

DISSERTATION

ON

**Role and Significance of CAS in Settlement of Sports Related
Disputes: Bangladesh Perspective**

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Shatabdi Barua

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Declaration

I claim and declare that the thesis has been solely written by myself and has been submitted for the LLB (Supervised Dissertation) of the Department of Law, East West University. I guarantee that this is entirely my own research work and no part, whether it is partially or full, of this research has been applied for any other academic or research purpose yet. This is also critically prohibited to copy any part partially or fully of this thesis for any purpose without compliance.

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List of Abbreviations

CAS- Court of Arbitration for sports

BCB- Bangladesh Cricket Council

BABF- Bangladesh Amateur Boxing Federation

BFF- Bangladesh Football Federation

BHF- Bangladesh Hockey Federation

BSF- Bangladesh Swimming Federation

FIFA- Federation Internationale de Football Association

ICAS- International Council of Arbitration for Sports

ICC- International Cricket Council

IOC- International Olympic Committee

IJF- International Judo Federation

WADC-The World Anti-Doping Code

IWF- International Weightlifting Federation

DRC- Dispute Resolution Chamber

NCL- National Cricket League

NSCB -National Sports Council of Bangladesh

CHAPTER 01

Introduction

1.1 Research Question: Should Court of Arbitration for Sports (CAS) be introduced Bangladesh?

1.2 Abstract

There is a distinguished system of arbitration for the things related to sports in different countries in the world. Nonetheless sports organizations or federations in Bangladesh like Bangladesh Cricket Board (BCB), Bangladesh Football Federation (BFF), Bangladesh Hockey Federation (BHF), Bangladesh Swimming Federation (BSF), Bangladesh Amateur Boxing Federation (BABF) etc. still go to the International Sports Authority e.g. International Cricket Council (ICC), Federation Internationale de Football Association (FIFA) etc. for the solutions of civil matters or make so called solutions they themselves. They do not take help from Court of Arbitration for Sports (here after CAS) in the fact of contractual dispute, transaction, match fixing, cessation or financial punishment for default etc. But civil matters should be solved in legal way always.

In this research work it will be tried to sketch out some of this type of improper legal practices previously held worldwide along with Bangladesh, and to bring out the injustice happened to them and will also be tried to suggest some possible recommendations afterwards.

1.3 Scope and Limitations

In spite of CAS being a very significant and worldwide issue there is insufficiency of primary or secondary data, books, journals, articles or treatises regarding this. There are some very secondary sources but access to them is restricted or of high prices. Moreover, COVID-19 aftermath made it even harder to every access to the libraries or seminars. To be frank, this project has slightly been hindered by the inadequacy of resources. Being aware of that the researcher has had a planned plan to carry out the research and bring out best output possible.

1.4 Literature Review

Despite being an important court, there is very few writings i.e. articles, treatise, books or research works etc. regarding CAS. In Bangladesh, it's even more trivial. If granted not to hide anything, it is to say, there is no solid research work relevant to CAS here in Bangladesh. However, the mention-worthy works on CAS done by internationally or nationally will be focused here whether they be relevant fully or partially.

An erudite and intellectual work has been done by a Umea University Professor of Law.¹ It is a tremendous work indeed on CAS. This book illustrates the pros and cons of CAS showed the entirety of CAS as a jurisprudential body. Most importantly, it emphasized on the empirical analysis of very decisions of CAS in where majority of the books are based on traditional theories of law. This book also illustrated the empirical legal studies, sports law, arbitration law and transnational law etc.

Another a master piece work on CAS.² This book deeply illustrates about the procedures to establish CAS jurisdiction validly, the laws and rules applicable to the cases of CAS, types of provisional steps can be taken by CAS, process of drafting valid request for the arbitration and appeal statements, cost related issues, practical matters etc. This very book is an important reference for all the practitioners of sports law.

This book conceptualized CAS well, sketched its evolution, development and the ultimate revolution it has brought to the era of sports jurisdiction.³ This book demonstrates the historical background of CAS sports cases solved by CAS from 1984 to 2004 mention-worthy milestone and significant achievements after operations of 20 years.

There is another milestone work regarding CAS.⁴ It elucidates some of most burning and smeared cases related to football solved by CAS. Studying this book, one will easily find the most agitating

¹ Lindholm Johan, *The Court of Arbitration for Sports and Its Jurisprudence: An Empirical Study into Lex Sportiva* (1st edn, T.M.C. Asser Press The Hague 2019)

² Mavromati Despina and Reeb Matthieu, *The Code of The Court of Arbitration for Sport: Commentary, Cases and Materials* (1st edn, Wolters Kluwer Law & Business 2015)

³ Blackshaw I. S., Soek Jenwillem and Siekmann C. R. Robert, *The Court of Arbitration for Sport: 1984-2004* (1st edn, T.M.C. Asser Press The Hague 2006)

⁴ Alexander Wild, *CAS and Football: Landmark Cases* (1st edn, T.M.C. Asser Press The Hague 2012)

football cases solved by CAS. From the very acceptance of CAS by FIFA, enormous football disputes started to come CAS for settlement. This book states some indiscrepancies in jurisdiction held with sportsmen and showed the very pathway to ensure justice for settling the disputes related to sports.

1.5 Chapter Conclusion

CAS is solely a sport related jurisdiction body. It only deals with sports related disputes. This chapter contains the abstract, scope and limitation and literature review of the research work. The various organization or federation or a sport-related body or players around the world solve their disputes regarding sports though CAS but Bangladeshi sports organizations, most of the time, do not go to CAS with their disputes. In spite of CAS being a very significant and worldwide issue, primary or secondary data, books, journals, articles or treatises regarding this are quite inadequate. It is a little tough to know about this court and their activities in broad. There are some few books related to arbitration of sports. The zest things of these books have been sketched here in chapter one as literature review.

Chapter 02

What is CAS?

2.1 Historical Background:

CAS is a court which deals with sports associated disputes by mediation or arbitration, by means of procedural rules adapted to the specific necessity of the sport world founded by the International Olympic Committee (IOC) in 1884. The headquarter is situated in Lausanne, Switzerland and the courts are situated in New York City, Lausanne and Sydney. It's an autonomous institution. At early period of 1980, number of sports associated disputes started to be increasing rapidly. As a result, the necessity of a sports-specific arbitral jurisdiction arises. This is Juan Antonio Samaranch, President of International Olympic Committee, introduced the idea of creating jurisdiction of dispute related to sports first in where the disputes can be solved by arbitration or mediation which means moving them away from the national court of jurisdiction to international.

There are divisions in Court of Arbitration for Sports. Ordinary arbitration Division -which responsibility is to solve disputes which presented to ordinary procedure. Anti-doping Division- their responsibility is to solve anti-doping matter related disputes as a first instance authority and finally Appeals Arbitration Division- their responsibility is to solve disputes regarding decisions of associations, federations or any sports-related body or a certain agreement.⁵

2.2 What is the ICAS?

The International Council of Arbitration for Sports (here after ICAS) is also created at the same time along with CAS to settle sports associated disputes through mediation or arbitration. It is a statute which contains section 1-26 and rule 27-70. According to section 2 of Code of Sports-related Arbitration. ICAS intends to expedite the settlement of sports associated disputes by mediation or arbitration. It works as a safeguard for the independence of CAS which is liable for the financing and administration of the CAS.

⁵ Section 20 of Code of Sports-related Arbitration

2.3 Membership

Membership of CAS and ICAS Ms. Carole Malinvaud (France) is President of CAS ordinary division. Ms. Corinne Schmidhauser OLY (Switzerland) is the President of Appeals Arbitration Division. Mr. Mathieu Reeb is the CAS Director General, Lausanne, Switzerland. Mr. John D. Coates (Australia) is President and Mr. Michael B. Lenard OLY (USA) is the Vice President of CAS. Mr. John D. Coates (Australia) is also the president of ICAS. There are 20 different countries who has membership in the ICAS, whom are responsible for financing of and financial reporting by the of CAS, also this appoints the Secretary of the CAS.

2.4 Functions of CAS

CAS holds panels which have the responsibility of resolving any disputes arising in the sport by arbitration or mediation pursuant to the Rules .⁶Works of the Panels are to settle the referred disputes by ordinary arbitration, to solve matters related to anti-doping as a authority of 1st instance or a sole instance, to resolve the referred disputes by ordinary mediation, to solve by through the procedures of appeals arbitration disputes related to the decisions of association, organization, federations or other bodies related to sports as the statutes, regulations or a specific agreement.⁷

2.5 Jurisdiction of CAS

CAS is known as Supreme Court for sports. CAS deals with some different types of cases in sports arbitration. CAS is able to hear general sports-related disputes from commercial disputes like a contract, including sponsorship contracts, employment issues, transfer regulations and media rights to sports related specific disputes like doping, incidents or accidents on the field, eligibility and also issues related Olympic games. Most of the countries recognized CAS as a court of dispute settlement for sports by arbitration. There is only one requirement which is the dispute must

⁶ Articles R27 of Code of Sports-related arbitration

⁷ Section 12 of Code of Sports-related arbitration

indirectly or directly relate to dispute. It's very important to recognize CAS before asking for its advice.

The Procedural Rules are applied by the parties when they agree to take sport associated dispute in CAS. They can refer their disputes in CAS by arbitration if they had already been included it in contract or a later arbitration agreement or regulations or apply for an appeal against any decision which given by association or federation or a definite agreement which provide for an appeal for CAS. The disputes can be principle related, contract related, pecuniary related etc.⁸ The first case was handled by CAS in 1986. From 2016 -till today every year this court handle considerable amount of cases. Day by day the number of cases in CAS is increasing.

Court of Jurisdiction has a certain jurisdiction which is also clearly mentioned in definition itself. Its major limitation is the dispute has to be related to sports. When there is an international element, all disputes related to sports are eligible for CAS. The relation to sports, no matter, can be indirect even and the abstract of the dispute can cover all the arenas of law. The two below categories divide all the possible disputes before the court, for instance, no determination has previously been made in this case. These types of case are submitted to court prior to all and can contain any subject area. Major of them are commercial disputes, contractual obligations or business aspects related to sports. Once in a while disciplinary actions, at first, can be taken to the court and it generally happens under special procedural rules during major sport related events. Secondly, appeal, the appeals process is the other form of case. This is mostly involving a review of a disciplinary action made by sports organization. In this cases, this is the court which will review the determination and will fix whether the result is appropriate or not. These cases, in general, involve doping allegations and in this fact court can only hear the arguments on other disciplinary actions. It may include some reviews of federations' rules on commercial issues but this is hardly seen to follow.

⁸ Articles R27 of Code of Sports-related arbitration

2.6 The Code of Sports Related Arbitration

This Code of Sports Related Arbitration directs and controls procedures and organization of the court. It includes procedures for four below mentioned distinct processes in the court-Ordinary Arbitration, the procedures of the ordinary arbitration are applicable to those cases only of coming to the court at first. Though in major times it includes commercial disputes but it resolves wide variety of disputes too. Appeals Arbitration, if the federation is not pleased with the judgement then the federation can appeal in the court. Advisory Procedure, it is a non-contentious process. The federation or organization can seek for advice from the advisory body based on any question which the organization want to solve. The court has also a mediation process by which the parties can resolve the dispute. The court appoint a mediator for meditation.

2.7 Chapter Conclusion:

In the arena of dispute resolution, the CAS is a significant tool. Though skeptics argue that the process largely differs from the traditional arbitration but the voluntary, confidential and adjudicative process quietly prevails there in the core of the court. In general, sports disputes are different and more complicated. So, to resolves these common knowledges is not adequate. Specialized knowledge regarding sports and other fields are mandatory for this. So thus, way the CAS is playing a pivotal role in resolving such invaluable disputes around the world.

CHAPTER 03

The application of The CAS around the world: Part 1

3.1 Background:

In Krystsina Tsimanouskaya⁹ The applicant is a field and track athlete with Belarussian nationality contesting in Tokyo Olympic Games in the category of women's 100 meter and 200 meters. The applicant did an Instagram video along with another athlete. The applicant said on that both of them going to take part in the Tokyo Olympic Game but they were excluded from that because they were not able to take sufficient doping test. The athlete resented about this in her personal Instagram video that the Federation made the athlete along with Elvira Herman to took that rap, also take part in discipline even when they were not specialized in it. The athlete also said that Federation did mistake by not counting properly numbers of test of the excluded athletes. After that said video of Instagram, that story was cover by TV channel of Belarussian government.

For this story cover she got a lot of negative & hateful reactions which was a threat for her safety. 1st August of 2021, the coaching staff who are the Belarussian Delegation took decision to withdraw the athlete from the participation in Women's 200-meter qualification which was scheduled on August 2 ,2021 at 10hr30 (Tokyo time zone) by saying that her mental state was not good. In the Instagram the applicant stated that she was not consulted by any doctor. She also said that NOCB forcefully sent her back without her consent. So, she filed an application on 2021, August 2, at morning 8;30 am, the athlete an urgent Application for stay in the Appealed Decision was filed. The women's 200-meter qualification were scheduled on same day at 10hr30 (Tokyo time zone), considering that, according to the CAS Arbitration Rules Article 14 for Olympic Games, President of the CAS Ad hoc Division ruled ex parte and issued at 10h00 (time of Tokyo) the following Order on Request for Stay-This urgent application for stay which was filed at morning 8;30 am on 2021, August 2 by the applicant is dismissed.

⁹ Krystsina Tsimanouskaya VS National Olympic Committee of Belarus [2021] CAS OG 20/13

In Keramuddin Karim¹⁰ Mr. Keramuddin karim is an Afghanistan citizen. From 2004 to 2018, he was president of The Afghanistan Football Federation. There was allegation of power abuse, mental & physical sexual harassment against the appellant & other officials of the federation. This allegation was made by some female football player of the Afghanistan team.

Adjudicatory Chamber of the FIFA Ethics Committee recognized, on 2019, June, Mr. Karim guilty of abusing his position by harassing female players sexually which broke the FIFA Code of Ethics. For this he got a lifetime ban from all football related activities nationally internationally including sports, administrative or other. Moreover, he was also fined in the amount of CHF 1,000,000. Afterwards CAS dismissed Mr Karim's appeal and thus decision of Adjudicatory Chamber of the FIFA Ethics Committee had fully been confirmed.

By this case CAS has confirmed the significance of FIFA's zero tolerance policy against mental, physical and sexual abuses at all levels of football, as well as the sufficiency of the strongest sanctions in such cases. An appeal against any decision which given by association or federation or a certain contact which provide for an appeal for CAS.¹¹ Decisions of the adjudicatory chamber are the final decision. This decision can be appeal in the CAS under relevant section of FIFA Statues.¹² An appeal can be file against final decisions of FIFA legal body and member of associations, leagues, confederations in the CAS.¹³ Both parties did not have any problem with the decision of the CAS and they also signed Order of Procedure. So, it shows that this court has such right to give decision in the present issue.

In Emilio Yamin Faure¹⁴ The appellant signed a contract with the club of an employment agreement on 6 July 2018 and the caption was "Contract for player service" which draft in Arabic and English. The content of the contract was that from 1st June ,2018 until end of the season 2018-2019 the player started his service and an annual remuneration of \$ 25,000 which is payable in 10 monthly instalments of \$2,500 each. In the preamble of the Contract it was stated that "Mr. Emilio

¹⁰ Keramuddin Karim VS Federation Internationale de Football Association (FIFA) [2019] CAS 2019/A/6388

¹¹ Article R47 of Code of Sports-related arbitration

¹² Article 82 of FIFA Code of Ethics

¹³ Article 58, para. 1of The FIFA Statutes

¹⁴ Emilio Yamin Faure VS Al Salam Zgharta FC; Federation International Football Association (FIFA) [2020] CAS 2020/A/6933

Yamin Faure, Mexican Citizen” but printed word “Mexican” was crossed -out and it was replaced with “Lebanese” word which was in hand-written form. Both contracting parties gave their signs beside this hand-written amendment. On the same day the contracting party signed an additional Agreement which contented that the club agreed with the player to pay an amount of \$15000 as sign on fees for signing the said contract. On August 19,2018, during an official match the appellant suffer a knee injury and needed perform surgery on his knee. On September 4,2018, the appellant got a text message from the Club’s Team Manager informing that Club had took decision to end up the employment contract. The applicant refused to sign that end up of the employment contract and also said that this termination is unjust also requested to paid the remaining unpaid amount of singing -on fee and also the unpaid remuneration for June, July, August. But the Club refused that. The appellant file the claim against her Club to Dispute Chamber of Federation International Football Association (FIFA). His claim was that, this Club had ended up the contact except any reasonable cause on September 4,2018. The Decision of the FIFA DRC “The claim of Claimant, Emilio Yamin Faure, is inadmissible”. On 14 April the Appellant, filled an appeal in accordance with the CAS Code of Sports -related Arbitration for Sport, Article R48 against that Club as 1st respondent and against FIFA, as 2nd Respondent also with respect to the Appealed Decision. The Jurisdiction of CAS in the appeal executes from the Article R27 of that said Code and also Article 58 par.1 of the Federation International Football Association (FIFA) Statutes. The both parties did not have any problem with the decision of the CAS and they follow the jurisdiction.

In Andreea Răducan ¹⁵ On 2000, September 19, at Sydney Olympics the applicant achieved a gold medal in Gymnastics Women’s Team Finals. Andreea got out of subject of doping after that competition. On September 20, 2000 the applicant reported to their Romanian gymnastics team doctor Dr. Oana with a running nose, little headache, also the feeling of some congestion. For that reason, Dr. Oana referred her a Nurofen (Cold and Flu tablet) and the applicant had before the doctor. On September 21, 2000 again, she participated in Gymnastics Women’s Individual All - Around Program. After a few moments she starting up warm-up and before the event being started, she complained to the doctor Oana about her not feeling good physically. Then Dr. Oana gave her a 2nd Nurofen tablet and she took it. Again, she won a gold in the Gymnastics Women’s Individual All -Around Program. According to the antidoping procedures of Sydney Olympic Games,

¹⁵ Andreea Răducan v. International Olympic Committee [2000] CAS OG 00/011

Applicant was sent for doping test in the Doping Control Station. By the urine test the lab found pseudoephedrine in her sample. According to The Applicant's evidence she didn't took any medicine after September 21,2000. Yet she mentioned in the Record which was made after receiving the silver medal in Gymnastics Individual Vault Finals dated September 24, 2000, that she took one tablet of Nurofen on September 23,2000. On September 25, 2000 the International Olympic Committee of Medical Commission reported to International Olympic Committee Executive Board about results of the lab sample A. In 25 September 2000, sample B was tested in front of Romanian Olympic Committee. The sample B testing of Applicant's urine was received on September 26,2000 and it's confirmed that the sample A finding of the presence of pseudoephedrine at the concentration greater than 25g/ml. On September 26 the applicant filled an application in the Court of Arbitration for Sports (CAS) in which requesting an order to setting aside the Decision of Olympic Committee Executive and also bring back the gold medal to Applicant. A hearing was conducted on September 27, 2000 attended by the Applicant. The CAS Panel is conscious about the effect of their decision will have on the young athlete. But the Anti-Doping Code should be applied on zero tolerance. So, according to Panel, this application is dismissed and the decision of the International Olympic Committee in 26 September is also upheld.

3.2 Chapter Conclusion

In the above-mentioned cases there are doping test issues, safety issues of the players, employment contract issue, unpaid remuneration issue etc. The players or members not satisfied with the decision of their club or federation went to CAS for their dispute settlement. Some previous decision was upheld and in some issues CAS gave new decision. The parties were also agreed with the decision of CAS.

Chapter 04

The application of The CAS around the world: Part 2

4.1 Background:

In Islamic Republic of Iran Judo Federation¹⁶ There was an allegation against the Islamic Republic of Iran Judo Federation that they instructed an Iranian Judoka athlete named Mr. Saied Mollaei to withdraw from competing against Mr. Sagi Muki, an Israeli Judoka, to avoid any kind of potential contest. The IRIJF disputes these allegations. The athlete loses the games where he had to face the Israeli athlete. Regarding this matter The International Judo Federation sent a letter to athlete and also to the President of Iran Olympic Committee and to Ministry of Sport and Youth of Iran. They exchange several letters after that. But the outcome was same. So that The International Judo Federation decided to take a disciplinary action against Appellant before Disciplinary Commission of the International Judo Federation. The Disciplinary Commission of IJF issued a Provisional Suspension Decision. The appellant appealed in the Court of Arbitration for Sports against IJF, respondent to challenge their Provisional Suspension Decision. Whether CAS has jurisdiction to hear present dispute or not is to be evaluated on the base of *lex arbitri*. The court follows Article R47 of the CAS code, Article 29.1 of IJF Statutes, Article 1 of IJF Disciplinary Code enclosed an Annex 1 to the IJF Statutes.

In Mu-yen Chu & Chinese Taipei Olympic Committee¹⁷ An athlete named Mu-yen Chu is the Taekwondo champion Athens Olympic Games. During London Olympic Games, in 2012, the appellant started campaigned for election as a member of IOC Athletes' Commission. Due to violation of rules in said campaign for election IOC Executive Board cancelled his candidacy. The appellant was accused for giving promotional materials which is unauthorized and gifts to voters. The appellant lost this case but Court of Arbitration for Sports Panel stated that appellant's

¹⁶ Islamic Republic of Iran Judo Federation VS International Judo Federation [2019] CAS 2019/A/6500 & 6580

¹⁷ Mu-yen Chu & Chinese Taipei Olympic Committee VS International Olympic Committee (IOC) [2012] CAS 2012/A/2913

behavior was driven by his zeal only rather than any motive to cheat. He had not any bad intention. Nonetheless his reputation due to this should not be hindered by this decision.

In Liao Hui¹⁸ Liao Hui was weightlifting champion in Beijing Olympic Games. In 2010, the player was suspended by International Weightlifting Federation (IWF) for Four year taking dope test. Contradiction goes between anti- doping rule WADC and IWF. In IWF rules of doping, in case of the first offence, such appellant shall be suspended for 4 years; meanwhile in doping rules of WADC, the appellant shall be suspended only for 2 years. The CAS upheld the appeal which filed by athlete to reduce the suspension of the athlete from four years to two years. This case points out the compulsory nature of suspension period in WADC and also priority of WADC in case of International Federations' doping rules. In 2005, this updated version of WADC amended the suspension from 2 years to 4 years.

In Wen Tong¹⁹ Wen Tong, A Judoka from China, named filed an application in CAS against the decision of International Judo Federation (IJF). A 2 years ban was attributed on applicant for a positive dope test for clenbuterol by IJF. Applicant was the champion of Beijing Olympic in category of Women 78+kilogram. On 8 of September, 2009, applicant's sample A was tested positive for said test. After that, on 25 of November, 2009, again IJF had tested sample and without letting know the applicant or offering any kind of chance to attend herself or by a representative. Sample B was tested also positive. A two-year suspension was imposed in her by IJF executive board. On 2010,6 July, she filed an appeal to CAS. Her request was about to annulment the suspension. The CAS stated that appellant was not provided any chance to represent herself or through any representative for opening and for testing of sample B. Court of Arbitration for Sports panel also recognized the athlete have the right to be attend whenever sample B was analyzed. Considering sample B analytical results failed to confirm validly result of sample A and accordingly , CAS has annulled decision of IJF cause appellant was not provided any chance to represent herself or through any representative for opening and also for test of sample B, in violation of Articles 7.1.4 and 7.1.6 of the IJF Anti-doping Regulations , 2009. After winning that case, the athlete won bronze medal at London Olympic Games in 2012. It was very first issue ever

¹⁸ Liao Hui VS International Weightlifting Federation [2011] CAS 2011/A/2612

¹⁹ Wen Tong VS International Judo Federation (IJF) [2010] CAS 2010/A/2161

in where a Chinese athlete won case in CAS and this was also one of very few cases in where athletes win a case against the dope allegation.

In P.²⁰ A Serbian footballer named Dusan Petkovic who filed a complaint along with Federation Internationale de Football Association (FIFA) Dispute Resolution Chamber (DRC) against Shanghai Shenhua Football Club, China in 2004. He said that club end up the contract one-sidedly, so, he requested compensation for it. The Club explained that he did not perform as it was required -70% of Club's matches in past year. Thus, Club deserved legal right to end up contract with player. FIFA DRC primarily rejected his claim, afterwards the appellant appalled to Court of Arbitration for Sports for justice. In 2005, Court of Arbitration for Sports bring out different thing and overturned calculation of matches given by DRC and upheld player's appeal. Eventually Petkovic got his deserving compensation reward which was more that \$1 million USD.

In M.²¹ Along with FIFA DRC an Italian football couch named Giuseppe Materazzi filed the complaint against China Tianjin Teda Football Club in 2004. He stated that the said club unilaterally terminated player's contract of employment as club head couch. Both of the parties expressed disagreement with the decision of FIFA DRC and they decided to appeal in CAS. The CAS determined that behavior of Tianjin Teda Football Club could be described at early of his contact of employment and appellant could comprehend from all the situations that his being excluded from Football Club was obvious and their contact of employment had come to termination. So, he could have indemnities (\$1.5 million USD) which was provided through contact of employment.

There are some other famous incidents-Salim Malik, a Pakistani captain first banned for bribing two Australian cricketers to lose in a test match. He also had to go in jail. In 2008 he was able to remove his life time ban from cricket by appeal. There was an allegation against the cricketer Mohammad Azharuddin for giving bribe to South Africa's Captain Hansie Crony in a match. After investigation in 2000 ICC banned him from cricket for lifetime. In 2012 his punishment was removed by his appeal. Hansie Crony an incident was related with Mohammad Azharuddin. After

²⁰ P. VS Shanghai Shenhua Football Club [2005] CAS 2005/A/840

²¹ M.VS Tianjin Teda Football Club [2005] CAS 2005/A/909,910 and 912

the series in India he confessed that he got fifty thousand dollars for giving the inside news about the upcoming series. It also alleged that he was in contact with some gambler. After the investigation he was found guilty. That's why he was banned for life time in 2000. But in 2002 he unfortunately died in a plane crash. Spot Fixing Scandal of Pakistan is a black chapter in the history of cricket. The alleged players were Salman Butt, Mohammad Amir and Mohammad Asif who had been punished for different years of cessation from cricket. That very scandal had been happened during Test Match between Pakistan and England in 2010 at Lord's, London. That three Pakistani cricketers were convicted of receiving bribes from Mazhar Majeed, a bookmaker for bowling no-ball during the Test at some fixed moments. Scotland Yard arrested Mazhar Majeed on charge of match fixing. In the meantime, ICC banned these three Pakistani Cricketers- Salman Butt who was the team captain and the two fast bowlers Mohammad Amir and Mohammad Asif in terms of between five to ten years. In 2011, all four were sentenced for prison for 6 to 32 months.

4.2 Chapter Conclusion

International sports body like IOC, FIFA started taking their disputes in CAS. Players are also taking their disputes in the CAS. They are asking advice from CAS in their disputes. In the above-mentioned cases there are various types of issues like – employment contract, unreasonably breach of contract, sexual harassment issues, non-payment of wages, anti-doping issue, termination of contract without proper reason, mistreatment with the players etc. Some case decision went favor of the organization or federation and some went in favor of the player. In the most cases they accept the decision of the CAS. CAS defiantly giving proper attention in anti -doping cases and following the statutes strictly. Day by day the number of cases is increasing. More issues are getting attention of CAS.

CHAPTER 05

CAS on Bangladeshi Perspective

5.1 Different Incidents Held in Bangladesh

Qazi Onik, Bangladeshi fast bowler has been banned by The Bangladesh Cricket Board (BCB) for two years. The bowler failed the dope test in 2018 during the National Cricket League (NCL) match in Cox's Bazar. The bowler was tested positive for Methamphetamine. He also accepted his offence for violating the anti-doping rule because he used the prohibited substance. Methamphetamine is prohibited under section S6a of the 2018 International Cricket Council Prohibited list also under the Bangladesh Cricket Board Anti-Doping code 2.1. The BCB appreciated that his confession saves the time of hearing and the money of the proceeding.

Another Bangladeshi Cricketer Shabbir Rahman was faced disciplinary action for beating an audience in the ongoing cricket match. The disciplinary action was taken by Bangladesh Cricket Board (BCB). The Chairman of the BCB stated that the disciplinary committee took the decision of eliminating him from the central contract, twenty lakh taka fine and suspension from home cricket for next six months. According to him, this is his last chance for his actions. Because this is not the first time he was in a controversy. In 2016 BPL he was in a controversy with a woman in Chattogram hotel. That time he was fined twelve lakhs by the committee. Then again, he did misbehave with the umpire in another BPL and was fined. He also had demerit point for breaking rules.

Shahidul Islam, a Bangladeshi pacer has been suspended for ten months for finding guilty for breaching the Article 2.1 of the International Cricket Council Anti-Doping code. The pacer had represented once Bangladesh in T20I. The ten-month has been started from 28 May, this day he admitted to his offence. He will be eligible to play again on March 28, 2023.

In the break of Mohamedan – BJMC match Arif Khan Joy enter the field. The BFF made rules that nobody could enter in the field during the match or match. But the President of BFF enter the match during the break with his gun. And there also allegation that he threatened the referee for giving penalty to him team. He broke the several rules but he was not facing any consequences for his actions.

The biggest controversial case in Bangladesh is Ashraful's match fixing case in the Bangladesh Premier League (country's domestic twenty20 event). Mohammad Ashraful was the former captain of the Bangladesh cricket team. Ashraful admitted to the ICC's Anti-Corruption and Security Unit that he was involved in the match fixing in BPL. He stated that, he felt guilty for involving in this activity and also thought if he confessed everything then he might get less punishment for involving in match fixing. After knowing that Bangladesh Cricket Board set up a disciplinary panel for investigating the BPL match fixing controversy. The disciplinary panel claim four charges against Ashraful for this incident. He was charged for four for match fixing in BPL second season against Khulna Royals, Chittagong Kings, Barisal Burners and Sylhet Royals. The BPL disciplinary committee found him guilty for those four charges and banned him from all kind of cricket match for eight years (three years of suspension) and fined him with One million taka. While the ICC's Anti-Corruption and Security Unit investigating this issue then they found out that this is not his first match fixing involvement. He involved with spot fixing for three times in past. The two-former captain of Bangladesh cricket team Khaled Mahmud and Khaled Masud and left-hand spinner Mohammad Rafiq was also involved with him. They introduced him with the gambler in the first place. From there spot fixing has started. But they refused that allegation. The BCB disciplinary panel did not held any further investigation against them. United Nation General Assembly recognized sport as a system of learning, peace and fitness progress in its resolution 58/5 in 2003. In recent times sports has been a top profit-making business in the world with expand of several types of media. This starts emphasizing on founding specific sports law. Almost all the sports bodies in Bangladesh are run under control of National Sports Council of Bangladesh (NSCB).

Bangladesh Football Federation (BFF) and Bangladesh Cricket Board (BCB) are also under control of National Sports Council of Bangladesh (NSCB) which is an independent association going under the Ministry of Youth and Sports. Ministry of Youth and Sports is created by National Sports Council Act 1974 but this is matter of fact that it does not refers clear rules and regulations for the players and sufficient mechanism for dispute settlement. Despite that it is the authorised apex organization for developing and controlling sports. Though Bangladesh Football Federation (BFF) and Bangladesh Cricket Board (BCB) are run by their own constitution but in the form of legal categorization they (constitution) are in vague.

Sports Law is not only of sports rather it is a very well-developed law based on human rights law, public law, criminal law, labour law, competition law, company law, intellectual law, competition law, tort law, media law, contract law, administrative law etc. All of these laws cover sporting framework regarding security, public order, drugs, punitive actions, anti-competitive trade, match fixing, confidentiality rights business exploitation in sports etc.

Legal issues in sports in Bangladesh has become burning issue in recent times because of commercialization and rapid expansion of sports. Within last few years, some very scams have taken place specially in cricket but no solid endeavor for enacting sports law has been seen yet. Moreover, in Bangladesh there is no specific law for addressing deviance and corruption in the sports. Even Anti-Corruption Commission Act (2004) and Penal Code (1860) also does not suit any solid or exact provision against unethical endeavor and corruption in sports.

Since our traditional laws are not adequate to ensure justice and even to bring accountability, I think, an autonomous body or Ombudsman for sports may be put in the place and they should be provided supreme authority to inspect, control and take action needed regarding sports related disputes. Moreover, it is suggested to bring out more sports law specialist as to fulfil the demand needed for sports related problems needed with the passage of time.

In Bangladeshi law there are some laws by which this sports related issues can be deal. If anybody makes false document with intention to damage to anybody or make any implied or express contract with the intention of fraud or already committed fraud it is consider as forgery.²² The punishment for forgery is maximum two years or fine or both.²³ After filing written statement, the parties can solve their dispute by mediator through mediation.²⁴ At any stage of suit if the parties apply to the court to withdraw the suit on ground their disputes will be refer to arbitration for settlement. If the referred proceeding arbitration does not happen or arbitral award is not provided parties will be entitled to reestablish the permitted to be withdrawn suit. An application shall be considered as an agreement of arbitration under Arbitration Act 2001.²⁵

²² Section 463 Of The Penal Code,1860

²³ Section 465 Of The Penal Code,1860

²⁴ Section 89A of The Code of Civil Procedure,1908

²⁵ Section 89B of The Code of Civil Procedure,1908

5.2 Chapter Conclusion

Presently different countries or international organizations are going to CAS for resolving their sport related disputes. But in case of Bangladeshi sports organizations like BCB, BFF etc. mostly does not present their disputes in the CAS. There are a lot of incidents which can be resolved by the CAS. But Bangladesh is solving these things with the help of ICC which result is not reasonable most of the time and also doing injustice with the players. Mentionably Cricketer Ashraful incident he got a improper punishment for match fixing and even the investigation was not also proper. These disputes can be solved properly by forwarding to CAS from the beginning. This above mentioned incidents show that Bangladeshi sports organizations do not consider to take their disputes in the CAS mostly.

CHAPTER 06

Recommendations

CAS is the apex judicial body for ascertaining sports related disputes all over the world. Nonetheless, we hardly see its application in settling disputes in South Asian countries let alone Bangladesh. In Bangladesh there are some very cases which should obviously be solved by CAS but not happened that so. This has been very injustice to the victim or alleged that their judicial process had been gone through the traditional judicial system despite having a relevant and specific court. In Bangladesh, the application of CAS in any cases has yet not been seen. Question arises that where there is a certain specific judicial body for sports related disputes why we are to go through banal and traditional laws!

Here, some possible recommendations regarding the necessity of application of CAS in Bangladesh will be suggested. Since there is a specific judicial body for sports related disputes, so it's application should be ensured in Bangladesh too to ensure justice, as CAS is the only relevant body for resolving disputes related to sports, our government and sports authority should take steps to launch CAS here too, traditional laws cannot, most of the time, ensure justice to the sportsmen alleged as they cannot go deep through the cases with banal laws, sports Tribunal can be founded to deal with legal matters and sports associated disputes, besides CAS being applied here in Bangladesh, steps can be taken to set up a branch or sub-branch of CAS to ensure more justice in settling sports related discrepancies, special courses on sports law should be introduced in study of law in our country, government should take steps in creating or bringing out sports law specialists to keep pace with the changing scenario sports field expansion, an autonomous body like Ombudsman for Sports may be introduced to whom supreme authority will be given to inspect, prosecute and control the sports organizations as well as legal issues and disputes regarding this.

CHAPTER 07

Conclusion

Despite having a distinct system of jurisdiction for the sports related dispute, it's CAS, still this is very common to see sports persons to go under the saw of conventional law which hardly can ensure justice for them. Moreover, this is very regretful that Sports Authorities are doing the same injustice too. They are either going to the mother authority i.e. certain international authority for solution or they themselves are mediating. This is not a legal process at all. Very often the sportsmen remain beyond justice. In Bangladesh, this is even more unreasonable.

Court of Arbitration for Sports (CAS) is an obvious court dealing with sports related disputes through mediation or arbitration founded by the International Olympic Committee (IOC). Through it can play pivotal role in revolving sports related disputes, practices going to them for arbitration has still not been to common. In some very countries the functions of Court of Arbitration for Sports (CAS) is yet to be introduced. But introduction of CAS in every country along with Bangladesh can open a new era in the form of jurisdiction related to sports and justice can be ensured for the sportsmen undoubtedly. CAS is only certain and highest tribunal for the disputes related to sports in the world. Nonetheless its application all over the world is not so satisfactory at all, and in South Asian countries as well as in Bangladesh its practice is yet to be introduced indeed. But the condition wasn't supposed to be so. It is CAS which expedite the settlement of issues by mediation or arbitration by means of specific procedural rules needed for sports word. Through traditional law sports disputes cannot be solved ensuring justice. And in Bangladesh, many of our sportsmen e.g. Mohammad Ashraful, Sakib Al Hasan, Quzi Anik, Shahidul Islam didn't get justice too but if application of CAS was there in Bangladesh, they had not to face injustice. So, I think, of CAS can play a pivotal role in ensuring justice for the sportsmen and in Bangladesh it should obviously be launched in on early basis.

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