

# The game changing reforms from the Lodha Committee

In this second instalment of a two part article, Amrut Joshi Founder of GameChanger Law Advisors and member of the *World Sports Law Report* editorial board, dissects the recommended reforms contained within the Lodha Committee's latest Report in response to the corrupt practices identified within the Board of Control for Cricket in India and highlights the significance of the recommendations made stressing the need for change and strengthened accountability in Indian cricket.

“Cricket is a national sport that connects the people of India in a unique way. The Board of Control for Cricket in India (‘BCCI’) which administers the game in the nation, however, continues to be mired in one controversy after another. These include serious inaction regarding betting and match-fixing, frequent amendments to the rules to enable persons in power to perpetuate their control and promote their financial interests, permitting or enabling its office bearers, employees and players to do acts which clearly give rise to conflicts of interest which have no resolution mechanism, lack of transparency and accountability, failure to provide effective grievance redressal mechanisms and a general apathy towards wrongdoing.<sup>21</sup> With these damning words, the Lodha Committee Report simply cuts to the chase on everything that is (i) currently wrong with the BCCI; and (ii) needs an urgent remedy.

In this article I highlight some of the key recommendations of the Lodha Committee (the ‘Committee’), and provide my thoughts on the specific

ramifications for the sport of cricket in India.

The Committee has organised its Report in 10 broad chapters. The first three chapters outline the issues associated with the structure, constitution, governance and management of the BCCI.

Chapter 4 of the Report specifically tackles issues associated with the organisation of the Indian Premier League (‘IPL’). Chapters 5 and 6 deal with issues that have plagued Indian cricket for a long time: the lack of a players’ association, the unregulated activity of player agency, the issue of ‘conflict of interest,’ the latter of which was at the centre of the *N. Srinivasan* case.

In Chapters 7 and 8, the Committee advocates for (i) the establishment of an Ombudsman to resolve internal disputes arising between the BCCI and any member/franchisee/zone/players’ association, player and to investigate such disputes *suo motu*; (ii) the reform of electoral processes adopted by the BCCI to appoint office bearers; and (iii) the need to bring the BCCI under the purview of the India’s Right to Information Act, 2005, in order to make it a more transparent governing body.

Chapter 9 of the Report specifically tackles the issue of match-fixing and betting, and Chapter 10 deals with the constitution and functioning of the member associations that form part of the BCCI.

## Structure, constitution, governance and management of the BCCI

To begin with, the Committee examined how the BCCI had been structured. The BCCI is currently registered as a society, under the provisions of the Tamil Nadu Societies Registration Act, 1975, with its stated aim as the

promotion of cricket. It was widely anticipated that the Lodha Committee would recommend that the BCCI be reorganised as a ‘not for profit’ company under Section 8 of the Companies Act, 2013. This would have brought the governance structure of the BCCI in line with several other sports governing bodies globally. However, on perusal of the Model Rules and Regulations outlined in Annexure A to the Lodha Committee Report, it is evident that the Lodha Committee’s recommendations retain the ‘society’ structure of the BCCI. I would argue that this is one of the few areas where the Committee seems to have missed the beat, as on most other issues, the Committee has drawn on precedents established by other sporting bodies across the globe to buttress its arguments for change.

However, while not tinkering with the BCCI’s ‘society’ structure, the Committee found that some states of India were unrepresented within the BCCI whereas certain other states had been overrepresented i.e. certain states had more than one Full Member within the BCCI. To remedy this inequality, the Committee is advocating the principle of ‘One State - One Member - One Vote’, where each member would have an equal vote, regardless of the size or population of the state. The Committee recognising the fact that certain existing members would be affected by this change, has argued that changes in the membership of the BCCI are inevitable and must be seen by all concerned in the spirit of fair representation and for the improvement of cricket administration. The Committee’s suggestion has clearly set the cat amongst the pigeons as several entrenched member associations and their officials are not prepared

for such a ‘rationalisation’ or ‘consolidation’ of the membership of the BCCI, fearing the loss of relevance and financial power that is currently attendant to an association as a result of being a ‘Full Member’ of the BCCI.

Regarding governance, the Committee found that the BCCI was plagued by a concentration of power in the hands of its President. Advocating decentralisation in the governance of the BCCI, the Committee recommends the establishment of an Apex Council that would be able to exercise all crucial powers and functions hitherto bestowed exclusively on the President of the BCCI. The Committee has also recognised the complete absence of women in the BCCI’s Working Committee and has sought to provide representation of women on the Apex Council.

Damningly, for the BCCI, the Committee also concluded that “the present Working Committee of the BCCI consisting of the various office bearers elected by the BCCI and other representatives of the Members do not have any managerial expertise and requisite experience to run the BCCI in a professional manner.”<sup>22</sup> To remedy this, the Committee has advocated the appointment of a professional management team that would separately deal with ‘cricketing’ and ‘non-cricketing’ matters, with cricketing matters left exclusively to ex-cricketers, while a professional team headed by a CEO would be responsible for all non-cricketing, operational and logistical matters.

**The governance of the IPL**

The Committee recognises the ‘revenue-generating’ role played by the IPL. At the same time, the Committee also recognises that “the governance of the IPL has left much to be desired, run as it is by a Committee of twelve which denies

any role to the franchisee companies who are responsible for fostering competition and making revenue.”<sup>23</sup> The Committee advocates the reconstitution of the IPL Governing Council so as to be composed not only of representatives of the Full Members of the BCCI, but also of Franchisees, Players and an independent auditor.

It is ironic that IPL Franchisees, who have themselves courted controversy on more than one occasion (including most notably two franchisees who were suspended by the very same Lodha Committee on account of their officials being involved in illegal betting) are now being bestowed with representation on the IPL Apex Council. However, the Committee’s recommendation, proposing the introduction of a nominee from the office of the Comptroller & Auditor General of India (an authority that derives its mandate from the Constitution of India), is definitely welcome as this will ensure that there is an independent and external checks and balance mechanism in place to oversee the functioning of the IPL Apex Council.

**Establishment of a players association and accreditation of player agents**

The very fact that in 2016, Indian cricket is still debating whether there needs to be a Players’ Association, is an indicator of how behind India is in the sphere of sporting governance when compared to the rest of the sporting world. Almost every other popular sport has provided players the opportunity to establish associations, and for such associations to engage with sports governing bodies on a host of player welfare issues. The Committee clearly acknowledged this lacuna in the context of Indian

cricket and has mooted the establishment of an independent Player’s Association. The Committee has also recommended that “this Association shall be comprised only of Players who have retired from competitive cricket in all forms of the game” and that “it will be for such Association to nominate representatives from amongst its members to the Governing Body and Apex Council.”<sup>24</sup>

Similarly, while other cricketing nations such as Australia, England and Pakistan to name a few, have formulated Player Agent Accreditation Regulations<sup>5</sup> for quite some time now, the BCCI has failed to address the issue of agent accreditation to date. The Committee has therefore drawn up draft regulations for accreditation of Player Agents (outlined in Annexure-C of the Report), which propose the establishment of a committee on agent regulation (constituted by the BCCI). Importantly, these regulations also outline that all applicants must (i) pass a test and a personal interview to be conducted by the BCCI to enable the committee to ascertain whether the applicant is capable and suitable to be a player agent and has adequate knowledge of cricket regulations, including the relevant disciplinary and ethics regulations laid down by the BCCI and/or the IPL and is also knowledgeable in the fields of legal, accounting and business management; (ii) be able to submit a clearance certificate issued by the Anti-Corruption and Security Unit (‘ACSU’) of the International Cricket Council (‘ICC’); and (iii) be able to satisfy the committee of their good character and reputation, on terms that will be stipulated by the committee from time to time.

**Conflict of interest**

Considering that the Committee owes its existence to the *N. Srinivasan*<sup>6</sup> case, the Supreme Court of India mandated the Committee to formulate clear principles on what constitutes 'conflict of interest' in a cricketing context. The Committee identified, from its discussions with Players and Officials, that there is, at best, an "extremely casual understanding of the concept of Conflict of Interest." For the first time ever, the Committee has therefore spelt out specific types of Conflict of Interest, and applied them to individuals employed by, or connected to the BCCI. In order to provide clarity, the conflicts have been broadly classified as tractable and intractable, with separate solutions or sanctions as the case may be<sup>7</sup>. The Committee has also recommended the appointment of an Ethics Officer who would administer the 'conflict of interest' policy for the BCCI.

#### Appointment of an Ombudsman

In recent years, the BCCI has been confronted with several lawsuits by disenfranchised member associations who have challenged their disqualification or ineligibility from the membership of the BCCI on various grounds, and before different courts of law. In addition, the termination of various IPL Franchises by the BCCI has also been challenged in different judicial fora, leaving the BCCI to fight multiple legal battles with entities that are crucial stakeholders in the administration and development of the game. Therefore, in order to reduce the judicial role and the burdening of the courts and to expedite dispute resolution, the Committee has recommended the appointment of a retired judge of the Supreme Court or a former Chief Justice of a High Court as the Ombudsman

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of the BCCI, to be appointed once a year at the Annual General Meeting.

This Ombudsman has been tasked with the responsibility to investigate and resolve any dispute between the BCCI and any Member/Franchisee/Zone/Players' Association/Player/Team Official/Administrator either *suo motu* or on reference from the Apex Council<sup>8</sup>.

#### Appointment of an Electoral Officer

Recognising that the conduct of elections for the office bearers of the BCCI has been an intensely political activity thus far, the Committee has proposed that a former Election Commissioner of India (which is a permanent constitutional body in India) be appointed as an independent Electoral Officer for the BCCI, and that his or her decision would be final and conclusive as regards to the process of elections<sup>9</sup>.

#### Bringing the BCCI under the purview of the Right to Information Act

The Committee found the BCCI to have been a rather opaque organisation in terms of the process adopted by it to award contracts for different services, whether it pertained to building infrastructure or the engagement of experts for commentary/media services, broadcast rights or the supply of equipment. To remedy this anomaly, the Committee has made recommendations that are aimed at making the BCCI transparent, such as recommending that the BCCI website and office carry all rules, regulations and office orders of the BCCI, the constitution of the various committees, their resolutions, the expenditures under various heads, the reports of the Ombudsman/Auditor/Electoral

Officer/Ethics Officer and the annual reports and balance sheets<sup>10</sup>.

However, the recommendation that will have a far-reaching impact is the requirement that the BCCI's activities be brought under the purview of the Right to Information Act, 2005 ('RTI Act'). The RTI Act requires that public authorities disclose the particulars of the facilities available to citizens. While the issue of the BCCI being brought under the purview of the RTI Act is currently *sub judice* before the High Court of Madras, the Committee has taken into account the fact that the Supreme Court has itself held that the BCCI discharges public functions. It is for this reason that the Committee has recommended that the legislature must seriously consider bringing the BCCI within the purview of the RTI Act.

#### Match-fixing and betting

The Committee has concluded that the only way to deal with match-fixing is "by making it a criminal offence punishable by law." It is my view that the Committee could have examined the issue in greater detail and pressed the BCCI to increase its financial commitments to protect the integrity of the game, specifically by entering into agreements with global and local policing agencies, as the BCCI on its own, is ill-equipped to guard against match-fixing (as is clearly evident from the fact that Indian cricket has been witness to at least two, if not more, high profile match-fixing scandals in the last two decades).

With regard to betting, the Committee, at first glance, appears to have taken a pragmatic view by recommending to the legislature that betting in cricket be legalised with the following safeguards i.e. (a) regulatory watchdogs would be necessary to ensure that the betting

houses as well as those transacting there are strictly monitored, failing which their registrations would be susceptible to cancellation; (b) the Players, Administrators and others closely associated with the sport would be required to furnish the details of their incomes and assets for the sake of transparency; (c) licences would have to be issued to those placing the bets as well, with age and identification details recorded; and (d) strict penal sanctions would have to be imposed on those transgressing the licence and other requirements<sup>11</sup>.

It remains to be seen whether the legislature of different states in India will build on these recommendations and introduce licensed betting/gambling legislation. Given that most states in India have resisted attempts to legalise betting on sports (other than horse racing) to date, the move to a licensed and regulated betting framework seems unlikely in the near future.

### Constitution and functioning of member associations

Lastly, the Committee has examined the functioning of different member associations of the BCCI and come up with a number of sweeping recommendations regarding their constitution and functioning. Some of the key recommendations are<sup>12</sup> that (i) there be uniformity in the constitution and functioning of the various associations; (ii) cricketers be made members of member associations and have a say in governance and that the management of member associations be made professional; (iii) there must be an audit and independent oversight of how resources are allocated and spent by member associations; (iv) there must be an automatic disqualification of an official from the member association upon such

official being elected to a position in the BCCI so as to avoid conflicts of interest; and (v) there should be limits on the tenure for which such officials hold office.

### Conclusion

There can be no doubt that the Committee has, by and large, delivered on the mandate that it was provided by the Supreme Court. The sheer breadth and depth of the recommendations of the Committee is astonishing.

This was an exercise which was unprecedented in the context of Indian sport. While many of the recommendations of the Committee draw from the experiences of sports administration outside India, the Committee has now laid down a template which can be utilised by other sports governing bodies in India (who have been plagued by similar, if not worse, issues) to transform their governance models.

As I have argued before, any argument that the Committee has over-reached in its enthusiasm to clean up the game, has already run its course. The Committee has methodically cut through the various issues that were plaguing the BCCI and its member associations, analysed how such issues have been addressed either by other sports bodies across the globe or by referring to constitutional mechanisms in certain cases (for example, the recommendations pertaining to the appointment of an Electoral Officer and a nominee of the Comptroller and Auditor General of India). By actually detailing its suggestions and proposing model documents and draft rules and regulations on certain issues, the Committee has left the BCCI with no wriggle room whatsoever to avoid reform. At the time of going to press, the Supreme Court of

India has already issued an ultimatum to the BCCI that if it were to fail in implementing the Committee's recommendations, the Court would ask the Committee to step in and actually implement its recommendations!<sup>13</sup>

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1. This was the very first paragraph of the second report submitted by the Lodha Committee, available at: <https://lodhacommittee.wordpress.com/2016/01/04/report-on-cricket-reforms/>
2. See Page 26 of the second report submitted by the Lodha Committee.
3. See Page 40 of the second report submitted by the Lodha Committee.
4. See Page 44 of the second report submitted by the Lodha Committee.
5. I have discussed this issue in greater detail in the following articles i.e. Fight against Fixing in cricket - 1 of 2: Why BCCI needs to implement globally-adopted norms on agent accreditation at <http://www.cricketcountry.com/articles/fight-against-fixing-in-cricket-1-of-2-why-bcci-needs-to-implement-globally-adopted-norms-on-agent-accreditation-27750>; and 'Player Agents: Cricket begins regulation of player agents: analysis,' World Sports Law Report, Volume 9, Issue 5, May 2011, [http://www.e-comlaw.com/world-sports-law-report/article\\_template.asp?Contents=Yes&from=wslr&ID=1328](http://www.e-comlaw.com/world-sports-law-report/article_template.asp?Contents=Yes&from=wslr&ID=1328)
6. For a more detailed discussion on this case see 'The N. Srinivasan case and 'conflict of interest' in sport,' World Sports Law Report, Volume 13, Issue 6, June 2015, [http://www.e-comlaw.com/world-sports-law-report/article\\_template.asp?Contents=Yes&from=wslr&ID=1782](http://www.e-comlaw.com/world-sports-law-report/article_template.asp?Contents=Yes&from=wslr&ID=1782)
7. See Pages 139-144 of the second report submitted by the Lodha Committee.
8. See Page 51 of the second report submitted by the Lodha Committee.
9. See Pages 53-54 of the second report submitted by the Lodha Committee.
10. See Page 57 of the second report submitted by the Lodha Committee.
11. See Pages 61-62 of the second report submitted by the Lodha Committee.
12. See Page 73 of the second report submitted by the Lodha Committee.
13. See Supreme Court gives BCCI one month, little wriggle room to respond to Lodha report at <http://www.espnricinfo.com/india/content/story/968987.html>