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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# THE INTERSECTION OF COMPETITION LAW AND SPORTS LAW IN INDIA

AUTHORED BY - KEERTHI DEPA

## Introduction

Sports in India and across the globe has departed from being a recreational and cultural activity and emerged as one of the most lucrative sectors. Sports are an indispensable part of our country and it has now become a globally commercialised business by virtue of liberalisation and globalisation. Furthermore, it is not merely a physical activity anymore as the sports industry has ventured into e-sports. In the study released by the European Commission concerning assessment of sport's industry's impact on macroeconomics of the European's Union stated that "*Sports is an employment-intensive economic activity, therefore generating a greater sport share in employment than in Gross Domestic Product.*"<sup>1</sup> In India, the situation is no different as sports has ventured beyond the bounds of entertainment, cultural significance and has become one of the biggest economic booster and employment generator. For example, the Indian Premier League's (hereinafter referred to as "**IPL**") contribution to India's Gross Domestic Product (hereinafter referred to as "**GDP**") accounted for \$182 million dollars in the year 2019.<sup>2</sup> In view of sports sector's transition, besides its advancement into a commercial industry, it accommodates for more than \$600 billion people, including players, clubs, governing bodies, etc.

This evolution of sports sector calls for regulation and governance like any other enterprise would and therefore, it needs to be brought under the scrutiny of law. The sports sector interplays with an amalgamation of other laws like Competition Law, Labour Law, Law of Contracts, Law of Torts, Intellectual Property Rights (IPR), Criminal Law, etc. This paper aims to analyse the intersectionality between competition law and sports in India by drawing inferences from the legal framework for competition law in the European Union. Before addressing the question of why competition law is relevant to sports, it is essential to establish the meaning and purpose of

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1 New Study on the economic impact of sport released by the European Commission (2018) EOC EU Office. Available at: <https://www.euoffice.euolympic.org/new-study-economic-impact-sport-released-european-commission/>

2 Tiwari, M. (2018) Financialexpress, The Financial Express. Available at: <https://www.financialexpress.com/sports/ipl/ipl-economy-what-the-cash-rich-league-adds-to-indias-gdp/1025063/>



## **Meaning and Purpose of Competition Law?**

Competition Law serves as a legal framework that is designed to promote fair competition and prevent the stakeholders or the businesses from engaging in practices that could distort the market and harm consumer interests and welfare. These practices that disrupt the market and pose harm to the consumers are known as anti-competitive practices in the competition law legal framework. In countries such as United States, Canada, and the European Union, competition law is commonly referred to as Antitrust Law. The purpose of this law is multi-fold. It aims to sustain the competition by protecting the interests of the consumers and players in the market.<sup>3</sup> It further tries to prohibit anti-competitive practices by promoting free-trade practices by the participants in the market.<sup>4</sup> It largely aims to achieve consumer welfare, reduce economic concentration, equal level playing field for all the players, maintain competitive process by encouraging innovation, fairness and equality. The list of conducts that fall within the purview of competition law are the agreements that distort competition, abuse of dominant position and forming a merger and acquisition that would distort the competition.

In India's competition law jurisprudence, Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as "**the 1969 Act**") was the first act concerning competition law. In 2002, this act was replaced by the Indian Competition Act, which is based on Report of the High Level Committee on Competition Policy and Law (2000). The new law was enacted because the 1969 Act was merely focusing on controlling the monopolies in the market and strengthening the economic power of India.<sup>5</sup> This old framework for competition law in India failed to focus on promoting competition in the market by invoking the principles of neoclassical economies.<sup>6</sup> Therefore, the new Indian Competition Law Act, 2002 (hereinafter referred to as "**the ICA/Competition Act**") provides for a holistic approach by not only focusing on prohibition of abuse of dominance but also on promotion of competition. The Competition Commission of India (hereinafter referred to as "**the CCI/Commission**") was established in the year 2003, to enforce the provisions of the Competition Act. In India, the examination of competition law is mainly carried out using Sections 3 and 4 of the Competition Act. The former section restricts any

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<sup>3</sup> Indian competition law in sports - aiirjournal.com. Available at:  
[https://aiirjournal.com/uploads/Articles/2018/01/2762\\_41.Jai%20Bhagwan%20Singh%20Gaoun.pdf](https://aiirjournal.com/uploads/Articles/2018/01/2762_41.Jai%20Bhagwan%20Singh%20Gaoun.pdf)

<sup>4</sup> ibid

<sup>5</sup> Bhattacharya, Shilpi. "Competition Law in India." Forthcoming in Elgar Concise Encyclopedia of Asian Law.

<sup>6</sup> ibid



agreements that are anti-competitive in relation to goods or services, such as production, supply, distribution, storage, acquisition or control, that could potentially result in significant adverse effects on competition within India.<sup>7</sup> On the other hand, the latter section prohibits any misuse of a dominant position in the market within India, including unfair purchasing terms, discriminatory pricing, actions that prevent access to the market, or agreements that link the sale of one product to another.<sup>8</sup>

## **The Importance of Competition Law**

The importance of bringing sports under the purview of competition law stems from the fact that sports is organised in a pyramidal structure. This means that there are various autonomous governing bodies in the field of sports both globally and nationally, which control and regulate sports. These bodies are de facto dominant and they have a monopolistic behaviour in the market. Due to this dominant and monopolistic nature of these governing entities, there can be various conflicts that could emerge among the players, clubs, and these entities. For example, in pursuit of commercial interests, the governing entities could go to the lengths of abusing their dominance in the market by committing anti-competitive practices and thereby, restricting the free movement of the players and clubs.

Furthermore, the text of the Indian Constitution (hereinafter referred to as “**the Constitution**”) under articles 38 and 39 also reflects the need for application of competition law in the sports sector by highlighting the intervention of the state. These articles are part of the Directive Principles of State Policy. While Article 38 of the Constitution places a mandatory obligation on the state to ensure public welfare, Article 39 of the Constitution mandates the State to ensure that everyone has equal access livelihood and material resources, regardless of their gender. These provisions are relevant to competition law because its purpose is derived from these Directives Principles of State Policy. This is because even competition law aims for a fair system of competition which aids in economic growth and places all the competitors or enterprises on an equal footing. A legal framework like competition law is therefore essential to ensure that economic growth is promoted and equality is prevalent in any market and thereby provide remedies when required. In the case of ‘*Meca Medina*’<sup>9</sup>, the European Union Competition authority applied a rule that recognizes the authority of sports governing bodies in relation the

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<sup>7</sup> Competition Act, s.3

<sup>8</sup> Competition Act, s.4

<sup>9</sup> *Meca-Medina and Majcen v Commission* (2004) ECR II-3291, para 40-44.

criteria for selection and doping rules.<sup>10</sup> The '*Meca-Medina case*' provides some flexibility for athletes by stating that sporting rules are not automatically exempt from the European Union Competition Law.<sup>11</sup>

## **Sports Governance and its Pyramidical Structure**

In India, the states have the authority to regulate and legislate on sports. This authority is empowered upon the states of India because sports is mentioned in Entry number 33 of the State List under Seventh Schedule of the Constitution. However, the intervention of government in sports is very limited. This is because, as per the Olympic Charter, the sport governing bodies are autonomous bodies, with restricted influence by the government.

In the realm of sports governance, there are two wings. The first wing consists of all the government bodies that play a major role in attributing to the promotion of sport training. This wing is controlled by the Ministry of Youth Affairs and Sports (hereinafter referred to as "MYAS") and it consists of various other institutions like the State Authority of India (hereinafter referred to as "SAI"). The second wing consists of all the Olympic sporting bodies. This wing is headed by the Indian Olympic Association (hereinafter referred to as "IOA"), and it consists of State Olympic Association (hereinafter referred to as "SOA"), National Sports federations (hereinafter referred to as "NSF") and State Sports Federation (hereinafter referred to as "SSF"). The NSF and SSFs conduct sporting activities and events in our country under the regulation of the IOA. However, they receive promotional, infrastructural and financial aid by the MYAS and are politically represented by the MYAS, indirectly.

While the NSF and SSFs are responsible for Olympic sports, there are Non-Olympic federations that take care of sporting activities and events that fall outside the purview of Olympic sports. For example, Board of Control for Cricket in India, All India Chess Federation, National Yoga Federation, Kickboxing Sports Federation of India, Tennikoit Federation of India, Mini Golf Federation of India, Association of Sports Karate India, Indian Marshal Arts Federation, etc. These federations are affiliated with their own international federations, respectively. The Non-Olympic sporting bodies are also autonomous bodies with limited government influence and intervention. All the aforesaid sporting bodies both Olympic sporting bodies and Non-Olympic sporting bodies

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<sup>10</sup> The sport, money and law: Transforming indian sports - ICLR. Available at: [http://www.iclr.in/assets/pdf/ICLR%20Volume%201%20\(Second%20Article\).pdf](http://www.iclr.in/assets/pdf/ICLR%20Volume%201%20(Second%20Article).pdf)

<sup>11</sup> *ibid*

are registered under the Societies Registration Act, 1860 as societies. They receive multiple benefits from the government of India such as tax benefits like indirect tax subsidies and financial help. However, the prerequisite to avail these benefits from the government is to have a government observer in each of these sporting bodies to overlook internal functioning like how the funds are being utilised.

It is apparent from the structure of the two wings that the governance of sports takes the shape of a pyramid. This is prominent in the European Union as well. This system aims to regulate the sports sector from top to bottom. This kind of model which is a hierarchical model of power distribution leads to reduction in competition among the sport governing bodies and further result in lack of transparency and accountability from the federations that hold the highest power in the pyramidal structure.

### **Political Influence on Sports**

In India, various governing bodies of sports have prominent politicians and retired bureaucrats as their office bearers in posts such as presidents. This is done to leverage their political power in various matters. The IOA hold Annual and Special General meetings where decisions concerning sports in India are made. The members of NSF, National Federation for Indigenous Games, Olympic Associations at the States and Union Territories, the IOC members, representatives from the Athletics Commission are granted voting rights in these matters. As of 2012, 38 out of 72 NFs and SOAs were led by the politicians. Even though the intervention by the politicians as a replacement of leadership should have made this sector and all the sport governing bodies transparent, accountable and open to challenges, it has resulted in making them being controlled by the politicians on their whim. This trend over the decades has significantly impacted the composition of the sports teams as these politicians are involved at the decision making level as well. It is apparent that for most of the politicians who have headed these sporting bodies, publicity is their sole incentive from sports at both national and international levels.

The administrative structure of sports associations in India such among others, is highly politicized. This type of monopolistic structure limits the scope for competition and development of sports in the country. Private players who are interested in entering the emerging sports market in India are often rejected by these sports associations which have political heads.



## **Problems with Sports Governance in India:**

One of the most significant issues plaguing sports organizations is the lack of accountability and oversight. The sport governing bodies have been granted complete autonomy to function as they please, which has raised concerns about accountability. In any sport, there are two primary stakeholders, and they are the athletes and the spectators. The most important job that a sports federation is tasked with is to identify and develop talented athletes and provide them with a platform to interact with spectators. However, this is a complex task that requires creating sports infrastructure, providing training facilities, and promoting sports through events. Unfortunately, sports federations have failed to fulfil their responsibilities, which can be attributed to their governance.

Furthermore, under the garb of their autonomous status, these governing bodies are enjoying unlimited discretionary powers. Due to this there is lack of transparency in decision-making. Revenue management irregularities, administrative problems related to sponsorships and media rights, and issues of discrimination based on sex and religion are also prevalent. Moreover, doping and drug-related problems among athletes and unauthorized betting have caused significant disruptions in sports. Developmental issues such as infrastructure and cultural development are still present and need to be addressed.

## **The Intersectionality explained through Indian case laws:**

In India and the European Union, the relationship between competition law and sports often involves powerful governing bodies. These bodies, have significant control of sports, including granting of rights, athlete participation, and tournament or sport activity organization. It is a common characteristic of these interactions that governance bodies hold a dominant position. Even though the competition regime in India is relatively new, the CCI has made prominent rulings in the field of professional sports. As is the case in many other countries, sports in India is overseen by various governing bodies that hold significant power as stated above. However, the CCI has taken steps to scrutinise and prevent abuse of dominance and promote fair development of the sports industry. In the recent years, the CCI has given landmark judgements in the cases where both sports law and competition law. This paper will be discussing three judgements given by the CCI, which are the Athletics Federation of India Case, Indian Cricket League Case and All India Chess Federation Case.

In any case of competition law, firstly, it is crucial to determine or identify the relevant market of the concerned competitor or player and then go ahead with the assessment of dominance in that relevant market. With the assessment of dominance, it will be established whether the concerned party is dominant in the market or not. If it is established that they are dominant, the next step in the assessment is to check whether the concerned party has abused their dominant position in their relevant market or not.

In the '*Athletics Federation of India Case*', the relevant market defined by the CCI for Athletics Federation of India (hereinafter referred to as "**AFI**") is "provision of services relating to organisation of athletic/ athletic activities in India" and "the market for services of athletes in India".<sup>12</sup> For this case, the CCI considered the relevant market to be "provision of services relating to organisation of athletic/ athletic activities in India" and not "the market for services of athletes in India".<sup>13</sup> This is because the latter was outside the scope of this case and is not concerned with the allegations made in this case. The AFI is associated and affiliated with International Association of Athletics Federation (hereinafter referred to as the "**IAAF**") and the Asian Athletics Association (hereinafter referred to as the "**AAA**") and Indian Olympic Association. In our country, the AFI is considered as the supreme body to have control of the management of all athletic events and activities that take place. It holds this power because of its affiliation with governing bodies, IAAF, AAA and IOA. In the words of the CCI, the AFI was called the "*apex body in the pyramid structure of administration of athletics/ athletic activities in India.*"<sup>14</sup> This establishes that AFI is in a dominant position in the market for "provision of services relating to organisation of athletic/ athletic activities in India."<sup>15</sup>

In view of the facts of the case, in an Annual General Meeting (hereinafter referred to as "AGM"), which was held between April 11 to April 12 in the year of 2015, the AFI had allegedly decided to take action against athletes and officials who indulge in the promotion of marathons without taking any permission or in the absence of AFI's authorisation. The Department of Sports, Ministry of Youth Affairs and Sports, Government of India had referred to this case. On March 16, 2016, the CCI had ordered for an investigation into the matter, against AFI, for its decision taken in the AGM relating to the alleged restriction of organising marathons without taking any prior permission from it. The CCI directed the Director General (hereinafter referred to as "**DG**")

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<sup>12</sup> Re Department of Sports, MYAS v. Athletics Federation of India, Reference Case No. 01 of 2015, 2016

<sup>13</sup> Malik, Saksham (no date) Volume 8, January 2020 ISSN 2581-5504 role of competition law in sports. Available at: <http://www.penacclaims.com/wp-content/uploads/2020/02/Saksham-Malik.pdf>

<sup>14</sup> ibid

<sup>15</sup> ibid

to investigate AFI's conduct as it *prima facie* appeared to abuse its dominance under section 4 of the ICA.

According to the CCI, the AFI did not abuse its dominance. The reasons provided by the CCI are that upon going through the minutes of the AGM, the CCI did not find its contain to be violative of any provisions under the ICA. It held that it was merely advisory. Furthermore, the CCI opined that the decisions made during the AGM were not put into effect and it is not mandatory to obtain approval from AFI to conduct a marathon or road race, and they can be conducted without any restrictions imposed by AFI or anyone else. In fact, over 96% of such events are organized without any involvement from the governing body.

Furthermore, the CCI also took into account potential policy decisions. In view of road races and marathons, a framework of policies was submitted to the Ministry of Youth Affairs and Sports by the Commission, which it hoped would address any current uncertainties.<sup>16</sup> However, this policy's implementation is still impending. The Commission correctly found AFI to be not guilty of contravening with section 4 of the ICA. This is because AFI's actions did not prevent athletes, sponsors, organizers, or other stakeholders from participating in events, which were not approved by AFI. In fact, there are numerous private organizations organizing marathons in India, such as Run India, Procam International, and India Running. Even though there is no concrete information, some statistics suggest that the participation rate in marathons in India has grown by 154.78% from 2009 to 2014, with a growth rate of 7.8% for men and 26.90% for women.<sup>17</sup> While there could be several reasons for this growth, the emergence of privately organized marathon events is likely a significant catalyst. Therefore, in a market characterized by healthy and vibrant competition, the dominance of AFI has not had any adverse effects.<sup>18</sup>

In the '*Athletics Federations of India case*',<sup>19</sup> even though the AFI was not charged for abuse of dominance, it is pertinent to note that the CCI is performing its duties by bringing such entities like governing bodies under the scrutiny of the competition law.

The next case that is going to be discussed in this paper is the CCI decision on Board of Control for

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16 Draft Policy Framework On Marathons And Road Races, MINISTRY OF YOUTH AFFAIRS & SPORTS <https://yas.nic.in/sites/default/files/Draft%20Policy.pdf>

17 India's running Events Industry Report, TOWNSCRIPT <https://blog.townscript.com/india-running-events-industry-report>

18 supra note 13

19 supra note 12



Cricket in India's (hereinafter referred to as "**BCCI**") abuse of dominant position.<sup>20</sup> The BCCI's objectives are to regulation of cricket in India, promotion of its growth, development of the rules of cricket, and select teams to represent India in events like One day Innings (hereinafter referred to as "**ODI**"), test matches, etc. played both domestically and internationally. The informant in this case was the promoter of the Indian Cricket League (hereinafter referred to as "**ICL**"). They have alleged that the BCCI is the dominant player in its relevant market of "organisation of private professional league cricket in India" and that they have abused their dominance by denying ICL's access into the market. It was further stated that the BCCI had restricted cricket players, stadiums, officers, etc. from participating in any sporting event or activity conducted by the ICL. They players who go against these restrictions have faced a virtual ban and were deprived of benefits from the BCCI. Additionally, their contracts with the ICL were ceased. The informant was also excluded from the bidding process for the allocation of broadcast rights for IPL (hereinafter referred to as "**IPL**") by imposing a specific set of eligibility criteria that included being free of any litigation against the BCCI. Through coercive tactics, the BCCI had allegedly favoured ICL's rival, IPL by promoting it and giving a regulatory sanction to it. The criteria were specifically targeted and resulted in the informant being disqualified due to their previous involvement in a long-running legal dispute with the BCCI over their approval of a rival league, the ICL.

The CCI identified the relevant market for BCCI as "organisation of private professional league cricket in India" and held that it was dominant in its relevant market. The BCCI was dominant by virtue of its monopoly in organising cricket events, and its significant role in regulating cricket, where the entry barriers and granting of supplementary rights are at its discretion. The CCI further stated that since the BCCI is affiliated to the International Cricket Council (hereinafter referred to as "ICC"), it has "*significant authority in the pyramid structure of sports governance.*"<sup>21</sup> The CCI held that the BCCI abused its dominant position under section 4(2)(c) of the ICA as it indulged in foreclosing the market for ICL by engaging in an activity that was exclusionary. On June 1, 2018, the CCI directed the DG to investigate into the actions of the BCCI concerning the organisation of professional cricket leagues in India and the auction of media rights for the Indian Premier League (hereinafter referred to as "**IPL**").

This case illustrates how the actions of regulatory bodies can significantly affect the fortunes of private enterprises. When the ICL was launched in 2007, it received help from various entities like Zee Entertainment, cricketers, and the governments. However, the league ultimately failed

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<sup>20</sup> Pan India Infra projects Private Limited v. Board of Control for Cricket in India (BCCI), Case No. 91 of 2013

<sup>21</sup> supra note 13

due to the absence of support from the BCCI and its anti-competitive practices, as discussed in the aforementioned case. The BCCI even granted "amnesty" to Indian players who participated in the ICL, but only on the condition that they cut their relations with the ICL. This also serves as evidence that sports organizations have the ability to target a particular entity unfairly and systematically in order to bring about its downfall. Conversely, the BCCI has provided unlimited support to the IPL, which has made it one of the wealthiest leagues globally, with a brand value that reached \$6.8 billion in 2019.<sup>22</sup>

In the 'All India Chess Federation (hereinafter referred to as "AICF")' case, chess players filed a petition before the Delhi High Court against the ban imposed by the AICF on chess players who play under its rival, Chess Association of India (hereinafter referred to as "CAI").<sup>23</sup> This issued stemmed from the registration form of the AICF which had a declaration that stated that the participants would be denied to take part in any tournament or sporting activity that was not conducted under the authorisation of the AICF. Upon failing to comply with this clause, the participants would have to submit an apology and an undertaking that they would refrain from participating in an unauthorised AICF tournament. Furthermore, the banned participants are obligated to pay half the price from their prize money that they won from that unauthorised tournament to the AICF.

The Delhi High Court directed the CCI to look into this case and the CCI defined the relevant markets for the AICF as the "market for organization of professional chess tournaments/ events in India" and the "market for services of chess players in India."<sup>24</sup> The CCI found the AICF to be dominant in both of its relevant markets. By placing reliance on one of the precedents passed by the CCI in the case of "Surinder Singh Barmi v. Board for Control of Cricket in India", where the BCCI was held to be an enterprise, the CCI concluded that the AIFC is also an enterprise in accordance with section 2(h) of the ICA.<sup>25</sup> It further stated that the AIFC is an enterprise as it indulges "in organisation of professional chess events/tournaments as well as in incidental revenue – generating activities."<sup>26</sup> The CCI found the penalties imposed by the AIFC on the players was harsh and further highlighted that there was no mention of the term "unauthorised tournament" mentioned in the policies of the AIFC. The CCI concluded that the actions of AIFC were anti-competitive as it had deprived the players of their freedom and denying their access into the

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22 IPL brand value rises 7% to \$6.8 billion in 2019, THE HINDU BUSINESS LINE  
<https://www.thehindubusinessline.com/news/sports/ipl-brand-value-rises-7-to-68-billion-in->

23 Hemant Sharma v. All India Chess Federation, Case No. 79 of 2011

24 supra note 13

25 Surinder Singh Barmi v. Board of Control of Cricket in India, Case No. 61/2010.

26 Supra note 13

market. Therefore, in light of the above reasoning, AIFC's actions was held to be violating within the meaning of section 4 of the ICA.

## **Conclusion:**

In India, there is an increasing trend towards regulating the sports industry using competition law. Currently, sports organizations in India have immense power to regulate sporting events, including player participation, event authorization, and broadcasting rights, resulting in significant economic consequences, as seen in cases like BCCI and AICF. However, the CCI has begun to establish accountability for such bodies. The BCCI case has prompted the most crucial intervention of the CCI to oversee the economic facets of the sports industry in India, which could greatly impact the future of the sector. In the case of AIFC, the CCI recognized that conflicts often arise between regulatory functions and economic activities of sports associations, necessitating government policies to resolve these conflicts. Meanwhile, the Commission's approach of each case on its own factual merits acknowledges that governing entities of sports do not fall within the blanket exemption from competition law, but not all activities have anti-competitive effects. The pyramidal structure of sports governing bodies poses additional issues that the Commission has acknowledged, but rather than holding them as inherently anti-competitive, it has taken a nuanced approach to ensure fair and legitimate sporting objectives. It can be concluded that the discipline and intervention of competition law in the realm of sports and its governance is essential for an efficient regulation sports and its governing bodies.

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