
POLITICAL SPEECH IN SPORTS: A CASE FOR NON- PROHIBITION

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ABSTRACT

In January 2020, the International Olympics Committee released guidelines under Rule 50 of the Olympic Charter prohibiting any form of political speeches during the upcoming Tokyo Olympics, except during interviews and press conferences, and on social media. This article builds an argument against such blanket prohibition and proposes a regulatory regime that can, on one hand, uphold the freedom of speech of the athletes and on the other, maintain a disciplined athletic culture of sports. It is argued that political speech in sports satisfies all the predominant reasons furthered for guaranteeing a constitutional right to freedom of speech. Unlike a generally followed structure of unrestricted free speech bound by narrowly tailored reasonable restrictions, this article endorses a 'restricted free speech model', the boundaries of which must be defined by the principles of Olympism. This shall ensure that athletes utilize the Olympics as their moment of emancipation and help the world transform and adopt a progressive, non-discriminatory and anti-exclusionary outlook.

KEYWORDS

Olympic Charter, Political Speech, International Olympic Committee, Freedom of Speech.

1. INTRODUCTION

“Sport[ing] events are not just competitions; they are platforms for social interaction and the promotion of many ideals such as respect, fair play, integrity, and solidarity.”

-Wilfried Lemke¹

A free flow of political speech sans the one which attempts to incite violence is one of the primary edifices of a sound democratic system. Any suppression of diverse political views necessarily seeks a tacit promotion of a certain political view, which is believed by the leadership in power as the truth. For instance, in April 2020, the Rajasthan High Court, in a welcoming order, quashed a First Information Report registered against Jack Dorsey, the CEO of Twitter, for holding a poster stating ‘Smash Brahmanical Patriarchy’.² How does this concern sports law? The necessary context comes from the guidelines released in January 2020 by the International Olympics Committee (IOC) concerning political speech by the athletes during Olympic events. ‘To maintain harmony³ between the participating nations and the athletes’,⁴ the IOC has decided to prohibit political speech by expression or gestures, except during interviews and press conferences, and on social media during the Tokyo Olympics,⁵ provoking John Carlos, a former US athlete involved in the famous Black Power Salute during the 1968 Olympic Games, to label the guidelines as ‘nonsense’ and ‘ridiculous’.⁶ Taking a cue from Rule 50 of the Olympic Charter, which states that “[n]o kind of demonstration or political, religious or racial propaganda is permitted in any Olympic sites, venues or other areas”, the guidelines state that protests and demonstrations would not be permitted:

¹ Statement by the Special Adviser to the United Nations Secretary-General on Sports for Development and Peace, quoted by the United Nations Office on Sport for Development and Peace, *Annual Report 2015*, UN 1 (2016), [https://www.un.org/sport/sites/www.un.org.sport/files/ckfiles/files/UNOSDP_Annual_Report_2015%20\(1\).pdf](https://www.un.org/sport/sites/www.un.org.sport/files/ckfiles/files/UNOSDP_Annual_Report_2015%20(1).pdf).

² PTI, ‘Smash Brahmanical Patriarchy’ Poster: Rajasthan High Court Quashes FIR against Twitter CEO, THE WIRE (Apr. 7, 2020), <https://thewire.in/caste/jack-dorsey-smash-brahminical-patriarchy/>.

³ See, IOC Athletes’ Commission, *Rule 50 Guidelines*, <https://www.olympic.org/-/media/Document%20Library/OlympicOrg/News/2020/01/Rule-50-Guidelines-Tokyo-2020.pdf> (last visited Sept. 9, 2020) (See ‘Introduction’ to the document for a repeated use of the term ‘harmony’).

⁴ Katelyn Burns, *Why you might not see any athletes protest at this summer’s Olympics*, VOX (Jan. 9, 2020), <https://www.vox.com/2020/1/9/21058912/summer-olympics-tokyo-ban-athlete-protests>.

⁵ Agencies, *IOC lays down law over Olympics protests by athletes in Tokyo*, THE GUARDIAN (Jan. 10, 2020), <https://www.theguardian.com/sport/2020/jan/10/ioc-lay-down-law-over-olympic-protests-by-athletes-in-tokyo>.

⁶ Dave Zirin, *John Carlos Responds to the New Olympics Ban on Political Protest*, THE NATION (Jan. 14, 2020), <https://www.thenation.com/article/archive/olympics-protest-ioc/>.

“[a]t all Olympic venues, including: On the field of play; In the Olympic Village; During Olympic medal ceremonies; During the Opening, Closing and other official Ceremonies.”⁷

In the words of the IOC Athletes’ Commission:

“It is important, on both a personal and a global level, that we keep the venues, the Olympic Village and the podium neutral and free from any of political, religious or ethnic demonstrations. If we do not, the life’s work of the athletes around us could be tarnished, and the world would quickly no longer be able to look at us competing and living respectfully, as conflicts drive a wedge between individuals, groups and nations.”⁸

The reasoning, far from being logical, can at best be termed as highly paternalistic and depicting either a form of helplessness to support principled protest from its platform or a sense of complete disregard to certain political decisions of the participating states that have widespread humanitarian consequences. It is unfortunate that Olympics, already an event that runs on the forces and vices of neo-liberalism,⁹ instead of taking pride in upholding the interests of the marginalized, chooses to restrict the political voice to itself, not letting it extend to its athletes, even when, as I shall argue later, it has the ability to deliver significant results. If the aim of such restrictions, as stated by Thomas Bach, ‘is to unite and not to divide’,¹⁰ then it must be imperative for the IOC to positively further all those speeches that argue for equality, be it a speech that argues for ‘smashing Brahmanical patriarchy’ in the context of women and Dalits players in India, or concerns regarding other such fault-lines existing in other nations. It seems, quite ironically, that in the façade of adopting a policy that ensures politically neutral Olympics, the IOC itself is taking a political stand.

⁷ IOC Athletes’ Commission, *Rule 50 Guidelines*, OLYMPICS <https://www.olympic.org/-/media/Document%20Library/OlympicOrg/News/2020/01/Rule-50-Guidelines-Tokyo-2020.pdf>.

⁸ Katelyn Burns, *Why you might not see any athletes protest at this summer’s Olympics*, VOX (Jan. 9, 2020), <https://www.vox.com/2020/1/9/21058912/summer-olympics-tokyo-ban-athlete-protests>.

⁹ See JULES BOYKOFF, *CELEBRATION CAPITALISM AND THE OLYMPIC GAMES* (2013); JULES BOYKOFF, *OLYMPIANS: INSIDE THE FIGHT AGAINST CAPITALIST MEGA-SPORTS IN LOS ANGELES, TOKYO AND BEYOND* (2020).

¹⁰ Agencies, *IOC lays down law over Olympics protests by athletes in Tokyo*, THE GUARDIAN (Jan. 10, 2020), <https://www.theguardian.com/sport/2020/jan/10/ioc-lay-down-law-over-olympic-protests-by-athletes-in-tokyo>.

It is interesting how *Vox* has quoted Pierre de Coubertin, the founder of the modern Olympics, to counter this reasoning of the IOC. According to the news agency, de Coubertin emphasized on the aspect of ‘bringing together humanity’ (read as challenging the divides and inequalities to reach an egalitarian world, and not as harmony that silences demeaning differences and stigmatizing prejudices), rather than on ‘celebrating athletic excellence’:

*“To spread these principles is to build up a strong and more valiant and, above all, more scrupulous and more generous humanity.”*¹¹

To logically follow the sequence of events, the ban has come as a reaction to the symbolic protest by two athletes – Race Imboden and Gwen Berry – during the 2019 Pan American Games, where Imboden took a knee and Berry raised his fist during the medal ceremony against ‘racism, gun control, and the mistreatment of immigrants’.¹² These are the issues which have shaped and hugely impacted American history and continue to do so. These issues can never be placed under the category of ‘non-speech’, and games such as the Olympics, which attract viewership in billions across the globe,¹³ must serve as the necessary catalyst for the Governments to rethink their policies.¹⁴ As Imboden puts it, ‘I want my country to change’.¹⁵

It cannot be denied that these protests do have value and courage, something that must be appreciated. However, reflecting an indifferent attitude, the IOC states that ‘the focus for the field of play and related ceremonies must be on celebrating athlete’s performance.’¹⁶ Such statements show a complete disregard of the IOC towards the struggles that an athlete faces back home due to certain ascribed social set-ups¹⁷ and perpetuating politics that runs a vicious

¹¹ Id., quoting from PETER L. DIXON, *THE OLYMPIAN* (1984).

¹² Janelle Griffith, *Olympic fencer and hammer-thrower who kneeled, raised fist in protest put on probation*, NBC NEWS (Aug. 21, 2019), <https://www.nbcnews.com/news/nbcblk/olympic-athletes-who-kneeled-raised-fist-protest-put-probation-n1044826>.

¹³ *Olympic Winter Games global TV audience/viewership from 2010 to 2018 (in billions)*, STATISTA, <https://www.statista.com/statistics/531768/global-audience-of-the-winter-olympic-games/>; *How do we know that Rio 2016 was a success*, INTERNATIONAL OLYMPIC COMMITTEE (Dec. 6, 2016), <https://www.olympic.org/news/how-do-we-know-that-rio-2016-was-a-success>.

¹⁴ See Faraz Shahlaei, *When Sports stand Against Human Rights: Regulating Restrictions on Athletes’ Speech in the Global Sports Arena*, 38(1) LOY. L.A. ENT. L. REV. 95 (2017).

¹⁵ Race Imboden, *I am proud to be an American fencing champion. Here’s why I knelt for our anthem*, THE WASHINGTON POST (Aug. 13, 2019), <https://www.washingtonpost.com/outlook/2019/08/13/im-proud-be-an-american-fencing-champion-heres-why-i-knelt-our-anthem/>.

¹⁶ *International Olympic Committee bans political statements by athletes at games*, NBC NEWS (Jan. 10, 2020), <https://www.nbcnews.com/news/olympics/international-olympic-committee-bans-political-statements-athletes-games-n1113191>.

¹⁷ See ANAND TELTUMBE, *REPUBLIC OF CASTE: THINKING EQUALITY IN THE TIME OF NEOLIBERAL HINDUTVA* (2018); SURAJ YENGDE, *CASTE MATTERS* (2019); YASHICA DUTT, *COMING OUT AS DALIT* (2019).

cycle of domination of certain groups,¹⁸ while at the same time showing apathy for one's moment of emancipation. To put it in the words of an Olympics scholar, Jules Boykoff has aptly summarized everything that is wrong with the guidelines:

*“The IOC’s edict, as laundered through its Athletes Commission, brims with hypocrisy. Athlete activism emerges from overlapping systems of injustice. To deny athletes the right to express their thoughts and feeling on the political injustices that wrack the world today reeks of authoritarianism, which is political in itself. This policy is a slap in the face to the exciting zeitgeist of smart savvy athletes who are willing to check their brains in at the Olympic door.”*¹⁹

In light of this introduction, it shall be my endeavour in this article to argue for a free flow of political speech during the Olympics. Though the history of political protest at the Olympics and other equivalent games is long,²⁰ the focus here is not to reiterate all such events, but to build an argument that supports a system of regulated speech, drawing inspiration from the principles of the Olympic Charter, and the regulation of free speech in democratic countries such as Canada, South Africa, Germany and India. In the next part, I shall first run a theoretical exercise to argue that political speech in sports satisfies the generally accepted reasoning underlying the guarantee of freedom of speech. Post that, juxtaposed against the blanket ban as directed under the guidelines, I shall argue for a regulatory framework for political speech, which shall ensure the existence of political speech during the Olympics, while checking that the Games do not transform into a platform for furthering unwarranted political motives, and due decency is maintained.

¹⁸ See JOSEPH STIGLITZ, *THE PRICE OF INEQUALITY* (2012); JACOB S. HACKER AND PAUL PIERSON, *WINNER-TAKE-ALL POLITICS: HOW WASHINGTON MADE THE RICH RICHER – AND TURNED ITS BACK ON THE MIDDLE CLASS* (2011); LARRY BARTELS, *UNEQUAL DEMOCRACY: THE POLITICAL ECONOMY OF THE NEW GILDED AGE* (2016).

¹⁹ Dave Zirin, *John Carlos Responds to the New Olympics Ban on Political Protest*, *THE NATION* (Jan. 14, 2020), <https://www.thenation.com/article/archive/olympics-protest-ioc/>.

²⁰ See Faraz Shahlaei, *When Sports stand Against Human Rights: Regulating Restrictions on Athletes’ Speech in the Global Sports Arena*, 38(1) *LOY. L.A. ENT. L. REV.* 95 (2017); Matthew J. Parlow, *Race, Speech, and Sports*, 52(4) *U. RICH. L. REV.* 923 (2018); Melissa Godin, *Athletes Will be banned from Protesting at the 2020 Tokyo Olympics: But the Games Have a Long History of Political Demonstrations*, *TIME* (Jan. 14, 2020), <https://time.com/5764614/political-protests-olympics-ioc-ban/>.

2. REASONS FOR SUPPORTING FREE SPEECH

The role of sports in community development is undeniable.²¹ Sports have truly become an important arena for social cohesion and the realization of human rights. In the words of Peter Stone, the Australian Representative at the United Nations' Sixty-fifth General Assembly's 32nd and 33rd Meetings, which convened to adopt a resolution on 'Sports as Means to Promote Development':

*“A growing body of sport for development research provided strong empirical evidence for the direct role sport played advancing human rights, social inclusion and community development.”*²²

Though this *intrinsic power of sporting activities* to further human rights has been widely recognized, but the idea of sports acting *as a medium* for performing the same functions has been constantly denounced. For instance, when Colin Kaepernick, on multiple occasions, decided to sit on the bench while the national anthem was played as a protest against racial discrimination and police brutality against 'people of colour',²³ attempts were made to deliberately keep him out of the field.²⁴ Much severe were the consequences for players like Vera Caslavka, who was completely barred from sports by the Soviet government for turning her head away from the flag, and John Carlos and Tommie Smith for raising their gloved fists during the medal ceremony, who were suspended immediately from the US contingent.²⁵

²¹ MARTHA E. EWING ET. AL., *The Role of Sports in Youth Development*, in PARADOXES OF YOUTH AND SPORT 31 (Margaret Gatz et. al. eds., 2002); SPORT IN THE CITY: THE ROLE OF SPORT IN ECONOMIC AND SOCIAL REGENERATION (Chris Gratton & Ian P. Henry eds., 2001); Martha Brady, *Creating Safe Spaces and Building Social Assets for Young Women in the Developing World: A New Role for Sports*, 33(1-2) WOMEN'S STUD. Q. 35 (2005); Nico Schulenkorf, *Sustainable Community Development Through Sports and Events: A Conceptual Framework for Sport-for-Development Projects*, 15(1) SPORT MGMT. REV. 1 (2012); See Alex Poinsett, *The Role of Sports in Youth Development*, Report of a Meeting Convened by Carnegie Corporation of New York (March 1996), <https://files.eric.ed.gov/fulltext/ED407376.pdf>.

²² United Nations, Meeting Coverage and Press Releases, *Adopting Resolution on 'Sports as Means to Promote Development', General Assembly Recognizes Potential of Sport to Encourage Tolerance, Social Cohesion*, UNITED NATIONS GENERAL ASSEMBLY GA/11012 (Oct. 18, 2010), <https://www.un.org/press/en/2010/ga11012.doc.htm>.

²³ Steve Wyche, *Colin Kaepernick explains why he sat during national anthem*, NFL (Aug. 27, 2016), <http://www.nfl.com/news/story/0ap3000000691077/article/colin-kaepernick-explains-why-he-sat-during-national-anthem>.

²⁴ Brittney Watkins, *Kaepernick Can Kick It!: Employment Discrimination, Political Activism, and Speech in the NFL*, 59 WASH. U. J. L. & POL'Y 259 (2019).

²⁵ Melissa Godin, *Athletes Will be banned from Protesting at the 2020 Tokyo Olympics: But the Games Have a Long History of Political Demonstrations*, TIME (Jan. 14, 2020), <https://time.com/5764614/political-protests-olympics-ioc-ban/>.

It is argued that such two-faced behaviour must be debunked, and political speech in sports be supported. The argument is not merely based in consequentialism, it does have necessary roots in deontological ethics to meet the consequences. In most established constitutional democracies worldwide, freedom of speech finds a special place for certain commonly accepted reasons. If such reasons are also applicable in the case of political speech in sports, then it should prevail that political speech in sports must be allowed.

The primary reasons for supporting freedom of speech are: *first*, it helps in the discovery of truth; *second*, it helps in the creation of a marketplace of ideas and various viewpoints; *third*, it fulfils the ‘identity’ function, specifically the aspect of self-fulfillment; *fourth*, it secures due participation of citizens in the democratic functioning of the polity; and *fifth*, it allows for ‘suspicion of the government’ or to seek accountability from the government.²⁶ The arguments in the realm of sporting events would not be restricted to a two-way speech, i.e. between the government and the citizens, and between citizens *inter-se*. Rather, they would take place on three platforms – between the players (used liberally to include all stakeholders working along with the players, such as trainers, etc.) and the organizing committee, between the players and the state that they represent, and between players *inter-se*. Using these fronts, I shall cite at least one incident from the past against each of the five abovementioned reasons to establish that speech in the realm of sports is a principled argument, supported by a long-developed jurisprudence of free speech.

There is no better starting point than the 1968 Mexico City Summer Olympics. After winning the gold and the bronze medal in the 200-meter sprint, the US Olympians Tommie Smith and John Carlos faced an angrily booing crowd, screaming the US national anthem to them amidst their protest against black poverty and lynching. The two players climbed the podium barefoot, shared a pair of black gloves and raised their fists in the air when the national anthem played. John Carlos even kept his track-jacket unzipped and wore beads.²⁷ In his book, Carlos writes

²⁶ ERIC BARENDT, FREEDOM OF SPEECH (1985); GAUTAM BHATIA, OFFEND, SHOCK AND DISTURB (2016).

²⁷ DeNeen L. Brown, *They didn't #TakeTheKnee: The Black Power protest salute that shook the world in 1968*, THE WASHINGTON POST (Sept. 25, 2017), <https://www.washingtonpost.com/news/retropolis/wp/2017/09/24/they-didnt-takeaknee-the-black-power-protest-salute-that-shook-the-world-in-1968/>.

that this was ‘a moment of truth’ for them,²⁸ a truth which must be confronted by the world. In his interview with *The Guardian*, Carlos highlights the emancipatory power of his expression:

*“[t]he first thing I thought was the shackles have been broken and they won’t ever be able to put the shackles on John Carlos again. ... Materially, some of us in the incarceration system are still literally in shackles. The greatest problem is we are afraid to offend our oppressors.”*²⁹

The lines which followed are moving and they must make the IOC re-assess its decision to disallow political speech:

*“I had a moral obligation to step up. Morality was a far greater force than the rules and regulations they had. God told the angels that day, ‘Take a step back – I’m gonna have to do this myself.’”*³⁰

This is the courage that must be protected. To better comprehend the weight underlined the above quote, one must consider the works of a prominent Dalit scholar, Anand Teltumbde. He has argued, in his seminal work *Republic of Caste*, that one of the most disturbing parts of the Indian republic is the failure of the Dalit community forwards in fighting and leading the struggle for, and of, the remaining oppressed.³¹ John Carlos had done the same – when he got the right platform, he utilized it to seek an inclusive America. If such actions are strangulated at their moment of inception, it would be nothing but a move to keep the existing fault lines alive in the system, and regularly reinforce them. These protests are an event of self-fulfillment, aimed towards the establishment of real truth and not a politically motivated truth, and seeking accountability by injecting the space with viewpoints of the oppressed.

Set on a similar backdrop is the story of Colin Kaepernick. His protest was for highlighting and standing shoulder-to-shoulder with the subjects of racial injustice and police brutality,

²⁸ JOHN CARLOS AND DAVE ZIRIN, *THE JOHN CARLOS STORY: THE SPORTS MOMENT THAT CHANGED THE WORLD* (2011).

²⁹ Gary Younge, *The man who raised a black power salute at the 1968 Olympic Games*, *THE GUARDIAN* (Mar. 30, 2012), <https://www.theguardian.com/world/2012/mar/30/black-power-salute-1968-olympics>.

³⁰ *Id.*

³¹ ANAND TELTUMBDE, *REPUBLIC OF CASTE: THINKING EQUALITY IN THE TIME OF NEOLIBERAL HINDUTVA* (2018).

which had a great impact and moved many other sportsmen to stand by him.³² He justified his protest in the following words:

“I am not going to stand up to show pride in a flag for a country that oppresses Black People and people of colour. ... To me, this is bigger than football and it would be selfish on my part to look the other way. There are bodies in the street and people getting paid leave and getting away with murder.”³³

Majority of other such instances concern subjects like oppression, discrimination, exclusion and inequality. However, it is ironical how IOC chooses to frame its fundamental principles of Olympism. Consider Principle 6:

“The enjoyment of the rights and freedoms set forth in this Olympic Charter shall be secured without discrimination of any kind, such as race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status.”

While the principle argues for equality, it makes it subject to the rights and freedoms granted by the IOC through its Charter, necessarily allowing it the infinite power to determine the territories of the equality arguments that can be raised through its platforms. This allows the IOC to preach certain values as window-dressing, but effectively curtail the protests for ensuring the same values at a broader-level, i.e., in the participating state, as it conflicts with IOC's interests. Beyond the charge of hypocrisy, it can also be questioned on the lines of the basic human rights, freedom of speech being one of them, which are ensured to everyone merely by virtue of their human existence and have been developed while having an emphasis on individual dignity.³⁴ Moreover, merely reserving political speech to press conferences and other such events put place-based restrictions, something which acts as a major impediment in

³² Matthew J. Parlow, *Race, Speech, and Sports*, 52(4) U. RICH. L. REV. 923 (2018); Brittney Watkins, *Kaepernick Can Kick It!: Employment Discrimination, Political Activism, and Speech in the NFL*, 59 WASH. U. J. L. & POL'Y 259 (2019).

³³ Mike Florio, *NFL: Players are encouraged but not required to stand for national anthem*, PRO FOOTBALL TALK (Aug. 27, 2016), <https://profootballtalk.nbcsports.com/2016/08/27/nfl-players-are-encouraged-but-not-required-to-stand-for-national-anthem/>.

³⁴ KATE PARLETT, *THE INDIVIDUAL IN THE INTERNATIONAL LEGAL SYSTEM* (2011); Faraz Shahlaei, *When Sports stand Against Human Rights: Regulating Restrictions on Athletes' Speech in the Global Sports Arena*, 38(1) LOY. L.A. ENT. L.A.W. REV. 95 (2017); Universal Declaration of Human Rights, GA Res. 217(III) A (Dec. 10, 1948); International Covenant on Civil and Political Rights, 999 UNTS 171 (Dec. 19, 1966). See K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

allowing free and effective speech. It is again nothing but a colourable exercise to show solidarity to the protests, but, in reality, is an act of non-concern. All these aforesaid instances and arguments build a case for supporting political speech in the Olympics. In the next part, I shall reflect on how this speech can be regulated so as not to grossly impact the athletic culture, and save it from being overpowered by cross-countering political events.

3. REGULATION OF POLITICAL SPEECH IN SPORTS

Beginning with a basic norm, none of the fundamental freedoms could be unregulated. The regulation provides the necessary balance and helps in ensuring that the freedoms are utilized in a manner that best serves its goals. All constitutional documents guaranteeing the freedom of speech (and expression in certain cases) prescribe certain restrictions, either explicitly, for instance, the Indian³⁵ and the South African³⁶ constitutions, or implicitly, like in the USA, where the courts have read in certain restrictions by invoking the inherent police powers of the state.³⁷ The restrictions in each of such documents, or those restrictions which have born out of court judgments, necessarily share a unique cultural and political history with the individual nations, and thus, varying from nation to nation. At the same time, the manner of restriction of a particular kind of speech may also differ from nation to nation. For instance, hate speech in the US is supposed to be countered with more speech,³⁸ while it is specifically deemed unconstitutional, and thus, criminalized in India³⁹ and Canada.⁴⁰ Similar must be pattern followed while regulating political speech in the Olympics. Therefore, this requires an answer to two queries: (i) what are the interests that the Olympic events seek to promote; and (ii) what is the apt mechanism for regulating the speech.

Olympic Charter serves as an easy solution to the first query. Being a refined document developed over the years, the Charter provides some of the most progressive principles that

³⁵ INDIA CONST. art. 19, cl. 2-6.

³⁶ S. AFR. CONST., 1996, §§ 7, 36.

³⁷ See *Brandenburg v. Ohio*, 395 US 444 (1969) (free speech could be restricted for if it is directed at inciting or producing imminent lawless action, or is likely to incite such an action); *United States v. Xavier Alvarez*, 567 US 709 (2012) (on restricting free speech on the grounds of libel, fraud and perjury); *Miller v. California*, 413 US 15 (1973) (regarding punishing pornography); *Ashcroft v. Free Speech Coalition*, 535 US 234 (2002) (regarding non-coverage of child pornography under free speech protection); *Virginia v. Black*, 538 US 343 (2003) (non-protection of speech used as a threat of violence).

³⁸ *RAV v. City of St. Paul*, 505 US 377 (1992); *Virginia v. Black*, 538 US 343 (2003); *Snyder v. Phelps*, 562 US 443 (2011) – (United States Supreme Court).

³⁹ For an extensive discussion on the same, see Law Commission of India, Report No. 267 – Hate Speech (Mar. 2017), <http://lawcommissionofindia.nic.in/reports/Report267.pdf>.

⁴⁰ *Saskatchewan (Human Rights Commission) v. Whatcott*, [2013] 1 SCR 467 (Canadian Supreme Court).

can govern the regulation of free speech based on principles. In various jurisdictions, the regulation of free speech is done either through specifically drafted restrictions or through certain highly revered principles and constitutional values. For instance, in India, Article 19(2) of the Constitution provides a list of eight restrictions on the freedom of speech and expression. In contrast, the Canadian Charter of Rights and Freedoms places equality and multi-culturalism as the guiding values for exercising (and restriction thereof) the enlisted rights and freedoms.⁴¹ Similarly, Germany⁴² and South Africa⁴³ place dignity and equality at the highest place, thereby giving discretion to the courts to prohibit demeaning and degrading speeches.

I argue that the IOC can adopt the latter approach, as it shall allow the disciplinary body to assess the speech by looking into its content and core intentions. A study of the fundamental principles of Olympism leads to the identification of following values that can govern the freedom of speech: *human dignity* (principle 2); *inclusion* (principle 3); *non-discrimination* (principles 4 and 6); *equality* (principles 4 and 6); and *fraternity* (principle 4). Therefore, any speech (including expressions) that furthers and finds its roots in these principles must be supported and secured by the IOC. The model which is adopted here is not to grant unwarranted free speech to the stakeholders, but to allow limited political speech in consonance with IOC's principles. I believe that an institution with the stature of the IOC would also grow and mature with time and societal progress, and thus, if the future society finds more basic values worth adding to the Olympic Charter, the generally available freedoms under the national Constitutions shall be the source of their inclusion in the Olympic Charter, which would then allow players or trainers to use the platform of Olympics to voice their concerns. So, the territory of limited freedoms shall grow or be contained, along with the conscience of society. I believe that this would not promote majoritarian perspectives unless the national constitutions worldwide falter on checking majoritarianism. Any speech beyond the permitted speech would thus be a non-speech, bringing home disciplinary proceedings.

Some of the most intricate scenarios here, which one could also perceive as a limitation of this model, could be those where the athletes take a particular stance on purely political developments and justify them by citing the abovementioned principles of Olympism. To illustrate, consider a situation where a player *voluntarily* supports, and not on the coercion of

⁴¹ Constitution Act of 1982, §§ 27-28.

⁴² GRUNDGESETZ [GG] [BASIC LAW], *translation at* https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.pdf, art. 1.

⁴³ S. AFR. CONST., 1996, § 36.

the state,⁴⁴ the boycott of Israeli players and refuses to play or share a podium with them. Or, to consider a domestic scenario, a situation where certain players from India undertake an active and visible protest against the government policies regarding Kashmir or Nagaland (not including the concerns of human rights violation). One can identify that the roots of these issues are historical and purely political, and their resolution is generally subject to diplomatic negotiations among the different interested parties. The IOC in itself, as a formidable institution, does not influence such matters. Therefore, for the effective working of the ‘restricted free speech model’, it must be ensured that athletes maintain distance from such grossly political disputes and do not take advantage of the IOC’s platforms for furthering their personal opinions. The aim must be to secure neutrality where it is needed, because such protests carry with themselves a possibility of inviting political implications, disrupting the organization of the event, and might prove to be demeaning to the players standing on the other end of the spectrum. The jurisprudence on these lines could be developed by taking initial guidance from Principle No. 5 of the Fundamental Principles of Olympism. It argues for political neutrality of the organizations involved with the Olympic Movement. This principle can, on the one hand, secure political neutrality of sporting events, and on the other, act as a necessary check against those speeches that originate from political ideologies, religious sentiments or foreign policies. Nevertheless, it is predictable that the body-in-charge of evaluating the conduct of athletes and enforcing athletic discipline would come across many hard cases. It is on their judicious determination of such disputes that the future of political speech in sports depends, at least under the model as proposed in this article.

4. CONCLUSION

Political speech has been the source of many changes and progression in our society. Even revolutions are founded on ideas – ideas which are shared across the civilization with an aim to convince the audience for a change. Sans political speech, the society stands at danger of stagnation – a situation which is inherently unequal and promotes vested interests. Olympics, given its viewership and values, must utilize its influence in taking the world forward, and

⁴⁴ See, for instance, Reuters, *Iran’s Top-Rated Chess Player Alireza Firouzja Won’t Play for Country Due to Ban on Israeli Players*, FIRSTPOST (Dec. 25, 2019), <https://www.firstpost.com/sports/irans-top-rated-chess-player-alireza-firouzja-wont-play-for-country-due-to-ban-on-israeli-players-7824171.html>; Thomas Erdbrink, *Iran Bans Two Soccer Stars for Playing against Israelis*, THE NEW YORK TIMES (Aug. 17, 2017), <https://www.nytimes.com/2017/08/10/world/middleeast/iran-soccer-masoud-shojaei-ehsan-haji-safi.html>.

support its *primary stakeholders* to break their shackles. And it has got the power to do so.⁴⁵ As I have argued elsewhere regarding the rights of the LGBTQ+ community, the IOC host city contract has the ability to transform national laws of the host country as a domino effect of the application of progressive laws to the host city.⁴⁶ Moreover, this might also help in shielding the athletes from the excessive backlash that they might face at the hands of their national governments. A countering voice coming from the IOC shall be influential, if not a strong deterrent. It is hoped that in light of the support that many sporting bodies have extended to the ‘Black Lives Matter’ movement,⁴⁷ IOC would also re-assess its stance and come-up with fresh guidelines that defend balanced political speech before the Tokyo Olympics 2021.

⁴⁵ See Julie H. Liu, *Lighting the Torch of Human Rights: The Olympic Games as a Vehicle for Human Rights Reforms*, 5(2) NW. J. INT’L HUM. RTS. 213 (2007); See also *FIFA against racism: A decade of milestones*, FIFA (Mar. 2, 2011), <https://www.fifa.com/mensyoutholympic/news/fifa-against-racism-decade-milestones-1384919>.

⁴⁶ See Anmol Jain, *Principles of Olympism as Supra-National Constitutional Values*, JURIS OMNIBUS (Jun. 4, 2020), <https://jurisomnibus.com/2020/06/04/principles-of-olympism-as-supra-national-constitutional-values/>.

⁴⁷ Shivam Singh, *When Sports Align with Dissent*, INDIAN EXPRESS (Jun. 26, 2020), <https://indianexpress.com/article/opinion/black-lives-matter-when-sports-aligns-with-dissent-6477907/>; Scroll Staff, *Black Lives Matter: NBA Walkout Sparks Historic Sport Boycott in US; Osaka Withdraws, Tennis Halted*, SCROLL.IN (Aug. 27, 2020), <https://scroll.in/field/971490/black-lives-matter-nba-walkout-sparks-historic-sport-boycott-in-us-osaka-withdraws-tennis-halted>.