

A Note on the Autonomy of Sport

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Abstract

Sport today is a world of commerce far from its humble origins as a recreational unifying activity. The age-old notion that sport should not be open from regulation by entities/persons outside sport, especially the state, are being challenged by the own making of the sport. The principle of 'Autonomy of Sport' has undergone changes to an extent that today we have a branch of law referred as 'Sports Law'. The change in part is a making of the constituents of the sport (regulatory) bodies viz., organisations, associations, federations. The improper and in some cases the arbitrary working of these institutions demanded an intervention by the state and courts to streamline the governance of sport. This paper is an attempt to understand the autonomy of sport in terms of governance and the principles to be followed.

Introduction:

Sport is for recreation. It helps people come together. It is a vehicle for forging relationships among various sections of the community. Considering that the sport is a unifier, though there are exceptions where fans fights, the unifying factor of it remains strong if it stays aloof from the forces that rattle its foundations viz., political, financial commercial. The sport will be 'sport' only if it can continue the notions of fair participation, wherever possible, without succumbing to political, financial and commercial pressures.

Who should regulate sport?

This can be a simple question when considered in the pre broadcast period and in the absence of commercial elements associated with the sport. The exponential growth of sport related business and allied commercial activities have made the answer complex. Generally speaking the people in sport are the ones who can, in fact should, regulate the sport. This can be seen at various levels of the sport be it international, national or provincial, wherein traditionally people from sport background had come together to make an association or a club etc, which had grown in size depending upon the growth and popularity of the sport.

The scope of regulation had also enlarged over a period of time, i.e., apart from the traditional aspect of laying the rules of the game/sport, the regulation today covers other aspects like player eligibility, discipline of players, activities that can meddle with integrity of the sport like fixing, doping. The emergence of market for sport, sport related merchandise, sport related content and commercial opportunities surrounding these made the scope for regulation broader. Today a sport regulatory body is equally concerned with actions of the player on¹ and off the field², both sport related³ and otherwise⁴. There can also be actions

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¹ Verbal exchanges between players which may include racial overtones are a concern for the sport regulatory body. An example can be the Monkey-Gate. <https://www.espnricinfo.com/story/the-aftermath-of-the-sydney-test-329517>
<https://www.espnricinfo.com/story/andrew-symonds-harbhajan-singh-should-have-been-punished-479835>

which are almost unconnected to the sport or even no relevance to sport, but still the regulator may have to step in to protect commercial interests involved therein, like in the recent Coca-Cola/ water bottle request by famous footballer Christina Ronaldo⁵.

Considering the expanded scope, the question brings in various facets like governance, management and accountability layers of regulation. It is undeniable that the experts in the concerned sport should look into the sport aspects⁶. This ideal requires the sport to have the attribute of autonomy. But the limited/ untested capabilities or lack of expertise when coupled with evils associated with commercialization of sport brings in an argument to have qualified people (accountants, managers etc.) to look at the commercial aspects so that the sport in the Sport regulation remains rooted to the foundations of integrity and fairness.

Autonomy and Governance:

Generally, the term autonomous incites the notion that an entity is free to govern itself, free from external forces, free from control of someone/something. The ideal of autonomy is something that has to be backed by good governance so that the entity, institution or the system will not get demolished by its own bad doings. If the autonomy is used by the constituents of the system to further the goals or objectives of their own instead of the said entity, institution or system, the regulation will be derailed and the entity, institution or system will consequentially head towards its doom. It may seem to be remote but in an environment where there is no oversight the constituents may succumb to pressures from outsiders (social, political or otherwise); carried away by personal emotions; or give way to corrupt practices, all of which is highly dangerous to the entity, institution or system in the first case.

² Interaction of players with others can be concern for the sport regulator. An example can be an unreported meeting with a bookie or approaches to fix a match. Brendon Taylor

<https://www.espnricinfo.com/story/zimbabwe-cricket-brendan-taylor-statement-in-full-i-walked-into-a-situation-that-has-changed-my-life-forever-1298665>

³ Actions of the players on field may attract penalties from the sport officials, regulators. But the same can also be ill-founded. An example can be recent set of circumstances where Indian Shuttler P V Sindhu was penalized for taking more time than permissible, and the same was later held to human error on the part of the match official, consequentially an apology was tendered <https://www.firstpost.com/sports/badminton-news/pv-sindhu-receives-apology-from-badminton-asia-technical-committee-for-umpiring-error-10872671.html>

⁴ Players too have lives off the field but the interactions of those lives with the sporting world at time attract consequences. Examples can be

- Violation of whereabouts clause <https://www.espnricinfo.com/story/andre-russell-banned-for-one-year-for-doping-code-violation-1080431>
- Racist tweets by a player <https://www.espnricinfo.com/story/eng-vs-nz-2021-ollie-robinson-apologises-for-posting-racist-and-sexist-comments-on-twitter-as-a-teenager-1264960> & https://www.espn.in/cricket/story/_/id/32658928/jack-brooks-apologises-historical-racist-tweets-cheteshwar-pujara-steve-nickname or
- Insensitive words, comments in interviews <https://www.newindianexpress.com/sport/cricket/2019/jan/11/koffee-with-karan-row-only-second-time-in-82-years-players-sent-back-for-disciplinary-reasons-1923849.html>

⁵ The commercial implications of the request by Ronaldo to have water are noteworthy.

[https://www.espn.in/football/portugal-por/story/4410619/cristiano-ronaldo-snob-sees-coca-cola-share-price-fall-by-\\$4bn](https://www.espn.in/football/portugal-por/story/4410619/cristiano-ronaldo-snob-sees-coca-cola-share-price-fall-by-$4bn)

⁶ Richard Parrish, <https://www.sportetcitoyennete.com/en/articles-en/the-autonomy-of-sport-a-legal-analysis#:~:text=Generally%20these%20provisions%20suggest%20that.and%20to%20secure%20and%20use>

The autonomy to regulate the sport by the sport regulatory bodies can only lead to positive outcomes if the governance is transparent, fair and accountable. The regulation of sport by the national sport organisations has to be proper particularly bearing in mind the spirit of the sport and the foundational values of the sport. It does not mean that everything should be considered in the sportive sense. The regulation will be proper only if the regulator steps into action as and when needed and responds with appropriate steps be it a warning, penalty or whatever the circumstances demand.

The regulation of sport requires a fine balance between spirit of the sport and the integrity of the sport. The regulator is expected to strive towards balance keeping in view the needs of the sport concerned and consequences of the actions called for. Just as a namesake penalty against a star player, considering the stardom than the act in question, sounds improper, the commercial actions of the regulator without propriety or unreasonable considerations are also highly deplorable. Just as an exclusion of a player on flimsy grounds is unacceptable, continuation of tainted individuals as constituents of the regulatory body is also perverse to the sport.

Types of Autonomy:

From the above discussion, the key takeaway will be the scope for the possible misuse of the autonomy by the sport regulator. This raises another question on the possibility of regulating the autonomy; after all will it be autonomy if it is regulated at all? So the question transforms into the permissible extent of regulation of the autonomy and the possibility of finding the proper regulator of such autonomy. The following can be types of autonomy of sport regulators⁷:

- Unregulated Autonomy
 - Wherein each sport organization has a responsibility for governing and disciplining itself.
- Responsible Autonomy
 - Wherein the sport organizations, on their own, responsibly practice good governance by upholding transparency, accountability and democratic decision making.
- Supervised Autonomy
 - Wherein the actions of sports organizations are monitored by a government mandated framework.

The prospects of the sport depend on the proper use of the autonomy and that use is generally reflected in the governance of the national sport organisation. There are many facets in governance ranging from internal mechanisms to external implications; ways to handle a player to crisis management; payment of dues to the players to negotiating deals with sponsors; and many more where there is scope for laxity, arbitrariness, corruption and many other evils associated with lack of effective oversight and accountability.

One another pertinent aspect related to autonomy and the use of it in governance is related to abuse. The sport being a discipline where there are always some relationships which demand a lot of trust and soft power at play like the Coach-Player, Selector-Player, Support Staff-

⁷ Peter Donnelly, *Autonomy, Governance and Safe Sport* in Julie Stevens (ed.) *Safe Sport: Critical Issues and Practices*, Centre for Sport Capacity, Brock University, Canada, available at <https://ecampusontario.pressbooks.pub/safesport/chapter/autonomy-governance-and-safe-sport/#return-footnote-137-5>

Player, one can never rule the possibility of abuse of such relationship and soft power. The influence of the people in power can be asserted for negative consequences just as for positive outcomes. The prevalence of sexual abuse of players is not a bolt from the blue, and the system should be made in a manner to prevent such abuses, if not watertight common sense demands that there should be avenues to report such abuses (sexual and otherwise). The sport system may turn a blind eye to abuse, and it may cover up abuses, but it is also the system that could prevent abuses⁸.

National Sports Governance Observer:

The National Sports Governance Observer (NSGO)⁹ is a project researching towards creation of robust framework and improvement of governance of national sport organisation. This project is conceived and managed by a think-tank called Play the Game¹⁰. Play the Game is an initiative of Danish Institute for Sports Studies. It is aimed at raising the ethical standards of sport and promotion of democracy, transparency and freedom of expression in world sport. The NSGO is a tool concerning the benchmarking the governance practices of the national sports organizations. The measure is based on performance scores of the organisations on 274 indicators of good governance. The process tries to cover four different dimensions viz., Transparency, Democracy, Internal Accountability and Societal Responsibility.

Principles covered under NSGO¹¹:

Good governance should not be regarded as an end in itself, but rather as a means to an end. The implementation of good governance enhances the legitimacy and effectiveness of organisations, as well as their resistance to unethical practices¹². It is undeniable fact that the sport organisations should have autonomy in matter related to rules of the sport, selection and eligibility issues etc., but there is a clear need to build trust with the stakeholders, commercial partners (existing and future) and government so that the use of autonomy is well received. Aspiring towards the goal of enhancing the autonomy and respect, the sport federations are expected to know what principles are to be implemented¹³. The NSGO performance measure of a concerned state is covered through 46 principles under the four dimensions.

Transparency:

The dimension of transparency is concerned about the reporting of the organisation's working and the level of possibility for an outsider to look into the same and know about the events transpiring. The transparency of an organisation paves for better monitoring of the working of

⁸ *ibid*

⁹ About the NSGO Project, available at <https://www.playthegame.org/projects/national-sports-governance-observer-nsgo/>

¹⁰ About Play the Game, available at <https://www.playthegame.org/about/>

¹¹ Sandy Adam (ed.), *National Sports Governance Observer 2: Benchmarking Governance in National Sport Organization*, November 2021, available at https://www.playthegame.org/media/v2cbmyte/national-sports-governance-observer-2_final-report.pdf

¹² Arnout Geeraert, *National Sports Governance Observer: Indicators and Instructions for assessing good governance in national sports federations*, November 2018, available at <https://www.playthegame.org/media/gbogvqna/national-sports-governance-observer-indicators-and-instructions.pdf>

¹³ *ibid*

the organisation so that the stakeholders, government and the commercial partners can plan necessary actions and responses. To illustrate the need, consider that a sport apparel manufacturing company wants to partner with a national sport federation as the official kit sponsor. It goes without saying that the company will look for information about the process and point of contact. The process may not be a tender or bidding, it may be something that the federation decided beforehand; or there exists a kit partner whose contract is extendable; or the office bearer whom the company contacted may be a person whose term ended. So there is a clear need to have transparency. It helps to enhance trust and incentivises people involved to perform better.

This dimension has seven principles (Principles 1-7):

Under these principles the publication of information related to the following in the website is considered and evaluated.

1. Legal and policy documents
2. General assembly
3. Board decisions
4. Board members
5. Athletes and clubs
6. Annual report
7. Remuneration

Democratic Process:

The Democratic Process dimension is concerned with the nature and the system of governance of the sport organization. It is aimed at understanding the extent of free, fair and competitive elections. It also focuses on the participation of various parties (including the affected party) in the decision-making process. Among other things, it also tries to look at the possibility of fair and open debates at the internal level.

This dimension has 13 principles (Principles 8 – 20). Under this dimension, the possibility of having free and fair elections in timely manner through an established procedure is gauged. Along with that the dimension also considers the diversity of the board composition, avenues to voice concerns and share the insights, and inclusivity of various stakeholders. The principles are:

8. Elections of board members
9. Policy for differentiated board
10. Nomination committee
11. Quorums
12. Term limits
13. Member representation
14. Regular board meetings
15. Athletes' participation
16. Referees' participation
17. Coaches' participation
18. Volunteers' participation
19. Employees' participation
20. Gender equality policy

Internal Accountability and Control:

The dimension of Internal Accountability and Control is concerned with the governance structure of the organization, the check and balances available internally, the existence of separation of powers and rules and regulations along with the procedures seeking the compliance of the staff and officials. It can help towards finding the likelihood of power imbalances, abuse of power and possibility of unethical conduct.

This dimension has 14 principles (Principles 21-34). Under this dimension, the separation of powers within the organization, the existence of checks and balances, grievance redressal mechanism, and various layers of accountability infusion is also considered and evaluated.

The principles are:

21. Supervision of board
22. Board resignation procedures
23. Board eligibility rules
24. Clear governance structure
25. Supervision of management
26. Audit committee
27. Financial controls
28. Board self-evaluation
29. External audit
30. Code of conduct
31. Conflict of interest procedures
32. Complaint procedure
33. Appeal procedure
34. Board meeting schedule

Societal Responsibility:

The dimension of Societal Responsibility concerned is about the application of the organizational potential and impact to have a positive effect on the society and thereby legitimize and enhance trust from external stakeholders. It is also about contribution to the effective policies elicited from positive relationship of the organization with both internal and external stakeholders.

This dimension has 12 principles (Principles 35- 46). Under this dimension, the fact that sport is not just for itself and the positive impact that the sport can exert on the society is considered by ascertaining the existence of policies relating to prevention of sexual harassment, match-fixing, doping, and for the promotion of gender equality, environmental sustainability, sport promotion and right of the athletes. The principles are:

35. Governance consulting
36. Mitigating health risks
37. Combating sexual harassment
38. Anti-doping
39. Social inclusion
40. Anti-discrimination
41. Gender equality
42. Anti-matchfixing

43. Environmental sustainability
44. Dual careers
45. Sport for all
46. Athletes' rights

Regulatory Intervention by the State:

The nature and type of governance expected to follow the autonomy of sport is not up to the mark in the post modern world due to the impact of commercialization of the sport and evolution of a market for the sport related activities. Naturally we expect the states to have recognised the malaise associated with improper self regulation of the sport and venture to intervene. But the position of autonomy as enunciated by the international federations like the International Olympic Committee is couched in terms which are open for narrow interpretation coupled with the concern that the state (political) intervention into sport will undermine the sport perse paved way for the international federations to take action against the national federations and in some cases in went till de-recognition of the national federation due the state interference^{14,15}.

This led to states making laws that act as guidelines for the sport federations to uphold the good governance aspects. One such example can be National Sports Development Code of India, 2011¹⁶. It is an amalgamation of earlier policies, guidelines and directions of courts in relation to the good governance practices of the national sport federations in India.

Intervention by Courts:

On a general note the sport happens to be a private activity regulated by a private entity, which may be recognised by the state. The disputes are not generally open for the court to intervene. The courts were reluctant to intervene into election matters of the sport bodies¹⁷. Justice R.C.Lahoti (as he was then) opined that the elections are internal matters of the sport regulator and it did not warrant the grant of injunction by a court of law¹⁸. Two decades later we have the Supreme Court not just looking into the matter, but constituted a committee to probe into the matters and also appointed a Committee of Administrators for the BCCI¹⁹.

Over a period of time various courts, quasi judicial bodies had looked into the cases and complaints filed by stakeholders, victims etc., and passed directions, gave orders and delivered judgments. These range from some of the basic activities of the sport federations like selection to complex commercial deals like franchise based leagues.

¹⁴ Jean-Loup Chappelet, *Autonomy of Sport in Europe*, Council of Europe, 2010 available at <https://rm.coe.int/autonomy-of-sport-in-europe/168073499f>

¹⁵ J. G. Hylton, *How FIFA Used the Principle of Autonomy of Sport to Shield Corruption in the Sepp Blatter Era*, 32 Md. J. Int'l L. 134 (2017). Available at: <http://digitalcommons.law.umaryland.edu/mjil/vol32/iss1/6>

¹⁶ Available at <https://yas.nic.in/sites/default/files/File918.compressed.pdf>

¹⁷ All India Wokey's Hockey Federation v Indian Olympic Association and Others 1994 Indlaw DEL 5

¹⁸ *ibid*

¹⁹ Nagraj Gollapudi, *Supreme Court names administrators to supervise BCCI*, available at

<https://www.espnricinfo.com/story/supreme-court-names-administrators-to-supervise-bcci-1080252>

Conclusion:

The 'autonomy of sport' is a phenomenon meant for the independence of the sport in an ably administered setup. If the administrators try to misuse and abuse the freedom of governance, it is imperative for the state to intervene in today's scenario. The codification of law relating to sport governance may seem to be over regulation, but when it is considered in the light of good governance principles²⁰ and the supervised autonomy model, turn out to be proper and required. As long as the codes made by the states are in accordance with the good governance principles and in furtherance of the spirit and integrity of the sport, they can never be considered as intervention into to the autonomy of the sport. Similarly, the orders, direction and judgments of the court on similar lines make the sport a better place for tomorrow and can never be said to be uncalled for.

²⁰ Basic Universal Principles of Good Governance of the Olympic and Sports Movement, 2008, available at [https://stillmed.olympic.org/Documents/Conferences Forums and Events/2008_seminar_autonomy/Basic Universal Principles of Good Governance.pdf](https://stillmed.olympic.org/Documents/Conferences_Forums_and_Events/2008_seminar_autonomy/Basic_Universal_Principles_of_Good_Governance.pdf)