

Sports Dispute Settlement in India: A Legal Quandary and Possible Remedies

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Abstract: Human race has an inborn tendency to cooperate, compete and conflict, which form very essence of sports. Sports teach a human to work together and coordinate with others to achieve the desired goals. But the most important element of sports is competition. The degree of competition has grown exponentially with the advent of commercialization of sports and aligned activities and hence the increase in disputes. Considering that the sportsperson's career is of very short span, and the opportunity to represent the country at big events comes to many once in a lifetime, a faster and effective dispersal of the cases will not only save the sportsperson's career but also may result into more glory in global events. The research discusses the possibilities and the outcomes of setting up of Sports Tribunal in India for effective settlement of disputes in sports.

Keywords: Sports, Disputes, Tribunals, Legal Machinery, Settlement

Introduction

Human race has an inborn tendency to cooperate, compete and conflict. The very essential of human race is the ability to cooperate and coordinate to fulfil the demands. The demands for food, shelter, clothing and above all the sense of accomplishment. These form the very essence of sports. Sports also play a very crucial role in the development of the individual physically and mentally. Sports teach a human to work together and coordinate with others to achieve the desired goals. But the most important element of sports is competition. The degree of competition has grown exponentially with the advent of commercialization of sports and aligned activities. With new rules, regulations, and code of conduct the behavioral aspects of the sportsmen are governed to keep them in aligned with the aspirations of the nation, people, and sports lovers. With so many things like fame, popularity, money, and idolism growing the conflicts in sports have seen a drastic elevation. The conflicts between the sportsperson during an event are controlled and solved by the referee or the umpire. But the conflicts between the management and sportsperson have not been addressed in the manner they ought to be. Right from the cases of Sarita Devi¹[1] to S. Sreesanth, from Ajay Jadeja²[2] to Wrestlers protests the situation has gained little attention of the administration for the need of Sports Tribunal to solve the disputes in sports in a better and effective manner. The courts take their time which is understandable considering the overloaded judiciary. But one thing to note is that the sportsperson's career is of very short span. And considering the opportunity to represent India in big events comes to many once in a lifetime. A faster and effective dispersal of the cases will not only save the sportsperson's career but also may result in more glory in global events.

Dispute Redressal Mechanism

There are various countries which have specialized and dedicated sports Tribunals to deal with the issues, conflicts, and disputes in sports. India presents a strong contention for establishment of Sports tribunal which shall deal with conflict and dispute resolution in sports. Court for Arbitration in Sports (CAS) has been the apex international body hearing and resolving disputes related to Doping and use of energy and potency enhancing substances (Duval, 1995). CAS is divided into two divisions of which the first The Ordinary Arbitration Division deals with acts like the court which takes the first cognizance, and the second division is The Appeals Arbitration

¹ Rajiv Dutta vs Union of India & Ors 2016 SCC Online Del 265

² Ajay Jadeja vs Union of India and Ors. 95 (2002) DLT 14, 2002 (61) DRJ 639

Division which deals in resolution of the decisions of the federations, associations and any other appeal that is related to the sports³. The CAS deals with disputes under Doping and other Performance Enhancing Drugs (PEDs). Established in 1999 World Anti-Doping Agency WADA is an independent agency that governs the doping in sports and aims at fair and doping free sporting events round the globe⁴. The primary role of WADA is that of developing anti-doping rules to harmonize the sports across countries. The question arises whether there is any international law that governs sports or to say in other words International Sports Law. The national sports law derives immunity from the national or local laws i.e., law of land [4]. The very nature of international sports makes it impossible to be governed by any national or local laws. In the case of *Reynolds v. IAAF* [1992] 841 F.Supp 1444, 1452 where the athlete was suspended as his urine sample tested positive for anabolic steroid nandrolone. Here where the United States District Court, S.D. Ohio, E.D. found that there was sufficient doubt on the samples that were tested and hence giving the plaintiff Henry J. Reynolds the athlete benefit of doubt quashed the orders of injunction (Ban) to participate in any competition for 2 years by the IAAF and ordered that the athlete be allowed to participate. *Harry L. Reynolds, jr. v International Amateur Athletic Federation*. (841 f. Supp. 1444 (1992))⁵. One of the major concerns of the court in the above case was that the IAAF and TAC marked their correspondence with regards to the test of the athlete and their findings of Doping as 'Confidential'. This may cause serious harm to the repute of the athlete and his integrity for the future will always be questioned. Also, the concern that the IAAF published the results that the athlete ingested himself PAD Nandrolone before giving the opportunity to the accused of being heard. Which is against the basic principle of laws. Another concern that was highlighted was how IAAF self-immunized itself from the jurisdiction of the court through its own rules. In the absence of any International Sports Law the issues are endless and the dominance and power that the sporting bodies exercise over the athlete imbalances the paradigms of justice.

Issues in Common Sports Law

The very nature and diversity in sports makes it difficult and complex to comprise a common sports law (Davis, T. 2012). Legislating a common sports law is a complex issue, due to the varying and unique characteristics of different sports. Every sport has its own rules and regulations which are governed, drafted, and altered by the professional sporting bodies such as ICC for Cricket, FIBA for Basketball, FIFA for Soccer etc. Apart from these, the International Olympic Committee acts as a custodian for any sport to be a part of the Olympics which is represented by International Sporting Bodies. Thus, having a commonly accepted Sports Law seems not so feasible (Dashkovska, Yavor, Brovchenko, Huz, Barabash (2021). Sports and its legal aspects were studied by various scholars in order to regularize and create a uniform sports law for effective management of sports. For constituting the Court of Arbitration in Sports was studied and analyzed by Casini (Casini, 2011). The role of CAS in controlling various issues in international sports and its interaction with various sport governing authorities laying a perspective of the globalization of sports and sports law (Nafziger (2006). A study of development of sports law with reference to substantive capacity, external borders with various branches of law, local or characteristics of the nation and its universal applicability cross boundaries was analyzed by Felops (Felops et al., 2006). There are numerous issues in sports that need to be addressed beyond the rules and regulations. Issues such as pay parity, gender discrimination in representation on international forums, issues related to training and the equal opportunities, infrastructure needs, labour aspect in sports i.e., the grounds men and other behind the scenes workers, administrative accountability and above all justice to all. These issues are the root causes for roadblocks that hinder the development and prospective growth of the sports person and sports overall. There is no dedicated authority for redressal except the courts which are time, money and effort consuming. Considering the importance of time and the limitation as to the age and opportunity of a sports person renders injustice for any dispute that may arise.

³ Rule 61, International Olympic Charter, retrieved from:

<https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf>.

⁴ <https://www.wada-ama.org/en/who-we-are>

⁵ *Reynolds v. International Amateur Athletic Fed'n*, 841 F.Supp. 1444, 1454 (S.D.Ohio 1992):
retrieved from: <https://law.justia.com/cases/federal/district-courts/FSupp/841/1444/1508617/>

Analysis of Role of CAS

The power of CAS in matters of sports dispute is questionable. Taking about arbitration clause in the contract between the sports person and the governing body is imbalanced in favor of the administrative body. The athlete who wishes to represent the nation in international tournaments or has a will to reach the top level of sporting dais has to under the duress agree with terms and conditions of the sport governing body. As it is only after the affiliation with the governing body he or she can compete at the desired level. The dispute settlement through CAS and its jurisdiction is unequivocal and not free⁶. It becomes difficult to justify the transnational jurisprudence to explain and justify CAS when we consider the power and impact that CAS has which acts beyond the parties to the dispute (Lindholm 2021). Appointment of unilateral arbitrator defects the very purpose of Arbitration as an effecting means to settle the disputes (Bühning-Uhle (2005), Paulsson (2010)). It is argued that after the Pechstein decision the delivered by the European Court of Human Rights that the appellate powers of the CAS are totally arbitrary and lack the guarantee as it is deemed to be forced arbitration (Duval, A., 2021). In the case of Semenya v Switzerland the European Court of Human Rights held that due to the provision of compulsory arbitration through CAS in sports the applicant is deprived of her basic right to seek remedy through ordinary courts and due to the only remedy available against the request of arbitration to the Federal Court of Switzerland and no other remedy was available⁷. On similar grounds in domestic or national level sports the dominance and power exercised by the sports administrative bodies over the professionals is far beyond the realms of effective and efficient justice through arbitration. Justice should be fair and free from incumbents. Where the parties under compulsion to adopt a particular redressal mechanism without having an effective and efficient mechanism is defeat of judicial system. Also, taking into consideration the domestic or National Sports where the CAS has no role to play, the National Sporting Bodies have an unparalleled advantage in case of disputes with the sportsperson.

Need for Sports Tribunal

In India sports is gaining much attendance and the participation has grown multi levels. Sports have gained importance, and the policies of the government have ensured that sports are developed at the very grass root level. Competitions and tournaments are organized at various levels starting from schools, Universities, districts, states and national and there the selections of the sports person are made for representing India at various international events. The remedy available in these disputes is very limited as the athletes are bound by the contract and its terms that they enter under duress. The professional life span of an athlete is very short and in that too an athlete who is in dispute with the Sport's Governing Body is generally till the pendency of the dispute is barred from appearance in any tournaments. Due to which he or she may lose on achieving feats and may also cost him or her loss of the golden period in sports. On January 18th, 2023, a major rebellion in the sport of wrestling broke out. The rebellion was against the Wrestling Federation of India Chief, Brij Bhushan Sharan Singh charging him for sexual exploitation and biased selection. On 19th January the wrestlers protesting the WFI chief met with Anurag Thakur (Minister of Sports) and placed their contention but to no avail. On January 20th the wrestlers wrote a letter to Indian Olympic Association (IOA) demanding constitution of an inquiry panel to probe the allegation and appointing a new Chief of WFI in their consultation. Things went on for a few weeks, but the protesting wrestlers were still short of proper remedy to their allegations. On April 23rd seven female wrestlers along with a minor wrestler file complaint against Brij Bhushan for sexual harassment at the Connaught Place Police Station in Delhi. The police however did not file the FIR until intervention and reprimanded by the Supreme Court of India. The IOA arbitrarily altered the selection criteria to one-bout for the six protesting candidates for Asian Games and World Championship, which was protested by several coaches, and guardians of other wrestlers and contended to take back the decision of granting this exemption. Bajrang Punia and Vinesh Phogat two of the main protesting

⁶ European Court of Human Rights, *Mutu & Pechstein v. Switzerland*, appl. nr. 40575/10 & 67474/10, paras 92–115.

⁷ *Semenya v. Switzerland* (application no. 10934/21); Retrieved from: <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-7701636-10631196&filename=Judgment%20Semenya%20v.%20Switzerland%20-%20Discrimination%20against%20international-level%20athlete%20who%20was%20not%20afforded%20sufficient%20procedural%20safeguards%20when%20challenging%20World%20Athletics%20regulations.pdf>.

wrestlers and Olympic wrestlers got direct entry into the Asian Games. This was again protested by the young wrestlers against 'unfair trial exemption'. On August 23rd the UWW (United World Wrestling) the International Governing Body for Wrestling suspends WFI for not conducting elections. This issue did not only hamper the careers of the Sport person but also tarnished the image of India on the global front. Apart from this the various petitions that were filed in courts in different states also complicated the issue with various stay and other orders issued by courts. The questions that arose: "Had there been a dedicated body to handle sport issues, would the matter be handled in a more effective and efficient manner"? "Had there been a specialized judicial machinery to handle sports issue the precious period of the Sports Persons and the opportunity to compete would not have been compromised"?

Sports Tribunal need of the hour.

The Constitution of India under Articles 323A and 323B under the 42nd Amendment imbibes the provision for Administrative Tribunals. Under the Report no. 58, Structure and Jurisdiction of Higher Judiciary, Law Commission of India⁸, it was advised that quasi-judicial bodies under specialized subjects be formed to deal with the cases under that subject matter. The basic objective for setting up the Tribunals was to lighten the burden of cases on the Higher Judiciary and to provide cheap, speedy, and effective adjudication of specific subject matters. Under Article 323A provision for setting up Service Tribunals is embodied. The efficiency of the tribunals depends largely on the compliance of its adjudication by the parties. Tribunals are set up by the State Government under various statutes. The Government also has the power to amend the working conditions of the Tribunals in consistency with the provisions of the Constitution of India. The members or the presiding officers of the Tribunals are appointed by the Government and the pay and service conditions can be altered by the government by simple resolutions passed in the state assembly. Thereby compromising on the independence of the Tribunals. The composition provided in the statute provides for appointment of non-judicial members. The non-judicial members in the case of the Sports Tribunal can be ex or retired Sports Personnel, who will be in a better position to understand the complexities of the sport and the dispute and may be able to give a better relief. Australia is the country to set up a Sports Tribunal (National Sports Tribunal) under National Sports Tribunal Act 2019. The types of disputes handled by NST are.

1. Anti-doping and Appeals method adopted Arbitration.
2. Disciplinary (General and Appeals) methods adopted Arbitration.
3. Case appraisal method adopted mediation, conciliation.
4. Selection and eligibility (General and Appeals) methods adopted Arbitration,
5. Case appraisal method adopted mediation, conciliation.
6. Bullying, harassment, and discrimination (General and Appeals) method adopted Arbitration, case appraisal, mediation, conciliation.
7. Other (CEO approved) disputes (General and Appeals) method adopted Arbitration, case appraisal, mediation, conciliation.

The NST does not handle disputes with regards to the disputes that happen in the field of play, thereby not interfering in the rules and regulation of the play of sporting event. The establishment of the NST has enabled the provision of power of the Tribunal to compel Third-party evidence in deciding upon the disputes which is absent in case of CAS or other arbitration proceedings in sports disputes. It has not only strengthened the judicial process but also has inculcated integrity and reliability in decision making authority. In India also where there are number of Tribunals such as Income Tax Tribunal, Civil Service Appellate Tribunals, Company Law Tribunal etc. are already in existence and have been performing satisfactorily. Setting up the Sport Tribunals (National Sports Tribunal and State Sports Tribunals) will provide for better dispute settlement of disputes in Sports.

⁸ Tribunals | Law Commission of India | India: retrieved from:
https://lawcommissionofindia.nic.in/cat_tribunals.

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