

Justice Sharad Rao Speech

Justice Sharad Rao focused on the law as pertains to sports and gave a moving and informative speech on Legal and ethical issues in sports management today. His key highlights were:

- Sport is said to be about fair play. Although result is important, the enjoyment of the game that should be as important. The IAAF rules which also has code of ethics that each athlete and official is required to observe and comply have been established to govern the sports.
- Internal disputes-it is usually in the interest of sports that disputes be dealt with first by an internal body and matters must be referred first to an adjudicatory body within the sports itself. The IAAF rules are what each athlete has to adhere to and judgements have to be swift. The court should be the last resort for an athlete or an official to seek resolve to.
- The law seeks fair and impartial adjudication of the rules.
- Rules of natural justice apply whenever the rights, property or legitimate expectations of an individual are affected. A breach of the rules of natural justice is one of the grounds upon which courts justify intervening in or reviewing a sporting organization or arbitral board's decision.
- All international federations such as IOC, Common Wealth Games Federation (CGF) derive their power from contract. The rules govern the relationship with the members. The rules are a legislative code laid down to be obeyed by the members.

In what situations should courts intervene?

One factor which has from time to time been relied upon to justify a limitation upon the application of the rules of natural justice is the need for prompt action.

- Prompt action- sporting bodies are obliged to act promptly and with speed.
- Sport federation derive their power from contract, the rules are laid down to be obeyed.
- The requirements of natural justice depend on the circumstance of the case.If the board or tribunal is found to have acted in an unfair manner, then review is likely to occur. The intention of the courts is not to regulate sporting bodies but one of 'substantial compliance with natural justice.'

Natural justice and the court of Arbitration for Sports

- The court for arbitration for sport (CAS) was set up in 1984. This court has emphasised the importance of natural justice or due process but has never found that it had not been complied with. There are circumstances in which the principle of natural justice must defer to other important goals. E.g strict liability rule to doping offences. This is justified because it protects other athletes who have not ingested the drug.
- Key question is; what has the management done in relation to the sports men found violating the rule?

- Kenyan athletes are natural. The few who have been involved in doping tested positive and have not been vigilant enough to know what the prohibitive attributes are in the drugs.
- The strict liability rule may defer the sanction but the breach would be there if it is proved and the athlete would face suspension. It is upon the athlete to prove that it was no fault on their part.
- The agents encourage the athletes to take the drug in the belief that they will not be found. The agent is making a lot of money from the pharmaceutical company at the peril of the athlete. This is an menace that must be fought
- The field of play decisions-
- This concept is not uniformly defined. The essence is the decision of referees or judges made in a competitive situation and cannot easily be re- addressed retrospectively. E. G case of Yang Tae Yang and Paul Hamm. The court concluded both Hamm and Yang were victims of unusual course of events and CAS had to give a verdict based on its findings on fact viewed in context of relevant law.
- The concept of field of play decisions accords better need to the swift decision than the requirement of certainty. Technological development has let to the minimisation of the error in the swift decision. E.g in London- one camera at the finishing line was not working and the women triathlon was based on whose thorax crossed the finished line first. The judgement was made that the judge acted honestly based on the information he had. Such inevitability is something all participants in sporting activities must accept. The conclusion was toleration and finality was all important.