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TITLE OF PAPER: THE ESSENTIAL AND GROWING ROLE OF ALTERNATE DISPUTE RESOLUTION IN SPORTS LAW IN INDIA

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ABSTRACT

Worldwide, alternate dispute resolution has become a common means of dispute resolution parallel to the court system itself. Disputes in sport are inevitable, particularly in the areas of team selection and eligibility and particularly before a major competition such as the Olympic Games. In the past few years, extensive usage of alternate dispute resolution in resolving sports-related disputes has been made in a number of countries including the United States, New Zealand, Great Britain, and Canada. Yet, this remains an underused tool for resolving sports disputes in India. The essay will look at the intersection between ADR and sports law at the national platform. It begins with discussing the existing mechanism of sport dispute resolution in the country and its shortcomings. The essay highlights the current problems in the redressal mechanisms of National Sports Federations in India which pave way for the essential role of ADR in sports dispute resolution. The underlying premise of this essay is that sports dispute resolution by alternate forms of dispute resolution is the need of the hour. It should be designed further to support and facilitate the desired result. ADR must be particularly used in sports-specific dispute because it is speedy, cost-effective and private process. It will further put forth the arguments in favor of using ADR in SDR. The essay ends with concluding remarks and suggesting few measures to strengthen the framework of dispute resolution in sports by ADR.

Keywords: alternate dispute resolution (ADR), Court of Arbitration for Sport (CAS), National Sports Federation (NSF), sports dispute resolution (SDR), sports law.
1. INTRODUCTION

A lot has changed in the world of sports since its introduction to the mankind. Traditionally, the sole aim of sports was to enhance and maintain one’s physical and mental health. “All work and no play make Jack a dull boy” was a common expression which placed emphasis on the importance of sports in development of human personality. A sport by contemporary definition has become more of a competitive activity rather than merely a recreational activity. However, with time this notion has undergone enormous change and sports today has acquired several other purposes. Sports Competitions now have the power to clasp and harness worldwide audience. It has become more competitive than ever. Though the concept has largely remained the same, competitions have drastically changed in terms of size and the level of participants since they were first officially introduced.

Worldwide, sports are considered to be a big industry. The same is increasingly becoming true for India too. In India itself sport approximately amounts to 0.5% of the Government of India expenditure\(^1\). With the growing competition and commercialization, disputes in sports are inevitable. Disputes may arise in the area of representation, team selection, eligibility etc. especially before a major competition is being held. There is an increasing trend of resolving all such disputes by way of alternate dispute resolution mechanisms (hereinafter referred to as ‘ADR’). The underlying premise of this essay is that sports dispute resolution (hereinafter referred to as ‘SDR’) by alternate forms of dispute resolution is the need of the hour. It should be designed further to support and facilitate the desired result. ADR must be particularly used in sports-specific dispute because almost all disputes in sports in a way or the other have a commercial impact. A mere disciplinary action against a player may have a huge commercial impact on his career and the club or team he is associated with.

Simon Gardiner\(^2\) rightly points out “The sports world is a small one – everyone seems to know somebody – and relationships, and indeed, reputations, are therefore more important and worth preserving”. ADR allows the disputes to be resolved within the sports fraternity. The essay will look at the intersection between ADR and sports law both at the national and international

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\(^1\) The peculiarity of sports resolution in sports, LAKSHMIKUMARAN & SRIDHARAN ATTORNEYS (Sept. 28, 2020, 04:30 PM), https://www.lakshmisri.com/newsroom/archives/The-peculiarity-of-dispute-resolution-in-sports#.

platform. It will further put forth the arguments in favor of using ADR in SDR. The essay ends with concluding remarks and suggesting few measures to strengthen the framework of dispute resolution in sports by ADR.

2. DISPUTE RESOLUTION SYSTEM IN SPORT

Sport disputes include a wide range of disputes from representation, eligibility, doping, and injuries to issues of gender inequality, bans and disciplinary actions. The nature of sports dispute may be purely commercial, regulatory and quasi-criminal. However, all disputes have a commercial impact. Due to such dynamic nature of sport disputes, it becomes difficult to frame a concrete set of rules to govern each dispute. The SDR does not provide for a fixed hierarchy or method. Generally, parties involved in sports disputes have three ways of resolving their disputes: Firstly, by complaining to the internal authorities available within the sporting federations in nations; Secondly, by instituting a civil or criminal suit in a court of law and thirdly, through ADR mechanisms.

In India, National Sports Federation (hereinafter referred to as ‘NSF’) is considered to be a suitable forum for resolution of sport related dispute. It works on the concept of sport being “legally autonomous” which means that disputes so far as possible must be resolved “internally”\(^3\). However, the inability of NSFs to establish satisfactory internal mechanisms and forums to address the disputes has come to light with the two recent cases. The first case\(^4\) challenged the decision of suspension of female-boxer Sarita Devi for refusing to accept a bronze medal at the Asian Games by International Boxing Association. Mr. Rajiv Dutta, senior advocate in the case argued that these federations should take note of the rules and regulations laid down by Court of Arbitration for Sports. The second case\(^5\) was filed by former Olympic wrestler, Sushil Kumar against the arbitrary selection procedure adopted by the Wrestling Federation of India for India’s representation at the 2016 Olympics.


The problem is further escalated by NSFs’ inability to incorporate an arbitration clause within their regulations entitling athletes final recourse to the Court of Arbitration for Sport (hereinafter referred to as ‘CAS’). Under such circumstances it is argued that ADR is an effective method of dispute resolution.

2.1. SPORTS LAW AND ADR

With increase in sports disputes, ADR offers the most suitable, flexible, inexpensive method of dispute resolution. The disputes when referred to courts take a long time to resolve since the Indian courts are already burdened with a number of pending cases. ADR is a system of non-adversarial method of justice delivery which provides an alternative to the conventional methods for resolving disputes. It can be defined as a collective description of process or mechanisms that parties can use to resolve disputes such as mediation, conciliation, negotiation and arbitration.

Sports arbitration is a form of SDR which specifically deals with matters or disputes of sport of all kind. The SDR mechanism although settles disputes in sports arena through various modes which include mediation, conciliation and arbitration, but the most widely prevalent and used mode is that of arbitration. This is because of booming of sports-specific arbitration institutions and bodies worldwide.

3. INTERNATIONAL CONTEXT

3.1. Court of Arbitration for Sports

3.1.1. Overview

In 1981, Juan Antonio Samaranch, who was the then president of International Olympic Committee (hereinafter referred as ‘IOC’), envisioned a “Supreme Court for World Sport.” In 1983 the IOC established the CAS, a private international arbitral body in Lausanne, Switzerland, to provide a platform for hearing and settling sports-related disputes. It is the apex authority where disputes between sports personnel and sports federation are resolved. In CAS,

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the effective law is collectively chosen by the parties. In absence of agreement Swiss law applies. It is an arbitration tribunal whose jurisdiction and authority entirely depend upon the agreement between the parties.

3.1.2. Award and Jurisdiction

The awards made by CAS are enforceable just like the judgments of normal courts. Appeal from the award of CAS can be permitted on a limited number of predetermined grounds to Swiss Federal Tribunal⁷. Disputes arising out of any matter whether directly or indirectly connected to sports may be submitted to the CAS.

4. NATIONAL CONTEXT

For a very long time sports have been the neglected area in India. However, the situation has transformed gradually in the last 2 decades. In India, a few associations make up the overseeing authorities of issues in sports including the Sports Authority of India (hereinafter referred as ‘SAI’) and the Sports Law and Welfare Associations of India. In terms of legislative framework sports law in India is governed and regulated by National Sports Policy of India and the Sports Broadcasting Laws. These organization authorities deal with the existing laws and make new laws in order to manage and to regulate issues emerging from the sphere of sports law in the country.

4.1 Indian Court of Arbitration for Sports

To settle the dispute expeditiously International Olympic Association guided by the IOC had decided to come up with an Indian Court of Arbitration for Sports (hereinafter referred to as ‘ICAS’). ICAS was to comprise of eight retired judges of higher judiciary. All the disputes emerging in the connection of sports will be decided by the ICAS. This was done in light of the fact that the lifespan of an athlete is restricted and they can’t stand to lose time in litigation. However, there is barely any evidence to support or suggest that the ICAS is functioning with

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full potential and capacity. Rajiv Dutta\textsuperscript{8}, senior advocate, while raising important questions over the functioning of the Indian Court of Arbitration for Sports cited a case involving doping of an Indian Swimmer. The case was not heard by ICAS and instead referred to Alternative Hearing Centre of the CAS at Abu Dhabi, where the Sole Arbitrator held against the Indian swimmer. This stands testimony to the non-functioning of ICAS. This has been discussed in detail in the latter part of the article.

4.2 National Sports Federation

One noteworthy issue in Indian sports today is the dispute resolution mechanism. The dispute resolution mechanism provided inside NSF deals with disputes and grievances emerging out of selection method of athletes for representation at different national and global forums, disciplinary issues against the athletes, ban because of age fraud, gender inequality, maintenance and submission of medical record, and issues with respect to monetary support. However, SDR mechanism under NSF has time and again come to be ineffective. The NSF didn't have that sort of knowledge to illuminate the issue identified with the sports, and eventually the sports person needed to go to the courts so as to seek justice. The shortcomings in the SDR mechanisms provided by NSF have been discussed in detail in the subsequent part of the article.

In the case of Rajiv Dutta v. Union of India\textsuperscript{9} the court stated that there is a provision of appeal to CAS in the National Sports Code of 2011 against any decision of Sports Federation of India. The court also laid down the guidelines in this case for NSF to include the clause of CAS in their constitution within 3 months but NSF failed to do so.

5. CURRENT PROBLEMS IN SDR

The inability of NSFs to satisfactorily resolve disputes is a major challenge to effective SDR mechanism in India. This fact was highlighted in the case of Sushil Kumar v. Union of India.\textsuperscript{10} To briefly recap the facts, Sushil Kumar, a former Olympic wrestler filed a case against the Wrestling Federation of India and made Ministry of Youth Affairs and Sports a party to the case. The case challenged the arbitrary selection procedure for India’s representation at the 2016

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\textsuperscript{9} Supra note 4.

\textsuperscript{10} Supra note 5.
Olympics. The Ministry of Youth Affairs and Sports, in response to the case filed, issued a new set of guidelines titled “Safeguarding the Interests of Sportspersons and Provision of Effective Grievance Redressal System in the Constitution of National Sports Federations”. The guidelines directed all the NSFs to establish an effective, transparent and fair grievance redressal system to hear and settle disputes. The guidelines further directed the NSFs to incorporate the right of appeal to CAS for aggrieved sportspersons in their constitution.

Prior to such guidelines, there were only two remedies available to a sportsperson against a decision of the NSF. One, make an informal request to the NSF to reconsider their decision, and two, bring a suit in Indian courts against the decision of NSF.

Practically speaking, both the remedies have proven to be futile in the past. NSFs barely change their decisions and suits in courts take too long to settle. For instance, in the case of Amit Kumar Dhankar v. Union of India, the petitioner had challenged selection of respondent by Wrestling Federation of India for a wrestling event at the Rio Olympics Games 2016. The decision in the case came long after the event in question (Rio Olympics) had already taken place. Further, the uncodified rules of NSF have time and again made the Courts handicapped in holding the discretion exercised by NSF to be arbitrary or capricious or perverse. For instance, in Sushil Kumar v. Union of India, the Delhi High Court observed the following:

41. Keeping in view the aforesaid, this Court is of the view that a writ Court will not interfere in the exercise of discretion of the National Sports Federation and substitute its own judgment except where the discretion is shown to have been exercised in an arbitrary or capricious or perverse manner or contrary to settled principles or practices.

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12 W.P. (C) 3914/2014.
13 Supra note 5.
It is pertinent to note that some NSFs have failed to establish grievance redressal system as per guidelines because there was no time period prescribed in the guidelines for establishment of such a system.

Apart from this, another challenge in SDR today in India is non-incorporation of an arbitration clause entitling athletes final recourse to the CAS. Though National Sports Development Code, 2011 has implicitly recognized the jurisdiction of CAS by stating that NSFs must comply with the principles laid down in the Olympic Charter. But NSFs are yet to include such a clause thus leaving athletes with no recourse to appeal to CAS. It is also important to note that Courts have too in the past recognized this right of appeal to CAS of athletes. In Rajiv Dutta v. Union of India, it was observed by the Court that

\[\text{Supra note 4.}\]

Due to all such shortcomings in SDR mechanism provided by NSFs in India, it is important to establish a more flexible yet rigid dispute resolution mechanism which meets the needs of all the stakeholders involved.

\section*{6. NEED FOR ADR IN SDR}

It has already been pointed out that sports organizations have exerted absolute control over SDR mechanism in India. They justify this monopoly due to the peculiar nature of sports which in case of India is characterized as a religion which does not allow any outside authority to intervene. This monopolistic attitude of sports organizations in India is criticized for several
reasons. One, the sports industry in India is now increasingly becoming an organized industry. Due to this reason disciplinary actions, suspensions etc. may destroy professional careers of sportsmen. Two, the organizations may while resolving and settling disputes acquire an overriding interest in the dispute itself (for instance, contract and labor). This violates the basic principle of natural justice i.e. no one should be a judge in his own cause. This is further exacerbated when a person complaining about the decision given by sports organization is left with no other option but either to exercise the appeal mechanism available within the sports federation itself which is inadequate, or to fight long legal battle in court which again due to time-constraints is not exercised.

Under such circumstances the role and recognition of ADR in resolving sports-related disputes has increased. However, the sports organizations are still reluctant to make wide use of ADR in resolving disputes as it challenges their autonomy. Below are few points discussed which highlight the essential role of ADR in SDR:

A. Reduced cost

Litigation has been regarded as an expensive, inflexible and tardy form of dispute resolution especially by sportsmen, sports bodies and other stakeholders involved. It is due to its slow and tardy nature that often, although certainly not always, arbitration can cost less than litigation. ADR is being widely embraced by the commercial sports fraternity as a quick and less expensive ways of settling disputes. No doubt that there are several factors which add up to costs of ADR particularly in the case of arbitration like the complexity of matter in hand, time spent in hearing, whether or not a legal counsel is involved or not. Other forms of ADR i.e. mediation, conciliation and negotiation are less expensive in costs than both arbitration and litigation.

B. Timely-hearing

Timely hearing of a dispute, particularly where competitive timelines loom, is a crucial aspect in SDR. Many a times disputes involving selection issues may arise at the eleventh hour, leaving a little or no time at all for the parties to seek redress. Such last minute hearings can be accommodated by ADR effectively.
C. Independent Expert Adjudicator

An important factor affecting the ability of sports bodies and organizations to resolve disputes using their own internal mechanisms and appeal procedures is the inherent bias of such a mechanism or procedure. This renders the mechanism or procedure inadequate and unsatisfactory. Further, when it comes to selection of a team or pool for representation at a competition, the organization for that matter not only selects the team but also lays down the selection criteria and its process, establishes the appeal policy, and manages the appeal hearing. This is an indication of inherent bias in the structure.

ADR allows for free selection of adjudicators, mediators, conciliators and facilitators by the parties themselves who possess legal expertise as well as knowledge of the sport system and sport-related issues. This enables party participation in process of selection of adjudicator and attenuates bias. It has been noted that "sport-related disputes tend to rest on issues of fact, rather than on complex issues of law," and thus ADR can serve as an excellent mechanism of SDR.

D. Privacy and Confidentiality

Privacy and confidentiality of matters and parties involved is of paramount importance in sports-related disputes. All forms of ADR mechanisms are private, confidential and quick process. ADR in SDR can prevent throwing of sludge on parties, players and sports agents involved. Litigation comparatively is often complicated and contracted.

The popular Lindland's case\textsuperscript{15} revolved around dispute between two competitors for a selection in wrestling team for the 2000 Olympics in Sydney. The loser of the match, Matt Lindland, complained that the winner, Keith Seracki, had used illegal means. The dispute went on for a long period of time in the federal Courts, including unsuccessful appeals to the United States Supreme Court, as well as the CAS. In the end, the plaintiff won the case. A simple one or two-step arbitration or ADR process would have been preferable as it allows the parties to obtain timely hearing, confidentiality and flexibility. Confidentiality is one of the major highlights of ADR process particularly in sports. Media’s unnecessary attention can cause irreparable damage.

\textsuperscript{15} Lindland v. United States Wrestling Association, 227 F.3d 1000 (2000).
to reputation of sportspersons and their sponsors. This becomes especially true in countries like India where sportspersons are revered as Gods.

E. Win-win agreement

ADR often yields a win-win agreement rather than win-lose agreement in SDR. Further, resolution of disputes via ADR allows the disputed to be resolved within the family of sports which is the underlying principle that operates widely in sports organizations in India. Thus, it yields a win-win situation for both the players and the organizations.

While explicitly highlighting the role of mediation in SDR, Grabowski argues\textsuperscript{16}, sports leagues could save themselves many millions of dollars-and, by building win-win relationships, allow their teams to pursue win-lose victories uninterrupted.

F. Party Participation & Better Relationships

ADR facilitates party participation better than any other mechanism. Active participation of parties yields a better and more sustainable outcome. A settlement is reached to only when both parties are satisfied. The keystone principle of ADR is ‘spirit of understanding and fair play’. It further preserves and improves relationships between the players and organizations rather than strains the relationship which may happen in case of litigation. In other words, ADR is that process which preserves both personal and business relationships.

G. Speedy Disposal

ADR, perhaps, is the only effective method for speedy disposal of cases. This becomes an increasingly important factor for resolution of sports-related disputes as the careers of the sportspersons is very short. Further, the amendment brought in 2015 to the Arbitration and Conciliation Act, 1996 in section 29A stipulates the period of resolution of disputes to be one year. This is again beneficial for quick disposal of sports disputes.

**H. Courts are burdened**

Litigation in courts does not seem a workable option as the courts in India are overburdened with huge number of pending cases. Further, the short spans of professional career of sportspersons demands quick disposal of cases which is not possible as litigation may go on for several years. Keeping this in mind, arbitration should thus be embraced by the sports fraternity as a quicker and less expensive ways of settling disputes.

**7. CONCLUSION AND SUGGESTIONS**

As sports are becoming an increasingly professional and organized industry in India, SDR occupy an increasingly important role. The disputes when referred to courts get complicated and take considerably a long time to settle which is detrimental to the interests of sportspersons as they have short spans of sports career. There is a need to have a mechanism which can efficiently deal with sports-specific disputes due to their peculiar nature. There is a need to have an authority for sports in India that offers quick, hassle-free and inexpensive method of resolution of sports disputes.

Arbitration has the ability to carve out a place for itself in sports dispute resolution. Sports arbitration bodies along with services of mediation, negotiation and conciliation ought to be established in India in line with tribunals like Court of Arbitration for Sport and World Intellectual Property Organization. Alternate dispute resolution process offer several advantages over litigation like timely hearing, low costs, confidentiality and hassle-free process. Further, adjudicators have expertise in the field.

The advantages of sports-specific ADR are well established. However, there are certain issues and challenges prevalent in sports-specific ADR. At present, most of the sports disputes in India are heard and settled by the guidelines and procedures which are laid down in the rule book of individual federations and organizations. There is no uniformity in method of settling disputes. A uniform method of resolution of sports disputes with established ADR procedure and mechanism is the need of the hour.
Another important fact that the authors would like to point is that the establishment of Indian Court of Arbitration for Sports was a progressive step pertaining to SDR in India. The Indian Court of Arbitration of Sports was supposed to be composed of eight panelists to adjudicate disputes arising in the sporting arena. However, several doubts have been raised on the functionality of the Court. Rajiv Dutta, a Senior Advocate pointed out that the aforesaid panel is not functional and that no steps have been taken to establish the panel as per the plan. From a bare perusal of all newspaper information and conduction of a web-search by entering combinations of the ‘Indian Court of Arbitration for Sports’, ‘sports arbitration’, ‘panel in ICAS’, into electronic databases through Google it is not clear if the panel is functional. It appears as if the panel exists only on papers. Furthermore, there is no material suggesting if any of the disputes have been heard and settled or any rules and regulations have been framed.

Had there been an effective ADR process in existence, all the disputes relating to BCCI and IPL, which have occupied national attention and scandal in the past could have been resolved at the earliest without inviting unrequited attention.

Under such circumstances, it is necessary that necessary steps be taken so that the ADR and arbitration process, and more specifically the rules of such process, should be designed to support and indeed, facilitate the desired function of ICAS.

The success of Court of Arbitration Sports or other ADR bodies in Canada, Australia or Ireland stands testimony to the success of ADR in SDR and also justifies why there is a sudden influx towards these bodies. It is submitted that the ICAS must be further developed on similar lines wherein it hears and settles disputes in an efficient manner. Progressive steps must be taken so that the federations, sportspersons and other ancillary bodies can realize their sports related goals rather than getting caught up in long and inconvenient litigation. There is lack of appreciation or observation of principles of natural justice at present in the procedure laid down by sports organizations and associations. Well-crafted rules of arbitration in harmonization with global system is the most desirable and appropriate step. It will reflect uniformity in sports dispute resolution in India.
Another suggestion is the introduction of a separate chapter on ‘Sports Arbitration’ in the Arbitration and Conciliation Act, 1996 giving it a concrete legislative framework with defined rules and procedure. It must be borne in mind that mere provision to facilitate sports arbitration would not suffice. Sports-specific arbitration institutions must set up rules and regulations with a working knowledge of sports laws.

In the light of the arguments advanced above, we suggest that the case for a system of arbitration to deal with the increasing number of disputes in sports is strong. All of these factors highlight the fact that Alternative Dispute Resolution is an ideal mode of dispute resolution for sports disputes on a comparative scale.
REFERENCES

Journal Articles


Internet Sources


4. Katie Shonk, How Mediation Can Help Resolve Pro Sports Disputes, HARVARD LAW SCHOOL BLOG (Sept. 29, 2020, 05:55 PM),


**Other Sources**


**List of Cases Referred**

**a) Indian Cases**

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2. Rajiv Dutta v. Union of India & Ors. | W.P.(C) 8734/2014

3. Sushil Kumar v. Union of India | W.P. (C) 4514/2016

**b) US Cases**

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