



Court of arbitration for sports (CAS): An efficient mechanism for resolving sports related disputes

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Abstract

Sports teaches you character, it teaches you to play by the rules, it teaches you to know what it feels like to win and lose-it teaches you about life"- Billie Jean King

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Introduction

'Sports' is defined as an activity involving physical exertion and skill in which an individual or team competes against another or others. It is based on skill, planning, competency, strategy and execution. The importance of sports in life can never be overemphasized. Both physical and mental wellbeing are the essential prerequisites of great achievements in one's life. The institute of sport extends into economics, education and mass media; it has been studied by anthropologists, historians, economists and political scientists, social psychologists and authors in physical education ^[1].

Commercialization of Sport: the Number Game

Traditionally, sports were restricted to games for recreation and leisure. However, over the years, it has extended to the contests of professional athletes. Modern day, sports has become highly commercialized on account of huge stakes involved. Sport is big business accounting for more than 3 per cent of world trade and 1 per cent of the combined GNP of the 15 member states of the European Union (EU) ^[2]. Cricket is almost a religion in India, Indian Premier League has been a huge hit among masses and its continued success has clearly demonstrated the commercial viability of franchisee, endorsement and broadcasting rights for club and league sports. Accordingly, other sports-football, hockey etc are too gaining increased viewership. It is not surprising, therefore, with so much money at stake that sports disputes are also on the increase. For example, in the UK some 19 million sports injuries occur each year costing around £500 million in treatment and absence from work ^[3].

Nature of Sport Related Disputes:

Sporting Disputes cover a wide range of disputes, namely-eligibility, doping, personal injuries, sponsorship, endorsement, licensing, merchandising, image rights and broadcasting arrangements. Such disputes vary in their subject matter neither being completely commercial or completely contractual. Hence, framing a concrete set of rules to govern every sports dispute is complicated. Rather than being governed by a single set of laws or rules, such disputes generally involve multiple norms and regulations. Added to

this is the fact that sports persons are of different nationalities and are constantly moving across national boundaries, it all adds to the challenges in resolving sports related disputes. The parties involved in dispute would, typically, be either a sports person and an international sporting organization or two Sports Federations or an organization and an ancillary member of the sporting fraternity.

Few Instances of Sports Disputes in India

Indian Super League (ISL), regulatory commission banned popular club FC Goa for 'indiscipline' and imposed a hefty fine of US\$ 1.6 million on the club owners. The club had boycotted the final prize distribution ceremony last year after some players had made allegations against the match officials. The FC Goa management had made adverse comments in the media disputing the result of league's final last year. The team co-owner Dattaraj Salgaocar claimed that two penalties given against his team in the last five minutes changed everything ^[4].

The Board of Control for Cricket in India, (BCCI) sacked Kapil Dev as chairman of the National Cricket Academy for aligning with Indian Cricket League, and barred all the 44 defecting players from playing for India or at the domestic level. It made clear that any cricketer who aligns with ICL will be banned for life from playing for India. Such practice on part of the BCCI may attract liability under the provisions of the Competition Act, 2002. As per Section 4(2)(c) of the Act if any enterprise "indulges in practice or practices resulting in denial of market access in any manner", then it shall be liable for abuse of dominant position. Thus, such practice of banning players from domestic tournaments on account of joining the rival leagues may prove expensive for the BCCI, which may face a challenge on grounds of abuse of dominant position ^[5].

Sports: Legal Framework

Sports events worldwide are organized in a pyramid structure, where a particular sport is governed and regulated by a single International Federation (IF) with various National Federations affiliated to it. The International Federation governs the regulatory aspect i.e. laying down the rules of the

sport, eligibility criteria and playing condition. In India sports information is in the Concurrent list of the Seventh Schedule (entry 33) of the Constitution of India on which both the union and state legislatures are proficient to put together laws. In India, for example, the administration of sports activities is in the hands of autonomous bodies, such as Sports Authority of India (SAI), Indian Olympic Association (IOA), Hockey India (HI) and Board of Control for Cricket in India (BCCI).

Sports Arbitration

Sports professionals have got very short careers compared to other professionals and traditional litigation which runs into years together causes irreparable damage to them. Arbitration, a form of alternative dispute resolution (ADR), is a legal technique for the resolution of disputes outside the courts, wherein the parties to a dispute refer it to one or more persons (the “arbitrators”, “arbiters” or “arbitral tribunal”), by whose decision (the “award”) they agree to be bound. It is a settlement technique in which a third party reviews the case and imposes a decision that is legally binding for both sides.

This paper attempts to study the role of Sports Arbitration, Court of Arbitration for Sports (CAS) in particular, as an efficient mechanism for resolving sports related disputes, landmark cases where CAS has played a great role in resolving sporting disputes involving sports technicalities and inherent advantages of CAS as a preferred mode for dispute resolution.

Court of Arbitration for Sport (CAS)

Arbitration exists in international sport through the Court of Arbitration for Sport (CAS). The Court of Arbitration for Sport (CAS) is an institution independent of any sports organization which provides for services in order to facilitate the settlement of sports-related disputes through arbitration or mediation by means of procedural rules adapted to the specific needs of the sports world. The CAS was created in 1984 and is placed under the administrative and financial authority of the International Council of Arbitration for Sport (ICAS). The CAS has nearly 300 arbitrators from 87 countries, chosen for their specialist knowledge of arbitration and sports law. Around 300 cases are registered by the CAS every year ^[6]

A dispute may be submitted to the CAS only if there is an arbitration agreement between the parties which specifies recourse to the CAS. The language for the CAS is either French or English. In principle, two types of dispute may be submitted to the CAS

1. Commercial Disputes, and
2. Disciplinary Disputes.

Commercial Disputes

The first category essentially involves disputes relating to the execution of contracts, such as those relating to sponsorship, the sale of television rights, the staging of sports events, player transfers and relations between players or coaches and clubs and/or agents (employment contracts and agency contracts). Disputes relating to civil liability issues also come under this category (e.g. an accident to an athlete during a sports competition). These so-called commercial disputes are handled by the CAS acting as a court of sole instance.

Disciplinary Disputes

Disciplinary cases represent the second group of disputes submitted to the CAS, of which a large number are doping-related. In addition to doping cases, the CAS is called upon to rule on various disciplinary cases (violence on the field of play, abuse of a referee). Such disciplinary cases are generally dealt with in the first instance by the competent sports authorities, and subsequently 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. According to Articles S12, S20, R27 and R47 of the Code, the Appeals Arbitration Procedure is open for the appeal against every decision rendered by a federation or club and not limited to disciplinary matters, especially doping cases. In addition, Article R57 empowers the CAS Panels not only to annul a certain decision, but also to replace a decision by a decision by a decision of the arbitrators, or to refer the case back to the issuing body. Moreover, Article R58 authorises the Panel to apply the ‘rule of law’ it deems most appropriate for the case. Thus the Panels may deviate from the laws of the country in which the federation is domiciled and reach a decision on the basis of laws of another country or other rules of law, such as general principles of law.

The CAS acquires its jurisdiction in a particular case only through the mutual consent of the parties involved. Currently, all Olympic International Federations and many National Olympic Committees have recognised the jurisdiction of the CAS and included in their statutes an arbitration clause referring disputes to it. The CAS hears approximately 200 cases per year. While it was the international response to the rise in the use of performance-enhancing drugs and the resulting doping cases that fueled the creation of the CAS, the Court is called upon to assist in a wide range of sport conflicts, including sponsorship disputes, the eligibility of a particular athlete in accordance with a sport’s constitution, as well as the resolution of disagreements concerning competition results. The determination of issues arising in doping cases remains a significant portion of the CAS caseload ^[7].

There are only a few circumstances under which such an award may be challenged:

- a. Irregular designation of sole arbitrator or arbitral tribunal
- b. The tribunal made an error with regard to its own jurisdiction
- c. The tribunal ruled on matters beyond its claims or left out a claim without ruling,
- d. Principle of equality not followed
- e. The award goes against Public Policy ^[8].

Court of Arbitration for Sports (CAS): Important rulings

- In 2003, Canadian cross country skier Becky Scott successfully appealed to the CAS with respect to her claim that she be awarded the 2002 Olympic gold medal in the 5-km pursuit event. Russian skiers Olga Danilova and Larissa Lazutina finished first and second respectively in the competition, with Scott in third place,

- and each athlete passed their post-event doping test. Danilova and Lazutina each failed a subsequent doping test administered in relation to another Olympic cross-country event, when the presence of a prohibited blood doping agent, darbepoetin, was detected in each skier's sample. Scott appealed her 5-km race result on the basis that both Russian skiers were engaged in ongoing doping practices. The Scott ruling was the first time in Olympic history that a gold medal had been awarded to an athlete as a result of a CAS ruling^[9].
- In 2005, the CAS arbitration panel ruled that American sprinter Tim Montgomery be banned from international competition for two years as a result of doping, in spite of the fact that Montgomery had never failed a doping test. The CAS ruled that it could find a doping violation on the basis of the third party evidence called against Montgomery, most of which connected Montgomery to the Bay Area Laboratory Cooperative (BALCO) athlete steroid scandal that had arisen in the United States in 2003^[10].

Court of Arbitration for Sports (CAS): Advantages

The Court of Arbitration for Sports has got certain inherent advantages compared to ordinary courts, as follows:

1. **Expert Domain Knowledge:** Expertise in sports-related disciplines (there are more than 300 arbitrators from 87 countries qualified to hear CAS disputes)^[11] whereas a typical civil judge will not likely possess such sports-specific technical knowledge.
2. **Privacy Protected:** CAS follows a private procedure and therefore is conducted without the public glare or media interference. The arbitrators and CAS staff are obligated not to disclose any information connected with the dispute^[12]. Sports disputes generally involve prominent personalities. Popularity of sports stars makes privacy in an actual litigation a practical impossibility. For Eg. Privacy has been held to be a Fundamental right in India. For this reason, arbitration in sporting disputes is an added advantage as it is possible to keep arbitration proceedings private and hence protect reputation^[13].
3. **Wider Acceptance:** The arbitrators involved in CAS are all high level jurists and are held in high regard in the international sports community. Thus there is a wider acceptance with CAS awards.
4. **Simplified Procedure:** The procedure is flexible and informal and can be understood better.
5. **Time Bound:** Another great advantage with CAS is that it delivers time bound awards. There is expeditious proceeding as cases are heard and determined within a few months from the date of reference. During the Olympics, for example, awards are required to be made within 24 hours. This augurs well for both the athletes and sports federations.

CAS: Filling the Gaps

Prior to setting up of such institutions, and development of a specific "sports law", the interpretation of sporting disputes was left to Civil Courts who interpreted law as per their own interpretation of ordinary civil law without any domain specific knowledge. The dynamic development of a "Sports

Law" led to the twin concepts of *Lex-Sportiva* (technical rules associated with Sporting Law, which regulates the public aspect and includes the "specificity of Sports" within itself) and *Lex-Ludica* (the "spirit of sports", of ethical sporting conduct, sportsmanship, fair play and other aspects which privately regulates sporting conduct of athletes in tournaments)^[14]. The twin concepts were developed through precedents by international institutions such as the Court of Arbitration for Sports ("CAS").

The CAS has, over the years, become a central body for the settlement of sport related disputes. It also possesses a distinct body of precedents that should be followed. An example of a well-known case would be of Floyd Landis who was facing allegations of doping during a stage in the *Tour De France*. He chose to post all the facts online and make it a public and transparent proceeding which is now popularly known as the *Wiki Defence*^[15].

In *Sandra Gasser's* case, the material issue was doping. *Gasser's* advocates argued on the legal aspect that a ban on doping amounted to restraint of trade. The Courts had no difficulty in dismissing the argument of IAAF which was centred around arguing that *Gasser*, as an "amateur" athlete, did not have any trade, and therefore, there could not be any restraint. The Courts held that there could not be any amateurism, rather, *Gasser was a sportsperson, and as a sportsperson, any action that infringed her right to compete amounts to a restraint of trade*^[16].

In *Renolds' case*, in spite of the facts, the issues that arose interestingly was the absolute disregard of IAAF for the Court process, wherein IAAF had remarked that "*Courts create a lot of hindrance in the anti-doping work. But the IAAF doesn't care the least for what the Courts say. The Rules of IAAF are supreme and IAAF will follow their Rules*"^[17]

Conclusion

There is no denying the fact that given short career spans that sports professionals have, prompt resolution of disputes is much needed. Ordinary litigation is always fraught with inordinate delays. Additionally, Sports Law has got on its own technicalities and nuances and the one deciding such disputes too needs to have a thorough understanding of the same. Institutions are also required to be set up with a working knowledge of sports laws. The working knowledge needs to be discipline specific too and must frame a concise and clearly distinguishable dispute resolution practice that places emphasis on "Alternate Dispute Resolution" because of inherent added advantages. CAS holds a unique place as the "Supreme Sports Resolution Authority". Various domestic arbitration tribunals have also been set up to in various local jurisdictions to deal with Sports Disputes

Within the Indian sports jurisprudence, a positive step was taken in 2011 with the Indian Olympic Association being directed by the International Olympic Committee to establish an Indian Court of Arbitration for Sports ("ICAS") which was to be composed of eight Panellists to adjudicate disputes arising in the sporting arena. The Panellists were retired judges of the Supreme Court of India and various High Courts^[18].

There is no doubt that had there been an effective Alternate Dispute Resolution process in place, BCCI and IPL related

issues, could had been resolved more amicable instead of media turning them into sensationalism. Many such prospective issues could be better solved though arbitration which leads to a win –win situation instead of scenario where both Sports Federations and athletes are caught settling scores in a hostile litigation.

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