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Olympic Rule 50: Bane toward Human Rights implications for the Athletes

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Abstract--In the Tokyo Olympics, Raven Saunders, Bao Shanju and Zhong Tianshi were questioned by the IOC and got warnings due to their “performance of political demonstration” at the Olympic podium. We saw something similar during the 2012 London Olympic Summer Games when an indigenous boxer of Australia, Damien Hooper, was nearly disqualified from the Olympic competition for entering the ring wearing the Aboriginal flag shirt of Australia. The Olympics has had a history of maintaining a hypocritical form of political neutrality over the years. The Olympic Charter talks about sport being an essential medium in advancing the human rights of various individuals from different countries. However, it also chooses to stay neutral and gives preference to host nations. “Freedom of opinion and expression”, is a fundamental right enshrined in core international and regional human rights treaties and national laws. But it is also to be taken note that this freedom is restricted due to the “legitimate aims” of these treaties and laws. The Olympic Charter has followed suit and enacted a certain rule that prevents athletes from making demonstrations at the Olympic sites under the threat of disciplinary sanctions.

Keywords---charter, expression, freedom, human rights, Olympic.

Introduction

On August 1, 2021, at the Tokyo Olympics, the women’s shotput final event took place. American shot putter Raven Saunders was up against Gong Lijao of China

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for the battle of gold medal (ESPN, 2021). She put up a brave fight but eventually lost to her. She had just won the silver medal for her country. But after the medal ceremony, she was in the limelight for the wrong reasons. She became the first athlete to demonstrate on the podium at the Tokyo Olympics. After receiving her silver, Saunders made a “X” sign with her arms. According to the Associated Press, the 25-year-old performed the gesture to symbolise “the confluence of all oppressed people coming together (Morse, 2021).” Saunders said the gesture was a shout out to Black people, the Lesbian, gay, bisexual, and transgender (LGBTQ) community and all people dealing with mental health (Hart, 2021). But later on, the International Olympic Committee (IOC) raised questions over her misconduct during the medal ceremony (Morgan, 2021) and said that they were investigating the particular gesture as potential breach of its rules which could result in heavy sanctions for Saunders (BBC, 2021). What had she done wrong? It looks like Saunders was found in breach of Rule 50 of the Olympic Charter (Olympic Charter, 2021). She wasn’t the only athlete found in violation of Rule 50. Chinese cyclists, Bao Shanju and Zhong Tianshi wore red and gold pins (also known as Mao Zedong badges) which signified the Cultural revolution in China. They were left off with a warning. (Ingles, 2021) In short, this rule prohibits any kind of political, religious, or racial protest inside an Olympic site. The United States Olympic and Paralympic Committee (USOPC) stated in a statement that Saunders’ gesture did not violate its regulations regulating athlete protests. The committee concluded that Saunders’ “peaceful statement in favour of racial and social justice” did not break regulations, was respectful of her rivals (Gaydos, 2021). This research paper will try to contextualize the Saunders incident within the scope of Olympic political, racial demonstrations and other human rights issues which are relevant.

Political games or olympics games: the history

Before going into the details about Rule 50, let us look at the history of Olympics with some examples with regards to its political history. The 1968 Mexico City Olympics was one of the clearest instances of restricting athletes’ freedom of speech (Hartmann, 2003). Tommie Smith and John Carlos raised black gloved fists during the United States (US) national anthem during the men’s 200-meter medal presentation, (Rounds, 2020) a black power salute and symbolic gesture to protest the status of civil rights in their homeland (Smith, 2020). Both were even asked to return their medals. While the whole chain of events was criticized back then by the IOC, now Smith and Carlos find themselves in the Olympic Museum. United States of America (USA) even included them in the Olympic Hall of Fame (Armour, 2019). It is ironical that what was applauded at the Olympic Museum was not even permitted in the Tokyo Olympics, as the new rules explicitly prohibited raised fists. This wasn’t the first time that IOC brought implications at an athlete for his/her demonstration. In 2012, Australian boxer Damien Hooper (ESPN, 2012) was accused of violating Rule 50 because he entered the ring wearing a shirt which had the Aboriginal flag of Australia (Chagas & Fonseca, 2020).

The hypocrisy of IOC

There is also another hypocrisy shown by the IOC with regards to the host nations. Sochi Winter Games had one of the most picturesque opening ceremonies ever seen in which political and patriotic emblems were impossible to overlook (Elsborg, 2020). The IOC president must have turned a blind eye when the opening ceremony was used to create a beautiful and carefully choreographed image of the nation (SI, 2014). The Russian State took over the opening event. All in all, the Russian state exploited the ceremony of opening to construct a national story glorifying the Soviet period. The soviet communism's political elements were forgotten, and its economic and social aspects instead were welcomed as a setting for the present contemporary Russian state. The most severe and disastrous elements of Stalin's rule, such as political persecution, mass extermination and forced industrialization, were not mentioned.

In 2008 the Chinese organizers again made political use of the opening ceremony of the Beijing Olympic Games. For example, in the most populous nation in the world, with more than 1.4 billion people, the opening ceremony signaled ethnic unity. The national flag was brought into the stadium by children of 56 different ethnic groups in China. Later it was found out that all of them belonged to the Han Chinese ethnic group, which comprises 92% of the Chinese population (Goldsmith, 2008).

The London 2012 Olympics had a particular agenda to defend Western ideals, including open and tolerant societies in recognition of the United Kingdom (UK) health care system and the emancipation of women and civil rights. The Olympic flag was assisted by human rights campaigners. As with every Olympic event, the darker aspects of British history were erased for their own gains. (Murray & Pigman, 2014). So, it can safely be said that IOC doesn't invoke Rule 50 when the host nations use their opening ceremonies to drive a specific agenda that they prefer to, and it is only limited to the athletes playing on the field. This is a double-standard approach from the IOC.

IOC's political neutrality

Former IOC President Avery Brundage during the 50's was a strong supporter of the two main Olympic principles, "amateurism and non-politicization of sport" (Duval, 2020). The 1956 Olympic Charter was the first to include the "Information for Cities Desiring to Host the Olympic Games," which stated that invitations "must state that no political demonstrations will be held in the stadium or other sport grounds (Cottrell & Nelson, 2011), or in the Olympic Village, during the Games, and that it is not the intention to use the Games for any other purpose than to advance the cause of the Olympic Movement (Seltmann, 2021)". This would morph into the present Rule 50 over time. However, as we have seen in the past, despite the IOC's best efforts, politics is fundamentally entrenched into the Games, (Cha, 2009) owing to the multitude of players representing diverse interests engaged in its preparation and implementation. In this way, the Games can never really exist in a vacuum, independent from the social environment in which they exist.

Human rights and sports: the reality

Human rights protection is generally agreed upon and approved in a number of conventions. The Advisory Committee of the Human Rights Council released a study in 2015 (Donnelly, 2018) on the potential of utilizing sport and the Olympic concept to promote universal human rights and enhance universal respect for them.

‘Sport is essential in advancing human rights globally via the relationships it creates between individuals from various origins and cultures,’ according to section 8 of this study (General Assembly (UN), 2015). Sport and the Olympic ideal may also be used to promote peace, development, and the elimination of all kinds of prejudice. Furthermore, the Advisory Committee of the Human Rights Council recommends that sport be used to promote equal opportunities in education, health, gender, and ethnic equality, as well as to safeguard the rights of people with disabilities and the environment. The Olympic Charter prohibits discrimination based on race, colour, sex, sexual orientation, language, religion, political or other beliefs (Boykoff, 2019). The Games are an international sporting event, not a political platform. It is stated in the above-mentioned Human Rights Council Advisory Committee report that: “the cohesiveness and neutrality of the athletic movement are essential elements for attaining the Olympic ideal and ideals and that sports events should not be exploited to express political protests or boycotts.” The Olympic charter focuses much on their stand to remain neutral when almost 200 countries participate in the games (Lenskyj, 2017). But doesn’t it raise a serious question. Is neutrality of the highest importance when it comes to human rights issues (Toma & Zimmer, 2012). Calling out these violations of human rights at the biggest stage will bring a lot of attention to the issues. Rather by staying neutral, you end up siding with the offenders as a result of your failure to intervene on the behalf of the victimized.

Freedom of expression under international laws and the olympic charter

The IOC is established under the Swiss Association Law (Ettinger, 1992). The Universal Declaration of Human Rights (UDHR) was taken into cognizance in 1948 by the United Nations (UN), and then the International Covenant on Civil and Political Rights (ICCPR) accepted it as an absolute right and recognized in 1961 (Flowers, 1998). Article 19(2) of the ICCPR provides for the “right to freedom of speech for everyone (Dawson, 2003; Pietrzak et al., 2010). (ICCPR, 1976)”, Article 19(2) of the ICCPR provides for the “right to freedom of speech for everyone.” Article 10 of the European Convention on Human Rights (ECHR) (ECHR, 1953) provides:

“Everyone has the right to freedom of expression (O’Flaherty, 2012). This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises (Flauss, 2009)”

“The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society (Dembour, 2009), in

the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary (Bychawska-Siniarska, 2017)".

Freedom of expression is enshrined not only in Article 10 of the ECHR and Article 19 of the ICCPR but also in other international human rights legislative instruments like Article 19 of the UDHR of 1948 (UDHR, 1948), Article 17(1) of Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention, 2011) and Article 11 of the Charter of Fundamental Rights (CFR) of the European Union (EU) (CFR, 2000).

International "freedom of speech" rights may only be restricted in certain situations, such as national security (Nacos, 2019), protecting the reputation and privacy of others and promoting democracy, etc. but, these restrictions have to be justified. The fundamental human right to free expression also serves as an enabling right, since it makes the enjoyment of other human rights more convenient and efficient (Bettinger, 2005; Winters, 2012). The IOC a responsibility to respect UN Treaties (Grell, 2018). The Olympic Charter 2020's Fundamental Principles of Olympism, which are stated after the Preamble, also include human rights clauses. The practice of sport is a human right, according to paragraph 4 of the Fundamental Principles of Olympism (Yurlov, 2015). Discrimination of any sort is prohibited under paragraph 6, including discrimination based on race, colour, sex, sexual orientation, language, religion, political or other beliefs, national or social origin, property, birth, or other status (Duval, 2018).

Rule 50: A primer

Rule 50.1 of the Olympic Charter states: - "Except as may be authorised by the IOC Executive Board on an exceptional basis, no form of advertising or other publicity shall be allowed in and above the stadia, venues and other competition areas which are considered as part of the Olympic sites (Jowett & Cockerill, 2003). Commercial installations and advertising signs shall not be allowed in the stadia, venues or other sports grounds (Goh, 2021)". The prohibitions in rule 50.1 of the Olympic Charter is from a marketing sense. It is principally to ensure that the main sponsors of the Olympic Games get the appropriate space and broadcast time for the said Games touted to be one of the world's largest international marketing events capable of reaching billions in more than 200 countries worldwide. It is to ensure that there are no chances of ambush marketing at any point of time (Laviron, 1979; Wood & Episkopou, 1999).

But the controversial part of Rule 50 is in its sub rule 2. Sub rule 2 states: - "No kind of demonstration or political, religious or racial propaganda is permitted in any Olympic site, venues or other areas (James, 2021)". There is a bye law to the same rule which states that: - "No form of publicity or propaganda, commercial or otherwise, may appear on persons, on sportswear, accessories or, more generally, on any article of clothing or equipment whatsoever worn or used by all competitors, team officials, other team personnel and all other participants in the Olympic Games (...) (Dryden, 2018)" The Olympic Games may be over for the athlete if the athlete or team violates Rule 50(2) of the Olympic Charter or bye-law

1. The International Olympic Committee underscores that the Olympics are about sport. Therefore, political announcements like armed wars, religious concerns, and so forth are inappropriate. Athletes, other officials involved with various teams, and other individuals with access to Olympic venues are barred from exhibiting any symbol, banner, artwork, piece of equipment, or clothing within Olympic venues (Sallis et al., 2016; Fletcher & Sarkar, 2012). The Rule 50 is a bit tricky. Athletes and other authorized persons are free to express their opinions via interviews, press conferences, social networks, olympic press but not while they are “playing” the games or receiving a medal during the ceremony. IOC President Thomas Bach confirmed the same during an interview in 2014 (Rumsby, 2014).

Limiting the capacity of athletes to affect the movement once they are on the podium would be a direct power block to prevent them from engaging actively (Titko et al., 2021). In addition, if the limelight given by the Olympic Games is not able to convey political beliefs, the ability of athletes as agents to exert power is severely reduced (O’ Bonsawin, 2015). This declaration is fundamentally problematic because the Olympic Committee has failed to establish a solid human rights foundation which would apply to all Olympic Games (Hack, 2020). Rather, it has concentrated exclusively on the human rights that apply in the host nation (Itkulova et al., 2021). It is vague because the host nation might have banned a lot of things which cannot be used by the athlete to express his/her freedom. With that being understood, there are certain questions which arise from Rule 50.2.:

- Does Rule 50 of the Charter limit one’s right to free speech?
- If so, does Rule 50 have any justification for the Olympic Committee’s “legitimate purposes” as a restriction or interference with the right to liberty?
- If so, is Rule 50 laid down by legislation do athletes have no comeback if there is a ban imposed on them?

Rule 50: A limit to free speech or a required restriction?

We have already seen in cricket (Sarmah, 2020) and football (Doel, 2020) where players have bent the knee before the start of a match. Now, there is also a demand for space for peaceful demonstration and racial issues at the Olympics. IOC Athletes’ Commission has already started work to review the Rule 50 of the Charter (Pavitt, 2020). But before completely having a stance, we have to look at the amalgamation of international, national laws and the Olympic Charter and see how feasible Rule 50 actually is.

In spite of the very minimal limitations on free expression of participants at the Olympic Games in accordance with Rule 50, it nevertheless limits their ability to engage in free speech at Olympic places and in the official ceremonies of the Olympic Games, either “demonstrating” or “political, religious and racial propaganda.” Analysing Rule 50, it is clear that the participants are in fact limited to free expression, as “demonstration and propaganda” is denied at the Olympic sites

It is worth noting that the particular phrase of rule 50(2) at this point possibly implies the IOC's precise intents to limit just certain kinds of behaviors and intentions. Because it only mentions propaganda such as political, religious and racial. IOC could have added other words too but we don't see anything else in the above rule. But this doesn't mean that they can get away with other forms of propaganda (Arbaoui, 2018; Otakhonova, 2021).

Olympics: Always been unsupportive to indigenous and less privileged?

We will take a look at the case of Damien Hooper and understand how Olympics has done the opposite to what it stands for (Nyandra et al., 2018). Damien Hooper would have had a chance to enter the Olympic Arena with an Aboriginal flag shirt to commemorate his culture, community, family and Indigenous peoples during the 2012 London Olympic Games (Wills, 2021). It was going to be a revelation for all other indigenous who have been neglected since time immemorial. His acts would have been applauded by everyone. Hooper, however, was fiercely denied this fundamental human right and accused of introducing a political message into the purely playful world of Olympic sport (Lane, 2012).

This is what the Olympic Charter mentions: - "to place sport at the service of the harmonious development of humankind, with a view to promoting a peaceful society concerned with the preservation of human dignity (Spaaij, 2012)" If we look at the Olympic charter and its framework, it will seem as if various philosophies have come together for an event whose sole motive is to bring the world closer. It is supposed to mean peace and non-existence of barriers between sportsmen. It is also supposed to promote democratic and liberal forward-thinking ideologies. But Hooper's decision of entering the field wearing a shirt which had the Aboriginal Flag was not seen in clean eyes. What happened to the Olympism? A small act of promoting a culture was seen as an act of villainy. This surely can't be the teachings that Olympism teaches us. But it had happened. This is not a small event. It does not happen to the privileged whites. Always blacks or lesser privileged who have to deal with this because they are easy targets. Earlier it was mentioned in an article that "Organizers today need eligibility rules for practical reasons. Without rules stipulating precise qualification and eligibility requirements, the Olympic Games have the potential to grow to unmanageable sizes (Teetzel, 2011)."

Chapter 4 of the Olympic Charter talks about the Mission and roles of the National Olympic Committees (NOC) (Tomlinson, 2012). It says that "The mission of the NOCs is to develop, promote and protect the Olympic Movement in their respective countries, in accordance with the Olympic Charter (Korent, 2018)." Further the NOC's role is mentioned. NOC are here "to ensure the observance of the Olympic Charter in their countries". 27(5) states that "In order to fulfil their mission, the NOCs may cooperate with governmental bodies, with which they shall achieve harmonious relations. However, they shall not associate themselves with any activity which would be in contradiction with the Olympic Charter." 28(5) is another important rule here. It says "The area of jurisdiction of an NOC must coincide with the limits of the country in which it is established and has its headquarters." Bylaws to rules 27 and 28 recognize that NOCs "have the sole and exclusive authority to prescribe and determine the clothing and uniforms to be

worn . . . by members of their delegations on the occasion of the Olympic Games and in connection with all sports competitions and ceremonies.”

Damien hooper fiasco in eyes of the olympic charter

The Olympic Charter 4 although it sounds harmless, but it was the downfall of Hooper. In accordance with these criteria, the IOC has recognised the Australian Olympic Committee as (AOC) the legal Olympic authority in Australia. This is due to the fact that the “world community” recognises and respects political and geographical borders. Born inside the geographical boundaries of this globally recognised sovereign State, Hooper was naturally engaged with Australian citizenship. This Olympic athlete, being an Australian citizen, came under the jurisdiction and control of the IOC-sanctioned AOC (Staniforth, 2012). Hooper had to comply with rules set forth by IOC and AOC (Barlow, 2012). Dressing in clothes specified by the AOC was covered under these rules. If there were any flags or symbols on such clothing, they should be Australian insignia recognised by the IOC (Dobson, 2012). If an athlete, like Hooper, fails to fulfil such expectations, the Olympic Charter rules on contingencies with regard to rebellious athletes. Rule 50 had struck Hooper.

Whether Hooper deliberately and/or intentionally breaching the Olympic eligibility criteria is neither, nor should it be, the focus of this debate. What is fundamental to the issue is that this indigenous athlete entered the Olympic ring in order to respect his culture, nation, family and indigenous people and that basic right was denied. Similar to Smith and Carlos (Peterson, 2009), this disadvantaged indigenous athlete also had backing from a much broader racial and political group and was involved in a well-defined, culturally focused and collectively led protest. Olympic responses were hauntingly similar of the Black Power protest some 50 years earlier (Osmond, 2010).

Australia’s Aboriginal flag flown freely, permissibly, and joyfully during the Summer Olympic Games 2000 in Sydney (Heinz-Housel, 2007). One must take a critical look at why Hooper was handled with such harshness at the London Olympic 2012 for paying homage to his culture, family, and thus to disadvantaged people.

During the 2000 Olympic Games IOC granted a special permission for the Aboriginal flag to fly at several Olympic venues (White, 2013). But today it seems that the hand of the IOC was more or less pushed. During those years developments occurred in the political, legal and social landscapes of Australia. These were at the time linked to Aboriginal rights (Rowe, 2012). The elitism of the Olympic movement was eventually opposed by indigenous peoples and colonising allies, since these individuals and groups would not take politically repressive action to organise and host such events.

It is a big irony. And it speaks about the hypocrisy of IOC. One thing which was within rules in 2000, was seen as a disgraceful act 12 years later in another country. Did the morals change? If no, then what happened. IOC, time and again has acted as a puppet of the host nations and it changes or relaxes its rules accordingly without any basic structure.

When can “Right to Free Speech be curbed”?

Article 19(3) of the ICCPR adds some restrictions and puts some conditions while talking about free speech (Shepherd, 2017). It states “It may therefore be subject to certain restrictions (here right to free speech and expression), but these shall only be such as are provided by law and are necessary:

- For respect of the rights or reputations of others (Carter, 2017);
- For the protection of national security or of public order, or of public health or morals.

Article 20 of the ICCPR has expressly restricted certain types of speech. It has restricted any “propaganda for war and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (Eltayeb, 2010)”.

Article 10(2) of the ECHR (Sluijs, 2012), too talks about some restrictions and conditions that come with such a right. It states “The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary (Serter, 2010)”.

Important cases related to article 10

Handyside v United Kingdom is one of the cases which has discussed Article 10 in detail. Concerning the subject of freedom of speech, the Court said that it is “one of the fundamental tenets of such a democratic society” and “a necessary prerequisite for its growth and the development of every individual (Handyside v. United Kingdom, 1976).” However, the Court determined that while enjoying your right to free speech, you must bear the “duties and obligations” that come with it in a democratic society. Some actions may “offend, shock or disturb the State or any sector of the population (Oetheimer, 2009).”

Let’s take a look at another case related to Article 10 and a player’s action on the field. There are repeated cases of homophobia and other kinds of discriminatory chanting in football at stadiums, which Fédération Internationale de Football Association (FIFA) tries to prevent through regulations and penalties. In Šimunić v. Croatia, an applicant, a footballer, was convicted of a minor crime in Croatia for sending messages to football viewers during a match (Simunic v. Croatia, 2019). Allegedly, those contents conveyed or instigated hate on the grounds of race, nationality and religion. Submissions were sentenced by Croatian authorities. In reality, he used an official greeting of a radical political party in Croatia. In particular, he argued before the Court that his right to freedom of speech was infringed in accordance with Article 10 (Rietiker, 2020). The Court found the complaint of the applicant as completely baseless. The court found that interference with his freedom of expression had been backed by relevant and

adequate reasons. The court believed that the Croatian authorities found a fair balance between his interest for freedom of expression and the interest of society in the promotion of tolerance and mutual respect. The court emphasized on this balance very much and believed that it is the essence of Article 10. In particular the Court observed that the applicant, who was a well-known football player and a role model for many supporters, should have known and refrained from such conduct even after getting riled up by fans.

Justification of Rule 50 by the IOC

The IOC may have some reasons to enact the Rule 50. The Olympics are a huge event and their primary objective is to make it a controversy free event. Rule 50 might be one of the forced rules set out by the IOC. Just like a state has three reasons to curb right to free speech, IOC too has something like it. The reasons in a nutshell are:

- Right to Privacy and Reputation (Mestre, 2008)
- National Security
- Hate Speech and Propaganda related to war (Nocita, 2020)

Basically, IOC doesn't want any of these things happening in their global event.

Right to privacy and reputation

Like the way in which national laws are established in order to safeguard the reputation, image and intellectual property rights of others, such as sport personalities, Rule 50 may be justified by the IOC to preserve the reputation, image and other intellectual property rights. The image and prestige of the Olympic Games are the assets of the IOC (Miah & Jones, 2012). These are some things that produce income for the organization. The IOC's property protection is largely encapsulated by Rule 7 of the IOC, which sets out the rights to property in all Olympic properties (Madi, 2016). They include the Olympic rings, flags, mottoes, emblems and anthems. Only the IOC is permitted to use them financially and commercially. The image of the Olympic Games has long been linked to ancient global peace. The Olympic Charter also acknowledges the contribution of sport to the harmonious development of man to promote the creation of a peaceful society that respects human dignity. Defamation laws and intellectual property rights safeguard celebrity's reputation and image rights. Rule 50 is a method for IOC to safeguard its reputation and image rights.

National Security

National security and public order are also very much at stake with the Olympics. In the Olympic Games, Munich is one such occasion where terrorists attacked and took some athletes hostage (Large, 2012). IOC does not want the repeat of another such event.

In addition, it is not only host nations, during such major sports events, that face dangers to their national security and public order, but other participating nations too. So, if we look at IOC's stance, even during the Olympic Games, it is not unreasonable to create some rule of law to achieve safety and tranquilly which

ensures more safety. Rule 50 could be an example of some ‘social cooperation’ between which results in sacrifice of freedoms.

The rule explicitly forbids any ‘demonstration’ or ‘political, religious and racial propaganda’ relating to national security and public order issues during the Olympic Games (Schlereth & Frederick, 2017). Even if it is meant to be peaceful, every ‘demonstration’ or gathering of sorts may transform into something violent, as history has shown in Munich (Lenk, 1984). Peaceful demonstrations may not bode well with everyone as well. An athlete’s good intention might be triggering for a few sections of fans. In any event, free expressions include contentious and divisive social topics. The IOC believes that using the Olympic broadcasting platform to demonstrate and expose such problems may lead to rifts among the competitors in the Olympic Games. There are spectators involved too here who come to watch the Olympics in large numbers. It also undermines the goal of Olympism (Teetzal, 2012) to encourage peaceful growth through sports by allowing the spread of contentious and dividing social topics.

Hate speech and war propaganda

The IOC’s position on any ‘political, religious, and racial propaganda’ has been firm and unyielding. IOC is determined on removing any potential hate speech and war propaganda. Rule 50 may be one of those which facilitates this concept since it forbids the public spread, at specific Olympic sites, of any political, religious and racial views (Wasserman, 2020). The IOC believes that by default athletes won’t be able to promote any hate speech or war speech. IOC’s main aim is promoting universal access to everyone in sports without discrimination (Chappelet, 2011). The aims of the IOC to prohibit some propaganda seem to be reasoned and related to legitimate state objectives to suppress hate speech and propaganda under international and national law.

Are athletes completely shut down during the olympics?

The answer to this will be in the negative. There are opportunities for athletes to express their views. The Olympics mentioned a few of the places which were:

- “In the mixed zones, including when speaking to the media
- In the International Broadcast Centre (IBC) or the Main Media Centre (MMC), including when speaking to the media
- During press conferences in the venue or in the MMC
- During interviews
- At team meetings, subject to NOC conditions
- In traditional media or digital media
- Through social media channels, consistent with IOC and NOC social media guidelines.”

Legality of Rule 50

As we’ve seen, all of the articles we have discussed with regards to freedom of speech in some way limit the activities that a human being is capable of doing on their own. And the rule of law is not arbitrary (Sharon, 2016); it is enshrined in

law via legislation. In international human rights law, the concept of legality binds everyone and is essential to the protection of human rights (Reiter, 2014; D'Amato, 1982).

When there are concerns about national security and law enforcement, the concept of legality for limitations becomes a source of worry (Garibaldi, 1976). There are numerous nations that utilise this technique to gather information about their people and further their own agenda. This isn't a new phenomenon. IOC has done something close to this.

The question of the validity of Rule 50 relates less to whether the limitations are lawful. The extent of the ban is more important. In short, the question which arises here is whether all kinds of demonstrations are prohibited at the Olympic venues or some. Has the IOC mentioned the particular details about what would constitute 'political, religious, or racial propaganda'?

The Guidelines are a good primer to understand as it mentions some examples. But the situation is still a bit vague. We also saw that athletes may "express opinions" at several locations in the Olympic village while giving press conferences, etc etc. But "protests and demonstrations" are prohibited. Won't expression of views count as a protest or a demonstration? Or is it just limited to actions done and not words spoken.

When these two arguments are read together, a combination of acceptable and forbidden situations appears to exist. Are participants permitted to spread political, religious and racial perspectives, for example, during the Olympic Games via press conferences and public media platforms? Can people take part in various forms of "expressing" their views at the Olympic venues that are neither "demonstration" or "political, religious or racial propaganda?" Because an athlete while giving a certain opinion might violate this particular rule and the career could be in jeopardy.

In IOC's defence, the sites to be regulated by Rule 50 are fully within the competence and power of the Olympic Committee (Andrieu, 2020). These venues are the effective brand channels for the Olympic Games. There are certain venues which have been immortalised in the Olympics due to specific performances and also due its grandeur. Bird's Nest/Beijing National Stadium or the London Olympic Stadium have been spectacular venues (Branigan, 2012). IOC doesn't want a bad name attached to this. Therefore, free speech may be limited by the IOC to successfully preserve the IOC's reputation and image rights. Nevertheless, one of the components of the freedom of speech is the right to communicate information and ideas in which Olympic Games participants may want to spread their views and ideals using the same platforms (Shahlaei, 2017). This is a way to exchange ideals and tell the world about their problems. It would therefore be essential to assess the kind and scope of the free speech limitation to which participants are subjected.

Approach of State courts with regards to the IOC charter

National tribunals in the past too have proven insufficient to safeguard athletes' human rights and regulate the IOC's activities. *Martin v. the International Olympic Committee* is one of the famous examples with this regard (*Martin v. IOC, 1984*). The facts of the case were that a collection of women runners and organizations for runners in 1983 filed action against the IOC in a California State Court seeking compulsory preliminary injunction requiring the 1984 Los Angeles Summer Olympic Games' organizers to add some events ([Goettel, 1983](#)). The rejection of the IOC to add 5000 Metre and 10000 Metre track events for women while holding comparable events for male athletes was a gender discrimination and a violation of equal protection rights under the US constitution ([Dhonchak, 2020](#)). They argued that it is an attack to their constitutional Rights under and under the fifth and fourteenth amendments created under the Civil Rights Act of Unruh (*Unruh Civil Rights Act, 1959*).

The Court heard the arguments and observed that traditionally the Olympics has discriminated against women. The Court ruled that the Civil Rights Act of Unruh did not apply to the IOC ([Cleary, 2010](#)). For women, they are not bound to create "separate but equal" events. Without delving into the case, the Court said that it was "very reluctant to apply the law of one State in order to change an event held with contestants from across the globe ([Berman, 1987](#))". So here is a case where we see that a state court was reluctant to apply a local statute to an event which is held globally because it felt that was inappropriate. In this situation, athletes' human rights must be respected by European courts with transnational character.

This is what we have seen in the USA. The court hesitated in applying a local statute to a private charter. But there have been some cases related to Article 10 of ECHR where it gives some hope. After years of debating whether to grant Article 10 ECHR horizontal effect or whether to require States to protect the fundamental right set forth in the provision through positive obligations, the Court has decided that the provision must be enforced in order to prevent the freedom of expression of a private individual from being infringed upon ([Faut, 2014](#)). The *Fuentes Bobo v. Spain* decision is one ruling where the court ruled that the Article 10 also applies to employer-employee interactions (*Fuentes Bobo v. Spain, 2000*). It was a dispute between an employee and a Spanish television company in which an employee publicly criticized the management of the company after which he was dismissed ([Wechsler, 2015](#)). The Court took cognizance and held that Article 10 is not merely meant for public relations between the employer and the employee, but to private relations as well. In certain cases, the State was obliged to safeguard the rights of such people. It's their duty to ensure it. The foregoing case shows that Article 10 on freedom of speech may, in some situations, be relevant to private interactions via affirmative State duties ([Spachmuller, 2006](#)). They also demonstrate that a wide variety of private connections are addressed, regardless of whether it is a link between a media business and a journalist. The Court argued that, if one person or organization has some authority over the other and may impose restrictions that impair its basic rights and liberties, it should act. Although this case does not involve sports as such, it should be pointed out that many aspects and findings are of relevance to the sports cases.

Recourse available to athletes

Rule 61(2) of the Olympic Charter itself provides another option open to sanctioned athletes in accordance with Rule 50 (James & Osborn, 2012). The regulation establishes exclusive jurisdiction for all disputes related to the Olympics for the Court of Arbitration of Sport (CAS) in Switzerland. This CAS dispute reference provision is virtually omnipresent. CAS proceedings are regulated by Chapter 12 of the Swiss Private International Law Act (PILA) allowing the Swiss Federal Tribunal to review arbitration decisions (Rawat, 2020). The scope of such a challenge is limited to five reasons under Article 190(2) of the PILA. The first four reasons for this are entirely procedural. Clause 'e' is the one we want to talk about. It says that an award may be challenged if it is incompatible with public policy in Switzerland. A decision of the arbitral tribunal that goes beyond the claims submitted to it or fails to decide an element of the claim may be annulled under Article 190 (2) of the PILA. This means that an arbitration procedure under the CAS is limited to the issue before it (Mavromati, 2016). To overturn Rule 50, it does not have the power to go into constitutional arguments. But an appeal to the Swiss Federal Tribunal under Article 190(2)(e) will be a completely different case because Article 16 of the basic rights chapter of the Swiss Constitution discusses freedom of speech and information. Article 16 may be considered to be an essential component of Swiss public policy (Rigozzi & Hasler, 2013). It may also be argued that international treaties signed by Switzerland, which provide comparable freedom of expression, are part of its public policy. Athletes who want to appeal an IOC decision must show to the CAS that the decision in question violates Swiss public policy (Article 190(2)(e) of the PILA), which includes both substantive and procedural public policy. This hasn't been done earlier but it is doubtful that Rule 50 will survive if it is challenged under Swiss Federal Tribunal because of the severe nature of the limitations imposed by rule 50.

Recommendations

IOC Athletes' Commission's recommendations on Rule 50

Increase opportunities for athletes' expression during the Olympic Games:

- “At the opening and closing ceremonies
- Highlight the importance of solidarity, unity and non-discrimination at the opening and closing ceremonies. Adapt the Olympic Oath to include messaging on inclusion and non-discrimination.”
- “In the Olympic Village branding
- Incorporate collective messaging into the Olympic Village “look” to celebrate Peace, Respect, Solidarity, Inclusion and Equality.”
- “Through the Olympic Truce Mural
- Further leverage the Olympic Truce Mural in the Olympic Villages among the athletes for them to show their support for the Olympic Truce ideals and increase its reach through digital means of engagement.”
- “Through athlete apparel
- Produce athlete apparel with inclusive messaging and make it available for athletes and their entourage during the Games. Proposed words are: Peace, Respect, Solidarity, Inclusion and Equality.”

- “Social media campaign
- Build on the “Stronger Together” campaign with the athlete community to increase awareness of our shared values of Peace, Respect, Solidarity, Inclusion and Equality.”
- “Digital messaging in sports presentation
- Incorporate messaging around our shared values as part of the digital messages in the competition venues and the sports presentation.”

Increase athletes’ expression outside the Olympic Games

“Provide athletes with a platform, including Athlete365, to discuss and highlight topics that are important to them. The expression of views should always be respectful and in line with the Olympic values.”

Provide clarity on sanctions

“As it is the current practice according to the IOC disciplinary procedures and IOC Rule 50 Guidelines, examine breaches of the current paragraph 2 of Rule 50 on a case-by-case basis to ensure due process and the proportionality of sanctions. The IOC AC recommends that the Legal Affairs Commission clarify, in due course, the range of sanctions that would be imposed for a breach of the Rule, taking into consideration the respective context of each individual case.”

Provide more information around Rule 50

Provide increased and enhanced information on:

“The purpose and scope of Rule 50.2 (athlete expression) and the related Guidelines. How the Olympic values and the non-discrimination principle are implemented and promoted by all stakeholders.”

Restructure Rule 50 into two rules and increase clarity of Rule 50.2

“Separate Rule 50.1 and Rule 50.2 into two rules. Provide more clarity on the scope of Rule 50.2, including by incorporating some elements that are currently included only in the Rule 50 Guidelines, into the Rule itself.”

Conclusion

The author feels that the Rule 50’s general limitation may per se be too broad. We do not want to see another athlete getting dragged by the IOC or the media for glorifying their culture like Hooper or Saunders. Athletes should be known for their performance on the field and the revolution they bring. They are entertainers. Criminal treatment vetted out to them for small mistakes isn’t justified. So, it might be a bit inappropriate to restrict freedom of speech. Anyways there is no room for peaceful protest at the venues. Furthermore, according to the Johannesburg Principles, it may be appropriate to restrict protests or statements which are, in the name of national security and public order, ‘planned,’ ‘likely’ or ‘linked’ to imminent violence. Only such demonstrations deserve a ban because of the large involvement of people. Having followed Olympics, the authors believe that there is scope for a peaceful protest

limited to certain apolitical and neutral agendas. But the IOC has to cooperate here. If the IOC can authorise certain kinds of peaceful protests, it would be a good boost to the fight against Rule 50. Alternatively, hybrid notification procedure may be established, where certain kinds of demonstrations may only be conducted with advance notice. The IOC and a certain group of neutral members can make the decision if those could be allowed. This allows for free expression to be expressed but regulates peaceful protests for certain categories as well. It also enables the IOC to protect reputation and image rights and other legitimate goals and to prepare for unforeseen events arising out of such protests.

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