



INDIA ADR WEEKDAY 2: MUMBAI

SESSION 3

The Big Business of Sport – Why Arbitrate? This session will offer an in-depth exploration of the growing role arbitration plays in the sports industry

12:00 PM To 01:30 PM IST

Moderator – Mythily Katsaris, Partner Fladgate LLP

Speakers:

Mark Buckley, Partner Fladgate LLP

James Earl, Partner, Fladgate LLP

Yashojit Mitra, Partner, Economic Laws Practice

Dinesh Pednekar, Partner, Economic Laws Practice



1 **HOST:** Can I request you all to be seated? We'll be starting with our next session very soon.
2 We'll be starting with our next session by Fladgate LLP and economic laws practice on, 'The
3 big business of sport. Why arbitrate?' On the panel we have Mark Buckley, Partner Fladgate,
4 who will be moderating the session. We have Mark Buckley, Partner at Fladgate. James Earl,
5 Partner at Fladgate. Mr. Yashojit Mitra, Partner at Economic Laws Practice and Mr. Dinesh
6 Pednekar, Partner at Economic Laws Practice.

7

8 **MYTHILY KATSARIS:** Hi. Good afternoon, everyone. Lovely to see you all and thank you
9 very much for attending our session. James, Mark and I have come from London. We're from
10 Fladgate. Fladgate's a leading sports law firm in the UK. And, of course, Dinesh Pednekar from
11 ELP here. No introduction needed to ELP, I'm sure, but we're working very closely with them
12 on sports and sports related matters. And today we're talking about the big business of sport
13 and why one should look at arbitration. So, we're going to cover a lot of ground. So, I'm going
14 to try and keep things moving gents, but let's perhaps start with Dinesh, and I think a great
15 place to start is the Vinesh Phogat's cast proceedings during the recent Olympics that
16 showcased the timely manner in which arbitration can help adjudicate sports disputes. How
17 viable do you think it's sports arbitration in the Indian landscape?

18

19 **DINESH PEDNEKAR:** Good afternoon, everyone. First of all, I say that arbitration in sports
20 has now become very, very important. We've all seen the decision in Vinesh Phogat case and
21 what has happened. The decision was rendered within days. And what is more important is
22 that decision was accepted by the athlete. So, this shows that the trust which the CAS carries
23 in its decision making process. However, we must also consider the fact that can all Indian
24 athletes avail the mechanism of CAS for its dispute resolution? For me, the answer is no.
25 Because firstly, there is lot of lack of awareness amongst the athletes and secondly CAS
26 arbitration is not financially resourceful for any Indian athlete. Because they come from
27 varying background.

28

29 So now, how are disputes in India adjudicated at this moment? Sport disputes when I'm
30 talking about it. So, mostly we approach the courts and invoke the writ jurisdiction, the
31 athletes or the lawyers will advise them to do so. And the courts have, on a number of
32 occasions, pass several orders in favour of athletes or against them. But are courts the best and
33 effective mechanism available today? The answer is, again, no. Because the courts are very
34 overburdened. And, of course they may lack the expertise to understand and whimsies of
35 disputes which are available in sports today. Plus, there are certain disputes like doping, which



1 cannot fall within the jurisdiction of courts, and they will always have to go before specialized
2 institutions like CAS. So why is arbitration therefore important in sports? Today we see that
3 sports is a very big business and the success of professional leagues like the IPL, which is one
4 of the richest leagues in the World. The professional Kabbadi League, the Indian Soccer
5 League, et cetera have got a lot of attention for Indian sports. Many corporates are now
6 investing in huge amounts, and there is a lot of government funding, too. So given this fact, it
7 is important that an effective dispute resolution mechanism is evolved so that the athletes are
8 taken care of.

9

10 Now, as I said CAS would be mostly available and easier for an international athlete. But when
11 it comes to a domestic athlete, there could be a huge problems. And CAS may not be even be
12 able to hear it because unless there is an arbitration contract or a contract in the federation
13 itself, they will not hear those disputes. Now, what is the Indian Government doing? Certainly,
14 Indian Government has also encouraged arbitration, but however, the implementation has not
15 been that effective. When I say this way back in 2011, India enacted the International Court
16 for Arbitration for Sports, in 2011, as I said, but so far we haven't been aware of any disputes
17 that were adjudicated by the ICAS of India. And in 2021 again they have enacted another
18 sports mechanism called as Sports Arbitration Centre of India, in 2021, but again, there is no
19 awareness whether there is a panel of arbitrators available? Who the panel of arbitrators are?
20 What is the procedure? What is the mechanism, if any disputes have been heard? And what is
21 the appeal process against that? So once again though there is an intent there is no
22 implementation thus far.

23

24 Then we come to the point of National Sports Federations, which are the governing bodies of
25 all sports individual sports in India. The Ministry of Youth Affairs and Sports, which frames
26 policies for sports in India, have issued advisories from time to time to the National Sports
27 Federations to incorporate dispute mechanism clauses in their constitutions and bylaws and
28 to ensure that the disputes are further referred to CAS, but not all National Sporting
29 Federations have accepted this. Maybe All India Football Federation and Hockey India have
30 accepted this but important bodies like BCCI, All India Tennis Association and Wrestling
31 Federation of India still only have their internal arbitration mechanism in place with no
32 reference to any dispute to CAS or ICAS, for that matter. So, therefore, unless and until the
33 government comes out with strict directions that there should be like a sports body and all
34 National Sports Federation should now adopt SACI as the arbitration dispute resolution
35 mechanism. Plus, they should probably could advise all NSFs to have a common arbitration
36 clause which could be used by all National Sporting Federation and, of course spread
37 awareness amongst all the athletes as well as the legal professionals and all stakeholders



1 involved that such a mechanism exists. And you should resort to it. So probably only this will
2 result in the success of sports arbitration in India. But yes, the courts as well as the
3 governments from time to time have indicated that there needs to be an effective mechanism
4 other than courts to resolve the disputes.

5

6 **MYTHILY KATSARIS:** Thanks Dinesh. James, take us through the role of CAS and perhaps
7 give us a few recent cases more internationally what has CAS been up to?

8

9 **JAMES EARL:** Thank you very much. And great to be here, by the way. This is a fantastic
10 city in my limited experience in the last 24 hours I've been here. CAS that's the Court of
11 Arbitration for Sport. I presume most of you do know of that. And if you don't it's an
12 organization in Switzerland. It's been around for about 40 years. It's heard over 10,000 cases
13 and as the name on the side of the tin suggests, it is to listen to disputes in sport. Most of those
14 come from decisions from governing bodies. And personally, my experience of it is that I think
15 it's a very important part of the ecosystem for sport. I'm not actually an arbitrator. I'm the one
16 who does the deals and then people like my friend Mark here actually help them when they go
17 wrong, but we need something like the court of arbitration for sport. Because unlike some
18 other jurisdictions and forums, the people who hear these cases are on a sort of dedicated list,
19 they are very specialist in understanding what the issues are in relation to that particular
20 decision that will be challenged. And I think that they also understand one key thing, which is
21 that sport has a lot of specificity. It has a lot of unique things that some industries just don't
22 have or need to have. For example special regulations terms of entry to be a participant, as was
23 just touched on by Dinesh there. The idea that athletes might not be able to afford to defend
24 themselves in arbitration is something we'll probably talk about a bit later on. But I think the
25 fact of the matter is that they have to accept, as things stand, a lot of athletes the jurisdiction
26 of CAS. And I think that is an interesting sort of question. I think that it's a very important
27 organization also because it sort of helps to deal with the time pressure that support requires.
28 A lot of these decisions come down to things like sort of doping challenges or other
29 requirements that need to be met in order to compete. Obviously, the Vinesh Phogat's
30 arbitration is a prime example of that. That's just a decision that needs to be made at that time
31 on that day. So often CAS will have a sort of a temporary court set up at the Olympics or the
32 Commonwealth Games, and it will actually travel to the site and so, for example, when we had
33 the Olympics in London back in 2012, there was a lot of legal work being conducted on site,
34 including by our firm and others, to help deal with disputes and appeals that were going on in
35 relation to whether someone could compete. Sometimes next week, but sometimes the next
36 day. So, I think that that's been a very important point.

37



1 We've also seen, I mean, in terms of cases that you might have also heard, I mean, there's a
2 very significant case going on in London at the moment with dear friends at Manchester City
3 who have been charged with no less than 115 breaches of financial regulations that will
4 probably end up in CAS would be my guess, they recently challenged the ruling in CAS from
5 UAE, which was to ban them for several years and to find them €30 million. So, they managed
6 to overturn that and that was a significant result, not just because of the financial savings. But
7 the fact is that as a sporting team, if you can't play, then the values of the rights that you're
8 selling to people like sponsors and broadcasters can immediately be eroded. So, these are very
9 significant decisions that CAS is making and sometimes probably more significant than people
10 might realize.

11

12 **MYTHILY KATSARIS:** Thanks, James. Mark, do you want to talk about the role of
13 arbitration more generally and internationally in sports disputes?

14

15 **MARK BUCKLEY:** Good afternoon, everyone. So, some basics to start with. As Dinesh has
16 mentioned. Cases go to CAS because athletes and teams have signed up to the rules of the
17 particular sport and that contains a CAS Arbitration Clause because, as you know, you can't go
18 to arbitration without an agreement. Some of the governing bodies of the Olympic movement
19 the BCCI, I think have agreed to CAS. But it is slightly controversial and political. There are
20 some sports, like Formula One, for example, which I'll talk about in a minute, and the Premier
21 League Football, which don't go to CAS.

22

23 In general, though, governing bodies are quite keen for CAS to deal with disputes because they
24 have expert arbitrators. The types of disputes they deal with include doping violations,
25 contractual disputes. There are two main types of cases that go to CAS. One is the most
26 common is the appeals from the governing body about sporting decisions. More rarely, some
27 contracts contain their CAS Arbitration Clause. We'll talk about the difference from the point
28 of view of confidentiality in a minute. The advantage of CAS is that it can be either very quick,
29 e.g., as James has said Olympic disputes are dealt with by a CAS ad hoc division which can
30 deal with them within 24 hours, because obviously it's important. If you got a qualifying
31 followed by a semi-final, the athlete needs to know if he or she can take part in the next race.
32 Some arbitrations, on the other hand, like the Premier League, are very slow. So, the
33 Manchester city case, which is currently going on, goes back to breaches of rules from 2009 to
34 2018. There were some tactics involved because the lawyers of Manchester City thought if they
35 can drag out that dispute. Who knows what will happen? They managed to get another appeal
36 in the meantime, which might have affected the outcome of this current arbitration. So, tactics
37 do get involved.



1

2 I'll just briefly now talk about one of the sports that isn't involved in CAS, which is Formula
3 One. The reason, probably the reason doesn't have any CAS involvement is that back in the
4 day it was run by the duo of Bernard Ecclestone and Max Mosley, and they wanted to control,
5 to some extent, how decision making appeals and decisions were arrived at. Which is maybe a
6 cynical view, but I'll just tell you about this four different types of arbitrations that Formula
7 One has.

8

9 So Formula One is governed by a contract called the Concord Agreement. All the teams sign
10 up to it, along with the commercial rights holder and the governing body, the FIA. Any disputes
11 under the Concord Agreement go to ICC arbitration. Examples have included where teams
12 which, under the rules, have to own the IP in their chassis are alleged to have been given or
13 sold IP by a parent company. These so called customer cars obviously have an advantage over
14 other teams because everything is much cheaper and that was a big ICC arbitration about ten
15 years ago, which settled.

16

17 The next body is quite interesting. It's called the Contract Recognition Board. So, this is a
18 board that decides on the priority of teams to the right to have a driver. So, the word disputes
19 about which team, believe it or not, which team has a contractual right to have a driver driving
20 for it. Normally that involves complicated auctions, and no one quite knew when the option
21 was available or who had priorities. So, they have to register every driving contract at the
22 Contract Recognition Board in Geneva. If there is a dispute, then the case is referred to three
23 Swiss Arbitrators and they will decide on the who has the priority.

24

25 The third body is the FIA International Field of Appeal that operates a little bit like CAS. So
26 basically, it's appeals from decisions of stewards that the race, if a driver is penalized or did
27 something wrong then doesn't appeal to the international court. That's on the whole
28 respectable body, run by respectable lawyers from around the world excluding anyone from
29 the country of the teams involved in the appeal.

30

31 The last body is the most interesting is called The World Motor Sport Council. It may or may
32 not be an arbitration but it has an arbitrator. That's the President of the FIA. The teams are
33 represented by lawyers. and the council can make a hefty fine. So, the most notorious case
34 involve the McLaren Spygate issue where it was alleged that McLaren was in receipt of
35 confidential information stolen from Ferrari as a result of which they were in possession, but
36 they didn't actually use it. But nevertheless, the Council fined McLaren \$100 million, which



1 by any standard, is quite a hefty fine. So that's a quick run through of the role of arbitration in
2 Formula One.

3

4 **MYTHILY KATSARIS:** Thanks, Mark. Dinesh, I'm going to come back to you now and talk
5 about sporting disputes in India. What are the trends that you're seeing here?

6

7 **DINESH PEDNEKAR:** So according to me, the main disputes in India opening to about
8 selection disputes. Many of the achieved approach the Indian Courts to state that they have
9 not been selected despite being ranked higher. In some cases, athletes have approached goes
10 to state that selection has been done without a trial, and athlete has been selected on the basis
11 of his previous record. On these occasions, the courts have not interfered, and they have
12 generally held that it is the National Sports Federation's prerogative and their expertise to
13 decide the selection and the courts will not interfere in such decisions. So, these are the most
14 important decisions which come in.

15

16 The second kind of important disputes which you've seen is the governance issues. Like,
17 despite the issuance of guidelines by the National Sports Court of India, way back in 2011,
18 whereby all National Sports Federations are bound to comply with the Olympic Charter, which
19 means that the office bearers have to hold term for a limited period. It cannot be indefinite.
20 Yet, the office bearers in Indian Federations have tried to hold on for life. So, whenever such
21 situations have occurred, like in...Sorry. Olympic Association, Indian Olympic Association, the
22 Boxing India Association, and all proceedings have been filed in courts, and the courts have
23 interfered and they have threatened withdrawal of recognition unless and until they comply
24 with the guidelines of the National Sports Court. So, these are the second types of issues which
25 we've seen.

26

27 Then, of course, there is an issue of match fixing. We've all seen the BCCI issues, where they
28 had suspended Sreesanth, Azharuddin, Jadeja and all earlier on the basis of match fixing. So,
29 match fixing issues can also be there. In fact, there was one more peculiar match fixing issue
30 pertinent to table tennis in India where Manika Batra, who's the number one table tennis
31 player in the country had reported an approach by an official to throw away a match. She
32 refused, and she approached the Council to say that I have been asked to throw away the
33 match. What the officials did was, they introduced a policy which said that any person who
34 does not participate in the National Coaching Camp will not be selected. This was basically
35 done to oust her. So, she approached the courts, and the court on this occasion interfered and
36 that said that her dropping or non-inclusion was unfair, and they also appointed a committee
37 to oversee this and investigate.



1

2 The other kind of matters which we see are contractual disputes. In fact, very recently, on 14
3 September there was an order passed by the High Court of Delhi whereby a footballer had
4 approached the Delhi Court on the basis of a penalty levied by the All India Football Federation
5 holding that the football player was liable to pay jointly in several penalty to Mohun Bagan
6 Club for 13 crores. But the AIFF had failed to give a reasoned order, and the High Court
7 intervened and said that since you've not given a reasoned order which takes away the right of
8 the footballer to appeal, you have to withdraw it and pass and decide the matter afresh. So,
9 this was another one.

10

11 Then, of course, there is this Termination of Franchises. We've all known about the
12 Termination of Franchises when it came to BCCI terminating the agreements of UAE Super
13 Giants, Kochi Tuskers, Sahara Star for not furnishing them bank guarantees. So, these were
14 all resolved through arbitrations, through the internal dispute mechanism process of BCCI,
15 and the disputes were adjudicated. As far as CAS is concerned, these have been related to
16 doping. Like, for example, when the Indian shot putter Inderjit Singh was banned the National
17 Antidoping Agency had actually mitigated his substance, sorry, sentence by stating that he
18 wasn't aware, so they had reduced his sentence. However, WADA carried, the World Anti-
19 Doping Council carried this in appeal before the CAS and submitted that the punishment
20 should be stringent and no leniency should be shown. And CAS accepted WADA submissions
21 and punished Inderjit Singh to the full suspension. A similar case also occurred in the case of
22 Narsingh Yadav. In this case, he was a wrestler. He claimed sabotage by a fellow wrestler who
23 was not selected and NADA the Indian National Doping Agency, accepted his case and revoked
24 his suspension. However, WADA once again went before the CAS and said that this was not a
25 case of sabotage, but this showed a systematic injection of steroids for performance
26 enhancement. They, in fact, relied on an expert opinion, too. And CAS accepted their
27 submissions and suspended Narsingh Yadav for four years. So, these are the regular disputes
28 in the recent past which we've seen.

29

30 **MYTHILY KATSARIS:** All very interesting. Thanks, Dinesh. James, do you want to talk to
31 us about what is actually driving the change in contracts to include arbitration clauses now?

32

33 **JAMES EARL:** Yes. So, this is the question about a growing trend that we've noticed in a lot
34 of contractual work that we do in sport where regularly arbitration is the default, not the sort
35 of the less used option. And I think the main reason for that is that unless you've been living
36 under a rock for a long time you will have seen that billions and billions of dollars, rupees,
37 pounds, whichever currency you prefer to use has been pumped into sport, particularly from



1 private equity. And I think for anyone in the room who's worked with anyone in that space,
2 private equity, private capital, even institutional money. The one thing that they like more than
3 anything else is to control their risk. And there is a perception, and I'm not sure what everyone
4 thinks about this in the room, but this would be something to perhaps discuss a little is this
5 sense that arbitration does deliver a lot more certainty in terms of outcome, but also process
6 and, yes, sometimes timetable. I don't think arbitration is necessarily the speedy option that
7 people sometimes think it is certainly in the sporting context. We've heard about the Court of
8 Arbitration for Sport, and yes, in certain circumstances with urgent appeals. Yes. It is
9 absolutely designed to deal with the situation very, very quickly. But in a more commercial
10 scenario, a contractual dispute, for example, that's not necessarily going to be the outcome.
11 But what is the case is that you are going to obviously achieve? Confidentiality in many of those
12 situations. That's very important because particularly if I take a current example in London,
13 there is a football Club called Chelsea, which you've probably heard of, if you follow the
14 Premier League. It has two shareholders. They both think that they are shareholder. So you've
15 got a group led by Todd Bowley. And you've got a group led by Clearwater Capital, and they
16 are trying to work out who's going to come out on top, and the point is that a lot of that
17 probably doesn't need to be played out in the press. It unfortunately, is already. But I can be
18 confident that they would like to resolve their behind closed doors, and that's what arbitration
19 can often offer in those circumstances. And that's important because there is many billions of
20 pounds tied up in that deal, and there are many people behind those lead stakeholders. So they
21 are consortia. And again, as we all know, when we're managing our clients, our shareholder
22 groups and things like that. Managing those situations with certainty is very, very important.
23 So, I think that's for us that's what's been driving a lot of the decision making there is that
24 arbitration can give those things this sense of confidentiality and control, I think and when
25 there's that kind of money on the table now, I think that's what people are looking to try to get.
26 It doesn't always, of course, work like that. But someone wants that the law is an ass, and I
27 think that is probably true.

28

29 **MYTHILY KATSARIS:** Thanks, I think we're going to talk about confidentiality in sports
30 and in sports arbitration in a little bit, because there's a striking difference between what
31 happens domestically in India and internationally. But I think, Yash, do you mind if I bring
32 you in and ask you about player contracts and what you see key contractual issues in these
33 professional service contracts with players?

34

35 **YASHOJIT MITRA:** Thank you. So, these contracts very interesting. And some of the stuff
36 which Dinesh said, I will give a little context. Say, for example, in these contracts, you'll have
37 these general clauses, say, for example, bonus, which is fine those are general clauses which



1 are always there, non-compete, always there. It's like every other service contract. But in
2 sports, what makes it interesting and Dinesh already said the last part, I want to talk about the
3 first part, which is transfer restriction. Now, this was a case which Dinesh just mentioned, so
4 you typically have contracts where you are allowing, you don't want to play with a certain club,
5 so you request the club or the club requests you that. Okay, I will transfer you to another club
6 and you play for that Club.

7

8 So, this was that case you mentioned, which got passed on September 14. So, this guy, Anwar
9 Ali. He had a contract. He was given on loan to Mohun Bagan. And he decided that, no, I now
10 don't want to play with Mohun Bagan. I want to play with East Bengal, which is like the rival.
11 So, then it went to the... and again, I'll just bring it back into contact, but then he effectively
12 lost that case, and he was told that, no, you have to play with Mohun Bagan. And East Bengal
13 and the other party who allowed the transfer, along with Anwar Ali, were jointly and severally
14 made liable for 13 crores. And then obviously Dinesh mentioned that that has now been stayed
15 and it's going to be freshly heard. But I think that these type of provisions are different in
16 player contracts.

17

18 Another very interesting is the hazardous activities clause. So, a footballer will be told that in
19 your off season you can't be engaged in say, skiing or skydiving or any other activity which can
20 be hazardous to your health and which might impair you from performing in the season. And
21 this has been not in the Indian context, but in the international context this is actually very
22 relevant and has been used multiple times where I know as a matter of fact, that there was a
23 baseball player who tried his hand in the offseason in basketball got hurt and his contract was
24 terminated. So that was a tough aspect.

25

26 Then you'll always have those personal injury clauses where if you are not during the course,
27 of your contract or your service, if you get hurt, then you might be kind of terminated earlier.
28 So non-compete and all is always there. It's not something which is new.

29

30 But another one, which I think is very interesting, is, say, for example, disrepute. Everybody
31 has heard, say that famous thing in India, it was very famous Koffee with Karan, Hardik
32 Pandya went and shot his mouth on Koffee with Karan. And most of the big leagues will have
33 a disrepute clause where if you are acting in a certain manner or you are accused of acting in
34 a certain manner which is bringing disrepute to yourself or to the sport, then you will have
35 proceedings against you which can also, at times, lead to termination. You know we've all Nike
36 had terminated Tiger Woods. Even Lance Armstrong, Nike has terminated Lance Armstrong,
37 also because of his doping scandals. So, I think that this is something which is also very heavily



1 negotiated while we are talking about player contracts. One aspect which...okay, like say, for
2 example, Mohammed Shami. Suddenly you would have seen in the press that his wife is
3 levelling charges against him for infidelity or he is taking bribes and this and that. It was just
4 an accusation, but that accusation was enough for the BCCI to take cognizance and start
5 proceedings, and at some point, his contract was withheld, and that ran the process. The panel
6 has talked about it, but I just want to put it in context that in these contracts first stage is
7 always typically if you're playing in the big league. We are talking about big money in sports,
8 not kind of small money. When you are talking about big money in sports, you will typically
9 have these federations, which will have their own dispute resolution mechanisms, which you
10 will have to first follow.

11

12 So ordinarily, even if you have some employment contracts you will typically first run that
13 process, and it is only after that process is run and you have not got proper remedies, will you
14 typically kind of escalate it. So, in the context of player contracts first, yes, it is a little different.
15 You have... It's not your random service contracts, which you have for most of the, and this
16 very specialized. But I think that the key parts I've mentioned. And as a last passing thought,
17 you will, you know he mentioned this, but I just want to emphasize that the Ministry of Youth
18 and Affairs and Sports has tried to kind of codify and say that you should have a proper
19 mechanism. You should incorporate CAS, but that is not fully followed. And I think that if
20 followed, will be the next big thing.

21

22 **MYTHILY KATSARIS:** Thanks, Yash. I think we were chatting about how many of these
23 players and athletes actually read their contracts. Because what tends to happen is that
24 managers and agents negotiate these contracts, and so they're not fully aware of all their
25 clauses and their obligations. But actually, we can talk about that for hours. But I think what
26 we do need to touch on is confidentiality. And there is, from where we're sitting and from
27 where you're sitting there's a striking difference in how confidentiality in India, particularly in
28 arbitration proceedings, when it goes to court, becomes public versus in the English Courts or
29 even in CAS. Perhaps, Mark, you can start us off with what happens in the UK and more
30 internationally and then Dinesh, I'll come to you.

31

32 **MARK BUCKLEY:** I will, yes. So, this is a very interesting subject currently the topic of much
33 debate following a Football Association case against an agent and it was alleged that the agent
34 gave false evidence to the FA Tribunal. But because it's a confidential arbitration, neither the
35 award nor the name of the agent could be disclosed, and therefore he's free to carry on his
36 business despite the serious allegations against him. So, I'll take a brief position against



1 confidentiality, and I know that some people on the panel will take the opposite view. The
2 reasons I think that sports arbitration awards should be made public are three or four reasons.

3
4 First, the old saying that, 'sunlight is the best disinfectant'. So, if an award is, if the procedure
5 is in secret, if the award is in secret, there's no accountability of the arbitrators. And the quality
6 of arbitrators even specialist sports arbitrators can vary quite significantly. If the award was
7 made public, let alone proceedings, then there would be much more scrutiny of the outcome.
8 It can't be underestimated how much the public feel they are invested in sport. Football Clubs
9 get their money from people buying tickets, from people subscribing to sports channels, Sky
10 Sport, other tv channels are available, but this money comes from the spectators and they feel
11 invested. And if they don't know what's going on they feel 'aggrieved', is a good word. It would
12 also inspire public confidence if the awards were made public, then people would have more
13 trust in the whole system.

14
15 The final point, I think, is that in arbitrations, one of the weaknesses of arbitrations is that you
16 can't use awards as a precedent because the award is confidential, and it is, as all lawyers know
17 it's very useful to be able to rely on precedents, because you can then predict what's going to
18 happen in the case that you're currently advising your client on. And if you don't know what
19 happened in a previous case, it's more difficult to advise. So, I think those are the reasons I
20 would argue that sports awards should not be confidential.

21
22 **MYTHILY KATSARIS:** Thanks Mark. Dinesh, what's happening in India here?

23
24 **DINESH PEDNEKAR:** Yeah. So, I'm not arguing whether it is should be made confidential
25 or it should be made public. But in the context, of course, the fundamentals of arbitration are
26 that the proceedings should be kept confidential. Section 42A of the Arbitration and
27 Conciliation Act also provides that all proceedings should remain confidential. However, in
28 reality, when the award is challenged or when the award is presented for enforcement, the
29 parties opposing the enforcement or praying for setting aside of the award will probably make
30 every possible submission and raise every possible objection to further their case. In such a
31 case, there will be cross referencing of documents and therefore the issue of confidentiality is
32 diluted to a certain extent.

33
34 Again, the court proceedings once these proceedings are in court in India, the Indian legal
35 system follows the open court policy. So that means the general public has access to the
36 courtrooms during trial and during hearing. So, they get to hear and know what is being
37 argued.



1

2 Another this problem is further compounded by the live streaming of cases now. Now, it's no
3 longer required to be present in court. You can be in the comforts of your office and or whom,
4 if you have the link and you can hear whatever is going on in court. So, this is also further
5 compromised. Plus, even the court documents are accessible, they are public documents in
6 that sense. So therefore, if anybody makes application under the Right to Information Act, of
7 course, there is a restriction that unless and until if a court case is pending, then you may not
8 have access to the documents unless you make those application in terms of the High Court
9 rules, but in all cases which are already disposed off, you can certainly have access to those
10 court proceedings.

11

12 Then there is an issue of media coverage. Now a lot of times we see publication houses like
13 Live Law, Bar & Bench or news reporters. They are all present in court. They want to pick up
14 a very interesting case. And if there is a Sports Law case, of course they would want to record.
15 So these are the things which bring out all the disputes out in the open. Now, just from the
16 CAS perspective, subject to correction from my co panellists have seen a contradiction in the
17 rules. While one of the rules states that the award should not be made public, Rule 59 also says
18 that unless both parties agree the award will be made public. In fact, in the Vinesh Phogat case
19 the question was put that Vinesh Phogat wanted that case to be kept confidential. Perhaps the
20 Respondents did not agree and the award was published.

21

22 **MARK BUCKLEY:** I think, yes, Dinesh, I think the position is as follows. There are two types
23 of cases that go to CAS. One is quite rare. That's where you have a CAS Arbitration Clause in
24 your contract. And the second one is where there is an appeal from a governing national
25 governing body. So, with the ordinary proceedings, like any other arbitration, that remains
26 confidential unless the parties agree that it can be disclosed, which they sometimes do. In
27 contradiction, appeals from governing bodies decisions in say, doping cases are automatically
28 published. And you can see them on the CAS website, very cleverly catalogued by nation, by
29 sport, by date and so on. So, I think that's the position.

30

31 **MYTHILY KATSARIS:** Actually, just flowing from that. There's another question we should
32 talk about, which is arbitration clauses in standard form contracts of clubs and sports
33 federations. And whether these are in conflict with the consent based approach that you have
34 in arbitration? I mean, is it forced upon people to arbitrate?

35

36 **DINESH PEDNEKAR:** If you ask my opinion, I don't think so, because the parties are
37 concurring voluntarily. Of course, it can always be argued that a standard from contract in a



1 National Sport Federation's constitution is unilateral. Let us examine the situation where any
2 say corporate house would say that if you want to enter into a contract with us you must have
3 an arbitration clause. Now, can you say, and it must be referred to, say, a regular or a proper
4 repeated institution, such as a SIAC or an ICC? Can you say that, oh, this has been forced upon
5 me because I was not in the position? No, you do it. So similarly, all that these sports
6 federations are trying to tell the athlete or its member is that let's adopt the dispute
7 mechanism, which is effective and which will give you expeditious results too. So therefore, in
8 my view it does not violate any rights.

9
10 But yes this would be violative...like, for example, let me give an example of the Perkin
11 Eastman case, which was recently decided by the Supreme Court. In that case, one of the
12 party's Chairman and the Managing Director had a complete right to appoint an arbitrator.
13 So, in that event, what the Supreme Court said that person interested in outcome of the dispute
14 must not have the power to appoint an arbitrator. And if you are ineligible to be appointed as
15 an arbitrator, you cannot also have the power to appoint an arbitrator. So that was the
16 distinction drawn. But here in this case there is no interested party who is going to be
17 appointed. There is an institution which is a neutral institution and a reputed institution which
18 is going to be appointed. So, therefore this argument does not fly. But however, we must say
19 that even the CAS appointment has been questioned. There is this famous case of Claudia
20 Pechstein. She fought for more than 12-13 years. The case is still ongoing where she was
21 actually suspended by the International Skating Union for the violation of doping. She
22 challenged it before the CAS. Her appeal was rejected. She challenged that decision of CAS
23 before the Swiss Federal Court that was also rejected. She did not take it kindly. She moved
24 the German Courts and the German District Court, the Munich District Court rejected and
25 refused to interfere in that proceeding. However, the Munich Higher Appeal Court upheld her
26 appeal and said that the court has jurisdiction and held that the arbitration contract was one
27 sided and forced upon, therefore void. Therefore, the court had jurisdiction. It also questioned
28 the impartiality of CAS. That is how the order was passed. This also was carried in appeal
29 before the Federal Court in Germany. The German Court reversed that decision and said that,
30 no, she had done it voluntarily. The agreement, arbitration agreement stands and also come
31 to a conclusion that CAS is a neutral, independent body. You cannot question it. After this
32 decision, she was not satisfied even with that. She filed two proceedings. She filed one
33 proceeding before the European Commission of Human Rights and also filed a challenge with
34 the Constitution Court of Germany. The European Commission of Human Rights came to the
35 conclusion that, yes, this was a forced contract. However, it came to the conclusion that CAS
36 is an independent body. At least it came but it did hold that the arbitration contract was a
37 forced contract. The Constitution Court of Germany has remanded the matter back to the



1 Munich Higher Court for reappreciation. I am not aware if that has been decided as yet, but it
2 raises a fundamental issue now that given the court ruling that arbitration, especially by the
3 Human Rights Court, that the arbitration contract was one sided. If all International
4 Federations on the National Federation also adopt the same thing, then it clearly undermines
5 the authority of CAS, which has been accepted as a ruling body as of now. And plus, there is a
6 problem of conflict of decisions and also another problem where every National Court will be
7 a little more sympathetic towards their own athletes and could pass orders. So, this is going to
8 create chaos unless and until this is clarified and everything withdrawn.

9
10 **JAMES EARL:** I think I was just going to add to that, as someone who does work a lot with
11 governing bodies in sport and advise drivers, athletes. I think you're right. I agree with you.
12 But I think there is sort of there's a sort of David and Goliath thing that often happens just as
13 a sort of a natural consequence of individual vs sort of some institution. And I think one of the
14 problems which you touched on, we have a bit of a problem, is that we often deal with
15 managers, and managers don't like to talk through the not very sexy parts of a contract.
16 Athletes usually interested in how long I signed up for, how much am I going to get paid and
17 what's the bonus if I do really well. And by the way, what happens if I get caught doing x, y or
18 z. Those are the things which typically we see getting advised. What we advise through
19 managers. So, we often know that a lot of our advice is not getting to them. The other thing is
20 that when somebody is challenging a contract as an individual or rather challenging the
21 decision of a governing body. Often someone who might have an interest in, for example, the
22 league they play in, or the rules which preside over that league. So, to some extent, has what
23 might appear to be a natural bias when they're challenging those decisions. CAS is often seen
24 as an extension of an institution. It's obviously not. It is completely independent. It is known
25 as the Apex Court in sport. But I think for athletes and indeed for the public, who don't
26 necessarily get into the nuances of what we in this room would all understand is how courts
27 and institutions separate and work around each other. I think the public perception can be
28 that there is a degree of unfairness and that athletes only ever worked this out when they're in
29 the middle of a sort of what seems to be very funny emotive situation, particularly if you think
30 about challenges to decisions, about someone being able to participate in the Olympics when
31 they've spent four years getting ready for one race. I need to find that they couldn't compete
32 or in one event. So, I think that that is what often drives that perception, but I think it's not
33 fair on the institution itself to blame CAS.

34
35 **MYTHILY KATSARIS:** Some great points there. I think one of the other things we should
36 touch on, James, if you don't mind is what we see with international sporting events and the
37 issues they see particularly when it comes to tax in India. And maybe if you just spend a couple



1 of minutes to talking about the highlight of the tax issues in India that international sporting
2 events, sport events face.

3

4 **JAMES EARL:** I am getting worried that they've walked into a seminar about tax thinking,
5 hang on a minute, that's not what I'm here for. I'll just explain briefly. We, as a firm, advise
6 the Promoters of the Hyderabad Formula A Prix, which happened in 2023. It was the first time
7 that Formula A had come to India. It was a very difficult negotiation, but we worked with the
8 Formula A rights holders and they were obviously very focused on understanding what the
9 position in India is with regards to putting a race here on the ground. You can draw any
10 analogy to any other sort of sporting event other than things like Commonwealth Games,
11 Olympic Games, which have special statutory recognition ditto for sort of games that involve
12 people competing from different countries versus competing for teams as is the case in
13 motorsport. There is definitely a very high level of concern about bringing things like that, like
14 Formula A here because of the decision in Formula One, which people in this room may know
15 about where the Indian Supreme Court, I believe, found that they were operating a permanent
16 establishment here. So that's not necessarily something that is going to happen every single
17 time, but obviously the implications of that were very significant and getting a contract closed
18 around that was particularly difficult around this sort of question of who would pick up the tax
19 bill.

20

21 We did very much talk about how that would be resolved in arbitration. It's a matter of public
22 record was selected as the forum mainly to avoid having to go through the judicial system here
23 or at least to try to avoid it because Formula A were very nervous. I think that is something
24 that if I was talking to people in this country about how to change things, I think making that
25 environment better. So that people can sort of see past that issue is going to make a big
26 difference to the prospects of attracting more and more private based events.

27

28 **MYTHILY KATSARIS:** Thanks James. I think it's also important that we talk about athletes
29 and their brand and their image rights. And Yash, maybe you could throw some light on what
30 the key legal issues with image rights for athletes are?

31

32 **YASHOJIT MITRA:** Now, like you said, the name itself is big in sports. People are making
33 millions on the basis of their image rights. And I'm told that Virat Kohli, for some
34 endorsements, small endorsements, will be making multiples of crores. So obviously it's a very
35 big thing. And this has been in sports for a long time. And thankfully the courts have always
36 kind of acknowledged that. I remember that when Saurav Ganguly debuted in London and he
37 hit a century, and he did multiple centuries and then came back he was employed with Tata



1 Tea as a manager, and Tata Tea started a campaign where they had these small packets of Tata
2 Tea, and then there was a postcard in them that if you buy this one kilo packet or something,
3 you will be able to greet sort of Ganguly. You're going to send a postcard and greets or a
4 Ganguly. So, they were trying to kind of use his image for their benefit, which was not, and
5 obviously not Saurav kind of objected to it. And the court held in his favour. Look at this stuff,
6 even right now, when the Olympics happened. Sreejesh was the hockey goalkeeper. Apollo
7 Tires came out with an ad with his image. Manu Bhakar. Honestly, I think that many people
8 in the room wouldn't have no one about her till she won two medals and everybody raving
9 about her, and suddenly we see her picture around 2, 3, 5, 6 ads. So, moment marketing or
10 ambush marketing is something very kind of looked upon as fair by the courts. And this is
11 history. If you see the judicial precedent on this, at least in the Indian context, clearly the
12 courts have held that it is how you want to depict yourself is a personal right that you have,
13 and this is more so for celebrities.

14

15 I remember that there was a case where Anil Kapoor, who's a celebrity, some actor celebrity in
16 India. And some...there was a distortion. Someone used artificial intelligence and his voice or
17 was modulated as if it was him who was speaking, and he kind of objected to it. And the court
18 held that that is not right. You can't use machines to try and emulate people and pass them as
19 having endorsed your brand or to promote your product. So, I think that historically, and even
20 it is now well established that if you're trying to kind of piggyback on the brand or the image
21 of someone else without them having gotten proper benefit of it. It is not something which the
22 courts would allow.

23

24 **MYTHILY KATSARIS:** Mark, you want to comment?

25

26 **MARK BUCKLEY:** Yes just to say the obvious image rights disputes are not arbitrable,
27 because by definition, there's no contract between the rights holder and the bad guy. So they
28 go to court. So, I think the position in the UK is similar to India, contrary to, for example, Civil
29 Law Countries and the United States, where there is statutory protection for what they call
30 personality rights in the UK. You have to go through the hoops of proving passing of them,
31 which unless you're a celebrity and unless you make money from endorsements, is very
32 difficult. So, you have to prove the three classic passing off things, of having goodwill that
33 you're famous, that there's been a misrepresentation using your image without your
34 permission and that you've suffered damage. And that's quite difficult and expensive. So, the
35 law in the UK is not that helpful.

36



1 There's a theory that you could bring a case under the data protection laws if the photograph
2 has been manipulated, and manipulated without the person having gone through the hoops to
3 be allowed to do that. But that's slightly untested. So, the UK position, I think, is similar to
4 India. It's quite a difficult task. And it's only really celebrities that who make their money and
5 endorsements, sponsorship can do anything about it.

6

7 **MYTHILY KATSARIS:** Thank you Mark. Yash, I'm just going to come back to you because
8 we've talked about image rights. But are there any other intellectual property rights and legal
9 issues around those in the sports industry that one should be aware of?

10

11 **YASHOJIT MITRA:** The big business of sports, as Mark just mentioned IPL as last reports
12 I read it was \$16.4 billion. So, it's crazy money. And you know, all these franchises, Chennai
13 Super Kings, Kolkata Knight Riders, all backed by celebrities. So, you know, merchandising,
14 trademarks. This is a big deal. Every aspect of their franchise is, you know, kind of covered by
15 some intellectual property or other, you know, copyright, some songs are made. So, it's a whole
16 gamut of intellectual property which is made. Nowadays there is, there is this website fan code.
17 Fan code started by, you know, having small broadcast rights, but then they took an exclusive
18 license from the ICC to sell official merchandise products on their fan code shop. So, this has
19 become a very big deal. And not only for organizations, even for personality, celebrities, I think
20 everybody will remember, Roger Federer had his logo RF. And everybody is aware of that RF
21 it was very close to him because it had his initials. And in 2018 when he was hanging, he was
22 retiring in Wimbledon he said that look, this RF is right now owned by Nike, but it's a matter
23 of time when it will come back to me. So, these are rights which are very personal, and
24 eventually it did. It was a certain period of time post which it came back to him and it's now
25 his. But all I'm trying to say is that trademark is a very big deal. We've all always talked about
26 broadcasting and how big that market is, but keep that discussion aside even now trademarks,
27 copyright. It is something which is very stringently now try to aggressively, people are trying
28 to protect. Kolkata Knight Riders has a helmet or a Viking kind of helmet with a golden...it's a
29 golden embossed helmet which has become distinctive to them. Mumbai Indians. Everybody
30 has come up with these brands and everybody is really trying to aggressively protect it. But it
31 is a large country. Counterfeiting is always there. And it is very difficult to kind of push and
32 protect everything, but they are trying.

33

34 **MYTHILY KATSARIS:** Thanks Yash. Well, you can see these four gents here are very
35 passionate about sports, sports law and arbitration. But if I keep asking them questions, they
36 can go on and on. And I have a very big clock staring at me to say that we have five minutes
37 for any Q and A, that we can do, if there's any questions? Not sure how



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RAKESH KHANNA: I represent organization which is a not for profit organization for otherwise in India [INAUDIBLE] we try to win. Vinesh Phogat was supported by us. And right from the time that she was there at the way and which was around 12:30 afternoon. I was involved right till the time that the matter was dropped by her after going to lawyers abroad to try and win a case to go forward. Just that. Argument just to win a case to go forward for arbitration, that was not allowed, by the lawyers saying that you have no case. And I agree. What in Indian context, you must know is the fact that Indian athletes, barring cricket. I'm not talking about cricket. I can go on for hours on cricket. But barring cricket all other sports you have a problem, basically because except for shooting where you get people coming from good backgrounds other people are from very poor backgrounds. And Wrestling more so then you can never get.

So, my experience over 17 years that I have been involved with this has been that, you have to keep on pushing them. The only thing we have been able to get athletes to, at least get some sense is be aware of the WADA and NADA, which BCCI has not yet been able to convince players to do it, by the way, because of its power. Okay. And incidentally, I'm the mother of ELP, so you should know this. I have founded ELP along with others when I'm not even a lawyer. Thank you.

MYTHILY KATSARIS: Thank you very much, sir . Any more comments?

SUSHIL SHANKAR: Yes. Sushil Shankar. My question is something along the lines of what Mr. Rakesh Khanna just mentioned. So, the topic of the panel discussion itself is the big business of sport, and we've been talking in terms of millions and billions of dollars and big names and big contracts. Is this a sort of an admission that arbitration in the area of sport is only more suited to big ticket cases, big claims, and that there is no room for smaller ones?

MARK BUCKLEY: I think, at the Olympics and Commonwealth Games we've mentioned that, CAS, as an ad hoc panel, which will deal with disputes very quickly. But in addition, there are usually lists of firms that are happy to volunteer to represent athletes who can't afford to pay top lawyers but have expertise in the subject. So, think those two factors help. But you're right. Arbitration is expensive, litigations even more expensive. And it can shut people out of getting justice.

MYTHILY KATSARIS: Do you have any views? Yash, Dinesh?



1 **DINESH PEDNEKAR:** Effectively that's the reason why we are propagating that if an
2 institution model on the lines of CAS. Now the Sports Arbitration Centre of India comes into
3 frame, then probably the domestic athletes will also benefit from that, to have an expeditious
4 resolution of the dispute because it's extremely important. It's not taking away anything from
5 the court but expeditious decisions is the need, given the fact that the lifespan of an athlete is
6 very short, even if he's made to miss one tournament it will have serious consequences on his
7 career, including commercially. So therefore, why we are suggesting is that arbitration is
8 important so that you take away from that courts and there is an expert panel of arbitrators or
9 when also ex-sportsmen are also part of the arbitration are arbitrators, they will be in a better
10 position to understand and take fast decisions.

11

12 **AUDIENCE 3:** This morning's panel discussion might lead to this institution, the setting up.

13

14 **DINESH PEDNEKAR:** It is already set up, but we don't know how much progress that has
15 made up.

16

17 **AUDIENCE 3:** Sure. Thank you

18

19 **MYTHILY KATSARIS:** Well, that's the time, there. Thank you very much for listening.
20 Thank you to the MCIA and Neeti for having us here. It's an absolute pleasure and thank you
21 to all the panellists.

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~~~END OF SESSION 3~~~

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