

To

**THE MINISTRY OF YOUTH AFFAIRS AND SPORTS**

**COMMENTS AND SUGGESTIONS ON**

**THE DRAFT NATIONAL SPORTS**

**GOVERNANCE BILL, 2024**

**NOVEMBER 2024**



**CENTRE FOR EXCELLENCE IN SPORTS AND ENTERTAINMENT LAWS**

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10<sup>th</sup> November 2024

**Subject: SUBMISSION OF COMMENTS AND SUGGESTIONS ON THE DRAFT NATIONAL SPORTS GOVERNANCE BILL, 2024**

Respected Authorities,

In furtherance of the notification dated 10<sup>th</sup> October 2024 issued by the Ministry of Youth Affairs and Sports inviting comments/suggestions on the Draft National Sports Governance Bill, 2024, we, the members of the Centre for Excellence in Sports and Entertainment Laws, RGNUL, Punjab, hereby submit our comments and suggestions on the draft Bill. The **Centre for Excellence in Sports and Entertainment Laws** (“CESEL”), under the aegis of the **Rajiv Gandhi National University of Law, Punjab** (“RGNUL”), was established in the year 2022 with the objective of expanding on existing literature related Sports and Entertainment laws.

As part of our objectives of being a research-driven Centre and as law students that understand the importance of policy making, we have conducted in-depth research into the existing framework of sports governance in India, landmark judgments on the topic, international standards set by bodies such as the IOC, and prepared the following document with our suggestions on how the Bill can be improved.

We would like to thank the Department of Sports, Ministry of Youth Affairs and Sports for placing the Draft National Sports Governance Bill, 2024 in the public domain and granting all stakeholders and the general public the opportunity to provide their suggestions and comments on the Bill.

**Regards,**

**CENTRE FOR EXCELLENCE IN SPORTS AND ENTERTAINMENT LAWS**

## SUMMARY OF KEY RECOMMENDATIONS

Rec. No.	Clause No.	Recommendation in Brief	Page No.
1	<b>Clause 2 (cc)</b>	It is recommended to establish qualifying criteria, such as participation in events organized by recognized Regional Sports Federations, to clarify who qualifies as a “ <i>sportsperson</i> ” under the Bill.	6
6	<b>Clause 5</b>	It is recommended to define specific criteria for “ <i>exceptional circumstances</i> ” within the clause and include safeguards, such as a “ <i>dual-leadership model</i> ,” to ensure balanced representation of Olympic and Paralympic interests. Alternatively, Clause 5 could be removed entirely to prevent these negative consequences and safeguard against misuse.	9
7	<b>Clause 6</b>	It is recommended to review and amend Clause 6 to establish explicit registration criteria for RSFs, specifying the applicable legislation and confirming the continued applicability of the <i>2015 Ministry Guidelines</i> for RSF recognition.	10
12	<b>Clause 7 (1)(g)</b>	It is recommended to review and reinstate a specific total term limit for Designated Office Bearers, ensuring that no individual serves for more than 12 years in the same position. The current provision, which only imposes a four-year gap between terms, should be amended to strike a balance between continuity and fostering new leadership.	15
30	<b>Clause 22 (2)(a)</b>	It is recommended to revise the clause to specify that athlete representation should serve as a formal body advocating for the athlete’s interests, with their views formally communicated and considered in decision-making processes of the NOC, NPC, and NSF.	24

		Additionally, provisions for regular consultations, structured feedback channels, or specific voting rights may be included to enhance accountability and ensure athlete voices are effectively incorporated.	
39	<b>Clause 24 (9)</b>	It is recommended to review and amend Clause 24 (9) to clarify the scope and grounds for appeals within the Appellate Sports Tribunal's jurisdiction. The nature of decisions subject to the appellate jurisdiction of the Sports Tribunal and the grounds on which they can be challenged should be clearly delineated.	30
43	<b>Clause 25 (1)</b>	It is recommended to review and amend Clause 25 (1) to specify the tenure and appointment timing of Electoral Officers to ensure consistent election preparation. Additionally, outline specific duties, such as scrutinizing electoral rolls, verifying nominations, monitoring compliance, overseeing campaigning and voting, and certifying election results.	32
48	<b>Clause 26 (3)</b>	It is recommended to review and amend Clause 26 (3) to align with the Supreme Court's rulings in <i>Madras Bar Assn. v. Union of India</i> (2020) and <i>Madras Bar Assn. v. Union of India</i> (2021) regarding the composition of selection committees for Tribunals. The committee should include: <i>The Chief Justice of India or nominee as Chairperson; The outgoing Chairperson or a retired Supreme Court Judge/Chief Justice of a High Court; Two Secretaries nominated by the Cabinet Secretary from departments outside the parent department; The Secretary of the sponsoring Ministry as Member-Secretary/Convener.</i> This will ensure fairness and transparency in the selection process for members of the Sports Appellate Tribunal.	38

49	<b>Clause 29 (1)</b>	It is recommended to review and amend Clause 29(1) to limit the transfer of pending cases to the Appellate Sports Tribunal to those in District Courts, excluding cases from High Courts. Given the lack of independent safeguards for Tribunal members, as highlighted in <i>L. Chandra Kumar v. Union of India</i> , Tribunals cannot serve as full substitutes for the High Courts.	39
57	<b>Clause 36 (2)</b>	It is recommended that the provision be revised to ensure clearer definitions of confidentiality, adopt explicit selection criteria, and mandate greater transparency, following models like the <i>UK's Governance Codes</i> and the <i>National Sports Code of 2011</i> .	42
66	<b>Clause 6 (I) (Annexure 1)</b>	It is recommended that specific criteria and guidelines for the integrity check be established, similar to those used by the <i>USOPC Athletes' Advisory Council</i> , and that an appellate or review mechanism be introduced to ensure transparency and fairness in the decision-making process of the electoral officer.	55

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**COMMENTS AND SUGGESTIONS ON  
THE DRAFT NATIONAL SPORTS GOVERNANCE BILL, 2024**

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**CHAPTER I: PRELIMINARY**

**SUMMARY OF RECOMMENDATIONS UNDER CHAPTER I**

Under Chapter I, the key issues include unclear and ambiguous language, lack of definitions for certain words used in the Bill. Clause 2 (cc) provides an overly wide and ambiguous definition of “sportsperson”, which is one of the most important terms of the Bill. The term should have some qualifying metric in order to be more specific. Further, Clause 2 (e) leaves the Bill in danger of violating the IOC rules on government interference by allowing the government to independently notify any additional posts in the future.

Clauses 2 (f) and 2 (i), when discussing the members of the Executive Committee, provide inconsistent definitions by mentioning that the members must be duly elected in one place, and including nominated members in another. Another inconsistency arises with the usage of the term “*Olympic Games*” when defining the IOC. The IOC charter uses the term “*Olympic Movement*” all throughout, and this must be followed in all statutes referring to it. It is suggested that the Chapter I be amended slightly to cure the inconsistencies and provide specificity on some Clauses.

**ANALYSIS**

**1. CLAUSE 2: DEFINITIONS OF “ATHLETE”, “ATHLETES COMMISSION” AND “SPORTSPERSON”**

The definition Clause does not define “athlete”. However, the term “*Athletes Commission*” is defined as “*a body of sportspersons*”, while the term “*sportsperson*” has been defined as “*a person who participates in a sport*”. This definition is vague and extremely wide, and could include anyone from Olympic medallists to amateur club cricketers. Such a wide definition for the most important word in the Bill will vastly increase its scope and create ambiguity regarding its jurisdiction. It is suggested there be some qualifying metric to be considered a “*sportsperson*” under the Bill, such as having participated in events conducted by recognised Regional Sports Federations.

## **2. CLAUSE 2 (E): LACK OF CLARITY IN THE INTERVENTION OF THE CENTRAL GOVERNMENT**

The Clause, as currently phrased, lacks clarity and may be open to broad interpretation, potentially permitting excessive government intervention in the elected governance. The Clause states, “...and may include any other post notified by the Central Government in the relevant registered sports federation hereunder and further...” The IOC specifies in the fifth fundamental principle of the Olympic Charter that sports organisations within the Olympic Movement shall be politically neutral.

The principle states, “...*They have the rights and obligations of autonomy, which include freely establishing and controlling the rules of sport, determining the structure and governance of their organisations, enjoying the right of elections free from any outside influence and the responsibility for ensuring that principles of good governance be applied.*” The Clause provides for excessive intervention of the Central Government which goes against the fundamentals of the IOC. It is recommended that the Clause be amended to minimise government intervention and align with the fundamental principles of the Olympic Charter.

## **3. CLAUSE 2 (F) & CLAUSE 2 (I): INCONSISTENCY IN THE DEFINITIONS RELATED TO THE “EXECUTIVE COMMITTEE”**

Clause 2 (i) refers to a “*duly elected*” individual, whereas Clause 2 (f) specifies “*duly elected or nominated*” when referring to the members of the executive committee. This is inconsistent, as allowing members to be nominated to the committee as per 2 (i) would go against the definition in 2(f). It is suggested that this inconsistency be corrected by clarifying that members of the executive committee can only be elected, and not nominated, as allowing nominations could lead to arbitrary appointments without sufficient checks on government interference.

## **4. CLAUSE 2 (L): INCONSISTENCY IN THE DEFINITION OF IOC**

The Olympic Charter specifies that the NOC must follow its principles, stating “*The mission of the NOCs is to develop, promote and protect the Olympic Movement in their respective countries, in accordance with the Olympic Charter.*” Currently, certain Clauses reference ‘*Olympic Games*’ and others ‘*Olympic Movement,*’ leading to inconsistency in terminology. It is recommended to use the term ‘*Olympic Movement*’ consistently to ensure uniform interpretation and coherence.

## CHAPTER II: ESTABLISHMENT AND RECOGNITION OF NATIONAL OLYMPIC COMMITTEE, NATIONAL PARALYMPIC COMMITTEE AND NATIONAL SPORTS FEDERATIONS

### SUMMARY OF RECOMMENDATIONS UNDER CHAPTER II

Under Chapter II, the primary issue is regarding the phrasing in Clauses 4 and 5. With regard to Clause 4, the dispute resolution and ethics commissions that are mandated by the use of the word ‘*shall*’ for NOC are not so for NPC. It is suggested that it be mandated for the NPC too, since such a mandate is necessary for it to effectively fulfil its obligations and retain its recognition from the IPC. With regards to Clause 5, the absence of any clear definition of the terms “*exceptional circumstances*” and “*in the interest of Indian Sports*” creates ambiguity and leaves immense scope for misuse of the provision, making it harmful to retain. It is suggested that the provision be done away with, and if it must be retained, it should contain clear, unambiguous safeguards and specific criteria for its application.

### ANALYSIS

#### 5. CLAUSE 4 (4) (B) AND (C): CLARIFICATION ON THEIR BINDING NATURE

While Clause 3(4) mandates the establishment of an ‘Ethics Commission’ and a ‘Dispute Resolution Commission’ for the NOC by using the word “*shall*”, the same is made optional for the NPC in Sub-Clauses (b) and (c) to Clause 4 (4) with the usage of the word “*may*”. This inconsistent in treatment of the NOC and the NPC is unreasoned and unnecessary. In examining this Clause, attention needs to be drawn to the general obligations of IPC members set forth in Rule 13.2 of the IPC Constitution.<sup>1</sup>

Rule 13.2 of the IPC Constitution mandates all IPC members to “*not discriminate unlawfully on the grounds of disability, race, skin colour, national, ethnic or social origin, age, sex, gender, sexual orientation, language, political or other opinion, religion or other beliefs, circumstances of birth, or other unlawful ground.*” Further, Rule 13.2.14 mandates them to “*reject all forms of harassment and abuse, and protect and safeguard athletes and other persons under its jurisdiction from such harassment and abuse.*” Similarly, Rule 13.2.23 mandates them to “*have*

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<sup>1</sup> Constitution of the International Paralympic Committee.



*an integrity code (or similar) applicable within its jurisdiction, incorporating standards of conduct that are at least equivalent to those in the Integrity Code.”*

Given these fundamental obligations, it is recommended that NPCs be required to establish both an *ethics committee* and a *dispute resolution commission* to ensure compliance with IPC standards, safeguard athletes’ rights, and promote fair competition. To reinforce this mandate, it is proposed that the word *may* be replaced with *shall* in both sub-Clauses (b) and (c), aligning the NPC requirements with those for NOCs.

## **6. CLAUSE 5: CONSEQUENCES OF AN EXCEPTIONAL CIRCUMSTANCE CLAUSE**

The term ‘*exceptional circumstances*’ is broad and open to interpretation. In such a case, it allows the Clause to be open for a plethora of instances that may not be ‘exceptional’ in nature. The lack of definition of ‘*exceptional*’ as well as ‘*interest of Indian Sports and Indian Sportspersons*’ allows for potential abuse of power. Further, concentrating the powers of both the NOC as well as the NPC can lead to centralisation of power. Given that such a provision exists for ‘*exceptional*’ circumstances, centralising power can lead to a shift in focus from athlete-centred principles that underpin sports governance.

In the event that the Clause must be retained, it must mention definitive circumstances that are considered ‘*exceptional*’. The Clause must include specific criteria that must be met for such a provision to be invoked. As for the harm arising out of concentrating power, the provision must provide safeguards to ensure a democratic representation of the interests of all stakeholders in this single organisation. Such a safeguard may include a ‘dual-leadership model’ with the Olympic and Paralympics becoming two distinct and independent heads within the same organisation.

The ambiguity arising out of this provision is susceptible to incorrect application and may lead to misuse of power. Since the SRBI has been provided with a safeguard Clause in case the NOC or NPC have to be suspended or recognition cancelled by way of establishing an ad-hoc normalizing committee<sup>2</sup>, it is suggested that Clause 5 be removed to prevent negative consequences.

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<sup>2</sup> Clause 14, Chapter IV, Draft National Sports Governance Bill, 2024.

## **7. CLAUSE 6: CLARIFICATION ON THE REGISTRATION OF REGIONAL SPORTS FEDERATIONS (RSFs)**

Clause 6 (3) gives power to the SRBI to frame regulations regarding the criteria and conditions to be satisfied by a sports organisation seeking recognition as an NSF/RSF for a particular sports discipline. However, within its subsequent sub-Clauses, the Draft Bill does not provide for any specific form of registration for RSFs as it does for NSFs.

Additionally, it does not specify whether the conditions laid down by the Ministry of Youth Affairs and Sports for the Creation of Regional Sports Federations and their Recognition, 2015<sup>3</sup> continue to apply. It is suggested that Clause 6 be amended to include the specific criteria for granting recognition to RSFs as it does for NSFs. This may be undertaken by specifying the legislations under which an RSF must register itself in addition to compliance with the notified conditions of 2015.

## **8. ADDITIONAL SUGGESTIONS**

To streamline regulatory oversight, sports bodies and federations in India, which derive their recognition from the Sports Regulatory Body (SRB), should not be compelled to register under statutes such as the Societies Registration Act.<sup>4</sup> Requiring such dual registration imposes an unnecessary administrative burden that can dilute the SRB's authority and hinder the autonomy of sports bodies. In place of requiring sports bodies to be registered under other Acts, a provision should be introduced within the Draft Bill explicitly delineating the SRB as the primary and exclusive body for the registration of all sports bodies in India.

Further, Clause 3(5) with reference to NOCs, Clause 4(5) with reference to NPCs, and Clause 6(4) with reference to NSFs/RSFs, each provide for the provisional recognition of previously recognized bodies of the respective nature, granting a period of one year to re-incorporate or amend its Constitution to align with the provisions of the Draft Bill. Given that the Draft Bill has significant differences from the present standard of recognition for major organisations such as the Paralympics Committee of India (NPC) which is currently registered under the

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<sup>3</sup> Creation of Regional Sports Federations and their Recognition, Ministry of Youth Affairs and Sports, 27 May 2015.

<sup>4</sup> Societies Registration Act, 1860.

Karnataka Societies Registration Act, 1960 and Rules, 1961<sup>5</sup>, a time period of 1 year is restrictive in nature. Additionally, the Central Government must provide such organisations with the requisite resources to re-incorporate themselves in compliance with the conditions of the Bill.

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<sup>5</sup> Article 1, Paralympic Committee of India – Bye Laws, 2022.

**CHAPTER III: CONSTITUTIONS OF NATIONAL OLYMPIC COMMITTEE, NATIONAL PARALYMPIC COMMITTEE AND NATIONAL SPORTS FEDERATIONS TO CONTAIN CERTAIN PROVISIONS**

**SUMMARY OF RECOMMENDATIONS UNDER CHAPTER III**

Under Chapter III, the key issues are existence of ambiguity and a lack of clarity within certain Clauses, which undermines the document's alignment with established standards of the Olympic Charter. Clause 7(1)(c), which discusses the composition of the Executive Committee has several inconsistencies, with the existing framework exceeding the newly imposed limit of 15 members, and it is unclear how and which members would be excluded in order to comply with the same. Clause 7(1)(d) allows the central government to prescribe rules for the conduct of elections, possibly contravening the IOC charter which disallows any government interference and mandates that the election process be free from any political influence.

Further, there are several ambiguities and issues with the eligibility requirements for the Executive Committee of the NOC such as the change in age limit from 70 being the age limit for a position holder to 70 being the age limit for those seeking nomination, allowing them to hold their posts until much longer if they win. A major change in the present chapter comes in the form of removal of any definitive term limit for Designated Office Bearers.

While the existing framework imposes a total term limit of 12 years, the Bill removes the total term limit entirely, only mandating that candidates who have already served two terms for a total of 8 years will not be able to contest for the next 4 years, allowing them to re-contest after the expiry of that period. It is suggested that there must be a total term limit in order to ensure that power is not concentrated in the hands of one person for a long period.

Additionally, Clause 7(1)(h) allows for a vacancy in the Executive Committee through co-option and ratification, potentially providing undue advantage to the person temporarily appointed to that post, allowing them to avoid facing a full-fledged election. It is recommended that this be avoided, and all appointments to the Executive Committee be made through free and fair elections.

## ANALYSIS

### 9. CLAUSE 7 (1)(C): INCONSISTENCY WITH PRE-EXISTING BODY OF NOC

The aforementioned Clause mandates that the EC of the NOC shall consist of a maximum of fifteen members, specified as per the positions outlined. However, given that the pre-existing EC structure includes more than 15 members and the present provision constantly referring to the pre-existing constitution, it is unclear how the reduction will be implemented and which members will be excluded to meet the new limit. It is recommended that further clarifications be provided on the transition process to avoid potential governance issues.

Additionally, the *second proviso* requires that at least 30% of EC members should always be women, implying that only female candidates should contest for certain positions to ensure compliance with the gender representation mandate. This raises issues as, if the reserved positions remain vacant due to insufficient female candidates, it is unclear whether these positions may then be filled by male candidates, thereby breaching the 30% requirement. The Clause lacks clarity on the process for filling these positions under such circumstances, potentially leading to non-compliance with the intended gender reservation. It is recommended that the Clause be reviewed and amended to resolve these issues.

Further, the third proviso states, “... *the representatives of the Athletes Commission of the NOC shall be elected or nominated to the EC, as the case may be, in accordance with the rules and regulations prescribed by the IOC.*” The phrase “as the case may be” leaves room for varied interpretations. To ensure clarity and prevent inconsistent applications, it is recommended that the proviso specify the exact circumstances under which representatives shall be 'elected' or 'nominated' in alignment with the IOC's Charter.

### 10. CLAUSE 7 (1)(D): GOVERNMENT INTERFERENCE IN THE ELECTION PROCESS

Clause 7 (1)(d) stipulates that elections for the EC shall be conducted adhering to Model Election Rules as prescribed by the Central Government, with a member of the Sports Election Panel overseeing the election process. However, this provision may contravene the IOC Charter, which mandates that sports governance and election processes should remain free from

political intervention to protect the autonomy of sports organizations. The principle highlights the importance of political neutrality.

To align with IOC standards, it is recommended that the Model Election Rules be developed independently by the Sports Election Panel, in consultation with the Olympic Charter, rather than being prescribed by the Central Government. This approach would ensure that elections are conducted in a fair and transparent manner while maintaining the independence and autonomy of the NOC as required by international sports governance norms and Charters.

#### **11. CLAUSE 7 (1)(F) AND CLAUSE 7 (1)(H): AMBIGUITIES IN ELIGIBILITY REQUIREMENTS FOR EC FOR NOC**

The eligibility criteria outlined in Clause 7 (1)(f) sets the upper age limit for EC candidates at seventy years at the time of contesting the election or seeking nomination. However, this criteria effectively allows candidates who contest at age sixty nine or younger to remain in office well beyond the age limit. This potentially undermines the intent of an upper age restriction. To address this, it is recommended that the Clause include a maximum age limit for holding office, ensuring that the tenure aligns with the intended age mandates.

Additionally, as per the *IOC Charter Clause 3.3.2.1*, an exception allows for extending the age limit for up to ten members for an additional four years, on the proposal of the IOC Executive Board. It is recommended that this provision be incorporated into the Bill, aligning it with the IOC's standards on age limits while allowing an extension with the approval of the entire board.

Further, Clause 7(1)(h) allows for a vacancy in an EC Member post to be filled temporarily through co-option, with the option of ratification by the General Body to allow the co-opted individual to complete the next term. This ratification process may undermine principles of electoral governance by providing an unfair advantage to the temporarily appointed individual, as it effectively bypasses the election process and grants undue advantage.

To uphold fairness and transparency, it is recommended that any co-opted DOB filling a vacancy should be required to contest in a fresh election along with other potential candidates, rather than simply being ratified. This approach would ensure that all candidates, including the temporarily appointed individual, have an equal opportunity to contest for the position.

**12. CLAUSE 7 (1)(G): REMOVAL OF TOTAL TERM LIMIT FOR EC MEMBERS MUST BE REVERSED**

Clause 7 (1)(g) provides that an individual who has served as a Designated Office Bearer for more than two consecutive terms (each term not exceeding four years) must observe a four-year gap before becoming eligible to contest for the same position again, thereby not imposing the total term limit on such office bearers. As per the pre-existing framework, no individual can hold the post of Designated Office Bearer for a period of over 12 years.

However, the present Bill has omitted the total term limit entirely, allowing individuals to continue holding office indefinitely, as long as they observe the four-year buffer between terms. It is recommended that a specific limit on the total number of terms an individual can serve as a Designated Office Bearer be established, ensuring both continuity and the opportunity for new leadership, in line with best governance practices.

**13. CLAUSE 8 (1)(C), 8 (1)(D), CLAUSE 8 (1)(F) AND CLAUSE 8(1)(G): AMBIGUITIES IN ELIGIBILITY REQUIREMENTS FOR EC OF THE NPC**

The key issues in Clause 8 (1)(c) run parallel with the issues discussed in Clause 7 (1)(c).

The key issues in Clause 8 (1)(d) run parallel with issues discussed in Clause 7 (1)(d).

The key issues in Clause 8 (1)(f) run parallel with the issues discussed in Clause 7 (1)(f).

The key issues in Clause 8 (1)(g) run parallel with issues discussed in Clause 7 (1)(g).

**14. CLAUSE 9 (1)(D), CLAUSE 9 (1)(G) TO CLAUSE 9 (1)(I) – AMBIGUITIES IN ELIGIBILITY REQUIREMENTS FOR EC FOR NOC**

The key issues in Clause 9 run parallel with the issues discussed in Clause 7.



## CHAPTER IV: SPORTS REGULATORY BOARD OF INDIA AND RECOGNITION PROCEDURES

### SUMMARY OF RECOMMENDATIONS UNDER CHAPTER IV

Clause 11 of the Draft National Sports Governance Bill, 2024, outlines the SRB's composition but lacks clarity on appointment procedures, eligibility, and qualifications. The Bill should specify these details, similar to Section 14 of the Indian Olympic Association's Memorandum and Rules. Clause 12 (4) assigns the SRB responsibility for athlete welfare but lacks implementation mechanisms, and must reference IOC Guidelines on Safeguarding Athletes from Abuse in order to strengthen it. Clause 12 (8) requires the SRB to create a uniform Code of Ethics, which may conflict with existing Codes in federations. The Clause should allow flexibility for federations to maintain their Codes if aligned with international standards. It should also define the term '*vulnerable person*' to ensure clarity and consistency.

Clause 13(1) should clarify who '*third party*' is and when they can file complaints to prevent misuse of the Clause. The Clause also lacks guidelines regarding audits and inquiry, and should specify the same to ensure transparency. The term '*gross irregularities*' used in Clause 13(2) should be clarified to ensure fairness. Clause 14(1)(b) gives the SRB power to ask the NOC to form an ad-hoc normalization committee but does not specify whether its role extends beyond Olympic events, creating ambiguity and leaving room for interpretation. The term '*publicly-spirited eminent sports administrators*' used in Clause 14(2) is vague and should be defined. Lastly, Clause 14(2) allows the committee's mandate to be extended in '*exceptional circumstances*,' but without defining these circumstances, it could lead to unnecessary delays. Clear conditions should be set for extending the mandate to maintain efficient governance.

### ANALYSIS

#### **15. CLAUSE 11: DETAILS ABOUT THE COMPOSITION, APPOINTMENT PROCEDURES, ELIGIBILITY CRITERIA, AND TERMS OF THE SPORTS REGULATORY BOARD OF INDIA ARE NOT SPECIFIED**

Clause 11 fails to include detailed guidelines on appointment procedures, eligibility criteria, qualifications, and terms for its members, instead deferring these essential details to future government prescription. This omission could lead to inconsistencies in how the Board is structured and managed over time. Section 14 of the Memorandum and Rules and Regulations



of the Indian Olympic Association<sup>6</sup> already specifies these aspects, and a similar approach should be taken here.

A Constitution must be created for the Sports Regulatory Body, which should then lay out the structure of the Sports Regulatory Board, including the number of members, representation across sports, and clear appointment procedures. This would specify who appoints the members, how long they serve, and reappointment criteria to ensure consistent and transparent leadership. Detailing these points directly within the Constitution would create a solid, fair foundation for sports governance

#### **16. CLAUSE 12(4): LACK OF CLEAR GUIDELINES FOR ATHLETE WELFARE PROTECTION**

Clause 12(4) assigns the responsibility of ensuring the protection of the rights and welfare of athletes and support personnel to the SRB. However, there need to be clearer guidelines or specific mechanisms for the practical implementation of these protections. For instance, the inclusion of independent monitoring bodies or periodic audits of athlete support programs could strengthen the effectiveness of the SRB's role in this regard.

An example of this can be seen in the IOC Guidelines for International Federations (IFs) and National Olympic Committees (NOCs) Related to Creating and Implementing a Policy to Safeguard Athletes from Harassment and Abuse in Sport<sup>7</sup>, which includes detailed provisions for athlete support and safety. It emphasizes athlete rights, provides for monitoring and accountability, and outlines procedures for addressing grievances, ensuring a more structured approach to athlete welfare.

#### **17. CLAUSE 12 (8): THE PROVISION FOR THE SPORTS REGULATORY BOARD OF INDIA TO PRESCRIBE GUIDELINES FOR A CODE OF ETHICS FOR VARIOUS STAKEHOLDERS MAY LEAD TO CONFUSION**

Clause 12 (8) requires the Sports Regulatory Board of India to set a uniform Code of Ethics for all recognised bodies, including committees, staff, athletes, and others. However, many sports

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<sup>6</sup> Memorandum and Rules and Regulations of the Indian Olympic Association, 2022, § 14, 2022 (India).

<sup>7</sup> IOC Guidelines For International Federations (IFs) And National Olympic Committees (NOCs) Related To Creating And Implementing A Policy To Safeguard Athletes From Harassment And Abuse In Sport, 2016 (India).

federations already have their own Codes of Ethics, designed to align with the principles of their respective international governing bodies. This could lead to confusion as the new Clause may force a single, standard Code of Ethics that might not account for the specific needs and standards of individual sports.

While it is important for the Code to comply with IOC standards and Indian law, the Clause should also allow for flexibility. It should permit sports federations to maintain their own ethical frameworks, particularly if they are in line with international guidelines. This would help each sport preserve its unique ethical standards while ensuring they meet broader legal and global expectations. Allowing this flexibility would strike a balance between a unified ethical approach and the individuality of each sport.

#### **18. CLAUSE 12 (8): LACK OF DEFINITION FOR ‘VULNERABLE PERSON’**

Clause 12 (8) refers to the protection of *‘vulnerable persons’* against abuse by those in positions of trust, responsibility, or authority but does not define what constitutes a *‘vulnerable person’*. This lack of definition creates ambiguity and could lead to inconsistent interpretation and application of the Code of Ethics.

For clarity and to avoid potential misuse, the term *‘vulnerable person’* should be clearly defined in the Clause. A comprehensive definition should include specific criteria, such as age, physical or mental condition, and dependence on others for care or support, or any other characteristic that could make an individual more susceptible to exploitation or abuse. Defining this term will ensure that the Code of Ethics is applied fairly and consistently across all recognized bodies and will provide clear guidelines for those in positions of trust and authority.

#### **19. CLAUSE 13 (1): UNCLEAR DEFINITION OF THIRD PARTIES AND THEIR ROLE IN THE COMPLAINT PROCESS**

Clause 13 (1) grants the Sports Regulatory Board of India the right to accept complaints from third parties, but it does not clarify who these third parties are or under what circumstances they can file complaints. This ambiguity raises concerns about the scope and legitimacy of complaints from entities or individuals who are not directly involved in the issue at hand. The

requirement does not explain why third parties should have such a role in the complaint process or what criteria should be used to determine their involvement.

It is important to define the term ‘*third parties*’ clearly, and outline their specific rights, responsibilities, and the evidence required to justify their intervention. Additionally, there should be a clear framework for when third-party complaints can be accepted, especially to ensure that the process is not misused or becomes too broad.

## **20. CLAUSE 13(1): AMBIGUITY IN AUDIT AND INQUIRY POWERS**

Clause 13(1) of the Bill grants the Sports Regulatory Board (SRB) the rights of audit and inquiry but fails to define the scope and procedures for these powers. It is crucial to establish clear guidelines on the process, frequency and criteria for audits, the specific criteria for initiating inquiries, and the processes for ensuring fairness and transparency. Without such provisions, there is a risk of these powers being used arbitrarily, potentially leading to non-compliance or misuse.

## **21. CLAUSE 13(2): VAGUE DEFINITION OF NON-COMPLIANCE CONSEQUENCES**

Clause 13(2) outlines various grounds for suspending or cancelling recognition, including terms such as ‘*gross irregularities*’ [13(2)(c)]. However, these terms are broad and lack specific definitions, which could lead to inconsistent interpretation and arbitrary decision-making. To ensure fairness and transparency, it is essential to establish precise criteria that define what constitutes non-compliance or misconduct.

A useful reference can be found in the World Anti-Doping Agency (WADA) Code<sup>8</sup>, which outlines clear and specific criteria for the types of misconduct that can lead to suspension or penalties for athletes and organizations. Similarly, in the case of non-compliance with governance standards, the SRB could adopt a more structured approach by clearly defining what constitutes “gross irregularities” to avoid ambiguity and ensure decisions are based on objective criteria.

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<sup>8</sup> World Anti-Doping Agency (WADA) Code, 2021.

## **22. CLAUSE 14 (1)(B): LACK OF CLARITY ON THE SCOPE OF THE AD-HOC NORMALIZATION COMMITTEE**

Clause 14 (b) gives the Sports Regulatory Board of India the power to ask the National Olympic Committee (NOC) to set up an ad-hoc normalization committee when an NSF's recognition is suspended or cancelled. However, it does not explain whether the committee's authority also covers other major events like the Asian Games or the Commonwealth Games, which fall under the NOC's responsibilities too.

It is unclear if the scope of the ad-hoc committee includes these events, or if its role is limited to the Olympics. The Clause should clarify whether the committee's scope extends beyond Olympic sports to ensure a consistent and clear process for all relevant events.

## **23. CLAUSE 14 (2): AMBIGUITY IN THE DEFINITION OF “PUBLICLY-SPIRITED EMINENT”**

Clause 14(2) mentions that the ad-hoc normalization committee should consist of “*publicly-spirited eminent sports administrators*,” but does not provide a clear definition of what qualifies as “*publicly-spirited eminent*”. This term is vague and could lead to ambiguity in selecting suitable members. It is important to outline specific criteria or qualifications for such members to avoid confusion and ensure transparency in the appointment process.

Without clear guidelines, the selection could be subjective, and the integrity of the committee's role could be questioned. The Clause should specify the qualifications, experience, or other relevant criteria that define “*publicly-spirited eminent sports administrators*” individuals to maintain fairness and consistency in the committee's formation.

## **24. CLAUSE 14 (2): POTENTIAL FOR PROLONGED SUSPENSION**

Clause 14 (2) allows for the extension of the ad-hoc normalization committee's mandate “*in exceptional circumstances*”. However, the term “*exceptional circumstances*” is not clearly defined, which creates uncertainty about when such extensions are warranted. This lack of clarity could lead to prolonged periods of intervention in the governance of sports bodies, resulting in unnecessary delays and instability in the functioning of the organization. This provision should be amended to clarify what constitutes “*exceptional circumstances*” and impose a maximum limit on such extensions.

## CHAPTER V: RIGHTS, DUTIES AND FUNCTIONS OF NATIONAL OLYMPIC COMMITTEE, NATIONAL PARALYMPIC COMMITTEE AND NATIONAL SPORTS FEDERATIONS

### SUMMARY OF RECOMMENDATIONS

Under Chapter V, the primary problem is the lack of specified demarcation of the duties of the NOC and the NSFs. Key issues involve the use of overlapping terms, making the specific duties of each undeterminable. Additionally, under the Rights of an NSF, the scope of regulation of any sport has been left undefined, leading to procedural gaps, and creating inadequacies for mechanisms to ensure the said regulation. Furthermore, the rules pertaining to Voting Members have been kept unspecified, leaving room for arbitrariness and unfairness.

Therefore, the scope of the functions of the NOC, NPCs, and NSFs as public authorities is undefined, leading to a lack of clarity on their respective power. Recommendations include unambiguous phrasing, a clear scope of regulation of sports, a predefined compliance policy binding on all Voting Members, a clearer CSR guide, and a clear demarcation of functions, powers, and rights of the NOC, NPCs, and NSFs.

### ANALYSIS

#### **25. CLAUSES 15(1)(B), 17(1)(B), AND 19(1)(B): CLARIFICATION OF THE TERM “REGULATE”**

The term ‘*regulate*’ used in the above three sub-Clauses is very vague and undefined, leaving room for the assumption of arbitrary power by the said authorities. This allows for interpretations that offer an unfair advantage to the governing bodies to make rules that may not necessarily be suitable for the sporting landscape of the country.

As the distribution of athletes is non-uniform over the country, the rules and regulations for the selection process need to be shaped accordingly. In order to properly allow representation, the scope of regulation needs to be specified. To aid the same, regulatory mechanisms need to be set up along with suitable statutory backing.

#### **26. CLAUSES 16 (1)(D) AND 18 (1)(D): AMBIGUITY REGARDING THE TERM “EXCLUSIVE JURISDICTION”**

The phrase "*Exclusive Jurisdiction*" implies that the NOC/NPC shall assume exclusive power in resolving conflicts that arise in the course of procedures established in sporting events. This raises concerns as it undermines the authority of appellate authorities statutorily empowered to do the same as a part of the judicial process.

A clarification of the same should be added, empowering either the appellate authorities or the NOC/NPC as the case may be. In consonance to the same, there should be a mention of how certain conflicts of international relevance fall directly within the jurisdiction of the IOC/NOC as the case may be.

For instance, the case of *Vinesh Phogat's Silver Medal Appeal* offers a detailed perspective on the dispute resolution mechanisms within the Olympic Games, specifically highlighting the IOC's authority over medal awards. With the matter falling exclusively under the IOC's jurisdiction rather than the NOC's, the clear and well-defined rules facilitated an expedited decision-making process.

#### **27. CLAUSES 16 (1)(J), 18 (1)(J), AND 20 (1)(F): COMPLIANCE POLICY FOR VOTING MEMBERS**

The abovementioned sub-Clauses only lay out the basic foundation for the rules Voting Members must necessarily comply with, but does in no way specify the same in a practicable manner. Although it may be done to keep an open scope for rules in the future as the situations demand, the exceedingly broad wording of the same may result in arbitrary rules for the Voting Members of the said authorities, leading to unpredictable and undesirable decisions.

A clear-worded Compliance Policy hence becomes necessary here in order to make the sub-Clause practicable, fair, and justiciable. The said policy shall clearly lay out the rights, duties and objectives of the Voting Members, so that the decision-making power does not lie completely in the higher positions in the respective sporting authorities.

#### **28. CLAUSES 15 (1)(D), 17 (1)(D), AND 19 (1)(D): CLARIFICATION OF GRANTS FOR CORPORATE SOCIAL RESPONSIBILITY**

The said sub-Clauses entail the provision that the NOC, NPCs, and NSFs have the right to receive Corporate Social Responsibility (CSR) Grants for the development of sports facilities.

The simple yet non-specific phrasing of the same makes the provision susceptible to multiple procedural gaps through which the funds may leak into the pockets of corrupt officials.

In order to prevent the same from happening, it requires more sub-Clauses to include the scope of CSR funding, its limitations, minimum and maximum corpus, funding reports, and regular audits, along with a step-by-step guide for distribution of the said grant.

## **29. ADDITIONAL SUGGESTIONS**

In order to make the Bill statutorily parallel to the standards of the Olympic Charter, the term “Olympic sports” should be changed to “Olympic Movement”. This way, the Bill would be at par with the preferred terminology of the IOC



## CHAPTER VI: ATHLETES COMMISSION

### SUMMARY OF RECOMMENDATIONS UNDER CHAPTER VI

Under Chapter VI, the primary problem is the ambiguity in Section 22(2) regarding athletes' representation and engagement. Key issues include unclear language on whether athlete representation is advisory or binding, lack of specific mechanisms to ensure athletes' voices are effectively considered, and procedural gaps in the sharing of information and support initiatives. Recommendations include clarifying athletes' representation roles, setting timelines and defining scope of support, specifying engagement parameters, and establishing structured consultation and accountability frameworks to ensure the Athlete Commission's effectiveness.

### ANALYSIS

#### **30. CLAUSE 22 (2) (A): CLARIFICATION OF ATHLETES' REPRESENTATION**

The term "*represent the views and opinions of the athletes*" is vague. The provision must specify whether this representation is advisory or binding on the decision-making processes of the NOC, NPC, or NSF. Additionally, the phrase "*ensure their voice is heard*" lacks clarity about mechanisms for ensuring effective communication. It is essential that provisions regarding athlete representation and rights be as clear and unambiguous as possible as they are the most important stakeholders in the entire sports governance process.

To correct the ambiguity in the current provision, the following revision to the provision can be considered: "*Serve as the formal representative body to advocate for the interests and perspectives of athletes, ensuring that their views and concerns are effectively communicated and considered in the decision-making processes of the NOC, NPC, and NSF as the case may be.*" Furthermore, adding provisions for regular consultations, structured feedback channels, or specific voting rights could increase accountability.

#### **31. CLAUSE 22 (2) (B): DEFINING SCOPE OF INFORMATION PROVIDED TO ATHLETES**

The phrase "*Inform athletes about the sport body's activities*" should specify the types and frequency of information shared. Without concrete requirements, this Clause risks becoming a procedural formality, where athletes may be informed sporadically without meaningful



engagement. Key activities such as policy changes, funding allocations, or event updates could be enumerated, and timelines set for regular updates.

### **32. CLAUSE 22 (2) (C): ROLE DELINEATION IN DEVELOPMENT SUPPORT**

There is no clarity on the scope of "support." Ambiguity around responsibility-sharing could lead to duplicated efforts or neglect, especially if no guidelines exist for the extent of the Athletes' Commission's involvement in developmental initiatives. The phrase "*Work with and support the NOC, NPC, NSF in its mission*" should detail the Athlete Commission's exact role, such as advocacy, providing athlete feedback, or participating in strategic planning.

### **33. CLAUSE 22 (2) (D): ACTIVE ENGAGEMENT PARAMETERS**

It is the responsibility of an Athletes' Commission to ensure the overall well-being of athletes, including addressing sport-related human rights abuses.<sup>9</sup> However, without the delineation of specific responsibilities of such a Commission, engagement with projects supporting athletes may be minimal or symbolic.

The phrase "*Engage actively with initiatives and projects that protect and support clean athletes*" would benefit from specifying what "*active engagement*" entails, such as regular participation in anti-doping education programs, integrity workshops, or mental health resources. Further, the phrase "*on and off the field of play*" should clarify what off-field protection encompasses (e.g., privacy, and mental health support).

### **34. CLAUSE 22 (2) (E): STRUCTURED CONSULTATION PROCESS**

The current phrase "*Consult with athletes in the evaluation of the rules and regulations*" may act as a mere procedural formality without the inclusion of a defined mechanism for athlete consultations with specified timelines for regular evaluations. Further, the phrase "*subsequently provide feedback*" adds to the redundancy of being a procedural formality as it implies a passive role, lacking specificity on how and when the feedback is utilized. Including a follow-up

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<sup>9</sup> Naidoo U, Grevemberg D. The role of athlete commissions in addressing sport-related human rights abuses: a case study of the Commonwealth Games Federation Athletes Advisory Commission. *Int Sports Law J.* 2022.

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procedure where athlete feedback is systematically reviewed and responded to by the NOC, NPC, or NSF would ensure that athlete input is actionable.

### **35. ADDITIONAL SUGGESTIONS**

Without a transparent accountability mechanism, it is unclear how the Athlete Commission's performance and adherence to its responsibilities will be assessed, risking limited effectiveness. An additional Clause could establish an accountability framework, where the Athlete Commission must report on its activities, challenges, and outcomes in representing athlete interests. This report could be presented annually to the NOC, NPC, or NSF.

## CHAPTER VII: NOC ETHICS COMMISSION

### SUMMARY OF RECOMMENDATIONS UNDER CHAPTER VII

Under Chapter VII, the key issues involve lack of clarity in the scope of ethical issues eligible to be addressed by the Commission owing to its wide ambit and the consequent possibility of overlapping of jurisdictions between the NOC Dispute Resolution Commission and the NOC Ethics Commission. Additionally, there exists ambiguity with respect to the timeline for determining procedures to be followed by the Commission. It is recommended to clearly define the contours of jurisdiction for the NOC Dispute Resolution Committee and the NOC Ethics Commission to ensure effective implementation of their respective objectives, provide clarification on the scope of treatment of doping compliance matters with reference to the Ethics Commission and delineate specific timeline for the Commission to formulate its procedures.

### ANALYSIS

#### **35. CLAUSE 23(1): CLARIFICATION ON THE POWERS OF THE COMMISSION TO ADDRESS DOPING VIOLATIONS AND CLEAR DEMARCATION OF ITS JURISDICTION**

The definition of “*ethics commission*” provided under Clause 2 (h) creates a wide ambit for the categories of ethical issues that may be dealt with by the Commission owing to the use of the term “*without limitation*”. The lack of clarity regarding the scope of ethical issues falling under the jurisdiction of the Commission can lead to an overlap between the matters to be considered by this Commission and the NOC Dispute Resolution Commission. In order to avoid such potential jurisdictional conflict between the two bodies, it will be essential to delineate clear perimeters of jurisdiction and scope of issues which can be addressed before both the NOC Ethics Commission and the NOC Dispute Resolution Commission.

Moreover, Clause 27(b) expressly excludes the jurisdiction of Appellate Sports Tribunal from adjudicating on doping related disputes, granting exclusive power to National Anti-Doping Act, 2022 to resolve such cases. There is no similar provision provided under Clause 23 barring the Commission, therefore there is a need for further clarification on the prospect of whether the Commission shall possess appropriate jurisdiction to tackle doping related concerns or if

the authority of the National Anti-Doping Act, 2002 will prevail. It is recommended to review and amend the Clause to resolve this conflict.

**36. CLAUSE 23 (10): DELINEATION OF TIMELINE TO ESTABLISH PROCEDURES**

The NOC Ethics Commission has been granted the power to establish its own procedures. However, a timeline must be specified for the completion of the same to ensure that the procedures are formulated in a timely manner. Moreover, the extent of powers of the Chairperson and the discretion exercised in determination of the said procedures should be clearly defined to prevent concentration of excessive authority in the hands of an individual.

## CHAPTER VIII: NOC DISPUTE RESOLUTION COMMISSION

### SUMMARY OF RECOMMENDATIONS UNDER CHAPTER VIII

Under Chapter VIII, the key issues include ambiguity in defining the scope of disputes eligible to be addressed by the NOC, absence of a legal expert specializing in the domain of sports law in the Commission and lack of clarity on the scope of appeals to the Appellate Sports Tribunal. Additionally, there exists a lack of stipulated timeline for determining the procedures to be followed by NOC Dispute Resolution Commission. Recommendations include clearly defining the nature of specific disputes addressable by NOC Dispute Resolution Commission, appointment of legal experts in sports law as members of the Commission, outline the scope of appeals to the Appellate Sports Tribunal, delineate specific timeline for NOC Dispute Resolution Commission to formulate its procedures and resolve the contradiction between sub-Clause (9) and sub-Clause (1).

### ANALYSIS

#### **37. CLAUSE 24 (1): CLARIFICATION ON NATURE OF GRIEVANCES TO BE ADDRESSED BY NOC DISPUTE RESOLUTION COMMISSION**

Clause 24(1) mentions the term “*any grievances*” that encompasses a vast ambit of issues. There is a lack of specification for the specific type of disputes falling under the purview of the Commission. The *Indian Olympic Association (IOA) Dispute Resolution Rules* issues a definite framework for addressing specific disputes that arise within its scope.<sup>10</sup>

It is recommended to implement similar rules in order to ensure that there is no overlap with the Ethics Committee Disputes. Furthermore, the terms “*stakeholders*” need to be defined to clarify which members of the NOC have the right to raise grievances. Additionally, the term “*any unresolved dispute*” should be refined to cover the specific categories of issues to be dealt with under this Clause.

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<sup>10</sup> Disputes Commission Rules of the Indian Olympic Association, 2018, § 2, 2018 (India).

### **38. CLAUSE 24(3): INCLUSION OF LEGAL EXPERTS SPECIALIZING IN SPORTS DOMAIN AND CLARIFICATION ON SELECTION PROCESS FOR SPORTSPERSONS REPRESENTATIVE**

The provision should provide for inclusion of legal experts possessing specialised experience in the domain of sports law as members of the NOC Dispute Resolution Commission instead of solely members having general legal expertise. A similar approach is followed by the *National Green Tribunal* wherein the Chairperson may invite experts with specialized knowledge to assist in certain cases.<sup>11</sup> This framework will help in effectively dealing with the legal conundrums presented to the Commission and provide credible solutions by ensuring an informed decision-making process.

Further, there is a lack of clarity regarding the selection process for the “*Sportspersons’ Representative*” specifically pertaining to the category of sport from which they should be elected. The representative must be able to reflect the interests of athletes belonging from various sports, or in alternative, a mechanism must be established to fairly represent all athletes as it will ensure inclusivity and transparency in the Commission.

### **39. CLAUSE 24 (9): OUTLINING SCOPE OF APPEALS**

Clause 24 (9) states that any person aggrieved by the decision of the NOC Dispute Resolution Commission shall be entitled to proffer an appeal to the Appellate Sports Tribunal. For further clarity regarding the maintainability of appeals, the nature of decisions subject to the appellate jurisdiction of the Appellate Sports Tribunal and the grounds on which they can be challenged should be clearly delineated.

The *Competition Act, 2002* outlines the scope of appeals and specifies timelines for filing the appeal and disposing of it.<sup>12</sup> A similar approach should be adopted by the NOC within its dispute resolution framework in order to avoid any uncertainty. This will help the Appellate Sports Tribunal in making decisions regarding admitting and hearing appeals against the decisions of the Dispute Resolution Commission and will also aid the litigants in deciding whether they want to file further appeals against the decision they have received.

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<sup>11</sup> The National Green Tribunal Act, 2010, § 4(2), No. 19, Acts of Parliament, 2010 (India).

<sup>12</sup> The Competition Act, 2002, § 53B, No. 12, Acts of Parliament, 2002 (India).

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#### **40. CLAUSE 24 (10) : DELINEATION OF TIMELINE TO ESTABLISH PROCEDURES**

The NOC Dispute Resolution Commission has been granted the power to establish its own procedures. However, a timeline must be specified for the completion of this task to ensure that the process is initiated and procedures are formulated in a timely manner. Moreover, the extent of powers of the Chairperson and the discretion exercised in determination of the said procedures should be clearly defined to prevent concentration of excessive authority in the hands of an individual.

## CHAPTER IX: SPORTS ELECTION PANEL

### SUMMARY OF RECOMMENDATIONS UNDER CHAPTER IX

Clause 25 (1) provides for the establishment of a Sports Election Panel and the appointment of Electoral Officers to oversee the conduct of elections for the executive committees of the NOC, NPC), NSFs, and their respective Athletes Commissions. However, the provision suffers from critical ambiguities that could undermine its objective of ensuring free and fair elections. Further, Clause 25 (1) of the Draft National Sports Governance Bill, 2024, fails to align with the standards set out in the Bye-law to Rule 16 of the Olympic Charter, which governs the election process and ensures transparency, diversity, and adherence to ethical standards.

To address key deficiencies in Clause 25 of the Draft National Sports Governance Bill, 2024, we propose the following amendments: Clause 25(1) should specify the tenure, appointment timelines, and duties of Electoral Officers, including scrutiny of electoral rolls, nominations, and disputes, while ensuring compliance with ethical, anti-doping, and anti-manipulation standards as per the Olympic Charter. It should also mandate the preparation of candidate profiles to promote diversity and balanced representation. Clause 25(4) must expand the pool of eligible electoral officers by setting clear qualification criteria for substitutes, providing training for experts, and streamlining contingency plans to avoid delays. Further, roles and responsibilities of Electoral Officers must be clearly defined, with robust oversight mechanisms, including reporting requirements to the Sports Regulatory Board.

### ANALYSIS

#### **42. CLAUSE 25 (1): DETAILS ABOUT THE TENURE AND DUTIES OF THE ELECTORAL OFFICERS OF THE SPORTS ELECTION PANEL ARE NOT SPECIFIED**

Clause 25 (1) fails to specify the tenure of Electoral Officers. For instance, it does not indicate how far in advance of an election these officers should be appointed or the duration of their term. Such vagueness can lead to inconsistency in the appointment process and may hinder the timely preparation and execution of elections. Clear guidelines on tenure are necessary to ensure uniformity and adequate preparation for election-related activities.



While the Clause states that Electoral Officers shall “*oversee the conduct of free and fair elections,*” it does not outline the measures they must undertake to achieve this objective. To uphold transparency and fairness, Electoral Officers should be explicitly required conduct scrutiny of the electoral rolls, nominations, and candidatures, verify compliance with prescribed rules and regulations, monitor the electoral process, including campaigning and voting, to prevent malpractices and certify the election results. These responsibilities should be clearly articulated to prevent any ambiguity in their scope of duties.

Reference for enhancing Clause 25(1) can be drawn from Rule 33 of the Constitution of the Board of Control for Cricket in India (BCCI),<sup>13</sup> which explicitly requires the appointed Electoral Officer to oversee and supervise the entire election process, including scrutiny of rolls and nominations. Adopting similar provisions will strengthen the role of Electoral Officers under the Draft Bill, ensuring clarity, accountability, and procedural integrity.

#### **43. CLAUSE 25(1): NON-COMPLIANCE WITH STANDARDS PRESCRIBED BY THE BYE-LAW TO RULE 16 OF THE OLYMPIC CHARTER**

The Olympic Charter emphasizes the need for diversity and balanced membership in electoral processes, as stipulated in Rule 16, particularly in Section 2.3.1. The IOC Members Election Commission is mandated to prepare candidate profiles and propose candidates to achieve these goals. Clause 25(1) is silent on any such measures to promote diversity, inclusivity, or balance within the leadership of the NOC, NPC, and NSFs. To ensure compliance, the Sports Election Panel should be tasked with preparing and evaluating candidate profiles and adopting measures to promote diversity and representational balance, in line with international standards.

Further, The Olympic Charter mandates rigorous evaluation of candidates, including career achievements, sports activities, references, and interviews, with Section 2.3.3 of the Bye-law to Rule 16 emphasizing the need to verify a candidate's eligibility, origin, and admissibility. Clause 25(1) lacks provisions for such scrutiny, risking the appointment of unqualified candidates and compromising the integrity of sports governance. Introducing a robust candidate assessment mechanism is vital to prevent manipulation and uphold the core principles of the Olympic Charter.

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<sup>13</sup> Rules & Regulations of the Board of Control for Cricket in India.

Moreover, Section 2.3.4 requires consideration of compliance with the Olympic Charter, the World Anti-Doping Code, and the Olympic Movement Code on the Prevention of the Manipulation of Competitions. Clause 25(1) fails to incorporate any reference to these critical standards. Including these standards is crucial to ensuring that elected candidates uphold the ethical principles of sportsmanship and integrity.

To address these deficiencies and ensure compliance with the Olympic Charter, Clause 25(1) should be amended to mandate the preparation and evaluation of candidate profiles to promote diversity and balanced representation, require the gathering and assessment of candidate information such as references, career achievements, and interviews, and introduce explicit provisions for verifying candidates' eligibility, origin, and admissibility. Furthermore, it should incorporate compliance with ethical, anti-doping, and anti-manipulation standards as a criterion for candidacy. Aligning Clause 25 (1) with these international standards will enhance transparency, integrity, and India's global standing in sports governance.

#### **44. CLAUSE 25(4): THE LIMITED AVAILABILITY OF QUALIFIED MEMBERS WILL LEAD TO AN ARBITRARY AND BIASED CONSTITUTION OF THE SPORTS ELECTION PANEL**

Under Clause 25 (2), the total number of members on the roster of the Sports Election Panel is not specified. Given that Clause 25 (4) limits the pool to retired officials of the Election Commission of India and the State Election Commissions, there is a risk of diminishing availability of members over time. The existing pool of retired members of the Election Commission of India is very small, considering that the ECI's strength is limited to 3 members at a time.<sup>14</sup> Limiting the pool to only retired officials of the Election Commissions may lead to a scarcity of qualified personnel, especially for multiple simultaneous elections.

This diminished availability may be exploited using the second proviso to Section 25 (4), under which the NOC or the NPC "*may in consultation with the Election Commission of India engage any other individual who is not in the Sports Election Panel and who is a retired member of the Election Commission of India or is a retired State Election Commissioner.*" The use of the phrase "*may in consultation with*" gives arbitrary and discretionary powers to the NOC and the NPC to select the roster of the Sports Election Panel in such a situation. Since consultation

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<sup>14</sup> India Const. art. 324.

does not imply concurrence,<sup>15</sup> such a provision can potentially allow the NOC and the NPC to make decisions that are not approved by the Election Commission of India. Overall, there is no clear, impartial mechanism for selecting electoral officers from the panel, which may lead to perceived favouritism or inconsistent practices.

Hence, in case a retired State Election Commissioner of India from the Sports Election Panel is not available to act as an electoral officer, there should be fixed qualification criteria for substitute members, such as having prior experience in municipal or other electoral bodies. For this, the Sports Regulatory Board of India should consider periodic training and certification programs for additional experts who can join the Sports Election Panel, ensuring continuity in the future. Additionally, instead of multiple layered “*proviso*” Clauses, a single, clear provision can be made for instances when no Sports Election Panel member is available, allowing the NOC, NPC, or NSF to select from a pre-approved list of experienced election professionals.

#### **45. CLAUSE 25(4): LACK OF OVERSIGHT MECHANISM FOR ELECTORAL OFFICERS**

There is no provision stating the accountability terms of Electoral Officers of the Sports Election Panel. To ensure accountability and uphold impartiality, it is crucial to define terms of engagement and accountability measures for electoral officers. Adding a Clause that clarifies the officer’s role, duties, and reporting obligations would enhance transparency and compliance.

Furthermore, there is a limited oversight mechanism as the Draft does not refer to any mechanism to overlook the transparency in the selection of members of the Sports Election Panel or to regulate the Panel and ensure that it functions without any bias. Without any such oversight mechanism, there might arise discrepancies in the functioning of the panel. To remedy this, it may be considered to add a provision requiring the Sports Election Panel or individual electoral officers to submit reports on election conduct and outcomes to the Sports Regulatory Board of India, ensuring oversight and documentation. Additionally, there should be provision for independent observers from international sports governance bodies or independent auditors to oversee elections.

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<sup>15</sup> S.P. Gupta v. President of India and Ors. AIR 1982 SC 149.

Members of the Sports Election Panel should be selected by the Election Commission of India instead of the Sports Regulatory Authority to avoid any biases, similar to how a collegium of judges decides on the appointment of new Supreme Court judges with minimum government interference to maintain impartiality and transparency. For independent election oversight, the Draft Bill can take inspiration from the Bylaws of the USOPC Athletes' Advisory Council.<sup>16</sup>

#### **46. ADDITIONAL SUGGESTIONS**

Clause 25 is silent on how disputes or objections, such as challenges to a candidate's eligibility, disqualification, or voter eligibility, will be addressed. Granting Electoral Officers the authority to adjudicate such matters is essential for maintaining order and credibility in the election process. A Clause should be incorporated to vest Electoral Officers with powers to resolve disputes, with such decisions being final and conclusive to ensure expeditious redressal.

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<sup>16</sup> By Laws of the United States Olympic and Paralympic Committee (“USOPC”) Athletes’ Advisory Council (the “AAC”).

## CHAPTER X: APPELLATE SPORTS TRIBUNAL

### SUMMARY OF RECOMMENDATIONS UNDER CHAPTER X

Chapter X deals with the establishment of an Appellate Sports Tribunal to hear all matters coming within the scope of the Bill and covers some procedural aspects such as the bar on the jurisdiction of civil courts, transfer of pending cases, appeals, powers, and removal. However, the chapter leaves gaps and does not cover several important aspects of establishing a Tribunal such as the manner of selection, qualification, term of the members, general procedure to be followed during the hearing, and so on, stating that the Central Government shall prescribe them at an unspecified later stage, inexplicably dividing the rules to be followed by the Tribunal into multiple enactments.

Clause 26 in the chapter also creates a selection committee to recommend the selection of the Appellate Sports Tribunal, the composition of which stands in direct violation of several Supreme Court judgments by failing to include the Chief Justice or his nominee. Further, Clause 29 provides for the transfer of cases covered by the scope of the Bill from all District Courts and High Courts, even granting the Tribunal the power to hear these matters afresh, leaving room for serious delays in the delivery of justice and going against the purpose of the Bill.

Clause 32 provides a limitation period of 30 days for appeals to the Supreme Court, which is significantly shorter than the period for appeal provided by any other Act establishing such a Tribunal and does not account for various factors involved in the filing of an appeal. Additionally, Clause 34, which discussed the removal of members from the Tribunal, omits the crucial ground of conviction for offenses involving moral turpitude, which is present in most Acts that establish and prescribe procedures for Tribunals.

The aforementioned changes are necessary, as it is important to clearly define the rules governing a quasi-judicial body such as the Appellate Sports Tribunal to ensure that the government does not have unfettered discretion in any regard and to safeguard the independence of the members of the Tribunal.

## ANALYSIS

### **47. CLAUSE 26(2): LACK OF CLARITY REGARDING SELECTION, QUALIFICATION, TERM OF MEMBERS, PROCEDURE, AND OTHER RULES OF THE TRIBUNAL**

Clause 26(2) of the Bill states that the Central Government shall prescribe the composition, manner of selection, qualifications, and terms of the members, the procedure to be followed by the Tribunal, and so on, while only dealing with some aspects of the Tribunal such as the formation of a selection committee, powers assigned to the Tribunal, transfer of pending cases and appeal provisions. There is no sufficient reasoning as to why only some aspects of the Tribunal have been discussed here while the rest is to be separately prescribed by the Central government at an unspecified later stage.

Most Acts that lead to the establishment of specialized Tribunals include all relevant provisions regarding the functioning of the said Tribunal within the same Act, thereby avoiding confusion, oversight, and overlap. Further, mentioning all provisions governing the establishment and workings of the Tribunal in the Bill would also have allowed the citizens and stakeholders to read them and provide their valuable feedback as part of the public consultation process. The same may not be possible if the remaining details governing the Tribunal were to be released in the form of Rules at a later stage.

Thus, it is suggested that the present chapter must be expanded and should include all necessary details regarding the establishment and functioning of the Tribunal such as manner of selection, qualification, terms of the members, procedure to be followed, and so on.

### **48. CLAUSE 26(3): COMPOSITION OF SELECTION COMMITTEE VIOLATIVE OF SEVERAL SUPREME COURT JUDGMENTS**

The composition of the Selection Committee to pick the members of the Tribunal, as mentioned in Clause 26(3) is unlawful and expressly goes against landmark judgments of the Supreme Court. The Hon'ble Supreme in *Madras Bar Assn. v. Union of India* (2020),<sup>17</sup> as clarified in *Madras Bar Assn. v. Union of India* (2021),<sup>18</sup> while discussing the Tribunal, Appellate Tribunal

<sup>17</sup> *Madras Bar Assn. v. Union of India*, (2020) 7 SCC 369.

<sup>18</sup> *Madras Bar Assn. v. Union of India*, (2021) 7 SCC 409.

and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2020, held that the search-cum-selection committees of such Tribunals must include:

- (a) The Chief Justice of India or his nominee—Chairperson (with a casting vote);
- (b) The outgoing Chairman or Chairperson or President of the Tribunal or a retired Judge of the Supreme Court of India or a retired Chief Justice of a High Court—Member;
- (c) Two Secretaries to the Government of India nominated by the Cabinet Secretary from a department other than the parent or sponsoring department — Members;
- (d) Secretary to the sponsoring or parent Ministry or Department—Member-Secretary/Convener (without a vote);

While the rules in question and the judgment were specifically dealing with Tribunals and authorities under the Finance Act, the same essential principles of ensuring fairness and independence in the selection of members also apply to any such appellate Tribunals including the Appellate Sports Tribunal in the present case.

The presence of the CJI or his nominee as the chairperson is essential to ensure that the committee works independently and is not subject to any pressure from the executive, which otherwise exercises strong control over the functioning of various bodies under the present Bill. The fact that the government or one of the sport's governing bodies established through its Sports Regulatory Body is likely to be one of the parties in most of the litigation at the Appellate Sports Tribunal makes it all the more important to ensure that its members are selected fairly and are not subject to any external pressure or obligations.

**49. CLAUSE 29(1): TRANSFER OF ALL PENDING CASES FROM HIGH COURTS IS UNNECESSARY AND WILL LEAD TO A DELAY IN THE DELIVERY OF JUSTICE**

Clause 29 deals with the transfer of all pending cases in District Courts and High Courts that come under the scope of the Bill to the Appellate Sports Tribunal as soon as it is formed. The transfer of all relevant pending cases from High Courts is problematic, as it is clear that the Tribunals are not equivalent substitutes to High Courts, especially considering the lack of independence of the selection committee of the Tribunal and the absence of any details regarding appointment and tenure of the members of the Tribunal on the Bill.



The Hon'ble Supreme Court, in the case of *L. Chandra Kumar v. Union of India* held that because the members of the Tribunal do not have the same constitutional safeguards to ensure independence as High Court judges, they could never be full and effective substitutes for higher judiciary.<sup>19</sup>

Additionally, while there are similar provisions in several other Acts in India establishing Tribunals to handle subject-specific matters such as Section 33B of the Industrial Disputes Act<sup>20</sup>, Section 127 of the Income Tax Act<sup>21</sup>, Section 131B of the Customs Act<sup>22</sup>, Section 39 and 33A of the NGT Act<sup>23</sup>, none of these provisions allow the transfer of all pending cases from High Courts. As mentioned in the above provisions, all pending cases in District Courts and other Tribunals are to be transferred to the newly established Tribunals, and not those in High Courts. In line with the same, it is recommended that the wording of this Clause be changed to remove the provision to transfer all pending cases from High Courts and limit this exercise to District Courts.

**50. CLAUSE 29(2): THE APPELLATE SPORTS TRIBUNAL MUST NOT HAVE THE UNFETTERED DISCRETION TO HEAR ANY OF THE TRANSFERRED PENDING MATTERS AFRESH**

While Clause 29(2) states that on transfer of all pending cases within the scope of the Bill from all District Courts and High Courts to the Appellate Sports Tribunal, the Tribunal has the absolute discretion to decide whether it wants to continue hearing the matter from the stage on which it was pending or if it wants to hear the matter afresh.

Such unfettered discretion in the matter of hearing transferred pending cases afresh could potentially lead to significant delays in the delivery of justice, which would go against one of the most important purposes of bringing this Bill, which is to ensure that sports disputes are resolved in a fair and speedy manner. Instead of granting blanket discretion to the Tribunal, the Clause could be changed to ensure that matters that have already reached a certain stage need

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<sup>19</sup> *L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261.

<sup>20</sup> The Industrial Disputes Act, 1947.

<sup>21</sup> The Income Tax Act, 1961.

<sup>22</sup> The Customs Act, 1962.

<sup>23</sup> The National Green Tribunal Act, 2010.



not be re-heard. This line could be drawn at the stage of completion of evidence or at least once both parties have completed all of their submissions.

**51. CLAUSE 32: THE LIMITATION PERIOD FOR APPEALS TO THE SUPREME COURT IS UNREASONABLY SHORT AND THE BILL MUST MENTION THAT THE APPELLATE JURISDICTION OF THE HIGH COURT IS NOT BARRED**

Clause 32(3) of the Bill provides a time limit of 30 days from the date of the Tribunal's decision to file an appeal against it at the Supreme Court. This period is unreasonably short and does not account for several factors such as the technicalities involved in sports matters, the financial condition of the athletes who will be parties in most matters before the Tribunal, and the time taken to sufficiently understand a decision, compile relevant documents and prepare an appeal to be filed at the Supreme Court.

Additionally, it is also important to note that none of the other Acts that establish specialized Tribunals in India have an appeal window as short as the one provided in the present Bill. Section 22 of the NGT Act grants 90 days, while Section 260A of the Income Tax Act grants 120 days. It is suggested that the present Bill also provide 90 days' time to file appeals against its judgments in order to avoid the unnecessary possibility of honest litigants having to file an application for condonation of delay after such a short period.

Further, while this section does not expressly bar the jurisdiction of any High Court from entertaining appeals, it does mention that all appeals against orders of the Tribunal shall lie before the Supreme Court. However, it is important to note that as per the judgment in the cases of *L. Chandra Kumar*, and *Union of India v. Alapan Bandyopadhyay*<sup>24</sup>, the appellate jurisdiction of the High Court under Articles 226<sup>25</sup> and 227<sup>26</sup> are part of the basic structure of the condition and cannot be taken away completely under any circumstances, and that litigants have the right to approach the division bench of the jurisdiction High Court to challenge the orders of such Tribunals. Thus, it is suggested that the government must specify that the Act does not intend to take away the jurisdiction of the High Courts in its entirety.

<sup>24</sup> *Union of India v. Alapan Bandyopadhyay* (2022) 3 SCC 133.

<sup>25</sup> India Const. art. 226.

<sup>26</sup> India Const. art. 227.

## **52. CLAUSE 34: ADDITIONAL GROUNDS FOR THE REMOVAL OF MEMBERS MUST BE ADDED IN LINE WITH OTHER STATUTES FORMING TRIBUNALS**

Clause 34 provides three specific grounds for removal from the office of the member of the Tribunal, namely, physical or mental incapacity, financial interests prejudicially affecting their functions, and abuse of position. However, this Clause surprisingly omits the conviction of a member for offences that involve moral turpitude as a ground for removal, which can be seen in several statutes across fields that discuss the establishment of Tribunals.

Section 10(b) of the NGT Act, Section 6 of the Securities and Exchange Board of India Act, 1992<sup>27</sup> on the Securities Appellate Tribunal, Section 7 of the Telecom Regulatory Authority of India Act, 1997<sup>28</sup> on the Telecom Disputes Settlement and Appellate Tribunal, Section 417 of the Companies Act, 2013<sup>29</sup> on the National Company Law Appellate Tribunal, and Rule 13 of the Consumer Protection Rules, 1987<sup>30</sup> on the National Consumer Disputes Redressal Commission, all include this essential ground for removal in addition to the grounds provided in the Bill.

It is clear that a person convicted of an offense, especially one that involves moral turpitude, cannot be a suitable candidate for the position of a judge in any body, Tribunal, or court. Thus, it is suggested that the additional ground of “*has been convicted of an offence which, in the opinion of the Selection Committee, involves moral turpitude*” be added to this Clause.

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<sup>27</sup> Securities and Exchange Board of India Act, 1992.

<sup>28</sup> Telecom Regulatory Authority of India Act, 1997.

<sup>29</sup> The Companies Act, 2013.

<sup>30</sup> The Consumer Protection Act, 1986 & Rules, 1987.

## CHAPTER XI: SAFE SPORTS

### SUMMARY OF RECOMMENDATIONS UNDER CHAPTER XI

Under Chapter XI, the primary problem is the narrow scope and jurisdiction of the safe sports policy as delineated in Section 35(1). Key issues include improper language regarding the provisions of the Protection of Women from Sexual Harassment (POSH) Act, 2013,<sup>31</sup> poor language concerning the protection and safety of minor athletes, and lack of clarity regarding the general or specific nature of the internal grievance redressal mechanism. Recommendations include broadening the scope and jurisdiction of the safe sports policy, phrasing of the provision in accordance with the powers of the SRBI, and specifying the special/exclusive nature of the internal grievance redressal mechanism regarding the enforcement of the safe sports policy.

#### ANALYSIS

#### **53. CLAUSE 35 (1)(A): CLARIFICATION REGARDING THE SCOPE OF THE SAFE SPORTS POLICY**

The phrase *‘including with respect to the protection and safety of minor athletes’* is too narrow and only deals with one set of persons out of the whole gamut of the sports industry.

To extend the scope of the policy as mentioned in the current provision, the following revision to the provision can be considered: *“including but not limited to with respect to the protection and safety of minor athletes, women and transgender persons.”*

#### **54. CLAUSE 35 (1)(II): CLARIFICATION REGARDING THE POWERS OF THE SRBI**

The use of the word *‘prescribe’* for the provisions of the POSH Act, 2013 lies outside the scope of the powers of the SRBI. To correct the error in the current provision and to provide greater protection specifically to minor athletes, the following revision to the provision can be considered: *“The SRBI shall ensure the enforcement of the provisions of the Protection of Women from Sexual Harassment Act, 2013 and the Protection of Children from Sexual Offences Act, 2012.”*

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<sup>31</sup> Protection of Women from Sexual Harassment Act, 2013.

## **55. CLAUSE 35 (1): EXTENSION OF SCOPE AND JURISDICTION OF SAFE SPORTS POLICY**

The use of the word ‘*undertaken*’ for activities, events, operations, and proceedings by recognised bodies does not take into account situations wherein an athlete is representing the recognised bodies in international games and competitions. However, these situations are covered under the jurisdiction of the current IOA Safe Sports Policy.<sup>32</sup> Similarly, this provision might also lead to the exclusion of situations where abuse takes place during work-related travel and stay, which is also recognized by the current IOA Policy.

Additionally, the scope of the policy might be broadened to include the conduct, of persons closely associated with the functioning of the recognised bodies, that is outside the activities and events of the recognised bodies but adversely affects these bodies’ relationships, or the work and sport environment, or the image and reputation.<sup>33</sup>

To extend the scope and jurisdiction of the Safe Sports Policy, the following revision to the provision can be considered: “*The SRBI shall prescribe ... in all games, competitions, activities, events, operations and proceedings wherein NOC, NPC, NSFs/RSFs is/are involved, as the case may be.*”

*Explanation 1 – The phrase ‘games, competitions, activities, events, operations and proceedings’ includes work-related travel and stay.*

*Explanation 2 – This provision extends to the conduct, of the persons closely associated with the functioning of the recognised bodies, that is outside the activities and events of the recognised bodies but adversely affects these bodies’ relationships, or the work and sport environment, or the image and reputation.”*

## **56. CLAUSE 35 (2): SPECIFICATION REGARDING THE EXCLUSIVE NATURE OF THE GRIEVANCE REDRESSAL MECHANISM**

A specification regarding the exclusive/special grievance redressal mechanism for the purpose of safe sports would bring clarity to the existing provision. Further, the replacement of the words ‘*involved with the recognised bodies*’<sup>34</sup> instead of ‘*associated with the functioning of the*

<sup>32</sup> Safe Sport Policy, Indian Olympic Association, 2019.

<sup>33</sup> Safe Sport Policy Template for Member Organisations of Safe Sport Programme, SSC Singapore.

<sup>34</sup> Safe Sports Policy, Fencing Association of India, 2022.

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*recognised bodies*’ would expand the scope of this policy, ensuring justice for a wider set of affected people.

To clear the ambiguity in the current provision and to expand the scope of the policy, the following revision to the provision can be considered: “*The SRBI shall prescribe an internal grievance redressal mechanism exclusively for the purpose of safe sports, for each recognised body to address the grievances of the athletes, coaches and others involved with the NOC/NPC/NSFs/RSFs as the case may be.*”

## CHAPTER XII: APPLICABILITY OF RIGHT TO INFORMATION ACT, 2005

### SUMMARY OF RECOMMENDATIONS UNDER CHAPTER XII

Clause 36 establishes the provision that deems NOC, NPC and NSFs to be public authorities, as defined in Clause (h) of Section 2 of the Rights to Information Act, 2005, and shall perform their duties and discharge their functions according to the aforementioned law. However, there are some ambiguities that could potentially undermine the objective of transparency as according to the RTI Act, 2005. According to Clause 36 (2), there are certain exceptions that limit the public access to information.

This includes provisions relating to selection and appointment of sports personnel (athletes, coaches, etc.), performance quality and injuries of athletes, medical health and fitness details, confidential anti-doping information and commercially sensitive information that could harm third-party interests. While these exemptions are intended to protect sensitive information, they also create substantial gaps in accountability and oversight.

To address the key deficiencies in Clause 36 of the Draft National Sports Governance Bill, 2024, we propose the following amendments: To address these critical issues, several recommendations can be made: There should be inclusion of selection processes under the RTI. This change can ensure that rights for athlete and other stakeholders are brought out and putting forward right information can be beneficial to everybody.

Moreover, by making selection processes (of athletes, coaches et cetera) amenable to RTI, it puts the selection processes out in the public domain and stakeholders for clarity on what went into the selection, any selection committee meetings held and the decision-making processes held, thus reducing nepotism, favoritism and even arbitrary system on issues arising. Secondly, there should be annual audits of selection processes by independent bodies to assess compliance to the National Sports Code. These audits should be made public thus enhancing accountability and transparency of the selection processes.

### ANALYSIS

#### **57. CLAUSE 36 (2): THE NOC, THE NPC AND THE NSFs SHALL NOT BE DEEMED TO BE PUBLIC AUTHORITIES IN CERTAIN CASES WHICH CAN UNDERMINE TRANSPARENCY**

Clause 36 (2) provides for specific cases wherein information can be withheld from the public. For instance, information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party can be withheld. However, this provision lacks clarity on confidentiality. The definitions of “confidential” and “commercial confidence” are often broad and vague, leading to excessive withholding of information. This lack of clarity can hinder accountability, particularly in cases of misconduct or poor governance, where transparency is crucial for trust and integrity.

The exceptions outlined above can result in insufficient oversight in critical areas like athlete welfare and selection processes. Without transparency in these domains, the risk of favoritism or discrimination increases, ultimately undermining the integrity of sports in India. In the judgment of *Shumel v. Union of India*,<sup>35</sup> This case highlights a transparency issue in the selection process, where the wrestlers were excluded from the selection trials without clear communication or explanation from the Sports Federation. The court emphasized that it could not interfere in the selection criteria, raising concerns about the fairness and transparency of how the athletes were excluded from the process. Judgments where similar points on transparency have been emphasized have been given such as *Swastika Ghosh v. Table Tennis Federation of India*,<sup>36</sup> *Vinod Kumar v. Union of India*<sup>37</sup> and so on.

Further, such a provision can create inconsistency with the Global Standards. Globally, many sports organizations are moving towards greater transparency and accountability. For instance, the UK's governance codes require sports bodies to disclose information related to integrity issues and decision-making processes. The British Elite Athletes Association (BEAA) has established explicit selection criteria, ensuring that disputes are thoroughly examined to confirm adherence to these policies. India would benefit from implementing similar mechanisms to enhance transparency and accountability.

This ambiguity in the provision has potential for abuse. The broad exemptions of the RTI Act mean that the sports organisations can easily avoid provision of information important to selection decisions that have a strong bearing on the careers and well-being of the athletes. This could help to propagate a secretive culture in already existing NSFs instead of a culture of

<sup>35</sup> *Shumel v. Union of India*, (2010) SCCOnline Del 4706.

<sup>36</sup> *Swastika Ghosh v. Table Tennis Federation of India*, (2022) 4 HCC (Del) 213.

<sup>37</sup> *Vinod Kumar v. Union of India*, (2024) 1 S.C.R. 1230.



openness and accountability. However, the BEAA continues to hold seminars to sensitize athletes on their entitlements and the legal mechanisms which are in force. Using this model, another similar intervention by the NSFs, NOC and NPC would create awareness to the athletes to participate and govern themselves.

Furthermore, the National Sports Code of 2011 serves as a guiding framework for NSFs, emphasizing the necessity of transparent selection procedures. There are certain key sections relevant to transparency. These include - Section 9.3 which mandates NSFs to adopt impartial and transparent selection procedures to qualify for government assistance and recognition, section 13 which establishes the selection procedure, detailing the responsibilities of NSFs in judiciously selecting national teams based on merit to enhance national prestige and section 15.1(a) which emphasizes the introduction of transparent selection procedures and mandates that selection criteria be communicated well in advance to all athletes.

The case of *Manika Batra v. Table Tennis Federation of India*<sup>38</sup> provides further clarity about the aforementioned Code. After Batra reported misconduct by the national coach, TTFI introduced new rules requiring players to attend national camps, which she argued unfairly targeted her. The Delhi High Court found TTFI's actions against the National Sports Code, emphasizing the need for fair and transparent selection processes. Cases such as *Neha Rathi v. Union of India*<sup>39</sup> and *Karamjyoti v. Union of India*,<sup>40</sup> further illustrate the challenges posed by opaque selection processes. Similar reasoning have been provided in the cases such as *Sushil Kumar v. Union of India*,<sup>41</sup> and *Paralympic Committee v. Naresh Kumar Sharma LPA*.<sup>42</sup>

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<sup>38</sup> *Manika Batra v. Table Tennis Federation of India*, (2021) SCC OnLine Del 4479.

<sup>39</sup> *Neha Rathi v. UOI*, (2010) SCC OnLine Del 4707.

<sup>40</sup> *Karamjyoti v. Union of India*, (2016) SCC OnLine Del 6766.

<sup>41</sup> *Sushil Kumar vs Union of India*, (2016) 230 DLT 42.

<sup>42</sup> *Paralympic Committee vs Naresh Kumar Sharma LPA*, (2021) 07 DEL CK 0175.



## CHAPTER XIII: USE OF NATIONAL NAMES AND INSIGNIA; OFFENCES

### SUMMARY OF RECOMMENDATIONS UNDER CHAPTER XIII

The current provisions concerning the use of national names and insignia overlook key regulatory gaps, particularly regarding influential bodies like the BCCI, which has avoided NSF recognition. Without including such organizations under the SRBI's oversight, there is a risk of inconsistent regulation. Introducing a compliance officer or an oversight mechanism could help ensure fair application of rules. Additionally, limiting the complaint process only to SRBI or Central Government officers excludes vital stakeholders like athletes and sports bodies, reducing accountability. Expanding the complaint mechanism would create a more transparent and responsive system, addressing the broader concerns of the sports community.

### ANALYSIS

#### 58. CLAUSE 37: ADDRESSING BCCI'S EXEMPTION

Clause 37 states that any organisation not recognised as NOC, NPC or NSFs under this Bill will be allowed to use the Indian flag, insignia, symbol or country name. The Clause should also take into account organizations like the BCCI, which has historically opted not to be recognized as a NSF despite being recognised by the ICC as the representative of Indian cricket.

Considering the BCCI's prominent role in Indian sports, it is important to ensure a fair and consistent regulatory approach, without granting exemptions to some bodies due to their financial power and influence. In furtherance of the same, introducing a dedicated oversight mechanism or appointing a compliance officer to identify defaulters and enforce these rules could be a huge step towards ensuring compliance. Organizations like the BCCI would then either need to gain recognition as an NSF or secure authorization from the SRBI, with penalties applicable in cases of non-compliance, as outlined in the Act.

#### 59. CLAUSE 37 (5): RESTRICTIVE COMPLAINT MECHANISM

Clause 37(5) restricts the right to file complaints to authorised officers of the SRBI or any other officer authorized by the Central Government. Limiting the ability to file complaints to this extent is too narrow, and could lead alienation of those with genuine grievances. This setup prevents other important stakeholders like athletes, sports bodies, and even the general public

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from raising valid concerns or reporting misuse. Opening up the process to include these voices, or atleast to their representatives in the Athletes Commission, would make the system more accountable and responsive to real issues in the sports community.

## CHAPTER XIV: DEVELOPMENT AND PROMOTION OF SPORTS

### SUMMARY OF RECOMMENDATIONS UNDER CHAPTER XIV

Chapter XIV aims to promote sports in India but misses the mark by not providing a clear plan for how this will actually happen. Despite its promising title, the chapter lacks specific actions or strategies to help nurture talent, improve infrastructure, or support grassroots initiatives. Additionally, the provision that allows the Central Government to relax certain rules for sports promotion lacks clear guidelines, raising concerns about potential misuse. To fix these gaps, the chapter needs concrete policies and the involvement of an independent advisory body to ensure that any exceptions made are fair, transparent, and truly benefit sports development in the country.

### ANALYSIS

#### **61. LACK OF ANY CLAUSE WHICH ACTUALLY SUGGESTS PROMOTION AND DEVELOPMENT OF SPORTS**

Although Chapter XIV is intended to develop and promote sports, it fails to provide any meaningful measures that would genuinely promote the growth of sports in the country. The title suggests a promise of concrete provisions, strategies, and commitments aimed at nurturing talent, enhancing infrastructure, or supporting grassroots initiatives. However, the chapter does not present any specific, actionable steps or initiatives that demonstrate a true legislative intent to promote and develop sports. To fulfil its title, this section must incorporate clear, targeted policies and tangible commitments that can significantly influence the sporting landscape.

#### **62. CLAUSE 38(4): OVERSIGHT OF THE RELAXATION POWERS**

The provision allowing the Central Government to relax rules, supposedly for the promotion of sports or to remove difficulties, lacks procedural safeguards or any clear criteria for application. This could lead to inconsistent application of the power or even misuse, particularly when relaxing eligibility criteria for office bearers of the NOC, NPC, or NSFs, considering the fact that those who occupy these posts must not be under any political or governmental influence as per international standards.

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It is suggested that strong safeguards be added to this provision and certain important decisions such as the tenure or eligibility of the office bearers, procedure to conduct elections and the provisions relating to the athletes commission be kept out of the ambit of such powers granted to the Central government.

## CHAPTER XV: MISCELLANEOUS

### SUMMARY OF RECOMMENDATIONS UNDER CHAPTER XV

Chapter XV of the Bill deals with various miscellaneous provisions, but the existing Clauses have certain gaps and ambiguities, particularly in relation to the allocation of penalty funds and the exercise of executive power. The key issues identified are the inefficient allocation of financial penalties and the broad scope of executive powers without sufficient oversight. The following recommendations address these concerns and suggest mechanisms for enhanced transparency and accountability.

#### ANALYSIS

#### 63. CLAUSE 40: ALLOCATION OF PENALTY FUNDS

The current Clause states, “*All sums realized by way of penalties under this Bill shall be credited to the Consolidated Fund of India.*” This allocation method, while straightforward, may not directly benefit the sports sector. Instead of channelling all penalties into the general Consolidated Fund of India, earmarking a portion specifically for sports development projects could yield significant benefits. There are several other acts meant for specific purposes that redirect the collected fines for the betterment of that sector.

In environmental legislation, such as *the Compensatory Afforestation Fund Act, 2016*<sup>43</sup>, and various rules under the *Environment Protection Act, 1986*<sup>44</sup>, penalties are directed towards environment sector specific initiatives (e.g., conservation efforts), with fines collected under the *Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016*<sup>45</sup> being directed toward managing and mitigating hazardous waste impacts. A similar approach for sports could involve allocating penalty funds towards infrastructure development, athlete training programs, and grassroots sports initiatives. By establishing a dedicated sports fund under the control of the Athletes Commission or independently, this provision could ensure that financial penalties directly contribute to strengthening the Indian sports ecosystem and could also ensure that there is no shortage of funds with athlete welfare bodies.

<sup>43</sup> Compensatory Afforestation Fund Act, 2016.

<sup>44</sup> Environment Protection Act, 1986.

<sup>45</sup> Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016.

#### **64. CLAUSE 43: EXECUTIVE POWER AND OVERSIGHT**

While "*power to remove difficulties*" Clauses are common in legislation (e.g., the Central Goods and Services Tax Act, 2017), the language in this provision is broad and lacks explicit safeguards, raising concerns over potential misuse of executive power. In the GST Act<sup>46</sup>, such executive powers are balanced by the requirement of recommendations from a council before orders are made, ensuring an additional layer of oversight.

The absence of a similar mechanism in this Bill leaves executive actions unchecked, potentially allowing decisions that may not align with the interests of sportspersons or sports development.

#### **65. CLAUSE 43: COUNCIL WHICH WILL RECOMMEND THE REMOVAL OF DIFFICULTIES**

One possible solution is to designate the existing All India Council for Sports<sup>47</sup> as the recommending body. This council already plays an advisory role in sports policy and could provide necessary oversight when the Central Government exercises its powers under Clause 43. Leveraging this existing body would streamline the process and ensure the involvement of experienced stakeholders.

Alternatively, if it is deemed necessary to create a new oversight mechanism, a Sports Advisory Council could be established. This council could include members of the Executive Committees of the National Olympic Committee (NOC), National Paralympic Committee (NPC), and National Sports Federations (NSFs), alongside athlete representatives. This diverse composition would ensure that the council has the requisite expertise and perspectives to safeguard the interests of sportspersons and promote the development of Indian sports.

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<sup>46</sup> Section 172, Central Goods and Services Tax Act, 2017.

<sup>47</sup> All India Council for Sports, Ministry of Youth Affairs and Sports, 2015.

## ANNEXURE I: DRAFT ELECTION RULES

### SUMMARY OF RECOMMENDATIONS UNDER ANNEXURE I

Under the Draft National Sports Governance Bill, 2024 [Annexure I], the key issues involve lack of restraint on the powers of the electoral officer with respect to undertaking eligibility check of the candidates, unfair restrictions on candidates for promotion of their campaigns via social media and public engagement and absence of provision to deal with tie situations during elections. Recommendations include formulating detailed guidelines to be adhered to by the electoral officer pertaining to the eligibility criteria of the candidates, delineate appropriate procedure to be followed in situations of tie-elections including protocols such as re-vote or run-off, and possibility of incorporating hybrid mode of voting allowing both physical and e-voting option which may be beneficial to all stakeholders.

### ANALYSIS

#### **66. CLAUSE 6 (I): UNCHECKED POWERS OF THE ELECTORAL OFFICER**

Under Clause 3 of the (Draft) Model Election Rules, an electoral officer is nominated from the Sports Election Panel for the conduct of elections. The electoral officer is responsible for multiple administrative functions and one of these functions is to conduct an “*integrity check*” about the “*eligibility or otherwise*” of the candidates. The term “*integrity check*” is not defined in the Bill. There is a lack of specific parameters and guidelines to adjudge the same. The words “*or otherwise*” leave the scope of powers of the officer wide and ambiguous. Hence, this can lead to discretionary & biased interpretations and arbitrary disqualifications.

Furthermore, in case of disqualification pursuant to the “*integrity check*” of the affected candidates, there is no appellate or review mechanism provided to the aggrieved individual to redress their concerns against the decision of the Electoral Officer under the Clause. There is a need for appropriate mechanisms to ensure transparency and accountability in the decision-making process of the electoral officers.

Hence, it is suggested that there should be proper parameters and guidelines in place to conduct these background checks in place. For instance, the Bylaws of the USOPC Athletes’ Advisory Council (Team USA Athletes’ Commission), 2024 provides an extensive criterion under Section 5 of the regulations to check the eligibility of any candidate. This process is also

supervised by the main body i.e. the USOPC (“United States Olympic and Paralympic Committee”).<sup>48</sup> Therefore, it is recommended to develop a mechanism along these lines to ensure reasonable fairness in the conduct of the elections.

#### **67. CLAUSE 7 (V): CAMPAIGN REGULATIONS AND COMMUNICATION LIMITS**

The Clause 7 (v) of the (Draft) Model Election Rules imposes an absolute restriction on the use of social media networks by the candidates for promotion of their campaign. Furthermore, a candidate is not even allowed to hold a public meeting or engage with a journalist for their publicity. These provisions are in complete contrast to the generally acceptable election campaigning guidelines in India as well as around the world.

The Model Code of Conduct which is imposed in India during elections allows the use of social media and print media as long as it is not done with the intention to influence the election. The IOC Athletes’ Commission Election Procedure provides that the candidate may use social media to promote their candidature as per rule 9.1, as long as they are not in violation of any relevant regulations.<sup>49</sup>

Hence, the absolute restriction on the use of social media networks should be lifted to provide the candidates necessary platform to share their vision with the voters. Furthermore, setting up structured forums or debates where all candidates can equally present their stance would foster balanced communication.

#### **68. CLAUSE 10: UNCLEAR PROVISIONS FOR RESOLVING TIE SITUATIONS**

Clause 10 of the (Draft) Model Election Rules provides the procedure for counting the votes after the culmination of polling via ballot paper. However, it is to be noted that there is no specific protocol prescribed to be followed in cases of tie situations. A tie between two candidates can be a possible outcome in any election and therefore, election procedures should be well equipped to deal with such circumstances. For instance, Rule 9.4(6) of the Constitution of The Australian Olympic Committee lays down that in the event of a tie, preference will be given to the youngest candidate.<sup>50</sup>

<sup>48</sup> BYLAWS of the USOPC Athletes’ Advisory Council (Team USA Athletes Commission), 2024, § 5, 2024.

<sup>49</sup> IOC Athletes Commission Election Procedure, 2023.

<sup>50</sup> Australian Olympic Committee (AOC) Constitution, 2019.



This oversight by not incorporating a definite provision to deal with tie matters can lead to delays and wide-ranging disputes. Therefore, it is recommended that there should be a specific protocol such as re-vote or run-off in place to deal with tie situations in order to ensure smooth and fair elections.

#### **69. ADDITIONAL SUGGESTIONS**

Clause 2(ii) of the (Draft) Model Election Rule, provides for voting by secret ballot paper. It further requires that voting shall only be done in person or by authorized representative as per Clause 9(vi) and there is provision for incorporation of digital or e-voting option. The absence of digital voting may restrict participation, create more logistical difficulties, and lessen the election process's flexibility at a time when digital platforms improve accessibility, efficiency and transparency. Therefore, it is suggested that incorporating a hybrid voting procedure that allows for both digital and physical voting provisions will benefit all the stakeholders and ensure the conduct of elections in a smooth and timely manner.

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