

Sports Disputes and Arbitration in India

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Abstract

This paper explores the intricate realm of sports arbitration, emphasizing how it has grown into a specialized area for settling conflicts resulting from disciplinary, competitive, and contractual matters. The paper aims to examine the relationship between sports disputes and arbitration, in addition to the inherent difficulties in this emerging field of sports conflict resolution. The study paper will address the topic in detail and attempt to provide answers to various queries such as the range of alternative dispute resolution (ADR) methods available to settle conflicts involving sports and how the Court of Arbitration for Sports handles disputes effectively across all sports. It further deals with the prospects of the Indian Court of Sports Arbitration.

Keywords: alternate dispute resolution, Indian Court of Sports Arbitration, National Sports Code, sports arbitration, Sports Authority of India, sports legislation

Introduction

Over time, sports have presented particular difficulties and problems for the legal community. This paper firstly will demystify the difficulties surrounding the area of sports. This paper will explore a variety of topics, including the selection of national teams by Indian courts, the necessity of a thorough sports legislation, the legal precedents surrounding sports arbitration, and other related topics.

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There appear to be a lot of concerns that could come up in one's head when looking into the model used in Indian sports. A multitude of controversies, ranging from doping issues to corruption, have inundated the sports business as an outcome of India's sports federations operating in opaquely and without comprehensive sports legislation unifying all sports groups under one roof. The subject of choosing the Indian national teams for both domestic and international tournaments is one that has frequently been brought before Indian courts. The disparities in the selection procedures observed by the various athletic bodies are one of the main causes of this issue. The aforementioned flaws have resulted in a widespread practice among athletes utilizing writ jurisdiction to challenge the decisions of the selection committees when they are not selected for the national teams. For a considerable amount of time, the courts have recognized that sports-related conflicts are best resolved "in-house," ideally through the employment of quasi-independent, arbitral-based disciplinary mechanisms. In fact, one of the best ways to demonstrate the advantages of alternative dispute resolution (ADR) over court processes is through sports. Finding a solution for sports issues greatly depends on how culture affects the alternative dispute resolution procedure in a particular geographic area. The Indian Court of Sports Arbitration was established with the express purpose of hearing cases pertaining to sports.

Sports Disputes and Alternate Dispute Resolution (ADR)

The Indian Government passed the National Sports Development Code of India (2011)¹, also known as the "National Sports Code," which was spearheaded by Ajay Maken, the then-Minister of Sports and Youth Affairs, despite the lack of a clear and binding legislation on sports in India that unifies all national sports bodies under one roof.

In *Indian Olympic Association v. Union of India*², the Division Bench of the Hon'ble Delhi High Court confirmed the legitimacy and legality of the NSDC. In the process, the Hon'ble High Court mandated that the Indian Olympic Association ("IOA") and National Sports Federations ("NSFs") adhere to the National Sports Code. The selection process for national teams to compete in major

¹ National Sports Development Code of India 2011, Ministry of Youth Affairs and Sports

² (2014) 212 DLT 389 (DB)

international competitions is outlined in Section 13 of the National Sports Code. This section states that the National Sports Federations have been given the autonomy to choose the national teams for these contests on the basis of merit, with the goal of selecting the best athlete or team overall.³ The President, the National Coach, and the distinguished former athletes must make up the selection committee that the NSFs must form in turn. In addition, the Government must designate an Observer to supervise the selection process and guarantee that the process is carried out in an impartial and open manner.⁴

Section 3 of the guidelines issued by the Ministry of Youth Affairs and Sports, Department of Sports, Government of India for more efficient management of coaching camps, selection of coaches, and athlete selection is another provision, in addition to the National Sports Code, has been cited in cases which challenge the national team selection process.

The aforementioned provision states that the NSFs will be exclusively responsible for selecting teams and athletes for international competitions. The Government and the Sports Authority of India (SAI) will only be engrossed in the selection process to make certain that it is conducted fairly and transparently. In addition, the selection criteria must be made clear to all relevant parties well in advance, including the Observer, players, coaches, and other relevant parties. SAI and MYAS must then upload the information on their websites.⁵ For team events, the selection process must be completed two months before the competition, and for contact games, it must be completed one month beforehand.⁶

Benefits of Arbitration in Sports Disputes

Arbitration is a tried-and-true, less expensive alternative to litigation. In arbitration, the disagreement is submitted to one or more impartial parties for a binding, final decision (in writing),

³ Section 13.1 of the National Sports Code

⁴ Section 13.2 of the National Sports Code

⁵ Section 3.2 of the MYAS Guidelines

⁶ Section 3.3 of the MYAS Guidelines

referred to as an "award." Arbitration is a private, confidential process meant to provide swift, sensible, and affordable remedies.

Sports arbitration is becoming more and more important. An increasing number of supervisory organizations are incorporating arbitration as a means of dispute resolution into their standards. Arbitration might take place ad hoc or institutionally. In institutional arbitration, the parties designate an organization that provides arbitration services to ensure a smooth and successful arbitration procedure; in ad hoc arbitration, however, the parties select the arbiter on their own.⁷ The argument is that, to the extent that it is practical, it should be possible to increase the transparency and instantaneous reviewability of choices, even though such certification is unimaginable. Given the brief career spans of athletes, arbitration may perhaps be a significantly better option than litigation or the typical court procedures system. It assists in providing sports enthusiasts with prompt justice and shields them from the torturous and protracted legal process, which negatively impacts their career. Sportsmen find litigation undesirable due to issues including having to attend frequent hearings and a lengthy commitment. Due to a huge number of cases that are pending in courts, justice is sometimes rendered slowly. When this method of conflict settlement is selected, the arbitrators themselves are experts in their respective professions, which is advantageous because they can comprehend the issue more quickly and thoroughly. Thus, it is much simpler to administer justice when arbitrators are appointed who are experts in their respective sports, have a thorough understanding of the rules and regulations of the sport, and have even handled sports legislation issues before. It is more trustworthy, appealing, and dependable because the arbitrators' verdict is binding in a court of law. Awards from arbitrations besides conventional lawsuits may be contested. Maintaining privacy and confidentiality is another crucial element that helps to keep athletes' goodwill and avoid damaging their reputations intact. There is no such privacy preserved in litigation.

India is realizing the value of arbitration in facilitating the speedy resolution of legal disputes, as seen by the 2009 opening of the country's first arbitration center in Delhi. The legal framework

⁷ Alan Redfern & Martin Hunter, *Law and Practice of International Commercial Arbitration* (2004).

that many jurisdictions employ to handle arbitration disputes has been put to the test by the growing use of arbitration in sports during the past ten years.

Sports Arbitration in India

The Arbitration and Conciliation Act 1996 (Act) contains the provisions pertaining to arbitration law in India. The UNCITRAL Arbitration Rules of 1976 and the 1985 UNCITRAL Model Law on International Commercial Arbitration are prerequisites for the Act.⁸ According to the Act's Statement of Objects and Reasons, India's monetary reforms will only become significant if its dispute settlement procedures are aligned with global governance.⁹

The growth of numerous sports leagues, the sports sector and the prospects of sports entertainment have experienced tremendous growth in the past decade with regard to both viewership and investment. The need for a supportive dispute resolution system to settle sporting conflicts has increased along with this boom. In addition to providing a means of revenue for the economy, sporting events have served as a stage for national recognition in the context of international politics. Years after gaining independence, India realized how important it was to use the same. This sparked a wave of innovations aimed at creating a structured framework for the sports community. India saw its first advancements in the sports industry concurrently with the world's achievements. According to Entry 33 of the State List under the Indian Constitution, anything concerning sports, development, and any related matters fall within the jurisdiction of the State Government. But when it comes to matters of international sports, the Union Government is in charge of passing legislations in accordance with Entry 10 of List 1 of the Indian Constitution. Many private organizations really assume this task, even though the State and Union Governments are seeming to be in charge of overseeing national developments pertaining to the sports business. The issue leaps up when there is uncertainty surrounding the accountability of entities that operate independently of governments, meaning that the primary authority to control and influence events

⁸ UNCITRAL Arbitration Rules General Assembly Resolution 31/98, available at: <https://www.uncitral.org/pdf/english/texts/arbitration/arb-rules/arb-rules.pdf>, (visited on Sept 28, 2019).

⁹ S Kachwaha & D Rautray, Arbitration in India: An Overview, <https://ipba.org/media/fck/files/Arbitration%20in%20India.pdf>.

within the sports community is held by privately operated entities. One such example is the Board of Control for Cricket in India (BCCI)¹⁰, it is a self-governing body that is not listed under the state's definition and is therefore exempt from the statutory liability that accompanies it, such as the enforcement of Article 12 of the Indian Constitution. Therefore, it is essential to have a state-created organization that specializes in meeting the unique requirements of an efficient conflict resolution mechanism in the sports industry. The formulation of the Sports Arbitration of India (SACI), which has been expanded upon in the next paragraphs, addresses this disadvantage.

It became evident that there was a need for improvement in both sports and education after the 1982 Asian Games. The formation of the Sports Authority of India (SAI), an independent registered society, is credited to the year 1984. The first significant step toward the nation's desired development came in 1984 with the establishment of a National Sports Policy. It appears to be the synthesis of all goals and desires to advance the Indian sports community. It was clear from the patterns that there was no active national desire or interest in learning and participating in athletics as a skill. Subsequently, the policy's main goals were to support sports facilities and include physical education in the curriculum. The policy, however, did not place enough emphasis on establishing a more structured and well-equipped atmosphere with a defined set of regulations and institutional structures to enforce them. A recent National Sports Policy was envisioned and developed in 2001 in response to the 1984 National Sports Policy's lack of success. Accompanying the "Broad Basing of Sports," the main goals of the policy, which has been a collaborative endeavour started by the State and Union Government in accordance with the Olympic Association and National Sports Federation, were to advance world sporting excellence. It continued to emphasize integrating physical education into the pre-existing academic program. The approach created a barrier to the efficient application of the regulations by placing the enforcement burden on the federal and state governments to grant them the necessary authority to enact laws. The Indian Court of Arbitration for Sports (ICAS), headed by Dr. A.R. Lakshmanan as the Chairman, was established in 2011 to support these endeavours. One of the country's first significant initiatives to make a strong dispute resolution system that would explicitly address the complexities of issues pertaining to sport was the ICAS. The court operated under the tenet that

¹⁰ Board of Control for Cricket in India, available at: <http://www.bcci.tv/>.

sports disputes should be settled effectively and quickly, taking into account the short career of a sportsperson.¹¹

Guidelines on Protecting the Interests of Sportspersons and Providing an Efficacious Grievance Redressal System in the Constitution of National Sports Federations were introduced, marking another significant advancement in the expansion of sports rules. Following the Sushil Kumar Case, which was heard by the Delhi High Court in 2016, the Ministry of Youth Affairs and Sports released a notification outlining policies for sports-related dispute settlement. Two key aspects were emphasized in the recommendations titled "Safeguarding the Interests of Sportspersons and Provision of Effective Grievance Redressal System in the Constitution of National Sports Federations".

The goal of creating an open, cost-free, and equitable grievance procedure was to safeguard the rights of athletes and was instructed all sports federations to address situations where athletes are dissatisfied with the conclusion rendered by the sports association or federation by incorporating into their contracts and constitutions a provision for appealing to the Court of Arbitration of Sports, administering the sports federations to incorporate a provision allowing them, appeal to the Court of Arbitration of Sports in the event that they feel wronged by a federation or association's decision or judgement in both its contracts and constitutions.

Currently, the Sports Authority/Federation responsible for a particular sport in India or the State in issue appoints an internal panel to try and settle the majority of sports disputes in India. If the commission process fails, disagreements are typically litigated in the relevant High Court or the Supreme Court. A specialist framework for resolving issues in sports and the sporting sector is desperately needed. With the aim of addressing these issues head-on, the Law Commission of India has put forth numerous recommendations, the most important of which are the creation of a specialized body for sports arbitration in India and the potential formation of a contemporary, practice-friendly law to regulate the resolution of disputes in the field.

¹¹ Rajiv Dutta, Sports Arbitration in India: A Wake-Up Call, Legally India, (July 10, 2015), available at: <http://www.legallyindia.com/Blogs/sports-arbitration-in-india-a-wake-up-call>.

The Sports Arbitration Centre of India was established in 2021 to fill this need. The Sports Arbitration Centre of India (SACI) was established in Ahmedabad, Gujarat, in September 2021 by Minister of Law and Justice Kiren Rijju. Its purpose is to act as an autonomous organization that expedites the resolution of disputes in the sports industry and provides a means of addressing concerns pertaining to sports.¹² The Ministry of Law and Justice will offer necessary legal support, and SE TransStadia Pvt Ltd., based in Ahmedabad, will promote the SACI. The SACI's ability to decide a matter and additional problems and worries of sports organizations in a quick, transparent, and highly responsible manner would help it build confidence and have a significant impression on the nation's sports industry. It provides an impartial, more effective forum that solely addresses disputes within the sports community, thereby meeting the demand for an autonomous organization dedicated to the complex requirements of the nation's emerging sports age. Since the Ministry of Law and Justice established the center, it can be considered an augmentation of that organization, offering a degree of responsibility that was unclear before to this endeavor. A lack of idea or inventiveness has prevented many previous initiatives that attempted to support and encourage the growth of the sports community in India from realizing their goals. Developing the facilities in isolation will not suffice for the growth of India's sports community. It was however important to give athletes who participated in sports proper facilities, rules, privileges, and guidelines. It is crucial to grant these rights to all athletes and carry out this desirable vision by providing them with a platform that effectively serves as a settlement mechanism. It is insufficient to turn to India's judicial hierarchy for dispute resolution because the courts themselves continue to face administrative obstacles that will fabricate the procedure exceedingly complex and time-consuming, moreover to the lack of experience needed to handle cases of this kind. An efficient safeguard for Indian athletes that is both time-efficient and knowledgeable enough to handle potential conflicts is the existence of a Sports Arbitration Center in India.

¹² Rajiv Dutta, Sports Arbitration in India: A Wake-Up Call, Legally India, (July 10, 2015), available at: <http://www.legallyindia.com/Blogs/sports-arbitration-in-india-a-wake-up-call>.

Conclusion

Arbitration is clearly a good way to settle disputes in the sports industry, and our nation demands an effective sports law. Compared to the traditional court procedure used in other conflicts, it is both speedier and more efficient. Sports fans have short careers, therefore it's important to have a quick dispute resolution process, which arbitration can offer. The most crucial project is to increase public knowledge of the laws, rights, and resources that the community is entitled to. India has worked to build the sports community's infrastructure, essentially pushing towards the commercialization of the sport, even though there is a delay in the areas of arbitration and conflict resolution. The current situation demands formalization and the establishment of more structured institutions that offer sportsmen support and facilities so they may grow and succeed.