
THE REQUIREMENT FOR TRANSFORMATION OF THE LOAN SYSTEM IN FOOTBALL: THE NEED TO CURB THE EXPLOITATION OF PLAYERS BY FOOTBALL CLUBS

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ABSTRACT

Football in the last two decades has seen a clear shift from being just a beautiful game to being a commercially viable venture with enormous amounts of money involved. Of all the money flushed into the system, a huge chunk is used for the transfer of players. While permanent transfers command more currency, it can be said that loan deals have assumed importance in today's transfer market. Rules and laws regarding permanent as well as temporary transfer (loans) of players from one club to another have now been codified by the game's governing body FIFA. However, big clubs have always exploited loopholes in the rules and laws concerning transfers that defeat FIFA's purpose of keeping the game ethical. In this short article, we attempt to understand how the loan system has evolved over the years with all its advantages and disadvantages with a special focus on English Football. Further, we look to analyse the recent recommendations by FIFA concerning International loans and the Football Association (Governing body of football in the UK) regarding domestic loans. We analyse their implications and put forth our suggestions to reform the loan system so that the game remains ethical and fair to big and small clubs alike and at the same time upholding its purpose of youth development over commercial gains.

KEYWORDS

Loans, Football, FIFA, Football Association, Transfer.

1. INTRODUCTION

FIFA, the governing body for football, has always been quite proactive in revamping the transfer system according to the needs of the time. Earlier this year, FIFA Football Stakeholders Committee (FSC) in its meeting decided that there need to be restrictions¹ when it comes to the loaning of players, concerning international loans² of players aged 22 or above, stating that this would “ensure that they have a valid sporting purpose.”³ The regulations, which were to come into force from July 2020, were subject to the approval of the Player’s Status Committee (PSC) and the FIFA Council.⁴ The decision, in our opinion, seems to be one in the right direction. Before discussing the particular measures decided by the FSC, it is imperative to throw some light on the existing transfer system.

Firstly, a Transfer in football means the moving of a player from one club to another club.⁵ Transfer Window is the time during which the clubs are free to trade their players.⁶ Secondly, Transfers in football can be of two types: a) Permanent Transfers and b) Loans. For a Permanent Transfer to take place, the buying club pays compensation, known as the transfer fee, to the selling club so that the player is relieved from his contract at the selling club and can now sign a new contract to register himself for the buying club. In loan deals, the player involved moves to the club loaning him in, while being contractually bound to the club loaning him out. It is a temporary transfer⁷ rather than a permanent one, and the player has to return to his old club after the period of the loan expires. The loan system has always been of help to young players who would like to get some precious playing time because, at a young age,⁸ it is very unlikely that the player would break into the first team or play week in week out for their parent club, with so many seasoned players ahead in the pecking order. Also, seasoned players

¹ *Clubs face loan restrictions after FIFA announces new regulations*, BBC (Feb. 27, 2020, 1:20 AM), <https://www.bbc.com/sport/football/51665904>.

² International Loans are when the player moves to a club associated with a different association.

³ *Football stakeholders agree further steps in the reform of the transfer system*, FIFA (Feb. 27, 2020, 1:40 AM), <https://www.fifa.com/who-we-are/news/football-stakeholders-agree-further-steps-in-the-reform-of-the-transfer-system>.

⁴ *Id.*

⁵ *Time is ripe for an overhaul of the football transfer system*, EU OBSERVER (Mar. 27, 2020, 10:15 PM), <https://euobserver.com/stakeholders/143093>.

⁶ *Football Player Transfers Explained*, FOOTBALL STADIUMS (Mar. 27, 2020, 11:20 AM), <https://www.football-stadiums.co.uk/articles/football-player-transfers-explained/>.

⁷ Andi Thomas, *The European soccer transfer market, explained*, SB NATION (Mar. 25, 2020, 7:50 PM), <https://www.sbnation.com/soccer/2014/7/28/5923187/transfer-window-soccer-europe-explained>.

⁸ Daniel Lewis, *Barcelona youngster Alena joins Betis until end of season*, GOAL (Mar. 26, 2020, 8:30 PM), <https://www.goal.com/en-in/news/barcelona-youngster-alena-joins-betis-until-end-ofseason/60abaenevebz1gcn0mzm7agd>.

who have fallen out of favour,⁹ either due to loss in form or because of differences with the management,¹⁰ have benefited from the loan option. Moreover, it gives the clubs with relatively low financial power a chance to get good players from the so-called bigger clubs¹¹ without having to spend a lot of money in the form of a transfer fee. Furthermore, teams could get players as a stopgap measure to reinforce their squad, say, in an injury crisis.¹²

Clubs have almost always found loopholes to exploit the transfer regulation system. There are fears that the clubs are taking advantage of the lack of regulation; this could jeopardise the players' careers and the integrity of the transfer market.¹³ Associations have previously investigated clubs on their loan business so that there are no irregularities.¹⁴ Recently, Associations like the Football Association, the national association for Football in England, have taken note of the exploitation and even put their regulations in place.¹⁵ But this won't be enough as it does not apply to clubs in other countries governed by their respective associations. Harmonised rules seem to be the need of the hour.

Therefore, in this write-up, loan deals are exclusively put under the microscope to understand why there is a need to regulate the loan system, how the clubs have been exploiting the system, and why the introduction of restrictions by FIFA FSC seems to be a step in the right direction. In this article, we have primarily focused on the loan system in English Football: the history and reforms.

⁹ Paul Fennessy, *Out-of-favour James Rodriguez joins Bayern Munich in 2-year loan deal*, THE42 (Mar. 29, 2020, 8:10 PM), <https://www.the42.ie/james-rodriguez-joins-bayern-munich-in-2-year-loan-deal-3490286-Jul2017/>.

¹⁰ Danny Ryan, *Barcelona's Philippe Coutinho set to sign for Bayern Munich on loan*, GIVEMESPORT (Mar. 24, 2020, 2:50 AM), <https://www.givemesport.com/1497818-barcelonas-philippe-coutinho-set-to-sign-for-bayern-munich-on-loan>.

¹¹ Alexander John Bond, Paul Widdop & Daniel Parnell, *Topological network properties of the European football loan system*, EUROPEAN SPORT MANAGEMENT QUARTERLY (2019).

¹² Phil McNulty, *Steven Caulker: Liverpool sign QPR defender on loan*, BBC (Mar. 27, 2020, 7:30 PM), <https://www.bbc.com/sport/football/35291772>.

¹³ Barry Lysaght, *Football's International Loan regulations: the 'Wild West'?*, LAWINSPO (Mar. 26, 2020, 3:10 PM), <https://www.lawinsport.com/topics/item/football-s-international-loan-regulations-the-wild-west?highlight=WyJsb2FuIiwidCciLCInbWFya2V0IiwibWFya2V0J3MiLCJtYXJrZXQnLCIsImxvYW4gbWFya2V0Ii0=>.

¹⁴ Dominic Fifield, *Chelsea and Vitesse Arnhem links investigated by the Dutch FA*, THE GUARDIAN (Mar. 27, 2020, 10:20 PM), <https://www.theguardian.com/football/2014/apr/01/chelsea-vitesse-arnhem-roman-abramovich>.

¹⁵ *Football loan transfer rules: Premier League guidelines, limits & full details*, GOAL (Mar. 27, 2020, 10:00 PM), <https://www.goal.com/en-in/news/football-loan-transfer-rules-premier-leagueguidelines/1kbkbnfluqauo1jpdowcm1pimp>.

2. HISTORY OF LOAN SYSTEM

The loan system is not something new as it is rooted in history since football's early days. Loaning of a player was done in a position of necessity if there were some grave injury or travel problems.¹⁶ The team would borrow some players from the other to fill up the slots in the squad. This process was quite realistic and straightforward, but the loan system went through a massive transformation after football turned professional.¹⁷ In the later part of the 1800s, the big clubs borrowed good players from teams that were already out of the competition to play in important matches or playoffs. But FA banned this particular system of loaning players for playoffs as it was considered unfair. Still, some teams kept on breaking these rules, and the rules were made stricter afterwards.¹⁸

The Second World War saw the return of loans when there was a suspension of football leagues around Europe. This made top players at that time to change clubs to get some minimal football action, and players even changed clubs within one day. After the war, the loan system was scrapped, which was considered a radical step. It only made a return when the 'retain and transfer' system was scrapped in 1963 which restricted players from leaving their current clubs even after the end of their contract without the club's approval. The scrapping of the 'retain and transfer' system was yet another radical step.

Further, in 1966, another change empowered the clubs to make a maximum of 2 loan transfers and they had to be players from a different division mandatorily. It was done to prevent top clubs from signing good players from smaller clubs and maintain a competitive status quo. In this system, loan deals had to be for a minimum period of 3 months. This same rule was changed again in 2003 where the English Premier League scrapped this law which forbade loans between clubs in the same division.¹⁹ Now, teams could loan out a player directly to a rival team as well. It was done to increase the convenience of a club in signing the players but this change was criticized by many as they believed it would take away the competitive element

¹⁶ Paul Brown, *A bizarre history of loans: Where did it really all begin*, FOURFOURTWO (Mar. 27, 2020, 5:40 PM), <https://www.fourfourtwo.com/features/a-bizarre-history-loans-where-did-it-really-all-begin>.

¹⁷ *History of Football- The Global Growth*, CLASSIC FOOTBALL (Mar. 27, 2020, 6:00 PM), <http://www.fifa.com/classicfootball/history/the-game/global-growth.html>.

¹⁸ PAUL BROWN, *supra* note 16.

¹⁹ Daniel Taylor, *Premier League set to scrap loan ban*, THE GUARDIAN (Mar. 26, 2020, 8:10 AM), <http://www.theguardian.com/football/2003/mar/04/newsstory.sport2>.

of the game and one club could easily influence the destiny of another club.²⁰ The above law was further chopped and changed after deliberation, and the loaned player was not allowed to play against his parent club during the loan duration. Arsenal manager, Arsene Wenger was highly critical of these changes and believed that it would kill the uprightness of the game.²¹ A study reports that the combined revenue of the top 20 earning clubs in the 2018-2019 season stood at over £8.2 billion without including the transfer fees which was an 11% increase in the previous year.²² This number stood at €1.2 billion²³ in the 1996/97 season. This is a testament to the fact that the values have risen exponentially over the past years.

Football transfers and loans play a huge role in it. Loan values too have skyrocketed at an alarming rate over the past years as we have seen from the Kylian Mbappe deal in 2017. PSG paid almost €35 million to get the services of young Mbappe just for a single season. Bayern paid €8.5 million²⁴ to Barcelona for Phillippe Coutinho while they paid as much as €13 million²⁵ for James Rodriguez to get their services just for a year. These are very high amounts being paid by clubs just for one season considering they have to pay the wages too. During the early 90s, a sensation back then, Roberto Baggio's whole transfer fee was around €12 million.²⁶ This is a testament to the fact that the value of loan deals for one year has crossed the transfer values of yesteryears. Directly and indirectly, loan deals affect the revenue of the club and the sport in general. This also shows that football is the highest money generating sport in the world, and football transfers play a huge role in it. As history suggests, the loan system has undergone various changes and now the overall success of a club depends upon the investment of the club, its social media coverage, and the players. Eventually, the squad of the club decides the fate of

²⁰ Andrew Warshaw, *Taylor attacks loan deal strategy*, THE TELEGRAPH (Oct. 7, 2020, 8:30 PM), <https://www.telegraph.co.uk/sport/football/2410147/Taylor-attacks-loan-deal-strategy.html>.

²¹ *Wenger calls for over 21s ban*, SKY SPORTS (Mar. 27, 2020, 10:30 PM), <http://www1.skysports.com/football/news/11670/7456398/wenger-calls-for-over-21s-ban>.

²² THEO AJADI, ZOE BURTON, MATT DWYER, TOM HAMMOND AND CALUM ROSS, *EYE ON THE PRIZE: FOOTBALL MONEY LEAGUE*, (Dani Jones, Sam Boor and Timothy Bridge ed., 23rd Edition, Deloitte Sports Business Group 2020).

²³ *Id.*

²⁴ Phillippe Coutinho, TRANSFERMARKT (Oct. 7, 2020, 8:20 PM), <https://www.transfermarkt.co.in/philippe-coutinho/profil/spieler/80444>.

²⁵ *James Rodriguez*, TRANSFERMARKT (Oct. 7, 2020, 8:25 PM), <https://www.transfermarkt.co.in/james-rodriguez/profil/spieler/88103>.

²⁶ Roberto Baggio, TRANSFERMARKT (Oct. 7, 2020, 8:30 PM), <https://www.transfermarkt.co.in/roberto-baggio/profil/spieler/4153>.

a club throughout the season.²⁷ The authors would want to emphasize the need for a better loan system considering the amount of money that is at stake.

3. UNDERSTANDING THE LOAN SYSTEM

Article 10 of the Regulations on the Status and Transfer of Players states that “*A professional may be loaned to another club on the basis of a written agreement between him and the clubs concerned.*”²⁸ The recipient club cannot send the player on loan again without proper authorisation from the parent club of the player.²⁹ In the current system, there are two transfer windows per season when loan deals can be conducted. Teams may loan out a player due to various reasons and it has gradually changed over the years.

Previously a team used to loan out a player because they could not find a buyer for the concerned player and the club wanted some money by selling the player. Keeping the same player in reserves would mean loss of money to the club and also a loss to the player’s market value due to inconsistent displays. So, loaning out to a small club would mean a win-win situation for both parties as the player would get more exposure and the club would get their desired money. But currently, most of the top clubs are self-sufficient, and loaning out a player is due to different reasons. The needs and necessities of every big club are quite different, particularly in this modern era of football.³⁰ Managerial tactics define the playing style of a club and it is his mentality which largely shapes what players are needed to build on the formation he wants to play.

There may be some world-class players who are not needed in a particular club for a particular season. But the same player may become an efficient pawn in making another team a world-beater. Rather than going for an all-out transfer, clubs resort to a season-long loan and they split the player’s annual salary. Clubs avoid unnecessary multi-million deals in the pricy transfer market by making shrewd temporary transfers for a season. This is also a victory for both parties as the player grows and develops rather than getting benched at his parent club. For example, the recent Alexis Sanchez loan deal in the summer window from Manchester United to Inter Milan for the 2019-2020 season was a win-win deal for both parties as Sanchez

²⁷ Liu XF, Liu YL, Wang QX & Wang TX, *The Anatomy of the Global Football Player Transfer Network: Club Functionalities versus Network Properties*, 11(6) PLOS ONE (2016).

²⁸ FIFA Regulations on the Status and Transfer of Players, art. 10.

²⁹ *Id.*

³⁰ ALEXANDER JOHN BOND, *supra* note 11.

had become a fringe player at United. Inter would have to pay half of Sanchez's £390,000 weekly salary after the completion of the deal and he would be back to United after a year if Inter decided not to buy him permanently.³¹

4. ADVANTAGES OF THE LOAN SYSTEM

The very basic advantage of the loan system is that it maintains the consistency for a player rather than forcing him to waste a full season on the bench and reduce the opportunity for him to display his skill.³² Getting some game time is far better than no game time because the player is frequently exposed to the crowd pressure. The loan is the fundamental behind creating a player with a strong mentality. A player on loan has a point to prove to his parent club and he can gain their trust by playing well at the club he is loaned out to. It tests the player's attitude because his future at his parent club is uncertain.³³

A good performance would lead to a call back to his previous team. The loan system is a boon to clubs from lower divisions as they work on a tight budget. It helps them in building and completing their squads for a particular season. These loan deals also help in building a relationship between two clubs. If a loanee progresses well in the club he was loaned to, the parent club may send more players to the same club.³⁴ Edgar Davids to Barcelona, Carlos Tevez to Manchester United, and Thibaut Courtois to Atletico Madrid are some of the recent examples where the loan system worked wonders for all parties associated with the deal.³⁵

5. DISADVANTAGES OF THE LOAN SYSTEM

However, there are many downsides to a loan system gone wrong. The art of scouting and developing is lost somewhere as the lower league clubs depend on the big clubs to sign some player who would be acquired by them. The club which acquires the player may not focus on his development as much as it focuses on other players, as the loan is a short term plan. They

³¹ Murad Ahmed & John Burn-Murdoch, *How player loans are reshaping European football's transfer market*, FINANCIAL TIMES (Mar. 30, 2020, 2:20 PM), <https://www.ft.com/content/9bd82b30-caf2-11e9-a1f4-3669401ba76f>.

³² Pete Spencer, *The Loan System – Does it Work?*, TALE OF TWO HALVES (Mar. 27, 2020, 10:40 AM), <https://taleoftwohalves.uk/featured/loan-system-work>.

³³ *Id.*

³⁴ *The Loan System- Good or Bad?*, FOOTBALLAGENTS.ORG.UK (Mar. 30, 2020, 1:30 AM), <http://footballagents.org.uk/blog/loan-system-good-or-bad>.

³⁵ Umid Dey, *5 Best Loan Deals in Football History*, 90MIN.IN (Mar. 27, 2020, 8:10 PM), <https://www.90min.in/posts/6473921-5-best-loan-deals-in-football-history>.

can just use the player for one season and send him back to his parent club when his contract gets over. Generally, when a club from second-tier qualifies to the first tier, the loaned players play a big role in their achievement. Rarely do these same players stick with the same squad and that particular team faces difficulty in matching to the league's standard. Inadequate restrictions enable big clubs to buy and pile up players which they do not even need. This hampers the growth prospect of the young players as eventually they get loaned out to small clubs. For a player to know that he is staying at a club for one season, winning the hearts of the fans and supporters is a herculean task. One or two bad performances can bring negativity among the fans and it gets difficult for a player to redeem himself after that. There are only a few players in history who have won over the fans in a single season and achieved cult status.³⁶

There is also a fear of nepotism as it happened in the case of Manchester United and Darren Ferguson who was the manager of Preston. The manager of United, Sir Alex Ferguson, had loaned out two players to Preston. United was quick to call back these players after Darren was sacked from his managerial position.³⁷ It was seen as unfair to other teams as they would never get the chance to get these players if it was not for someone in the family. The most recent case in this regard would be that of Watford who bought ten players from Granada (Spain) and Udinese (Italy) during the summer of 2012-2013 season. All three clubs had the same owner and they used a loophole in the rules to make things work.³⁸ In one match, Watford fielded no less than six loaned players which made the footballing world take note of this bamboozling strategy. There were not any restrictions with regards to the number of international loans which meant there could be even eleven international loanees in a team without flouting any rules and regulations.³⁹

The Chelsea-Vitesse relationship is well known to football fans around the world. Twenty-three players have been loaned out to Vitesse by Chelsea since 2010.⁴⁰ It was found that the

³⁶ ALEXANDER JOHN BOND, *supra* note 11.

³⁷ *Manchester United recall loan duo after Preston sack Darren Ferguson*, THE INDEPENDENT (Mar. 29, 2020, 2:15 AM), <https://www.independent.co.uk/sport/football/football-league/manchester-united-recall-loan-duo-after-preston-sack-darren-ferguson-2172876.html>.

³⁸ Joshua Kaye, *The international player loan loophole – should, and could, it be closed?*, LAWNSPORT (Mar. 30, 2020, 11:30 AM), <https://www.lawnsport.com/topics/sports/football/item/the-international-loan-loophole-should-and-could-it-be-closed>.

³⁹ *Id.*

⁴⁰ Travis Tyler, *Chelsea-Vitesse partnership the only certainty in the loan army*, FAN SIDED (Mar. 27, 2020, 3:50 PM), <https://theprideoflondon.com/2018/03/27/chelsea-vitesse-partnership-certainty-loan-army/>.

original funder of Vitesse was a close ally of Roman Abramovich, Chelsea's owner.⁴¹ This reaffirms the fact that close friendships can be used to strengthen the squad of another team. From the period of 1997 to 2009, Manchester United loaned no less than 29 players to Royal Antwerp, a Belgian club.⁴² These mass loaning out of players from one club to another may be a beneficial thing to the smaller club, but the main problems which persist is that of unfairness caused to other clubs in the same competition. Only because one club has good connections with a bigger club should not be a striking criterion in determining the result of the league.

The clubs while loaning out players ascribe very little significance to a players' mental health. Consecutive loan deals for a player have a dampening effect to the player's confidence as a footballer. Lucas Piazon, bought by Chelsea in 2012, has played for seven different clubs over these years. In a club like Chelsea which has changed many managers in this period, the prospect of being a starter is still a far-fetched dream for Piazon. In an interview in 2016, Piazon said:

*"It makes no sense to go on loan all the time. It is not good for any player in my experience or the experience of the other boys. I don't see it as a positive thing any more. To be in a different place every year is not good for me at 22."*⁴³

Another big disadvantage of the loan system is that it can be used by clubs to circumvent UEFA's Financial Fair Play (FFP) regulations (A club cannot report a cumulative loss of more than €30 Million over a particular 3 year assessment period). The most high profile recent example of this was the loan with an option to buy transfer of French teenage sensation Kylian Mbappe from French club AS Monaco to another French club Paris Saint Germain (PSG) in the summer of 2017. Having completed the world record transfer of Neymar from FC Barcelona for a record €222 Million in the same summer, it raised many eyebrows when Mbappe arrived at PSG as well. However, to comply with FFP requirements, the transfer of Mbappe was structured as a loan in 2017 with an option to buy for a fee rising up to €180

⁴¹ David Conn, *How Chelsea's links to Vitesse Arnhem run deeper than the public was told*, THE GUARDIAN, (Mar. 27, 2020, 4:00 PM), <https://www.theguardian.com/football/2017/feb/28/chelsea-vitesse-arnhem-links-deeper-public-told>.

⁴² *Where are they now? The 29 players Man Utd. loaned to Royal Antwerp*, PLANET FOOTBALL (Mar. 27, 2020, 4:20 PM), <https://www.planetfootball.com/quick-reads/revisiting-29-players-manchester-united-sent-on-loan-to-royal-antwerp/>.

⁴³ Matt Barlow, *What life is REALLY like as a Chelsea loan starlet...Lucas Piazon reveals all*, DAILY MAIL (Oct. 7, 2020, 8:20 PM), <https://www.dailymail.co.uk/sport/football/article-3775029/What-life-REALLY-like-Chelsea-loan-starlet-Lucas-Piazon-reveals-all.html>.

million in 2018. What this did was that the amortised transfer fee and astronomical wages of Mbappe would go into the books of PSG from the summer of 2018, when the 2015-2018 cycle of FFP would end and a fresh three-year cycle began. Therefore, it gave PSG an extra year to balance their books for the new three-year cycle (2018-2021) by bringing in new sponsorships as well as player sales in order to adjust the burden of both Neymar and Mbappe's huge transfer fees.

6. REFORMS MADE TO THE LOAN SYSTEM OVER THE YEARS

FIFA, in 2018 had announced its intentions to introduce landmark reforms concerning the transfer system which also included loans. This was done to increase transparency in the game and protect its integrity.⁴⁴ FIFA announced that they will be limiting the number of loans allowed per season to ensure that its purpose of youth development is realised. However, it took them some more time to work out the details of the proposal which was finally done on 27th February 2020.

In a press release following a meeting of its stakeholders' committee on 27th February 2020, FIFA announced its intentions of making radical changes to the existing loan system with an intention "*to protect the integrity of the system and prevent abuses.*" These changes are a part of the wide-ranging reforms of the existing transfer system.⁴⁵ The objectives of these proposed reforms in the loan system as we understand are threefold:

- i. To ensure youth development and thus ensure that loans have a valid purpose.
- ii. To prevent hoarding of talented players by big clubs. This has been done to a huge extent by Chelsea. This practice is not only unethical but destabilising as well.
- iii. To prioritise players' development over commercial gains.

The committee endorsed a move to limit the number of international loan deals for players over the age of 22 years that a club could make each season. It has been proposed to implement this measure by giving a transitional period to clubs. For the 2020-2021 season, eight international

⁴⁴ *Football stakeholders endorse landmark reforms of the transfer system*, FIFA (Mar. 30, 2020, 10:25 AM), <https://www.fifa.com/who-we-are/news/amp/football-stakeholders-endorse-landmark-reforms-of-the-transfer-system>.

⁴⁵ FIFA, *supra* note 3.

loans, both in and out of the club, will be permitted which will subsequently be reduced to six each in and out by the 2022-2023 season. Further, a maximum of three loans in and three loans out would be permitted between the same clubs by 2022-2023 season.

As far as domestic loans, i.e., loans between clubs of the same member association are concerned, FIFA has directed the member associations to amend the rules “*in line with the principles established at the international level*” within three years.⁴⁶ However, the problem with this statement by FIFA is that it has not set a limit on the number of loans that the associations should comply with. We believe that not making it strictly mandatory to comply with the numbers prescribed by FIFA and leaving it up to the discretion of the respective national associations for domestic loans is again a loophole that FIFA has given to the clubs to exploit. However, these changes will only be enforced if they are approved by FIFA’s Players status committee and the FIFA council. The regulations were to come into force in July 2020 but we have not been able to find any confirmation about the same.

The English FA, in 2019, had already made radical changes to the loan system for teams playing in the top division of English Football, i.e., the English Premier League. The amended rules are as follows;

- i. Teams can have a maximum of four players on loan from other Premier League teams during the entirety of the season.⁴⁷
- ii. At any given time, they cannot have more than two players on loan from other Premier League teams⁴⁸ and more than one player from the same team.⁴⁹
- iii. Further, a team cannot loan a player they have brought in the transfer window, to another Premier League club, in the same transfer window.⁵⁰
- iv. Also, no Premier League club can loan more than one of its goalkeeper to another Premier League club during a season.⁵¹

⁴⁶ *Id.*

⁴⁷ Premier League Handbook 2019-20 Section V.7.5.

⁴⁸ Premier League Handbook 2019-20 Section V.7.6.

⁴⁹ PREMIER LEAGUE HANDBOOK, *supra* note 47.

⁵⁰ Premier League Handbook 2019-20 Section V.7.1.

⁵¹ Premier League Handbook 2019-20 Section V.7.7.

However, these rules are comparatively quite relaxed for the lower divisions of English football and rightly so, as clubs in the lower divisions do not have the financial prowess nor the big star players to drive them to successful seasons. However, the problem arises when we observe that National Associations across jurisdictions do not have uniform rules regarding domestic loans. Just to give a perspective, Italian club Atlanta which plays in the Serie A (First division of Italian football) have as many as 55 players out on loan this season. This seriously impacts FIFA's intentions of reforming the game and making it more ethical. In the following section, we have suggested measures to improve the loan system. We have taken references from the rules framed by The Football Association for temporary transfers for the 2019-2020 season.

7. SUGGESTIONS

It is understandable that the clubs want to play the best players and wish to build a strong squad only where the fittest can survive but it does not have to become exploitative. The International Charter of Physical Education, Physical Activity and Sport which was adopted by the member states of UNESCO state that "*Top-class sport and sport practised by all must be protected against any abuse*" and "*commercial excesses threaten its moral value, prestige and image.*"⁵² FIFA states that it is strongly committed to upholding human rights and "*embraces all internationally recognised Human Rights including those contained in the International Bill of Human Rights*" and "*the International Labour Organisation's Declaration on Fundamental Principles and Rights at Work.*"⁵³ Moreover, FIFA in its human rights policy of May 2017 stated that it "*is committed to helping protect the rights of football players and will continually evaluate existing regulations*" to address risks.⁵⁴ Likewise, FIFA also remains committed to human rights issues like it is to commercial interests surrounding the game.⁵⁵ By adopting these declarations, FIFA recognises that the commercial excesses can result in the commodification of players and therefore it seeks to protect the rights of the players against any such abuse. Through its proactive adoption of international principles, it not only recognises the aspect of human rights involved in loaning players, but it also opens up avenues to address any violations that might occur while providing safeguards for the players. Therefore, it is of utmost

⁵² International Charter of Physical Education, Physical activity and Sport art. 7.1.

⁵³ FIFA Human Rights Policy art. 2.

⁵⁴ FIFA Human Rights Policy art. 5.

⁵⁵ FIFA 2.0: A VERSION FOR THE FUTURE, 63 (FIFA, 2016).

importance that FIFA improves its regulations as much as possible to create a better atmosphere for the players involved.

As has been discussed in the sections above, there have been quite a few instances where clubs have done questionable acts that jeopardise the integrity of the sport. Therefore, in this section, we would like to categorically discuss a few of those acts and what plausible steps can be taken to curb the seemingly unethical practices. For clarification purposes, all these suggestions should only be taken with regards to players who are 22 or above. Players below 22 are considerably young players and we feel that the clubs, for the sake of the development of these younger players, should exercise some discretion and autonomy.

7.1.CAPPING THE NUMBER OF PLAYERS THAT CAN BE LOANED OUT

This is one of the obvious solutions to stop clubs from hoarding players with or without the intention of ever using them. It is also the direction FIFA is intending to go with. It is understood that FIFA has time and again encouraged clubs to train youngsters and has also brought in the incentive of training compensation to make the practice more efficient.⁵⁶ But a thin line must always be drawn to restrict this practice from turning into a business model. Because then any club can bring multiple players that will never play for the club and would only be used to make a profit when they are sold. There have been allegations that Chelsea has indeed made use of a practice like this where young players are bought at low prices and then sold at higher prices without much representation at the club.⁵⁷ It is a plausible assumption given the number of players that Chelsea sends out on loan. The number in the last season itself is 28 with 15 of them aged 22 and above.⁵⁸ The practice of loaning an exorbitant number of players has applied to Serie A in the past as well. In the 2018-2019 season, Atlanta had 56 players out on loan along with Genoa who had 33, Sampdoria who had 31 and Torino who had 28.⁵⁹ While the intentions of the club can never be determined, one logical deduction that can be made out of this is that most of these players out on loan will never play for their current parent clubs. So, there must be a cap of players that can be loaned out in a season. The FIFA

⁵⁶ Definition 10 of the FIFA's Regulations on Status and Transfer of Players defines Training Compensation as the payments made to cover the training costs of a player. Article 20 of the FIFA's Regulations on Status and Transfer of Players mandates that Training Compensation shall be paid to the Training Club of a player.

⁵⁷ MATT BARLOW, *supra* note 43.

⁵⁸ BBC, *supra* at 1.

⁵⁹ Brad Homeyer, *Serie A clubs are ahead of other European clubs in one area*, THE18 (Mar. 30, 2020, 10:00 PM), <https://the18.com/soccer-entertainment/serie-a-loan-players-atalanta>.

FSC's decision to cap international loans to be reduced to six players from eight by the 2022-2023 season is a step in the right direction. The same meeting also gave three years to the relevant national associations to frame rules for domestic loans which will be in line with the principles established at the international level, but did not set a limit;⁶⁰ this could turn out to be a dangerous practice. The autonomy of the National Associations in the transfer system is to be respected. However, given the exploitation of the loan system in the past, a clear demarcation of a limit could have been helpful.

Another thing that can be suggested is bifurcation on the number of players that can be loaned out in a single transfer window. To be particular, if there is a cap of 8 players that can be loaned out both nationally and internationally, then there can be a bifurcation of 6:2, i.e., six players to be loaned out in the bigger transfer window which is the summer transfer window and two in the winter transfer window. While there is no documented basis or a precedent on bifurcation as to loaning out of players, there is one for loaning in of players. As we have already discussed, the Football Association introduced new rules for loan deals in between the clubs under them for the season of 2019-2020. The rules as having been stated in one of the previous sections stipulate that no club can register more than two loan deals from Premier League Clubs in the same transfer window time or the same transfer window and no more than four loan deals can be registrable in the same season. A similar parallel rule could be introduced for international loans as well as domestic loans. What this bifurcation does is that it gives at least two players, who would have otherwise been shipped out, a chance for some representation at the club. And the biggest problem is the representation which is what we have seen from Lucas Piazon's case. With this bifurcation, most clubs would probably keep those two players who are most likely to break into the first team and had these two players gone out on loan, the club would have spent money to buy a player. Instead, these two players now would stand a chance to break into the first team and even displace some of the first team starters. And in case of an event where things do not work out, the clubs can always choose to send the players on loan in the winter transfer window. Again, the number has been taken in reference to the numbers proposed by FIFA but the domestic leagues could also have an arrangement like this for domestic loans. What this does, in our opinion, is that it minimises the risk of non-representation and maybe, as an added advantage compels the club to make use of resources

⁶⁰ *FIFA set to limit number of international loans clubs can make*, ESPN (28 Feb, 2020, 11:50 PM), <https://www.espn.in/football/blog-fifa/story/4062188/fifa-set-to-limit-number-of-international-loans-clubs-can-make>.

available to them. There remains a chance that the players will still not represent the club but that, in our opinion, would be cases for bigger clubs who have star players.

One thing that also happens with a capping of the number of players a club could loan out is that it also makes the market much smaller for the clubs looking to loan in players which would mean that they would rely more on their youth set up, giving their young players opportunities which would have earlier been taken up by the players their clubs loaned in.

7.2.RESTRICTIONS ON LOANING OUT TO SUPPOSED FEEDER CLUBS

In 2015, the Dutch Football Federation, Royal Dutch Football Association, launched an investigation into the relationship of Dutch Club, SBV Vitesse (Vitesse Arnhem or Vitesse) and London club, Chelsea Football Club (Chelsea) following some allegations from the former owner, Merab Jordania who suggested that Chelsea exerted undue influence on Vitesse Arnhem.⁶¹ This was not the first time that an investigation was launched into the partnership as it was done once before in 2010.⁶² However, both the times the clubs have been cleared of any allegations.⁶³ As has been mentioned, Chelsea has enjoyed a great partnership with Vitesse working as a feeder club to Chelsea as implied by the former manager of Vitesse, Ronald Koeman who suggested that there was an agreement in place but the same was having adverse effects on the Dutch club.⁶⁴

Having the option of Feeder Clubs, in our opinion, have two glaring disadvantages. One, the concerned player does not have a say here. He has to move to the feeder club as part of the agreement even though the feeder club might not be the best place to learn his trade. Former Chelsea Footballer Sam Hutchinson reflected upon his time at Vitesse by saying:

“I was pretty much forced to go. My agent rang on the day my daughter was born and said that Chelsea thought it was best for me. I did not want to go. I was injured. But I did not realise that I was not going out there to play – I was going out there

⁶¹ DOMINIC FIFIELD, *supra* note 14.

⁶² DAVID CONN, *supra* note 41.

⁶³ Joe Brewin, *What’s it like to be a feeder club? How Vitesse fans really see their Chelsea partnership*, FOURFOURTWO (Mar. 28, 2020, 7:40 PM), <https://www.fourfourtwo.com/features/whats-it-be-feeder-club-how-vitesse-fans-really-see-their-chelsea-partnership>.

⁶⁴ Kevin Palmer, *Ronald Koeman questions Vitesse’s player-loan agreement with Chelsea*, ESPN (Mar. 28, 2020, 9:50 PM), <https://www.espn.in/football/southampton/story/2541470/ronald-koeman-questions-vitesse-loan-agreement-with-chelsea>.

to see a physio. Luckily he was amazing and got me fit in six weeks, but they still did not play me. It was frustrating. I came home after four months.”

Moreover of all the loanees to Vitesse from Chelsea, only Nemanja Matic was a player who cemented his position as a first-team player and the idea that can be borrowed is that these loan deals are only helping in commanding bigger transfer fees when the players are eventually sold.⁶⁵

FIFA FSC while putting restrictions on international loans between the same clubs stated that only three players could be loaned in or loaned out from both sides and we feel that this number is on the higher side. The decision creates the impression that the FSC, which contains people connected with professional clubs, has made this decision not to displease the clubs. The decision in itself is bound to create legitimacy for feeder clubs and therefore we suggest that the number be lowered to two players. What we also suggest is that no club should be allowed to loan out to the same club for more than two seasons in a row. For example, if Club A has loaned any of their player(s) to Club B for the seasons of 2018-2019 and 2019-2020, they shall not be allowed to loan any of their players to club B at least for the 2020-2021 season. However, we believe both the clubs should be allowed to enter into permanent deals during any season as the player would at least have stability in terms of his club career for a fixed duration of time. The practice of feeder clubs has limited the talent pool for all other clubs which in our opinion meddles with the integrity of the game. Moreover, this practice leads to the stagnation of the quality of football by depriving ambitious clubs of players fitting their profile.

7.3.RESTRICTIONS ON LOANING PLAYERS OUT WHO WERE BOUGHT IN THE SAME SEASON

Again, the Football Association introduced a restriction for this season which barred clubs from loaning out players who were bought in the same season to the clubs in the same association and we feel that this rule should make its way to rules governing International Loans and even domestic transfers. Although, we feel that a complete ban should not be the way for International Loans. It is quite understandable for domestic leagues to have this sort of systematic arrangement, as, in our opinion, each league has its distinct identity. The Premier League in England is considered quite physical⁶⁶ while Serie A has historically been considered

⁶⁵ Alex Dieker, *A Footballer's Purgatory: Truth about the Vitesse- Chelsea partnership*, FOOTBALL PARADISE (Mar. 23, 2020, 6:45 PM), <https://www.footballparadise.com/chelsea-vitesse/>.

⁶⁶ *Guardiola shocked by Premier League's physicality*, FOURFOURTWO (Mar. 28, 2020, 8:00 PM), <https://www.fourfourtwo.com/news/guardiola-shocked-premier-leagues-physicality>.

a league that is quite defensive.⁶⁷ So, it makes sense that a club would send the player to a different league if it feels that the player is too young for the division the club is playing in.

Since FIFA has not placed any restrictions on players who have been acquired in the same season being loaned in that particular season; it can be inferred that they do not see this as a problem. But, in our opinion, this practice should be limited to one player per season, i.e., clubs can only loan out one of the players they have acquired in the same season albeit in a different transfer window/registration period. Not regulating this practice might mean that clubs might acquire multiple players and send them out on loan without considering or caring for the footballing interests of those players.

⁶⁷ Theo Rowley, *Does Serie A still fit the traditional Italian Defensive mindset?*, BLEACHER REPORT (Mar. 27, 2020, 2:15 AM), <https://bleacherreport.com/articles/1509489-does-serie-a-stil-fit-the-traditional-italian-defensive-mindset>.