AN ARGUMENT FOR ESTABLISHMENT OF INSTITUTIONALISED ARBITRATION IN INDIAN SPORTS DISPUTE RESOLUTION MECHANISM

-Aman Gupta* and Ashutosh P. Shukla**

I. INTRODUCTION

Over the last two decades, sports governing bodies worldwide have experienced a metamorphosis: from being private associations and clubs in the early 19th and 20th centuries, to behemoths with international socio-economic impact in the 21st century. This transformation has also resulted in changes in the internal regulatory framework of the sport, with sporting bodies attempting, and in certain aspects, succeeding, to maintain independence from external interference by arguing that governance and regulation of sport are autonomous activities. The proponents of this viewpoint argue that interference by the State may adversely impact sport, given the State’s lack of expertise and knowledge of sporting matters. This being the case, it is argued that the functioning of sport (and sporting bodies) is best left to sporting bodies themselves. However, more recently, the legislature and judiciary have found themselves actively engaging in the regulation of sport. Legislations laying down norms for the functioning of sporting bodies have been enacted in several countries.¹ Additionally, judicial organs have found scope for oversight on the grounds of (a) contractual obligations and (b) sporting bodies exercising public functions (as distinct from their private functions).²

In India, the extent of judicial scrutiny aimed towards sporting bodies and their activities has steadily increased since the early 2000s. An important reason for the same has been an emerging jurisprudence via various decisions by the courts holding that actions of sporting bodies fall within the ambit of writ jurisdiction provided under Article 226 of the Constitution. Consequently, sportspersons, administrators,

* Assistant Professor, National Law University, Jodhpur
** Associate, Karanjawala & Company
and persons interested in the well-being of accountability and transparency have moved the court. The extent of the phenomenon reached a peak in 2018, with multiple petitions filed in respect of athlete selection for the Asian Games, 2018.³

The exercise of such power by the judiciary has been a source of criticism for multiple reasons. It has been argued that courts are not equipped to deal with such matters due to lack of expertise in sporting disputes; courts should not interfere in such disputes as it affects the autonomy of sport; courts are unable to give remedy within a time-bound manner; different courts (and benches) have taken different approaches whilst dealing with such disputes, which has led to an inconsistency in the doctrinal and policy norms of sport governance.⁴

The proponents of this viewpoint argue that a specialised body is needed to holistically deal with sports disputes in India, which, in theory, should alleviate the problems that exist in the present structure.⁵ The argument finds favour due to international and comparative practices, where sport disputes are resolved by recourse to the Court of Arbitration for Sport, which is an independent specialised arbitration tribunal. The entrenched nature of this argument can be seen from the fact that the establishment of a specialised body has been envisaged at multiple points in the past by the Government of India.

In this paper, the researchers follow the line of criticism and argue, via an examination of the decisions of the Supreme Court of India and the various High Courts along with the functioning of the ADDP and ADAP, that a change is required in the manner in which sporting disputes are presently resolved in India. In furtherance of (and agreeing with) the argument made by various scholars, the researchers propose that the resolution of disputes will be better served by resolution via a permanent arbitral body in light of the experiences of the Court of Arbitration for Sport and also practices arising from Canada and the U.K.

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II. Structure of Global Sports Governance

From a simplistic viewpoint, sport is organised in a pyramidal structure of hierarchy of private sports governing bodies (“SGBs”). The international sports federations manage sport at the global level. These bodies are responsible for laying down the rules and regulations of the sport, organising international sporting events, and recognising national sports bodies who will govern and regulate the sport at the national level. Below them, the national sports federations govern the sport at the national level, in consonance with the principles and rules established by the international federation. They are responsible for managing and developing the sport at the national level and selecting teams to represent the country at the international events. It may be noted that only one national federation is recognised per nation by the international federation. Below the national federations, the state federations exist who manage the sport at the state level. Like the recognition enjoyed by the national federations from the international federations, only one state federation is recognised per state by the national federation. Lastly, there are local level sports federations along with clubs.

The international SGBs are usually limited liability companies incorporated in a favourable jurisdiction, such as Switzerland. Given that these bodies are private in nature, the pyramidal structure exists through a web of contractual relations, via the rules and regulations of the international SGBs which other bodies in the hierarchy must adhere to in order to gain and maintain recognition. These contractual relations also extend to the athletes, coaches and other individuals who, in various capacities, participate in the sport. For example, the athletes agree to adhere to the rules and regulations of the governing bodies in order to be able to participate in the sport in a professional manner. The contractual relations ensure that the international SGBs are able to maintain their supremacy in governing the sport and are able to demarcate the role and responsibilities of the other bodies existing in the pyramidal structure.

6 GARDINER ET AL., SPORTS LAW 165 (2nd ed. 2001).
7 J. MUKUL MUDGAL & VIDUSHPAT SINGHANIA, LAW AND SPORT IN INDIA: DEVELOPMENTS, ISSUES AND CHALLENGES 24 (2nd ed. 2016) [hereinafter J. MUKUL MUDGAL].
8 MICHAEL J. BELOFF ET AL., SPORTS LAW 18 (1999) [hereinafter BELOFF]. For example, the headquarters of the International Olympic Committee (IOC), Fédération Internationale de Football Association (FIFA), and Union of European Football Associations (UEFA) are all based in Switzerland.
9 J. MUKUL MUDGAL, infra note 7.
10 Id.
Inherent in the pyramidal structure is the concept of autonomy for SGBs. This concept has existed since the Victorian era, as a reward granted for the ‘civilising process’. This reward included withdrawal of the threat of overt legal regulation and intervention and the autonomy to self-regulate their sport.

Another reason as to why sporting bodies were granted this broad autonomy was the argument that the administrators of these bodies managed the sport in an efficient manner due to their expertise. Force of this argument can be felt in the case of *Enderby Town Football Club v. The Football Association*, wherein the Court of Appeals, while rejecting the claim that act of the Football Association prohibiting legal representation at its tribunal was contrary to principles of natural justice, noted the importance of the autonomy of sport and the expertise that the persons appointed to the tribunals possessed.

Additionally, since most of the SGBs were private in nature, courts did not interfere in their functioning beyond the claims of breach of contract. It was assumed that the persons agreeing to participate in sport had agreed to be bound by the rules and regulations of the SGBs. Since these were private bodies, it was further assumed that the exclusion of persons by the SGBs was beyond the jurisdiction of courts.

**III. ‘Juridification’ of Sports**

The position changed post several legal challenges to actions by the sporting bodies in the late 80s and early 90s. One of the major reasons was the rise of increasing commercialisation and media interest in sport. Further, the states started recognising that, SGBs despite being private in nature, took decisions having a public character. Thus, their actions affect the rights of a number of persons, such as the right of livelihood of the athletes. This intervention took two forms: first, regulatory intervention through

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12 *Id.*
14 *Id.*
19 *Id.*
legislative means. Second, court involvement which arose in the form of litigations relating to breach of contractual duty and judicial review due to SGBs exercising public functions.\(^{20}\)

In the European Union, this change became evident through a series of decisions involving the challenges to the internal regulations of sport. In the case of *Walrave and Koch*,\(^{21}\) the European Court of Justice had held that the European Union law would not apply to rules made by SGBs that were purely sporting in nature.\(^{22}\) Thus, even if a rule did affect the economic interests of an athlete, they would not be subject to the Community law, if the object was purely sporting in nature.\(^{23}\) This was understood as a ‘sporting exception’ in the context of EU law, wherein the EU would not obstruct the functioning of a sporting rule so long it was proportionate and limited to its stated objective. This position changed post the *Meca-Medina* decision,\(^{24}\) in which the ECJ held that a sporting rule having an economic impact would not be excepted merely because it was sporting in nature, and noted that often ‘sporting’ and ‘commercial’ overlapped.\(^{25}\) Thus, in order to ascertain whether a regulation was subject to the Community law, a case-by-case examination would be required.\(^{26}\) Additionally, the *Bosman* ruling,\(^{27}\) which affirmed freedom of movement of the sportspersons in the European Union, held that the autonomy enjoyed by the SGBs was conditional upon them respecting the exigencies of the EU law.\(^{28}\)

In the United States, the series of litigations by Harry ‘Butch’ Reynolds against doping sanctions imposed on him by the International Amateur Athletic Federation (“*IAAF*”) also highlighted that domestic courts would interfere in the decisions of the SGBs if they were found against the rights of the athletes.\(^{29}\)

In light of these developments, the SGBs realised that they were ill-equipped to deal with the scenarios brought about by the legal challenges.\(^{30}\) Therefore, SGBs sought to make themselves less vulnerable to

\(^{20}\) Bhattacharjee, *supra* note 2.


\(^{22}\) Id.

\(^{23}\) Id.


\(^{25}\) Id.

\(^{26}\) Id.


\(^{28}\) Id.

externalities. This involved rewriting of the constitutions, rules and regulations of SGBs by lawyers, increased scrutiny of the legal standards being followed and ensuring that concepts such as due process, proportionality etc. were implemented in decision making. Beloff has termed this process as the rise of ‘legalism’ in sport.

An important facet of juridification was the emergence of Court of Arbitration for Sport (“CAS”) as a permanent arbitral body for the resolution of sporting disputes. Though it has been established in 1983 itself, for the initial period of its history, its services were not usually relied upon. However, after the Gundel case, the International Olympic Committee (“IOC”) converted CAS into a ‘global arbitration institution’ by ensuring mandatory acceptance by the SGBs to its jurisdiction as a condition precedent to inclusion in the Olympics, and by the athletes as a condition precedent to participation in the sport. This has meant that CAS decisions have led to the rise and establishment of a significant sports-related legal jurisprudence and precedents which the SGBs must follow.

IV. INDIAN SCENARIO

While the Constituent Assembly did not foresee sports or SGBs assuming the role that they presently have in the society, the Assembly did explicitly list sports in Entry 33 of the State list of the Seventh Schedule as an area on which the State Governments can legislate. Additionally, courts have interpreted the Central Government’s right to regulate the sport and SGBs arising out of the residuary power of the Central Government enumerated in Entry 97 of the Union List. Based on this, the Central Government established the Ministry of Youth Affairs and Sports (“MYAS”), which is tasked with the responsibility of,
inter alia, supporting the SGBs and ensuring that they promote sports to the best of their capacities. The Central and State governments have also formulated several sports policies for the development and encouragement of sport. While the country lacks a sports-specific legislation, despite several attempts, the National Sports Development Code, 2011 (“Code”) regulates the conduct and functioning of the national SGBs. The Code provides for, inter alia, the manner in which an SGB can be recognised by the Government of India; the manner in which it can avail funding; its responsibilities as a recognised SGB; etc. Thus, the State exercises regulatory control over the functioning of the SGB to the limited extent provided in the Code.

With regards to the context of judicial review, courts in England, U.S. and continental Europe have struck down the outright arbitrary processes of the sports bodies while at the same time recognising that, post juridification of sport, courts have a limited supervisory role in the governance and functioning of the sport. These interactions of the internal regulations, rules and customs of the SGBs with decisions of domestic courts have aided in legitimisation of the autonomy of the SGBs. However, this has not been the position in India, where the judiciary has increasingly found grounds for intervening in the functioning of SGBs.

The trend of the Indian judiciary adjudicating on disputes arising out of and/or associated with the functioning of the SGBs must be understood in light of the fundamental rights jurisprudence in India. Part III of the Indian Constitution provides for fundamental rights to individuals. These rights can be enforced against the ‘State’ by virtue of the writ jurisdiction of the Supreme Court and the High Courts under Article 32 and 226 of the Indian Constitution respectively. It may be noted that the writ jurisdiction of the High Courts under Article 226 is wider as the High Courts are allowed to issue a writ not only for the

41 J. Mukul Mudgal, supra note 7, 42-43.
44 J. Mukul Mudgal, supra note 7, at 81-84.
46 Id. ¶ 9, 10.
47 Id. ¶ 6.
48 For a discussion on the comparative trends of judicial reaction and intervention in sport, see Bhattacharjee, supra note 2; Ken Foster, supra note 16.
49 Ken Foster, supra note 16.
enforcement of a fundamental right, for which the remedy lies against the State, but also for ‘any other purpose’, which includes enforcement of duties by public bodies.\(^{50}\)

The question of amenability of SGBs to the writ jurisdiction under Article 226 was initially answered by the Delhi High Court in *Ajay Jadeja v. Union of India*.\(^{51}\) The Court held that a writ could be issued against the BCCI as it deemed that BCCI had been instilled with public functions. However, the Court warned that writ jurisdiction should not be exercised in each and every case of dispute. As per the Court, it was only when the actions infringed upon a fundamental right or were “so shocking and arbitrary so as to be unconscionable in addition to having wide ramifications of a public nature, that the writ Court may interfere.”\(^{52}\)

This position was further reiterated by the Delhi High Court in the case of *Rahul Mehra v. Union of India*,\(^{53}\) where the Court held that while certain actions of the BCCI would be subject to the writ jurisdiction of the court, not every act of the BCCI would be subject to the same. According to the Court, it was only actions having a public character that would be subject to review by the Court.\(^{54}\)

The argument of the amenability of SGBs to the writ jurisdiction of the Supreme Court was first raised in the case of *Mohinder Amarnath v. BCCI*,\(^{55}\) wherein several cricketers who had been banned by the Board of Control for Cricket in India (“BCCI”) for participating in an unauthorised cricket match challenged the action under the writ jurisdiction of the Supreme Court. However, the Court did not rule on the maintainability of the writ petition as BCCI withdrew from the petition and the question had become academic in nature.\(^{56}\)

The question was finally answered in the negative by the Supreme Court in the case of *Zee Telefilms v. Union of India*.\(^{57}\) The Court, by a majority, after applying the principles laid down in *Pradeep Kumar Biswas* case,\(^{58}\) held that BCCI was not an instrumentality of the state. In doing so, the Court was guided by the following facts: (i) BCCI is a private body registered under the Tamil Nadu Societies Registration Act and is not

\(^{50}\) INDIA CONST. art. 226.


\(^{52}\) *Id.* ¶ 33.


\(^{54}\) *Id.*

\(^{55}\) *Mohinder Amarnath v. BCCI*, C.W. No. 632/89.

\(^{56}\) J. MUKUL MUDGAL, supra note 7.


created by a statute; (ii) its share capital was not held by the government; (iii) the monopoly to regulate cricket was not conferred by the state; (iv) there was no deep and pervasive control exercised by the state; and (v) all functions performed by the BCCI were not public or governmental in nature.\(^59\)

The Court noted that if in the absence of any authorisation, if a private body discharges a public function, it would not make it an instrumentality of the State.\(^60\) Further, the power exercised by the government of India over BCCI was merely regulatory and would not amount to administrative control.\(^61\) Additionally, the Court reaffirmed that BCCI would remain amenable to the writ jurisdiction of the High Court under Article 226.\(^62\) The decision was further reaffirmed in the case of *Board of Control for Cricket in India v. Cricket Association of Bihar*.\(^63\)

With the writ jurisdiction of the court under Article 226 firmly established, along with the proceedings in the ‘ordinary course of law’, SGBs are increasingly facing legal challenges in respect of their actions. The subject matters of the challenges are varied in nature: athlete selection, electoral disputes, recognition of national and state SGBs, *etc.* More recently, the writ courts appear to be taking a proactive approach regarding the internal private functions of the SGBs. *Eg.* In the orders passed against the BCCI, the Supreme Court held that all actions taken in the course of discharging public functions are open to judicial review.\(^64\) It also established a committee, under the chairmanship of the former Chief Justice of India, Justice Lodha, to redraft and suggest reforms in the internal rules and regulations of the BCCI.\(^65\)

**V. CRITICISM OF JUDICIAL INTERVENTION**

The act of the judiciary interfering in the disputes has been a source of criticism for various reasons. These various criticisms will be discussed below. It may be noted that while the researchers have primarily relied on cases pertaining to athlete selection disputes, the same concerns remain valid with regards to other sports disputes pertaining to electoral issues, governance and functioning of sports bodies, *etc.*

\(^59\) Zee Telefilms, *supra* note 57, at 694.
\(^60\) *Id.* at 681.
\(^61\) *Id.*
\(^62\) *Id.*
\(^63\) *Id.* at 305.
\(^64\) *Id.* at 326.
(A) SPEED

While courts are the primary organs in the judicial system, they are beset with delays and complex procedure. Indian courts are notorious for the ever present delays and backlogs, which has been evidenced on numerous occasions. As of December 2, 2019, the Supreme Court of India had 59,535 pending matters. The situation only becomes worse when one takes into account pendency at the level of the subordinate judiciary, with more than three crore cases pending. Additionally, the pace of the disposal is also a matter of concern. As per PRS, twenty-three percent of the cases before the High Courts have been pending for more than ten years.

Contrast this to the timelines arising in sports sphere, which are usually extremely short due to the constraints provided by the deadlines of the international SGBs and the nature of the sport itself. For example, if a national SGB fails to send the list of participants for an international sporting event within the deadline provided by the international SGB, it will not be accepted by the international SGB. Given this scenario, domestic courts cannot provide adequate remedy to athletes in a time bound manner.

This concern has been realised in several cases pertaining to athlete selection disputes. First of these is the Kirandeep v. Chandigarh Rowing Association, in which the athlete had challenged the manner and the haste in which the athlete selection trials had taken place. Despite the Court holding that the element of malice was apparent in the selection process, the decision came much after the event for which the selections were conducted had taken place. Thus, the athlete was denied any effective remedy in her favour.

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70 Amit Kumar Dhankar v. Union of India, W.P.(C) 3914/2014 & CM No. 7890/2014 (Arguments advanced by the respondents).
71 Kirandeep v. Chandigarh Rowing Association, AIR 2004 P&H 278.
72 Id. ¶ 12.
73 Id.
Another example is the case of Amit Kumar Dhankar, where in similar circumstances, given the timelines involved, the Delhi High Court refused to interfere with the selection process and instead gave the petitioners INR 25,000 (Indian Rupees twenty five thousand) as costs. It is highly doubtful if such a limited sum covers the efforts and costs of an athlete preparing for international sports events.

Similarly, in the matter pertaining to the selection dispute of the kabaddi team in Asian Games, 2018, the Court had to innovate and come up with a judicial solution since the deadline for sending the team had already passed. The Court ordered a kabaddi match to be arranged for the claimants. This led to further confusion where the post-selection match did not take place in a proper manner due to a misinterpretation of the Court’s orders.

It may be noted that the situation does appear to be improving, as the courts have made efforts in order to ensure timely hearing of the cases. For example, the Kerala High Court held proceedings till 6:45 p.m. to hear the petition filed by Aparna Balan. However, the concern remains valid as this practice has not been institutionalised and may not recur given the regular workload on the judiciary.

It may be noted that the aspect of courts hearing sports disputes expeditiously has been criticised from a different perspective. Given the huge backlog of cases, critics have questioned the importance accorded by the courts to the sporting disputes over other matters. Clearly, whether this criticism is accepted or not depends on the importance one accords to sporting events and the rights of athletes over other disputes.

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75 Id. ¶ 46.
(B) AUTONOMY

Another factor which highlights the limitation of the traditional court-based litigation is that international SGBs do not adhere to the decisions of the national courts. Since SGBs are incorporated in jurisdictions other than that of the persons filing the litigation, even if the courts do order re-trials or ask the domestic SGB to include the athlete’s name in the list of participants, the international SGBs can simply refuse to follow the decision without adverse consequence.

The series of litigation between Butch Reynolds and the International Association of Athletics Federation in the U.S. highlights the futility of domestic courts passing any decisions against the international SGBs. While Reynolds had the domestic courts on his side, the international body simply refused to acknowledge the decision. At the same time, it demonstrated the fact that it could simply bar other bodies and persons from competing in the sport internationally if they went against its dictates. If a similar situation arose in India, it is doubtful the outcome would be any different.

(C) EXPERTISE

The third criticism arising out of courts adjudicating on sporting disputes is the issue of expertise, especially in adjudicating non-contractual disputes in relation to the technical aspects of the sport viz. rules of the games, selection procedures, eligibility criteria, etc. Judges and lawyers representing the athletes, are often unaware of the complexities associated with the sports governance structures. Thus, it is likely that a significant duration is spent in the litigation process while explaining the complexities and nuances to the judges and the appearing counsel. This creates delays in the process of adjudication and also leads to decisions which do not strike a balance between the autonomy of the SGBs and the rights of the athletes.

At the same time, the judiciary may become too deferent to the decisions of the SGBs and not protect the rights of the petitioners in an adequate manner. This can be termed as the ‘expertise’ ground, in which the courts invoke the concept that the persons running SGBs are best suited to determine the functioning of

80 David McArdle, supra note 29.
81 It would be pertinent to note that even the Code was drafted in discussion with the IOC. Indian Olympic Association v. Union of India, 212 (2014) DLT 389, ¶ 24.
82 Koshie, supra note 78.
83 For a comment on the concerns with regards to the autonomy of SGBs, see Bhattacharjee, supra note 2.
the sports bodies.\textsuperscript{84} However, this has the potential downside of courts overlooking the biases of the persons running the said bodies.

Thus, in conclusion, it can be seen that the rulings of the Indian writ courts coupled with the constitutional structure make it possible for the disputes to be brought before judicial bodies. However, if the criticisms discussed hereinabove are correct, it raises the question of why have the courts become the preferred mode of dispute resolution.

In the opinion of the researchers, the answers to this question can be found if one takes a step back in the chain of events. One finds that the challenges arise due to two linked phenomena. First is the lack of efficacious internal dispute resolution mechanism (“DRM”) within the framework governing SGBs. Secondly, in the event of such DRMs existing, a lack of trust in these bodies to provide desired processes and solutions.

\section*{VI. Sports Dispute Resolution Mechanisms in India}

As noted hereinabove, globally, the SGBs responded to increased scrutiny from State actors by reforming their internal structure and bringing in fairness and transparency in their functioning. It can be argued that until recently, the Indian SGBs, with the arguable exclusion of the BCCI, did not face such scrutiny and therefore did not undergo the juridification process in a manner comparable to their global counterparts. One such area where the reforms lag are the internal DRMs in the constitutions of the SGBs which allow internal settlement of disputes without approaching the courts.

Nancy Welsh has noted that courts provide an ‘experience of justice’ to the litigants.\textsuperscript{85} Not only are they required to resolve disputes, but also provide \textit{“something special in how they resolve those disputes”}.\textsuperscript{86} She lists these experiences as civil behaviour, reason-based decision making and thoughtful solutions.\textsuperscript{87} Additionally,

\begin{itemize}
  \item \textsuperscript{84} Sushil Kumar v. Union of India, 230 (2016) DLT 427 (Arguments advanced by the respondents).
  \item \textsuperscript{86} Nancy A. Welsh, The \textit{Current State of Court-Connected ADR: (Caught In/Living Through/Hoping for the End Of) the Ugly Duckling Phase}, 95 MARQ. L. REV. 873 (2012).
  \item \textsuperscript{87} Id.
\end{itemize}
the procedural aspects followed by courts, such as standards of neutrality of the judges, open-trial procedure, etc. add to this experience. For the parties to be able to trust the process, any DRM will have to provide a similar experience. However, it appears that, at present, the internal DRMs in India do not appear to provide confidence to athletes. Prior to discussing the flaws in the present sports DRMs in India, a brief discussion on the present state of sports DRMs is necessary.

**VII. THE SPORTS CODE REQUIREMENTS**

The Code, in an attempt to prescribe good governance practices and to ensure that sporting disputes could be resolved internally within the structure of SGBs, requires that SGBs are required to give essential consideration for the establishment of impartial machinery for the redressal of player's grievances. The SGBs are also required to ensure that the said machinery contains appellate mechanism.

Two cases adjudicated before the Delhi High Court in the year 2016 further highlight the existing problems. The first of these cases is the case of *Sushil Kumar v. Union of India*, which was a litigation surrounding selection dispute for the 2016 Olympics. Sushil Kumar had argued that since quotas for appearing in Olympic Games are allotted to countries and not athletes, the WFI was mandated to hold selection trials for the Olympic Games. On the other hand, the WFI argued that it had an unwritten policy of providing the quotas to the athletes who had earned the berth. It was only in cases of the athlete suffering an injury or drop in performance level when other athletes would be nominated.

The Court in its decision held that the policy adopted by the WFI was not contrary to the Code, and thereby rejected Sushil Kumar's petition. However, in the course of the decision the Court expressed its displeasure to the frequent challenges made to the selection for international sports competitions.

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90 Id. ¶ 15.1(a).
91 For an excellent comment on the state of various sports DRM models in India, see Bhogle, *supra* note 4.
93 Id. ¶ 3.
94 Id. ¶ 12.
95 Id.
96 Id. ¶ 70.
97 Id. ¶ 69.
same time, the Court also noted its limitations in granting a decision due to the nature of the sport with regards to the deadlines stipulated by the SGBs and the training of the athletes.

The second case was *Rajiv Dutta v. Union of India*, which was a public interest litigation arising out of the ban imposed on Sarita Devi Laishram. Laishram had refused to accept her bronze medal after losing the semi-final match in the 2014 Asian Games in a controversial manner. Due to her actions, the International Boxing Association banned her for a year. Subsequently, she was unable to file an appeal against the decision due to the Boxing India having no such provision in its constitution to challenge the decisions of the International Boxing Association. Given the scenario, Mr. Rajiv Dutta, a senior lawyer, filed a public-interest litigation before the Delhi High Court upon her being banned. In his petition, Mr. Dutta asked the court to direct the MYAS to direct the NSFs to incorporate a clause for appeal to CAS against the actions of international SGBs in their rules and regulations. While the Court did not pass any affirmative orders, it did ask the government to provide a hearing to Mr. Dutta.

**VIII. 2016 ADVISORY BY THE MINISTRY OF YOUTH AFFAIRS & SPORTS**

The combined effect of the Sushil Kumar case and the hearing provided to Mr. Dutta led to the MYAS, on June 17, 2016, issuing an advisory (“Advisory”) to all National Sports Federations. The Advisory asked the SGBs to consider establishing an internal grievance redressal mechanism for resolution of disputes and a specific provision in their constitution/regulations to allow athletes and support personnel to raise a dispute before the CAS. However, the Advisory was criticised on multiple grounds.

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98 Rajiv Dutta v. Union of India, W.P. (C) 8734/2014 [hereinafter Dutta].
100 Id.
101 Dutta, supra note 98, ¶ 3.
102 Id.
103 Id. ¶ 15.
105 Id.
First, the Advisory did not prescribe any time-period within which the SGBs were required to incorporate the mechanisms within their constitution. Critics have pointed out that despite a significant period of time elapsing since the Advisory, no action was taken by the SGBs in adherence of the same. Second, it may be noted that the Advisory did not prescribe any action which would be taken against the SGBs for failure to incorporate DRMs. As has been noted hereinabove, while SGBs can be refused recognition on the ground of failing to adhere to the Code, such action had not been taken up in a stringent manner by the Government, which made the Advisory a mere paper tiger. Another major flaw with the Advisory is that it silent on the structure of the internal mechanism. This lack of explicitness leads to concerns relating to lack of uniformity in the mechanisms and the functional independence of the mechanisms.

**IX. IOA Dispute Settlement Mechanism**

In addition to the aforementioned directive, the Indian Olympic Association (“IOA”), which is the Indian affiliate of the International Olympic Committee, has certain requirements for all bodies seeking to affiliate with it in order to participate in the Olympics. The IOA requires all National Sports Federations, State Olympic Associations, Union Territory Olympic Associations, Services Sports Control Board and National Federation of Indian Sport Kho-Kho (affiliated to the IOA) to include a provision in their constitution which provides that all unresolved disputes are to be settled by the Arbitration Commission of the IOA. The rules governing the Arbitration Commission are provided in Annexure-B of the Memorandum of Association of IOA. Given that all SGBs, which seek participation of their sport in Olympics, are required to adhere to the IOC (and thereby the IOA at the national level). This aims to ensure an internal resolution of dispute through a centralised mechanism.

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110 Memorandum of Association, Indian Olympic Association, Clause V.
It may be worthwhile to address the concerns which entail as a result of having such a dispute resolution mechanism. At the outset, one of the commentators has pointed to the fact that despite having been in existence since 2013, the details of the Arbitration Commission have only been published on the website of the IOA in September 2018.\textsuperscript{111} In addition, it appears that the athletes and NSFs were unaware of the availability of the arbitral process given the adjudication of selection disputes pertaining to the Asian Games, 2018, by various High Courts.\textsuperscript{112} At present, with regards to internal disputes between rival factions within national and state level SGBs, it does appear that the Disputes Commission and Arbitration Commission are being utilised for the resolution of disputes.\textsuperscript{113}

In addition to the aforementioned issues, scholars have also pointed to the structural concerns existing in the Arbitration Commission. These concerns can be enumerated as follows:

(A) CONSENT
Consent forms the bedrock on which arbitration and other form of private DRMs build upon. As has been noted by the author Jan Paulsson in his book ‘The Idea of Arbitration’,

“The idea of arbitration is that of binding resolution of disputes accepted with serenity by those who bear its consequences because of their special trust in chosen decision-makers.”\textsuperscript{114}

The decision of the Supreme Court in \textit{Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.}\textsuperscript{115} sets a good precedence in understanding the importance of consent in arbitral proceedings wherein the Court has held that the court cannot ask the parties to arbitrate the dispute without the consent of the parties.

\begin{footnotesize}
\textsuperscript{111} Sharda Ugra, \textit{supra} note 3.
\textsuperscript{112} Koshie, \textit{supra} note 81.
\textsuperscript{113} INDIAN OLYMPIC ASSOCIATION, https://olympic.ind.in/arbitration-commission (last visited Dec. 15, 2019).
\textsuperscript{114} J. PAULSSON, THE IDEA OF ARBITRATION 1 (2013).
\textsuperscript{115} \textit{Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.}, (2010) 8 SCC 24.
\end{footnotesize}
The consent of the parties is evidenced through a voluntary arbitration agreement, upon which parties voluntarily waive their right to pursue their claim in the ordinary courts. The courts are required to mandatorily refer the disputes for arbitration in face of a *prima facie* valid arbitration agreement.\(^{116}\)

Given the importance of consent, it is necessary to examine whether the arbitration rules of IOA adhere to this condition. The consent must be examined at two levels: first, at the level of the bodies affiliating themselves with the IOA; and second, at the level of the athletes participating in the sport.

As has been noted, the IOA Memorandum of Association explicitly provides that all SGBs affiliated with the IOA are required to resolve their disputes through the Arbitration Commission of the IOA.\(^{117}\) Since the rules are to be accepted in their entirety, any SGB wishing to align itself to the IOA would be required to this condition.\(^{118}\) Thus, the consent can be presumed to be present from the SGB affiliating itself with the IOA. However, there appears to be concerns over the issue of explicit consent and reference to the IOA Arbitration Commission in the constitutions and memorandum of associations of the SGBs.\(^{119}\)

With regards to the arbitrability of disputes involving athletes (such as the selection disputes discussed previously), the provisions contained in the IOA Memorandum do not explicitly refer to athletes. Instead they refer to the SGBs and their members, which presumably only includes their state and local SGBs, and not the athletes who participate in events organised by the SGBs. However, at the same time, the Arbitration Rules mentions that disciplinary, selection or other selection disputes arising out of actions of the SGBs, clubs, associations, *etc.* can be referred to the Arbitration Commission provided that regulations of the relevant body or specific arbitration agreement provides for the dispute to be heard under the IOC rules.\(^{120}\) Thus, it appears that IOA Arbitration Rules can assume jurisdiction in the event of the specific agreement/rules due to athletes’ participation in sporting events, instead of making the same mandatory on athletes.

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\(^{117}\) Model for Sports Dispute Resolution in India, *supra* note 5, Rule 22.


\(^{119}\) *Id.*

The concept of ‘nemo judex in sua causa’ (no-one can be a judge in his own cause) has been considered as a vital principle of legal systems across the globe. In the context of arbitration, this principle is understood in ensuring independence of the arbitrator from the parties to the dispute. The Arbitration & Conciliation Act, 1996,\(^{121}\) provides for stringent conditions of independence which must be adhered to by the arbitrators. For instance, Section 12 of the said Act provides the grounds of the appointment of the arbitrator. It provides that when a person is approached to be an arbitrator, they are required to disclose all circumstances which can give rise to justifiable doubts as to their independence or impartiality.\(^{122}\)

In this context, the rules contained in the IOA Memorandum and Arbitration Commission make for an interesting reading. It is within the mandate of the Executive Council of the IOA to appoint all committees.\(^{123}\) The Executive Council consists of all IOC members.\(^{124}\) Further, whenever a dispute is referred to arbitration, it is the President of the Arbitration Commission who shall appoint the arbitrator(s) to decide the dispute.\(^{125}\) It is not open for the parties themselves to pick the arbitrator. Whilst the present members of the Arbitration Commission are retired judges, senior advocates, and ex-government officials,\(^{126}\) which shows a high standard of experience for appointment, the rules do not appear to explicitly provide for any qualification of the members of the Arbitration Commission with regards to experience in sporting matters. Further clarity on these matters would be highly desirable to make the processes more clear.

**X. Dispute Resolution Mechanisms in Sports Governing Bodies**

While the IOA mechanisms are now established and functioning, the position regarding individual SGBs is more complex. In the following section, the position of the Dispute Resolution Mechanisms (‘DRMs’) in two national SGBs has been discussed. This section does not profess to be an exhaustive study of the

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\(^{122}\) Daniel Mathew, *supra* note 118.

\(^{123}\) Memorandum and Rules and Regulations, Indian Olympic Association, Rule 7.

\(^{124}\) Id. Rule 3.3.

\(^{125}\) Arbitration Rules of IOA, *supra* note 120, Rule 5.1.

DRMs across the SGBs in India but does highlight the need for further clarity in the structure and functioning of the internal DRMs of the SGBs.

The Wrestling Federation of India is the recognised SGB for the sport of wrestling, and is affiliated with the International SGB for the sport of wrestling i.e. The United World Wrestling. As on December 14, 2019, the constitution of the WFI provides for the establishment of a Disciplinary Committee, comprising of members from its Executive Committee to deal with “all matters pertaining to disciplinary regulations”. These regulations appear to pertain only to the member units, i.e. State Wrestling Associations, Union Territory Wrestling Associations, Services Sports Control Board, Railway Sports Promotion Board, and the FILA Bureau Members. The Executive Committee of the WFI consists of the office bearers of WFI and twelve members elected by its General Council consisting of representatives from its member units. The reference to ‘disciplinary regulations’ appears to be a reference to the regulations listed in Article XVII of its constitution. Thus, in the disciplinary proceedings, it appears that there are no external members or judicial members present. This aspect appears to be present even at the appellate stage, where the affiliated units can only appeal to the President of the WFI.

With regards to the athletes, Article XXII provides for sanctions against athletes, officials and coaches for unsportsman conduct. The appropriate penalty is to be decided by a committee appointed by the President or any other senior office bearer of the WFI. However, the WFI constitution does not appear to provide guidance on who shall be appointed to the committee or the manner in which the said committee is to operate. Additionally, the constitution is also silent on any committee to which the athletes or other persons can make representation to in the event of any dispute with the WFI. The WFI website does not appear to provide any other documents pertaining to the said information on its website.

128 Rules and Regulations, Wrestling Federation of India, art. XIX.
129 Id. art. III.
130 Id. art. V.
131 Id. art. XVII.
132 Id. art. XXI.
133 Id. art. XXII.
134 Id.
The rules of the Equestrian Federation of India, which is the recognised body for equestrian sports in India, are similar in nature. The Equestrian Federation of India (“EFI”) has an Executive Committee which nominates a three member Dispute Resolution and Disciplinary Committee for the resolution of all disputes in relation to the violation of statutes, disciplinary cases arising in course of events held under the aegis of EFI, etc., excluding those, which can be referred to respective technical committees constituted for their resolution. It may be noted that the members of the Dispute Resolution and Disciplinary Committee are not to be members of the Executive Committee. The Committee is to call on-record the necessary documents and is to afford the parties a reasonable opportunity to be heard, subsequent to which it is to render its reasoned decision with sixty days. The decision is appealable to the Executive Committee and the decision given thereby is final and binding on the parties. It may be noted that the Executive Committee is a twenty-two member body consisting of persons including the President of the EFI, Vice-Presidents, members responsible for various sporting disciplines, regional members.

In both the aforementioned examples, arguments can be made for the need for further clarity within the statutes of the SGBs in the manner in which the mechanisms are to operate, the appointment process, the manner in which the proceedings are to take, functional independence of the members of the panels and the appeal processes in order to avoid any further litigation by participants. While these are the only two examples which have been discussed, the arguments with regards to further elucidation and clarity may be valid regarding several other national SGBs.

It is evident that the government has recognised the need for adequate DRMs in the sporting context. In addition to the Advisory of 2016, as discussed previously, there have been prior attempts to establish such a mechanism. Both the Draft National Sports Development Bill, 2011, and the Draft National Sports Development Bill, 2013, envisaged the establishment of a Sports Dispute Settlement and Appellate Tribunal ("Proposed Tribunals").

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135 MINISTRY OF YOUTH AFFAIRS AND SPORTS, supra note 127.
136 Statutes, Equestrian Federation of India, art. 14.
137 Id.
138 Id.
139 Id.
140 Id. art. 2.
141 Bhogle, supra note 4; Mehartra, supra note 106.
However, despite much fanfare, the Bills were never enacted. Another proposed legislation, the National Code for Good Governance in Sports, 2017, is presently undergoing finalisation as per the orders of the Delhi High Court.\textsuperscript{143} It is not possible to comment if the proposed legislation contains similar provisions as the 2011 and 2013 Bills. However, given the present state of administrative tribunals in the country, it is doubtful that the Proposed Tribunals would have provided effective remedy in the present scenario.\textsuperscript{144}

\section{XI. Arbitration-based Dispute Resolution}

In the previous chapters, attempts have been made to establish that traditional court-based processes are not adequate venues for resolving sports disputes. The issues regarding the clarity in the structures of the internal DRMs and of the SGBs have also been highlighted. This section attempts to make a case for resolution of sporting disputes through arbitration. It is pointed out that institutionalised arbitration can be considered as a viable alternative for the resolution of sporting disputes, taking on from the global practices in sport.

(A) Arbitration in India


The 1996 Act does not explicitly bar any category of dispute as ‘arbitrable’ or ‘non-arbitrable’. However, Section 34 of the 1996 Act lays down the grounds on which a court may interfere with an arbitral award and Section 34(2)(b)(i) states that the court may set aside any award if it finds that the subject matter of the dispute is “not capable of settlement by arbitration”.\textsuperscript{145} Thus, it is essential to ensure that the subject matter of a


\textsuperscript{145} Arbitration and Conciliation Act, 1996, \textit{supra} note 121, § 34(2)(b)(i).
dispute is arbitrable, lest the award rendered would be liable to be set aside under Section 34(2)(b)(i) of the 1996 Act.

In the absence of explicit criteria to decide arbitrability, the courts in India dealt with the question on a case-to-case basis until the legal position was settled by the Supreme Court in *Booz Allen v. SBI Home Finance*. In this case, the Supreme Court enumerated certain disputes that cannot be referred to arbitration:

“*The well-recognized examples of non-arbitrable disputes are: (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship matters; (iv) insolvency and winding up matters; (v) testamentary matters (grant of probate, letters of administration and succession certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes.*”

The Supreme Court reasoned that disputes arising out of rights in rem (right in property) are conventionally non-arbitrable, whereas actions arising out of rights in personam (right directed toward other person) can be subject to arbitration. This is because any remedy awarded in an action in rem would lie against the whole world at large, and the arbitral tribunal, being a creature of the contract (and by extension consent) between the parties, would not be empowered to award a remedy enforceable against the world. On the other hand, an action in personam is for determination of rights and obligations of the parties vis-à-vis one another.

The Court further clarified that this is not a strict or rigid classification, as often actions in personam may arise out of rights in rem, and in such cases the subject matter of the dispute may be arbitrable. To illustrate, a dispute involving the validity of copyright is an action in rem, and consequently cannot be adjudged by an arbitrator. But a dispute regarding licensing of the same copyright is an action in personam arising out of the licensing agreement, and hence, arbitrable under the 1996 Act.

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147 *Id.* ¶ 36.
148 *Id.* ¶ 37.
149 *Id.* ¶ 38.
(B) WORKING STRUCTURE OF THE COURT OF ARBITRATION FOR SPORT

Globally, CAS has become the primary venue for resolution of sporting disputes. Though it offers a variety of Alternate Dispute Resolution services, it primarily uses arbitration as the mode of resolution of sporting disputes. In the present section, the researchers shall explain the structure of CAS and the manner in which it has emerged as an independent body for the settlement of sporting disputes.

As per its own Code, CAS has the jurisdiction to resolve disputes “matters of principle relating to sport or matters of pecuniary or other interests relating to the practice or development of sport and may include, more generally, any activity or matter related or connected to sport.” This is subject to a valid arbitration agreement between the parties giving CAS the requisite jurisdiction.

CAS functions through a closed-system of selected arbitrators, around 400 in number, who are appointed for duration of four years at a time. They are nominated by SGBs, such as the IOC, International SGBs and National Olympic Committees. At the same time, ICAS ensures that it appoints arbitrators with a view of safeguarding athletes’ interests. The CAS also provides for a comprehensive set of rules governing its arbitration mechanism, which is aimed at ensuring consistency in procedure.

Historically, CAS was heavily reliant on the IOC. However, with the passage of time, it has become increasingly independent and transparent in its functioning. These changes have been driven by a number of court-based decisions which have forced CAS to reform its internal structure and the hearing procedures. One of the foremost is the Elmar Gundel decision rendered by the Swiss Federal Supreme Court of Arbitration.
Tribunal.\textsuperscript{158} Gundel had argued that CAS award could not be considered as a valid international arbitral award as it was not sufficiently independent and impartial.\textsuperscript{159}

While the Swiss court held that the CAS was a ‘true’ arbitral tribunal, it pointed out areas of concern in the functioning of CAS, especially its linkages with the IOC.\textsuperscript{160} At that time, IOC provided exclusive financing to CAS. Vested with the power to modify the CAS statute it also had other powers relating to appointments and procedures to be followed by CAS.\textsuperscript{161} In short, “CAS had to be made more independent of the IOC both organizationally and financially”.\textsuperscript{162}

The primary change brought about by the decision was that attempts were made to separate CAS from IOC. The CAS Statutes were revised in order to make it more efficient and independent.\textsuperscript{163} The most primary change was the creation of a body called the ‘International Council of Arbitration for Sport’ (ICAS), which became responsible for the functioning and funding of CAS.\textsuperscript{164} CAS also created two separate divisions: one for hearing cases in the first instance; and another for hearing appeals. The modified CAS Code came into effect in 1994 with the signing of the Paris Agreement.\textsuperscript{165}

The CAS Code was further modified in 2004 in light of the Danilova and Lazuntina v. IOC and FIS case.\textsuperscript{166} The effect of the amendment was that no member of the ICAS could participate in CAS proceedings as an arbitrator or a counsel.\textsuperscript{167} Further, the amendment provided that none of the CAS arbitrators could act as a counsel for any party before CAS.\textsuperscript{168}

\begin{footnotesize}
\textsuperscript{158} Judgement of 27 May 2003, 3 (2003) Digest of CAS Awards 649. For a discussion on the history leading up to the changes, see Ian Blackshaw, CAS 92/ A/63 Gundel v FEI, in LEADING CASES IN SPORTS LAW 65-76 (Jack Anderson ed., 2013).
\textsuperscript{159} Id.
\textsuperscript{160} Id.
\textsuperscript{161} Id.
\textsuperscript{163} J. MUKUL MUDGAL, supra note 7, 408.
\textsuperscript{164} Id.
\textsuperscript{165} Id.
\textsuperscript{166} Blackshaw, supra note 162.
\textsuperscript{167} Daniel Mathew, supra note 118.
\textsuperscript{168} Id.
\end{footnotesize}
More recently, changes in the functioning of the CAS have come about due to the *Pechstein and Mutu*\(^{169}\) decision. The European Court of Human Rights ("ECHR") has recognised that arbitration in CAS can be deemed to be ‘forced’ arbitration in the event it is made mandatory on the athlete to participate in an athletic competition.\(^{170}\) Additionally, the ECHR held that CAS arbitration proceedings must comply with the procedural rights guaranteed by Article 6 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms.\(^{171}\) This involves publicity and transparency in the hearing process.\(^{172}\) The effects of the decision can be seen from the public nature of the proceedings on the doping charges against Sun Yang.\(^{173}\) While there is an ongoing discussion and criticism with regards to CAS and its functioning,\(^{174}\) it has been noted that the "IOA rules concerning the [Arbitration Commission] seem rather primeval"\(^{175}\) as compared to the CAS, specifically in comparison to the changes made in the structure of the CAS after the *Gundel* case. It is possible that the IOA mechanism of dispute resolution through the Arbitration Commission may lead to arguments pertaining to arbitration bias, especially as the appointments to the IOA Arbitration Commission is directly made by the IOA Executive Committee. It is desirable that the IOA evolve rules wherein a de-linking of the IOA with the Arbitration Commission is effectuated, which has by and large been done in the relation between IOC and CAS. Similar arguments can be made regarding the SGBs and their DRMs.

**CONCLUSION**

In the discussion above, the limitations arising out of traditional court-based litigation have been discussed, and how despite its limitations, it is doubtful that that the situation with regards to courts being the preferred venue for dispute settlement is going to change in the recent future. Given this scenario, the IOA DRM is indeed a welcome step in the right direction.


\(^{171}\) Id. §§ 170-191.

\(^{172}\) Duval, supra note 170.


\(^{174}\) Sethna, supra note 153.

\(^{175}\) Daniel Mathew, supra note 118. It may be noted that the comment appears to have been made prior to the amendments made to the structure of IOA Arbitration Commission in 2018.
The creation of an independent specialised institutional arbitration mechanism dedicated to sports can also be explored as a possibility in order to provide the participants a forum for resolution of disputes. It may be noted that this suggestion is a part of an increasing trend to establish arbitral tribunals in multiple jurisdictions, such as Canada and the U.K.

Sports Resolutions is an independent, private DRM body responsible for ensuring resolutions of sporting disputes in the U.K. It offers services which are similar in nature to the CAS. As per Anderson, the disputes (approximately 250 in number) have ranged from disciplinary issues to selection disputes. More recently, it has also been allotted resolution of doping-related disputes, highlighting its effectiveness and the trust it commands in the sports sector in the U.K. According to scholars, it offers an expertise and cost advantage as instead of creating and maintaining “their own quasi-independent appeals committee, [sports bodies] can, on ad-hoc basis, draw upon the pre-vetted expertise of Sports Resolutions UK panellists…” It may be noted that Prof. Anderson has discussed the possibility of establishing a Sports Resolutions style solution as an alternative to the existing structure in India.

Similarly, in Canada, sporting disputes are resolved through the Sport Dispute Resolution Centre of Canada. It is a statutory body, funded by the Government of Canada, which provides for arbitration and mediation of sporting disputes at all levels of Canadian sport. In order to avail funding from the Canadian government, the Canadian SGBs are required to provide that appeals from the internal DRMs of the SGBs shall lie to the Sport Dispute Resolution Centre of Canada. Similar to Sports Resolutions, it is also the designated body of resolution of doping-related claims in Canada. The Sport Dispute Resolution Centre of Canada ensures that the arbitrators and mediators enlisted with it possess necessary experience.

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176 In addition to arbitration and mediation, Sports Resolutions also offers assistance in appointment of members in internal sports DRMs and administration of the same. SPORTS RESOLUTIONS, https://www.sportsresolutions.co.uk (last visited Dec. 15, 2019) [hereinafter SPORTS RESOLUTIONS].
177 ANDERSON, MODERN SPORTS LAW: A TEXTBOOK 96 (2010) [hereinafter ANDERSON].
178 SPORTS RESOLUTIONS, supra note 176.
179 ANDERSON, supra note 177.
180 Model for Sports Dispute Resolution in India, supra note 5.
182 Id.
183 Id.
and expertise in the area of sport and ADR mechanisms.\textsuperscript{184} Furthermore, it also ensures that the membership is “a fair representation of the different regions, cultures, genders and bilingual character of Canadian society”.\textsuperscript{185}

Even in comparable socio-economic jurisdictions attempts are being made to establish independent sports DRMs. In South Africa, National Sport and Recreation Amendment Bill, 2020, was recently introduced with the aim to amend the National Sport and Recreation Act, 1998 (hereinafter referred to as the “NSR Act”) and to establish, \textit{inter alia}, Sport Arbitration Tribunal for the country.\textsuperscript{186} This was subsequent to the Portfolio Committee on Sports and Recreation being informed of the need for a sports arbitration tribunal,\textsuperscript{187} and a previous lapsed bill in 2018 proposing the same.\textsuperscript{188} The said Tribunal is to adjudicate on matters pertaining to, \textit{inter alia}, prohibited acts under NSR Act and/or appeals from, or review any decision of sporting bodies under the terms of the NSR Act.\textsuperscript{189} While the Tribunal is to contain at least five members appointed by the Minister of Sport and Recreation,\textsuperscript{190} norms pertaining to participation by public in the nomination, transparency and openness, and experience is to be taken into account in the appointment.\textsuperscript{191} Section 13J of the 2020 Bill also prescribes procedures with respect to conflict of interest and disclosures by the members of the Tribunal, which requires immediate and full disclosure of the conflict and a bar from participation in further proceedings.\textsuperscript{192} Further, the compensation and salaries payable to the members shall be determined by the Minister.\textsuperscript{193}

Building on these experiences, the establishment of a permanent arbitral institution for the resolution of sporting disputes seems imperative. The constituting structure and experience of the aforementioned models can be used as guidance to establish an arbitral institution which will be responsible for the resolution of sporting disputes. By making necessary modifications in the Code, the submission of disputes

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\textsuperscript{185} Id.
\textsuperscript{186} National Sport and Recreation Amendment Bill of 2020, Statement of Objects and Reasons (S. Afr.) [hereinafter National Sport Amendment Bill S.A.].
\textsuperscript{188} National Sport and Recreation Amendment Bill, 2018 (S. Afr.).
\textsuperscript{189} National Sport Amendment Bill S.A., \textit{supra} note 186, § 13E.
\textsuperscript{190} Id. § 13D.
\textsuperscript{191} Id. § 13D.
\textsuperscript{192} Id. § 13J.
\textsuperscript{193} Id. § 13L.
\end{flushright}
at the first instance shall be referred to the institution itself, in order to save time and costs. The funding to the institution may be provided by the government, in order to create structural independence in the mechanism. The proposed institution shall contain a pool of arbitrators, which the parties shall be at a liberty to appoint. Having an independent or legislatively established body resolve disputes makes its procedures more independent and less questionable during legal challenges which may arise regarding the independence of the decision makers. Additionally, the existence of a permanent arbitral body, such as the CAS, Sports Resolutions and the Sport Dispute Resolution Centre of Canada, has also given rise to a body of case laws which has been used as soft precedents to ensure that similar cases are treated similarly.\textsuperscript{194} This becomes vital in ensuring that the rights of the athletes and other persons using such mechanisms are protected. With regards to the arbitrators enlisted with the institution, the government should ensure adequate knowledge and experience of sports related disputes and an inclusive linguistic and gender-based representation in order to allow the parties a wider choice. Additionally, with the creation of the tribunal, the functions presently performed by the ADDP and ADAP may be shifted to it over a period of time.

Although similar attempts had been made in India in the past, which have failed,\textsuperscript{195} the circumstances have changed considerably since then. Firstly, not only have the athletes become more aware about their rights, they have also become more proactive in defending and enforcing the same.\textsuperscript{196} This can be attested from the multiple litigations surrounding Asian Games, 2018, which, as has been noted, forms the backdrop in which the article was written.

Secondly, post 2015, attempts have been made by the Indian government to make India more arbitration friendly in order to attract international arbitrations. The amendments made to the Arbitration Act in 2015 have strengthened the position and practice of arbitrations in India by reducing the judicial interference and bringing in clarity on certain areas of the Arbitration Act.\textsuperscript{197} Additionally, following the report of Report of the High Level Committee to Review the Institutionalisation of Arbitration Mechanism in

\textsuperscript{194} L.V.P. de Oliveira, \textit{Lex sportiva as the contractual governing law}, 17 INT’L SPORTS L. J. (2017); ANDERSON, supra note 17.
\textsuperscript{196} Sharda Ugra, supra note 3.
India, the government of India appears to be making further changes in the present legal landscape in order to strengthen institutionalised arbitration. These changes have led to the enactment of the New Delhi International Arbitration Centre Act, 2019, and the Arbitration and Conciliation (Amendment) Act, 2019, which serve to strengthen the institutionalised arbitration processes. Several pronouncements of the Supreme Court have also appeared to endorse the use of ADR-mechanisms over traditional court-based processes. It is hoped that these pronouncements will translate into more disputes being resolved through ADR-based mechanisms and signal a shift from constant interference by courts in the ADR-processes.

The aforementioned Arbitration and Conciliation (Amendment) Act, 2019 ("Amendment Act") is a huge step towards promotion of institutional arbitration. The Amendment Act has inserted the definition of "arbitral institutions" by the addition of S. 2(1)(ca) and has introduced provisions to grade arbitral institutions by the proposed Arbitration Council of India. The proposed Arbitration Council of India has been given wide-ranging powers of supervision and control over the arbitral institutions in India, but the appointment of members to the Arbitration Council of India is done by the Central Government. This does lead to concerns of independence wherein the control of a body having supervision of arbitration institutions is with an entity which is often party to such arbitrations. However, the push towards institutional arbitration can be effective in order to yield more efficient and effective resolution of sporting disputes.

The advantages of having such a mechanism over the present structure existing in the country has already been discussed at length. Given the state of previous sports related legislative reforms, it is likely that the present structure may continue for the foreseeable future. Regardless, at the minimum, it can be argued that it is desirable that further reforms are made in the structure of the internal DRMs of the national SGBs so as to bring them to similar levels to their counterparts internationally. If not, it is very likely that the courts will again be faced with a spate of litigations when the next international sporting event comes around.

198 Id.
201 Id. § 2
202 Id. § 10.
203 Id. § 43C.