

# Arbitration in Sports Dispute Resolution in India

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**Abstract**—According to Section 2 (1) (a) of the Arbitration and Conciliation Act, 1996 defines Arbitration to mean ‘any arbitration whether or not administered by permanent arbitral institution. This paper mostly stresses on the need for arbitration in sports dispute resolution. It talks about one of the biggest corporate giants, the BCCI and its monopoly in the field of cricket and how this monopoly can be curbed through the means of final-offer arbitration. In final-offer arbitration the two parties to a dispute submit final offers to an arbitrator. The arbitrator then chooses as the binding solution that offer which is closest to his own view of the appropriate outcome. Lastly it talks about the advantages of online arbitration and how it could help in delivering justice in the field of sports.

**Index Terms**— sports dispute resolution

## I. INTRODUCTION

Sports odyssey in India can be dated to the Indus Valley Civilisation but yet sports law has no jurisprudential foundation in our country. Sports law is considered as a misnomer even after being such an integral part of our society. Sports has gained momentum and has even become a professional career option for many sports enthusiasts. Sports law or ‘lex sportiva’ is now an upcoming field of study which deals with issues that rise with respect to sports or even the organisation and preparation of sports events. It overlaps with competition law, labour law, constitution law and various other fields of law. Some countries like the France and UK have a well laid down sports law where the former has used the interventionist approach by giving power to the state to award license for sports activities and events and the later has used the non-interventionist approach by giving all the power in the hands of the Department of Culture, Media and Sports. For India the more suitable approach would be the non-interventionist approach as state intervention would create unnecessary regulations and complications. As of now, the sports law in India supervised, managed and regulated by National Sports Policy, Sports Law and Welfare Association of India, Sports Authority of India and The Sports Broadcasting Law in India. There are no laid down national or state legislations for the regulation and management for sports.

In the olden days sports was for participation, entertainment and the spirit of the game was more important than anything else. People gained recognition only because of their extraordinary skill and performance in a particular sport and not due

to politics, discrimination or favouritism, which is prevalent now. The authenticity of the sport is taken away due to corruption and other illegal practices which are involved. The increasing amount of scandals like the IPL scams and sexual harassment of women in the Indian Women’s Hockey Team, controversies, issues between the players and the governing bodies, rise in labour issues, defamation and hurting the reputation of sports persons, no stringent laws to curb corruption and to ensure accountability, drug abuse and even problems like discrimination and favouritism demeaning the very essence of the sport being played—are few of the reasons why sports law is the need of the hour in our country. There is a need for an independent authority to look after the sports disputes which helps in rendering quick, flexible and inexpensive ways of rendering justice to sports persons.

Laying the dispute resolution in sports in the hands of Arbitration should be considered as a significant component while framing sports law in India. Many governing bodies are incorporating a clause in their rules to take up arbitration for dispute resolution.

In English law, arbitration is a mechanism for the resolution of disputes which takes place, usually in private, pursuant to an agreement between two or more parties, under which the parties agree to be borne by the decision to be given by the arbitrator according to law or, if so agreed, other considerations, after a fair hearing, such a decision being enforceable at law.

Arbitration is an alternative dispute resolution in which the parties choose one or more arbitrators who give their decision on the said case which is legally binding on both the parties. It is an outside court settlement. It is a settlement technique in which a third party reviews the case and imposes a decision that is legally binding for both sides. Other forms of ADR include mediation (a form of settlement negotiation facilitated by a neutral third party) and non-binding resolution by experts.

Arbitration and Conciliation Act 1996 which is based on the UNCITRAL Model Law governs arbitration in India. In sports, the disputes are first referred to the federations that govern a particular sport and subsequently the international authorities that govern the sport. e.g. in hockey disputes are referred to the Indian Hockey Federation and after that the International Hockey Federation.

## II. WHY SHOULD ARBITRATION BE CHOSEN OVER LITIGATION IN SPORTS DISPUTE RESOLUTION ?

Arbitration would be a far better choice than that of litigation or the traditional courts proceedings system as sports persons have short-lived careers. It helps giving the sports enthusiast's speedy justice and save them from the arduous and extremely lengthy litigation process which adversely effects their professional life. In litigation, problems like appearing for regular hearings and long term commitment makes it unappealing for sportsmen. In courts there are numerous amount of cases pending due to which justice is delivered over a long period of time. When this way of dispute resolution is chosen the persons or arbitrators per se are people with expertise in their particular fields which acts as an added advantage as they can understand the case better and also faster than any other person. So when persons from the specific sports are chosen, who have in depth knowledge of the rules and regulations of the particular sport and even the arbitrator has prior experience with sports law cases it makes the process of delivering justice way easier. The decision rendered by the arbitrators are questionable in the court of law which makes it more reliable, appealing and dependable. Both traditional litigation and arbitration awards can be challenged. Another important factor is privacy and confidentiality which is well maintained which doesn't spoil the reputation and helps in preservation of goodwill of the sportspersons. In litigation no such privacy is maintained.

With the inauguration of India's first arbitration centre in Delhi in 2009, India is recognising the necessity of arbitration for quicker disposal of cases. The increasing use of arbitration in sport over the last decade has challenged the legal framework in which arbitration disputes are addressed in many jurisdictions.

## III. HOW THE MONOPOLY OF THE BCCI HAS ADVERSELY AFFECTED THE GAME OF CRICKET? HOW TO CURB THIS INDESTRUCTIBLE MONOPOLY?

"Power corrupts and absolute power corrupt absolutely" Through the years we have seen how the BCCI has obtained a patent over cricket. It has single handedly controlled the game and regulated it as and when it deemed fit. This unbreakable, strong monopoly has led to a lot of biased decisions in the field of cricket which has effected the sportsmen playing the sport and the sport as a whole. BCCI has the power from choosing players and umpires for the national team, formulating the necessary rules and regulations for the game to disqualifying players which may effects his or her career to an extent that he or she may have to stop playing it completely. It builds stadiums, monitors the functioning of cricket academies, supports the state organisations and associations, frames pension schemes and also sustains expenditures of trainers, coaches and others. It also sends or lends the broadcast and telecast rights and even collects the admission fees for the place where the matches are conducted. Looking at all the powers and

functions that the BCCI has and that there is no opposition to its decisions, decentralisation of power is of paramount importance now. There are no steps or efforts made by the government to end this monopoly. The functions which are performed by the BCCI are public functions even though it is a private entity.

One such instance of BCCI's monopoly which we have seen in the past is when ICL that is the Indian cricket league was going to be introduced as an opportunity for all the cricket enthusiasts to showcase their talent.

A cricket tournament named ICL was started by Essel Sports Private Ltd (ESPL) which involved both Indian and foreign players. The BCCI did not support this tournament and used its power and influence and told the various state agencies to boycott this event.

BCCI despite having all the funds to provide for such an event, refused to make it work and banned players from taking part in ICL. It also forced the board members to take strict action against their respective players involved in the ICL. Due to all these strict rules of the BCCI, lack of participation and funds, the ICL was side lined permanently.

A suit was filed against the BCCI in the Delhi High Court as it was threatening the players to not participate in the tournament otherwise their license would be at stake and they won't let to take part in the international matches. To stop the ICL, the BCCI even out-hired cricket stadium which were under the state government.

These any-competitive practices were also challenged in the court.

The court ruled in favour of the ICL and gave notices to BCCI, state cricket associations and corporate sponsors against terminating valid contracts of players joining the ICL.

A fine way to resolve this problem of misuse of power is through the means of final-offer arbitration. In final-offer arbitration the two parties to a dispute submit final offers to an arbitrator. The arbitrator then chooses as the binding solution that offer which is closest to his own view of the appropriate outcome. When such a resolution is implemented wherein the BCCI has to go through Arbitration and not take decisions according to its own whims and fancies, it would bring down monopoly considerably.

A third party involvement would bring in fairness and also would not let one dominate over the other completely.

## IV. WHETHER ONLINE ARBITRATION A FEASIBLE OPTION FOR RESOLVING DISPUTES IN SPORTS?

The versatility of the internet and its popularity among the people of India makes online dispute resolution all the more attractive. Its efficiency, cost-effectiveness and also the amount of people it reaches out to be fascinating. The hassle of going to the court and appearing for each hearing is avoided when it's online. Online dispute resolution is a fairly new concept and has not been implemented in India. There are various advantages of this system due to which it would fit well in the sports arena.

Firstly, it saves time and also travel cost. Sports persons don't have that much time that they could go to the court and attend each hearing and their case could go on for years together. They have short-term careers and their disputes need immediate attention which could very well be provided through online arbitration which is way quicker and easier. Travel cost is also saved on. In case the parties need to meet or the witnesses required to be there then the parties can use video recording or videoconferencing, voice messaging, instant messaging, or chat room conferences can be used to avoid travel costs.

Secondly, non-confrontational method is useful and best suited if the parties don't trust each other or are not comfortable meeting each other face-to-face. When there is distance between the parties it helps them to deeply think about the situation in their own space and reflect on the situation and position and proceed further.

Thirdly, ODR also abolishes complex jurisdictional and Choice-of-Law problems. The Formal Justice Systems are restricted by the legal sovereignty and comity and sometimes an injured party may have to travel from one place to another to file a case, and to get justice. In the ODR mechanism this is overlooked as if two parties to a dispute submit to an online ADR provider, then the issue of jurisdiction is avoided.

Fourthly, in ODR, internet provides a neutral location and the issue of deciding on a particular place is avoided.

Fifthly, ODR facilitates the process of recording statements, correspondence, pleadings, and any other written, oral, or visual communication transmitted electronically.

These are the various advantages who online arbitration should be used in sports dispute resolution.

#### V. CONCLUSION

Our country needs a well-established sports law and it is evident that arbitration is a fine solution to solve disputes in the field of sports. It is more efficient and also faster than the traditional court system that is adopted in other disputes. For the short-lived careers of sports enthusiasts there must be a speedy dispute resolution which can be provided by the way of arbitration. The monopoly of the BCCI in the world of cricket could be changed through the means of final-offer arbitration to a certain extent.

Lastly, suggestion to adopt online arbitration in sports dispute resolution could help in many ways as stated in the paper. Arbitration is the future in many areas of law and should be chosen in sports as well.

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