

Dispute Resolution System in Indian Sports & Need for Its Betterment

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Abstract

In our country, disputes in sports are resolved through multiple mediums viz. courts, specialized tribunals, or alternative dispute resolution (ADR) which includes arbitration, mediation, negotiation, and conciliation. In the past few decades, the system of alternative dispute resolution has gained popularity among people. However, the system of ADR is still developing and speedy changes are required to be made for smooth settlement of disputes. The research paper focuses upon the methods that are available for the resolution of disputes in the field of sports. This research paper provides an analysis of the existing system of dispute resolution. The paper also attempts to understand the problems that are prevalent in the current system of dispute resolution and goes on to suggest certain measures that can be adopted to improve the dispute resolution machinery.

Central Research Questions

- Which methods are currently present in India for the resolution of disputes in sports?
- What are the problems in the present system and why is there a need to improve it?

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What is Alternative Dispute Resolution?

Alternative Dispute Resolution (ADR) refers to an extensive range of ways of dispute resolution which facilitates the parties facing dispute to reach a compromise without having to go through the process of the court. The main feature of ADR is that generally a third party is given the role of assisting the parties to resolve the dispute and reach an agreement. In a country like India, when an individual's legal right is violated, one does not approach the court either to avoid the complex court procedures or because they lack the financial resources to fight a prolonged legal matter. In such a scenario, alternative dispute resolution acts as machinery that ensures equal access to justice to all.

Due to overburdening of courts, many people in recent times have decided to settle their disputes through ADR. Thus, the system of ADR is considered very flexible and can be effectively used at any time during the course of a dispute. In ADR, a neutral third party is appointed which performs the role of communicating with the parties and in return provides them information and settlement options. The process might be expensive but since it aids in resolving the dispute in a shorter period than the court, it automatically brings down the cost. What is considered to be the best feature of ADR is that in reaching a compromise, all the parties involved are allowed to give their opinion, unlike in court. Moreover, since the methods of ADR are a private affair, it avoids the disclosure of secrets and confidential information.

Types of Alternative Dispute Resolution

➤ NEGOTIATION

The most common form of dispute resolution is negotiation.² The parties involved in the dispute participate in a non-binding process and have the power to control the outcome. Negotiation facilitates a wide range of possible solutions because parties do not place many limitations on the process and thus it maximizes the chances of joint gains for all parties. There are no statutory provisions existing in India as such that govern the process of negotiation and thus parties are at liberty to determine their objectives along with identifying the interests of other parties. All the parties participate in negotiation voluntarily without any coercion. The process helps the parties to reach a mutual outcome and thus it is considered as an economical, uncomplicated, swift, and private method of ADR.

²Adr Evolution, SCRIBD, <https://www.scribd.com/document/387943312/adr-evolution-docx> (Last visited Aug. 26, 2021).

➤ **MEDIATION**

Mediation is also a non-binding procedure wherein a mediator is appointed to assist the parties in reaching a mutually agreed settlement. The mediator is at liberty to not follow the procedural laws however he is supposed to act on the basis of equity, neutrality and good conscience. Usually, the parties in mediation are supposed to submit their position before the process of mediation starts and thereafter make oral briefs. In mediation, joint sessions are not compulsory. Some mediators tend to conduct private sessions with each party separately. The method of mediation is an informal one and thus avoids procedural traps, unlike the complex and expensive court system. The reason behind the success of mediation is that it tries to understand the root cause of the problem and reach a solution. It is neither coercive nor intimidating because disputes are resolved in a friendly manner. Moreover, it is speedier and affordable.

➤ **CONCILIATION**

In India, the Arbitration and Conciliation Act, 1996 deals with the method of conciliation and specifically sections 61 to 81. Conciliation is also a non-binding procedure wherein a neutral third party i.e. conciliator is appointed by agreement of parties. But it is more systematic than mediation and its primary focus is on the rights of the parties rather than their interests. It helps the parties to reach a suitable and acceptable settlement of a dispute. The outcome is generally based on a mutually agreed settlement. The parties participate voluntarily and the conciliator does not possess the power to impose its decision on the parties but merely give a solution to the dispute. If the parties do not agree with the conciliator's solution, then it may formulate and reformulate the terms for possible settlement.

➤ **ARBITRATION**

The Arbitration and Conciliation Act, 1996 governs the procedures of arbitration. In the simplest form, arbitration can be described as a process whereby parties involved in a dispute appoint a third party i.e., the arbitrator to intervene in the matter and provide a decision after judicially hearing all sides, by a person or a committee other than a court. The key feature of arbitration that separates it from other methods is that the decision given by the arbitrator is binding on the parties. Yet the method requires voluntary participation of all parties. It is a formal process operated as the provisions of law. A specialized arbitral tribunal is set up for the reference of disputes. Though binding, a decision is based on a mutual understanding of the terms of the settlement. Arbitration is the most successful form of

ADR because it is more flexible than adjudication and resolves the dispute quicker than litigation.

Research Findings

Methods presently available for Dispute Resolution in Sports

For a very long time, there was no definite system for dispute resolution in India. In 2009, the Indian government established its first Arbitration Center in Delhi to settle disputes but no explicit provision for Sports law was included in it. Several measures have been taken up by the National Sports Federation (NSF) to establish internal dispute resolution machinery. However, such measures were not successful. These bodies did not resolve the matters effectively; besides the decisions given were mostly biased. In February 2011, The Ministry of Youth Affairs and Sports introduced the National Sports Development Bill, 2011.³ The main feature of this bill was that it attempted to establish an Indian Court of Arbitration for Sports. Nonetheless, the bill was deferred by the Union Cabinet and till date, it hasn't been passed.

▪ Indian Court of Arbitration for Sports (ICAS)

In the same year as the National Sports Development Bill was introduced, the International Olympic Committee directed the Indian Olympic Association to establish an Indian Court of Arbitration for Sports (ICAS) for resolution of disputes in sports. The same was established in July 2011 under the Chairmanship of Dr. AR. Lakshmanan, former Supreme Court judge, and former Law Commission Chairman.⁴ The ICAS must be composed of eight retired justices of the higher judiciary. The main function of ICAS is to resolve all sports disputes under the Indian Olympic Association. The establishment of ICAS can be seen as a development in sports law in India. Indian Court of Arbitration for Sports is the first organization developed in India for sportspersons to get their dispute resolved quickly and efficiently.

▪ Advantages of ICAS

The career span of an athlete is short and therefore they cannot afford to lose time in lengthy court procedures. In such a scenario, ICAS acts as a savior and helps the sportspersons to

³ *National Sports Development Code of India 2011*, MINISTRY OF YOUTH AFFAIRS AND SPORTS, <https://yas.nic.in/sports/national-sports-development-code-india-2011> (Last visited Aug. 26, 2021).

⁴ *Sports Arbitration in India*, IPLEADERS, <https://blog.ipleaders.in/sports-arbitration-india/> (last visited Aug. 26, 2021).

resolve their dispute efficiently and quickly. If the sports persons are not satisfied with the decision of the ICAS, they have the opportunity to appeal against such a decision. ICAS is a specialized court set up particularly to deal with sports disputes with the help of arbitrators who know about sports laws and rules. Meanwhile in normal courts, the judges are not sports experts and may be unaware of the rules of a particular sport. Therefore, these dedicated organizations have a great advantage over the usual dispute resolution mechanism practiced in normal courts. It is not unknown that when a dispute is filed against a sportsperson, their career might take a hit because of multiple controversies that arise due to it. Thus, ICAS ensures that all the details of the dispute are protected and the proceedings are commenced privately thereby avoiding any negative consequences on the sportsperson's career.

▪ **Dispute Resolution in Indian Fantasy Sports**

It is significant to note that for the regulation of fantasy sports in India, a special body called The Indian Federation of Sports Gaming (IFSG) has been established. In 2019, Justice A.K. was appointed as the ombudsman of the IFSG.⁵ According to the organization's charter, the ombudsman has the power to investigate or adjudicate upon any complaints, disputes, or issues that are related to the matters of fantasy sports. Disputes relating to non-payment or inordinate delay in the payment of prizes or cash can be resolved by the ombudsman. The disputes are resolved by the way of mediation or conciliation. Some disputes may even be resolved without mediation wherein the ombudsman has the power to pass an order based on the pleadings and evidence brought on record. Moreover, the order of the ombudsman shall be final.⁶

The code contains a provision whereby it is stated if there is a dispute between two or more parties, in such case it is the responsibility of the ombudsman to aid the parties in resolving the dispute through conciliation or mediation. It is in fact evident that the code aims at dispute resolution through the involvement of a third party rather than referring the matter to court. If a dispute is resolved by the parties through conciliation or mediation, the ombudsman has to take on record the terms agreed upon among all the parties involved and accordingly pass an order as per the terms of agreement which becomes binding on the

⁵ Indian Federation of Sports Gaming appoints Justice A.K. Sikri as ombudsman, MINT, <https://www.livemint.com/news/india/indian-federation-of-sports-gaming-appoints-justice-ak-sikri-as-ombudsman-1564401312536.html> (Last visited Aug. 27, 2021).

⁶ Ombudsman Rules, FIFS, <https://fifs.in/ombudsman/rules/> (Last visited Aug. 27, 2021).

parties to the dispute. Further, the ombudsman may impose penalties or award compensation as appropriate and applicable to a particular dispute.

▪ **Court of Arbitration for Sports (CAS)**

Indian athletes facing any issue can refer their dispute to the Court of Arbitration for Sports (CAS). CAS is an international organization established by the International Olympic Association (IOA). The seat of CAS is situated in Switzerland. An arbitral tribunal was established to resolve disputes in sports easily through third-party interference without the need to go to court. The CAS received criticism in the past because their decisions were not impartial. The court gave a very unique judgment that since CAS is established by IOA, it is certain that in cases involving IOA itself, the decision will be biased. Therefore, to improve this position, the International Council of Arbitration for Sports was established to look after the functioning of CAS.⁷

▪ **Functioning of CAS**

As per Sec. 3 of the CAS statute, the disputes shall be resolved through a panel of either one or three arbitrators.⁸ The CAS is composed of three organs viz. Ordinary Arbitration Division, Appeals Arbitration Division, and Anti-Doping Division. The award given to the parties is decided by the majority of the panel or by the president of the panel himself in case of the absence of the majority. If parties are satisfied with the award given, they may file for an appeal. The compulsion here is that the appeal must always be submitted to a panel of three arbitrators unless parties to the dispute have already agreed upon any other composition. According to Section 12 of the CAS statute, the CAS may resolve the disputes through mediation as well. There shall be not less than one hundred and fifty arbitrators and fifty mediators.

⁷*Alternative Dispute Resolution: ADR in Sports–The New Mechanism*, LEGAL BITES, <https://www.legalbites.in/adr-in-sports> (Last visited Aug. 27, 2021).

⁸ ICAS Statutes, COURT OF ARBITRATION FOR SPORTS, <https://www.tas-cas.org/en/icas/code-icas-statutes.html> (Last visited Aug. 27, 2021).

Problems Prevalent in Sports Dispute Resolution system in India

The major drawback in the present system of dispute resolution in sports is poor sports laws. There does not exist a set of defined laws to govern the functioning of the sporting bodies and players in the country. In such a case, a well-defined arbitral tribunal especially for the resolution of disputes in sports seems impractical. Even though efforts have been made by several organizations for the speedy resolution of disputes in sports, the results have not been great. Thus, if a dispute arises in Sports in India, there are only two resources available for resolution of dispute viz. through the appointment of an internal commission through the sporting federation or by referring the dispute to the Supreme/High Court.

The Indian Court of Arbitration for Sports (ICAS) did not play an effective role. It was the first arbitral tribunal set up to solve sports disputes speedily. However; it was unsuccessful in achieving its objective. The prime reason behind the failure of ICAS is the lack of knowledge among the sportspersons and their managers about the availability of ADR and rules of arbitration.⁹ This only delays the process of resolution. Even when India's first arbitral tribunal was set up, no efforts were made by the government to include sports disputes resolution in it.

Although in India cases of sportspersons are referred to the Supreme Court or High courts for dispute resolution, the court procedure is extremely time-consuming and sometimes it takes years to resolve a dispute. Judges in the court do not have expertise in sports and there does not exist a special body of sports experts within the courts to give their opinion in the ruling. Thus, the judges' lack of knowledge often leads to unjust decisions. If proceedings are going on in a court, the confidential information is not safe as there is always a possibility that this sensitive material might be leaked. This is also one of the reasons why sports persons avoid approaching the court in the first place despite facing a problem.

Many times, disputes are referred to the private sporting bodies to avoid lengthy court procedures. But since these federations are private, they do not follow the rules of dispute settlement precisely. Due to the commercialization of sports, the sporting bodies are aware of the fact that they will not face serious consequences if they deviate from the established procedure for solving disputes. Even the Supreme Court in *Zee Telefilms v. Union Of India*¹⁰ held that

⁹ Sports Law and Court of Arbitration for Sports in India, MEDIUM, <https://medium.com/the-%C3%B3pinion/sports-law-and-court-of-arbitration-for-sports-in-india-203198cadf9c> (Last visited Aug. 27, 2021).

¹⁰ 2005.

sporting bodies are not accountable to the state.¹¹ The sporting federations do not have a uniform method for resolving disputes which creates uncertainty in the system of dispute resolution.

Need for Betterment of Dispute Resolution System in Sports

A number of problems are present in the current system. It cannot be denied that sports are a huge industry in our country. The need for a well-defined system for dispute resolution in our country cannot be stressed upon enough. Disputes that arise among sportspersons require quick preliminary investigation and speedy solutions for settlement. The present system in India doesn't provide for either of these. The most basic reason for betterment is the speedy resolution of disputes as sportspersons do not have time to engage in the lengthy litigation process. Since normal courts lack the expertise, an arbitral tribunal composed of sports and judicial experts will prove to be effective for the settlement of disputes.

The current system needs to be improved for the development of the sports fraternity. Many developed countries have already adopted arbitration as a way to settle disputes in sports because it is very flexible. For the resolution of disputes in fantasy sports, an arbitral tribunal has been established for the convenience of parties. A similar step needs to be taken for other sports for the ease of sportspersons. To avoid controversies and breaches of confidentiality, ADR in sports is the most suitable option. Unlike the present system, parties will have the option to choose the arbitrator or mediator thereby making the settlement process more flexible. It is necessary to improve the current system for reducing the expenses of litigation and for the delivery of an impartial judgment.

Conclusion & Recommendation

It is amply clear from the research findings that the present system of dispute resolution in sports is ineffective and changes are required to be brought. The introduction of ADR in a systematic manner in sports can prove to be a success. Since arbitration is still in the early stages in India, measures must be taken for its improvement. Through the method of arbitration, parties involved in a legal dispute have been able to find a substitute for the litigation process. Ever since the commercialization of sports in India, the need to develop and promote an arbitral tribunal in an efficient manner is felt more for facilitating economical and flexible ways for sports bodies

¹¹ *Weak Performance of India in Olympics – An Analysis*, LL.B MANIA, <https://llbmania.com/2021/08/02/weak-performance-of-india-in-olympics-an-analysis/> (Last visited Aug. 27, 2021).

to resolve disputes. Referring a dispute to a third party composed of experts possessing technical knowledge with the consent of the parties involved in the dispute seems more viable than a lengthy court procedure. The introduction of ADR in sports will ensure confidentiality and the parties' private information will not be in danger of being disclosed.

ADR would also help in bringing uniformity in the functioning of the sports federations. For the avoidance of damage to the professional career of the sportspersons, ADR will be useful. They will not have to wait for a judgment for a long time. The Sports federation must be authorized to resolve the disputes between the parties and undertake suitable disciplinary actions against them and punish the wrongdoers for breaching the code of conduct. Before introducing ADR, it is necessary to maintain an understanding between the sportspersons and associations. Mediation or Arbitration as a method of ADR is more effective for resolving the dispute amicably. The judiciary and the government must also make efforts for the promotion of ADR and prioritizing it for dispute resolution. ADR is necessarily based upon the principles of natural justice attempting to create a win-win situation for the parties involved in a dispute.

