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Patents in Sports Technology and Patentability of Sports Moves

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ABSTRACT

The Patents Act, 1970 confers exclusive right of exercise to the inventor over the subject matter of protection for a specific period which is 20 years. The Subject matter of protection under the Patents Act, 1970 includes any invention which is a new product or a process involving an inventive step and capable of industrial application. Grant of patent for an invention or a process involves a thorough procedure. There must be a rationale behind the grant of patent in order to clarify the relevant technical details that a person ordinarily skilled in the art should by merely reading of the description able to comprehend and carry out the invention. This paper covers in detail the Paris convention for the protection of Industrial Property and mentions other important conventions and treaties. Patents in Sports technology has been the most crucial part for the growth of sports industry not just in India but across the globe. This paper comes across some important inventions in different fields of sports such as Basketball, Football, Horseracing etc. It also includes some of the controversial inventions for which the patent had been granted. Another major chunk of this paper covers the patentability of the sports moves and the contentions in favor of and against the motion of patentability of sports moves. Should the sports moves be granted patent protection in India as there seems to be possibly narrow chances of seeking protection under this law. But the laws pertaining to patents in the USA offer considerably much higher chances of seeking protection for a sports move.

Keywords *– Sports Moves, The Patents Act (1970), Conventions, Sports Technology.*

I. DEFINITION OF PATENT

"Sec. 2(1)(m) - An exclusive right (practically, a monopoly right) conferred by the Patent office on an inventor to exploit his invention, subject to the provisions of Patents Act, 1970 for a limited period of time."[2]

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[2] The Patents Act, 1970 (Act 39 of 1970)

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II. DURATION AND NATURE OF PATENT

The duration of the Patent protection is 20 years granted to the patentee. In India the patent rights are statutory in nature as the provisions related to it are mentioned under the Patents Act, 1970.

In order to qualify for Patent protection, the following criteria must be fulfilled which are mentioned as follows:

a) At first, it must be an '**invention**' **Patents Act, 1970** defines an 'invention' as follows: **"Sec. 2(1)(j) –** '**Invention**' means a new product or a process involving an inventive step and capable of industrial application. It means that a product must not necessarily be a new one itself but even if there is a substantial improvement in that product through an inventive step involved, it would still be regarded as an invention.
b) Secondly, the product or the process that has qualified for its premier objective of having an inventive step must be capable of industrial application."[3]

III. RATIONALE BEHIND THE SYSTEM OF PATENTS

Prior to the grant of the patent protection, the applicant or the patentee must describe his invention "with such clarity and completeness of all the technical details that anyone having ordinary skill in the art should by merely reading of the description"[4] provided in the patent application be able to figure out as well as carry out the invention.

Patent protections not only inspires the younger generations to build forward new products and processes that are worthy of protection, but it also rewards the creativity of the inventor, and procure him recognition all over the world.

Justice Sarkaria observed in "Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries, (1979) 2 SCC 511 as follows:

The object of the patent law is to encourage scientific research, new technology and industrial progress. Grant of exclusive privilege to own, use or sell the method or the product patented for a limited period, stimulates new inventions of commercial ability. The price of the grant of the monopoly is the disclosure of the invention at the patent office, which, after the expiry of the fixed period of the monopoly, passes into the public domain. "[5]

[3] Ibid.
[4] VK Ahuja, Law Relating to intellectual Property Rights 742, (Lexis Nexis, Haryana, 3rd.edn., 2017)
[5] B.Bishwanath Prasad Radhey Shyam v Hindustan Metal Industries (1979) 2 SCC 511 p.517

IV. PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY, 1883

"The Paris convention deals in the widest sense possible in its applicability to the Industrial property that includes the following:

a) Patents
b) Trademarks
c) Industrial designs
d) Utility models (a kind of "small scale patent")
e) Service Marks
f) Trade Names
g) Geographical indications
h) Repression of unfair competition.

Substantive provisions of the convention fall into three main categories:

a) National Treatment
b) Right of Priority
c) Common Rules"

National Treatment – "it states that every contracting state must grant the same protection to nationals of the other contracting states as it grants to its own nationals. Nationals of non-contracting states are also entitled to national treatment under the convention if they are domiciled or have a real and effective industrial or commercial establishment in a contracting state"[6]

Right of Priority – "It means that on the basis of a regular first application filed in one of the contracting states, the application may, within a certain period of time (12 months for patents and utility models and 6 months for industrial designs and marks), apply for protection in any of the other contracting states. These subsequent applications will be regarded as if they had been filed on the same day as the first application. In other words, they will have priority over applications filed by the others during the said period for the same invention, utility model, mark or industrial design.

Moreover, these subsequent applications, being based on the first application, will not be affected by any event that takes place in the interval, such as the publication of an invention or the sale of articles bearing a mark or incorporating an industrial design. One of the great practical advantages of this provision is that the applicants seeking protection in several

[6] Supra note 4

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countries are not required to present all of their applications at the same time but have 6 or 12 months to decide in which countries they wish to seek protection for, and to organize with due care the steps necessary for seeking protection."[7]

Common Rules for Patents – Granting of patents for any specific invention in various states stands independent of each other. In other words, it is not obligatory for any contracting state to grant a patent for the same invention as it was provided in any other contracting state. This further means that any refusal, annulment or termination of a patent in one contracting state does not oblige the other contracting state to refuse, annul or terminate the grant of patent only because it was made to be in any one of the contracting states.

"Granting compulsory licenses for the prevention of any unauthorized act that has been a result of the exclusive rights conferred on a patentee by any of the contracting states that has taken such specific measures may do so only with certain limitations. Thus, a compulsory license based on failure to work the patented invention may only be granted in pursuance to a request filed after 3 or 4 years of failure to work or insufficient working of the patented invention and it must be refused if the patentee gives legit reasons to justify his inaction. Furthermore, forfeiture of a patent may be provided only in cases where the grant of compulsory license would not have been sufficient to prevent the abuse. In the latter case proceedings for forfeiture of a patent maybe instituted, but only after the expiration of 2 years from the grant of the first compulsory license."[8]

Other conventions related to patents include:

a) Patent Cooperation Treaty, 1970 - It regulates the formal requirements with which any international application must comply.
b) Patent Law Treaty, 2000 – It aims at formal procedures in respect of national and regional patent applications more user friendly etc.

V. PATENT IN SPORTS TECHNOLOGY

"From those sports shoe to a swimsuit and the tennis racquet to football, sports technologists have applied there ingenuity, creativity, and expertise to develop better and safer equipment in the quest for sporting excellence. The outcome has been enhanced performance; better, safer and more effective sports equipment; precision measurement of performance; a multiplicity of

[7] Wipo.int. 2021. *Summary of the Paris Convention for the Protection of Industrial Property (1883)*. [online] Available at: <https://www.wipo.int/treaties/en/ip/paris/summary_paris.html> [Accessed 22 July 2021].
[8] Supra note 4

ways to experience sporting events anywhere at any time."[9]

The primary objective of patent protection is as follows:

a) Acts as an incentive for the inventor
b) Provides recognition and rewards to the inventor in various other ways
c) Expansion of public knowledge
d) Procure investment in Research and Development

Over the time there have been remarkable developments in the field of sports and technology associated with it. All those inventions in sports that have been protected by the patent system are a silver lining for the progress and growth of it.

Many of us would have noticed that in the olden days, due to lack of proper technology most of the sports equipment were made either out of rubber, twine or wood etc. But as the times progressed, man's thinking as well as his eagerness to find a better alternative for sports equipment also surged. This eagerness led to the introduction of "wide range of highly sophisticated manmade materials that include alloys and polymers. Stronger and lighter sports equipment made with these Hi-tech materials has enabled sportsperson across the globe to reach new heights while minimizing the risk of injury and has helped sports enthusiasts everywhere to enhance their performance." [10]A few more improvements to say, range from sleeker and faster surfboards to more comfortable football gloves with an anti-slip lining especially designed for the goalkeepers. Bobsleds, aquatic wheelchairs, starting block assemblies, stop watches, golf clubs and gym equipment, sports drinks and muscle building and nutritional supplements are some more examples of patented sports and training equipment.

It is difficult to imagine sports without the use of "Ball" since the invention of ball itself is traced back to the 17th century that is why there are lots of sports involving ball as the integral part of the sport. For example, cricket, football, hockey, handball, basketball, volleyball are a few examples of it. This could be well explained with the help of some illustrations:

(A) Basketball

The 'Basketball' was awarded the first patent (US1718305) for this name in 1929 to George L. Pierce. Pierce had made some significant modifications to the ball by reorienting the ball's equatorial and polar zones for better balancing, "allowing material saves during its construction

[9] Wipo.int. 2021. *Sport and Technology*. [online] https://www.wipo.int/ip-sport/en/technology.html [Accessed 22 July 2021].
[10] Ibid.

and allowing the position of valve on a polar zone"[11]

The major improvisation brought in the game of basketball was in relation to its 'basket'. As in the olden days, instead of the modern styled high fiber plastic rims, fruit baskets were used as baskets. There were several inventions on baskets that made use of nets that further needed to be laced or tied on the hoop.

But finally in the year 1936, there was a breakthrough that introduced a series of tieless net attaching devices (US2053635) invented by A.E Sandenberg that helped any person to quickly and readily attach as well as detach the nets from the ring manually without requiring any lacing cord or tie cord.

(B) Horserace track

The inventions not just focused on matters related to a ball but also concentrated on improvising the places (i.e. stadiums, arenas, pitches etc.) where such sports are played. For instance, "as horses were impaired on wet days, because the track was in such bad shape, in 1966 the patent (US3272098) (Buchholtz et al) solved this problem by providing a self hardening synthetic paving material based on urethane elastomers. However, despite the technical benefits of new materials, the costs for these paving materials, the costs for these paving materials in racetracks were quite high." [12]

(C) The Waffle Trainer

Up until the 1960's the running shoes were featured in flat shoes that is not the situation today. "A running coach who belonged to the university of Oregon namely Bill Bowerman, latched onto the task of improving the traction and shock absorption in training shoes. His experiment included his wife's waffle maker to mold rubber spikes on the soles that led to the creation of a superior quality of running shoes that he then named it as the 'WAFFLE TRAINER'. This was revolution in the sports industry especially for the track athletes. Bowerman and one of his pupils Phil Knight, in partnership founded Blue Ribbon sports, which subsequently led to the creation of the popular sports company 'NIKE'."[13]

(D) Video Assistant Referee (VAR)

The introduction of the Video Assistant Referee has brought a substantial change in the

[11] International, I., 2021. *The Role of Patents in Sports*. [online] Inventa International. Available at: <https://inventa.com/en/news/article/415/the-role-of-patents-in-sports> [Accessed 22 July 2021].
[12] Vandulken, S., 2021. *The patent for synthetic running tracks*. [online] Steve van Dulken's Patent blog. Available at: <https://blogs.bl.uk/patentsblog/2012/08/the-patent-for-the-synthetic-running-tracks.html> [Accessed 22 July 2021].
[13] Global Invention Policy Center, Report: *Leveraging Intellectual Property in the Global Sports Economy* (United Nations General Assembly, 2016)

decision-making and reviewing process in football. It has cured a lot issues for the referees as well as the players that in turn has lessened the number of controversies that arose during the game due to the human errors involved by a referee in taking a particular decision. "David Sherry and Paul Hawkins developed this technology under the patent application number (WO0141884), related to a video processor system, comprising of six cameras, positioned around a sport ground or pitch, suitable for tracking a ball during ball games. The technology has found its place not just in cricket but also football, tennis etc."[14]

(E) Goal Line Technology

The goal line technology, which is supposed to be a very crucial technological development in football, was introduced much before the Video Assistant Referee that reduced some major issues that were to be dealt by the referees during the game. An instance of the "applied technology has been revealed in patent application number WO2014059971 (Rene Beaujean et al), that consists of a first plurality of cameras, that are arranged outside of the playing field, allowing a goal decision by a computer on the basis of said image data, when a ball from the direction of the playing field has completely crossed the goal line."[15]

VI. CONTROVERSIAL PATENTS

(A) Swimsuit

In the Beijing Summer Olympics 2008, the world witnessed a streak of world records broken in the sport if swimming. A company named Speedo International played a significant role in it. This company designed special swimsuits for the Olympic swimmers that also got patented under the Patent Application Number (US200814143OA).

"The swimsuit reduced the entry of water between the suit and the body (a source of drag) and avoids the sliding of the fabric over the skin. Further, it also reduced muscle vibration that was believed to be a cause of fatigue and body drag in swimming."[16] But later, considering the amazing results achieved at Beijing Olympics and considering the core principle of the sport 'that swimming is a sport essentially based on the physical performance of the athlete', these Hi-tech swimming suits had to be banned by the international Swimming Federation (FINA).

[14] Vandulken, S., 2021. *The Hawk-Eye® system at Wimbledon tennis*. [online] Steve van Dulken's Patent blog. Available at: <https://blogs.bl.uk/patentsblog/2008/06/the-hawk-eye-sy.html> [Accessed 22 July 2021].
[15] Supra note 11
[16] Minesoft. 2021. *Sports patents, when do innovations cross the ethical line? - Minesoft*. [online] Available at: <https://minesoft.com/2019/11/12/sports-patents-when-do-innovations-cross-the-ethical-line/> [Accessed 22 July 2021].

(B) The Eliud Kipchoge Case

Eliud Kipchoge regarded as one of the greats in the sporting events of long-distance running. He hailed from Kenya and holds a world record of completing a marathon in 2 hours 1minute and 39 seconds. But one of the facts to be considered in this case and that came struck the minds of many sports enthusiasts, technicians, technologists, scientists and other experts of this field is one related to the shoes that he wore during the marathon.

1. But what crucial role would the shoes play in an event like long distance running or a marathon?

The answer to it might somehow be bewildering. Along with his shoes, of course it required a lot of planning, hard work and discipline and from the perfectly flat course to the favorable weather and the runner had a group of pacesetters swapping in and out of position to keep him on track. This became one of the reasons why it did not turn out to be an official world record. The shoes that became the headline of the controversy were a bespoke version of the Nike Vaporfly Trainers, called "Alphafly".

In order to decipher the technology used behind the making of Alphafly, an extremely similar looking Kipchoge's Vienna shoe, patented in the US (US20180213886) filed by Nike in 2018, was designed.

2. Specifications

"The patent drawings outline a cushioning apparatus that includes a segmented sole and up to four fluid filled chambers, three curved plates (most likely carbon fiber) in the thick foamy sole gives an improved metabolic efficiency of 4% (according to Nike research)". [17]However, there is something uncommon in this shoe that is the midsole region that is relatively bigger in size than the midsole of any other trainer. Even though it seems as if the more the quantity of foam, the more the weight, the more the amount of air bubbles are accommodated in the forefoot that could cause internal resistance leading to a decline in its efficiency. But the point to be noted here is that there is a small gap in the midsole region which balances out the weight of the shoe rather it reduces some weight from the shoe allowing the absolute compression of the air bubbles.

But many more rival companies are investing heavily to replicate this show whether it is in the terms of design or performance. Nike too has been spending a lump sum of spondulicks to improve these shoes. Issue pertaining to such cases includes an important role of the IAAF

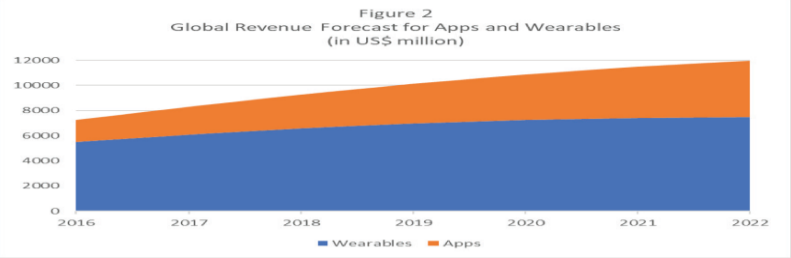
[17] Ibid.

(International Association of Athletics Federation) and its power to intervene in such matters to set limitations on innovations that may boost the performance of the athlete to give him an unfair advantage over his competitors.

(C) Patent for Apps and Wearables

"From footwear that senses running and fitness information, to belts tracking athlete performance, to smart watches and rings with Global Positioning System (GPS) capabilities and accelerometers, a vast platform of sports hardware is becoming more affordable and ubiquitous. The market for wearable devices is expected to double in the next three years, from 125 million devices in 2017 to 240 million in 2021, with the so-called smart clothing category growing at a 76% compound annual growth rate" [18]. Sales of smart watches and wristbands are forecasted to jump from 70 million units in 2017 to 161 million units by 2021. "Utility patents are at the core of this wave of technology development. For example, Fit bit, the maker of popular fitness trackers, has over 90 U.S. utility patents (issued and pending) describing different technological aspects of the tracker." Multiple other utility patents are licensed to Fit bit as well. Figure 1shows an example of a utility patent covering one aspect of a popular fitness tracker.

"With the advent of wearable technologies capable of tracking vital signs such as heart rate and burned calories, a new related industry has emerged in the form of patentable apps designed to motivate and help sports enthusiasts improve their training. In fact, this new industry and line of products—built on the existence of the wearable devices—is projected to actually generate more sales than the devices themselves. Figure 2 shows how the use of fitness apps is projected to grow faster than wearables over the next six years." [19]Without adequate IP protection, however, the development and commercialization of these new apps become virtually impossible.



Source: statista.com; analysis: Pugatch Consilium

[18]Lamkin, P., 2021. *Wearable Tech Market To Double By 2021*. [online] Forbes. Available at: <https://www.forbes.com/sites/paullamkin/2017/06/22/wearable-tech-market-to-double-by-2021/> [Accessed 22 July 2021].

[19] Includes Fitness wristwear equipped with sensors, activity trackers that measure and analyze the physical activity and body functions, smart clothes or eyewear that measure body functions, fitness and nutrition apps for detecting /tracking/ analyzing and sharing vitality and fitness achievements, desktop versions of fitness applications that additionally provide apps. See https://www.statista.com/outlook/313/100/fitness/worldwide#

(D) Patent for Energy Drinks and Supplements

"Innovation has been equally ubiquitous in the field of energy drinks and supplements designed to help athletes perform better and rehydrate faster. A Google Patent search on sports energy drinks, for example, yields more than 3,000 patents. One of the assignees of many of these patents is Gatorade, invented by Dr. Robert Cade and three medical fellows in a University of Florida lab in 1965 to help athletes restore electrolytes after intense physical activities." "It is currently the most popular energy drink, with a 52.8% market share in 2016 and sales of over $3.3 billion in the United States."[20]

In the context of utility patents, there are literally tens and thousands of utility patents granted in relation to sports. A search of the Google Patents Public Datasets reveals hundreds of thousands of utility patents related to sports and referring to such terms as "athletic" or "athletes.[21] In the below mentioned table there are a total number of utility patents granted to date across 17 selected patent offices around the world, selected sports categories.

Kite surfing	**14,224**
Hockey	**17,668**
Polo	**19,793**
Football	**28,779**
Boxing	**32,694**
Baseball	**44,468**
Tennis	**52,526**
Skiing	**110,501**
Golf	**112,256**

Source: Google Patents; analysis: Pugatch Consilium

[20] Statista. 2021. *Topic: Sports Drinks*. [online] Available at: <https://www.statista.com/topics/3051/sports-drinks/> [Accessed 22 July 2021].

[21] Google Patents Public Dataset is a search engine unveiled by Google on October 2017 that indexes more than 87 million patents and patent applications (both utility and design) from patent offices in Belgium, Canada, China, Denmark, EPO, Finland, France, Germany, Japan, Luxembourg, Netherlands, Spain, South Korea, Russia, U.K., USPTO (since 1790), and WIPO (since 1978). The data produced by Google Patents is from the respective patent offices, not from Google Patents itself. See https://cloud.google.com/blog/big-data/2017/10/google-patents-public-datasets-connecting-public-paid-and-private-patent-data.

VII. PATENT ABILITY OF SPORTS MOVES

Patentability of sports moves has always been a disputed topic in the UK as well as India but not so is the case in the USA.

(A) Contentions for Granting of Patent for sports moves

As per the current data and stats collection, there are a limited number of sports moves that have been granted the patent such as "D.S. Miller's Dominant Hand Putting method and Nolan Ryan's Baseball pitching method but both have been granted patents in the USA. D.S. Miller's dominant hand putting method has an interesting story where he was unable to putt (golf) properly due to a hand injury and thereafter devised a method by which he could hold the club normally in his right hand and place the left hand above the right wrist on the club. He showed that this had brought his handicap from 15 to 8."[22] This clearly meant that the person showed great signs of improvement from this technique and could be helpful for other who tried it.

Kunstadt was the first person to talk about the significance of IP rights in sports moves but provided limited information about the patenting of sports moves. But a major point of contention in favor of granting of patents for sports moves was that an athlete by his own labor i.e. (skills, intellect and hard work) and most importantly the time spent on developing a particular technique or process must be taken into consideration. "This argument was based on economic implications of granting of patents and argues that the athletes should get some rewards since their movements are part of the fuel that drives the sporting economy."[23]

As it is obvious that an athlete's or a sportsperson's career is considerably shorter than other professions. Such sportspersons or "athletes must be entitled to a patent to ensure that they are financially secure after their retirement."[24] It would be rather disadvantageous for the amateur sportspersons to totally depend upon sponsorships and advertisements as because it mostly involves athletes of the top level from each sport, and they are the ones who earn a major chunk of the revenue that leaves the amateur sportspersons with almost no good a deal. Therefore, if a patent protection is always granted in favor of the top-level athletes, it would be gross injustice and unfair for the amateur level athletes to not get a patent protection for their signature moves.

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[22] U.S. Patent & Trademark Office, *United States Patent: 5,127,650* http://www.uspto.gov/patft; *see also* U.S. Patent & Trademark Office, *United States Patent: 5,377,987* http://www.uspto.gov/patft

[23] Digitalcommons.law.scu.edu. 2021. [online] Available at: <https://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1488&context=chtlj> [Accessed 22 July 2021].

[24] C. A. Kukkonen III, Be A Good Sport and Refrain From Using my Patented Putt: Intellectual Property Protection for Sports Related Movements, (1998) 80 J. Pat. & Trademark Off. Soc'y, pp. 808-829 at pp. 819-820

"Moreover, the problem lies in the natural law libertarian view that there should be no restriction of freedom in the manner of moving the human body merely because an attorney filed an application in the patent office. This notion cannot be justified as just because the filing of the patent does not take away anything from the society. The logic behind the point is that if a person's movement were being restricted in order to make one realize that he would be prevented from playing a sport in a particular manner, in that case the patent wouldn't be non-obvious rather it would be novel. For instance, a move known as the Fosbury flop used in gymnastics was so peculiar that when it was first used, people laughed at it and were reluctant to follow the method. It is because of this peculiarity of the move that for not using the move did not make any gymnast feel deprived of that bodily movement. This clarifies that a patent does not take away the right that belongs to the society "rather it is awarding monetary consideration to someone for an addition to society."[25] As defended by Nozick (a scholar in political philosophy) defended copyright and patents using the 'Lockean Proviso' which states: "an inventor's patent does not deprive others of an object which would not exist if not for the inventor".[26] From a different perspective, any of the leagues, countries or even any intellectual property organizations have not been prevented from drafting new rules and regulations "to level the proverbial field by preventing the patentee from making an exclusive use of the patented move."[27]

This could be initiated by creating a non-exclusive license with a nominal fee that would hike the incentive to create novel playing methods in sports while at the same time ensuring healthy competition among all players.

Concerns may arise across various countries due to the possibility of incessant amendments and disharmony within the overall system. Other issues relate to the sovereignty that is an integral part of the sports culture in the sporting world but could act as a barrier by placing collateral restrictions in cross border licensing.

(B) Contentions for refusal of patent for sports moves

It is a very familiar fact that human body has got limited range of moves, in other words these movements could be performed by anyone at any given place at any given point of time and to keep a check on every individual for the purpose of surveillance for any violations committed against in context of the protected sports move is next to impossible. Therefore, such

[25] 35 U.S.C. §§ 102, 103 (2006).
[26] Robert Nozick, Anarchy, State, And Utopia, 182 (1974).
[27] KhelAdhikar. 2021. *Can Sports Moves be Patented under the Indian Patents Act ?*. [online] Available at: <https://kheladhikar.com/2018/08/04/can-sports-moves-be-patented-under-the-indian-patents-act/> [Accessed 22 July 2021].

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movements are already placed under the public domain.

Under the Indian Patent Law i.e., Patents Act, 1970, **Section 3(c)** states as follows:

"The mere discovery of a scientific principle or the formulation of an abstract theory or discovery of any living or non-living substance occurring in nature" [28]cannot be regarded or even claimed as invention.

Section 3(m) of the Patents Act, 1970 states as follows: "a mere scheme or rule or method of performing mental act, such as method of teaching or learning, or method of playing game, such as method of playing chess, is not an invention."[29]

Patenting a sports move could be unpropitious for an amateur sports person or an amateur level athlete who have not filed for a patent protection for a sports move and an unfair gain for the athlete who has patented the sports move since there cannot exist a healthy competition in the future due to imposition of restrictions on the number of moves that could be performed by those amateur athletes. There are a lot of situations when, in order to win a game an athlete may need to perform a specific protected move at that instance. For example, the bicycle kick performed by Ramón Unzaga, a Chilean footballer, who was claimed to be the first person to invent the bicycle kick. If Ramón had sought a patent protection along with an exclusive right over that move it would have been quite difficult for a footballer to have performed that move during the match and especially when his team needed him the most.

Another contention is that the "costs involved in applying for a patent maybe so prohibitive that there would be little or no incentive for sportspersons to seek patent protection especially when combined with the difficulties of enforcing your right particularly in case of the amateur sportsperson."[30]

"In addition, the requirement of novelty is not met once an invention is made available to the public. This is essential for the sportspersons who may privately work on a new move. For instance, a means of holding a cricket ball so that its spin"[31] is increased, just like 'carom ball' that was notably developed by Ravichandran Ashwin of India and Ajantha Mendis of Sri Lanka.

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[28] Supra note 2

[29] Ibid.

[30] Jane, R., 2021. *A Critical Analysis of the Arguments For and Against The Granting of Patent Rights over Sporting Apparatus and Sports Moves*. [online] Ipmall.info. Available at: <https://ipmall.info/sites/default/files/hosted_resources/SportsEntLaw_Institute/Sports%20patents/Patent%20Rights%20Over%20Sporting%20Apparatus%20and%20Sports%20Moves.pdf> [Accessed 22 July 2021].

[31] Circle Of Cricket. 2021. *R Ashwin reveals how he inculcated carrom ball in his repertoire*. [online] Available at: <https://circleofcricket.com/category/Latest_news/48609/r-ashwin-reveals-how-he-inculcated-carrom-ball-in-his-repertoire> [Accessed 22 July 2021].

Another instance is the famous style of spin known as the 'Teesra' that was claimed to be invented by Saqlain Mushtaq (a legendary Pakistani spin bowler) but if the bowler does not get a chance to practice these balls on the sporting field its effectiveness and working would just remain a mystery.

In a team sport such as cricket, a new move could only be practiced with the assistance of team members or directly on the pitch while facing your opponent. Another issue is that the permissibility of patents for an innocent infringement or independent organization cannot be claimed as a defense. This may invoke a legal battle if an athlete accidentally performs a move that has been patented by someone else.

Where there arises a new question of the derivation of sports moves. Many Basketballers who use the technique of slam dunk, is work which is said to be derived of Dr. J's (Julius Erving's) style of play that emphasizes leaping and playing above the rim. If such a derivation were to happen innocently in the game what would be the rights and legal implications associated with that?"[32]

VIII. CONCLUSION AND SUGGESTIONS

There have been numerous arguments, debates, and deliberations that have taken place over the issue of patenting of sports moves but the current scenario of the Indian patent law would require even more reasonable justifications and circumstances for at least some portion of the sports moves that is capable of being protected in the eyes of the public at large that should be protected and then there must be new laws and policies brought in to redefine the system. Such policies must not be biased in nature but should consider the benefit of both the parties i.e., the inventor of the sports moves as well as interests of other amateur sportspersons or athletes.

Secondly, even if the Indian law accepts that patent should be allowed in sports move then sports organizations and sports leagues must adopt a comprehensive private law solution. Intervention of the government or the court would then be highly unlikely unless there is a rise in an unfair competition or an impairment of revenues in the professional sport.

An inference drawn from here is that a sport irrespective of its components is genuinely dependent of the current situation on the field. In other words, the players during the game play cannot be distracted over the issue of whether he/she should perform that particular move that has been granted patent as the sole intention and focus of the athletes must remain on how to procure their team victory.

[32] Supra note 29

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