

# Analyzing Sports Arbitration and Its Trans-Border Application

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**Abstract:** The article analyses the introduction to sports arbitration, how it works and sports governance providing for settlement of disputes mechanism across the borders. It analyses the functioning of different sports agencies like Court of Arbitration for Sports, International Olympic Committee, World Anti-doping Agency and International Council of Arbitration for Sports. It provides an overview of the functioning of these agencies and raises concerns about the transparency and rendering justice to the sportspersons. It also raises concerns of limited judicial review of the decisions of CAS and also provides for prospective reforms to ensure fairness in the justice delivery system through arbitration.

## 1 INTRODUCTION


The contemporary Olympic moment represents a harmonized and organized global effort, conducted under the supreme authority of the International Olympic Committee. This endeavor involves individuals and entities who are guided by the principles of Olympism, which embodies a life philosophy that harmoniously amalgamates the attributes of the body, willpower, and intellect. (International Olympic Committee Olympic charter 11). The Olympic charter explicitly asserts that "engaging in sports is a fundamental human entitlement," and mandates all National Olympic committees to ensure that no athlete is subjected to exclusion due to racial, religious, political, or any other discriminatory factors. (Olympic charter rule 44 (4) at 80.)

Sports is a form of social conduct that has a multifaceted perspective and it is also governed by a set of defined rules that have been agreed by the sports persons and it also frames a code of conduct to be followed in accordance with those rules. It provides for exercise of both body and mind which improves the physical skills of a person how to work in a team how to build leadership skills and also how to have self-control over one cell in case of adverse circumstances and avoiding violent conduct. The persons who are already indulged in sports have a very enriching experience for life in comparison to

those who are mainly watching it. But every sport is governed by certain rules which are to be accepted by the participants as without these rules the activity or sports cannot be carried out to its full extent.

These rules are by the participant's outcome of any competition within the sphere of these rules and regulations. The rules are being formulated so as to grant equal opportunity of competition and success to every participant. The human nature is such that the rules are being abides advertently or inadvertently accordingly and for a player who reaches the rules applied and also a member may be removed temporarily like in football we have penalty shots and a player may also get disqualified for his offending conduct. The article aims to identify Sports arbitration providing for a future dispute redressal as there is elimination of the decisions inconsistency, for example in case of red card penalty leading to the suspension of a footballer can price him a lot as his other matches might be affected, so to challenge to his suspension the decision will be given either in his favor or against him in a span of 48 hours.

Sports interim measures are provided so that the athletes or sports person might not be stopped from participating in the tournament on account of delay in the arbitration or adjudication. In case of sports arbitration, the arbitrators are appointed are appointed from a closed list of arbitrators providing for a constrictive system. Its justification is that it comprises of law specialist as a panel for deciding the

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sports arbitration as contrast to the commercial arbitration where the parties are at liberty respecting the norms of party autonomy. Since CAS is seated at Lausanne, therefore the party submit their submission of the disputes to the Swiss institution in resolving the sports disputes pertaining to Olympics and FIFA. The major challenge is the decision making system that requires transparency and rendering justice to the sports persons.

## 2 SPORTS ARBITRATION

**a. AAA-**The Ted Stevens Olympic and Amateur Sports Act, 1978 (The Ted Stevens Olympic and Amateur Sports Act, 1978) and US Olympic Committee, American Arbitration Association recognize a particular sport as Olympic sport. United States has anti-doping agency and it has also appointed American Arbitration Association to resolve the dispute that is pertaining to the violation of the protocols that is done by the athletes in the Olympic sports matches. It has provided excellent service for over 40 years and also it has trained the Arbitration activities for Sports to adjudicate the sport doping cases. The American Arbitration Association also looks after the doping cases in case of Professional Golfers Association and also maintains the players integrity program and whatever the appeals that are being raised out of the violations, the sanctions that are being imposed by the Professional Golfers Association pertaining to doping or other ethical issues.

The AAA comprises of a National Commercial Sports panel consisting of former judges, executives and attorneys who are very well experienced in the athletics or have the agent representation in sports and they are having the relevant experience pertaining to the Olympic matters and the contracts, and the gaming and gambling in answering in all that are being used as professional league disputes. There is requirement for the minimum qualifications and abidance of the code of conduct.

The qualification provides for a 10 years of experience disputes pertaining to Sports dealing with the issues like the doping, gambling, contract breach, ethics violation and the eligibility for the participation issues. The legal professional must comprise of an attorney having a minimum number of 10 years of experience in the legal scenario. He should also possess an educational degree in a particular field of expertise and he should also have the training in dispute resolution and other forms of dispute resolution that is pertaining to sports. Such person

shall be able to manage the proper hearing processes and he should be free from any bias and there should be impartial evaluation of any evidence.

The AAA also provides for a Commercial Code of Ethics for the arbitration for training to the commercial disputes. The Code provides the neutrality in arbitration for deciding the disputes and ensure that the settlement should be independent and impartial. The arbitrators are also required to make a free disclosure of issues or the circumstances which might raise questions to the neutrality of the impartiality. If there is not any doubt pertaining to any uncertainty then arbitrators should serve neutral arbitrators unless and until there is any doubt pertaining to uncertainty in dispute resolution.

**b. Role of Arbitrator-**The arbitrator should ensure the fairness in the arbitration process ensuring high levels of independence and the integrity of the process. The Pro Bono services may be instituted by the arbitrator where ever he deems fit. Reappointment acceptance should be done by the arbitrator only in those circumstances when he can ensure that he is competent to serve and resolve the dispute in partially and independently and he should make his availability and adhere to the party requirements. After being appointed, the arbitrator should not indulge in professional relationship or should not have any personal or monetary conflicts or interests which can have adverse effect on the Independence or impartiality. The decision of the arbitrator shall not have any self-interested motives or be effected by any external pressure. If he thinks that any obligations or rules that are specified in the arbitration agreement are not ethical then he is not under any obligation to comply with the agreement. Arbitration process is adopted as it is efficient resolution of the disputes and the arbitrator should not withdraw and abandon his appointment unless there are such compelling circumstances which provides that he would not be able to perform his duties in an impartial manner.

## 3 DISPUTES IN SPORTS ARBITRATION

**a. Issues in sports arbitration-** The doping and cheating issues pertaining to the sports are at upsurge and therefore neutral solution for the same. First the disputes go to the ordinary divisions and then the other is the appeal arbitration division.

**b. International Council for Arbitration for Sports-** It operates as an institution that supports arbitration, overseeing arbitrator activities and

addressing issues related to arbitrator removal and challenges. Each division is led by its own President, overseeing administrative tasks specific to that division. Disputes in sports can emerge directly or indirectly from commercial contracts tied to sports, such as media rights, employment matters, or sponsorship agreements between parties. The framework includes procedural rules categorized into three procedures: general provisions for regular arbitration and its various processes, along with specific provisions for arbitration appeals.

For those seeking interim relief, including applicants, it's crucial to demonstrate that they have endured irreparable harm that could negatively impact their chances of succeeding in their claim. Participation in arbitration isn't optional for athletes wishing to compete in the Olympic Games; they are required to sign a waiver agreement renouncing the right to appeal to CAS. (Rule 59 of the Olympic Charter)

**c. The Court of Arbitration for Sports-** The Court of Arbitration for Sport (CAS) was established in 1983 by the International Olympic Committee and is headquartered in Lausanne, Switzerland. CAS decisions are final and binding, except on extremely limited grounds, such as incompetence or irregularity of the arbitration panel, the award going beyond the scope of the parties' submissions, the award failing to decide a major issue, violation of the parties' right to be heard, lack of equal treatment between the parties, or the award being incompatible with public policy.

In 2018, CAS amended its Code of Sports-related Arbitration to add a new provision (Rule 59(e)) that allows the court to alter or amend a judgment within 10 days of its entry. This provision is similar to Federal Rule of Civil Procedure 59(e), which allows a court to alter or amend a judgment for a limited number of reasons, such as a mistake in the judgment, newly discovered evidence that could not have been discovered earlier with reasonable diligence, or fraud or misrepresentation by a party.

The amendment to CAS Rule 59(e) is intended to provide parties with a way to correct errors in CAS judgments and to ensure that justice is served.

**d. Arbitration award-** The arbitration award is binding on the parties and cannot be set aside simply because the parties do not have any business or residence in Switzerland. Arbitration offers a number of advantages, such as public hearings, which give the athlete accused of disciplinary action the right to a fair

hearing. Public hearings also help to maintain the integrity of the proceedings and prevent negligence, bias, or corruption, which are common problems in private proceedings.

Sports-related penalties are consistent with other sanctions for doping or other unethical practices. One of the main advantages of sports arbitration is that it leads to less discretionary outcomes in arbitral awards. Additionally, sports arbitration can be expedited, with decisions being made within 24 hours by sports governing bodies and rules.

#### 4 SPORTS ARBITRATION IN DISPUTE REDRESSAL

The arbitration has its advantages for the attorneys because it constituted a fair arbitration Tribunal working on equitable basis and the chairman who was also the President of the disciplinary committee was not effectively involved in the arbitration Tribunal and the athlete was given the right of appointment of only one arbitrator out of the three arbitrators.

**a. CAS-**The CAS provides for Ad-Hoc division of the arbitration which consists of an arbitral body for specified duration like during the Olympic winter and Summer Games and the FIFA World Cup. The events duly have, an arbitrator panel are appointed and they decide in the host city throughout the event and it must remain available at all times. As per the Adhoc rules, if complaint is filed then it has to be resolved within a period of 24 hours after its lodging in open championships like football I League and for World cup it is 48 hours. The time limit and resolution of disputes through arbitration is very less and it provides for expedited procedure of all the legal issues in advance before the start of the competitions.

**b. The World Governing Body of Swimming-** The Brazilian National Swimming Federation (CBDA) initially issued warnings to four swimmers who had tested positive for a prohibited substance. However, the International Swimming Federation (FINA) appealed to the Court of Arbitration for Sport (CAS), which ultimately upheld the CBDA's decision. CAS is a specialized court that resolves disputes in the field of sports. It is known for its fast and efficient dispute resolution process, and it also has the power to grant provisional measures, such as injunctions, before a final decision is made. This can be helpful in cases where there is a risk of irreparable harm, such as when

an athlete is facing a doping ban. The CAS ruling in this case is a reminder that even if an athlete tests positive for a prohibited substance, they may not be automatically banned from competition. The specific circumstances of each case will be considered, and the CAS may decide that a warning is sufficient punishment.

**c. The Basketball Arbitral Tribunal-** It is set up in Geneva and provides for speedy resolution of sports disputes among the athletes, clubs and the parties. It provides for several conservative remedies and a speedy issuance of final arbitration award within six weeks from the date of completion of proceedings. It clears the hearings only upon the application by the parties and the cases are on justice and fairness insured to the parties with reference to any international law.

**d. Chambre Arbitrale du Sportis-** France has a dispute resolution body called the Court of Arbitration for Sport (CAS). It offers speedy dispute resolution through arbitration and is referred to by national and international sports organizations. The French Olympic Committee appoints the arbitrators for CAS and exercises control over it.

CAS has gained the trust of the sports world, including the Olympics and other regional games. This is due to the growing number of disputes in the sports sector and the need for CAS to resolve national, domestic, and international disputes arising from disputes between athletes and international sports federations.

Here are a few examples of disputes that CAS has resolved:

- A dispute between a player and a sports federation over a doping violation.
- A dispute between two sports federations over the ownership of a tournament.
- A dispute between a sponsor and an athlete over a breach of contract.
- CAS is a respected and impartial body with the expertise and experience to resolve disputes in the sports world. It is a valuable resource for athletes, sports organizations, and sponsors who need to resolve disputes quickly and efficiently.

**e. The World Anti-Doping Agency** The establishment of the Court of Arbitration for Sports (CAS) in 1999 was prompted by conflicts between international sports redressal bodies and governments.

This institution serves as an overarching body dedicated to combating global doping issues. It operates under unified rules, procedures, and sanctions managed by sports organizations. CAS enforces a catalog of banned substances, ensures proper testing in authorized labs, and encourages research into prohibited substances and methods such as chemical, blood, and genetic manipulation to enhance athletes' performance. It also grants exceptions for therapeutic drug use. The growth in sports arbitration has led to decreased quality in arbitration awards and necessitated significant financial, intellectual, and infrastructural resources to provide top-notch CAS services on a global scale for resolving international disputes.

In a recent development, the Sports Arbitration Centre of India was established on September 26, 2021, and inaugurated by Minister Kiren Rijiju in Gujarat. This initiative, backed by the Ministry of Law and Justice, aims to establish a reputable and enduring center to address sports disputes and related issues transparently and equitably.

The adjudicatory process in India has proven ineffective in providing remedies to athletes, as seen in the Manika Batra case (W.P.(C) 10590/2021 & CM APPL. 32671/2021), which has been ongoing for many years. This prolonged decision-making has left no recourse but to await investigations to address charges or ethical concerns. This situation fails to meet the urgent needs of Indian athletes, particularly those aspiring to participate in global events like the Olympics, as the adjudication delays could lead to the loss of career opportunities and negatively impact their prospects.

A significant drawback is the high cost and lack of transparency in resolving disputes. Notably, the Court of Arbitration for Sports (CAS) has not published any annual reports, making its financial operations and expenditures undisclosed. This lack of transparency raises concerns about its functioning, as it operates without public awareness. Furthermore, gender disparity exists among the arbitrators listed on CAS's website, predominantly comprising males. Matthieu Reeb, the Secretary General of the Court of Arbitration for Sports, has retained his position unchallenged since 1999, raising questions about leadership longevity.

Forced arbitration clauses are established under Article 6(1) of the European Convention on Human Rights, which mandates a fair public hearing within a

reasonable timeframe by an impartial tribunal. However, in practice, these clauses can undermine fairness and due process.

In the case of *Mutu and Pechstein v Switzerland*, the European Court of Human Rights (ECHR) found that the rights of Claudia Pechstein, a professional speed skater, had been violated under Article 6(1) of the European Convention on Human Rights (ECHR). This is because the Court of Arbitration for Sport (CAS) did not hold a public hearing in her case.

The ECHR distinguished between forced arbitration clauses and voluntary arbitration clauses. Forced arbitration clauses are those that are imposed on athletes as a condition of participating in a sporting event. Voluntary arbitration clauses are those that are agreed to by athletes of their own free will.

The ECHR found that the arbitration clause in Pechstein's case was a forced arbitration clause because she was given the choice of either accepting the clause or being ineligible to compete. This, the ECHR found, violated Pechstein's right to a fair hearing.

The ECHR's decision in the Pechstein case is significant because it sets a precedent for other athletes who have been subjected to forced arbitration clauses. The decision also raises questions about the fairness of the CAS, which is the leading international body for resolving sports disputes.

Here are some of the key points of the case:

The ECHR found that the CAS's decision not to hold a public hearing in Pechstein's case violated her right to a fair hearing under Article 6(1) of the ECHR.

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## 5 CONCLUSION

In conclusion, the analysis of sports arbitration and its trans-border application reveals a complex landscape where various sports governing bodies and arbitration institutions play pivotal roles. The contemporary Olympic movement embodies a globally coordinated effort under the aegis of the International Olympic Committee, guided by the principles of Olympism that harmonize physical prowess, willpower, and intellect. However, this framework necessitates effective dispute resolution mechanisms to ensure fair play and justice.

Sports arbitration, which includes the Court of Arbitration for Sport (CAS) and other bodies like the American Arbitration Association (AAA) and International Council for Arbitration for Sport, strives to provide an impartial and efficient platform for resolving disputes in the realm of sports. The CAS, established in 1983, stands as a critical institution to arbitrate disputes related to sports and ensure the integrity of the games. Nevertheless, concerns have been raised about the transparency, quality of arbitration awards, and limited judicial review of CAS decisions.

Despite these challenges, sports arbitration offers a means to expedite dispute resolution and provide athletes with timely justice. Measures such as the Ad-Hoc division of CAS during major events like the Olympics and FIFA World Cup, along with specialized bodies like the Basketball Arbitral Tribunal, have been established to address sports-related disputes efficiently. However, cases like the *Mutu and Pechstein v Switzerland* raise questions about the fairness of forced arbitration clauses and highlight the need for balanced proceedings.

The establishment of the Sports Arbitration Centre of India marks a significant step towards resolving disputes in the Indian sports context. However, concerns remain about the efficiency of the adjudicatory process and the potential impact on athletes' career prospects. Transparency, gender parity among arbitrators, and financial accountability of arbitration institutions like CAS are areas requiring attention to uphold the principles of fairness, equity, and justice within the sports realm.

In the broader context, the pursuit of a transparent, fair, and efficient sports arbitration mechanism remains an ongoing endeavor. The combination of legal expertise, neutrality, and respect for athletes'

rights is essential to create a balanced and effective platform for resolving disputes, preserving the integrity of sports, and ensuring that athletes can compete on a level playing field.

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