesses *lex sportiva* with a degree of accountability. Contractual law succeeds in instilling accountability in the domain of sports law as it ties the floating elements of sporting activity in a concrete bundle of enforceable agreements. Concurrently, the current era of legal awakening is witnessing a giant inundation by the tides of the human rights campaign, thereby prompting the siege of sports law by human rights adjudication. At the behest of the Human Rights Campaign, human integrity and privacy emerge as inviolable ideals on the sporting platform. It thereby assures that no athlete suffers a violation of his personal integrity and sense of privacy.

The three-pronged ambush by the triangular army douses the systemic turmoil in the world of sports.