



GLOBAL JOURNAL OF HUMAN-SOCIAL SCIENCE: H
INTERDISCIPLINARY
Volume 21 Issue 4 Version 1.0 Year 2021
Type: Double Blind Peer Reviewed International Research Journal
Publisher: Global Journals
Online ISSN: 2249-460x & Print ISSN: 0975-587X

Arbitration and Sports Law

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GJHSS-H Classification: FOR Code: 180199p



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Arbitration and Sports Law

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Abstract- The objective of this paper is to understand how arbitration in the realm of sports law succours in reducing the workload of the ordinary courts (?) As compared to the court litigation, arbitration is often less expensive and faster way to resolve disputes as it is based on consensus. Arbitration does provide for a neutral forum to swiftly settle the disputes with procedural flexibility and finality which is vital for the international commercial dispute resolution. Hence, this paper will provide the crux of sports arbitration by providing a snapshot on the relevance of sports and need for sports law in India, unethical sporting practices, advantages of resolving sports dispute by means of arbitration and benefits of entrusting cases to the Court of Arbitration for Sports.

“At all events, arbitration is more rational, just, and humane than the resort to the sword”- Richard Cobden

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I. INTRODUCTION

In the present scenario, sports emerge as a pivotal integrant for the socio-economic development of a nation. Sports play a significant role in the blossoming of mental health and physical strength and thereby promoting the somatic, cerebral, social, emotional and spiritual wellness. The sportily partake in sports subsumes discipline in character, truncates medical payments, ameliorates community well-being & productivity and enriches social solidarity. Sport is a puissant social instrument that unifies people from divergent socio-economic, cultural, ethnic, linguistic and religious backgrounds. It amplifies self-esteem amongst the players and proffers opportunities for the progression of peer leaders.¹ Sports not only imparts physical, emotional and social privileges to the sportspeople, but the implementation of a mega-sporting tournament succours in engendering employment, reinforcing infrastructure, fortifying inflow of foreign capital and consequently contributes appreciably to the economic development of the nation.² Ergo, the reverberation of sports on the society is multi-dimensional. India is regarded as the land of myriad games whereby numerous national and

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¹ Team UNICEF: Sports. https://www.unicef.org/sports/index_23624.html 5 June, 2014.

² Banerjee A. Role of Government in Promoting Sports in India: A Critical Evaluation. *The Sport Digest*. 2011 Aug 19 (Newspaper Article)

international sporting events have taken place. Howbeit, there has been an elevation in the instances of broadcasting rights and arbitrary actions of the sports authorities whereby the contribution made by the judicial authority towards stiffening the sports jurisprudence has been very exiguous.³ Sports have never been a focal stream subject for the policymakers. Unlike other nations, India has never implemented an enactment in the sphere of sports. Sports law is a miscellany of the court cases and policy decisions under the auspices of the Indian Government. Under the Indian Constitution, sport is listed as State subject (Entry 33) and as such the Central Government has no locus standi to legislate on Sports which is one of the most confronting chores whilst addressing sports law reforms at the national level. The sports-related issues have always occupied a peripheral spot in Indian socio-political-legal sphere. Thence, the vacuity in the domain of sports governance needs to be addressed promptly to come out of the extant state of inertia.⁴

II. UNETHICAL PRACTICES IN SPORTS

Sports has become tremendously mercenary and the zest of true competition within the perimeter of fair play has been faded. The axiom of the Olympics: “Citius, altius, fortius”- “swifter, higher, stronger”, which can be illuminated as “striving to beat one’s personal best” cannot be discerned into practice any longer as everybody wants instant success and fame without any hard work. There are numerous forms of iniquitous behaviour cropping up from players and umpires all the way to the fans and media because of the rising rivalry. Our society has generated this competitive abhorrence against each other along with all the money, envy, shortcuts and unscrupulous conduct embraced in the contemporary form of sport.⁵ Competition by itself is not iniquitous. Competition is crucial to sport as a good motivator, “but it can impel some contenders to unscrupulous behaviour.” Therefore, it is of paramount significance to see the bigger picture and comprehend the importance of ethics in sports. Betting, gambling, match-fixing, doping, corrupt practices, taxation & IPR issues, player’s exploitation, gender discrimination and sexual harassment are the snags that have plagued the

³ Sports Law in India. <https://www.khuranaandkhurana.com/2019/01/04/importance-of-sports-law-in-india/> 4 Jan, 2019

⁴ Thakur A, Kaur R. Sports Law in India: Present Status and Future Road Map. *JASRAE*. 2018; 15(3): 33-40

⁵ Ethics in sports. <http://www.theindependentindia.com/2017/04/ethics-in-sports.html> 27 Apr, 2017

sports domain.⁶ Indeed, the Indian Sports industry has blossomed by leaps and bounds but the social & economic inequalities, lack of infrastructure, corruption & mismanagement of sports authorities, policy lacunae and limited allotment of resources are responsible for underdevelopment of sports in our nation.⁷ In the past decades, the sports industry has been bedevilled by controversies and scandals. Thence, there is a necessity to probe corruption and ensure accountability in comportment and pecuniary deals of the government authorities and other organizations involved in managing sports. The nation has reached the juncture where it requires a legislation that deals with sports law. In order to encounter the escalating demands of the changing scenario, national as well as international, it is momentous that a uniform code for sports be aggrandized.⁸

III. SPORTS LAW IN INDIA

Due to lack of uniform legislation, India has been majorly failing at international sports junction. Sports law has an exceptionally well-developed model of globalized regulation and intersects appreciably with contract law, labour law, human rights law, criminal law, law of tort, public law, media law, administrative law, intellectual property rights, competition law and company law. The above stated laws have been applied to sporting backdrop involving disciplinary measures, public order, safety, match fixing, drugs, privacy rights, defamation, anti-competitive behaviour, restraint of trade and the commercial exploitation of sports. In India, there is no national legislation for the regulation of sports. The Indian Government set up the Ministry of Youth Affairs & Sports to develop the infrastructure and foster capacity building for broad-basing sports and for attaining transcendence in numerous competitive events at national and international levels. In India, the Sports Law is regulated and governed by the National Sports Policy, Sports Law and Welfare Association of India, Sports Authority of India and The Sports Broadcasting Law in India.⁹ The interplay between sports and law has shaped a pristine requirement for an immense comprehension of how the law relates to the sporting world. There is a desideratum of statutory enactment and technical prowess to encounter an blend of divergent legal disciplines such as sports law, tort, contract, labour, taxation, competition and criminal

laws.¹⁰ The legislative interposition is the need of the hour so as to thrive sports and athletes in our nation.

IV. SPORTS LAW AND ARBITRATION

It has been noted that as compared to the other professionals, the sports professionals have got very short career. The traditional courts proceedings are always fraught with inordinate deferments which causes irreparable damage to them. Consequently, arbitration would be a far better choice than that of traditional litigation. It provides speedy justice to the sports enthusiast's and safeguard them from the strenuous and mightily lengthy litigation process which adversely affects their professional life. The problems of long time commitment and appearing for regular hearings makes litigation unappealing for sports professionals.¹¹ Arbitration is a legal method for resolving the disputes outside the courts, whereby the parties to a dispute refer it to one or more persons, by whose decision they concur to be bound. It is a kind of alternate dispute resolution wherein a third party analyses the case and imposes a verdict that is legally binding on the parties. Arbitration subsists in international sport by dint of the Court of Arbitration for Sport (CAS). The CAS (oftentimes referred to as "Sport's Supreme Court") is an institute independent of any sports institution which bestows for services to lubricate the resolution of sports-related disputes, by means of arbitration or mediation, through procedural rules attuned to the precise requirements of the sports world.¹² The CAS was established in 1984 and is set down under the administrative and financial domination of the International Council of Arbitration for Sports (ICAS). CAS is an arbitral tribunal, headquartered in Lausanne, Switzerland. Presently, CAS has two ancillary permanent divisions situated in Sydney, Australia and New York, USA. The CAS has an obligation to settle legal disputes in the sports field by means of arbitration. It does this by ordaining arbitral awards that have the same enforceability as verdicts of ordinary courts. It can also succour parties to resolve their disputes on cordial basis by way of mediation, when this course of action is permitted. A dispute may be referred to the CAS only if there is an arbitration agreement between the parties which states recourse to the CAS. In practice, Disciplinary and Commercial disputes may be submitted to the CAS.

⁶ Agrawal U, Sharan G. Issues plaguing the sports arena. *JLJ*. 2018; 3: 143-166.

⁷ Sports in India: Problems and reform measures. <https://www.jagranjosh.com/current-affairs/sports-in-india-problems-and-reform-measures-1508848667-1> 30 Oct, 2017.

⁸ Pujari M. Need for Sports Law in India. *IJAR*. 2017; 2(3); 291-293.

⁹ Kanth G. Emergence of Sports Law in India. *ILJ*. 1.

¹⁰ Sports Law- A viable career option in India. <https://blog.ipleaders.in/sports-law-career-option-for-lawyers-in-india/> 23 Jan, 2017.

¹¹ Bhandari M. Arbitration in Sports Dispute Resolution in India. *IJRESM*. 2018; 1(9): 482-484.

¹² Court of Arbitration for Sport. <https://www.wada-ama.org/en/court-of-arbitration-for-sport>

Disciplinary Disputes: It involves cases pertaining to doping, abuse of a referee, violence on the field. Generally, such disciplinary cases are dealt by the competent sports authorities in the first instance, and eventually become the subject of an appeal to the CAS, which then acts as a court of last instance. The CAS is governed by its own Statutes and Rules of Procedure namely the Statutes of the Bodies Working for the Settlement of Sports Related Disputes, Code of Sports Related Arbitration and Mediation Rules.

Commercial Disputes: It involves cases pertaining to the implementation of contracts, such as those connected to sponsorship, the staging of sports events, the sale of television rights, player transfers and relations between coaches or players and clubs or agents (employment and agency contracts). Disputes associated with civil liability issues also come under this ambit (e.g. an accident of an athlete during the sport competition). These commercial disputes are managed by the CAS acting as a court of exclusive instance.

Benefits of Arbitration when resolving sports disputes:

- ❖ *Citius/Faster* (resolution of disputes): It is momentous for sports disputes to be resolved expeditiously because many competitive tournaments are held in a fixed time period, leaving parties unable to stand by for months/years before a verdict is reached. The best instance of the requirement for speed is for those disputes that arise during the Olympic Games, which usually last for no more than 16 days.
- ❖ *Altius/Higher* (quality of decisions): It is the adroitness and experience of an arbitral tribunal that proves to be very constructive when accommodating various industries. This attribute of prowess in arbitration is very significant to sports, principally because there is an enormous list of sports games and contests. Moreover, proficiency of the arbitrators can mitigate the time needed to settle a dispute; providing another ground why arbitration is generally expeditious than lawsuit and, perhaps, mediation.
- ❖ *Fortius/Stronger* (enforcement): An additional crucial benefit of arbitration is its stronger enforcement. In domestic domain, an arbitral award can generally be enforced just like the decision of the national court. In an international realm, arbitral awards are enforced quite easily than the foreign court verdicts because of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention), which has been embraced by 156 nations.¹³

Advantages of entrusting cases to the Court of Arbitration for Sports:

The Court of Arbitration for Sport was initially constituted with the object of settling disputes that have some interrelation with sports. Ergo, the Court of Arbitration for Sport has attained substantial stature for being distinctly effective, fair and venerated forum for resolving sports disputes comparatively in an economical and expeditious way since its conception in 1984. The inherent advantages of CAS are as follows:

- *Speedy resolution of dispute:* The Court of Arbitration for Sports deliver time bound awards. The proceedings are swifter as the cases are heard and resolved within few months from the date of reference.
- *Special Expertise:* The arbitrators involved in CAS are expert in sports-specific disciplines (there are more than 300 arbitrators from 87 countries qualified to hear CAS disputes)¹⁴ whereas a typical civil judge will not probably possess such sports-related technical knowledge.
- *Simplified Procedure:* The procedure is pliable & informal and hence, it can be understood better.
- *Wider Acceptance:* The arbitrators are top-notch jurists and are held in high regard at the international sports community. Thence, there is a wider acceptance with the CAS awards.
- *Confidentiality/ Privacy Protected:* The course of action of ordinary arbitration is private. CAS follows a confidential procedure and wherefore is conducted without the public or media intervention. The CAS staff, arbitrators and parties are obliged not to divulge any details associated with the dispute. The awards are not published. Sports disputes usually involve acclaimed personalities which makes privacy in an actual litigation a practical impossibility. Hence, arbitration in sporting disputes is an added advantage as it is viable to keep arbitration proceedings confidential and thus it shields one's reputation.
- *CAS filling the gaps:* Before establishing such institutions, and burgeoning of a particular "sports law", the elucidation of sporting disputes was left to the Civil Courts who illuminated law as per their own interpretation of ordinary civil law without any specific knowledge. The vigorous development of a "Sports Law" led to the twin notions of *Lex-Sportiva* (technical regulations correlated with Sporting Law, which modulates the public aspect and incorporates the "specificity of Sports" within itself) and *Lex-Ludica* (the "spirit of sports", of principled sporting conduct, sportsmanship, fair play and

¹³ Pashorina-Nichols V. Is the Court of Arbitration for sport really arbitration? *VUW*. 2015: 4-66.

¹⁴ What is the Court of Arbitration for Sport? <https://www.tas-cas.org/en/general-information/frequently-asked-questions.html>

other aspects that privately modulates sporting conduct of athletes in tournaments). These concepts were reinforced through precedents by the Court of Arbitration for Sports.¹⁵

V. CONCLUSION

Since 1980s, sports became tremendously globalised. Consequently, there emerged a necessity for a dispute resolution forum that not only provides a mere verdict, but also that such decision can be enforced expeditiously at the international platform. Over the years, international arbitration has gained prime significance. As an alternate system to the court litigation, arbitration is much faster and less expensive medium to settle the disputes.¹⁶ Due to the versatility and vogue of the internet, E-arbitration is a feasible option for resolving disputes in sports provided that the system of checks and balance is maintained like ordinary arbitration. It will not only save time & money but will unravel complex jurisdictional and choice of law issues. Online arbitration is an ideal avenue for providing speedier justice to the parties who have geographical constraints.

¹⁵ Pandey K. Court of arbitration for Sports (CAS): An efficient mechanism for resolving sports related disputes. *IJL*. 2017; 3(6): 22-25.

¹⁶ The Court of Arbitration for Sport: A champion of institutional arbitration? https://www.academia.edu/37143567/The_Court_of_Arbitration_for_Sport_A_champion_of_institutional_arbitration 2018.