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THE LEGAL FRAMEWORK FOR SPORTS DISPUTE RESOLUTION IN INDIA

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Abstract:

The dynamic world of sports is not without its fair share of disputes, ranging from contractual disagreements to doping controversies. In India, the legal framework for sports dispute resolution has evolved over time, encompassing litigation in courts, key sports-related legislation, sports arbitration, and alternative dispute resolution mechanisms. The establishment of the Sports Arbitration Centre of India in 2021 marks a significant step towards providing a specialized and accessible forum for resolving sports-related disputes. This paper delves into the intricacies of sports dispute resolution in India, examining the existing framework, its strengths and limitations, and exploring potential avenues for further development. The author has analyzed various pieces of literature for understanding the system and has tried to provide a way forward.

KEYWORDS:

Arbitration

Legal framework

Sports Arbitration Centre of India

Sports Dispute Resolution

Introduction and Background:

The internationalization of sports has led to its commercialization and globalization, resulting in the integration of sports and law.¹ The sports industry has experienced significant growth in a short period of time, transforming it from a leisure activity to a commercialized enterprise, particularly in light of the exorbitant sums of money involved in some major sports.

¹ SCC Online Blog, Arbitration in the Realm of Sports Law, Apr. 13, 2022, <https://www.sconline.com/blog/post/2022/04/13/arbitration-in-the-realm-of-sports-law/>

Consequently, the industry produces a large number of legal disputes that require speedy adjudication and specialized bodies to deal with the subject matter's specificity. Like any other sector that relies heavily on arbitration to resolve disputes, sports arbitration entails submitting sports-related disputes to a person or tribunal for final and binding decisions. The only difference between sports arbitration and other forms of arbitration is the subject matter. While procedurally all arbitrations are the same, sports arbitrations have their unique set of challenges. Sports arbitrations offer the same advantages as commercial arbitrations, such as a neutral setting, flexible procedures, and specialized arbitrators. However, sports arbitrations do not conform to the New York Convention, which governs the enforcement of foreign arbitral awards. Instead, sports governing bodies have their own internal rules and regulations for dealing with disputes. Hence, the enforcement of awards through sports arbitrations is different from those arising through commercial or investment arbitrations.

The concept of sports arbitration dates back to the ancient Greeks, who used it to resolve disputes arising from the Olympic Games. However, sports arbitration did not become widely accepted and institutionalized until the late 20th century. In 1984, the International Olympic Committee (IOC) established the Court of Arbitration for Sports (CAS) as a permanent body to resolve sports-related disputes. The CAS is headquartered in Lausanne, Switzerland, and has offices in New York City and Sydney. It is the supreme arbitral body for sports disputes worldwide, and its awards are generally accepted by national and international sports federations.

India ratified the Arbitration and Conciliation Act, 1996, which provides a framework for the enforcement of foreign arbitral awards in India. However, the Act does not specifically address sports arbitration. In 2016, the Ministry of Youth Affairs and Sports (MYAS) issued a press release advising all National Sports Federations (NSFs) to insert a specific provision in their constitutions or bye-laws allowing athletes to raise disputes with the CAS. This was a welcome step, but it is important to note that the CAS is not a domestic arbitral tribunal under Indian law. As a result, CAS awards are not automatically enforceable in India. Despite this challenge, sports arbitration is gaining traction in India. In recent years, a number of Indian athletes have successfully appealed to the CAS against decisions made by NSFs.

Sports arbitration in India is still in its early stages of development. One of the biggest challenges is the lack of awareness about sports arbitration among athletes, administrators and organizations. Additionally, the cost of sports arbitration can be a determining factor for many athletes as the

cost is quite high. Despite these challenges, there are a number of opportunities to develop sports arbitration in India. The government can play a role by promoting awareness about sports arbitration and by providing financial assistance to athletes who wish to pursue arbitration. Additionally, sports federations can adopt CAS rules and regulations into their own constitutions and bye-laws. By taking these steps, India can create a more robust and effective system of sports arbitration and dispute resolution. This will benefit athletes, administrators, and the sports industry as a whole.

Types of conflicts:

The Court of Arbitration for Sport (CAS) can arbitrate any sports-related dispute, whether directly or indirectly related to the sport, as long as the parties have a valid arbitration agreement.

In the famous case of *Angela Raguz v Rebecca Sullivan & Ors* [2000] 42, the CAS arbitral award was challenged in an Australian court because the parties to the dispute were two Australian sportsmen and the arbitration agreement was considered a "foreign" one. The court ruled that it did not have jurisdiction over foreign arbitration agreements and that it only had jurisdiction over "domestic" arbitration agreements.³

Sporting disputes can be categorized into two branches:

- **Disciplinary conflicts:** Disciplinary conflicts are a major area that CAS deals with. These types of disputes can arise from issues such as doping violations by athletes, incidents of racism or discriminatory behavior, acts of violence or misconduct on the field of play, and ethical disagreements or breaches of conduct. When these situations occur in a sporting event or competition, the governing sports authority overseeing that activity will typically take disciplinary action, such as issuing suspensions, fines, or other punishments against the athlete(s) involved. However, athletes have the ability to appeal these disciplinary decisions to CAS, but only after they have exhausted all available domestic remedies and appeal processes within their own country first
- **Business-related conflicts:** These can include contractual disputes over things like broadcasting rights, media licensing, merchandising agreements for sporting events, sponsorship deals, and endorsements. They can also involve agency relationships and

² *Angela Raguz v Rebecca Sullivan & Ors* [2000] NSWCA 240

³ Shivam Narwal, *Dispute Resolution in Sports: A Legal Viewpoint*, 3 *Jus Corpus* L.J. 1165 (2022).

contracts between athletes, coaches, agents, and teams or clubs. Additionally, CAS has jurisdiction over business disputes relating to legal liability matters, such as lawsuits stemming from accidents or injuries involving athletes during competition. For these types of business and commercial disputes, Swiss law will normally govern unless the parties previously agreed to apply a different country's laws to their specific agreement or contract..

The CAS is a leading international body for the resolution of sports-related disputes. It has jurisdiction over a wide range of disputes, including disciplinary conflicts, business-related conflicts, and disputes involving legal liability matters. CAS arbitral awards are generally accepted by national and international sports federations, but they may not be automatically enforceable in all countries.

Related Case Laws:

The Secretary, Ministry of Information & Broadcasting v Cricket Association of Bengal Anr.4

In this case, the Supreme Court of India held that the Cricket Association of Bengal (CAB) had the right to enter into a contractual agreement under which it would sell the broadcasting rights to private news channels. However, the court also noted that the airwaves and frequencies used for broadcasting are public property, and that businesses cannot monopolize them. The court directed the Indian government to ensure that the rules for telecasting sports competitions are in the best interest of the general public.

1. New Delhi Television Ltd. v ICC Development (International) Ltd. & Anr.5

In this case, the High Court of Delhi upheld the International Cricket Council's (ICC) broadcasting guidelines for the 2011 World Cup. The court held that NDTV had violated the broadcasting guidelines by broadcasting significant clips of a wicket falling and a century. The court rejected NDTV's argument that the broadcasting footage was protected by the "fair dealing" clause of the Copyright Act.

2. Zee telefilms and others v Union of India and Ors.6

In this case, the Supreme Court of India held that the Board of Control for Cricket in India (BCCI)

⁴ Secretary, Ministry of Information & Broadcasting v Cricket Association of Bengal & Anr (1995) AIR 1236

⁵ New Delhi Television Ltd v ICC Development (International) Ltd & Anr FAO(OS) 460/2012

⁶ Zee Telefilms Ltd. v. Union of India, (2005) 4 SCC 649

does not fall within the definition of "state" under Article 12 of the Indian Constitution. This means that the BCCI is not subject to the fundamental rights enshrined in the Constitution.

These three cases have established important principles of sports broadcasting law in India. First, the CAB case established that sports governing bodies have the right to enter into contracts with private broadcasters. Second, the NDTV case established that broadcasters must comply with the broadcasting guidelines set by sports governing bodies. Third, the Zee telefilms case established that the BCCI is not a state actor and is not subject to the fundamental rights enshrined in the Constitution. In addition to these three cases, there have been a number of other cases that have dealt with sports broadcasting law in India. For example, in the case of ESPN Software India Pvt. Ltd. v BCCI, the Supreme Court of India held that the BCCI had the right to charge broadcasters a fee for access to its live content. In the case of Star India Pvt. Ltd. v BCCI, the Supreme Court of India held that the BCCI could not enter into exclusive broadcasting agreements with broadcasters.

These cases demonstrate that Indian courts are willing to recognize and enforce foreign principles of sports arbitration. This is a positive development for sports in India, as it provides athletes with a fair and efficient way to resolve disputes.

The law of sports broadcasting in India is still evolving. However, the three landmark cases discussed above have established important principles that guide the industry.

The Sports Ombudsman Concept:

The Sports Ombudsman concept in India is a relatively new one, but it has the potential to revolutionize the way sports disputes are resolved in the country. A Sports Ombudsman is an independent third party who is appointed to investigate and resolve disputes in a fair and impartial manner. The Sports Ombudsman can be appointed by the government, a sports governing body, or by a consortium of stakeholders.

The Sports Ombudsman concept has several advantages over traditional methods of dispute resolution, such as litigation and arbitration. First, it is much faster and less expensive. Second, it is more accessible to athletes and other stakeholders, as it does not require any legal expertise. Third, it is more flexible and can be tailored to the specific needs of the sports industry.

In India, the Sports Ombudsman concept is still in its early stages of development. However, there are a number of initiatives underway to promote and implement this concept. For example, the Ministry of Youth Affairs and Sports (MYAS) has established a Sports Ombudsman Office to resolve disputes involving government-funded sports programs. Additionally, a number of

sports governing bodies have also established their own Sports Ombudsman mechanisms.

The Sports Ombudsman concept has the potential to play a significant role in the development of Indian sports. By providing a fair and efficient way to resolve disputes, the Sports Ombudsman can help to create a more transparent and accountable sports system.

The Sports Ombudsman presents a refreshing alternative to conventional dispute resolution methods within the world of sports. Its unique selling point lies in the specialized expertise it can offer, thanks to a deep-rooted understanding of the intricate nuances governing the sports arena. From complex regulations and athlete-organization dynamics to ethical quandaries unique to this field, a dedicated Ombudsman acquires comprehensive knowledge, enabling well-informed and tailored verdicts. Moreover, the confidential nature of proceedings proves invaluable when addressing sensitive matters like controversies or doping allegations, shielding reputations from premature public scrutiny.

Central to the Ombudsman's mandate is fostering mutually agreeable solutions that preserve the close-knit fabric of relationships within the sports community. This approach empowers athletes, particularly those in the nascent stages of their careers, by presenting an approachable platform to voice grievances. In stark contrast to adversarial legal battles that can irreparably strain connections, the Ombudsman facilitates compromise, allowing all parties to maintain productive working associations – a critical factor in a domain where coaches, administrators, and athletes often collaborate over extended periods.

As the Ombudsman office matures, it amasses institutional memory, meticulously tracking dispute patterns and evaluating the efficacy of resolutions. This wealth of data illuminates systemic issues, enabling the proposal of structural reforms and best practices to mitigate future conflicts proactively. This forward-thinking, reform-oriented ethos can catalyze the evolution of sports governance and athlete support mechanisms.

A significant pragmatic advantage lies in the cost-effectiveness of the Ombudsman process compared to litigation and arbitration. With legal fees often spiraling beyond the means of smaller organizations or individuals, the Ombudsman emerges as an economical bulwark, democratizing access to fair resolutions across resource constraints.

Extending beyond conflict resolution, the Ombudsman's purview encompasses an educational role – upskilling stakeholders through workshops, publications, and guidance materials on rules, regulations, and ethical best practices. This proactive approach cultivates an ecosystem where all parties can navigate challenges deftly, preempting unnecessary disputes.

Ultimately, the Sports Ombudsman concept holds the potential to forge a more harmonious,

accountable, and athlete-centric sporting environment. Its foundational principles prioritize collaboration, accessibility, and systematic improvement, benefiting the entire sports community while preserving the integrity of competition.

Conclusion:

How Viable is International Sports Arbitration in the Indian Landscape?

The Ministry of Youth Affairs and Sports (MYAS) has long been concerned about the lack of a viable mechanism for resolving sports-related disputes in India. In particular, the MYAS has observed that athletes and coaches are often unjustly penalized in disciplinary proceedings, and that there is no effective way for them to appeal these decisions.

In 2016, the MYAS issued a press release advising all National Sports Federations (NSFs) to insert a specific provision in their constitutions or bye-laws allowing athletes to raise disputes with the Court of Arbitration for Sports (CAS). This was a welcome step, but it is important to ask how viable sports arbitration really is within the Indian landscape.

One of the major issues is the lack of arbitrability of a number of disputes that are raised before the CAS. For example, disputes pertaining to rape, fraud, and match-fixing are not arbitrable under Indian law. This means that any CAS award in such a dispute would not be enforceable in India.

Another major concern is the lack of financial resources and support for most athletes in India. Appealing a decision to the CAS can be a very expensive process, and many athletes simply cannot afford it. Even if an athlete is able to secure funding, they may not have the necessary support system in place to help them navigate the arbitration process.

One way to make sports arbitration more viable in India is to encourage the practice of third-party litigation funding. Third-party litigation funding allows third parties (non-lawyers) to fund litigation on behalf of clients in exchange for a share of any winnings. This could be a lifeline for athletes who lack the financial resources to pursue arbitration on their own.

In addition, the Indian government needs to take steps to establish a central sports arbitration tribunal with the jurisdiction to uniformly regulate all sports bodies, including the BCCI. The tribunal should be staffed by judges with expertise in sports law, and it should be able to resolve disputes in an efficient and timely manner.

Overall, sports arbitration has the potential to be a viable solution for resolving sports-related disputes in India. However, there are a number of challenges that need to be addressed in order

to make it more accessible and affordable for athletes.⁷

The Way Forward for Sports Dispute Resolution in India:

The way forward for sports dispute resolution in India is to develop a more efficient and accessible system that is based on the principles of fairness, transparency, and accountability.

Mediation and arbitration are voluntary ADR mechanisms that can be used to resolve sports disputes in a faster and more cost-effective manner than litigation. The use of ADR mechanisms shall be promoted by providing training and resources to mediators and arbitrators, and by making it easier for parties to enter into ADR agreements. A specialized tribunal should be set up which shall be a quasi-judicial body that has the power to adjudicate on sports disputes that have not been resolved through ADR. The tribunal should be composed of independent and experienced individuals who have expertise in sports law and dispute resolution. However, it shall be noted that in reality, only judges are preferred over other experts in the field. This disparity among retiree or former judges and other experts in the same field shall be bridged. Sports dispute resolution should be accessible to all stakeholders, regardless of their financial resources.

In addition to the above changes, the following steps can also be taken to improve the way forward for sports dispute resolution in India:

- Raising awareness of sports dispute resolution mechanisms: Many athletes and other stakeholders are not aware of the sports dispute resolution mechanisms that are available to them. SGBs and the government should take steps to raise awareness of these mechanisms through educational programs and outreach campaigns.
- Developing a code of ethics for sports dispute resolution: A code of ethics would provide guidance to mediators, arbitrators, and other individuals involved in sports dispute resolution on how to conduct themselves in a fair and impartial manner.
- Establishing a research center on sports law and dispute resolution: A research center would promote research on sports law and dispute resolution, and would provide a forum for the sharing of best practices.

By implementing the above changes, India can develop a sports dispute resolution system that is efficient, accessible, fair, transparent, and accountable. This will help to create a more positive and supportive environment for sports in India.

⁷ Nishith Desai Associates, **Time for Evolution of Sport Adjudication in India: Is Sports Arbitration the Way Forward?** (2023), https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research_Papers/Time-for-Evolution-of-Sport-Adjudication-in-India.pdf