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#SandpaperGate: Why the ICC got it wrong and Cricket Australia got it right

Amrut Joshi, Founder of GameChanger Law Advisors and Member of the *World Sports Advocate* Editorial Board, shares his opinion on the ball tampering scandal that has rocked Australian cricket and the concerns surrounding the discrepancies found between the investigations carried out and sanctions issued by the national governing body and the global governing body of cricket.

In the words of Sir Donald Bradman AC¹, “When considering the stature of an athlete, or for that matter any person, I set great store in certain qualities which I believe to be essential in addition to skill. They are that the person conducts his or her life with dignity, with integrity, courage and perhaps most of all, with modesty. These virtues are totally compatible with pride, ambition and competitiveness.”

One cannot fathom how disappointed the greatest cricketer of all time would be had he been alive to witness the sordid ball tampering saga that erupted on 24 March 2018 at the Newlands Cricket Ground in Cape Town.

It all began during the post-lunch session on the third day of the third test match between Australia and South Africa. With South Africa firmly in the lead in the match, and on course to clinch what would have been a series leading win, television cameras spotted Australian opener, Cameron Bancroft holding a “foreign object” when working on the ball².

The footage is shown on the big screen at Newlands. On seeing the footage, Bancroft panicked and stuffed the substance down his trousers. When questioned by the umpires, Bancroft attempts a cover up by showing them a black cloth, before play goes on. At the end of the day’s play, Australian captain Steve Smith and Bancroft fronted up before the media for a highly anticipated post-match press conference, where

both players made dramatic admissions. Bancroft admitted to attempting to change the condition of the ball, while Smith admitted to the “leadership group” of the Australian Team being aware of the plan to tamper with the ball.

The ICC makes the first move

Soon thereafter, it was the International Cricket Council (‘ICC’), cricket’s global governing body, that made the first move by pressing charges against Smith and Bancroft, for violations of the ICC Code of Conduct for Players and Player Support Personnel (‘ICC Code of Conduct’)³. Here is where things take an interesting turn. In a hearing conducted by the match referee, Steve Smith admitted⁴ being party to a decision within the ‘leadership group’ of the Australian team to attempt to change the condition of the ball in order to gain an unfair advantage over the South African team.

The decision of that group, of which Smith is the team captain, risked causing serious damage to the integrity of the match and was contrary to the spirit of the game. And yet, the ICC charged Smith under Article 2.2.1 of the ICC Code of Conduct (i.e. a Level 2 Offence) and not under Article 2.3.1 (which would have meant that his actions would have been construed as a Level 3 Offence). Smith’s punishment under the ICC Code of Conduct was that he would be banned from playing the last test match of the series against South Africa and that he was fined 100% of his match fee. Even if the ICC had charged Smith under Article 2.3.1, he could potentially

have been forced to miss only one more test match in addition to the test match against South Africa or four ODIs/ T20I matches as a maximum sanction. On the other hand, Bancroft admitted to changing the condition of the ball, which is an offence under Article 2.2.9 of the ICC Code of Conduct. Bancroft was handed three demerit points, which under the provisions of the Code meant that he would not even miss the last test match of the series against South Africa. Further, the ICC merely fined him 75% of his match fee.

Cricket Australia responds to the “moral outrage” at home

At around the same time, Cricket Australia (‘CA’) was forced to initiate its own investigation into the same incident, prompted in no small measure by the massive outrage that this incident sparked among Australia’s public, including a condemnation from its Prime Minister, Malcolm Turnbull⁵. As has been eloquently expressed by a multitude of cricket columnists and commentators, Australia’s cricket team is older than the country itself and historically, cricket has been the team sport that has commanded the greatest nationwide support in Australia. This incident, when viewed alongside a series of other instances of sledging, on and off-field confrontations⁶, seemed to ignite a sense of “moral outrage” in the Aussie public, with calls from all and sundry to reboot the culture of the Australian cricket team, and to restore the age old Aussie tradition of “playing hard but fair.” Consequently, there were calls to ban the errant players from the

continued

game for a substantial amount of time. The CA despatched its Integrity Officer to conduct an investigation into the incident. The results of its investigation threw up several interesting differences from the ICC's investigation. Firstly, the CA's investigation brought to the fore the role of David Warner, who had not been charged by the ICC, let alone been penalised! According to the CA's investigation, it was Warner who had developed the plan to "attempt to artificially alter the condition of the ball" and instructed Bancroft to "carry out a plan to take steps to attempt to artificially alter the condition of the ball".⁷

Secondly, the CA charged Smith, Bancroft and Warner with a breach of Article 2.3.5 of the CA Code of Conduct⁸, namely that their conduct: (a) was contrary to the spirit of the game; (b) was unbecoming of a representative or official; (c) is or could be harmful to the interests of cricket; and/or (d) did bring the game of cricket into disrepute.

Under the CA's Code of Conduct, this was treated as a Level 3 offence, and consequently the following sanctions were handed out to the three players i.e. Steve Smith - suspension of 12 months from all international and domestic cricket, David Warner - suspension of 12 months from all international and domestic cricket, and Cameron Bancroft - suspension of nine months from all international and domestic cricket. The BCCI followed the CA in imposing bans on Smith and Warner, preventing them from playing in the 2018-19 season of the Indian Premier League.

Too harsh or too light?

It appears from the chain of events that the CA's investigation unearthed more information on the ball tampering plan than what was disclosed to the ICC. In

my opinion, this suggests that either the Australian cricketers were misleading the Referee, the Umpires and other ICC officials about (a) the players who were party to the plan; and (b) the nature of the plan (it was only CA that determined that the "foreign object" used by Bancroft was sandpaper and not sticky tape as had originally been claimed by Bancroft); or the ICC's investigative mechanisms were totally shambolic. Despite Steve Smith admitting to the ICC officials that he was a party to a decision within the "leadership group" of the Australian team to attempt to change the condition of the ball in order to gain an unfair advantage over the South African team, the ICC did not even press him as to who constituted the "leadership group." There can be no other plausible explanation for the failure of the ICC to even charge, let alone penalise David Warner.

Lastly, the ICC has clearly not paid any heed to the premeditated nature of the offence committed by the players. As is evident from the furore generated across the world, to most observers, the Australian cricketers were involved in an act of "cheating" that was exposed by the television cameras. The ICC claims that ball tampering is only a Level 2 offence under its Code⁹, and hence, the sanctions levied by the ICC against Smith and Bancroft were the maximum available to it under its Code of Conduct.

Here again, the ICC seems to have been caught napping in its efforts to police the game. Once the players admitted to their offences, could it not have been possible for the ICC to treat this as a Level 3 offence, and charge the players under Article 2.3.1? The penalties levied by the ICC seem to be jarringly light, especially in light of how the CA viewed the same offences! How can the global governing body of the game be viewed to be so pusillanimous in comparison

with a national governing body when faced with the same situation?

On the other hand, despite the CA being criticised heavily for allowing a culture to develop within the Australian team, which encouraged a "win at all costs" attitude, credit must be given to it for the manner in which it has come down on the players after this incident came to light. The CA has clearly characterised the offence committed by the players as being more serious, when compared with the ICC's characterisation (Level 3 versus Level 2). The ICC has announced a review of its Code of Conduct¹⁰ in the aftermath of this incident, and one would hope that apart from clarifying what constitutes 'ball tampering' more specifically, it also clearly states when conduct that is "contrary to the spirit of the game" is to be treated as a Level 2 offence and when the same conduct should be treated as a Level 3 offence.

As for the global player community, there are a whole lot of legal, moral, and cultural questions that are as yet unanswered. Hasn't rampant ball tampering been a part of the game for a long time, with administrators either unaware or turning a blind eye?

Could it have been conceivable that the bowlers of the Australian cricket team were not in the know about the plan¹¹? And then there is the deeper cultural issue that seems to be permeating through the cricketing world - that of a "win at all costs" culture. This is clearly not just an issue for Australian Cricket to contend with - players from almost all cricket playing countries have admitted/been caught/charged with ball tampering in the last four decades. With financial stakes in cricket higher than ever, it is unfortunate that players believe that they need to resort to any means to win a game.

1. Speaking at his Induction into The Sport Australia Hall of Fame, 1985. See <https://www.sahof.org.au/about-us/history/>
 2. Subsequent investigations by Cricket Australia revealed that the substance in question was sandpaper.
 3. Please see the ICC Code of Conduct for Players and Player Support Personnel, at <https://pulse-static-files.s3.amazonaws.com/ICC/document/2017/10/05/40ae9126-9042-437a-9cba-12a1bdb21923/Code-of-Conduct-For-Players-and-Player-Support-Personnel-effective-28-...-1-.pdf>
 4. This is noted on the ICC Website, <https://www.icc-cricket.com/about/cricket/rules-and-regulations/code-of-conduct>

5. See Brydon Coverdale 'Why is Australia so outraged at Steven Smith's team?', at http://www.espnricricinfo.com/story/_/id/22916100/why-australia-outraged-steven-smith-team
 6. The earlier test matches in the same series had been marred by an off-field confrontation between Australia's David Warner and South Africa's Quinton De Kock and South African bowler Kagiso Rabada making contact with Steven Smith's shoulder after claiming his wicket.
 7. See 'CA says sandpaper was used to tamper, not sticky tape as Bancroft claimed,' at http://www.espnricricinfo.com/story/_/id/22940383/cricket-australia-says-sandpaper-was-used-tamper-not-sticky-tape-cameron-bancroft-claimed

8. See the Cricket Australia Code of Conduct for Players and Player Support Personnel, <https://www.cricketaustralia.com.au/cricket/-/media/20A51657C8FC48BC91C446549C9015F7.ashx>
 9. See 'ICC to review code of conduct, ball-tampering set to be bigger offence' at http://www.espnricricinfo.com/story/_/id/22951750/icc-review-code-conduct-ball-tampering-set-bigger-offence
 10. Ibid.
 11. See 'Australia ball-tampering: 'Nonsense' only three players knew - Andrew Flintoff,' at <http://www.bbc.com/sport/cricket/43706190>