

A CASE FOR ENACTING ADEQUATE SPORTS LEGISLATION THROUGH AN ANALYSIS OF THE LEGAL DEBACLE OF THE 2010 COMMON WEALTH GAMES

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In this paper I argue that the lack the sports legislation in the country was one of the reasons behind the Commonwealth Games organizational fiasco. Drawing from the legislations adopted by Melbourne (host of the previous 2006 games) and Glasgow (hosts of the forthcoming games in 2014) I have laid out the important features that a sports legislation in India should have if India ever hopes to host a world scale sporting event successfully. These features include formation of the organising committee, land acquisition, intellectual property rights, ticket touting, transport and ambush marketing. I have pointed out specific areas where India failed in this regard during the Commonwealth Games, in light of India's bid document and the events that unfolded in the run up to the Games.

I. INTRODUCTION

The 2010 Commonwealth Games (Games) might have finished but the probes to ascertain those responsible for the poor organization and the corruption have only just begun.¹ The Games, right from the beginning, were embroiled in a host of controversies from delays in schedule, corruption, doping to security and safety concerns. A number of prominent sports persons and politicians in the country spoke out against the preparations and went to the extent of saying that India should never have bid for the games given the lack of infrastructure and rampant corruption in the country.²

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¹ *Shunglu meets PM, discusses CWG probe*, available at <http://www.hindustantimes.com/specials/sports/cwg-2010/Shunglu-meets-PM-discusses-CWG-probe/newdelhi/SP-Article10-616998.aspx> (Last visited on November 11, 2010).

² *CWG mess saddens Indian athletes*, available at <http://timesofindia.indiatimes.com/sports/events-tournaments/commonwealth-games/top-stories/CWG-mess-saddens-Indian-athletes/articleshow/6613432.cms> (Last visited on November 11, 2010), *Saina says Delhi not ready for CWG, then makes volte face*, available at <http://timesofindia.indiatimes.com/sports/news/Saina-says-Delhi-not-ready-for-CWG-then-makes-volte-face/articleshow/6492688.cms>

In this paper, I will focus on how the legal system in our country failed the Games from the very start. In India, there is legislation specifically relating to sports. The first thing most countries do once they win the bid for a major sporting event like the Commonwealth Games, is set in place various legislations and safeguards to ensure that the preparations for the Games are completed in a smooth manner and on time.³ These laws lay down specific punishments which would be meted out to anyone who is in contravention of the law. I argue that failure to have such laws, sows the seeds for disorganized preparation and eventually disorganized Games. If India is to improve its sporting organization, it is essential to have a legislation relating specifically to the conduct of major sporting events. This is the first step that needs to be taken before India can ever hope to make a bid for the Olympics or any major sporting events in the future.

This paper will deal with the need for sports legislation in India by examining laws of other countries which have been put in place to deal with major sporting events. For this, I will specifically examine the Australian Commonwealth Games Arrangements Act, 2001 for the Melbourne 2006 Games, the Glasgow Commonwealth Games Act, 2008 for the Glasgow 2014 Games and other allied acts which have been put in place by these countries in preparation for their respective Commonwealth Games.

II. THE COMMONWEALTH GAMES BID: A COMPARATIVE LEGAL ANALYSIS

All major sporting events require a sound legal system to be in place to safeguard their legal rights in the host country. There are a host of legal requirements for a country to have in place before bidding for any major sporting event. These are usually enforced through a legally binding contract known as the host city contract. I have dealt with some of these below. While examining each of the requirements, I have looked at how India has attempted to meet the requirement and failed; in contrast to other host nations that have met the requirements more successfully through the enactment of specific legislation.

(Last visited November 11, 2010); I'll be very unhappy if Commonwealth Games are successful: Aiyar, available at <http://timesofindia.indiatimes.com/india/Ill-be-very-unhappy-if-Commonwealth-Games-are-successful-Aiyar/articleshow/6224739.cms>, July 28, 2010 (Last visited November 11, 2010).

³ This can be seen from the enactment of the various laws for the Melbourne 2006 games and the Glasgow 2014 games with respect to the Commonwealth Games. Such legislation has also been introduced for other major sporting events such as by Australia for the Sydney, 2000 Olympics, by UK for the London 2012 Olympics, by South Africa for the 2010 FIFA World Cup etc. *See also* Glasgow Commonwealth Games Bill, Policy Memorandum at 8-9, available at <http://www.scottish.parliament.uk/s3/bills/04-GlasgowCommGames/b4s3-introd-pm.pdf> (Last visited November 11, 2010).

A. ORGANISING COMMITTEE

One of the pre requisites for a host nation is to prove to the Commonwealth Games Federation (CGF) that it has in place a structured OC in charge of organizing the Games. In its bid document, India has stated that the Organizing Committee for the Games would be a nonprofit government registered society. It has also laid out a detailed structure of the composition of the committee. It has proposed that the executive board of the committee would be headed by a Chairman who would be a government appointee, a Vice Chairman who would be the Indian Olympic Association (IOA) President and thirteen other members who would consist of government appointees, IOA appointed and national sports federation nominees.⁴

The reality was, however, far removed removed from what was prescribed in the original bid.⁵ The Chairman of the OC was Suresh Kalmadi, the President of the IOA.⁶ The role originally assigned for him was as Vice Chairman of the OC. Further although the original bid states that there would be two CGF nominees⁷ the number was increased to three in the final executive board with no explanation given for the reason behind the increase.⁸ It also has an additional list of special invitees which had not been envisaged previously.⁹ Further, even though India won the bid in 2003 it took two years for an OC to be formed.¹⁰ No explanation was given for these inconsistencies and with the lack of adequate law governing the constitution of the committee no direct action lies against any authority. The lack of organization in the OC seems to have set an example for the rampant corruption which followed and the delays in construction of the sports venues.

In fact, members of the OC, who were in charge of overseeing the preparation of the Games were the ones against whom most of the corruption charges were leveled. They were alleged to have been involved in entering into questionable contracts with dubious firms for selling television rights, citing inflated transport costs, fixing ridiculously high prices for overlays like air

⁴ *Indian Olympic Association Bid document for Commonwealth Games (Bid document)*, 37, available at http://www.thecgf.com/media/games/2010/IOA_Bid.pdf (Last visited on September 20, 2010).

⁵ *Id.*

⁶ *Organising Committee General Body*, available at <http://www.cwgdelhi2010.org/?q=node/756> (Last visited on September 19, 2010). *See also* Executive Board, available at <http://www.cwgdelhi2010.org/?q=node/758> (Last visited on September 20, 2010).

⁷ *Supra* note 4.

⁸ *Supra* note 5, *Executive Board*.

⁹ *Id.*

¹⁰ *Organising Committee Commonwealth Games*, available at http://www.cwgdelhi2010.org/organising_committee_commonwealth_games_2010_delhi, (Last visited on November 11, 2010).

conditioners, tread mills, toilet papers, umbrellas and awarding of marketing contracts to little known firms etc.¹¹

The Melbourne 2006 Games on the other hand through the Commonwealth Games Arrangements (Governance) Act, 2003 had established a Melbourne Commonwealth Games Corporation.¹² The functions of the Corporation were to negotiate, enter into agreements in relation to the Games, to undertake and facilitate organization, conduct, management and promotion of the Games and to do all other things necessary for or in connection with the conduct of the financial and commercial management of the Games.¹³ The Corporation was to have a Board of Directors which would be responsible for the affairs of the Corporation.¹⁴ The Board would consist of twelve directors, two directors would be appointed by the CGF, not more than four to be nominated by the Australian Commonwealth Games Association and six directors appointed by the state.¹⁵

B. TRANSPORT

The Host City Contract imposes certain requirements regarding transport regulation on every city. In its bid document, India had laid out proposed transport arrangements for athletes. Further, it stated that one lane would be reserved for participants and officials on all major roads for easy accessibility.¹⁶ There was, however, neither any transport plan in place nor any body to oversee the implementation of the arrangements until a few months before the start of the Games¹⁷. The only semblance of organisation was seen with the Delhi Metro Rail which aimed to provide connectivity to 10 out of 11 venues of the Commonwealth Games 2010.¹⁸ While, this is a welcome initiative, a proper organizational system which inscribes many more such initiatives in the run up to any major sporting event is necessary and this can only be achieved by laying down a formal structure in a legislation dedicated to such events.

For example, the organisers of the 2014 Glasgow Games have already unveiled their transport plan this year, three years ahead of the Games to give them ample time to implement the proposed plan and to ensure

¹¹ *Alleged Commonwealth Games Corruption*, available at <http://www.currentnewsindia.com/2010/08/alleged-commonwealth-games-corruption-probe-report-today-darbari-may-be-sacked/> (Last visited on November 11, 2010).

¹² Commonwealth Games Arrangements (Governance) Act, 2003, § 4C.

¹³ *Id.*, § 4E.

¹⁴ *Id.*, § 4K.

¹⁵ *Id.*, § J.

¹⁶ *Supra* note 4, 164.

¹⁷ Spectator transport plan drawn up for Commonwealth Games, available at <http://timesofindia.indiatimes.com/sports/commonwealth-games-2010/news/Spectator-transport-plan-drawn-up-for-Commonwealth-Games/articleshow/5587915.cms> (Last visited on November 11, 2010).

¹⁸ *Metro to provide easy access to 10 of 11 Commonwealth Games venues*, available at http://www.delhimetrorail.com/common_wealth.aspx (Last visited on November 11, 2010).

its smooth functioning during the Games.¹⁹ This is the first of three versions of the plan with the final one scheduled to be introduced in 2014. Currently the plan is open for public comments.²⁰

One of the reasons which can be attributed to such timely action is that the Glasgow Commonwealth Games Act itself clearly provides that the organising committee would be in charge of making a plan about transport matters relating to the Games. In addition, it states that the Organising Committee must consult the ministers, every council in whose areas a Games location is situated and every chief constable of a police force maintained for an area in which a Games location is situated.²¹ Further, it provides that a traffic authority for a road may make an order in relation to a road for the purposes of implementing the Games transport plan, facilitating transport services in connection with the Games, facilitating travel by any person for a purpose connected to the Games, or carrying out an experimental scheme of traffic control for a purpose connected to the Games.²² The Act also provides consequences for a council which fails to implement a traffic regulation needed to deliver the commitments given in the host city contract. It allows the Scottish ministers to take the directed action in place of the council and recover the cost of that action from them as a debt.²³

C. TICKET TOUTING

The host city contract for the Commonwealth Games requires that that “the unauthorised sale of tickets should not be allowed” and requires that “appropriate regulations are put in place to prevent ticket scalping”. In India, we had no specific law to deal with ticket touting especially with relevance to the Games. The Glasgow Commonwealth Games Act however, has a specific provision which makes it an offence to tout a ticket. Acts which amount to touting include selling a Games ticket, offering to sell a Games ticket, exposing a Games ticket for sale, advertising that a Games ticket is available for purchase, making a Games ticket available for sale by another person, and giving away (or offering to give away) a Games ticket on condition that the person given the ticket pays a booking fee or other charge or acquires some other goods or services.²⁴ Persons guilty of a ticket touting offence would be liable to pay a fine.²⁵

¹⁹ *Transport plan for 2014 Commonwealth Games unveiled*, available at <http://www.bbc.co.uk/news/uk-scotland-glasgow-west-11243278> (Last visited on November 11, 2010).

²⁰ *Transport plan for 2014 Commonwealth Games unveiled*, available at <http://www.bbc.co.uk/news/uk-scotland-glasgow-west-11243278> (Last visited on November 11, 2010).

²¹ Glasgow Commonwealth Games Act, 2008, § 37.

²² *Id.*, §38.

²³ *Id.*, § 40(4), (5), (6).

²⁴ *Id.*, § 17.

²⁵ *Id.*, § 35.

D. LAND ACQUISITION

Most host cities for international events like the Commonwealth Games require extensive stretches of land in prime areas. A study carried out by Housing and Land Rights Network showed that a number of evictions had been carried out in Delhi in the run up to the Games. For example, in 2004, authorities in Delhi evicted more than 35,000 families living along the banks of the river Yamuna to make way for the development of a city beautification and tourism project on land adjacent to the Commonwealth Games Village. Further, a slum cluster located alongside a drain behind Jawaharlal Nehru Stadium which included over 50 people suffering from a high degree of disability was demolished. The drain was to be covered and the area beautified to make way for a parking for the Commonwealth Games.²⁶

In India, land acquisition is covered under the Land Acquisition Act, 1894. This act states that the government may acquire land in any locality if it is required in public interest.²⁷ While land acquisition may be necessary in order to conduct an event of such a scale, it is essential to have proper regulations and laws in place for rehabilitation and compensation so that the actions of the municipal bodies do not result in a violation of human rights and exploitation of the poor. While in general Art. 21 of the Constitution can be invoked to assert the right for rehabilitation, the Courts have upheld that compulsory acquisition of land is not a violation of the Right to Life. A nationally applicable law that ensures the right to rehabilitation, drawing upon Article 21 and the Right to Life with Dignity, is therefore an urgent necessity.²⁸

Although the National Policy on Rehabilitation and Resettlement, 2007 has been approved by the Union Cabinet there is still no law conferring the explicit right to rehabilitation.²⁹ Some of the important provisions of this policy include the conduct of a Social Impact Assessment (SIA) for projects which displace people above a threshold number. The SIA shall take into account the impact that the project will have on public and community properties, assets and infrastructure. Another provision states that the land acquired for a public purpose cannot be transferred for any purpose but a public purpose and if acquired land remains unutilized for more than 5 years, it shall revert to the Government. Further, one of the main objectives of this policy is to minimize displacement of people and to promote least-displacing

²⁶ Shalini Mishra, Shivani Chaudhry & Miloon Kothari, *The 2010 Commonwealth Games: Whose Wealth? Whose Commons?*, Fact Sheet 4, *The Social Legacy of the Games: Who Gains? Who Loses?*, 56, available at http://www.hic-sarp.org/documents/Whose%20Wealth_Whose%20Commons.pdf (Last visited on September 20, 2010).

²⁷ Land Acquisition Act, 1894, § 4.

²⁸ Shripad Dharmadhikary, *Resettlement policy: promising start, and a let down*, available at <http://www.indiatogether.org/2007/nov/hrt-randrpil.htm> (Last visited on November 11, 2010).

²⁹ *Id.*

alternatives.³⁰ It is hoped that legislation along these lines will be implemented soon. Such a legislation would go a long way in protecting the rights of those displaced by major events such as the Commonwealth Games, for the purposed of construction of Games venues or building the Games village. No such law, however, is in effect in India at the present.

The Commonwealth Games Arrangements Act, 2001 for the Melbourne 2006 games had special provisions regarding the mode of acquiring land for the Games³¹ and compulsory compensation to be paid for all land which had been divested or surrendered for the Games.³² These laws essentially stated that a grant of land for the purposes of the Commonwealth Games must be made on the recommendation of a minister. Further for the purposes of the Commonwealth Games the Secretary on behalf of the crown may acquire an interest in land by a compulsory process.³³ Every person other than a public body who surrenders or divests land in this process will be entitled to compensation.³⁴

The next two points intellectual property and ambush marketing though not one of the primary causes for the 2010 Commonwealth Games mishap need to be delved into since they could prove to be a major hurdle in the future especially with respect to the upcoming 2011 Cricket World Cup. It is for this reason that I have delved into the problems associated with intellectual property rights and ambush marketing by citing the Commonwealth Games situation as an example.

E. INTELLECTUAL PROPERTY RIGHTS

Every host nation needs to have a sound intellectual property regime in order to safeguard the marks and logos associated with the games. It usually includes any logo, emblem, flag, mascot, domain names, specific words etc associated with the games. This requirement is typically stipulated in the host city contract which every Host City signs with the Federation in charge of the Games.³⁵

India in its bid for the Commonwealth Games stated that it recognizes the importance of protection of Intellectual Property Rights (IPRs) and has listed legislations such as the Patents Act, 1970, Designs Act, 1911, Copyright Act, 1957, Information Technology Act, 2002 and the Trade and

³⁰ *Id.*

³¹ Commonwealth Games Arrangements Act, 2001, § 29.

³² *Id.*, §.34.

³³ *Id.*, § 29, 33.

³⁴ *Id.*, §.34.

³⁵ Jeffrey F. Levine, *A Golden opportunity for Global Acceptance? How hosting the Olympic Games Impacts a Nation's Economy and Intellectual Property Rights with a Focus on the Right of Publicity*, 15 SPORTS LAW. J. 245, 249.

Merchandise Materials Act, 1958 as evidence of the fact that it has laws equivalent to any developed country for protection of IPRs.³⁶ These laws however are very broad and general in nature and do not specifically relate to the needs of the Commonwealth Games.

In India the closest we have to specifically protecting the marks associated with the Commonwealth Games right now, is a caution notice on the official website of the Games which states that the OC is the owner of all IPRs associated with the Commonwealth Games and that ‘by virtue of the extensive use of the Delhi 2010 Marks, the Marks have acquired international reputation, goodwill and importance.’³⁷ A caution notice is not a statutory enactment and is not a binding instrument. It seems to be a shoddy way of bypassing the legal requirements of the Host City Contract and substituting them with a short cut solution which intends to use the existing legislative framework along with a caution notice.

On the other hand, The Melbourne 2006 Commonwealth Games had passed a specific law called the Melbourne 2006 Commonwealth Games (Indicia and Images) Protection Act, 2005. This Act was intended to regulate the use of indicia and images associated with the games for commercial purposes.³⁸ The Act clearly defined the indicia to include the phrases, “Melbourne 2006 Commonwealth Games”, “Melbourne Commonwealth Games”, “Commonwealth Games”, “Australian Commonwealth Games”, “Queen’s Baton Relay” etc.³⁹ For the purposes of this enactment even attempt, aiding, abetting and conspiring to use the indicia have been made punishable.⁴⁰ Further, it provided remedies if there was use of indicia by anyone other than an authorized user as defined under the Act. These remedies were in the form of injunctions, interim injunctions, corrective advertisements and damages or account of profits.⁴¹ It also allowed the customs authorities to seize goods if the designated owner was not authorized to use the indicia or images for commercial purposes in relation to the goods.⁴² The Act provided for remedies if an authorized user made a groundless threat or actually brought a groundless legal proceeding against another person for allegedly misusing the Commonwealth Games indicia.⁴³

³⁶ *Supra* note 4, 173.

³⁷ *Caution Notice*, available at <http://www.cwgdelhi2010.org/?q=node/1502> (Last visited on September 16, 2010).

³⁸ *See* Melbourne 2006 Commonwealth Games (Indicia and Images) Protection Act, 2005.

³⁹ *Id.*, § 7 (2).

⁴⁰ *Id.*, §.13.

⁴¹ *Id.*, §.31-35.

⁴² *Id.*, §.21.

⁴³ *Id.*, §.36.

F. AMBUSH MARKETING

A provision with respect to ambush marketing is essential in any sports law legislation because major events such as the Commonwealth Games attract large audiences. This makes them attractive to businesses seeking to promote their goods or services. Such businesses pay significant sums to the organisers of these events to become official sponsors, thereby securing the right to promote themselves and their goods or services as associated with the event. The sale of such sponsorship rights provides a significant revenue stream for these events. Ambush marketing or parasitic marketing, describes the actions of companies or advertisers who seek to capture these benefits for themselves without the authorisation of the event organisers. Such activity can prove very lucrative for those organisations as they gain the benefits of association without paying the sponsorship fee.⁴⁴ Not paying this fee also allows them to direct greater levels of resource at traditional marketing activities. Such practices can frustrate an event's ability to attract private investment and undermine its revenue base.⁴⁵

Ambush marketing can be of two major types. The first involves an advertiser creating an association through misleading the public into thinking that the ambush marketer is an authorised sponsor or officially connected to the event. This can be achieved in a number of ways that do not necessarily use the name of the event or its protected trademarks.⁴⁶ For example, in 2003 during the ICC World Cup in South Africa, Philips ran a marketing campaign offering its customers the chance to travel to South Africa and win tickets to watch matches. The ICC alleged that these advertisements were meant to suggest that Philips was associated with the event when in fact it was not an official sponsor. Since the words 'world cup', however, are generic in nature and were used in the context of several other international sporting events, the Court held that ICC's mark had not been misappropriated.⁴⁷

The second type of ambush marketing involves the creation of association through proximity to or intrusion into venues where the event is being held. Ambush marketers could, put in place advertisements around venues which could be seen by spectators or picked up by television coverage. They could also, hand out free branded merchandising to spectators that could be carried into venues.⁴⁸ This could include handing out free merchandise to

⁴⁴ Glasgow Commonwealth Games Bill, Policy Memorandum 9-10.

⁴⁵ *Id.*

⁴⁶ *Id.*, 11.

⁴⁷ Bisman Kaur, *Apprehending an Ambush – How to Defend Against Ambush Marketing*, available at <http://www.iam-magazine.com/issues/article.ashx?g=a96dceed-1e54-456c-bd75-6a38f819d228> (Last visited on September 21, 2010).

⁴⁸ *Supra* note 44, 11.

spectators which is carried to the venue, using event tickets as prizes in consumer sweepstakes etc.⁴⁹

Thus, it is essential for every host country to have in place legal enactments to be able to curb this type of practice. In its bid document India has submitted that the laws relating to protection of IPRs sufficiently protect market rights from unauthorised use.⁵⁰ There are, however, cases where the campaign does not use the authorised trademarks or copyrighted material, such as in the Philips case mentioned above. No law can be used against the ambush marketers and the organisers are left remediless. Given the magnitude of major sporting events such as the Commonwealth Games a special legislation is required to protect the legitimate interests of the official sponsors associated with it.

For example the Glasgow Commonwealth Games Act, 2008, enacted by the Scottish Parliament has specific provisions to deal with ambush marketing. It makes advertising within the vicinity of the Games by anyone other than the Organising Committee or the Commonwealth Games Federation (CGF) an offence.⁵¹ Further, it empowers special enforcement officers to enforce these rules.⁵² It also empowers them to enter and search any place without a warrant where they believe an offence in connection with the Games is being committed.⁵³

The Commonwealth Games Arrangements (Governance) Act, 2003 enacted for the Melbourne, 2006 Commonwealth Games also had special provisions against ambush marketing. The Act required a register to be maintained which specified the entities to which authorisations had been given to use the indicia related to the Games.⁵⁴ It also made it an offence to engage in any conduct that suggested sponsorship, approval or affiliation with the Games or use of games related indicia or images without authorisation.⁵⁵ Further the Courts had also been given the power to order damages to be paid⁵⁶ or corrective advertisements to be issued if they deem fit.⁵⁷

⁴⁹ *Supra* note 47.

⁵⁰ *Supra* note 4, 173.

⁵¹ Glasgow Commonwealth Games Act, 2008, § 10.

⁵² *Id.*, § 21.

⁵³ *Id.*, § 24.

⁵⁴ *Supra* note 12, § 56J.

⁵⁵ *Id.*, § 56L, 56M.

⁵⁶ *Id.*, § 56S.

⁵⁷ *Id.*, § 56R.

III. CONCLUSION

In this paper I have tried to outline the lacunae existing in sports law in India through the Commonwealth Games. Every major sporting event needs to be well organised and have clearly defined regulations in place to tackle various issues such as IPRs, ambush marketing, transport regulation, ticket touting and land acquisition. In my opinion, if India is to make a serious bid for the Olympics in the near future, one of the first steps would be to streamline our sports legislation. Most nations have specific laws enacted in the run up to major sporting events.⁵⁸ In this paper, I have highlighted this through the Acts enacted by Australia for the Melbourne 2006 Commonwealth Games and by Scotland for the Glasgow 2014 Games. Ideally India should have had a law in place in the run up to the 2010 Games. This would have not only promoted accountability and transparency but would also have made various regulations surrounding the Games clear. India's first sports law conference was held this year with a view to tackle legal issues surrounding the Games however nothing concrete has come out of it yet.⁵⁹ It is hoped that more such conferences are held and that these are used as platforms to evolve the till now very nascent study of sports law in India especially in view of the Cricket World Cup to be held in 2011.

⁵⁸ This can be seen from the enactment of the various laws for the Melbourne 2006 games and the Glasgow 2014 games with respect to the Commonwealth Games. Such legislation has also been introduced for other major sporting events such as by Australia for the Sydney, 2000 Olympics, by UK for the London 2012 Olympics, by South Africa for the 2010 FIFA World Cup etc. *See also supra* note 44, 8-9.

⁵⁹ *And now, India's first Sports Law Conference*, available at <http://www.hindustantimes.com/And-now-India-s-first-Sports-Law-conference/Article1-575815.aspx> (Last visited on September 21, 2010).

