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The Abrupt Suspension of Fifa - A Constitutional Lens

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The heralding force acting as an impetus to sustain the sagacity of the constitutional principles being held as sacrosanct for years can be said to be the dogma followed as gospel truth in the bureaucracy- Separation of powers. Right from the Kesavananda case that held the separation of powers to be intertwined as a loop in basic principles of the constitution thereby ousting the possibility of any tampering with the provision in form of an amendment, the recent twist that witnesses the ostracization and suspension of AIFF by FIFA gives a blurred format of whether the apex court ardently follows the principle through heart soul mind and conscience or otherwise. Lately, the tonic of anomalies being reflected as a perplexion as to whether the court intervening in the appointment of an independent committee followed by an order mandating incumbent authority to quit who has exceeded the term of holding office is ambiguous in terms of powersharing.¹ Greater monumental irregularities in the functioning of an entity need be or need not give the prerogative to form an exception by having the authority to appoint a supervising body, the constitution of which digresses from the codified statutes of the global federation. Thus, getting into over-refined deliberations this paper seeks to strike a thorough study on:

1) *Whether AIFF is a state under article 12 of the Indian Constitution further, whether the spirit of separation of powers truly entrenches the judicial institutions.*

¹ Shruti Kakkar, 'FIFA ban-Does judicial intervention ins sports amount to legal outreach' (*The New Indian Express*, 21 August 2022) <<https://www.newindianexpress.com/thesundaystandard/2022/aug/21/fifa-ban-does-judicial-intervention-in-sports-amount-to-legal-outreach-2489655.html>> accessed 01 February 2023

2) *Whether exceptional situations can mandate the digression from the conventional authority vested in a body and analysis of similar circumstances in different countries.*

3) *After-effects of this paradigm shift that are noticed by the sudden inception of judicial authority over an organization that is anticipated to abide by standard rules of an international organization, under whose veil it is covered.*

Keywords: *fifa, suspension, constitution.*

INTRODUCTION

The dusk as draconian as it was, the torrential downpour of castigating news fell on the ears of the All India Football Federation (hereinafter, AIFF) in which a drastic step of suspending the former was taken unanimously by FIFA because of external interference against its ascertained statute. Putting forth a condition, on the sole basis of which the ban would be lifted was when the Committee of Administrators (CoA) appointed by the Supreme court of India would stand repealed. The dilemma shuttled between the right to intervene in case of the need of the hour and the hanging sword of threatening the discontinuation of the decision of India to host the prestigious U-17 Women's football world cup, giving the country an edge in performance. Adding to the fact that it is not a prudent idea to have an equal number of eminent players alongside the state association in the electoral college. The draft put forth by CoA states the electoral college to have 36 eminent players all over India- 24 males and 12 females (making it 50% of total eminent players elected) in contrast to the 25% proposed by the draft constitution of FIFA. ²Unwaveringly, credit has to be equivalently given to Shri. Praful Patel, who for 12 years and 4 months has overlooked the administrative work of AIFF, and the issue playing to the gallery when state associations complained about certain provisions of the draft constitution of CoA being utterly discriminatory and illogical. While on one hand this verdict of the apex court elaborating on voting rights for management of internal affairs completely to the electoral

² 'SC Approves COA's timeline for AIFF elections polls to be held on Aug 28' (*The Times of India*, 5 August 2022) <<https://timesofindia.indiatimes.com/sports/football/top-stories/sc-approves-coas-timeline-for-aiff-elections-polls-to-be-held-on-aug-28/articleshow/93379200.cms>> accessed 01 February 2023

college comprised of eminent players, given Bichung Bhutia has hailed it to be a move to reminisce forgotten players who have brought laurels to the nation, FIFA is seen to be in staunch opposition to the third party intervention in the autonomy of the body. However, remaining as firm in its keel as it can be FIFA lifted the ban only after the apex court repealed the mandate of CoA an icebreaker to make the coast clear and make sure the affairs are overlooked solely by the acting secretary general as against one headed by justice AR Dave on the recommendation of the apex court.

THE BASIC ANALOGY IS DRAWN IN COMPARISON TO BCCI

What remains giving chills as being more catastrophic is this. Post announcement of the ban on AIFF Indian women's league champion Gokulam Kerala was barred from competing in The Asian club championship. Men's national team matches in Singapore and Vietnam were canceled as well, posing a threat to their livelihood. One needs to take a look at the objective behind the verdict of *The Board of control for cricket in India v Netaji cricket club*³ where considering the pervasive and deep effect of autonomy given to the board in discharging public functions could threaten the livelihood of the players since the board has immense prerogative in suspending, appointing, disqualifying the members from being representatives in matches the apex court held the disputes associated with it if concerning with serious infringement of fundamental rights to be amenable to writ jurisdiction in spite it not being a state. The state does not hold any share capital, the government has unanimously decided to delegate the powers it enjoys without interference from choosing the venue to rules and regulations of the game where the government has no say in its internal or administrative affairs to say. This very objective has been dismantled by the judiciary intervening in the admin affairs of the AIFF, whose shadow of the verdict has had serious repercussions on the livelihood of players as aforementioned in a few cases. This is also a juncture to know that limited power even in need of hour conferred upon the judiciary at times is not detrimental to but supportive of the independence of sports

³ *Board of Control for Cricket in India v Netaji Cricket Club* (2005) (4) SCC 741

associations in worldview. Why this thin line of differentiation and how prudent can it be? Let's delve deeper to explore.

SIGNIFICANCE - WHAT NEEDS ATTENTION WITH ACUTE SENSITIVITY?

In light of allegations and controversies associated the paper draws attention towards AIFF being a state and BCCI not being one despite the objective of autonomy and degree of non-interference by judiciary being minimal in the latter's case to be a discharge of crucial public functions. However, even this is not without complaints. When Gurunath Meiyappan (son-in-law of the former president of BCCI) got arrested for spot-fixing, betting, and non-allowance of contracted and non-contracted domestic players from participating in foreign franchise cricket leagues but only allowing their retired counterparts to do so, it seriously uproots right to life and liberty under art 21 of the Indian constitution, fails to draw an intelligible differentia test between this difference of violation of rights and non-observance by the judiciary in case of AIFF thus also explicitly affecting the right to equality under art 14 of the law.⁴ While the significance stands to be to kindle as to when both govern respective sports entities in their way, one has a pervasive state control in contrast to the other being absolved from the same. However, BCCI's autonomy affecting matters of public importance should give sufficient reasons for the court to impose a curb on the unfettered powers the cricket board possesses as an independent body which came much later as compared to the appointment of a body to supervise the affairs of AIFF. Also, this variance of appointment of executives for further selection concerning internal affairs of the committee and furtherance of the interest of the sport vested on BCCI read in coherence with the court having limited powers to intervene in case of amenability to writ jurisdiction, whereas AIFF being interfered with in case of its internal affairs requires serious attention according to the author's purported intention of undertaking the research which makes its significance self explanatory.

⁴ 'Gurunath Meiyappan arrested in IPL betting case' (*The Hindu Business Line*, 12 March 2018) <<https://www.thehindubusinessline.com/news/gurunath-meiyappan-arrested-in-ipl-betting-case/article64106226.ece>> accessed 01 February 2023

THE AGENDA AND PRIMARY LITERATURE REVIEW: IS THE BODY OF DISCUSSION AT HAND, A STATE?

One needs to know the designation of AIFF which stands to be the governing body of football in India under the jurisdiction of the ministry of youth affairs, Government of India, before the taking of momentum of which the defacto head was The Indian football association. Hence under Art 12 of the Indian constitution which mentions in its ambit parliament, the government of India, state, local and other authorities stands met for two reasons as illustrated below:

1. The body is governed by the ministry of youth affairs, a body subject to the higher authority of the government of India as a whole. In addition to this major amount of financial assistance is also given by the central government since decision- related to financial allocation is also taken by it. A recent news article mentioned AIFF funding to be slashed by 85% by the central government (shows pervasive state control being a stakeholder in decision-making) citing the Indian team's poor performance.⁵ Hence research states that control of the sport is major because given the spectators' penchant for it, a majority have a keen interest in football abroad like Barcelona. The Union budget shows a paltry amount of allocation for Indian football. Since like cricket, the game does not have a magnetic pull of sycophants aboriginally looking forward to Indian football. The difference in the review of autonomy enjoyed by BCCI and AIFF can also be because India is a cricket-crazy nation, attracted largely by factors running in history backstage. Till the 50s-60s the enthusiasm for football was all alleviated by the famous 83 cricket world cup that the country lifted consequently focusing on pooling its resources for a single cause to the extent that being a cricketer sounds more promising and nourished field for the future compared to others. While state control being strongly aligned with the lack of facilities for the naïve sport may sound nebulous but is cited as one of the reasons by those who are oblivious to

⁵ Mihir Vasavda, 'Govt. cites 'poor performance' as funding to AIFF slashed to a sixth of 2019-20 amount' (*The Indian Express*, 27 April 2022) <<https://indianexpress.com/article/sports/football/govt-cites-poor-performance-as-funding-to-aiff-slashed-to-a-sixth-of-2019-20-amount-7888801/#:~:text=The%20federation%2C%20which%20has%20faced,Rs%205%20crore%20this%20year.>> accessed 01 February 2023

the fact that Brazil grew players that grew majorly in poverty. For India to see backstage in football and the reason for the apex court to intervene was to eliminate politics from governing the entity. The objective was to not transgress the jurisdiction, or enshackle the power separation through constant judicial overreach but to appoint those who possess the knowledge of the sport. Coming to the main discussion despite being a state what makes the AIFF administration different from BCCI?

2. Being a very happening organization, in conduction of major red flag days thelethargy does not drive the entity, unlike the AIFF which is often seen to be as a sleeping giant to be infused with some enthralling motto. Privatization isn't sought after for this, since corruption, nepotism, and bleak reasons force AIFF to refrain from being given the same autonomy. This may not be very convincing a reason since these shortfalls are also present in BCCI's administrative set-up, despite standing completely untouched by its autonomous aspect.

3. Unlike the ICC, FIFA will abstain from accepting an institution that represents only a nation but is not recognized by its government. However, the administration is not developing domestic leagues at the grassroots level, the oldsystem of checks and balances is always there to oversee the functioning, lack of international representation in comparison to cricket may be considered as anintelligible differentia for court intervening in the matter when AIFF had a sedentary existence for wholesome 12 years. However, the ICC draft constitutionlike FIFA prohibits the management of affairs by any third party, government, or public body in the selection and operational matters. This makes things equivocalwhen intervention is prohibited but internal mismanagement makes interference a Hobson's choice. The following case also elaborates to support the fact that football associations in India are largely public bodies under statecontrol.

4. **CIC declares Delhi association to be a public authority under RTI Act: (*Dk Bose v PIO*)** in which information was sought after under complaints registered under sexual harassment

for which respondent authority contended RTI not to be applicable since it is not a public body.⁶ However, for a body conducting public activity like football such allegations were bashed to be highly unbecoming and hence mandated to disclose information demanded to be disclosed. However, the sluggishness of the association to not rise to the occasion of coming up with players actively representing India in the international forum is also aligned with the public interest that needs to be addressed and hence judiciary had no alternative but to supervise the aspect.

EXAMINING THE DEGREE OF INTERVENTION THE COURT CAN HAVE THROUGH THE SYSTEM OF CHECKS AND BALANCES

Given that the AIFF is a state and writs can be filed only in circumstances of violation of fundamental rights let us analyze the language of judicial review under art 13 of the Indian constitution which says any law made in contravention to Part 3 of the constitution to the extent of such contravention be declared void. However, an interpretation of this kind can be possible, where abstinence from an essential responsibility can be a just reason to give much power to the court to find its way in. Politicians who have meager knowledge of the sport may not take steps to further the advancement of it infrastructurally or otherwise which may certainly hamper the preparation of budding football players. This as aforementioned has been one of the major reasons apart from the lack of financial assistance in creating an impression of sensitivity in the international arena. This may seriously infringe on the right to carry on an occupation under art 19(1)(g) ultimately detrimental to the construct of the personality of the whole individual. Disregarding a few things, blatantly a judicial overreach will not be helpful when the larger public interest of the nation is at stake.

ANALYSIS THROUGH SCOURING THE SHREDS OF EVIDENCE OF RESEARCH

Misunderstanding the nexus of which law has an upper hand: Evidence suggests that FIFA always enjoyed the legal monopoly that it wanted. From creating the laws of the game, dictating what qualifies as a sport, and enforcing a code of conduct for the clubs, players,

⁶ *Dk Bose v PIO* (2017) SCC Online CIC 1792

and international organizations without being accountable to national laws ranging from awarding Qatar the right to host a tournament despite reported cases of bribery.⁷ It has a court system comprised of three main judicial bodies namely – the disciplinary committee, ethics committee, and appeals committee. In this case, the disciplinary committee enforces sanctions and banishment of people like banning two Russian players in 2021 for violating its regulations. Sepp Blatter was next banned in 2022 after being found guilty of accepting bribes. When signing up to participate in FIFA events, players agree to bring disputes only to FIFA courts, therefore application of national laws becomes a huge challenge. Here is the impediment. When countries are forced to accept FIFA laws and abide by their self-chosen, self-imposed sanctions the only option becomes collective action to prevent unilateral decisions. An example of Russia is worth mentioning here. The soccer federation of Sweden and Poland declined to play against Russia in the World Cup Qualifiers, which would mean the undisputed victory of Russia in the forum.⁸ Fearing a massive loss of revenue FIFA pushed itself to ban Russian teams from playing which ultimately calls for collective action to provide a point of friction to the autonomy that this entity has got.

Comparative analysis of a viable scope of implementation of laws: The laws of the game are codified concerning the rules of the game to be followed by FIFA members. It can be termed to be more of a specific law with an ordained set of rules and regulations. Keeping that discussion at bay for a while, research says, any government up with a bleak spot of corruption could have its representatives threatened with expulsion. This law would lead to a breakup capable of destroying the global political balance, hence forcing the judiciary to intervene for reminding one of the crucial directive principles of state policy embossed in the Indian constitutions which proclaim maintaining an amicable international relation with other contemporaries. It is a way of learning about global systems to maintain their respective monopolies intact, at times rules capable of discrepancy are formulated

⁷ 'Everything wrong with Qatar World Cup' (*Independent*, 13 December 2022)

<<https://www.independent.co.uk/sport/football/world-cup/qatar-world-cup-2022-deaths-b2244081.html>> accessed 01 February 2023

⁸ Kacper Pempel, 'Poland, Sweden refuse to play world cup qualifier with Russia' (*ALJAZEERA*, 26 February 2022) <<https://www.aljazeera.com/news/2022/2/26/poland-refuses-to-play-world-cup-2022-qualifier-with-russia>> accessed 01 February 2023

such that the overall structure of it becomes mismatched with the inherent political order of the nation. Coming to the Indian side for a justifiable argument, knowing the distinction of what prevails with dominance, general or specific law becomes crucial. Going by the maxim '*generalia specialibus non derogant*'- when general words in a later act capable of reasonable application are dealt with by earlier legislation one cannot hold the earlier legislation to be repealed in any case by mere use of general words without there being an intention to do so. General words should not derogate special provisions one of them, in this case being the provisions of FIFA specific to its members for a cause thereby serving a specific purpose. General provisions will only apply where the possibility of application of specific law is largely unfound as held in *South India Corp (P) Ltd. v Sec of Board Revenue*.⁹

Moreover, under the specific law of FIFA which took a great menace against the composition of the team of appointees authorized by the Indian supreme court because of no proportional representation under FIFA statute needs the attention of Paragraph 20 of the decision of dispute resolution chamber that on becoming the member of FIFA, a country impliedly agrees to the fact that decision of FIFA prevails over any other national law which proves the objective of creation of a standard set of rules for everyone to follow. Decisions in dispute resolution cannot be as per the national laws of the parties in contention. Hence a specific law providing uniformity to a party to it, India needs to abide by it which it rightly did in reversing the CoA appointed by it exceeding the affixed percentage of exemplary players.

IS THE CONSTITUTIONAL STRUCTURE DISMANTLED BY THE SPONTANEOUS ACTION OF THE COURT?

The invigoration of the overall national interest of the country was at stake. Supreme court emphasized its interference by saying that if attempts to sabotage the hosting of the FIFA tournament by India are made, it will not stay aloof. Most importantly while the state representatives claimed that court interference was the only way in upholding reasonableness. FIFA statutes are a bit tacit about ways to tackle the disputes that arise within

⁹ *South India Corp (P) Ltd. v Sec of Board Revenue* (1964) AIR 207

a country than one in international forums between two nations – while politics had ruled AIFF to stagnation, voicing at the right time to kickstart the wheel of operation was essential. Court has felt the aspect of undue prevention of the country in hosting tournaments and the world cup which would have given another leg up for non-cricketing sports in India, unnecessarily stuck in administrative slack. However, in such adversity, the court took note of not making any bombastic moves but directing the center to take proactive steps to lift the AIFF suspension. This is to stop the CoA of former chief commissioner of India SY Quraishi and ex-India captain Bhaskar Ganguly as to draft a constitution in line with the sports code and model guidelines. Thus when separation of powers is a basic principle it is well followed as gospel truth in its functioning by the Indian legal system.

WHICH OTHER INTERNATIONAL COUNTERPARTS HAVE FACED THE MUSIC?

1. FIFA lately had also threatened to ban Tunisia from the world cup after the youth sports minister spoke of the possibility of dissolving the federal offices of different disciplines, indicating the Tunisian football association. The point hammered statement in response came as members of FIFA need to conduct affairs independently in the absence of influence of third parties in the failure to comply which would attract imposition of penalties including suspension of the relevant association.
2. What has not received a reply yet is a few Iranians wanting their country banned from the world cup in Qatar following the draconian killing of 22-year-old Mhasa Amin in sept after being arrested by Iranian morality police for inappropriate attire. They voiced against state-sponsored violence, claiming that everything in Iran is controlled by revolutionary guards with nothing independent as FIFA ordains one to be. Iranian women undemocratically were turned away from attending matches still keeping FIFA in abeyance since long when Russia got banned for killing people under Human rights violations, what exempts Iran from being barred from participating in international tournaments for gender discrimination? Certainly, something to ponder upon which shows a stance of predisposition on part of

FIFA in certain situations.¹⁰

3. FIFA banned the former secretary general of the Zimbabwe football association's referees' committee from all football-related activities for five years after evidence suggested that he was guilty of sexual harassment.¹¹ While this turns out to be an offense of gross violation of human rights affecting the bodily autonomy of the person, Iran by having a say in every decision of the inherent football federation is not just. While FIFA would show double standards by now giving a justifiable reason for not banishing Iran here, despite claims pouring in from teams of the country to do so pitching against Iran for a cause, what is awaited is the similarity of consequences that other countries face in such scenarios.

CONCLUSION

The issue at hand was akin to investment treaty obligations as analyzed by the author in similar brief research undertaken, where despite domestic courts being able to deliver justice one has to by treaty approach the international forum of Switzerland causing cost and time incorrection. An implied veto being conferred upon FIFA resulted in total disregard for domestic laws or a crunch of circumstances barring geopolitical issues alone. Like signing a treaty alone does not decide a boom in the economy, a one size fits all approach of a unanimous decision taken by a forum for dispute resolution may not be the solution given it is decided by the internal affairs of the country. This makes the amalgamation of national and international law indispensable.

¹⁰ Sandip G, 'Iran players make powerful statement by their silence' (*The Indian Express*, 22 November 2022) <<https://indianexpress.com/article/sports/football/qatar-world-cup-iran-players-make-powerful-statement-by-their-silence-8281637/#:~:text=None%20of%20them%20uttered%20a,home%20against%20the%20ruling%20regime.>> accessed 01 February 2023

¹¹ Ed Arons & Romain Molina, 'FIFA bans former Zimbabwe football official for sexual harassment' (*The Guardian*, 1 September 2022) <<https://www.theguardian.com/football/2022/sep/01/fifa-bans-former-zimbabwe-football-official-for-sexual-harassment-referees-obert-zhoya#:~:text=Fifa%20bans%20former%20Zimbabwe%20football%20official%20for%20sexual%20harassment,-This%20article%20is&text=Fifa%20has%20banned%20the%20former,sexually%20harassing%20three%20female%20officials.>> accessed 01 February 2023

A few futuristic approach-oriented proactive steps can be:

- The formation of contracts based on trust (fiduciary contracts);
- Abstaining from delegating the upper hand to influential players alone, and double standards of non-encouragement of emerging countries with deemed fit to be ingrained talents like India;
- Setting provision of equanimity of opportunity for future emulation of private organizations controlling self-operation like FIFA;
- Most importantly understanding that while a country cannot turn completely domestic for implementation of the law, but needs partnerships for a global representation to prove itself, a mutual coexistence should be felt by such authorities, else will meet the same fate as the Hobson's choice of banning Russian football team not by chance but by the absence of any other alternative.

No ignorant disregard for domestic/national law should prevail but an amicable settlement that finds space for the amalgamation of national and international laws should prevail. FIFA should reconsider the absolute imposition of strident rules on countries, or else face the fate of influence of the upholder of the constitution, that is the judiciary which barged in at the right time to prevent further worsening of the reputation of football beckoning of opportunities in all, making judiciary intervening in the matter inevitable. If one who regards the constitution to be sacrosanct does not entrench their foot to uphold it, who else will?

Thus doing away with it merely by an excuse of transgression is not the way out that seems promising but what is worth all the appreciation and evoking an appropriate response is judicial conscience is not merely on paper, but in practice, standing bold and confronting international challenges, also backtracking in just circumstances, to say reversal of CoA decision and retaining the independence of forum adhering to specific law of FIFA. An immaculate example of independence is not being devoid of decision-making prerogative, but a heralding force to provide an impetus to it. Time to ask ourselves whether we see ourselves in that way.