



MEDIATION IN SPORTS DISPUTES – A CRITICAL ANALYSIS

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ABSTRACT

Mediation provides players who are engaged in a dispute with a chance to settle their disagreement peacefully and for the sake of the sport for those who are negotiating in good faith, according to the International Olympic Committee. As an effective alternative to litigation in sports disputes for the management of conflicts and the resolution of disputes, the mediation process stands out owing to the broad range of advantages that mediation provides in relation to all problems that are involved in sports disputes. In contrast to other conflict resolution approaches, mediation in sports issues is a viable option. It has been shown to be a very effective technique for healing and sustaining interpersonal connections. This article examines how sports disagreements, when addressed via mediation, are likely to be more helpful than other forms of dispute resolution, such as arbitration or litigation.

Keywords: ADR, Mediation, Sports, Disputes, Doping.

BACKGROUND

There are many various forms of conflicts in the sports sector that may be resolved via mediation. These include professional sports, disciplinary issues, and other broadcasting disputes that are ready to be resolved through the mediation process. When mediation is used, a third person who has been trained as a mediator assists the parties to a disagreement in attempting to identify common ground in order to settle the issue and put an end to the deadlock between them.¹ Voluntary mediation settlements are reached when the parties agree that they will achieve a beneficial agreement. Both parties agree that they will bear the responsibility of reaching a beneficial agreement, and they are both free to terminate the mediation process at any point.

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¹ Nicholas Gould and Fenwick Elliott, "Mediation Guide - The Basics" (Fenwick Elliott, 2021)

<<https://www.fenwickelliott.com/research-insight/articles-papers/alternative-dispute-resolution/mediation-guide-basics>> accessed 7 December 2021.

Mediation, because of its distinct qualities, provides effective resolutions to many disagreements that arise between athletes and between teams in sports.

Mediation is a decision-making procedure in which the parties can make their own decisions and in which they have significant influence over the result of the mediation, as opposed to other dispute-resolution processes.² Athletes often have brief professional careers, and if they were to choose to go through the lawsuit process or other lengthy conflict resolution procedures, it would have a negative impact on their careers. Similarly, sports clubs cannot afford to keep the disagreements running for an extended amount of time since the season events are scheduled on a regular basis and any disruption to such events would have a negative impact on both the costs and the game. These are just a few of the reasons why mediation is an excellent choice for sports-related problems.³

Sports careers are often short-lived and fraught with complications such as early retirement and a high risk of injury. This is true regardless of location. Because of this, athletes must make the most of their limited time on the field in the most efficient manner possible. Any disagreement that stands in the way of their objectives would be detrimental to them. Moreover, this is applicable to not only sportspersons but also to sports organisations and any sponsors that are participating in the sport. As a result, the conflict resolution system in these types of disputes must be effective and expeditious. As a result, the mediation procedure is more appropriate for sports-related disputes.⁴ Because neither the sportsperson nor the association could afford to drag the process out and endure years of litigation, which would result in significant financial loss, neither could afford to delay the case.

SPORTS DISPUTES – AN INTRODUCTION

Mediation in Sports Disputes

Formal mediation is a successful alternative dispute resolution process in the business sector, as well as in the disputed domains. The use of mediation in professional sports has great promise for the advancement of relationships as well as the improvement of performance by athletes and the team management to which they are assigned.

² Katie Shonk, 'Types Of Mediation: Choose The Type Best Suited To Your Conflict' (*PON - Program on Negotiation at Harvard Law School*, 2021) < <https://www.pon.harvard.edu/daily/mediation/types-meditation-choose-type-best-suited-conflict/> > accessed 7 December 2021.

³ GOTTI Maurizio, "Interpersonality in Mediation Discourse", [2014] PL 303-327.

⁴ Peter Agardy, 'Mediation In Sports Disputes' (*Lexology*, 2018) < <https://www.lexology.com/library/detail.aspx?g=141bfc07-26b5-4fd7-968a-ee7faa6a0e86> > accessed 7 December 2021.

Throughout the years, the mediation process has shown to be beneficial, and it is fair to say that mediation has gained a well-established place for inclusion in the official dispute resolution procedures of all professional sports organisations worldwide. The vast majority of professional sports organisations often engage in "collective bargaining agreements," in which they define guidelines for the resolution of disputes that frequently occur in the context of sports and the sports industry as a whole.

The procedures of the Court of Arbitration for Sport are governed by the Code of the Court of Arbitration for Sport (CAS)⁵. The CAS is governed by its Statutes and Rules of Procedure, which are the Statutes of the Bodies Working for the Settlement of Sports-Related Disputes, the Code of Sports-Related Arbitration, and Mediation Rules, and the Code of Sports-Related Arbitration and Mediation Rules (SRAMR)⁶. According to the Articles of the Code SRAMR, the Appeal Arbitration Procedure is generally open for any appeals that are challenging the decisions that have been rendered by the club or by any federation that is in charge, and is not only deemed to be limited to disciplinary matters, which are particularly relevant in doping cases but is also open for any appeals that are challenging the decisions that have been rendered by the club or by any federation that is in charge. The Court of Arbitration for Sport (CAS) not only deals with sports conflicts via arbitration, but it also mediates them, and it is required to offer an unbiased mediation procedure for the disputants. According to its memorandum, CAS is responsible for resolving conflicts not only via official mechanisms such as arbitration, but also through mediation, and it is charged with this responsibility.

KEY FEATURES OF MEDIATION IN SPORTS DISPUTES

The following are the main features of mediation with reference to the sports disputes⁷, they are:

- Mediation provides parties the liberty to influence the outcome of the resolution, making sure that the party's interest is protected.
- The parties in a mediation are offered assistance, through the help of an independent mediator who is experienced.
- The process of mediation is in the control of the parties and they can negotiate in order to produce flexible outcomes, they are not imposed in nature. The parties are free to do what they want in mediation and they are in full control of the outcome they are to achieve.

⁵ Code of Sports-related Arbitration, 2021.

⁶ Sushil Kumar vs Union Of India & Ors, (2016) AIR 2005 SC 3100.

⁷ Rachit Garg, 'The Current Position Of India In Sports Dispute Resolution - Ipleaders' (*iPleaders*, 2020) <<https://blog.iplayers.in/current-position-india-sports-dispute-resolution/>> accessed 7 December 2021.

- The process of mediation is confidential in all disputes including sports disputes that would benefit fields such as sports due to the sensitivity of matter to the players, sponsors, team where they are likely to be affected in case there is any ill effect during the process and including the public who are vigilant towards sports.
- Athletes generally have short careers and if at all, they were to opt for litigation process or to other longer proceedings for dispute resolution, they can be affected badly. Similarly, sports clubs also cannot afford to keep the disputes ongoing for too long as the season events are periodic and any disturbance to such events would affect the costs and the game alike.
- Compared to litigation mediation offers dispute resolution at a lower cost and is faster, which is a great choice for sports disputes.

Mediation generally provides an environment for healthy relations where there is an opportunity to induce even future contracts, which is quite in contrast to the litigation process.

BENEFITS OF MEDIATION IN SPORTS DISPUTES⁸

Confidentiality and privacy:

In case of sports disputes, there is a heavy involvement of third parties in the dispute process and they are even more involved in the resolution process, the third parties might be sports agents to fans, these parties would often get in the way of the process of resolution and the making of agreements in sports disputes. As the mediation process often stays confidential, this can allow the parties to compromise out of the rare view of the public without much of a disturbance.

- Equal partake in the agreement making leading to a win-win situation:

Another benefit of the mediation process is that unlike the arbitration process the agreement that is reached is generally accepted outcome of both the parties and the parties are free to fall out from the mediation procedure whenever they wish. How the mediation unfolds is more in the hands of the disputants rather than the outer source, unlike the arbitration or the litigation process, which makes mediation as a dispute resolution to have opted more favourably than the other dispute resolution mechanisms.

- Benefits of productive and efficient dispute resolution through mediation- protecting relations between disputants:

⁸ 'Where Does India Stand In Sports Dispute Resolution - Legal Articles In India' (*Legal Articles in India*, 2020) <<http://www.legalservicesindia.com/law/article/1487/2/Where-Does-India-Stand-In-Sports-Dispute-Resolution>> accessed 7 December 2021.

If we take into consideration arbitration or litigation, it offers a stringent outcome that might not benefit one party. This method is directed towards only one of the party's benefits. This would make an opportunity to create a greater possibility of having ended the relationship between the parties that are involved in the dispute, which leaves a bad taste in the mouth after resolution. This would sometimes hinder the performance of players in the field also. However, mediation offers quite a different outcome from the previous situation stated, as it is confidential and collaborative in nature mediation preserves and improves the relationship between the players, and team management can be boosted.

MEDIATION IN SPORTS DISPUTES IN COVID ERA

There has been a tremendous effect on various industries with the onset of the pandemic in 2019, until this date. It is quite evident that many industries are suffering in the light of the pandemic, however in the least expected probability sports industry is also vulnerable to the effect of COVID and its effect is conspicuous. The sports industry is widely dependant on live events on a big scale that is to draw crowds of people from all over the country and even abroad. Most of the time, they are large-scale events that are dependent on the public gathering and it would be deemed anathema to the current situation of lockdown and social distancing practices that are need of the hour.

Due to the changes in the sports events by COVID, there is a large number of changes concerning the schedules and events⁹, few of them would include:

- Disputes where the Athletes are not paid or they are reduced in the pay if they do not have a contract in force
- Sponsors of the fame have the rights that are associated with the sports events might not pay as the events are postponed, as there are no benefits that are gained by them
- There might be disputes that arise out of the venues that are to be constructed for the events that are scheduled previously but are halted due to the pandemic.
- The Anti-doping laboratories that are to process the samples would be short of staff and they might be forced to work at home leading to several disputes, same keeping in mind the major issues that arise to doping methods in the sports industry, which is the main requirement for any sports event that is to occur.

Several disputes would arise, taking into account the pandemic and the requirement for the reference of these disputes to a third party is undeniable. Hence, the third neutral party where these disputes can be resolved is mostly likely to be a mediation mechanism. Mediation is a

⁹ Devyani Jain, 'Judicial trend of intervention in sports arbitration and its future in India',[2012] PL 1(1), 3.

mechanism for alternative dispute resolution where a third party would assist in the conflict resolution, here it is consensual. Here the mediation on these types of dispute, specifically during the pandemic would result in speedy dispute resolution that would benefit both the parties that are involved in the dispute, which would result in a favourable outcome to both the parties at a period comparatively better than the trial process. Also with the pending cases and adjourned proceedings of the Court in light of COVID, adopting a mediation mechanism would greatly benefit both parties.

CONCLUSION

- Early Mediation in Sports Disputes Offers Efficient Outcomes

There is a high possibility that the earlier mediation is opted by the parties in sports disputes the more favourable and efficient are the outcomes achieved by the parties. As, the delay in sports disputes resolution, not only puts the athlete's career at stake but also makes the environment quite stale. It also has proved ill effects on the parties to the dispute like the sponsors for the game who are investing the game for capital gains, where there is a possibility for loss of their profits. In addition, the organizations that are involved in the sports disputes will also suffer a big-time due to the team management. Hence, for the protection of interest of athletes, organisation, and the sponsors or any other parties that are involved in the dispute it is better to have an early mediation for acquiring efficient outcomes.¹⁰

- CAS Mediation For Settling of Sports Dispute

Not only does CAS provide for the arbitration, but it also provides for the mediation of sports disputes, though the CAS mediation rules provide for the mediation of sports disputes. Still, according to the rules of the CAS, the mediation procedure is not binding on the parties and it is informal. However, it is confirmed principles that CAS is to provide for the mediation procedure.

- Other Dispute Resolution Method in Sports Disputes

Apart from mediation, other dispute resolution methods for sports disputes are arbitration, litigation processes. The governing bodies as CAS, WIPO Arbitration and Mediation Centre, and FIFA are various bodies that are referred for alternative dispute resolution mechanisms in case of sports disputes by the parties. These international bodies are set up for the resolution of disputes. There are other national dispute resolution bodies and regulations, adopted by various jurisdictions different from each other. Apart from the mediation and litigation process, sports disputes can be

¹⁰ Marcos Santillana, 'The Need For Better Dispute Resolution Systems In Indian Sport And The Government'S New Guidelines - Lawinsport' (*Lawinsport.com*, 2016) <<https://www.lawinsport.com/topics/item/the-need-for-better-dispute-resolution-systems-in-indian-sport-and-the-government-s-new-guidelines>> accessed 7 December 2021.

referred for arbitration process, but the mediation process is generally preferred by the parties due to the special properties of mediation as analysed in this article.

- Key Issues with Mediation in Sports Disputes

As much as, benefits the mediation has to offer. There are issues that are involved in sports dispute resolution through mediation. Such as, inconsistency in mechanism where they can be considered informal and no proper formal model to follow, the parties have a lot of say on the issue and they would influence the outcome majorly sometimes this would result in non-resolution of the sports disputes, making the disputes stale. Sometimes athletes might be left in vulnerable position also as most of the incidents would involve drug abuse, contractual disputes and other labour issues.