
RELEVANCE OF ROBUST DISPUTE RESOLUTION SYSTEM IN THE ESPORTS INDUSTRY: A STUDY

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ABSTRACT

A participant in the Esports industry suffers through the same challenges as a player involved in the traditional sports. There are challenges like mental health issues, doping, player rights and contractual rights. This paper advocates the establishment of a CAS (Centre for Arbitration) like system or any arbitration system which will be instrumental in upholding the rights of participants and upholding the procedural fairness, expedited results and consistency of decisions. The author through the paper establishes the similarities between traditional sports and esports; and thus establishing a rightful case for a similar dispute resolution body. There are multiple stakeholders involved in esports and thus a question keeps arising as which forum will be best suited to meet the requirements of variety of disputes that may arise. Through the paper it will also be established that the typical litigation route is disadvantageous to the esports industry and an alternative arbitration system is more preferable.

Keywords: Esports, dispute resolution, player rights, self-regulatory bodies, mediators.

INTRODUCTION

Esports is “a form of sports where the primary aspects of the sport are facilitated by electronic systems; the input of players and teams as well as the output of the esports system are mediated by human-computer interfaces.”

Esports has been growing in Popularity since a long time and it has been generating huge revenue resources since a very long time. Since a lot of revenue is concerned, lot of stakeholders want to get a chunk of the revenues generated. There is a lot of scope for betting and bookies to bet their money on this game. It is pertinent for the businesses to be cautious and before plunging into something with the heads in front, the issues concerned with betting must be addressed for both the investors and the consumers likewise.¹

LINKAGE BETWEEN TRADITIONAL SPORTS AND ESPORTS

Compared with traditional sports, esports industry has more scope for hacking than the traditional sports since they can clearly be seen to exist. As yet, no solution can be devised to know what is the optimum solution to avoid hacking.

In order to keep growing in the esports market, it is of utmost importance that some integrity is maintained and a standard of transparency is present in the industries concerning casino and sports betting.

Before we dwell into what regulations are there for esports and what scope is left for future regulation making, it is pertinent to draw parallels between traditional sports and esports industry.

Amongst the traditional sports, an association like FIFA can be looked upto as an inspiration for building up a robust regulatory system for Esport industry. The lessons from the experiences of FIFA can be applied in the esports industry for tackling of major issues like corruption.

Through the experience, it is quite clear that FIFA had to struggle with corruption, therefore, it is pertinent that Esports industry has lessons to learn from the mistakes of the FIFA industry. Just like FIFA, Esports should put bribery as the central point which needs to be addressed.

¹ Ryan P. Toomey, Upholding the integrity of esports to successfully and safely legitimize esports wagering [2019] 1 GLR

Since a lot of money is involved which gets won by the players and enriching the stakeholders. Therefore, CAS should be implemented with rigour to ensure that the system of corruption will not last long and that people involved in this will have to face legal action.

FIFA is an association to govern football around the world. It is a private organization, it is responsible for framing legislations that will govern the legal scenario regarding football. It uses the civil code of Switzerland and possess the minimum requirements which can make an association to come into existence. The legal scope for FIFA will be to have autonomy under the scope of various laws such as civil law, fiscal law which includes tax exemptions and inclusion of corporate law for all agreement related problems.

In the esports industry, a palpable need to form an organization has been felt which will look after the esports industry. Hither – thither, there seem to be some endeavours of creating Major League for the esports industry and thus creating FIFA esports league but that remains like that. It is to be seen that esports leagues are multiplying in number real soon.

The pursuit of making FIFA like structure may require a national level organization to delegate tasks to the regional level authorities. Regional level authorities may contribute to regulating the esports industry at the local level and thus contributing to the build up of solid infrastructure throughout the world. This in a way shows that how countries are planning out and modelling out a way for the organization of governing bodies in order to float team for esports for the eFIFA tournaments.

There are multiple organizations which lay claim that they are regulating the esports industry. So a legitimate esports regulation is a big problem for the industry. There is lack of clarity as to what laws will apply when and this causes major problems. Apparently, it has been felt by the stakeholders that esports industry should adopt the FIFA model and follow Swiss law. Obligation for Swiss law will give the interested countries and concerned organization a concrete direction on what will be tolerated in the industry. Also, the laws of Switzerland permit extradition and therefore enforcement mechanism applicable to industries and organizations will follow the rules. This will also expose everybody to the best available practices globally.

The laws of Switzerland, have got extradition policies which will further help in the implementation of enforcement mechanism which are available for countries and organizations in different parts of the world. If all the countries follow Swiss Law, both confusion and

enforcement issues will not be there in the esports industry. The model of FIFA should also be followed in the Esports regulation by authorising organizations lower in rank be responsible for different territories that may still fall under single regulatory authority.

As of now, the regulations surrounding the esports industry is pretty jampacked, and the existing organizations will get the chance to work under single regulatory body which is the main regulatory body distributed within their respected regions and territories.

Other alternative rules or directives of traditional sports include bodies which self-regulate. These self-regulatory bodies put administrative rules to the business related to the sport, relationships of employees, usage of drugs, behaviour of players, giving license to the amenities provided to the players, arrangement of money through brand advertisements, putting safety standards and the control of their on field gameplay.

As of now, one has not seen such kind of structure in the esports governing mechanism.

ESTABLISHMENT. OF SELF-REGULATORY BODIES

Some other mechanism to modulate the esports industry is to create self regulatory bodies. The self regulatory bodies have been playing active role in traditional sports. These are formed in order to initiate and manage bye laws relating to the beginning of sports, employment relationships, use of prohibited and unprohibited drugs, regulating the players' behaviour, providing license to the facilities where sports are played, arrangement of sponsorships, putting down safety standards and the control and how they are being put at on-field gameplay.

THE CONCEPT OF GOVERNANCE IN SPORTS

As one can already sense the growing level of business interests and legal complexities involved in the world of sports, the policy makers and scholars over the time have realised the importance of laying down clear guidelines regarding good governance practices and establishing a good framework in the traditional contexts of sporting. There are around 50 sporting governance frameworks that are present and governed by various stakeholders from areas like academics, government and federations for international sporting events. Any best practice should meet the needs of accountability, responsibility, transparency, social responsibility, independence, fairness, discipline and transparency. For the best practices, institutions have carved out four pillars, these include transparency and public communication,

democratic processes, checks and balances and solidarity.

Esports is becoming quite popular amongst the youth and is soon going to become a major attraction for youth. Since, esports have commercial roots and has a long and tricky way to grow as a sport, it is pertinent to build a solid framework of governance and regulation designed to ensure sufficient adequate protection given to players. The audiences involved are also at risk since they are mostly minors. The borderless nature of esports, commercialisation, internationalised nature of the esports presents extreme challenges to the lawmaking bodies. Also, the growth of esports is faster than what the lawmaking bodies can catch and also the ever evolving nature of disputes presents a great challenge in framing the laws. The stakeholders involved in esports are not well versed with the rapid advancement of the complexities involved in the esports industry. Esports presents unique challenges that is difficult to interpret for even a person who is expert in law. Since esports also has a lot of similarities with traditional sports, therefore, some kind of protectionist policies may be applicable to esports as well. Thus, policymakers have to adopt a very balanced approach towards esports since both commercial and protectionist stances have to be maintained. The involvement of external policymakers will be more than welcomed especially youth in order to resolve tensions among stakeholders and jurisdictions.²

DISPUTE RESOLUTION IN THE ESPORTS INDUSTRIES AND THE NEED FOR CAS LIKE SYSTEM IN ESPORTS

The Centre for Arbitration of disputes is a step by step process, which usually involves four procedures. These four procedures first involve an arbitration procedure which is a run of the mill procedure. In cases that involve contractual or tortious disputes, the mediation process is preferred. In case of any dissatisfaction regarding the arbitration procedure, an appeal can be sent to another authority is also provided in CAS. CAS also gives advisory opinion to bodies which request their opinion, this advisory opinion does not have binding value and is not treated as an award.

The CAS has a given list of mediators. Both the parties can choose a mediator from this list, these mediators become visible in the list for a time period of around four months and they

² Sarah J. Kelly, Stephanie Derrington & Shaun Star (2021): Governance challenges in esports: a best practice framework for addressing integrity and wellbeing issues, *International Journal of Sport Policy and Politics*, DOI: 10.1080/19406940.2021.1976812

have the scope for reselection. It is the duty of the mediators to not be biased or partial. It is also necessary that in case the independence of parties are compromised, they should remain separate and the this event should be brought to the notice of the parties.

CAS AND ESPORTS

Development of CAS will provide a podium for the E-sports companies and their players wherein their issues and concerns will be highlighted and addressed. It will act as a deterrent for misconducts that happen within the esports industries. It will not address the concerns relating to misconducts in the industries. An unconnected body should be established which will handle the legitimacy concerns that might pop up in the esports industries. Since CAS has been around for quite long, it is well armoured to handle any kind of misconduct that may arise.

Accordingly, it can be safely concluded that constructing and strengthening the CAS like system will help reinvigorate fairness or rightfulness in the esports industry.

OTHER ATTEMPTS TO REGULATE THE ESPORTS INDUSTRY

Many groups are created to regulate the esports industry. They oversee the working of the esports industry. However, it is observed that these groups have not been successful in achieving the set targets to regulate the esports industry. Also having organizations which are multiple in number does not result well in clarity, rather creates confusion and lack of unity in the regulation system. The Esports Integrity Coalition (ESIC) was set up as an antifraud group in the year of 2015. The purpose of the group is to catch any issues of match fixing, cheating within the game and doping. ESIC is also in the process of implementing an anti-corruption code for the members and tournaments. This will be specifically applicable to CSGO, DOTA, League of legends and Statecraft. Having spoken about the ESIC industry, the, it is pertinent to admit that ESIC is not sufficient to tackle the burgeoning esports industry.

Further efforts to manage the Esports industry involves the setting up of the World Esports Association also known as WESA in the year 2016. WESA lays emphasis on resorting to arbitration and more satisfactory representation of esports teams in general terms. The constitution of WESA consists of esports teams which are competent and the players who are engaged in restructuring the delineation of esports teams which are involved in legal disputes. The association aims to create rules and regulations which will set the standard for players in

creating and setting rules and regulations for players. While creating rules and regulations, they will keep the players interests at the top most hierarchy. The special thing about WESA is that it has a council of players who will make rules and regulations for benefit of players. Only the players will know what is best for the other players. Therefore, the rule making authority of WESA is its players' council. Like this, the structure of WESA becomes democratic and players have a say while deciding the rules and policies of WESA.

Fundamentally, WESA has an ambition of becoming the governing body like FIFA (Fédération Internationale de Football Association). The structure of WESA is quite similar to FIFA since the WESA is close to one of the largest companies for esports in the world known as Electronic Sports League ("ESL"). ESL provides access to WESA for many teams.

The notion that WESA is pretty devoted towards establishing a good structure for player fairness, is evident from the fact that it has established the "Arbitration Court for E-Sports" ("ACES"). The conflicting parties can choose their own arbitrators, these arbitrators are expertise in their area of subjects. The proceedings of the arbitration procedure are usually kept confidential and they also have the scope of being conducted electronically and the enforceability of the awards take place in countries ranging beyond 150. Lastly, WESA concludes that not having an appeals process helps in quicker disposal of cases.

In its emphasis for arbitration, WESA highlights the endless benefits that arbitration can provide, it has provided reasoning and thrust for players to adopt to arbitration as it will help solve many disputes with much ease. It lays down the logical reasons regarding the benefits of adopting a systematic approach to solve the disputes.³

In order to pursue the purpose of regulating the esports industry and giving it a legitimate status of sports, the International E-Sports Federation (IeSF) was founded in the year 2008. There are certain issues with IeSF, firstly, it only deals with members who are part of national esports federation and the relevant esports federations are international and not national. Thus, resultingly, IeSF is not as effective as World Esports Association. It has been unsuccessful in regulating esports at the global international level.

In pursuit of structuring and re-structuring, the World eSports Council (WeSC) was set up in

³ Ryan Boonstra, *Player 3 Has Entered the Game: Arbitration Comes to the eSports Industry*, Volume 10 Issue 1 (Arbitration Law Review)

2015 in order to form a governing body which will help in the smooth administration of esports industry. At the country level, there is the British eSports Association (BEA) which aims to put forward interests of players at all levels. Similarly, Esports in France is regulated by France Esports in 2016. France esports is a federation which is intended to give advises and assistance to regulate the esports industry. Likewise, in Russia, it is the Russian Esports Federation which has the same rights as a national sports federation. In the oil region, there is a combining of Arab Esports Federation (AES) and the Global Esports Resources (GER), resulting in the creation a new authoritative body for the esports. It is expected that this authority will design, develop and operate all esports related activities which includes gaming activities.

PRECEDENTS RELATING TO SPORTS ARBITRATION IN INDIA

It will be interesting to look at historical precedents of solving sports disputes in India. These precedents advocate the usage of arbitration as most appropriate mode for dispute resolution.

As viewed by the court in the case of “M.P. Triathlon Association through its Secretary and Anr v Indian Triathlon Federation and Ors” all the conflicts which are in relation to the sporting process are supposed to be solved by the application of arbitration since it is considered to be the most apt means of solving sports related disputes. Any particular issue related to sports law can have various aspects relating to law and this can be seen to touch various categories of legal framework.

Another precedent relating to the case can be seen in the case of “Secretary, Madras Gymkhana Club Employees’ Union v Management of the Gymkhana Club’. In this case, the case has been applied to the Industrial Disputes Act 1947 and the term ‘club’ has been brought under the purview of industry. Such cases actually show how sports cases in India have traditionally been solved. Various legal framework get stipulated if we dissect the facts relating to sports disputes in India.

CONCLUSION AND SUGGESTIONS

This study has demonstrated well the need for having a robust arbitration mechanism to solve disputes relating to the esports industry. Through the study it has made comparisons with the traditional sports industry and the mode that they adopt to solve the disputes coming up in sports. The study advocated the need for having a FIFA like organization to regulate the esports

industries. It also recommends the establishment of e-arbitration mechanism so that they can solve cross border disputes easily.

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