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Research

Time for Evolution of Sport Adjudication in India

Is Sports Arbitration the Way Forward?

June 2023

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Overview

Apart from being an industry promoting competition and entertainment, sports as an industry accounts for upto 6 per cent of the total world trade.[1] Over the years, sport has turned into a multi-billion dollar industry involving lucrative investments from all over the world. Some of the most coveted sports franchises have ended up establishing themselves as the biggest global brands, not only within the realm of the sports industry but also across all the industries in the world. Some examples of such franchises range from football clubs such as Real Madrid Football Club, Manchester United, Football Club Barcelona to NBA franchises such as New York Knicks and Golden State Warriors.

One of the major examples of the global demand of sport amongst the global business community was seen when JP Morgan Chase, the US investment bank had committed 3.25 billion euros to launch a break-away football league called the European Super League involving 12 marquee football.[2] Therefore, it should not come off as a matter of surprise that sports also has become a subject of legal disputes across the globe. One of the major mechanism of dispute resolution in the field of sports has been arbitration, mainly thanks to the uniform practice and abundant, publicly-available case law of the Court of Arbitration for Sport (the "**CAS**"), based in Lausanne, Switzerland, colloquially referred to as the Supreme Court for sports disputes.

The CAS as an organization was established by the International Olympic Committee in 1984. One of the visions behind the formation of CAS was the requirement of a supreme institution for the adjudication of sports disputes outside of the jurisdiction of national courts. Ever since its establishment, CAS has registered over 6,000 arbitrations. In fact, even in the Covid'19- marred year of 2020, the CAS registered over 900 arbitrations.[3] Apart from its headquarters in Lausanne, CAS also has two permanent decentralized offices — one is located in Sydney and the other is located in New York.

1 Ian Blackshaw, TV Rights and Sport, TMC Asser Press (2009); José Luis Arnaut, Independent European Sports Review 2006; Presentation of the United Nations Environment Programme (UNEP), November 2004.

2 The Guardian: European Super League Clubs promised €200m-€300m 'welcome bonus', available at: https://www.theguardian.com/business/2021/apr/19/jp-morgan-european-super-league.

3 Sports Arbitration: Certain unique features and the Court of Arbitration for Sport (the "CAS"), available at: https://www.acerislaw.com/sports-arbitration-certain-unique-features-and-the-court-of-arbitration-for-sport-the-cas.

The Global Sports Arbitration Regime

A. The CAS Code: The Adjudication Mechanism

I. Nature of Disputes to be Adjudicated by CAS

Article R27 of the CAS Code[1] stipulate that the CAS Code shall apply in the event that the parties agree to refer the dispute to CAS by way of an arbitration clause contained in a contract or the sports regulations. Further, an arbitration could be referred to CAS by way of an appeal against a decision rendered by a federation, association or sports-related body where the statutes or regulations of such bodies, or a specific agreement provide for an appeal to CAS.

The pertinent question that arises is what amounts to a "sports-related dispute". While the CAS Code does not specifically define "sports-related disputes", the CAS has adjudicated upon disputes ranging from commercial disputes involving sponsorships, media rights or player contracts revolving around sports to specific disputes pertaining to sports such as doping, on-field controversies etc. However, sports disputes have a wide ambit of governing laws, such as competition laws, IP Laws, contract laws and even criminal laws. Therefore, it is incumbent upon CAS to determine the arbitrability of the disputes brought before it.

II. Seat of Arbitration and Applicable Law

The applicable provision of the CAS Code governing the seat of arbitration, being Article R28 of the Code,[2] stipulates that all CAS Arbitrations shall be seated in the CAS headquarters at Lausanne. However, the venue of arbitration could certainly change to another location in exceptional circumstances, contingent upon due consultation with the parties to the dispute. Therefore, unlike international commercial arbitrations practiced in most arbitration hubs across the world, the parties are not conferred upon with the discretion to choose the seat of arbitration. Another noticeable implication of this rule is that the exclusive jurisdiction to set aside CAS Awards lies with the Swiss Federal Tribunal.

However, Article R45 of the Code[3] states that the substantive law governing the disputes arising between the parties can still be specifically decided by the parties. Therefore, the CAS Code does implement the concept of party autonomy as far as far as the choice of the law applicable to the merits is concerned. In the event that the parties fail to choose the applicable law, the Swiss Law shall be the default law governing the disputes

1 R27 Application of the Rules
These Procedural Rules apply whenever the parties have agreed to refer a sports-related dispute to CAS. Such reference may arise out of an arbitration clause contained in a contract or regulations or by reason of a later arbitration agreement (ordinary arbitration proceedings) or may involve an appeal against a decision rendered by a federation, association or sports-related body where the statutes or regulations of such bodies, or a specific agreement provide for an appeal to CAS (appeal arbitration proceedings). Such disputes may involve matters of principle relating to sport or matters of pecuniary or other interests relating to the practice or the development of sport and may include, more generally, any activity or matter related or connected to sport.

2 R28
The seat of CAS and of each Arbitration Panel (Panel) is Lausanne, Switzerland. However, should circumstances so warrant, and after consultation with all parties, the President of the Panel may decide to hold a hearing in another place and may issue the appropriate directions related to such hearing.

3 R45 Law Applicable to the Merits
The Panel shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to Swiss law. The parties may authorize the Panel to decide ex aequo et bono.

on merits. The CAS Code, however, prescribes a slightly different mechanism of choosing the substantive law governing the appeals to the CAS Appeals Arbitration Procedure.[4] While the parties still retain the discretion of choosing the applicable law, in the event that they fail to choose the applicable law, the applicable law shall be the discretion of the CAS panel between the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate.

III. CAS Appeal Mechanism

The appeal mechanism prescribed by the CAS Code is quite unique in its own accord. Article R47 of the CAS Code[5] provides for appeals against decisions rendered by the Sports Federation/ Association or by the CAS acting as the forum of first instance if such appeal has been expressly provided by the rules of the federation or sports-body concerned. However, the uniqueness of the CAS appeals mechanism is that unlike appellate tribunals serving as blue-prints for commercial arbitrations in jurisdictions across the world, CAS appeals tribunals are vested with the power to de novo review the facts as well as the law revolving around the decision rendered by the forum of first instance.[6] The significance of this provision is that it gives the CAS unfettered powers to review the decision of the forum of first instance and arrive at an independent decision. Therefore, the CAS Appellate Tribunal is not bound by any of the facts, evidence or even the reasoning arrived at by the forum of first instance. In fact, the CAS in appeal also conducts first instance arbitration proceedings wherein legal validity of the decision rendered by the Sports Federation/ Association is reviewed by an independent tribunal.[7] They have the power to partially or completely set aside the first decision and further replace it with a fresh decision or even refer it back to the forum of first instance. Therefore, the question that arises is whether the designation "appeals procedure" is a smokescreen, considering the fact that the function of the CAS Appellate Tribunal certainly is not that of an extended component of the institution's internal legal process.

B. Jurisprudence Adopted by Courts/Tribunals in Sports Arbitration

The courts and tribunals have adjudicated a wide variety of sports disputes. The judgments arising out of sports tribunals and courts have laid down jurisprudence on a variety of issues involving sports, such as the procedural jurisprudence around sports arbitration, the jurisprudence around sports and human rights and the jurisprudence on the social and economic integrity of sport. While the tribunals have taken up the preliminary considerations pertaining to the arbitrability of such disputes, the tribunals, especially CAS has been quite effective in laying down a number of valuable precedents in sports disputes. The same have been enumerated in categories supported by various case laws.

4 R58 Law Applicable to the merits
The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

5 R47 Appeal
An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body. An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned.

6 Read Article R58 defined at Footnote No.4

7 U. Haas, "The Time Limit for Appeal", Arbitration Proceedings before the Court of Arbitration for Sport (CAS) (German Arbitration Journal, Kluwer Law International; 2011, Volume 9, Issue 1) pp. 1 – 13.

I. Jurisprudence Around Impartiality of Arbitrator in Sports Arbitration

From time to time, it has been incumbent upon sports tribunals as well as courts to establish the standards of impartiality of the arbitrator vis-a-vis the procedure adopted in sports arbitration. The CAS Rules have *prima facie* established a modicum of difference between some procedures pertaining to sports arbitration and standards prescribed in international commercial arbitration. While arbitration statutes across the globe have prescribed that the arbitration proceedings are the creature of the arbitration agreement only, CAS Rules also allow for the commencement of sports arbitration proceedings if the regulations of the concerned sporting associations also prescribe arbitration as a mode of dispute resolution. Further, the tribunals and courts have been vested with the responsibility of ensuring that the procedure established in sports arbitration is followed by the parties involved, including the arbitrators themselves in an unbiased manner. Therefore, the standards of independence and impartiality of arbitrators in sports arbitration also ought to be established by the arbitral institutions and courts in accordance with the rules subscribed by the parties to the dispute. Some of the judgments wherein the courts have outlined the threshold of impartiality and procedural integrity in sports arbitrations have been enumerated in the table below:

S.No	Judgment	Case Summary and Jurisprudence	Relevant Paragraphs
1	Sun Yang vs World Anti-Doping Agency (WADA)[8]	The established the significance of impartiality of an arbitrator vis-à-vis the decision of CAS to ban Chinese swimmer Sun Yang for 8 years on the grounds of breaching the anti-doping regulations. In this matter, the Swiss Federal Supreme Court went onto uphold an application requesting for revision of the award rendered by CAS. The request was based upon revelations of tweets of the Chairman of the Arbitral Tribunal which demonstrated a strong case of bias against Chinese nationals. Based on these findings, the CAS award banning the appellant was annulled and the Chairman of the Tribunal was subsequently removed from the arbitration panel.	Para 6.4, 7.1, 7.2, 7.3, 7.5, 8
2	SA Sports Management International vs Serge Aurier (Mr. X)[9]	The judgment dealt with the issue of "double hatting" in sports arbitration, where an arbitrator in the panel of the sports arbitral institution cannot act as a counsel in an arbitration seated in the same institution. In this case, the dispute arose between Serge Aurier, a footballer playing for the club Paris Saint Germain, and the Appellant, a sports management company with respect to the termination of the contract, and arbitration proceedings were initiated as per the CAS-CONSF Rules. The Appellant requested the tribunal to preclude the player's counsel from representing him, as she was empaneled on the CONSF list of arbitrators. While the same was rejected by CNOSF, the award was challenged by the Appellants before the Paris Court of Appeal praying for annulment of award. The Court of Appeal held that the Appellant had agreed to arbitrate under the CAS-CONSF Rules, which did not prohibit "double hatting" per se. Further, accepting the Appellant's request would have an adverse impact on the player's right to choose his lawyer. Further, the plea that the lawyer was on the CAS-CONSF's panel could not be alone enough to prove a case of bias. In view of the same, the plea for annulment was not allowed and the appeal was thereby dismissed. However, this judgment played an integral role in inspiring the CNOSF to amend the CAS CONSF Arbitration Rules to specifically prohibit "double hatting" in the year 2020.	Paras 29-31, 39, 43-51

8 Swiss Federal Supreme Court, 4A_318/2020, available at: https://www.swissarbitrationdecisions.com/sites/default/files/584%20-%20SIAD%20-%204A_318-2020%20-%202020.12.22.pdf.

9 Paris Court of Appeal, RG no. 19/02245 - Portalis no. 35L7-V-B7D-B7LMV, Judgment dated 8 June 2021, available at: https://www.cours-appel.justice.fr/sites/default/files/2022-04/RG%2019-02245%20ANO.pdf.

II. CAS Jurisprudence Around Human Rights

While sport has been an instrumental agency to bring about unison across all races, nationalities etc., there have been several instances of discrimination, racism, violations of labour rights and other forms of human rights issues that have occurred during sporting events. Under such circumstances, where the sport has been subject to criticism and scrutiny, it has been incumbent upon the sports tribunals and courts to come to the aid of the marginalized and discriminated sections of athletes. One of the instances where the CAS took it upon itself to be the flag-bearer of human rights in the world of sports was when it upheld the decision of FIFA and UEFA to ban Russian teams from both club and national competitions following Russia's invasion of Ukraine.[10] Some of the judgments wherein the CAS laid down the jurisprudence around a variety of human rights issues are enumerated in the table below:

S.No	Judgment	Case Summary and Jurisprudence	Relevant Paragraphs
1	Manuel Henrique Tavares Fernandes v. FC Lokomotiv Moscow[11]	In this case, the CAS delineated the Labour Code of Russia and the obligation upon the employers to provide their workers with equal payment for work of equal value. In the present case, the Appellant entered into an employment contract with the Respondent, valid for five years. Over the course of the employment tenure, the Respondent Club kept paying the player his remuneration in the Russian RUB currency. However, the salary was contested by the Appellant player, especially with respect to the exchange rate used by the Respondent for the payment of his salaries. Further, the payment for match bonuses in the total amount of RUB 4'435'000 was also allegedly pending. Subsequent to demand notices sent to the Respondent Club without any response, the Appellant was constrained to initiate legal action before the FIFA Dispute Resolution Chambers ("DRC"). The FIFA DRC held that the Respondent Club had fulfilled its payment obligations and therefore, there was no merit in the application. Subsequently, the Appellant player appealed the FIFA DRC's decision before the CAS. The CAS Panel ascertained that the employment contract clearly stipulated that the payment of remuneration was to be paid in EUR and not in RUB. Therefore, the of its remuneration to the player. With respect to the bonus payable, the panel referred to Article 22, para. 2 of the Labour Code of Russia Respondent Club had defaulted on the complete payment, which specifies an obligation for the employer to provide workers with equal payment for work of equal value. Furthermore, Article 132 of the Labour Code of Russia forbids any discrimination at establishment and change of terms of payment for work. The panel found out that at the end of the season 2014–2015, all players of the team, except for the Appellant, were rewarded with bonuses for the win of the Cup of Russia. Therefore, the panel came to the conclusion that the Respondent Club's conduct was discriminatory in nature and that the Respondent did not adequately pay out the appropriate bonus to the Appellant.	Paras 99-107

10 'Sports court upholds football bans on Russian teams', accessed at: https://sportstar.thehindu.com/football/cas-upholds-ban-on-russian-football-teams/article65643585.ece.

11 CAS 2018/A/6045.

S.No	Judgment	Case Summary and Jurisprudence	Relevant Paragraphs
2	Josip Simunic v. Fédération Internationale de Football Association (FIFA)[12]	The present judgment revolves around disciplinary sanctions levied on players for offending the dignity of a community of section of persons after a match. In this case, the Appellant was a footballer who was playing for the Croatian National Team in the 2014 FIFA World Cup qualifiers. After the match got over, the Appellant player went to the centre of the pitch, without any of his teammates, with a microphone in his right hand and a shirt in his left hand. While making "rising arm movements" with his left hand, he first pronounced, at least two times, the words "u boj, u boj" ("to the battle"), replied by the spectators in the stadium with the words "za narod svoj" ("for your people" or "for your nation") and then repeatedly, i.e. four times, the words "za dom" ("for the homeland"), replied by the spectators at each occasion with the word "spremni" ("we are ready"). Later, the FARE network in its report assessed that the expression "za dom spremni" was a Croatian salute that was used during World War II by the fascist Ustaše movement. The issue was brought before the FIFA Disciplinary Committee. The FIFA Disciplinary Committee applied Article 58(1)(a) of the FIFA DC[13] and on the basis of the same, suspended the player for 10 matches. The ban was upheld in appeal before the FIFA Appeal Committee. When this decision was appealed before the CAS, the CAS had to ascertain (i) the standard of proof to be applied and (ii) whether the words expressed by the supporters could be attributed to the Player. To the first issue, the Panel held that in practical terms, the standard of proof is that of personal conviction, which coincides with the "comfortable satisfaction" standard widely applied by CAS panels in disciplinary proceedings. According to this standard of proof, the sanctioning authority must establish the disciplinary violation to the comfortable satisfaction of the judging body bearing in mind the seriousness of the allegation. It is a standard that is higher than the civil standard of "balance of probability" but lower than the criminal standard of "proof beyond a reasonable doubt. The burden of proof to establish the same lies with FIFA. With respect to the second issue, the Panel found that the Player was clearly interacting with the remaining supporters in the stadium and longing for their reply. The Panel finds it even an aggravating factor that the Player by his actions involved the supporters in his disparaging behaviour instead of pronouncing the words himself. Therefore, the words of the crowd could be attributable to the player in this respect. In light of these observations, the CAS also upheld the suspension of the player and thereby dismissed the player.	Paras 52-56, 57-59
3	Keramuddin Karim vs FIFA[14]	This was one of the first judgments delivered by CAS with respect to the issue of sexual harassment in sports. In this case, the appellant was the President of the Afghanistan Football Federation (the "AFF") from 2004 until December 2018. The FIFA Investigation Committee initiated a preliminary investigation into serious allegations of "severe mental, physical, sexual and equal rights-abuse of the female players" by the Appellant. The Chairperson of the IC issued her final report in the investigation, concluding that the Appellant had indeed committed the alleged violations and found him guilty of infringement of art. 23 (Protection of physical and mental integrity) and art. 25 (Abuse of position) of the FIFA Code of Ethics and banned from taking part in any kind of football-related activity at the national or international level During the appellate proceedings before the CAS, depositions of witnesses accusing the Appellant of sexual harassment were taken on record. While the CAS did not equate the proceedings to a criminal conviction, but the fact that there were five separate but coherent and consistent witness statements from these anonymous witnesses meant that the allegations could not be dismissed. In view of the same, the appeal by the appellant was dismissed by CAS.	Paras 191-203

12 Court of Arbitration for Sport (CAS), CAS 2014/A/3562, available at: https://jurisprudence.tas-cas.org/Shared%20Documents/3562.pdf.

13 Article 58(1)(a) of the FIFA DC

"Anyone who offends the dignity of a person or group of persons through contemptuous, discriminatory or denigratory words or actions concerning race, colour, language, religion or origin shall be suspended for at least five matches. Furthermore, a stadium ban and a fine of at least CHF 20,000 shall be imposed. If the perpetrator is an official, the fine shall be at least CHF 30,000".

14 Court of Arbitration for Sport, CAS 2019/A/6388, available at: https://sennferrero.com/descargaspdf/tas-cas/202010/CAS_2019.A.6388.pdf.

III. Jurisprudence on the Social and Economic Integrity of Sport

With the rise of sport and its over-commercialization as a marketable entity, there has been a growing need of protecting its social and financial integrity on a global level. As times have progressed, there has been a steady rise in doping cases in almost every sport, whether it is in gymnastics, cricket or even football for that matter. Further, the financial integrity of sport has also suffered major setbacks. With sporting franchises such as Newcastle United, Paris Saint Germain and Manchester City being acquired by state-owned investment funds, there has also been accusations of money-laundering and dirty-laundry cleanups on the part of these entities. This has given rise to cases on hyper-inflation in the transfer market, with such franchises purchasing players at monumental and record-breaking transfer fees, which has made the market unviable for the small players in the sport. The landscape of sport has also been marred by instances of bribery and match-fixing, which just does not only have a massive impact on the financial integrity of sport, but also raises a big question mark on the ethics and fairness of what is being played on the field. Therefore, under such circumstances, the onus lies upon the courts and the CAS to ensure that the social and economic integrity of the sport is protected. Some of the judgments wherein the CAS laid down the standards and parameters of fair play in sport are enumerated in the table below:

S.No	Judgment	Case Summary and Jurisprudence	Relevant Paragraphs
1	Md.Asif vs International Cricket Council (ICC)[15]	This case constitutes one of the most landmark judgments on the scandals of match-fixing and bribery, which marred the world of Pakistani cricket with nasty questions on the lack of ethical standards and desire for fairness. In the summer of 2010, there was test match played between England and Pakistan at the Lord's Cricket Stadium. A bookie by the name of Mazhar Majeed was caught confessing in a sting operation conducted by an undercover reporter of a UK-based newspaper that three "no balls"[16] would be bowled in a certain sequence in the said test match that was scheduled to begin the following day. The said "no balls" were bowled in the exact sequence as narrated by Majeed in the sting operation. The cricketers charged with the offence of "match-fixing" by ICC based on the said sting operation were Md. Asif, Md. Amir and Salman Butt. The matter was first heard by the ICC Tribunal, wherein the Tribunal determined that the sting operation recordings were authentic and the explanations given by the cricketers were not substantial. In view of the same, the players were handed enormous bans. Subsequently, the Crown Prosecution Service convicted the players with imprisonment sentences of 6 months for Md. Amir, 12 months for Md. Asif and 30 months for Salman Butt, for being the captain of the team. In appeal before CAS, it was determined that the players were not able to advance cogent explanations. Further, Md. Asif pleaded before CAS that there was no money found in his room which could prove his involvement in the match-fixing scandal. While CAS accepted this submission, the Panel noted that an infringement of the ICC Code[17] on match-fixing does not require a player to gain financially. Therefore, the Panel dismissed all the substantive grounds of appeal taken by the players.	Paras 52, 53, 62, 63, 69-73

15 Court of Arbitration for Sport, CAS 2011/A/2362, available at: https://jurisprudence.tas-cas.org/Shared%20Documents/2364.pdf.

16 According to Law 24(5) of the MCC Laws of Cricket, a "no ball" is not a fair delivery. For a delivery to be fair in respect of the feet, in the delivery stride (a) the bowler's back foot must land within and not touching the return crease appertaining to his stated mode of delivery; (b) the bowler's front foot must land with some part of the foot, whether grounded or raised; (i) on the same side of the imaginary line joining the two middle stumps as the return crease described in (a) above and (ii) behind the popping crease. If the bowler's end umpire is not satisfied that all of these three conditions have been met, he shall call and signal "No ball".

17 Article 2.1.1 of the ICC Code.

S.No	Judgment	Case Summary and Jurisprudence	Relevant Paragraphs
		While the CAS Panel was sympathetic towards their plea of financial hardship and inability to earn a living if the bans were imposed, given the history of corruption in cricket and the considerable adverse publicity caused by this episode, the Panel considered that strong enforcement action was necessary to send a signal of deterrence. In view of the same, the CAS refused to modify the sanctions imposed on the players by ICC Tribunal. Therefore, the appeal was dismissed.	
2	Sara Errani v. International Tennis Federation (ITF)[18]	The judgment laid down a very strong and clear jurisprudence on the standard of proof of balance of probability the reduction or elimination of a sanction for no significant fault or negligence of an athlete with respect to allegations of doping against him. In 2017, Sarra Errani, a tennis player underwent an out-of-competition doping control back home. The test analysis of the doping control revealed the presence of letrozole, a prohibited substance in the family of "Hormones and Metabolic Modulators" on the 2017 WADA Prohibited List[19]. Based on the same, the matter was brought before the Independent Tribunal. As the Athlete did not challenge the presence of letrozole, the dispute before the Independent Tribunal was about the sanction, exclusively. The tribunal of the ITF imposed a period of ineligibility of two months and disqualified the results achieved in the period 16 February 2017 to 7 June 2017. On 23 August 2017, Nado Italia and Sara Errani filed appeals at the CAS challenging different elements of the first-instance decision. Nado Italia sought the imposition of a period of ineligibility between two and twenty-four months, whereas Sara Errani sought to overturn the disqualification of the results achieved in the period 16 February 2017 to 7 June 2017. The CAS Panel in charge of this matter held a hearing in the presence of the parties in November 2017 at the CAS headquarters in Lausanne, Switzerland. With respect to Nado Italia's appeal, the Panel accepted that the Athlete established, by a balance of probability, like the ITF Tribunal did, that the source of letrozole found in her sample was medication taken by her mother that found its way into the family meal prepared by the Athlete's mother and eaten by the entire family, including the Athlete on 13 and/or 14 February 2017. The jurisprudence adopted by the Tribunal was that in order to determine the athlete's level of fault, an objective and a subjective level of fault must be taken into consideration. The objective level of fault or negligence points to what standard of care could have been expected from a reasonable person in the athlete's situation and the subjective level consists in what could have been expected from that particular athlete, in the light of his/her particular capacities. The point of departure for the level of care to be expected from athletes is their high responsibility to take care that no prohibited substance enters their system. A player is responsible for any prohibited substance or any metabolites or markers found to be present in his/her sample.	Paras 187-192 and 201-207

18 Court of Arbitration for Sport, Sara Errani v. International Tennis Federation (ITF), available at: https://jurisprudence.tas-cas.org/Shared%20Documents/5301,%205302.pdf.

19 Section S4 of the WADA Prohibition List lays down a list of prohibited substances.

Sports Arbitration in India

A. The Sport Landscape in India

In order to understand how sports arbitration works in India, it is a must to understand the structure of sporting bodies in India. The formal sporting bodies in India are divided into the district, state and national levels. The District Sports Federations (DSFs) govern the sport on a district level and compete in state level tournaments. They also have the responsibility of framing regulations binding the DSF member athletes. The various DSFs of the state form part as members of the State Sports Federations (SSFs). These SSFs are bestowed upon with the function of organizing the state level competitions wherein member athletes of the various DSFs across the state compete. At the national level, one body is recognized as the National Sports Federation (NSF) for each sport by the Ministry of Youth Affairs and Sports (MYAS), the Asian Sports Federation (ASF) as well as the International Sports Federation (ISF). For example, the All India Football Federation (AIFF) is the recognized NSF for football in India. The ISF and ASF are international sports governing bodies regulating the governance of member NSFs.

Sports Arbitration in India is still a niche and has is yet to be implemented on a formal level. The sports landscape in India still grapples with issues of match-fixing, doping, franchise scandals etc. However, despite the emergence of a global sports arbitration regime, India has a lot left to be desired in terms of making its sports landscape arbitration friendly. One of the major concerns that the Indian sports landscape faces is the ambiguity when it comes to the functioning of sports bodies that are rather autonomous and beyond the purview of the control of the government. One of such organizations is the Board of Control for Cricket in India (BCCI), a self-regulating body which does not entirely come within the purview of 'state' under article 12 of the Constitution. Therefore, in such circumstances, an effective dispute resolution mechanism is elementary.

B. Trajectory of Sports Arbitration in India

Sports policy in India witnessed its enlightenment in the year 1984 with the creation of the Sports Authority of India (SAI). Subsequently, the National Sports Policy was formulated in the same year, which was a milestone for the welfare of sports in India. However, the drawback of the 1984 policy was that its focus was more driven towards promoting sports as part of school curriculum instead of creating institutions prescribing formal rules towards the development of sports on a countrywide level. Owing to the same, a new National Sports Policy was formulated in 2001, which focused on both school curriculums as well as competing in international sports events.

The advent of a vision towards promoting sports arbitration in the country was seen with the creation of the Indian Court of Arbitration for Sports (ICAS) in 2011 with Dr. A.K Lakshmanan appointed as the Chairman. The institution was created with the objective of setting up a robust dispute resolution mechanism pertaining to sports disputes. One of the major drawback of the sports arbitration procedure in India has been the lack of specialised dispute resolution mechanism. Generally, the disputes are first brought before an internal commission appointed by the concerned Sports Federation. Subsequently, the aggrieved party is bound to take the traditional litigation route by approaching the respective High Courts or the Supreme Court. The issue with the adoption of the traditional litigation route in the resolution of sports disputes is the lack of

expertise in the specialized area of sports coupled with the issue of technical and procedural hurdles with courts in India, which in turn makes the redressal extremely time-consuming. This could have a major impact in the realm of sports, considering the nature of the time span of the careers of athletes. However, there has been an attempt by the Ministry of Law and Justice to circumvent these issues, with the setting up of the Sports Arbitration Centre of India (SACI) in 2021. The vision and objective behind the creation of the SACI was to create an institution that could serve as an independent body for the purpose of resolution of sports disputes in an amicable, expedient and efficient fashion. One of the biggest advantages of the SACI is the backing of the Ministry of Law and Justice, which in many ways ensures a higher level of accountability of the redressal mechanism.

C. CAS Awards Originating from India

Although there exists very limited jurisprudence surrounding CAS vis-à-vis Indian sports, there have been a number of reported awards passed by CAS originating from India. Most of these awards have pertained to Anti-Doping Appeals, recognition of the National Sports Federations or awards dealing with challenges against the International Sports Federation Regulations and player-club salary disputes. The jurisprudence pertaining to some of the awards have been discussed below:

S.No	Judgment	Case Summary and Jurisprudence	Relevant Paragraphs
1	IAAF vs Athletics Federation of India & Ors[1]	This case serves as one of the first anti-doping appeals involving Indian Athletes wherein the dispute was subjected to the jurisdiction of CAS. The case involved six Indian Athletes, whose samples revealed the presence of prohibited substances, and therefore, the case was first heard by the National Anti-Doping Agency Anti-Doping Disciplinary Panel (NADA ADDP). However, the appeal proceedings were bifurcated into two, which were eventually heard by the CAS. The major reason why CAS heard this appeal was owing to the fact that two of the athletes were classified as 'international athletes' by the IAAF, and therefore the Anti-Doping Appeals Panel (ADAP) was not competent to accept jurisdiction with respect to those two athletes. Therefore, the ADDP decision was directly appealed to the CAS in respect of the two athletes. With respect to the other four athletes, the ADDP decision was heard in appeal by the ADAP, whose decision was subsequently appealed before the CAS. The dispute revolved around the athletes committing Anti-Doping Rules Violations (ADRVs). However, the ADDP came to the conclusion that the ADRV was a result of contaminated food supplements given to these athletes by their coach, which the athletes could not have possibly verified. Therefore, the ADDP reduced the suspension handed out to the players. The said decision was upheld by the ADAP with respect to the four athletes. However, in appeal, the CAS held that the onus was upon the athletes to take reasonable steps in order to ensure that the food supplements were safe for consumption, and therefore, the said reasoning does not justify reduced sanctions. In view of the same, the decision of the ADDP and ADAP was overturned.	Paras 8, 13, 17-20

1 CAS 2012/A/2763.

S.No	Judgment	Case Summary and Jurisprudence	Relevant Paragraphs
2	Indian Hockey Federation (IHF) vs International Hockey Federation (FIH)[2]	The case involved a dispute between two organisations which claimed to be the National Sports Federation for hockey in India, being IHF and Hockey India (HI). The erstwhile NSF for hockey in India was FIH, which got subsequently replaced by HI, and subsequently received recognition by the MYAS as well as FIH, which was the International Sports Federation for hockey. The dispute was raised by IHF before the CAS, claiming recognition as the NSF for hockey in India. However, the CAS held that there is no scope of interference in FIH's decision to grant recognition of HI, as the same was in accordance with the FIH regulations. Therefore, the CAS did not require to adjudicate on the validity of the derecognition of IHF as the NSF.	Paras 12-20
3	Dutee Chand vs Athletics Federation of India & Anr.[3]	This was a landmark case which deal with challenges against ISF Regulations. The dispute pertained to the International Association Athletes Federation (IAAF) on Hyperadrogenism, brought about by reputed Indian athlete Ms. Dutee Chand. Chand was barred from participating in the athletics event on account of presence of androgens beyond the prescribed limit in her body. Androgens are a set of hormones capable of developing and maintaining male characteristics and is associated with masculinity. This was challenged by Ms. Dutee Chand before the CAS, wherein she contended that the androgens in her body were naturally occurring and not a result of doping. Further, it was contended that the said regulations were discriminatory against women, as the same subjected women to androgen removal medical treatments, which had harmful side effects. The CAS agreed with Ms. Dutee Chand's submissions and held that the Hyperandrogenism Regulations were unacceptable. In view of the same, CAS suspended the Hyperandrogenism Regulations for an interim period of two years, during which IAAF was supposed to gather scientific evidence justifying the regulations, failing which the regulations shall be declared null and void. As a result of this judgment, the IAAF was forced to introduce new eligibility regulations for females who has a Difference of Sexual Development (DSD), thereby replacing the erstwhile Hyperandrogenism Regulations.	Paras 9,16, 20-25
4	Club Royal Wahingdoh FC v. Othello Banei[4]	The Complainant/Respondent was a Nigerian Football player. The player brought a claim before the FIFA Dispute Resolution Committee (DRC) wherein he requested the Appellant club to pay his outstanding salaries. The club refused the salary claim on the grounds of submission of forged documents. The FIFA DRC directed the club to pay the player his outstanding salary dues. The club failed to exercise its right of appeal against the decision of the DRC before the CAS. Subsequently, the player applied before the FIFA Disciplinary Committee ("FIFA DC") for the enforcement of the decision of the FIFA DRC. The FIFA DC concurred with the decision of the DRC and directed the club to pay the outstanding dues to the player. Meanwhile, the club attempted to appeal the FIFA DC's decision before the CAS, but rather than impleading FIFA as a respondent, it erroneously did so against the player, who in reality had no standing to be sued. In view of the same, CAS held that it had no jurisdiction to intervene, despite its ability to hear the case de novo.	

2 CAS 2014/A/3828.

3 CAS 2014/A/3759.

4 CAS 2015/A/4179.

Conclusion: How Viable is International Sports Arbitration in the Indian Landscape?

One of the major concerns of the Ministry of Youth Affairs and Sports (MYAS) was that in the event that any dispute arises between the athletes and the concerned committee of the NSF and proceedings are initiated before civil courts, the Ministry is unnecessarily impleaded as a party in such proceedings. Further, it was also observed there have been several instances wherein athletes/coaches have been unjustly penalized in disciplinary proceedings. Subsequently, such aggrieved parties lack access to an appropriate mechanism in the constitution of their respective NSFs for appealing such decisions before the CAS. In view of the same, in a 2016 press release 1, the MYAS had advised all NSFs to consider inserting a specific provision in its constitution/bye-laws to the effect that any sportsperson who is aggrieved by the decision of an International Sports Federation/ Association is able to raise such dispute before the CAS either by himself or through the concerned NSF. However, the main question that still ought to arise is, "how viable is sports arbitration within the Indian landscape?" One of the major issues to be considered is the lack of arbitrability of a number of disputes that are raised before the CAS, such as issues pertaining to rape, fraud and even with respect to match-fixing. Therefore, the awards passed by CAS in such disputes shall not be enforceable in India under Section 48 of the Arbitration and Conciliation Act, 1996. Another major concern with respect to including a CAS clause in the contracts of athletes with their respective NSF is the lack of financial resources as well as an adequate support system for most athletes within the Indian landscape. Owing to the same, such sportspersons shall be more than hesitant to appeal the decisions of the internal disciplinary committee before the CAS.

Another aspect that should be widely encouraged is the practice of third-party litigation funding involving sports disputes. The Supreme Court duly recognized third-party funding in Bar Council of India vs AK Balaji,[2] wherein it was held that although advocates in India cannot fund litigation on behalf of their clients, there appears to be no restriction on third parties (non-lawyers) funding the litigation and getting repaid after the outcome of the litigation. Such third-party litigation could be extremely crucial in making sports arbitration much more viable in India, especially for athletes who come for extremely underprivileged backgrounds and lack adequate funds to facilitate dispute resolution for them. This shall certainly help in bridging the gap between the accessibility of sports tribunals and civil courts for resolution of sports disputes in India.

It goes without saying that endeavors need to be made to make sports arbitration a viable solution in the long run. It is essential that steps be taken towards establishing a central sports arbitration tribunals which are empowered with the jurisdiction to uniformly regulate even privately run sports bodies, including the BCCI. Subsequently, it is also imperative to ensure that even more number of such tribunals are eventually established as well. The state also needs to ensure that such tribunals appoint judges possessing adequate expertise in the area of sports law, and are able to resolve disputes in an efficient and timely manner.

1 Press Information Bureau, "Safeguarding the interests of sportspersons and provision of effective Grievance Redressal System in the Constitution of NSFs", accessible at: https://yas.nic.in/sites/default/files/Safeguarding%20the%20interests%20of%20sportspersons%20and%20provision%20of%20effective%20Grievance%20Redressal%20System%20in%20the%20Constitution%20of%20National%20Sports%20Federations_.pdf.

2 Civil Appeal No. 7170/2015, Supreme Court.

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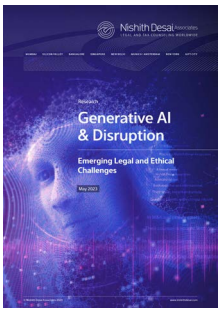

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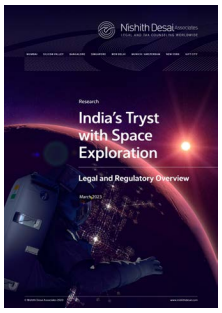

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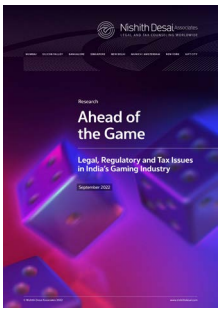

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