The Legal Status of BCCI: Unwarranted Ad-Hocism, Constitutional Hurdles and the Pressing Need for a Cricket-Legislation

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"What do they know of cricket, who only cricket know?"

- C.L.R. James

The Supreme Court in Zee Telefilms rejected the contention that the Board of Control for Cricket in India comes within the scope of the definition of 'State' as defined in Article 12 of the Constitution. The Court, by a 3:2 majority, came to the conclusion that the BCCI is essentially an autonomous non-statutory body with no declared monopoly over the game of cricket, no public function to discharge, no significant financial assistance from the Government and not being subject to what could be described as 'deep and pervasive control' by the Government. This paper seeks to analyse the more significant consequences of such a pregnant and peculiar position of law whereby the BCCI remains a non-State entity despite the Union of India viewing it as a state actor. It dwells on the need for legislative action to set right an anomaly that is now obtaining in the sphere of cricket in India, as much as it is in sports law at large.

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I. Backdrop

While the ongoing Indian Premier League [hereinafter "IPL"] fiasco has assumed bizarre proportions, one is bemused to learn that despite its rather overbearing name – 'Board of Control for Cricket in India' [hereinafter "BCCI"] and its rather imperious status of being "the single national governing body for all cricket in India,"[1] the BCCI is, by its own reckoning, a mere private, autonomous entity with no public mandate or governmental control. The case in point is the stand taken by the BCCI in the case of *Zee Telefilms Ltd. v. Union of India*,[2] wherein the BCCI opposed the writ petition filed against it in a matter pertaining to grant of exclusive television rights for cricket matches on the preliminary ground that it (the BCCI) was not 'State' within the meaning of Article 12 of the Constitution of India.[3] Curiously, the stand of the BCCI ran diametrically opposite to the stand taken by the Union of India in the said proceedings, wherein the Union filed a counter-affidavit contending, inter alia, that the BCCI *is* 'State', in that the BCCI has always been subjected to the de facto control and recognition of the Ministry of Youth Affairs and Sport as the national apex body for cricket in India, that the team selected by the BCCI represents the country as the official Indian team, that the permission of the Government of India is required (and indeed *sought*) by the BCCI for visiting foreign teams and that the BCCI has a public function, being accountable to the Government and to the people of India at large.

It is fait accompli that in *Zee Telefilms*, the Supreme Court of India, by a 3:2 verdict ruled that BCCI is not 'State', being essentially an autonomous non-statutory body with no declared monopoly over the game of cricket, no public function to discharge, no significant financial assistance from the Government and not being subject to what could be described as 'deep and pervasive control' by the Government.[4] Consequently, the writ petition filed under Article 32 was dismissed as 'not maintainable' against the BCCI.

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1 *See* www.bcci/tv/about-bcci.html.

2 Zee Telefilms Ltd. v. Union of India, (2005) 4 SCC 649 (Supreme Court of India) [hereinafter "Zee Telefilms"].

3 "Definition. – In this part, unless the context otherwise requires, 'the State' includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India." Constitution of India, 1950, Art. 12.

4 *See supra* note 4, at ¶ 23.

The stand taken by the BCCI and its endorsement by the Supreme Court has resulted in the BCCI being equated with any other private organisation that is subject to the competition laws of India,[5] thereby exposing it and its policies to the scrutiny of the Competition Commission and to litigation by competitors, such as the Subash Chandra-controlled, beleaguered Indian Cricket League [hereinafter "ICL"]. The erstwhile Monopolies and Restrictive Trade Practices Commission had, in fact, initiated an inquiry against the BCCI for restrictive and unfair trade practices on account of the initiation of action against and the refusal to consider players who opted for the ICL as well as its refusal to share infrastructure such as cricket grounds with other interested parties. This development is not surprising, and, if anything, was inevitable as the BCCI itself conceded before the Supreme Court that "there is no law which prohibits the coming into existence of any other parallel organisation"[6] making way, thereby, for competition and the application of competition laws.

While the decision of the BCCI in taking such a position is debatable, and liable to being criticised for being cavalier and self-defeating, drawing from the judgement of the Supreme Court in *Zee Telefilms*, this paper seeks to analyse the more significant consequences of such a pregnant and peculiar position of law whereby the BCCI remains a non-State entity despite the Union of India viewing it as a state actor. The paper does not enter into a syncretic exercise of reconciling the two positions; nor does it enter into a criticism of the decision in *Zee Telefilms* (though it must be stated that the weighty dissenting judgement of Justice S. B. Sinha is jurist's delight), but instead dwells on the need for legislative action to set right an anomaly that is now obtaining in the sphere of cricket in India, as much as it is in sports law at large.

II. Prognosis

In view of the preliminary comments above, the hypothesis that one begins with is that the BCCI (or any other organisation that officially governs and promotes cricket in India) *ought* to be 'State', an objective that can be directly achieved by the Government of India by enacting a law to deal with the establishment (or recognition, as the case may be) of such a body and its powers and functions. This obviates any discussion as to whether the BCCI, which is today the sole entity 'officially' controlling cricket in India vis-à-vis the International

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5 Competition Act, 2002, No. 12 of 2003. The Act repealed and replaced the Monopolies and Restrictive Trade Practices Act, 1969, No. 54 of 1969.

6 *See supra* note 4, at ¶ 3.

Cricket Council [hereinafter "ICC"], is 'State' on account of its being any 'other authority' within the meaning of Article 12 of the Constitution of India, as once it is a statutory authority, it automatically falls within the meaning of Article 12 becoming thereby subject to judicial review under Article 226 of the Constitution of India and Article 32 in cases of violation of fundamental rights, and obligated to act fairly and reasonably within the meaning of Article 14 thereof, inter alia.

Two important caveats:

One, for the sake of convenience, this paper proceeds on the basis that the BCCI *is* the sole body that controls cricket in India as far as the Government of India is concerned. The arguments applied herein as to why the BCCI ought to be 'State' could be equally applied to any new entity that the Government of India chooses to establish or recognize by legislation.

Two, that the proposed status of BCCI as 'State' that one discusses herein is 'State' as a statutory authority and not merely as any 'other authority', particularly as the latter question is no longer res integra in view of the judgment in *Zee Telefilms*.

III. Why the BCCI ought to be 'State'

The dissenting judgment of Sinha, J.[7] in *Zee Telefilms* seeks to answer this question from various perspectives, and it is apposite to dwell on these at the very outset. One test of a private body which could be 'State' is whether the said private body is "allowed to discharge public duty or positive obligation of a public nature and furthermore is allowed to perform regulatory and controlling functions and activities which were otherwise the job of the Government." [8] That being the case, the nature of the function performed by a private body simpliciter could elevate it to the status of 'State', regardless of the financial, functional and/or administrative control by the Government. For instance, the decision of a Division Bench of the High Court of Karnataka[9] in holding the Bangalore International Airport Limited [hereinafter "BIAL"] to be 'State' proceeded essentially on account of the activities carried out by it, namely airport activities, which bear the stamp of 'public function'.[10]

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7 The minority judgment was given by S.B. Sinha & S. N. Variava, JJ.

8 *Supra* note 4, at ¶ 70 (citing Pradeep Kumar Biswas v. Indian Institute of Chemical Biology, (2002) 5 SCC 111 (Supreme Court of India)).

9 Judgment dated December 19, 2008 passed in W.P. No. 14215/2006.

10 A Special Leave Petition has been preferred against the said judgment and is pending before the Supreme Court.

With the BCCI one finds an entity allowed, de facto, by the State to represent the country in international fora. There has never really been any dispute with regard to the fact that the 'Indian' team selected by the BCCI is, ipso facto, the team representing the country and that the players so selected duly represent India, wearing national colours at most times. Of course, this position also flows from the fact that the ICC recognises the BCCI as the 'official' body representing India,[11] but the fact remains that neither the Government of India nor any alternative body, and nor, for that matter, the BCCI itself have ever sought to revoke or challenge this status. As such, the BCCI, maybe unwittingly but irrefutably, has assumed a monopoly status that includes its absolute right to regulate and control the sport of cricket in India and significantly the rights of the citizens as regards their participation therein with a view to ultimately representing the nation. These facts by themselves are sufficient to conclude that there is a dimension of 'public function' in the activities of the BCCI.

Moreover, one cannot lose sight of the fact that cricket assumes manic proportions in India and cannot be viewed as being *merely* a sport or an ordinary amusement activity. The ground-realities of the popularity and reach of the sport of cricket in India make for a compelling argument that there is a patent 'public' element to the same. An international game of cricket played in India today brings into its fold various spheres of activity, which, collectively, have an uncanny resemblance to 'State' activity. These include:

(a) the regulation of the right of the viewers to witness the match on television and other media such as the internet;

(b) the right of the public to attend and witness the match at the stadium by purchasing tickets for value including their right to enter the stadium upon complying with security protocols and their right to remain in the stadium subject to compliance with the ICC Anti-Racism Code[12] and general laws of nuisance;

(c) the right of players to partake in the match subject to self-imposed standards of fitness, competence and discipline, coupled with the ICC

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11 *Supra* note 4, at ¶ 189 (referring to the Articles of Association of the ICC which define 'Cricket Authority' to mean "a body (whether incorporated or not) which is recognised by the Council as the governing body responsible for the administration, management and development of cricket in a cricket-playing country…".

12 For the text of ICC's Anti-Racism Code, *see* ICC Anti-Racism Code for Players and Player Support Personnel, *available at* http://static.icc-cricket.yahoo.net/ugc/documents DOC_AF7ED11C00109A7FB946A612A2FC5AAE_1263123600153_706.pdf.

regulations in respect of 'doping' or using banned performance-enhancing substances and general discipline as codified under the ICC Code of Conduct for Players[13] as well as the restrictions on addressing the media by a self-imposed code;

(d) the provision of security for the players, which has assumed far-fetched proportions in the wake of the terror threat to high-profile cricketers and tournaments;

(e) the provision of security and order to the spectators, with tens of thousands of lives at risk to riots, stampedes, terror and natural disasters such as fires;

(f) the control and management of infrastructure relating to the match such as the stadia and seating;

(g) the regulation of ancillary activities such as awarding of television contracts, team franchises, endorsements, distribution of prize money and public relations.

Many, if not all, of the above *individually* could have traces of a public function, and taken in their totality leave one astounded that all this and more is implemented by a 'private' body sans any regulation or law or control by the Government. The BCCI hence exclusively controls not only the sport itself but also the formulation of its policy and purport and so also its implementation. The BCCI has assumed to itself the unbridled right to regulate and control the game of cricket in India and also, significantly, the careers of those associated with it at various levels. But, as it is not 'State' it is not incumbent upon it to act fairly and reasonably within the meaning of Article 14 of the Constitution. This is a shocking incongruity that cries out for legislative correction.

Coupled with the aforesaid, is the fact that, ironically, the Union of India maintains that it has granted the BCCI the implied permission to operate as the sole cricketing federation, and thereby granted it de facto recognition.[14] However, in the light of the judgement of the Supreme Court in *Zee Telefilms* and in the

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13 *See* ICC Code of Conduct for Players and Player Support Personnel, *available at* http://static.icc-cricket.yahoo.net/ugc/documents/DOC_AF7ED11C00109A7FB946A612A2FC5AAE_1263123890451_791.pdf.

14 *Supra* note 4, at ¶ 201 (*per* S.B. Sinha, J., dissenting) ("It is true that no document has been produced establishing grant of such recognition (by the Union of India to BCCI); but the documents on record leave no manner of doubt that **the Board had asked for** and the Union of India had granted de facto recognition."). (Emphasis Supplied)

absence of any legislation governing the same, the BCCI could easily become (and some feel it already is) an unruly horse with no sense of accountability or control. For instance, in view of the 2008 Mumbai terror attacks, the Ministry of External Affairs resolved to put on hold all diplomatic and 'extra-curricular' interaction with Pakistan, including calling off the proposed cricket series with the old rival. While the BCCI went along with this decision, the fact remains that, theoretically, it could have turned a blind eye to the decision of the Union of India and proceeded with the tour to Pakistan with no sanction to follow.[15] This could not only have far-reaching ramifications internationally, but also indicates the status of the sport of cricket as a matter of public policy and a tool of 'Track B' diplomacy.

Another intriguing aspect is the 'human rights' facet introduced in the judgment of Sinha, J. Noticing the fact that the BCCI's activities

> impinge upon the fundamental rights of the players and other persons as also the rights, hopes and aspirations of the cricket-loving public, the right to see the game of cricket live or on television ... and that its actions may disable a person from pursuing his vocation and in that process subject a citizen to hostile discrimination or impose an embargo which would make or mar a player's career…[16]

the BCCI assumes a 'state-like' identity that could adversely affect the fundamental rights of the citizens involved (as players, umpires, administrators, coaches, spectators and viewers), and so also their *human* right to development that would take within its fold the enjoyment of sport as participants or as viewers.

And if one needed further conviction to seriously consider a legal statutory regime over the game of cricket, one need only refer to the balance sheets of the BCCI. No sport, and perhaps no other singular activity, generates as much revenue as the game of cricket of India. A whopping US $ 308 million were the stakes involved in the grant of television rights in the *Zee Telefilms* case! The official figures from the 2010 IPL are exponentially higher. The highest endorsement-royalty earners and among the highest tax-payers in the country are the Tendulkars and the Dhonis, who earn more than their daily bread via the BCCI. The IPL is a ticking bomb, as recent developments have disclosed. The BCCI enjoys an economy of scale that could equate it to a small nation - a fact that in tandem with the other factors enumerated above, warrants legislative control and supervision of cricket in India.

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15 In fact, the BCCI has always sought to adhere to the Foreign Policy of India, suggestive of its 'public' demeanour.

16 *Supra* note 4, at ¶ 247, 164-165 & 136 (*per* S. B. Sinha, J., dissenting)

Besides, the Government of the land also needs to take notice of the fact that with the 'official' revenues associated with the game of cricket, there is an infinite, organised 'black market' dealing in betting on cricket. While the Indian Government has pangs of morality that prevent it from legalising betting on sport in India, it has had no qualms in letting the betting market remain largely untouched by law. Apart from the stray arrests of bookies around the World Cup or other prominent tournaments for ordinary Indian Penal Code,[17] bailable and pro-accused offences and related offences under the archaic Indian Public Gambling Act, 1867, the Government remains oblivious to the episodes of money-laundering and *havala* that such volumes of money bring with them. There is cause to suspect that the organised mafia that operates such betting is the same mafia that possibly aids and abets the *fidayeen* funds. And we still pretend that cricket is just a game!

Added to betting, is the menace of 'match-fixing', a conundrum that always remained unsaid but explicitly reared its ugly head in Indian cricket in 2000 as a result of the Hansiegate confessions and the suspension of leading cricketers, including former captains Mohammed Azharuddin and Ajay Jadeja.[18] The fact remains that there is no offence under the IPC or for that matter any other law till date, which expressly makes match-fixing an offence. The police authorities sought to prosecute the accused under section 420 of the IPC for cheating the public at large, as the spectators could be said to have been 'dishonestly induced to part with their property', *i.e.*, their cash towards a purchase of a ticket, on the premise that the match would be played out fairly and on merit, and, but for such an assurance, would have never paid for the said ticket. (The Central Bureau of Investigation [hereinafter "CBI"] also explored the possibility of prosecuting Mohammed Azharuddin and Ajay Sharma under the provisions of the Prevention of Corruption Act, 1988, as they were employed with Public Sector Undertakings [hereinafter "PSU"] - State Bank of India and Central Warehousing Corporation, respectively - but clearly neither was acting in the course of his employment or otherwise as a 'public servant' when the misdemeanour occurred). While such a legal strategy is arguable, rather than rely upon such tangential interpretation, which heavily depends on spectator-support to arrive at a conviction, the Government would be well-served to conjure up an enactment specifically dealing with the same.

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17 Indian Penal Code, 1860, No. 45 of 1860 [*hereinafter* "IPC"].

18 For the text of the Report of K. Madhavan, former Director of the Central Bureau of Investigation on match-fixing in India, *see* Central Bureau of Investigation, *Report on Cricket Match-Fixing and Related Malpractices*, (2000), available at *www.yehhaicricket.com/madhavansreport/madhavansreport1.html.*

Rather than intervene in the functioning of the BCCI in a circuitous manner, as has been recently done through income-tax raids, enquiries through the Registrar of Companies etc, the Government of India ought to vindicate its stand taken before the Supreme Court by enacting a law to deal with the establishment (or recognition, as the case may be) of such a national cricket body and its powers and functions. Until such a comprehensive enactment sees the light of day, 'friendly' pitch-reports will continue to be disseminated by the Shane Warnes and the Mark Waughs of the cricketing world for a price and the game cricket will continue to be abused en masse.

IV. The Constitutional poser

While the arguments in favour of a legislation to deal with cricket and all its dimensions are compelling, the fact remains that 'sports' is a matter falling under the State List contained in Schedule 7 to the Constitution of India.[19] That being the case, prima facie, the Union of India has no legislative competence to make a central law on the subject. And leaving it to the States to legislate on cricket, particularly in respect of the matters arising in the context discussed above, is likely to boomerang, with there being divergent and possibly conflicting State enactments, with hydra-headed power centres, territorial limitations and no central body or law to uniformly govern the game of cricket in its many avatars. This would, clearly, compound the problem.

As such, one needs to seek solutions that meet the end of having a central Union law on the subject. One option that presents itself is contained in Article 249 of the Constitution of India[20] whereby the Rajya Sabha could propose a resolution with a two-thirds majority of those present and voting that the Parliament legislate on the sport of cricket, being a matter of necessity and/or expediency in national interest, in which case Parliament is conferred the

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19 Constitution of India, 1950, Entry 33, List II, Schedule 7. It reads as follows – "Theatres and dramatic performances; cinemas subject to the provisions of entry 60 of List 1; **sports**, entertainments and amusements." (Emphasis supplied)

20 "Power of Parliament to legislate with respect to a matter in the State List in the national interest. – (1) Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force." Constitution of India, 1950, Art. 249.

constitutional power to make a central law respecting the same. Such legislation can remain in force until such time as the resolution remains effective. Though the life-span of such a resolution is one-year (plus a buffer of six months on its expiry), vide Article 249(2) the same is renewable ad nauseam for recurring periods of one year each.

No doubt, such a method requires great political will and purpose. But Article 249 *has* been pressed into service on earlier occasions[21] and in the given scenario, the facts speak for themselves and command an urgent reaction from the law-makers. Once achieved, any Government in power for a period of five-years with the support of the Council of States can readily overcome the constitutional hurdle to enact such a law.

Per contra, Parliament can consider amending Schedule 7 to introduce 'sports' as an entry in the Concurrent List,[22] or for that matter, in the Union List. A reference to the National Sports Policy, 2001 makes it abundantly clear that the Union of India through the Ministry of Youth Affairs and Sports was fully cognizant of this matter. The said policy, inter alia, provides as follows:

> While the broad-basing of Sports will, primarily remain a responsibility of the State Governments, the Union Government will actively supplement their efforts in this direction and for taping the latent talent, including in the rural and tribal areas. The Union Government and the Sports Authority of India (SAI), in association with the Indian Olympic Association and the National Sports Federations, will focus specific attention on the objective of achieving excellence at the national and international levels.
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> **The question of inclusion of "sports" in the Concurrent List of the Constitution of India and introduction of appropriate legislation for guiding all matters involving national and inter-state jurisdiction, will be pursued.**[23] (Emphasis supplied)

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21 *See* Supply and Prices of Goods Act, 1950, No. 70 of 1950 and Evacuee Interest (Separation) Act, 1951, No. 64 of 1951. The Water (Prevention and Control of Pollution) Act, 1974, No. 6 of 1974 came to be enacted invoking Article 252 of the Constitution whereby some states passed resolutions that the matters covered by the State List relating to water pollution could be regulated in the said states by Parliament by law.

22 As was sought to be done by the 61st Constitutional Amendment Bill, 1988, which is now on the verge of being withdrawn.

23 *See* ¶ 5 and 6, National Sports Policy, 2001, *available at* http://www.yas.nic.in/index2.asp?linkid=67&slid=86&sublinkid=188&langid=1.

Seven years later, the stated policy of the Union of India to pursue the requisite Constitutional amendment and consequential legislation remains confined to the annals of its ministries, or perhaps, to the caches of their websites.

Clearly, an amendment to Schedule 7 by removing an entry from List 2 to List 3 is a delicate and elaborate process, requiring the ratification by the States whose seisin stands vitiated to that extent.[24] However, the provisions of Schedule 7 have seen numerous amendments earlier and one such proposed amendment is not improbable, especially in a matter of national importance.

V. Epilogue

While certain constitutional hurdles undoubtedly exist (as detailed above), one finds that they are not insurmountable and ought to be overcome with alacrity to provide for an umbrella-legislation that brings Indian cricket under a statutory regime of the BCCI (or any other national body) as well as tackles related issues that arise in terms of awarding of tenders, selection of players, players' contracts, security & discipline and so also, penal matters of betting and match-fixing in the sport. Cricket is larger than life in India and warrants such a holistic legislative response. The march of the law demands that Government constantly take cognizance of the realities and developments in its territory and respond to the challenges and threats that arise periodically. One has seen

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[24] Constitution of India, Art. 368(2). It mandatorily provides that "an amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill:

Provided that if such amendment seeks to make any change in-

(a) Article 54, Article 555, Article 73, Article 162 or Article 241, or

(b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or

(c) Any of the Lists in Seventh Schedule, or

(d) The representation of States in Parliament, or

(e) The provisions of this Article,

the amendment **shall also require to be ratified by the Legislatures of not less than one-half of the States** by resolution to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent." (Emphasis supplied)

legislation dealing with technological developments in India in the information technology, telecommunications and intellectual property spheres of late, with regulators entering the fray. Legislative responses to ownership and enjoyment of property are also found frequently, as are responses to various other matters of public interest.

However, when it comes to sport, there is still a perceivably apathetic approach, conveniently brushing it aside as a means of amusement and ignoring the massive financial, professional and national elements involved, particularly in a sport such as cricket. In India, national pride, as indeed patriotism, is often driven by cricketing results and support, and this strongly lends itself to the urgent attention of the legislators. Other compelling factors for such a response have been set out in the course of the discussion above. If one draws a parallel, the other facets that touch the lives of Indians at large as much as cricket are probably the stock-market and, more recently, the real-estate market. While the former has come under due legislative regulation by the enactment of the Securities Contracts (Regulation) Act, 1956 and, later, by the establishment of the Securities and Exchange Board of India [hereinafter "SEBI"] under the Securities and Exchange Board of India Act, 1992, the latter still remains unregulated. Now, if one analyses the impact that the real-estate industry has had on urban India, it is appalling that this sector remains totally unregulated (but for scattered apartment-ownership and registration laws) and is left to the ordinary civil law and Civil Courts (or Consumer Fora) to deal with the multiple and complex issues that arise in its fold. However, it is learnt that a Real Estate Regulator established under an associated legislation – the Real Estate Management (Control and Regulation) Bill - is on the cards, under the auspices of the Ministry of Urban Development.

Similarly, cricket in India has reached proportions where it can no longer be left to the whimsical decision-making of private bodies or to the 'one-size-fits-all' regulations of the ICC. Indeed, the Supreme Court in *Zee Telefilms* by a narrow 3:2 majority has held the BCCI to not be 'State' within the meaning of the Indian Constitution (the ramifications of which are exhaustively detailed above), but the said decision does not preclude Parliament from filling the void by passing an appropriate law on the subject. It is true that other prominent cricket-playing countries like England and Australia continue to be governed by non-statutory bodies,[25] the English & Wales Cricket Board and Cricket Australia, respectively,

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[25] For a detailed discussion on the scope of public law vis-à-vis sports federations in international jurisdictions, *see supra* note 4, at ¶ 106-124.

but the preeminent position that India enjoys in world cricket is reason enough for her to take the lead in legislating on the subject. After all, the pure financial clout that the BCCI (and by default, India) enjoys with the ICC is palpable, be it in the matter of tour-schedules, telecast rights or for that matter, hearings in matters of indiscipline affecting Harbhajan Singh!

The more apposite comparison is to, say, football in Brazil, where the sport is a veritable national way of life, just as cricket is in India. Brazil has had a formal sports law in place since 1941 and has more recently codified the 'Zico Law' in 1993 and the 'Pele Law' in 2001. Indulgent as the names may seem, the laws are far-sighted, dealing with matters ranging from players' and spectator-insurance, players' contracts, labour issues, formulation of leagues, et al. In India, though the Union Government as per its affidavit in *Zee Telefilms* considers the BCCI as the de facto recognised exclusive organisation for the regulation and management of cricket, there is still no law in place to codify the same, despite the contention of the Union of India being rejected by the Supreme Court and a yawning hole existing in a matter of public law. In this exercise, the Union needs to also address the observations of the Supreme Court in *Zee Telefilms* that if BCCI is treated as 'State', then other sports federations in India would also be treated as such, else Article 14 could be found violated and the BCCI discriminated against.[26] Apart from the fact that the said observations constitute obiter dicta, and are made in the context of interpreting whether or not the BCCI is 'State' as contemplated by our Constitution, in a matter of creating a statutory regulator and regime for the sport of cricket, the Union of India would be on a strong wicket (pun intended) to treat cricket differently from other sports in India, say, golf or shooting, and on this intelligible differentia request the Court to take judicial notice of the special status enjoyed by the sport and the macro challenges presented by it in its modern avatar, in the eventuality of a challenge being brought to such an enactment before the courts by the BCCI or any other person.

Ultimately, the prevalent ad-hocism in the management of Indian cricket is unacceptable to a jurist and a cricket-fan alike, and the time is ripe for the Union Government to rise to the occasion by propounding an original and exhaustive piece of legislation that addresses the issues facing India's national pastime (though hockey still remains our national sport!). Such a step would be a giant leap for the development of sports law in India and make her a torchbearer for the rest of the global cricketing community.

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[26] *Supra* note 4, at ¶ 34 (Santosh Hegde, J., concurring).