Vegueta. Anuario de la Facultad de Geografía e Historia
23 (1), 2023
eISSN: 2341-1112
DOI: 10.5281/zenodo.7538360

SPORT'S GOVERNING BODIES SHOULD ALWAYS BE SUBJECT TO JUDICIAL REVIEW: WHY?

Mr. Subhrajit Chanda
PhD Candidate, GD Goenka Law School, GD Goenka University, Sohna, Gurugram, Haryana, India. &
Asst Professor, Jindal Global Law School, OP Jindal Global University, Sonipat, India.
OrcId: 0000-0002-4340-9952, **Email Id.:** schanda@jgu.edu.in

Prof. (Dr.) Azimkhan B. Pathan
Professor and Head of the Department, GD Goenka Law School, GD Goenka University, Sohna, Gurugram, Haryana, India.
OrcId: 0000-0001-8268-0895, **Email Id.:** azimkhan.pathan@gdgu.org

Abstract

Generally, Sports Governing Bodies should not be subject to judicial review as it is a private body. The same was held by the Court of Appeal in the case of *R v. Disciplinary Committee of the Jockey Club, ex parte Aga Khan*[1]. This article discusses the reasons why the Sports Governing Bodies that always should be subject to judicial review. Furthermore, the accessibility of the judicial review in another jurisdiction and in contradiction of the other self-regulatory organisations proposes that the status of the Sports Governing Body in English Law is inconsistent. At most of the schools, there are various main sports that are now covered under the ambit of the curriculum of physical education. Further, there are many instances in which the intervention from the judiciary as well as the legislature on the issues relating to the safety of stadium and the orders of banning of football to hooligans depicts that some of the sports are already integrated within the ambit of public law. As earlier, before 1993, there was a case of *Finnigan v. NZRFU*[2], the Hon'ble Court held that the Sports Governing Body covered into the special area where a clear line between the private law and the public law cannot reasonably be drawn. Further, this chapter also considers that the procedural as well as the substantive limitations of the private law in challenging the Sports Governing Body, discovering that the judicial review might be a superior forum for the litigants in respect to sports.

Keywords: Private Law, Sports Governing Bodies, Public Law, Judicial Review, Legislature

[1] (1993) 1 WLR 909
[2] (1985) 2 NZLR 159

**Autora de correspondencia / Corresponding author.*

1. Background

The Court of Appeal's decision in R v Disciplinary Committee of the Jockey Club [1993] 1 WLR 909, ex p Aga Khan[3] had confirmed that SGBs are also not amenable to judicial review under English law, as stated by the Court of Appeal (CA). The 28-year-old case raises new questions because of judicial reasoning flaws and, more especially, the subsequent development of the government's involvement in sports. As a result of this, and the fact that some other self-regulatory organisations may be prosecuted in other nations, the situation of SGBs under English law is distinctive. A "supervisory jurisdiction" under private law has emerged in the courts since Aga Khan, somewhat making up for the absence of judicial scrutiny. Furthermore, this article analyses the limits of private regulation in the struggle against SGBs, based on previous study of Michael Beloff. It therefore suggests that judicial review would be a preferable location for sports plaintiffs to litigate against SGBs.

2. Introduction

During the previous three decades, the world of sports has seen a sea shift. The industry has grown thanks to a lot of public and private money. The sums involved are getting higher for everyone engaged: players, clubhouses, agents, funders, fans, as well as the State. Despite the fact that Ebsworth J said in 1997 that "sport is a significant business now," the industry is much bigger now than it was then[4]. An ever-expanding business, sport has become an integral aspect of our daily lives. According to folklore, it's a "fundamental aspect of our national identity."[5]. Having as much at risk in every match, event, or championships, it is important that each sports has strong governance. Football Association (FA), Rugby Football Union (RFU), and other national or international athletic governing bodies are responsible for this[6]. For the most part, these corporations have control over their own sports marketplaces, which gives them power to make and enforce laws on players, coaches, teams and even spectators. Despite the fact that these abilities are undeniable, the industry's growth need responsibility more than ever.

As a consequence of the Aga Khan judgement, the courts have devised a private law "supervising jurisdiction" to make up for the lack of judicial scrutiny. Due to both substantive and procedural constraints, the JR is the preferable forum for athletes seeking compensation, as will be shown. Sports-related disputes may benefit from the JR's standing criteria and hearing mechanism, which may make it a more feasible alternative to private law suits in certain situations. SGB challenges may be made in public or private law in New Zealand, and this approach should be imitated[7].

[3] *R v Disciplinary Committee of the Jockey Club* [1993] 1 WLR 909
[4] *Jones and Another v Welsh Rugby Football Union* [1997] EWCA Civ 3066
[5], Government, 'Sporting Future - Second Annual Report' (*GOV.UK*, 2018)
<https://www.gov.uk/government/publications/sporting-future-second-annual-report> accessed 7 February 2022.
[6] *Russell v Duke of Norfolk* [1949] 1 All ER 109
[7] Alan Sullivan, 'I Didn't Make The Team. What Can I Do?': An Overview Of Selection Jurisprudence' (2015) 10 Australian and New Zealand Sports Law Journal.

3. The State of Play

For a long time, courts have been arguing about whether a body is liable to JR. In order to assess the actual extent of JR, it is necessary to rely on "the inventories of the borderline occurrences," which is very hard to come by[8]. A number of criteria for determining amenability have evolved throughout the years, with the "source of power" criterion serving as the most well-known and often used. When a decision is derived from laws and the Royal Prerogative, it is subjected to JR; however, the rule above indicates that a judgement generated from a business agreement is immune from public law[9]. In this sector, however, the law has grown to the extent where the idea of a "public function" criterion is now proper, rather than inappropriate[10].

3.1. The Public Function Test

The potential use of JR was broadened in *R v Panel on Takeovers and Mergers*. Afterwards, this case led to the PFT being added to the Civil Procedure Rules ("CPR"). Anyone who seeks compensation under the JR must demonstrate that their injury was caused by an incident that occurred while they were engaged in a "public" activity. The act of doing something or the choice not to do something may all fall under this heading[11].

Despite the fact that this word's precise meaning has been challenged, there is also some room for discussion. During the Datafin presentation, Sir John Donaldson MR only mentioned a "public aspect," which may take several shapes. While Dyson LJ commented about the necessity for adequate public "flavour," as ruled in *Hampshire County Council v Beer t/a Hammer Trout Farm*[12], No matter how wide and perhaps contradictory this criterion may seem at first glance, a developing amount of case law offers some insight."

There is enough public character in private corporate decisions to allow JR in Beer to have a taste of it because of their tight affiliation with Hampshire County Council as well as the fact that they are limiting access to a public market. It was also revealed that JR might trade on a more "public" stock exchange in the UK and Ireland. It was ruled in Aga Khan that perhaps the organization had to be "governmental" to be subjected to the JR. This definition may be excessively limiting, but for the purpose of this discussion, "public" implies "government[13]."

Legal precedents and the CPR have made it public role to determine whether or not a person is eligible to receive JR benefits. The presence of a contractual connection does not conflict with JR, even if the authoritative source is relevant, as long as the privileges claimed are not exclusively contractual in character.

[8] Peter Leyland, *The Roller Coaster Ride Of English Administrative Law* (London 2020).
[9] *Law v National Greyhound Racing Club* [1983] 1 WLR 1302
[10] *R (Holmcroft) v FCA and Barclays* [2018] EWCA Civ 2093
[11] Legislation, 'The Civil Procedure (Amendment No. 4) Rules 2000' (*Legislation.gov.uk*, 2021) <https://www.legislation.gov.uk/uksi/2000/2092/schedule/part/54/made> accessed 6 December 2021.
[12] *Hampshire County Council v Beer t/a Hammer Trout Farm* [2004] WLR 233
[13]Ellen Rock, 'Measuring Accountability In Public Governance Regimes' [2020] Measuring Accountability in Public Governance Regimes.

3.2. The position of SGBs

Due to the CA judgement in *Law v National Greyhound Racing Club*[14], SGBs had traditionally been free from JR. The notion that the SGB's authority is contractually vested means that private law will always be the appropriate remedy in this situation.

While the petitioner sought to overturn an SGB ruling that his horse was discharged after having failed a drugs test, the CA took up the issue once more in Aga Khan. JR denied the Law Department's viewpoint, regardless Datafin's functional change. At the point of Hoffman LJ's appointment as a judge, he said that the SGB was a private organisation and that its activities were controlled by private law[15].

At the same time he was showing that private clubs seem likely to wield public authorities, he discovered that, contrary to popular belief, the Jockey Club does not have any public powers. The court emphasised the importance of the parties' contractual connections and concluded that the petitioner will almost probably have such a private law action. "Domestic bodies, as noted by Farquharson LJ, are free from public law sanctions because their powers are derived only from the assent of the persons concerned in the situation[16].

As according Hoffman LJ, to JR to qualify, the authority must be "of a governmental character," whether de facto and de jure. In the words of Sir Thomas Bingham MR, the Jockey Club will not have the jurisdiction to regulate horse racing since it does not belong to any system of governmental supervision. Since the Jockey Club's obligations are in many respects public, it's important to note that they aren't government-based. A last point of contention was that if there were no Jockey Club, the state will be obliged to step in to regulate horseracing, and so the government's privileges would be considered "public" powers. Any government agency will therefore assume responsibility for racing," stated "Farquharson LJ, whereas It was acknowledged by Sir Thomas Bingham MR also that state would undoubtedly create a public organisation to make use of it, but he said that this had no bearing on the fact that its authority was assumed via an agreement, making it "non-governmental[17]."

In English law, this procedure has been around for decades, 46 more recently in *R (Mullins) v Jockey Club (No. 1)*[18]. Such organisations may desire to take legal action in circumstances where athletes or clubs are unable or unwilling to do so. "

Individuals who were not contractually linked to the SGB were found to have standing in the landmark case of *Finnigan v NZRFU*[19], clearing the door for New Zealand's first case involving JR of SGBs. JR would be the

[14] *Law v National Greyhound Racing Club* [1983] WLR 1302
[15] Ben Cisneros, 'Challenging The Call: Should Sports Governing Bodies Be Subject To Judicial Review?' (2020) 20 The International Sports Law Journal.
[16] Ibid
[17] Ben Cisneros, 'Challenging The Call: Should Sports Governing Bodies Be Subject To Judicial Review?' (2020) 20 The International Sports Law Journal.
[18] *R (Mullins) v Jockey Club (No. 1)* [2005] EWHC 2197
[19] (1985) 2 NZLR 159

greatest way for these organisations to demonstrate their interest in SGB decisions.

4. Case for Judicial Review

It is doubtful that SGBs would be recognised as susceptible to JR until the SC overrules the Aga Khan decision. If so, then the current chain of authorities in English legal precedent has made a "wrong turn," it is alleged. It is in this part that the court's rationale and relevant English or international judgements will be studied once again, with an emphasis on Aga Khan. JR should apply to SGBs since they serve a public purpose now more than ever, and the test provided should be used correctly.

4.1 FIFA v. Trinidad and Tobago Football Association

One of the recent proponents of why SGBs should not be amenable to JR comes from another island country itself: Trinidad & Tobago, as the High Court of Trinidad and Tobago was involved to resolve a legal dispute against football's premier governing body, the Fédération Internationale de Football Association (hereafter "FIFA")[20].

The legal dispute between the Football Association of Trinidad and Tobago (TTFA) and the FIFA arose after FIFA's decision to appoint a Normalization Committee in place of the TTFA's elected Executive Committee, after the TTFA was found to lack adequate internal controls and was in financial distress, having incurred TT$50 million in debt[21].

A TTFA executive who was ousted initially expressed his willingness to take the matter before the Court of Arbitration for Sports (CAS). He, however, later withdrew his request, claiming that FIFA had shown no willingness to proceed. The TTFA also questioned the apparent institutional biases displayed by the CAS in requiring the TTFA to bear all expected costs of the arbitration. The matter was then brought before the High Court of Trinidad and Tobago. The High Court ruled in favour of the TTFA. The court pointed out that the TTFA is a legally constituted corporation which effectively brings it into the realm of public law. Furthermore, the court pointed out that Parliament had expressly stated that the FIFA Statutes intended to overturn the jurisdiction of the courts, but that it did not in the particular matter. However, the verdict was later overturned on appeal. Among other things, the Court of Appeal found that the High Court wrongly refused to stay the domestic proceedings to allow the matter to be approved by CAS. In particular, he pointed out that under Article 67 of its Constitution, the TTFA is subject to the jurisdiction of CAS, thereby waiving the civil jurisdiction of the High Court[22].

However, it is worth noting that Section 7 of the TTFA Constitution, it allowed for judicial intervention when there was sufficient reason to do so. It can be assumed that this enabled a balance to be struck between the

[20] *The Fédération Internationale de Football Association v Trinidad and Tobago Football Association* Civil Appeal No. P225 of 2020

[21] Daily Express, 'FIFA appoints Hadad to lead normalization committee' Trinidad Express Newspapers (Port-of-Spain, 27 March 2020) https://trinidadexpress.com/sportsextra/fifa-appoints-hadad-to-lead-normalisation-committee/article_f6605ea4-705d-11ea-a6de-d7412e3c1969.html accessed on 18 April 2022

[22] Supra note 20, para 29

autonomy of the parties on the one hand and the possible need for internal litigation on the other. However, the court found that Section 7 did not work in these circumstances and thus the court's jurisdiction was removed. Second, the court suggested that the lower court misapplied the source of power test by concluding that an act of Parliament was sufficient to bring it into the realm of public law. While the TTFA did gain a legal source of power, closer examination revealed that the TTFA Bill had been introduced in Parliament as a private members' bill without it being a subject of debate, either in the House of Representatives or in the Senate. Therefore, the creation of the TTFA was not strictly supported by public order.

SGBs will be discussed in broad terms in this article, but each case will be investigated in detail, and it is probable that such SGBs are more susceptible to JR than others. Accordingly, it is reasonable to assume that they would be addressed in a similar fashion in general because of the essential parallels between SGB powers and responsibilities and the broad government engagement in sport[23].

5. Reconsidering Aga Khan

SGB influence has been exaggerated and its public character has been neglected, according to the justifications for overturning Aga Khan. This has been increasingly apparent in recent years. Insofar as they must be evaluated together, we can't ignore the other crucial lines of argument.

5.1. The source of the power

In accordance with the Datafin judgement and subsequent authority, it is claimed that Aga Khan puts an inordinate focus on the sources of authority of SGBs instead of their objective. It was decided by the court that JR could not make use of the power since it was granted as a result of a jointly agreed-upon contractual duty. People who use a different strategy don't think about how people interact with SGBs and how powerful SGBs are.[24]

5.2. Consent v. Judicial Review

It can also be argued that the reasoning in Aga Khan does not hold water because it could apply to all forms of voluntary activity that are subject to a statutory permit system through licensing[25], as they may choose not to participate in the relevant activity. Of course, in such cases, a "consensual submission" would not exclude JR. You shouldn't do it for SGBs either.

However, Sir John Donaldson MR said in Datafin that "bodies whose sole source of power is consensual submission to their jurisdiction" (emphasis added) are excluded from the scope of JR[26].

Consensual submission is not the only source of power for statutory approval authority. However, the same is

[23] Jonathan Morgan, 'A Mare's Nest? The Jockey Club And Judicial Review Of Sports Governing Bodies' (2012) 12 Legal Information Management.
[24] Ibid
[25] Beloff M, Kerr T, Demetriou M, Beloff R (2012) Sports law, 2nd edn. Hart, Oxford, pp. 263–264
[26] *Datafin*, 838

arguably true of SGBs, as they exercise de facto public power, power that is implicitly delegated or perhaps even explicitly derived from government, as discussed below. In fact, the source of power cannot be completely separated from the nature of power.

The obiter dicta in Datafin rightly suggests that when a corporation exercises a public function, there will be no purely contractual relationship: the mere publicity of power. Power means that public law applies regardless of a contract[27].

Given the fictitious nature of the "contract" and the artificiality of assent to SGB jurisprudence, it is inappropriate to give as much weight to the source of power as the Aga Khan court did[28], especially when the modern liability test calls for a more functional one. and it was found that the existence of a contract was not fatal to JR's claims in later decisions[29]. The powers of the SGBs may formally be contractual, but in reality, they perform a public function.

5.3. Fictional Contract

A participant's connection with an SGB isn't genuine when you claim it's simply a contract. Even when there is a formal agreement, the SGB's regulations are nonetheless binding on parties. Additionally, they have the potential to deter attendees from taking part in an event altogether[30]. A contractual connection between an SGB and an athlete might well be established in three different ways, per the Court of Appeal in *Modahl v British Athletics Federation*[31]: via a "club basis" (a sequence of interconnected contracts beginning with an employment agreement with the sports club wherein the athletes consent to be regulated by SGB rules), throughout a "participation basis" (Under the rules, an agreement is inferred by the athlete's participation), or via a "submission basis." Parker LJ, in Modahl, was in fact of the opposite opinion. He didn't see the point in bringing up the subject of legal ties since he believed there was no actual purpose to do so. [32]

The source of the SGB's power is another indication of its nature and vulnerability to judicial review as examined in the Caribbean. For example, in the *Ramdial* case[33], a decision by the Disciplinary Committee of the Trinidad and Tobago Horse Racing Authority could not be reviewed by the High Court because the powers of the Board were derived from a purely contractual agreement between the parties concerned and thus fell outside the purview of the out of public law. In other words, the matter was private. But especially if a legal force arises from an SGB, the relevant legal provisions will have to have an effect on the organ so that it can be "woven into the fabric of public order" as decided in *United Bookmakers Association v. Caymanas Track*

[27] Elliott M, Varuhas J (2017) Administrative law, 5th edn. OUP, Oxford, p. 140
[28] Elliott M (2012) Judicial review's scope, foundations and purposes: joining the dots. New Zealand Law Review, pp 75–112
[29] See *Clark v University of Lincolnshire and Humberside [2000] 1 WLR 1988*
[30] *Nagle v Feilden* [1966] 2 QB 633
[31] [2001] EWCA Civ 1447
[32] James Mark, *Sports Law* (Macmillan International Higher Education 2017).
[33] *Ramdial v. Trinidad and Tobago Racing Authority* TT 1985 HC 64

Limited[34].

5.4. Satisfying the public function test

SGBs are susceptible to JR because they meet the aforementioned public purpose requirements after proving there were no contract or consensual barriers to a JR action against the SGB. A change in government policy has made it possible to find the "governmental" aspect that was previously thought to be absent, but the argument for SGBs fitting this condition is now unassailable[35].

To achieve social and political objectives, sport is a potent weapon that is certainly used to boost national pride. Historically, sport has also been utilised as an international negotiation tool. A public component is assumed, although additional arguments might be given. These are tried-and-true arguments, but others say that the current state of affairs makes them more persuasive than before[36].

It is important to note that while discussing the FIFA v. TTFA case to hold that JR should not extend to the SGBs, one looks at how the rest of the Caribbean islands views the matter vis-à-vis the matter of public v. private body. For example, in the *La Clery Football League* case[37], the Saint Lucia Football Association was considered a private entity and therefore not subject to judicial review. Cottle J justified his decision by stating that the association's rules and regulations were drawn up internally and its decisions were based on approval and consensus among members. Similarly, the Barbados Court of Appeal has ruled that the Barbados Cricket Association's decisions are not subject to judicial review[38]. The Court described two main factors preventing the association from being brought under judicial review: (a) it did not enjoy exclusive control over cricket in Barbados and (b) the Barbados Cricket Association Act provided that the association was a legal entity whose governing documents applied only to its members, underscoring the private nature of the corporation's operations.

The question of public function was taken up by one of the UK's former colonies, India, when in *Board of Control for Cricket in India (BCCI) v Cricket Association of Bihar*[39], the Supreme Court of India decided that cricket, being a 'public good' in India, provided a strong basis for the Board of Control for Cricket in India (BCCI) to be susceptible to judicial review, even if the BCCI does not fall within the ambit of 'State' as defined under Article 12 of the Constitution of India. This judgement is particularly interesting as one may postulate that cricket can also fall within the parameters of a 'public good' in the Caribbean context. In fact, in *Ramnarine v Trinidad and Tobago Cricket Board of Control (TTCB)*[40], the court expressed that cricket is a sport which is 'intricately woven into the cultural and social fabric' of Trinidad and Tobago and the wider Caribbean region,

[34] JM 2011 SC 56
[35] Ben Cisneros, 'Challenging The Call: Should Sports Governing Bodies Be Subject To Judicial Review?' (2020) 20 The International Sports Law Journal.
[36] McDowell Matthew and Fiona Skillen, *The Rewards And Risks Of Historical Events Studies Research* (Palgrave Macmillan 2016).
[37] LC 2008 HC 10
[38] BB 1999 CA 8
[39] (2016) 8 SCC 535
[40] CV 2019-01537

which could be used to negate the ruling of the Court of Appeal of Trinidad and Tobago in the FIFA v. TTFA matter and the other Caribbean dissenting judgements previously discussed.

5.5. The "Interwoven" argument

"Weaved into the fabric of public administration," are how the Datafin or Aga Khan courts have decided SGBs are[41]. For instance, the United Kingdom Anti-Doping Agency (UKAD) is not the sole agency responsible for enforcing anti-doping laws. Among all SGBs, enforcement of the WADC is shared with UKAD in accordance with its domestic legislation. Moreover, the SGBs have always been the prosecutor for doping cases, and therefore may enforce the restrictions set by the National Anti-Doping Panel, which is always the SGBs.

Anti-corruption activities fall into the same category. They've cooperated closely with police as well as the SBIU in their efforts to combat corruption. To discourage and penalise corrupt or potentially corrupt behaviour, the major SGBs have each enacted thorough anti-corruption rules. It is important that SGBs play a role in keeping the community free of criminal activity by enforcing such tough rules, even if not all of the offences they penalise are in fact crimes.

SGBs only have authority over sports-related corruption, thus working with the government and other institutions is essential to finding a long-term solution to this issue. In the Sport and Sports Betting Integrity Action Plan, all essential parties, including the Gambling Commission—a governmental entity, are assigned particular duties. Here, SGBs are knitted into the regulatory framework.

Aside from that, the governing bodies for several contact sports such as rugby and football have jurisdiction that would otherwise fall under criminal law. As a consequence of *R v Barnes*[42], acts of violence at sports stadiums are no longer punishable by law as long like they do not exceed the allowed limits set by the rules. Thus, these SGBs are tasked with enforcing such limits and punishing those who cross them violently. To put it another way, criminal law serves as a foundation for the jurisdiction of certain SGBs. When it comes to this specific role, the public character of the consequences that would arise from the action makes it clear how SGBs are incorporated into public policy. There is a memorandum of understanding between the FA, FAW, and the Crown Prosecution Service, as well as the Association of Chief Police Officers, which says that they agree. SGB share jurisdiction with law enforcement agencies in a number of cases, and they determine the boundaries of their cooperation in investigating and punishing.

Football hooliganism is another example of a long-term effort by the government, in conjunction with the police or football's SGBs, to manage the problem[43]. Under the Football Spectators Act 1989[44] and the Football (Offences) Act 1991[45], an offence or a banning order may only be established or enforced when the relevant

[41] Supra note 31
[42] [2004] EWCA Crim 3246
[43] James A.R. Nafziger and Stephen F. Ross, *Handbook On International Sports Law* (Edward Elgar Pub 2011).
[44] Football Spectators Act 1989
[45] Football (Offences) Act 1991

game is a "marked" football game. Governmental oversight is intimately tied to the SGBs of football in this regard. These examples, however, are restricted to a small subset of sports and hence only hint at the broader problem[46]. Some SGBs may be more susceptible to JR than others, but there is strong evidence that SGBs have become more connected into the public sphere.

Over at the Caribbean, in a similar vein to the Jamaican Supreme Court's judgement in *United Bookmakers Association v. Caymanas Track Limited,* are the cases of *Griffith v. Barbados Cricket Association*[47] and *Keith Look Loy v Trinidad and Tobago Football Association*[48], where the respective sporting bodies could be subject to judicial review. Mire Loy, the court reiterated that a corporation's source of power was a fundamental consideration, eventually ruling that the association in question was subject to the national courts of Trinidad and Tobago as it had been established by an Act of Parliament. While the Griffith Court held that the body in question was not a legal entity as it derived its power from a contractual source, it nonetheless ruled that the matter could be brought before the High Court. Summarily, the Keith Look Loy and Griffith cases concluded that the respective sports bodies' decisions were subject to judicial review but differed as to how those conclusions were reached.

It is also relevant that other legal systems have recognized the public function of SGBs. In French law, sports disciplinary sanctions are classified as administrative acts and can therefore only be reviewed by administrative courts[49], while in Spain the public nature of sport is constitutionally recognized[50], and there is a court-specific administrative body dedicated to resolving disputes about sport Rules called El Tribunal Administrativo del Deporte.

As for other common law jurisdictions, the Australian High Court upheld the JR of a SGB in *Forbes v NSW Trotting Club*[51], where the function of controlling sport – "a public activity" – was held to be important. The same position was achieved in New Zealand[52], Canada[53], South Africa[54] and, albeit to a limited extent[55], United States[56]. Thus, the English position appears to be an anomaly, "unjustifiably lagging behind its Commonwealth counterparts".[57]

SGBs have pretty much the same role and powers around the world, so it seems incongruous that English law should ask the same question and get a different answer. This is particularly significant in relation to the other common law jurisdictions since the principles involved are essentially the same. That England are the

[46] Ibid
[47] HC 13 1989
[48] CV 2018-03080
[49] R. van Kleef (2015) Reviewing disciplinary sanctions in sports. Camb J Int Comp Law 4(1): 11-12
[50] Ley 10/1990, de 15 de octubre, del Deporte
[51] [1979] HCA 27
[52] Finnigan v NZRFU; Le Roux v NZRFU (1995) unreported, 14 March; Loe v NZRFU (1993) unreported, 10 August
[53] Vancouver Hockey Club Ltd v Hockey Ventures Inc. (1987) 18 BCLR 2d 372 (BCSC).
[54] Jockey Club of South Africa v Forbes [1992] ZASCA 237.
[55] Kelly E (2011) Judicial review of sports bodies' decisions: comparable common law perspectives. Int Sports Law Rev 4:71–75
[56] *Finley v Kuhn* (1978) 439 US 876 (7th Cir)
[57] R Armstrong (2008) The whistle has blown…game over…or is it really? Challenging the decisions of sports governing bodies in New Zealand. Canterb Law Rev 14: 73

underdogs is revealing. Perhaps most worryingly, SGB's JR has long been available in Scotland[58]. Of course, Scottish law does not distinguish between public and private law in the same way as English law, which might explain the different outcome, but is nevertheless inconvenient given the geographic proximity of the jurisdictions. In fact, in some sporting contexts, athletes from the two jurisdictions compete together under a single SGB. in the most favourable jurisdiction. Such inconsistencies are unsatisfactory and could lead, for example, to athletes of the same nationality in the same sport being able to have different legal remedies simply because they are a member of the team/SGB. The fact that so many other jurisdictions have recognized SGB's public taste certainly makes the Aga Khan seem anomalous. However, Hoffman LJ was undeterred by comparative arguments: Different countries draw the line between public and private regulation in different places. The fact that certain functions of the Jockey Club could be exercised by a public body and the fact that they are exercised in some other countries does not make them government functions in England.

6. Conclusion

JR must be informed about SGBs before making regulatory actions, according to the aforementioned research. Due to several problems in the reasoning behind the Aga Khan's decision, it is questioned as to its validity. Its rationale on mutual agreement between participants or SGBs is poor, and its emphasis on the power source is misguided. Other nations' and English authorities' approach of self-regulatory organisations is incompatible with SGBs' exclusion from JR. Sports governance bodies (SGBs) have progressively increased their involvement in government policy since the early 1990s, and their public purpose can be plainly seen. In 1991, Rose J described allowing JR for SGBs as a "quantum leap." Continuing to deny SGBs in 2019 is a clear breach of the law. The use of JR as a single means of resolving sports-related disputes is not recommended even if private law does so in the future. A JR should not be disregarded just because a more attractive remedy is available via private law. A JR does not need to be denied if filed appropriately. Other nations should follow New Zealand's lead and implement a similar plan.

In addition, the research shows that the traditionally separated fields of public and private law have a great deal in common. According to the presence of SGBs and English court handling of these cases, the boundary between England and Scotland is not as rigid as previously thought. The procedural divide seems to be the most significant. Despite the fact that perhaps the process has been amended, sports claims should be able to contest SGB rulings in both jurisdictions.

[58] *St Johnston FC v Scottish Football Association, 1965 SLT 171*

7. Bibliography

7.1. Primary Source

7.1.1. Cases

Board of Control for Cricket in India (BCCI) v Cricket Association of Bihar (2016) 8 SCC 535

Clark v University of Lincolnshire and Humberside [2000] 1 WLR 1988
Finley v Kuhn (1978) 439 US 876 (7th Cir)
Finnigan v NZRFU (1985) 2 NZLR 159
Finnigan v NZRFU; Le Roux v NZRFU (1995) unreported, 14 March; *Loe v NZRFU* (1993) unreported, 10 August

Forbes v NSW Trotting Club [1979] HCA 27

Griffith v. Barbados Cricket Association HC 13 1989

Hampshire County Council v Beer t/a Hammer Trout Farm [2004] WLR 233
Jockey Club of South Africa v Forbes [1992] ZASCA 237.

Jones and Another v Welsh Rugby Football Union [1997] EWCA Civ 3066

Keith Look Loy v Trinidad and Tobago Football Association CV 2018-03080

La Clery Football League LC 2008 HC 10

Law v National Greyhound Racing Club [1983] 1 WLR 1302

Nagle v Feilden [1966] 2 QB 633

R (Holmcroft) v FCA and Barclays [2018] EWCA Civ 2093

R (Mullins) v Jockey Club (No. 1) [2005] EWHC 2197

R v Disciplinary Committee of the Jockey Club [1993] 1 WLR 909

Ramdial v. Trinidad and Tobago Racing Authority TT 1985 HC 64

Ramnarine v Trinidad and Tobago Cricket Board of Control (TTCB) CV 2019-01537

Russell v Duke of Norfolk [1949] 1 All ER 109

St Johnston FC v Scottish Football Association, 1965 SLT 171

The Fédération Internationale de Football Association v Trinidad and Tobago Football Association Civil

Appeal No. P225 of 2020

United Bookmakers Association v. Caymanas Track Limited JM 2011 SC 56

Vancouver Hockey Club Ltd v Hockey Ventures Inc. (1987) 18 BCLR 2d 372 (BCSC).

7.1.2. Legislation

Football (Offences) Act 1991

Football Spectators Act 1989

7.2. Secondary Sources

7.2.1. Articles/Books

Armstrong, R. 'The whistle has blown…game over…or is it really? Challenging the decisions of sports governing bodies in New Zealand' Canterb Law Rev (2008) 14
Beloff M, Kerr T, Demetriou M, Beloff R *Sports law* (2nd edn. Hart, Oxford 2012)

Cisneros B, 'Challenging The Call: Should Sports Governing Bodies Be Subject To Judicial Review?' (2020) 20 The International Sports Law Journal

Elliott M, *Judicial review's scope, foundations and purposes: joining the dots*. New Zealand Law Review (2012)
Elliott M, Varuhas J, *Administrative law*, 5th edn. OUP, (Oxford 2017)
Kelly E, 'Judicial review of sports bodies' decisions: comparable common law perspectives' Int Sports Law Rev (2011) 4

Leyland P, *The Roller Coaster Ride Of English Administrative Law* (London 2020)

Mark J, *Sports Law* (Macmillan International Higher Education 2017)

Matthew M, and Skillen F, *The Rewards And Risks Of Historical Events Studies Research* (Palgrave Macmillan 2016)

Morgan J, 'A Mare's Nest? The Jockey Club And Judicial Review Of Sports Governing Bodies' (2012) 12 Legal Information Management

Nafziger J, and Ross S, *Handbook On International Sports Law* (Edward Elgar Pub 2011)

Rock E, 'Measuring Accountability In Public Governance Regimes' [2020] Measuring Accountability in Public Governance Regimes

Sullivan A, 'I Didn't Make The Team. What Can I Do?': An Overview Of Selection Jurisprudence' (2015) 10

Australian and New Zealand Sports Law Journal

van Kleef R, 'Reviewing disciplinary sanctions in sports' Camb J Int Comp Law (2015) 4(1)

7.3. Others

Daily Express, 'FIFA appoints Hadad to lead normalization committee' Trinidad Express Newspapers (Port-of-Spain, 27 March 2020) https://trinidadexpress.com/sportsextra/fifa-appoints-hadad-to-lead-normalisation-committee/article_f6605ea4-705d-11ea-a6de-d7412e3c1969.html accessed on 18 April 2022

Government.UK, 'Sporting Future - Second Annual Report' (2018) <https://www.gov.uk/government/publications/sporting-future-second-annual-report> accessed 7 February 2022

Legislation.gov.uk, 'The Civil Procedure (Amendment No. 4) Rules 2000' (2021) <https://www.legislation.gov.uk/uksi/2000/2092/schedule/part/54/made> accessed 7 February 2022