

SPORTS' DISPUTES AND ARBITRATION

Ananya Bharadwaj¹

ABSTRACT

Sport is presently an enormous business representing more than 3 percent of world trade. The wonderful development of the sports' estimation industry is to a great extent because of the increment in the telecast scope of sport occasions and what's more is the escalated climb in the costs paid by supporters for the comparing rights.

In this paper, the objective of the author is to analyze interplay between Arbitration and Sports' Disputes and to identify inherent challenges in this new area of dispute resolution in sports conflicts. The author shall be dealing in detail with the matter, which shall end up answering the following questions:

- Whether there is a scope of Alternative Dispute Resolution Methods to resolve sports disputes?
- Whether Court of Arbitration for Sports (CAS) is efficient in dealing sports' disputes in all kinds of sports?
- What future does the Indian court of Arbitration of Sports has?

The research shall be limited to CAS, FIFA and WIPO ADR institutions as well as Indian court of Arbitration of Sports.

Keywords : Sports, Arbitration, Disputes, Trade, Inherent Challenges.

INTRODUCTION

*“Be quick to resolve conflicts before they mature to become wars.
The energetic crocodile was once a delicate egg”.*

– Israelmore Ayivor

Sport is presently an enormous business representing more than 3 percent of world trade. The wonderful development of the sports' estimation industry is largely because of the increment in the telecast scope of sport occasions and what's more is the escalated climb in the costs paid by supporters for the comparing rights.²

Sport is presently an item in its own privilege, and there is much to play for on as well as off the field of play. As being what is indicated, the quantity of games related issue is on the increment. Therefore, the question, quite naturally, arises: How best to determine these issues? The conventional – that is, through the courts-or the present day way-that is extra-judicially? In other words, by some form of alternative dispute resolution (ADR) method.³

¹ Research Scholar, School of Law, KIIT University & Former Research Associate (Law), Competition Commission of India.

² Ian Blackshaw, Sport, Mediation and Arbitration 3 (2009).

³ *ibid.*

The English courts have long acknowledged the in general sports-related disputes are better dealt with ‘in-house’, and preferably, by way of the utilization of quasi- independent, arbitral based, disciplinary mechanism. Indeed, sport provides a good example of the benefits of alternative dispute resolution (ADR) over judicial proceedings.⁴

The pith of fast dispute resolution in sports expect significant centrality in light of the fact that in games, the profession of the sportsperson is petite and the basic peril of wounds and trouncing of form is huge. It is an immediate consequence of these variables that the subject of reasonable and snappy determination of issues in sports gets the chance to be huge.⁵

The WIPO Arbitration and Mediation centre has been dealing with disputes in relation to the players’ brand name and image with respect to domain name issues.⁶The impact of culture on the ADR process of a particular geographical region has a great role to play in coming to a solution with regard to the sports dispute. The Indian court of sports arbitration has been formed to look into sports matter specifically.⁷

A duplicate dispute solving procedure joins parts of two or more largely separate strategies into one. The most broadly perceived half and half process is mediation-arbitration, or “med-arb”, such a procedure can be even encouraged when it comes to sports disputes.⁸

Sports Disputes and Alternate Dispute Resolution (ADR)

With all the cash and riches flowing in sports, winning is currently everything-the benefit and fulfillment alone of partaking is old fashioned. As such, the Olympic motto has these days lost its currency. Along these lines, as per the old saying, where there is money to be combat about there are problems to emerge; it is not bewildering that sports prosecution is furthermore on the augmentation.⁹ Issues in games can be absolutely business or contractual, few are administrative, others can be semi criminal. Games dispute determination does not as a matter of course have a settled progressive system or strategy.¹⁰

“The sports world is a small one – everyone seems to know somebody – and relationships, and indeed, reputations, are therefore more important and worth preserving”- Simon Gardiner¹¹

The court’s lack of enthusiasm to review disciplinary decisions of a sports body saves in instances of egregious breaches of the principles of fairness and proportionality.¹² Extra-judicial resolution of different sorts of problems through ADR is created in light of the fact that the courts-the results of legal procedures are largely erratic. Added

⁴ J Anderson, *Modern Sports Law: A Textbook* 77 (2010).

⁵ M Mudgal, *Law and Sports in India* 301 (2011).

⁶ WIPO Alternative Dispute Resolution, available at: <http://www.wipo.int/amc/en/>, (visited on Sept. 28, 2019).

⁷ PTI, IOA constitutes Indian Court of Arbitration for Sports, *THE TIMES OF INDIA*, available at: <http://timesofindia.indiatimes.com/sports/more-sports/others/IOA-constitutes-Indian-Court-of-Arbitration-for-Sports/articleshow/9360502.cms> (visited on July 25, 2011).

⁸ Christopher Honeyman, *Hybrid Processes, Beyond Intractability*, (July 2003), available at: <http://www.beyondintractability.org/essay/hybrid-roles>.

⁹ Ian Blackshaw, *Sport, Mediation and Arbitration* 4 (2009).

¹⁰ M Mudgal, *Law and Sports in India* 301 (2011).

¹¹ S Gardiner, *Sports Law* 251 (2006).

¹² J Anderson, *Modern Sports Law: A Textbook* 77 (2010).

to which judges are not largely side by side with the establishment to particular sorts of business issues, especially those including specific matters.¹³

Parties made up for lost time in disputes arising in sports have fundamentally three methods for complaining so as to determine their contradiction firstly, to the inside powers accessible inside of the instituting so as to brandish alliances both national and global; besides, a common or criminal case in a court of law; and thirdly, through Alternative Dispute Resolution (ADR). The present procedure of determining issues incorporates any or all 'routines for determining disputes in sports' generally than through the traditional strategy for ordinary trial, through courts.¹⁴

The benefits of using ADR for disputes in Sports¹⁵ are: A unitary arrangement of dispute determination, Speed, Cost, Expertise, Privacy, and Preservation of goodwill and Enforceability.

Why Arbitration (Benefits of Arbitration in sports Disputes)

Arbitration compared to litigation is time-tested and cost-efficient. Arbitration involves submitting the dispute to one or more neutral individual for a final and binding decision (which is in writing), known as an "award". Private and confidential, arbitration is intended for quick, practical, and economical resolutions.

Arbitration in sports is developing in significance. More overseeing bodies are including inside of their standards, a condition to resolve disputes through arbitration. Arbitration may be either institutional or ad hoc. In institutional arbitration a body which is so determined in the agreement give arbitration services to a smooth and successful working of the arbitration process, while in ad hoc arbitration, it is left to the parties to arrange the arbitrator, themselves.¹⁶

Reasonableness should dependably be litmus of value in sports. Keeping up a level playing field is, overall, the foremost method of reasoning for the determined war on doping of competitors. In any case, applying even the best standards is liable to human blunder. Subjectivity inheres in judging and scoring, particularly in sports that put a premium on style, feel, or general presentation, for example, figure skating, acrobatic, synchronized swimming, and free-form skiing. How, then, can there be any full confirmation of reasonable play and objectivity in judging? The answer is that, albeit such certification is unthinkable, much should be possible to expand the straightforwardness and on-the-spot reviewability of choices to the degree practicable.¹⁷

Source of establishment of Governing Bodies

In times gone by, sports and dispute determination emerged in the first Olympic Games in 776 B.C. There is motivation to trust that one of the eminent inspirations for conducting the amusements was to realize an end of a common war that was crushing Greece around then. The Olympic Games were dispatched in Olympia were held at

¹³ Ian Blackshaw, *Sport, Mediation And Arbitration* 4 (2009).

¹⁴ M Mudgal, *Law and Sports in India* 302 (2011).

¹⁵ S Gardiner, *Sports Law* 229 (2006).

¹⁶ Alan Redfern & Martin Hunter, *Law and Practice of International Commercial Arbitration* (2004).

¹⁷ J Nafziger, *Avoiding and Resolving Disputes During Sports Competition: Of Cameras and Computers*, 15 Marq. Sports L. Rev. 13 (2004), available at: <http://Scholarship.Law.Marquette.Edu/Sportslaw/Vol15/Iss1/4>.

regular intervals of 4 years. In the next years, Greece thrived and the Olympic Games turned into an enduring image of peace.¹⁸

There are various forums for resolving sports disputes. There are also certain specialist forums such as CAS. Such bodies are governed by various conventions. Presently 144 nations are party to the New York convention for the Recognition and Enforcement of Foreign Arbitral Awards, June 1958¹⁹. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, otherwise called the “New York Arbitration Convention” or the “New York Convention”, is one of the important instruments in global arbitration. The New York Convention deals with the recognition and enforcement of outside arbitral grants and the recommendation by a court to arbitration.²⁰The Convention’s chief point is that remote and non-domestic arbitral grants won’t be oppressed and it obliges Parties to be bound by such an award as if they were the same as the domestic ones. A subordinate point of the Convention is to oblige courts the parties approach; to give a better arbitration understanding by obliging courts to deny the parties access to court in contradiction of their consent to elude the matter to an arbitral tribunal.²¹

The apex court for resolution of a sporting dispute is the Court of Arbitration of sports (CAS) based in Switzerland. The strength and prestige is derived from the fact that it is the arbitral court for the Olympic Games. Article 61²² of the Olympic charter²³ gives the power to CAS to resolve any issue in relation to Olympics.²⁴

Working of governing bodies of sports disputes

Arbitral grants are ordinarily tying just in the cases and on the parties to which they are tended. Dissimilar to legal choices in like manner law frameworks, arbitral grants along these lines have no value as stare decisis. At the most, they may some of the time constitute a *lexspecialis*.²⁵

Despite the implications of Foschi²⁶ and Nagra²⁷, there may be some order amongst the perceptible convolution, if not confusion, in the general process of international sports law. A normative foundation upon which to raise a more stable process appears as follows:

¹⁸ Cardozo Journal of Conflict Resolution, Symposium on Sports Law and Alternative Dispute Resolution, available at: <http://cardozo.jcr.com/symposia/fall-2001/>(visited on Sept 29, 2019).

¹⁹ New York Convention, The New York Convention, available at : <http://www.newyorkconvention.org/>(visited on Sept 28, 2019).

²⁰ *ibid.*

²¹ ‘Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (the “New York Convention”)’ (UNCITRAL United Nations Commission on International Trade Law) , available at: http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention.html,(visited on Sept 28, 2019).

²² Olympic Charter, Article 61 (2015)“Dispute resolution 1. The decisions of the IOC are final. Any dispute relating to their application or interpretation may be resolved solely by the IOC Executive Board and, in certain cases, by arbitration before the Court of Arbitration for Sport (CAS). 2. Any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport, in accordance with the Code of Sports-Related Arbitration.”

²³ International Olympic Committee, Olympic Charter: In force as from 2 August 2015, available at: http://www.olympic.org/Documents/olympic_charter_en.pdf, (visited on Sept. 19, 2019).

²⁴ M Mudgal, Law and Sports in India 310-311 (2011).

²⁵ J Nafziger, *Lex Sportiva*, The International Sports Journal: Griffith University (2004).

²⁶ Jessica K. Foschi & United States Swimming, Inc. Arbitration Case, American Arbitration Association, No. 77-190-0036-96 (1996).

²⁷ *Nagra v. Canadian Amateur Boxing Association*, No. 99-CV-180990 (Ont. Super. Ct. Dec. 1, 1999).

1. National governing bodies: National administering bodies (or national Sports associations) have essential obligation to maintain a strategic distance from and intention debate and to apply endorses, from playing field infractions to qualification issues. Differences in the middle of competitors and their individual sports organizations are normally decided upon by internal administrative review within those bodies, by independent arbitration, or by a combination of them both.²⁸
2. International federations: IFs may audit choices of constituent national bodies, which are concerned, with an extroverted scope of issues including rivalries and the status of individual players. Tenets of the Olympic Charter are preeminent, however inside of the general procedure of universal sports law, it is misty when IOC choices trump IF choices.
3. The International Olympic Committee: The IOC, all alone activity or that of a competitor or an IF, may audit a wide scope of decisions by NOCs²⁹. Under the Olympic Charter, the IOC perceives the “exclusive powers” of NOCs to speak to their nations or select competitors to speak to them, in authorized rivalry, yet gives energy to the IFs to set up criteria of qualification and to build up and implement tenets to administer the act of their separate games.³⁰ The IOC by and by holds power as a last referee of debate inside of the Olympic Movement
4. Court of Arbitration for Sports (CAS): Toward the 1980s’ start, the customary increment in the quantity of global sports related disputes and the absence of any autonomous authority specializing in sports-related issues leading the top sports organizations to reflect on the question of sports dispute resolution.³¹

The former president of the IOC, Jaun Antonio Samaranch, is generally credited with the creation of what is now CAS.³² In 1983, the CAS statutes were officially ratified by the IOC at the 86th session held in New Delhi.³³ The statutes came into effect in 1984, though it was not until 1986 that CAS processed a request for arbitration to its final award stage.³⁴

The CAS is an arbitration body created by the IOC (International Olympic Committee) in 1983. Also known by its French Acronym ‘TAS’ (Tribunal Arbitral du Sport)³⁵, it is held in Lausanne, Switzerland, and has two permanent outposts in Sydney, Australia and New York, USA. During the Olympic Games it

²⁸ J Nafziger, *Dispute Resolution in the Arena of International Sports Competition*, 50 *The American Journal of Comparative Law*, 161-179 (2002).

²⁹ International Olympic Committee, *National Olympic Committees*, available at: <http://www.olympic.org/ioc-governance-national-olympic-committees>, (visited on Oct 2, 2019).

³⁰ Olympic Charter, Art. 30(1.1), (1.4), (2001).

³¹ Court of Arbitration for Sports, *History of CAS*, available at: <http://www.tas-cas.org/en/general-information/history-of-the-cas.html>, (visited on Sept 28, 2019).

³² In typical understatement, Samaranch labeled his idea as ‘A kind of Hague Court (International Court of Justice) in sports world.’ See Speech delivered by Mr. Jaun Antonio Samaranch IOC President 176 *Olympic Review* 314, 317 (1982).

³³ I Blackshaw, R Siekmann & J Soek, *The Court of Arbitration for Sports, 1984-2004*, (2006).

³⁴ The first case was relatively mundane affair with the CAS Tribunal rejecting an appeal by an Ice hockey coach against a disciplinary sanction imposed by the Swiss Ice Hockey League, *HC X v. Ligue Suisse de Hockey sur Glace*, CAS 86/1.

³⁵ Court of Arbitration for Sports, Home, available at: <http://www.tas-cas.org/en/index.html> (visited on Sept 30, 2019).

operates an Ad Hoc division, which was set up on 28 September, 1995 for the Centennial Olympic Games held in Atlanta in 1996.³⁶

The CAS has its headquarters in Lausanne, Switzerland, with seats of Arbitration in Sydney and New York. The jurisdiction of the CAS is derived from the rules forming a part of the sporting bodies' constitution or by the virtue of an ad hoc arbitration agreement. The authority of the CAS was established through the Swiss Equestrian Case³⁷. A CAS award is final and binding and it is very difficult to successfully appeal against a CAS ruling. Under Article 190(2) of the Swiss Federal Code on Private International Law³⁸, a decision of the CAS is treated as an arbitral award under the Swiss Law.³⁹ However, it is not clear whether the award would be enforceable in India if it violates public policy of India.⁴⁰

The advantages of the CAS arbitral procedures have been described as “confidentiality, specialization of the arbitrators, flexibility and simplicity of the procedure, speed, reduced costs and international effectiveness of the arbitration award.”⁴¹

In May 2003, CAS's reconstituted administrative basis was the subject of a judicial challenge at the SFT in *Danilova and Lazuntina v. IOC and FIS*⁴². The background to the case involved a CAS hearing wherein the claimants, two Russian cross-country skiing international competitors, appealed decisions to disqualify them consequent to positive tests for blood doping at the Winter Olympic Games of 2002 in Salt Lake City.⁴³ CAS' independence from the IOC was confirmed by the Swiss Federal Tribunal in 2003 when, dismissing a challenge to a CAS award by two Russian cross-country skiers against the IOC and the International Ski Federation, the Federal Tribunal referred to CAS as the “true Supreme Court of world sport” and stated CAS offered all the guarantees of independence and impartiality to be regarded as a real court of arbitration, whose awards are comparable to the judgments of a state court.⁴⁴

In Sports Arbitration, it is pragmatic that national courts orders' do not bind non-national parties but are binding upon parties who fall under the jurisdiction of the courts.⁴⁵ Such forays of the national courts in

³⁶ See Heikot.Vanstaveren, 'Why Does Sport Need Its Own Jurisdiction?', W.P.Heere, Ed. *International Law And The Hague's 750th Anniversary* (The Hague, TMC Asser Instituut, 1999) 229-232. See Also M.Reeb, 'The Court Of Arbitration For Sport', 3(4) *Sports Law Bulletin*(2000)10.

³⁷ *Gundel v. International Equestrian Federation* (FEI) / CAS [1949] All ER 109.

³⁸ *Umbrecht Attorneys at Law, Switzerland's Federal Code on Private International Law (CPIL)* (Dec. 18, 1987), available at: [http://www.hse.ru/data/2012/06/08/1252692468/SwissPIL%20%D0%B2%20%D1%80%D0%B5%D0%B4.%202007%20\(%D0%B0%D0%BD%D0%B3%D0%BB.\).pdf](http://www.hse.ru/data/2012/06/08/1252692468/SwissPIL%20%D0%B2%20%D1%80%D0%B5%D0%B4.%202007%20(%D0%B0%D0%BD%D0%B3%D0%BB.).pdf).

³⁹ I Blackshaw, *The Court And Sports Disputes*, 'Mediating Sports Disputes – National And International Perspectives', (2002).

⁴⁰ M Mudgal, *Law and Sports in India* 311 (2011).

⁴¹ Reeb, *The Court of Arbitration for Sport (CAS): An Institution for Settling Sports-Related Disputes by Arbitration*, in *SPORTS & EUROPEAN COMMUNITY LAW* 203 (D. Panagiotopoulos ed.)(1998).

⁴² An excerpt from the judgment of 27 May 2003 can be found at (2003) 3 *Digest of CAS Awards* 649.

⁴³ *L v. IOC, CAS 2002/A/370. L v. FIS, CAS 2002/A/397.*

⁴⁴ *Swiss Federal Tribunal, May. 27, 2003, III Arrêts du Tribunal Federal Suisse [ATF] 129.*

⁴⁵ (Switz.), translated into English in *MATTHIEU REEB, DIGEST OF CAS AWARDS III, 2001-2003* 688 545 (2004).

⁴⁵ Richard H. McLaren, *Sports Law Arbitration by CAS: Is It the Same as International Arbitration*, *PEPP. L. REV.*, 29 (2001-2002).

awards rendered by International Bodies may have the effect of invalidating them. This is reflected in the case of *Samoa NOC v. IWF*⁴⁶, where an interim award granted by the Samoan Courts precluding the enforcement of a decision by the National Level Weightlifting Federation resulted in the CAS ultimately setting aside the International Weightlifting Federations' decision. This occurred because the National Federation's decision was the keystone to the IWF's. Thus, this indicates that finality of awards in case of International Tribunals, such as the CAS, is subject to the exercise of jurisdiction by national courts.⁴⁷

5. FIFA Dispute Resolution Chamber: One of the FIFA's body known as The Dispute Resolution Chamber (DRC) provides arbitration and dispute resolution is based on equal representation of players and clubs and an independent chairman. 12 FIFA Development Officers have been issued the task of working with Member Associations in recognizing and implementing future projects within their respective regions.⁴⁸

The FIFA Dispute Resolution Chamber (DRC) deals with the resolution of sports disputes relating to football associations by extra-judicial methods. The FIFA DRC handles several hundred football-related cases each year. Not all of these cases are put on the FIFA official website,⁴⁹ only those of associated with interest that can be said to be general.

The FIFA set up the Dispute Resolution Chamber (DRC) in 2001 to take over certain disputes from the PSC relating to the international status and transfer of players. It dealt with cases concerning labour disputes, with an international dimension, and disputes regarding training compensation and the so-called camaraderie role.

The DRC unlike the CAS; is not an arbitral court. The decisions of the DRC can be enforced through the statutes and regulations of FIFA as it is not an International award. Thus, it's recognized only in the regime of disputes concerning football. The decisions of the DRC surely do have a massive impact on the international football world.

Since FIFA joined the CAS in 2002, there have been many disputes which have been referred to the CAS concerning the interpretation and application of the FIFA International Football Transfer Rules. The issues were relating to the reimbursement for the education and training costs of young players and regarding the level of transfer fees payable in those cases, on appeal from the FIFA Dispute Resolution Chamber. Many of these cases have involved well known Football Clubs and players.⁵⁰

⁴⁶ *Samoa NOC v. IWF*, Arbitration CAS Ad Hoc Division, 002 (O.G. Sydney) (Sept 12, 2000). *Sierocki v. IOC*, Arbitration CAS Ad Hoc Division, 007 (O.G. Sydney), (Sept. 21, 2000).

⁴⁷ Devyani Jain, *Judicial Trend Of Intervention In Sports Arbitration And Its Future In India*, Indian Journal Of Arbitration Law, available at: http://ijal.in/sites/default/files/JUDICIAL%20TREND%20OF%20INTERVENTION%20IN%20SPORTS%20ARBITRATION%20AND%20ITS%20FUTURE%20IN%20INDIA_0.pdf, (visited on Sept 28, 2019).

⁴⁸ FIFA, *Committees*, available at: <http://www.fifa.com/about-fifa/committees/index.html>, (visited on Sept 30, 2019).

⁴⁹ FIFA, available at: <http://www.fifa.com>, (visited on Oct 2, 2019).

⁵⁰ Ian Blackshaw, *ADR and Sport: Settling Disputes through the Court of Arbitration for Sport, the FIFA Dispute Resolution Chamber, and the WIPO Arbitration & Mediation Center*, 24 Marq. Sports L. Rev. 1 (2013) available at: <http://scholarship.law.marquette.edu/sportslaw/vol24/iss1/2>.

The members of FIFA, the national associations, must fully comply with all decisions of FIFA, such as decisions of the DRC.⁵¹ In turn, the national associations must take measures to ensure that their own members, the national players and clubs, also fully comply with these decisions.⁵²

In its Circular 827, FIFA outlined that after “*intense and very constructive discussions with the International Council of Arbitration for Sport*,” FIFA finally agreed to recognize the jurisdiction of the CAS to act as a final appeal body for decisions taken by the DRC with effect from November 11, 2001.⁵³

6. WIPO Arbitration and Mediation Centre: The exceptional ascent of the Internet – not minimum in connection to sports substance and sports related sites – has brought forth its own particular impossible to miss sort of disputes, including sports related ones, and created its own specific kind of ADR procedure in domain name dispute compliant with the ICANN Uniform Domain Name Dispute Resolution Policy, controlled by the Arbitration and Mediation Center of the World Intellectual Property Organization (WIPO Center), a particular office of the United Nations, situated in Geneva, Switzerland⁵⁴.

The WIPO Arbitration and Mediation Center gives time-and cost-productive components to determine domain name disputes, without the requirement for court prosecution. This administration incorporates the WIPO-started Uniform Domain Name Dispute Resolution Policy (UDRP), under which the WIPO Center has handled more than 30,000 cases.⁵⁵

The ICANN Board adopted a set of Rules for Uniform Domain Name Dispute Resolution Policy (the UDRP Rules) on October 24, 1999 for setting out the procedures and other requirements for each stage of the Dispute Resolution Administrative Procedure. The WIPO Arbitration and Mediation Center was given the duty of concluding the UDRP Policy and Rules while acting as a technical advisor to the ICANN drafting committee.

The central favorable position of the Procedure is that it ordinarily gives a quicker and less expensive approach to determine a question in regards to the enrollment and utilization of an Internet area name (an Internet address—likewise, as said above, frequently portrayed as an “electronic trademark”) as opposed to going to court. Moreover, the systems are impressively more casual than suit. Moreover, the decision makers are specialists in such ranges as worldwide trademark law, space name issues, electronic business, the Internet, and ADR.⁵⁶

The WIPO Arbitration and Mediation Center offers a wide-range of ADR services, including arbitration, mediation, and expert determination, not only in relation to intellectual property (IP) disputes but also to non-IP cases, when it comes to sports dispute it deals with the settlement of sports related domain name disputes, which are also on the

⁵¹ FIFA Statutes, Art. 34.

⁵² *ibid* Art. 65.

⁵³ Letter from UrsLinsi, Acting General Secretary, FIFA to The Nat’l Association of FIFA (Dec. 10, 2002), (Sept. 29, 2015), available at: http://www.fifa.com/mm/document/affederation/administration/tas_827_en_63.pdf.

⁵⁴ See further on this important subject, including sports-related disputes, especially concerning domain names of sports personalities (for example, the Wayne Rooney case) and sports bodies and events (for example, the FIFA World Cup cases), in Blackshaw (2008).

⁵⁵ WIPO, Domain Name Dispute Resolution, available at: <http://www.wipo.int/amc/en/domains/> (visited on Sept 30, 2019).

⁵⁶ Ian Blackshaw, ADR and Sport: Settling Disputes through the Court of Arbitration for Sport, the FIFA Dispute Resolution Chamber, and the WIPO Arbitration & Mediation Center, 24 Marq. Sports L. Rev. 1 (2013), <http://scholarship.law.marquette.edu/sportslaw/vol24/iss1/2>.

increase as sports bodies and sports persons⁵⁷ embrace the world wide web more and more to promote their activities.⁵⁸

Sports domain name disputes to date have been involved a wide range of sports and constituents. It is interesting to note that first domain name case handled through WIPO was a sporting one, involving the World Wrestling Federation involving the domain name <www.worldwrestlingfederation.com>⁵⁹.

WIPO sports domain name disputes have also included high profile sports good manufacturers, such as NIKE, Inc. one of the early cases involving the famous sports ware NIKE brand involved the registration of the domain name 'nike.net'.⁶⁰

The WIPO adjudication process has also been invoked in relation to the protection of sports event names. The world governing body of Football FIFA successfully challenged the use of its trademark WORLD CUP in thirteen domain websites, which not only related to FIFA event, but also included copyright content from the official website of FIFA.⁶¹

Indian Prospective

The Indian law of Arbitration is contained in the Arbitration and Conciliation Act 1996 (Act). The Act depends on the 1985 UNCITRAL Model Law on International Commercial Arbitration⁶² and the UNCITRAL Arbitration Rules 1976⁶³. The Statement of Objects and Reasons of the Act perceives that India's monetary changes will get to be compelling just if the country's dispute resolution procurements are tuned in to universal administration.⁶⁴

Sports law is utilized in the field of Sports, physical instruction and its related field. It is alluded to as a complete law which oversees the territory where law connects with Sports. These days, there is developing pattern of collaboration in the middle of law and the universe of Sports which thusly, has made interest for a more prominent comprehension of the connection in the middle of Law and Sports.⁶⁵

Sports arbitration is an evolving branch of alternative dispute resolution which accommodates new thoughts and systems to oblige the one of a kind necessities of sports disputes. It intends to give acceptable resolution of disputes in light of different superseding components in sports law. This incorporates issues, for example, the need of

⁵⁷ Wayne Mark Rooney v Huw Marshall, Case No. D2006-0916, available at: <http://www.wipo.int/amc/en/domains/decisions/html/2006/d2006-0916.html>, (visited on Sept 28, 2019).

⁵⁸ Ian Blackshaw, ADR and Sport: Settling Disputes through the Court of Arbitration for Sport, the FIFA Dispute Resolution Chamber, and the WIPO Arbitration & Mediation Center, 24 Marq. Sports L. Rev. 1 (2013), available at: <http://scholarship.law.marquette.edu/sportslaw/vol24/iss1/2>.

⁵⁹ For the decision see <<http://arbitrator.wipo.int/domains/decisions/html/1999/d1999-0001.html>>.

⁶⁰ WIPO Case No. D2000-1120.

⁶¹ WIPO Case No. D2000-0034.

⁶² UNCITRAL Model Law on International Commercial Arbitration 1985 With amendments as adopted in 2006, (Sept. 28, 2015), https://www.uncitral.org/pdf/english/texts/arbitration/ml-arb/07-86998_Ebook.pdf.

⁶³ 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).

⁶⁴ S Kachwaha & D Rautray, Arbitration In India: An Overview, <https://ipba.org/media/fck/files/Arbitration%20in%20India.pdf>.

⁶⁵ Government of India Ministry of Youth Affairs and Sports, available at: <http://yas.nic.in>, (visited on Sept 30, 2019).

expedient trials to keep up the respect of tiring occasions⁶⁶, the confidentiality required in such awards as well as reduced cost of dispute resolution.

i. Impact of CAS

In India, the global forum given by the CAS has been hardly used. In any case, as of late the importance of CAS as a worldwide forum of dispute resolution in sports was acknowledged on account of four competitors, Ashwini A.C., Sini Jose, Priyanka Panwar and Tiana Mary Thomas. These competitors who represented India at the CWG and the Asian Games were suspended for a time of one year by the National Anti-Doping Disciplinary Panel (“NAADP”) for steroid infringement in December, 2011. During the appeal before NAADP, World Anti-doping agency (“WADA”) cited several rulings of the CAS while arguing for a more stringent punishment.⁶⁷

Further, in case of an unsatisfactory ruling either party can approach the CAS by appeal.⁶⁸ In this manner it creates the impression that the CAS is commonly drawn nearer at a claim stage when the unsatisfied party has depleted cures at the national level.

Henceforth, it is watched that the choice of the Australian Court in *Raguz v. Sullivan* and other comparable cases, saving and confirming the purview of the CAS, have set up its position as a worldwide dispute resolution body. Be that as it may, in the Indian setting, the choices’ certainty of international arbitration institutions, for example, the CAS was farfetched after the Indian Supreme Court’s decision in the *Venture Global* case⁶⁹. The court held that Indian courts could implement their jurisdiction to set aside foreign arbitral awards in pursuance of the ratio of *Bhatia International*⁷⁰ case.⁷¹ But then there are recent cases to give difference to that establishment.

ii. Judicial trend of intervention in sports Arbitration: Enforcement of Arbitral Awards

The Arbitration and Conciliation Act, 1996⁷² was implemented with the rationale of reconciling the law of dispute resolution with the international fiscal scenario.⁷³ Part I of the Act is mainly based on the structure of the UNCITRAL

⁶⁶ Sports arbitral awards have been issued by arbitral bodies within 24 hours under institutional arbitration. For instance, Article 18 of the Arbitration Rules for the Olympic Games of the XXVII Olympiad in Sydney, 29 November 1999, stated that decisions were to be rendered within 24 hours of the application for arbitration is filed. This is a unique feature of Ad Hoc Division (ADH) of the CAS which is set up specifically for particular sporting events to deal with disputes arising during the event.

⁶⁷ Mail Today Bureau, WADA appeal another setback for four quarter milers, *India Today*, available at: <http://indiatoday.intoday.in/story/wada-appealanother-setback-for-four-quarter-milers/1/172803.html>, (visited on Sept 30, 2019).

⁶⁸ Times News Network, WADA Seeks Two-Year Ban On Ashwini & Co, *The Times Of India*, available at: <http://Timesofindia.Indiatimes.Com/Sports/Moresports/Others/WADA-Seeks-Two-Year-Ban-On-Ashwini-Co/articleshow/11815497.cms>, (visited on Sept 30, 2019).

⁶⁹ (2008) 4 SCC 190.

⁷⁰ (2002)4 Scc 105.

⁷¹ Devyani Jain, *Judicial Trend of Intervention in Sports Arbitration and its Future in India*, *Indian Journal of Arbitration Law*, available at: http://ijal.in/sites/default/files/JUDICIAL%20TREND%20OF%20INTERVENTION%20IN%20SPORTS%20ARBITRATION%20AND%20ITS%20FUTURE%20IN%20INDIA_0.pdf, (visited on Sept 28, 2019).

⁷² Arbitration and Conciliation Act (1996).

⁷³ B Srinivasan, *Public Policy and Setting aside patently illegal Arbitral Awards in India*, (Sept. 28, 2015), available at: <http://dx.doi.org/10.2139/ssrn.1958201>.

Model Law and is pertinent to arbitrations for which “the place of arbitration is India”.⁷⁴ Whereas Part II contains provisions to give effect to the Geneva Convention⁷⁵ and the New York Convention⁷⁶, on enforcement of foreign arbitral awards. Part II of the Act was enacted as a sign of support to foreign investors that the enforcement of foreign awards will be faster, unambiguous and more in line with the New York Convention.⁷⁷ Therefore, as per the preliminary format of the Act, there was a clear division between ‘domestic’ and ‘foreign’ awards. Further, due to non-application of Part I to Part II and in absence of any provision in Part II giving the Indian Courts the power to claim jurisdiction to accept an application to question foreign awards, there existed no provision to set them aside in India. Though foreign awards could be set aside or suspended in the country in which or under the laws of which the award was made.⁷⁸

Any award by an international arbitral tribunal can be set aside by the Indian courts under Section 34⁷⁹ of the Act. Thus, an award (including a sports arbitral award) has to go through the inspection by Indian courts for enforcement in India. Even if an award is not against the public policy, the right to challenge the same on any other ground under section 34 of the Act cannot be taken away.⁸⁰

In *Yograj Infrastructure*⁸¹ the Supreme Court unmistakably showed their goal to restrict unwarranted judicial intervention in foreign awards. In this, the court held that once the parties have particularly concurred that the arbitration procedures were to be conducted by SIAC standards, including Rule 32⁸², the decision in *Bhatia International*⁸³ and resulting comparative decisions will no more apply⁸⁴.

In two pro-arbitration decisions issued by the Bombay High Court in *HSBC PI Holdings (Mauritius) Ltd v Avitel Post Studioz Ltd and others*⁸⁵ and the Supreme Court of India in *World Sport Group (Mauritius) Ltd v MSM Satellite (Singapore) Ltd*⁸⁶, both held that issues of fraud ought to appropriately be managed by the arbitral tribunal as per the arbitration agreement went into between the parties, and not by the courts, withdrawing from a prior

⁷⁴ The Arbitration and Conciliation Act Sec. 2(2) (1996).

⁷⁵ The Convention on the Execution of Foreign Arbitral Awards (Geneva, 26 September 1927) (‘the Geneva Convention’). India became a signatory to this Convention on 23 October 1937 (one amongst six Asian nations to become a signatory).

⁷⁶ The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958) (‘the New York Convention’). India became a signatory to this Convention on 13 July 1960.

⁷⁷ *T.T. Arvind & Zia Mody, Bombay Gas Company Ltd v Mark Victor Mascarenhas Challenge to a Foreign Award*, 1 INT. A.L.R. 180 (1980).

⁷⁸ The Arbitration and Conciliation Act Act, Sec. 48(1)(e) (1996), corresponding to The New York Convention, Art V(e).

⁷⁹ The Arbitration and Conciliation Act, Sec. 34 (1996).

⁸⁰ M Mudgal, *Law and Sports in India* 325 (2011).

⁸¹ *Yograj Infrastructure Ltd v. Ssang Yong Engineering and Construction Co Ltd*, AIR. 2011 S.C. 3517.

⁸² SIAC, SIAC Rules 2013, (Sept. 28, 2015), available at: http://www.siac.org.sg/our-rules/rules/siac-rules-2013#siac_rule32.

⁸³ Appeal (Civil) 6527 (2001).

⁸⁴ Devyani Jain, *Judicial Trend of Intervention in Sports Arbitration and its Future in India*, Indian Journal Of Arbitration Law, available at: http://ijal.in/sites/default/files/JUDICIAL%20TREND%20OF%20INTERVENTION%20IN%20SPORTS%20ARBITRATION%20AND%20ITS%20FUTURE%20IN%20INDIA_0.pdf, (visited on Sept 28, 2019).

⁸⁵ Arbitration Petition No. 1062/2012, High Court of Bombay, India, (Jan. 22, 2014).

⁸⁶ Civil Appeal No. 895/2014, Petition for Special Leave to Appeal (Civil) No(s).34978/2010, Supreme Court of India (unreported), (Jan. 24, 2014).

questionable line of authority which had held something else.⁸⁷ Following the underpinning laid by the Supreme Court of India in cases such as *Bharat Aluminium Co Ltd v Kaiser Aluminium*⁸⁸ and *Shri Lal Mahal v ProgettoGrano Spa*⁸⁹, the two cases show an emergent judicial development on the part of the Indian courts not to meddle with the international arbitral process and to be enthusiastic to uphold valid international arbitration agreements between parties.⁹⁰

iii. Indian court of Arbitration for Sports

The Government of India, Ministry of Youth Affairs & Sports is in enthusiastic need to encourage Sports Bodies and national Sports advancement association to change and modernize them to meet the difficulties of current games, which have gotten to be both very aggressive and marketed.

Additionally, with the expanding commercialization of games, in the wake of the XIX Commonwealth Games, 2010, Delhi, the need to manage games has likewise turned into a need of a Sports Regulatory Framework prevailing in distinctive nations. The intercession of the Indian Courts, in Indian Sports administrative association, made it much more important, that they modernize their structures, frameworks and forms, and turn out to be more sportsperson driven and more straightforward and responsible in their capacities.

To determine such issues and guarantee the advancement of games in congruity with the Olympic Charter and with regards to the aims and objects of Comprehensive Sports Policy, it was consequently needed to frame a free assertion and intercession component on the lines of comparative activities taken in the United Kingdom (The UK Sport Dispute Resolution Panel)⁹¹ and Australia (The National Sports Dispute Centre)⁹².

The Union Cabinet Minister for Youth Affairs & Sports of Government of India had guaranteed the Members of Rajya Sabha in the Parliament of India that there have been suggestions for institution of a different Sports Law by the Central Government⁹³. The Minister had further guaranteed the Parliament that Government has meticulously examined the sports regulation frameworks pervasive in distinctive nations and is considering a few choices, including that of sanctioning a National Sports law for better administration of sports.⁹⁴

Inside of the Indian sports law, a positive step was brought in 2011 with the Indian Olympic Association being guided by the International Olympic Committee to set up an Indian Court of Arbitration for Sports (“ICAS”) which

⁸⁷ *N. Radhakrishnan v. Maestro Engineers & Ors* 1 SCC 72(2010), *India Household Healthcare v. LG Household Healthcare* 5 SCC 510 (2007), *Hindustan Petroleum v. Pink City Midway Petroleums* 6 SCC 503(2003).

⁸⁸ *Bharat Aluminium Co Ltd v. Kaiser Aluminium Technical Service Inc* 9 SCC 649(2012), overruling the much-criticised case of *Bhatia International v. Bulk Trading SA* 4 SCC 105(2002).

⁸⁹ (8) SCALE 480(2013).

⁹⁰ Linda Widyati & Partners in association with Clifford Chance, Two recent pro-arbitration cases from Indian courts continue the judicial trend towards recognition of arbitral independence, (Feb 2014).

⁹¹ Sport Resolution, Resolving Disputes in Sports, available at: <https://www.sportresolutions.co.uk/>, (visited on Sept 29, 2019).

⁹² Sportsa, State Sports Dispute Centre, available at: <http://www.sportsa.org.au/member-information/state-sport-dispute-centre>, (visited on Sept 30, 2019).

⁹³ Dr. M. S. Gill, Minister of Youth Affairs & Sports, Govt. of India, answer the Question No. 2105 in the Parliament of India (Rajya Sabha), (Aug. 12, 2010).

⁹⁴ R. K. Jain, Sports Regulations in India, Sports Law Knowledge Lecture & Seminar, available at: www.sportslawindia.info, (visited on Sept 30, 2019).

was to be made out of eight Panelists to mediate disputes emerging in the sports regime. The Panelists are retired judges of the Supreme Court of India and different High Courts. The Panel contains HMJ (Retd.) Dr. A.R. Lakshmanan, who is the Chairperson of the ICAS alongside Mr. M.R. Culla, Retired Justices R.S. Sodhi, B.A. Khan, Usha Mehra, Lokeshwar Prasad and S.N. Sapra.⁹⁵

From an exposed examination of all daily paper data and other data that is accessible, it is not clear whether the previously stated board is utilitarian, and moreover, there is no clarity on whether any hearings have been led, whether particular Rules and Regulations have been confined and whether there are any specific decisions that have been rendered by such a board inside of the last 3-4 years. It is trusted that since 2011, when news initially flowed that such a board was to be constituted; no compelling steps have been taken, following, to set up this board.

Truth be told, if such a board were working, then a recent dispute including doping of an Indian Swimmer would have been referred to such a Panel. In actuality, the said dispute has been referred to the Alternative Hearing Center (“AHC”) of the CAS at Abu Dhabi, where the Sole Arbitrator has in a detailed order dated 08.04.2015 held against the Indian swimmer.⁹⁶

As an idea, the ICAS was a stage towards adding to a corner zone of law and productively determining dispute at the most earliest conceivable manner without plan of action to an indulgent suit process. Be that as it may, steps must be taken to bring such establishments into realization. As the CAS has advanced the AHC at Abu Dhabi, which has been set up in relationship with the Judicial Department in Abu Dhabi, comparable steps are obliged to be taken to advance the Indian Court for Arbitration in Sports. It is trusted that if legitimate steps had been taken to advance and further the reason for sports arbitration inside of India, then such a particular Tribunal would go far in viably and effectively determining sports disputes.

Sports Arbitration is still a generally new idea under Indian law. A proposal can be propelled that “Sports Arbitration” as a class can be brought into the Arbitration and Conciliation Act, 1996 giving it a sure feeling of Parliamentary authenticity or be consolidated through the method for isolated model conduct rules that leagues can take recourse. It must be envisioned that had there been a compelling Alternate Dispute Resolution process set up, BCCI⁹⁷ and IPL⁹⁸ related issues, which have involved national consideration could have been determined at the most punctual without bringing on undue melodrama and embarrassment.

CONCLUSION

The fiber of game debilitates in great circumstances whether it be that the arbitrators appreciate aggregate control or where they are stripped of all capacities and force by subjecting a dominant part of their choices to survey, in this way lessening them to an insignificant custom. Equalization must be accomplished, and in coordinating investigative

⁹⁵ 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>.

⁹⁶ CAS, The appeal of Amar Muralidharan is dismissed by the CAS following first ever hearing held at the CAS Alternative Hearing Centre in Abu Dhabi, (Apr. 16, 2014), available at: <http://www.tas-cas.org/en/general-information/news-detail/article/the-appeal-of-amar-muralidharan-is-dismissed-by-the-cas-following-first-ever-hearing-held-at-the-cas-alternative-hearing-centre-in-abu-dhabi-1.html>.

⁹⁷ Board of Control for Cricket in India, available at: <http://www.bcci.tv/>, (visited on Sept 28, 2019).

⁹⁸ Indian Premier League, available at: <http://www.iplt20.com/>, (visited on Sept 28, 2019).

methodology and innovation, federations need to guarantee that such strategies encourage the choice making process and help in dispute resolution and not substitute the long-standing manual framework totally.⁹⁹

A hybrid dispute resolution procedure consolidates components of two or all the more generally separate procedures into one. The most well known mixture procedure is mediation-arbitration, or “med-arb”, which is a half and half between both mediation and arbitration. Subsequently, there are no settled tenets on how the procedure ought to be led. The parties to the dispute present the matter to mediation and after a concurred measure of time or an unbreakable stop the matter is changed over to arbitration and an arbitrator chooses the matter. Mediation took after by arbitration is a method, which gives an aggregate dispute resolution framework, which implies, the cost and postpone of the legal framework is dodged completely.¹⁰⁰

The system for Mediation-Arbitration has the upside of offering both the likelihood of determination by the parties’ own agreement and, fizzling such understanding, the assurance of determination by the binding decision of the arbitrator as the arbitral award.

Such “hybrid methods” has two focal points:

- first, neutrals who act as mediator-arbitrators are some of the time ready to apply aptitudes that organization neutrals may not have to the same degree (however regularly, the office neutrals are themselves profoundly talented);
- Second, and more critical, is that a mediator-arbitrators’ proposals convey more weight than those of a “pure mediator,” notwithstanding when the recommendations are comparable or indistinguishable. This is because the mediator-arbitrator may have the concluding decision if the case is unsettled.

The ideal kind of case for such hybrid process is one in which there appear to be possible solutions involving arrangements, which only the parties can make, such as long-lasting or familiar business relations. Thereby, making it more likely that, they will discuss their interests and wants forth rightly with the mediator in caucus and impound their submissions as to their rights to the succeeding arbitration phase. Thus it can very well be utilized in resolving the sports dispute more efficiently.

Concerning the fate of ICAS, a trust must be communicated that ICAS begins to practice its purview in appreciation of sports disputes and to function in a productive way. India is a nation where sports law is extremely lagging and steps are obliged to be taken in admiration of such disputes so that both athletes and also Sports Federations and other auxiliary bodies joined with sports in India can push ahead towards understanding their games related objectives as opposed to contemplate over how to settle scores against or with one another.¹⁰¹

⁹⁹ Fatema Merchant, *Howzzat! Appeal Process in Sports*, Sports@Lawnk, (Aug. 31, 2012), available at: <https://lawnk.wordpress.com/2012/08/31/howzzat-appeal-process-in-sports/>.

¹⁰⁰ D Elliort, *Med/ Arb: Fraught with Danger or Ripe with Opportunity*, 1996 (62) *ARBITRATION* 175.

¹⁰¹ 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>.