

MADHYA PRADESH CRICKET ASSOCIATION

HOLKAR STADIUM, RACE COURSE ROAD, INDORE

TERMS OF REFERENCE OMBUDSMAN CUM ETHICS OFFICER (MPCA)

Introduction:

MPCA is committed to establish robust and independent mechanism for dispute resolution, and for guidance and resolution in cases of conflict of interests confining within the applicable norms.

Accordingly, the Constitution of Madhya Pradesh Cricket Association (as amended on 15.9.2019) provides for appointment of an Ombudsman cum Ethics Officer (provision no. 15 (e.a))

As a minimum eligibility, a retired judge of any High Court can be appointed as Ombudsman cum Ethics Officer (i.e. OEF).

It is the responsibility of the Committee of MPCA to frame the Terms of Reference (TOR) for the OEF.

In accordance to the above, the Committee of MPCA has approved the TOR for the OEF.

As explained above, the OEF provides independent mechanism for two areas -

- (A) **Dispute resolution (role played as an Ombudsman)**
- (B) **Guidance and resolution in cases of conflict of interests (role played as an Ethics Officer)**

Hence, this TOR covers the specific extent of responsibility under each of the above aspects.

TOR – OMBUDSMAN

1. Nature of disputes that can be adjudicated by the Ombudsman, and ordinary procedure for admission of complaint -

1.1 **Member - Association Dispute** : Any dispute between MPCA and its Members and/or between Members in relation with the duties or responsibilities of the MPCA can be referred to the Ombudsman **directly** by the complainant.

1.2 **Detriment caused by Member or Administrator** : If any member or Administrator of MPCA commits any act of indiscipline or misconduct or acts in any manner which may or likely to be detrimental to the interest of MPCA or the game of cricket or endanger the harmony or affect the



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reputation or interest of MPCA or refuses / neglects to comply with any of the provisions of the Constitution, or any by-law, or any guideline, or any Code of Conduct, or any similar set of rules & regulations of MPCA.

Above nature of complaints should be **necessarily filed** to the President and/or Hon. Secretary of MPCA. If the complaint is regarding the President / Hon. Secretary themselves, then the said complaint has to be made to the highest authority in the hierarchy.

On receipt of such complaint, the President and Hon. Secretary, after mutual discussion, shall issue a show cause notice calling for an explanation from the concerned. The show cause notice shall be issued under the signature of the Hon. Secretary.

On receipt of the response and/or in case of no cause / insufficient cause being shown, the Hon. Secretary shall forward the same to the Ombudsman with a covering report within 7 days.

- 1.3 Misconduct or Breach by Others :** Any act of indiscipline or misconduct or violation of Constitution, or any by-law, or any guideline, or any Code of Conduct, or any similar set of rules & regulations of MPCA by any Player, Umpire, Team Official, Selector or any person associated with the Association in any capacity.

Above nature of complaints should be **necessarily filed** to the Hon. Secretary of MPCA.

On receipt of such complaint, the Hon. Secretary, or any official nominated by the Hon. Secretary, shall conduct preliminary inquiry and call for explanation from the concerned parties and submit a report to the Ombudsman within 48 hours and a copy should be given to the Committee.

- 1.4 By the Public:** Where a member of a public is aggrieved concerning ticketing and access and facilities at the stadium operated by MPCA, such complaint shall be made to the Ombudsman **directly**.

On receipt of such complaint, the Ombudsman shall solicit a report from the Hon. Secretary. Upon receipt of such report the Ombudsman shall adopt appropriate course of action.

It is clarified that no two or more parties can jointly file any complaint.

- 2. Action by the Ombudsman upon receipt of any complaint, directly or through the report as referred under point no. 1.2, 1.3 above :**



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2.1 It shall be at sole discretion of the Ombudsman to decide the course of action in order to dispose of the complaints before him.

The Ombudsman may address issues through means like mediation, or informal fact-finding etc.

2.2 The Ombudsman, at his sole discretion, may adjudicate that there is no prima facie case and such complaint can be disposed off without any course of action.

2.3 The Ombudsman, at his sole discretion, if observes any prima facie case, appropriate course of action shall be determined following the principles of natural justice and fairness.

2.4 In case if the concerned parties do not respond to the notices by the Ombudsman, the complaint may be adjudicated ex-parte.

2.5 If the Ombudsman is of the opinion that the complaint filed by two or more parties has arisen from same or similar set of facts and/or circumstances, the Ombudsman may combine the course of action.

2.6 The orders of the Ombudsman shall be final and binding.

The Ombudsman shall have the liberty to determine the sanctions imposed in a particular case by giving due reference to all relevant circumstances, including factors having mitigating or aggravating effect, prior record, motive, acceptance of guilt by the offender, nature of assistance to the investigation etc.

The Ombudsman is required to consider practical aspects that may arise as a challenge before MPCA when any decision / penalty is announced. Hence, leverage in terms of time frame will be essential if the situation demands so.

It shall not be mandatory for the Ombudsman to use the doctrine or jurisprudence adopted by the BCCI Ombudsman for any case adjudicated by the BCCI Ombudsman.

3. **Opportunity of hearing (if granted by the Ombudsman):**

3.1 Hearing shall be held at the office of the Ombudsman, or any other place directed by the Ombudsman.



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- 3.2 Hearing shall be in private and the parties shall not disclose any details to any third party about the proceedings so conducted. Doing so shall result in the dismissal of the case on this very ground.
- 3.3 The parties can either be represented by themselves or their authorised representatives or counsels, whenever presence is directed.
- 3.4 MPCA shall not bear any cost incurred by the complainant for such hearing.

4. General rules:

- 4.1 There shall not be any specific time period within which a complaint is required to be disposed of. However, in the interest of justice, the complaints should be dealt with expeditiously and effectively.
- 4.2 The Ombudsman shall not initiate any action suo-motu.
- 4.3 The Ombudsman shall not formulate, or set aside, or comment upon any decisions or policy matters or day-to-day and routine work related decisions of the Association, including for any International matches etc.
- 4.4 The Ombudsman shall not have remit for incidents which occur on the field of play, or relate to any act, incidence etc. happening on the field of play.
- 4.5 No other person apart from the President of MPCA shall have the right to interpret the provisions of MPCA Constitution. In case there arises any dispute regarding the interpretation of the provisions of the Constitution the interpretation given by the Registrar will be final and binding on all the members.

Therefore interpretation by any other person shall not be held valid.

- 4.6 Apart from member-association dispute, detriment caused by member or administrator, misconduct or breach by others, and by the public as mentioned above (i.e. point no. 1.1,1.2,1.3,1.4 above) there shall not be any other category of complaints filed before the Ombudsman.
- 4.7 The Ombudsman shall have powers to issue 'practice directions' to facilitate smooth functioning of his office in handling the matters before him.
- 4.8 The Ombudsman shall have powers to appoint staff for his office with prior approval of the Management.

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- 4.9 The Ombudsman shall not deal with any complaints for which a legal / statutory recourse is available as per the prevalent statutes.
- 4.10 Ordinarily, the complainant should have exhausted remedies for resolving the dispute (with the opposite party) before raising the dispute with the Ombudsman.
- 4.11 Any complaint that has relevance or context to any act, incidence, breach etc. to a period before the date of amendment of Constitution of MPCA in force (i.e. before 15.9.2019) shall not be admissible for any course of action under the authority of the Ombudsman.

However, if the Ombudsman / MPCA Official (as the case may be depending upon the authority who receives such complaint) is satisfied (by the complainant) that such complaint, even though pertaining to prior period, is essential to be admitted then the delay may be condoned.

- 4.12 Complaint related to any act, incidence, breach etc. after the date of amendment of Constitution of MPCA in force (i.e. after 15.9.2019) should be filed within a period of one month from such act, incidence, breach etc.

However, if the Ombudsman / MPCA Official (as the case may be depending upon the authority who receives such complaint) is satisfied (by the complainant) that such complaint, even though filed after lapse of one month from such act, incidence, breach, etc. is essential to be admitted for any good cause then such complaint may be admitted.

- 4.13 The Ombudsman shall have absolute authority to decide if the evidence produced before him is to be provided with any reasonable safeguards to any person to protect the privacy and confidentiality of the individual concerned.
- 4.14 In any case, the Ombudsman shall not allow disclosure of information which is sensitive in terms of financial, personal, confidential aspects etc.
- 4.15 Even though the Constitution of MPCA provides for uploading of all proceedings and conclusions of the Ombudsman on the website of MPCA annually, either party has the right to request that the final report is not published. Final decision rests with the Ombudsman.
- 4.16 The Committee of MPCA reserves complete powers to amend this TOR at any time.
- 4.17 The Ombudsman is expected to deal with frivolous and vexatious complaints appropriately to protect the repute of the Association, or the concerned responding party in the strongest manner, including imposing any sanctions or disciplinary measure or cost to the complainant. *

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- 4.18 The necessity of creating the office of Ombudsman has arisen under certain order/judgment of the Hon'ble Supreme Court arising out of CA 4235/2014 (and other applicable matters), which is still under adjudication by the Hon'ble Supreme Court. Hence, the outcome of the matter shall have direct relation to the provisions related to the Office of Ombudsman.

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TOR – ETHICS OFFICER

1. Nature of Conflict of Interest (COI) cases that can be adjudicated by the Ethics Officer, and ordinary procedure for dealing with COI cases -

- 1.1 The Ethics Officer is appointed to provide guidance and resolution in cases of conflict of interests.
- 1.2 The Constitution of MPCA states that the provisions related to conflict of interest in Rule 38 (1) of the BCCI Constitution shall mutatis mutandis be applicable to MPCA.
- 1.3 Hence, the nature of COI cases that can be adjudicated by the Ethics Officer, and ordinary procedure for dealing with COI cases shall be alike the BCCI, subject to making necessary alterations without affecting the main point / principle.

2. Mode and manner in which the Ethics Officer can take cognisance of any instance of COI

- 2.1 Any instance of COI may be taken cognisance of by the Ethics Officer either –
- Suo Motu;
 - By way of a complaint in writing to the official postal or email address;
 - On reference by the Committee of MPCA

It is clarified that no two or more parties can jointly file any complaint.

3. Action by the Ethics Officer upon taking cognisance of any instance of COI as referred under point no. 2.1 above :

- 3.1 It shall be at sole discretion of the Ethics Officer to decide the course of action following the principles of natural justice in order to dispose of the instances of COI before him.
- 3.2 The Ethics Officer, at his sole discretion, may adjudicate that there is no prima facie case and such complaint can be disposed of without any course of action.



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- 3.3 The Ethics Officer, at his sole discretion, if observes any prima facie case, appropriate course of action shall be determined following the principles of natural justice and fairness.
- 3.4 In case if the concerned parties do not respond to the notices by the Ethics Officer, the complaint may be adjudicated ex-parte.
- 3.5 If the Ethics Officer is of the opinion that the complaint filed by two or more parties has arisen from same or similar set of facts and/or circumstances, the Ethics Officer may combine the course of action.
- 3.6 The orders of the Ethics Officer shall be final and binding.

The Ethics Officer shall have the liberty to determine the sanctions imposed in a particular case by giving due reference to all relevant circumstances, including factors having mitigating or aggravating effect, prior record, motif, acceptance of guilt by the offender, nature of assistance to the investigation etc.

The Ethics Officer is required to consider practical aspects that may arise as a challenge before MPCA when any decision / penalty is announced. Hence, leverage in terms of time frame will be essential if the situation demands so.

It shall not be mandatory for the Ethics Officer to use the doctrine or jurisprudence adopted by the BCCI Ethics Officer for any case adjudicated by the BCCI Ethics officer.

4. **Opportunity of hearing (if granted by the Ethics Officer):**

- 4.1 Hearing shall be held at the office of the Ethics Officer, or any other place directed by the Ethics Officer.
- 4.2 Hearing shall be in private and the parties shall not disclose any details to any third party about the proceedings so conducted. Doing so shall result in the dismissal of the case on this very ground.
- 4.3 The parties can either be represented by themselves or their authorised representatives or counsels, whenever presence is directed.
- 4.4 MPCA shall not bear any cost incurred by the complainant for such hearing.



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5. General rules:

- 5.1 There shall not be any specific time period within which a complaint is required to be disposed of. However, in the interest of justice, the complaints should be dealt with expeditiously and effectively.
- 5.2 It is very important for the Ethics Officer to understand and always take into consideration the fundamentals of cricket governance at the level of a State Cricket Association, operational processes, multi-tasking necessities for human resources etc. The Ethics Officer, after analysis of factual position by carefully understanding the best practices, will assess the real impact of any COI instance.
- 5.3 The scope of work for the office of Ethics Officer orients from several categories of individual appointed / recruited / engaged / nominated etc. by MPCA. Hence, any complaint against any such individual also requires an opportunity for MPCA to defend the case.
- 5.4 The concept of conflict of interest is relatively new to Indian cricket, including the affairs conducted at the level of state association. It is a challenging task to spread information and create awareness among all stake holders. Hence, resolution of any conflict shall always take precedence over imposing sanctions.
- 5.5 As described in the BCCI Constitution, a declaration / disclosure (of any existing or potential event that may be deemed to cause a COI) does not lead to a presumption that in fact a questionable situation exists, but is merely for information and transparency.

Use of the term 'conflict of interests' for such declarations can thus be misleading in certain cases.

As an example, though the principles of Conflict of Interest are to be followed 'mutatis mutandis' (with reference to BCCI Constitution's relevant provision), there is a fundamental difference in structure of membership of BCCI and MPCA. BCCI does not have any individual member whereas MPCA has individual members with voting rights. Such membership is necessarily granted on certain parameters clearly defined in the Constitution of MPCA. Upon becoming a member, if MPCA entrusts any responsibility to such individual based on his expertise, qualities / abilities, and when there is a pre-sanctioned and measured reasonable monetary consideration for such services, whether to consider such case as a conflict situation should be adjudicated by the Ethics Officer on facts of the case and by avoiding misleading situation.



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- 5.6 Complaints that relate to isolated instance of COI having less substantial element shall be dealt with appropriately in a manner that they do not prohibit the individuals resource to be utilised elsewhere in a better manner.
- 5.7 The Ethics Officer shall not formulate, or set aside, or comment upon any decisions or policy matters or day-to-day and routine work related decisions of the Association.
- 5.8 No other person apart from the President of MPCA shall have the right to interpret the provisions of MPCA Constitution. In case there arises any dispute regarding the interpretation of the provisions of the Constitution the interpretation given by the Registrar will be final and binding on all the members.

Therefore interpretation by any other person shall not be held valid.

- 5.9 The Ethics officer shall only deal with issues relating to COI as per provisions of MPCA Constitution. There shall not be any other category of complaint filed before the Ethics Officer.
- 5.10 The Ethics Officer shall have powers to issue 'practice directions' to facilitate smooth functioning of his office in handling the matters before him.
- 5.11 The Ethics Officer shall have powers to appoint staff for his office with prior approval of the Management.
- 5.12 The Ethics Officer shall not deal with any complaints for which a legal / statutory recourse is available as per the prevalent statutes.
- 5.13 Any complaint that has relevance or context to any act, incidence, breach etc. to a period before the date of amendment of Constitution of MPCA in force (i.e. before 15.9.2019) shall not be admissible for any course of action under the authority of the Ethics Officer.

However, if the Ethics Officer is satisfied (by the complainant) that such complaint, even though pertaining to prior period, is essential to be admitted then the delay may be condoned.

- 5.14 Complaint related to any act, incidence, breach etc. after the date of amendment of Constitution of MPCA in force (i.e. after 15.9.2019) should be filed within a period of one month from such act, incidence, breach etc.



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However, if the Ethics Officer is satisfied (by the complainant) that such complaint, even though filed after lapse of one month from such act, incidence, breach, etc. is essential to be admitted for any good cause then such complaint may be admitted.

- 5.15 The Ethics Officer shall have absolute authority to decide if the evidence produced before him is to be provided with any reasonable safeguards to any person to protect the privacy and confidentiality of the individual concerned.
- 5.16 In any case, the Ethics Officer shall not allow disclosure of information which is sensitive in terms of financial, personal, confidential aspects etc.
- 5.17 Even though the Constitution of MPCA provides for uploading of all proceedings and conclusions of the Ethics Officer on the website of MPCA annually, either party has the right to request that the final report is not published. Final decision rests with the Ethics Officer.
- 5.18 Where the Ethics Officer receives a complaint instituted before the District Forum, the State Commission or, as the case may be, the relevant Commission is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, dismiss the complaint and make an order that the complainant shall pay to the opposite party such cost as may be specified in the order.
- 5.19 The Ethics Officer is expected to deal with frivolous and vexatious complaints appropriately to protect the repute of the Association, or the concerned responding party in the strongest manner, including imposing any sanctions or disciplinary measure or cost to the complainant.
- 5.20 The Committee of MPCA reserves complete powers to amend this TOR at any time.
- 5.21 The necessity of creating the office of Ethics Officer has arisen under certain order/judgment of the Hon'ble Supreme Court arising out of CA 4235/2014 (and other applicable matters), which is still under adjudication by the Hon'ble Supreme Court. Hence, the outcome of the matter shall have direct relation to the provisions related to the Office of Ethics Officer.

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Date of approval by the Committee of MPCA : 3.2.2020

To be applicable immediately after website disclosure and/or circulation among stakeholders as practicable.

