

## **ABSTRACT**

Sports law situates in a landscape that is pervaded by canons of the law of contracts. There is little gainsaying that our socio-legal world is beset by human whims and their unbridled liberties. In this very scenario, the intervention of law as a social tool that shapes and regulates human conduct is necessitated. In a field as lavish as the sporting culture, corruption stealthily seeps in. In consonance with the letter and spirit of contractual law, it is an accepted dictum that the presence of an unlawful objective renders the contract void. Accordingly, indulgence in substance abuse ruptures the lawful spirit of a sports contract. Instances of misdemeanour by sportspersons invoke fiery resentment of the masses owing to the fact that athletes and sports celebrities are revered as people of unparalleled integrity. While 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 the conduct of sports personalities. The moral conduct of a sportsperson must be looked askance only when the contractual boundaries are overstepped and not when the emotional expectations of masses are hurt. Moreover, contractual terms in sports law are pre-eminently based on 'agreement' and hence the literature of sport law must distance itself from tilting towards the forceps of criminal law. Ergo, the principle of strict liability institutionalised in criminal and tortious law must not enter the realm of sports law. The doctrine of strict liability is being silently imported to scrutinise the conduct of sportspersons. Compulsive necessities of sportspersons must be taken into consideration to pave the way for a more humane outlook. Rising above its grammatical setup, contractual sports law must adopt devices of fastidious and pragmatic extrapolation to check sporting behaviour.

**Keywords:** Law of Contracts, Unethical Practices, Instrument of Policing, Agreement, Strict Liability, Compulsive Necessities, Humane Outlook

## THE NECESSITY OF HUMAN RIGHTS IN SPORTS LAW

### **1. The World of Sports Succumbs vis-à-vis Rapid Commercialisation**

Present times are marked by a frenzy where the sporting forum 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 fiery-support lent by sports-enthusiasts. Excessive emotional attachment displayed by the sports aficionados has breathed a lease of materialism to the erstwhile sporting-fields where battles of integrity and glory were fought. Enthralled by the acrobatic glitters and physical prowess displayed by athletes, sports enthusiasts regard them as extraordinary beings endowed with virtues that go beyond physical competencies. Consequently, the enthusiasts often rummage through the personal life of athletes, thereby, invading their personal space and dignity. The Indian Supreme Court, in *Board of Control of Cricket v. Cricket Association of Bihar and Ors*<sup>1</sup>, while expressing concern over the commercialisation of cricket as a sport, enunciated,

“Commerce has overtaken the enjoyment of the sport, with advertisements 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 sixty-ninth session of the United Nations General Assembly convened in 2014, it was unanimously stated that the device of sports fosters comity, peace and solidarity among nations<sup>2</sup>. Consonantly, the world of sports refuses to be labelled as a commodity that mints money. Instead, the hallmark of sportspersonship is defined by social-cohesion, inclusivity, equality and non-discrimination<sup>3</sup>. As a result, sports lie couched within the protective frontiers of human rights law, thereby garnering recognition as a human right.

---

<sup>1</sup> 3 SCC 251 (2015).

<sup>2</sup> United Nations General Assembly, 11572, 2014, <https://press.un.org/en/2014/ga11572.doc.htm>.

<sup>3</sup> *Ibid.*

In the modern age, at the heart of the discourse on participation and representation, lie the sporting fora that as well runs in conjunction with human rights of integrity, peaceable enjoyment, and access to spheres of public life,

“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.”<sup>4</sup>

The fact that modern-day sporting guilds contribute heftily to business and commerce makes it imperative for law regulate the sporting arena. Resultantly, the framework of *lex sportiva* is modelled along standards of constitutional, contractual and human rights law.

## **2. Law of Contracts and *Lex Sportiva***

The emergence of sports law as an interplay of various branches of law is a recent happening in order to plug in systemic fallacies. Despite 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) is premised. The Court of Arbitration for Sports is a private-specialised arbitral body committed to resolve sports related disputes at the global forum<sup>5</sup>. Despite being an arbitral body, the functioning of CAS is embedded in contractual law by virtue of the fact that it overwhelmingly relies on agreement between parties. Moreover, CAS acquires its very jurisdiction through the mutual consent of parties so 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 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,

---

<sup>4</sup> Rodney K. Smith, When Ignorance is Not Bliss: In Search of Racial and Gender Equity in Intercollegiate Athletics, 61 (1996).

<sup>5</sup> 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/>.

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 fall under this category (for instance, an accident to an athlete during a sports competition). Such commercial disputes are handled by the CAS acting as the 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 the court of last resort<sup>6</sup>.

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 requirements<sup>7</sup>.

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

The magnitude of glamour, wealth and charm that the sporting world commands raises the clarion call for intervention of a central regulating mechanism. Terms of a contract tie commercial earnings of sportspersons within a legal 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

---

<sup>6</sup> Gaurang Kanth, Emergence of Sports Law in India, ILJ.

<sup>7</sup> Matthew J. Mitten, Timothy Davis, Athlete Eligibility Requirements and Legal Protection of Sports Participation Opportunities, Marquette University Law School, 2008.

contracts enunciated by Lord Hoffmann in *Investors Compensation Scheme Ltd. v. West Bromwich Building Society*<sup>8</sup> 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 studied by giving due regard to the historicity/ chain of events leading to the final act.

Writings on *lex sportiva* that present a taut dichotomy between moral and legal laws adduce that sports law stands well-equipped to bogus allegations imputed by frenzied enthusiasts upon sportspersons. Subscribing to the distinction, Professor Marios Papaloukas<sup>9</sup> 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 for any rule to be considered rule of law. All legal rules dictating human behaviour have the following characteristics:

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 caprice<sup>10</sup>.”

Hence, arbitrary rules of morality contrived by sports enthusiasts cannot delineate standards of responsibility imposed on sportspersons. Moreover, given the fact that sports laws has been

---

<sup>8</sup> 1 WLR 896 (1998).

<sup>9</sup> Marios Papaloukas, *ISLR/Pandektis*, (2013).

<sup>10</sup> *Ibid.*

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 privacy and integrity rights of athletes. While sanctioning improper behaviour and checking the occurrence of unethical practices by sportspersons, decision-makers must resist the temptation of converting legal forceps into an instrument of policing. Quite often, sports jurists, themselves being enthusiasts of the sport-under-scrutiny, fall prey to the vice of sentimental aggression. Excessive attachment with performances and personal standards of an athlete subjects the sportsperson under constant scrutiny. *Lex Sportiva* builds rigid contours to regulate/check instances of misdemeanour and substance abuse in the 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. Such must be the case that those wishing to relate to any part of the sports sector shall abide by 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 often transpires into a career-threatening punishment. Due to the principle of monopoly, there remains no 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 centralised 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 permanent professional disability<sup>11</sup>. Furthermore, contrary 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 state<sup>12</sup>. 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 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

---

<sup>11</sup> Ibid.

<sup>12</sup> Panagiotopoulos, Sports Law, *Lex Sportiva & Lex Olympica*, 128-132 (2011).

athletes should not be subjected to moral frisking. It has been gathered that sports regulations are governed by contracts freely 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 desired. The Indian Supreme Court, in *Board of Control for Cricket v. Cricket Association of Bihar & Ors*<sup>13</sup>, expressed concern over the dearth of representation to players. It was remarked 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 administrative-sports posts drains the essence of impartiality in a field that thrives exclusively on skill, talent and individual abilities. Entrustment of the decision-making baton onto individuals lacking an eye for detail and keenness of spirit often entangles 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 interpretation exercise concerning sports disputes must be approached objectively, not subjectively<sup>14</sup>. Moreover, the meaning of the terms of a contractual document is to be determined along scales that a reasonable person would have preferred. Determining how a reasonable person would comprehend a contract requires consideration not only of the text, but as well of the surrounding circumstances known to the parties, alongside the purpose and object of the transaction. The task is henceforth one of construing the text of the contract in its permissible context<sup>15</sup>.

---

<sup>13</sup> SCC 251 (2015).

<sup>14</sup> Toll (FGCT Pty Ltd v. Alphapharm Pty Ltd 219 CLR 165 (2004).

<sup>15</sup> *Ibid.*

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 the concerned sport is being played at an international level or at regional rungs, there is always a contract functioning somewhere along. 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 offences”<sup>16</sup>.

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 to participate in the particular sport and, in imposing disciplinary sanctions, it is likely that the Court will presume that the parties intended the contract between them to be legally enforceable<sup>17</sup>.

The enforceability of sporting agreements was affirmed in a resounding fashion in *Rush v W. A. Amateur Football Club Inc.*<sup>18</sup> 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*<sup>19</sup>, 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.”

---

<sup>16</sup> Allan Sullivan QC, *The Role of Contract in Sports Law*, ANZSLA, 2010, 3.

<sup>17</sup> *Ibid.*

<sup>18</sup> WASC 154 at [54] (2001).

<sup>19</sup> 1 WLR 1192 at 1222 [105] (2002).

Furthermore, the Court in *McClelland v Burning Palms Surf Life Saving Club*<sup>20</sup>, 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.”

It is inferable that the precincts of contractual law infuse the sporting world with arithmetic precision. While laying down the framework for penalising the conduct of sportspersons, *lex sportiva* as well protects the rights of such athletes. Contractual law prohibits employers from unreasonably dismissing players. Conversely, where a player is found to be at a fault, sports law dictates that a regulating-authority take up the matter for scrutiny. 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 that regulates conduct of players and the bodies that oversee them, sports would fall into a state of disarray<sup>21</sup>.

### **3. Fusion of Contractual Law and Human Rights in *Lex Sportiva*: A Path to Redress?**

In a backdrop, where instances of encroachment into the personal space and reputational safety of sports celebrities galore, the intervention of contractual law and the human rights campaign becomes imperative. While the human rights campaign ensures that principles of natural justice stand supreme, contractual law delineates the rights and obligations of the concerned parties and elucidates 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 implication of terms, courts may, in some cases, seek to amplify or modify what the

---

<sup>20</sup> 191 ALR 759 at 786 - 788 [103] – [109] (2002).

<sup>21</sup> Roger Day, AEG Media, (11 July 2019, 4:23 PM), <http://www.aegmedia.com/importance-of-sports-law/>.

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.”<sup>22</sup>

Emboldened by the forces of constitutional law and administrative law, *lex sportiva* underscores unassailability of the principle of fair hearing, famously known as *audi alteram partem*. Congruently, “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.”<sup>23</sup>

The sporting arena does not confine itself to a heated battlefield where victory is vied for, it rather streamlines the coming together of different nations on a global platform. It becomes certain that in such an arena celebrated feistily for its virtues, the slightest trace of deceit and foul-play is debunked with disdain. Inferably, indulgence in substance abuse and psychotropic drugs is condemned and strictly discouraged in the world of sports. Furthermore, in an arena where the spirit of humility, magnanimity 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. And hence, it is barely an uphill task to admit that sports enthusiasts and decision-makers often succumb to overzealous intervention and emotional aggression. Driven by this frenzy, 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 is essential for holding the conflation together. Law must not fall prey to the subjectivity infused in the term ‘unethical behaviour.’ 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’

---

<sup>22</sup> cf Sullivan (n 14) 24.

<sup>23</sup> Arbitration CAS 2000/A/317, A. v. Federation Internationale des Luttes Associees, 2001, Vol. 3 Digest of CAS Awards 2001-2003 159, 162 (2004).

to fathom reason and regularity in the elastic term, ‘unethical behaviour.’ The Supreme Court, while elucidating the components of rule of law, highlighted in *Som Raj v. State of Haryana*<sup>24</sup> 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.”

Concurrently, in *Llyod v. McMohan*<sup>25</sup> 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 sense<sup>26</sup>.

The rules of procedural fairness are touted as the part and parcel of the contract animating the sports agreement. Adopting an identical tone, the integration of contractual law and principles of procedural fairness was reinforced in the verdict, *McClelland v. Burning Palms Surf Life Saving Club*<sup>27</sup>.

It may be deciphered that the contractual terms stand sentinel for safeguarding the rights of athletes. The contract between the sporting body and the athlete has a central and 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, and the nature of the 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 matter<sup>28</sup>.

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.

---

<sup>24</sup> 2 SCC 653 (1990).

<sup>25</sup> AC 625 at 702, (1987).

<sup>26</sup> *Nadahl v. British Athletic Federation* 1 WLR 1192 at 1230 (2002).

<sup>27</sup> 191 ALR 759 (2002).

<sup>28</sup> *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).

The World Anti-Doping Code (WADC) operates in the international sports circuit. Hundreds of sporting associations and bodies have adopted the WADC as central in 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 another<sup>29</sup>. The World Anti-Doping Code (WADC) as well comprises a mechanism in alleviating the grievances of responsible sportspersons who find themselves entrapped in unfounded accusations of indulgence in substance abuse and unethical behaviour. The WADC provides protective provisions to the concerned athletes to break free from unfounded 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 decision, that specifically includes reasons that must be publicly disclosed<sup>30</sup>.

#### **4. Human Rights in Sports Law: Salience of Dignity**

Sporting rights ought to be elevated to the status of core human rights as the sporting regime stands as a harbinger of international unity. Heralding the inclusion of sporting rights in the arena of human rights discourse, the pioneer of modern Olympic Games, Pierre de Coubertin remarked,

"Sport is part of every man and woman's heritage and its absence can never be compensated for."<sup>31</sup>

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."<sup>32</sup>

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,

---

<sup>29</sup> cf Sullivan (n 14) 17.

<sup>30</sup> Article 8.1, World Anti-Doping Code (WADC), Amended in 2015.

<sup>31</sup> Commission of the European Communities, White Paper on Sport, 391 (2007).

<sup>32</sup> IV Fundamental Principle of Olympism, Olympic Charter (OC), 2015, IOC.

language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>33</sup>

It is noteworthy that the Olympic Charter scathes discrimination in the domain of sports. Sporting activities facilitate the untrammelled physical, moral, cultural and intellectual development of an individual. Sports rights were highlighted in 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 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.”<sup>34</sup>

The frightening levels of attachment displayed by sports aficionados often disrupt conceptions of privacy and integrity held together by human rights law. Sports enthusiasts tend to turn a blind eye to the fact that sportspersons are human beings characterised by human fallacies. At times, when

---

<sup>33</sup> VI Fundamental Principle of Olympism, Olympic Charter (OC), 2015, IOC.

<sup>34</sup> United Nations Human Rights Office of the High Commissioner, 2018 (July 25 2019) <https://www.ohchr.org/EN/NewsEvents/Pages/CentreForSportandHumanRights.aspx>.

the athletes they adore, fail to deliver results, the frenzied fans transform into precarious admonishers. Henceforth, when such sports enthusiasts violate privacy and reputational rights of athletes, they ought to be penalised.

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.”<sup>35</sup>

## **5. Divorcing Strict Liability from the Domain of Sports**

Sports law primarily reposes faith in the ideals of contractual law. The procedure and entailing remedies envisaged under contractual law texts are civil in nature. It is an accepted dictum of law 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 emotional sentiments staked by the swarming fanbase. The strict liability doctrine underlying criminal law cases must not mar the civil spirit of the sporting regime. The doctrine of strict liability is attracted by those crimes or torts which do not require intention, recklessness or even negligence as prerequisite(s).<sup>36</sup> 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 decision-makers to disregard elements of intention and standard-of-care, and punish innocent athletes by taking recourse to the device of strict liability. Especially when the chief dictating force in sports law is a bilateral agreement between parties, which is in turn governed by the rule of privity of contract.

---

<sup>35</sup> Cancik, “Dignity of Man” and “Personal” in Stoic Anthropology: Some Remarks on Cicero, *De Officiis*, Kretzmer and Klein.

<sup>36</sup> K.N. Pillai, *Strict Liability*, (July 24 2019) <http://14.139.60.114:8080/jspui/bitstream/123456789/742/11/Strict%20Responsibility.pdf>.

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 uncalled-for importation of the strict liability doctrine in matters of sports adjudication. A dismal precedent was set 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. Even though dexamethasone is not a performance-enhancing substance, the World Championship medal earned by the badminton star was callously disqualified<sup>37</sup>. While disregarding 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 Malaysian shuttling star, Lee Chong Wei. This decision was particularly salient as it was set to decide the fate of one of the greatest shuttlers ever born. In its final verdict, the panel even refused to investigate the necessitating circumstances that prompted the badminton great to undertake medication. The panel, stoically disregarded the fact that the episode scarred the glorious shuttling career of Lee. As an outcome of the decision, Lee Chong Wei was side-lined from the badminton circuit for eight long months. Moreover, the enforced hiatus prompted him to slide down the world rankings where he once reigned supreme as *numero uno*.

## 6. Conclusion

It is befuddling how the sporting world has turned into a commercial behemoth. With changing tides characterising the modern age, profit and commercial expansion have come to define the world of sports. As the sporting world burgeons into a hub of wealth and glamour, the intervention of law becomes essential. 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 three-pronged synergy offered by constitutional law, contractual law and the human rights campaign. Constitutional law ensures that innocent athletes are not subjected to uncorroborated disciplinary action through its resort to principles of procedural fairness and fair hearing. The cradle of sports law is anchored by contractual law that embraces the spirit of reasonable objectivity. Contractual law succeeds in instilling accountability in the domain of sports law as it ties the floating elements of sporting

---

<sup>37</sup> 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](https://system.bwfbadminton.com/documents/folder_1_81/folder_1_210/Hearing-Panel-Decisions/6.%20Lee-Chong-Wei---ADRV%20-%2025-April-2015.pdf)).

activity in a concrete bundle of enforceable agreements. Concurrently, in the current era of legal awakening, the human rights campaign has been introduced in *lex sportiva*. 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.