



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

SPORTS DOPING: BANE TO SPORTS JURISPRUDENCE

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Abstract:

Today sports are not just limited to recreational events but have grown into a billion-dollar industry. The industry laden with money depends on the promotions and marketing of sports and the performance of an athlete at times. The athlete either in this lure to shine bright or to make money often opts for the means which are prohibited in sports codes. One such illegal means used by athletes is doping. This article aims to highlight the menace of doping in the Indian sports industry and its impact on the integrity of sports as a whole. Technological advancement has brought new revolutions for detecting such foul play but also has enhanced the probability of failure in detection because of new drugs and steroids which are hard to detect. Thus it becomes imperative to have an effective legal means to cater to the need for maintaining sports integrity. Henceforth this article is an effort to shed some light on the issues of doping in India.

Keywords: Doping, sports, drugs, athletes, law.

I. INTRODUCTION:

Sports have always been a subject of discipline, determination, and integrity. Unfortunately, the ills of doping, match-fixing and corruption have affected the fabric of sports culture across the globe, nationally and internationally. Doping amongst all has been one of the potent threats, impacting the lives and careers of many successful athletes. The word doping generally means the use of a substance or drugs¹ or technique² to improve their athletic performance and that is typically banned in competitive and professional sports. These drugs enhance the performance of the athletes by way of

¹ such as an anabolic steroid or erythropoietin

² Such as blood doping.

either building up their muscles or by way of enhancing their stamina. Consequently, any such malicious approach has implicated the essence of sports.³

Over the years the cases of doping have surfaced significantly and the reasons for the same are either to make some financial gains or to win the contest. Today the scenario of sports has changed significantly. It hasn't remained as a recreational or a leisure event, it has turned out to be a billion-dollar industry with enormous financial flow. In the course of these events, some athletes knowingly or unknowingly indulge in illegal, immoral, and unethical activities in which they think that they aren't going to be caught and could make easy money. Today sports is not just limited to teams and players, it includes many stakeholders from sponsors, managers, advertising agents, promoters, and whatnot. It is with the increase of such stakeholders the tendency to manipulate athletes also increases with the widening playing field for these stakeholders and the chances of sports corruption increase.

It is evident that the sports industry is growing and maturing at a significant pace and with it there is a need for an effective sports governance model. The body like the World Anti-Doping Agency is created to maintain the check and balance over the cons of doping. It is the need of the hour that governance of sports shall be taken as a serious affair to develop and promote sports in a structured way.⁴

II. WHAT CONSTITUTES DOPING?

There is no concise legal definition of doping as such. As per Beckmann's dictionary of sports, doping is defined as the use of performance-improving drugs or substances, which helps sportsmen to be in the superior position that they could have honestly achieved.⁵

It was for the first time in the year 1963, that the European Committee Council had defined doping officially: "Doping includes the use of substances or physiological mediators, which are not normally present in the human body by its own, perhaps introduced as an external aid to increase the athletes' performance during a competition".⁶

It was in the Convention of European Council's Anti-doping meet, "Doping in sports" denoted as an application of doping agents or doping techniques or preventive substances by the sportsmen. The doping technique or the methods or the substance mentioned here are those doping agents that are listed as ineligible substances and that the Anti-Doping Agency has banned.⁷

World Anti-Doping Code 2021 is the main charter that regulates doping. The term Doping has been defined as an "Occurrence of one or more anti-doping rules violation outlined in Art.2.1⁸ of the code"⁹. To establish the charges of doping it is to be detected that the athlete has used any such prohibited substance or have used any such prohibited

³ Rodriguez-Serrano. 'Young athletes' health knowledge system: qualitative analysis of health learning processes in adolescent sportpersons'. Scand J Medical Science Sports. 2018; 28(3).

⁴ Michael Staubel 'The international convention against doping in sport: is it the missing link to USADA being a state actor and WADC coverage of U.S. pro athletes?' (2008) 19 Marquette Sports Law Review 63.

⁵ Beckmann O., 'Sport-Lexikon' Leipzig: Beckmann, 1933.

⁶ Detlief T, Hemmersbach P. 'Doping in sports' Springer; 2010.

⁷ Ibid note 5.

⁸ Athlete's sample containing a prohibited substance, its metabolites, or markers.

⁹ World Anti-Doping Code, 2021

method enumerated in the WADC.¹⁰ The WADA code's Article 4 establishes the list of forbidden substances and methods which if detected in the athlete's body could result in their ban or termination by the authorities provided, such substance in any way, increases the athlete's capacity to perform in the sports or if it is hazardous to the athlete's health or which is against the spirit of sport.¹¹

III. WITH WHOM LIES THE ONUS PROPENDI

Doping is one of the complicated issues where the burden lies on anti-doping agencies or the accused parties to prove that an athlete is under the influence of any illegal drug or has used any illegal method whilst participating in an event.¹² The standard of proof laid in the WADA code can be understood with the words "comfortable satisfaction of the hearing body" where the panels shall be convinced with all the evidential proof for doping assertions and accusations against athletes.¹³

The agency may establish such presumption either by way of the athlete's statement or through dependable third-party testimonies, trustworthy written records, and trustworthy analytical data or by conducting the athlete's blood or urine sample tests.¹⁴ Generally, it is determined only by way of finding metabolite or markers in the body of athletes. Mere allegations cannot withstand as proof. There are very rare instances where athletes confess of commitment to any anti-doping violation.¹⁵

Few countries like Australia, Spain, Austria, and Italy have enacted sports-specific legislation to curb doping menace. It has criminalized doping and any activities that are prevented by the World Anti-Doping Code. On the other in India, doping is still considered professional misconduct where the penalty prescribed is disciplinary in nature.

IV. DOPING IN INDIA:

Doping has become a widespread phenomenon since its inception during the 1982 Asian Games. As the host country, there was a desire to outperform in sports, hence this led to an increase in drug usage. One of the coaches from Bulgaria played an important role in promoting drug abuse by supplying substances to Indian lifters openly. Not just weight lifters but athletes from other sports too were involved in these practices. Major (retd.) Joginder Singh, a member of the training staff mentioned that there was use of drugs by athletes, during the 1982 Asian Games. He jokingly remarked that the athletes achieved record-breaking performances fuelled by doses of banned substances without anyone monitoring them.

Seema Antil, an athlete discus thrower lost her gold medal at the World Junior Championships in 2007 due to a test for pseudoephedrine. Anil Kumar and Neelam Singh, another discus thrower athlete received two-year suspensions after testing positive for Norandrosterone in 2005. Anil Kumar was also barred from competing in the Asian Championship. His bronze medal was also been revoked for the said conduct. Athlete Saurabh Vij was initially banned for two years by NADA for testing positive for Methyl exanilate¹⁶. The decision was later overturned after two weeks allowing him to

¹⁰ World Anti-Doping Code, 2021, Article 2.1.

¹¹ Ibid note 8

¹² World Anti-Doping Code, 202, Article 3.1.

¹³ Ibid note 11.

¹⁴ World Anti-Doping Code, 2021, Article 2.2

¹⁵ Dasgupta L. *'The World Anti-Doping Code: fit for purpose?'*, London: Routledge; 2019.

¹⁶ With its ortho, inductive, and conformational effects, methyl can modify the physicochemical, pharmacodynamic, and pharmacokinetic properties. As a soft metabolic point, it also enhances metabolic stability.

participate in the 2010 Commonwealth Games. In 2011 six female athletes, including three gold medallists from the 4x100 meters relay at the 2010 Commonwealth Games and Asian Games were handed one-year bans by NADA. A major doping scandal unfolded when the Indian Weightlifting Federation suspended 21 weightlifters across championships due to tests, for prohibited substances shocking the nation.

V. CRIMINALISING DOPING: INDIA'S STANDPOINT:

Over the years the cases of doping have upsurged and have led to the major concern without effective legislation in India. Nearly 40,000 athletes have been tested by NADA¹⁷ for Violation of the Anti-Doping Rule since 2009, and 1206 athletes were found guilty of the transgression of NADA anti-doping rules. It's been marked that India has continuously been among the worst offenders of doping according to WADA's reports.¹⁸ Countries that were in the top three list for doping breaches in 2022 were Russia¹⁹, Italy²⁰, and France²¹.

It was for the first time in the year 2009 that an independent organization called the National Anti-Doping Agency was founded concerning the Societies Registration Act, of 1860, to police doping in India. One problem with the doping-related cases of athletes is that it is hard to contest in court and prove the use of drugs because of legal technicalities as the law needs a prove beyond reasonable doubt and what contributes to legal failure is technological advancement as there are no much laboratories which can carry out tests and to determine the use of advanced drugs and methods.

However, the need for doping law was realized and the Department of Sports was recommended to enact anti-doping legislation by the Parliamentary Standing Committee on Sports in 2021 to deal with such doping incidents. Countries like the United States, the United Kingdom, Germany, and Japan, have passed laws governing anti-doping operations conforming to the guidelines of WADA²², which is the main doping governing body across the globe. It is a separate, global organization that was founded in the year 1999. The main goal with which WADA was created, was to harmonize, and organize anti-doping laws for all sports and for nations across the globe. It accomplishes this by guaranteeing the effective application of the World Anti-Doping Code (WADA Code) and its guidelines with due effectiveness and application.

It was in the recent past, that India passed a National Anti-Doping Act in the year 2022. This Act aims to provide a constitution for the National Anti-Doping Agency to ensure the regulation of anti-doping activities in sports. This Act establishes NADA as a statutory body that is responsible for organizing, carrying out, and overseeing anti-doping initiatives as well as looking into rule infractions. This Act also creates a National Anti-Doping Disciplinary Panel to decide the repercussions of breaking anti-doping regulations. This panel will include former athletes, physicians, and legal experts for dealing with doping-related matters.

Furthermore, this legislation gives independence to NADA to ensure its smooth functioning to prevent any external pressure from national sports organizations or agencies, which may influence their judgments or decisions.

¹⁷ National Anti-Doping Agency

¹⁸ WADA (2017) Anti-doping rule violations report. Available at http://www.wada.org/sites/default/files/resources/files/2015_adrvs_report_web_release_0.pdf. Accessed on 21/05/2024.

¹⁹ 144 cases of Anti-Doping Rule Violations.

²⁰ 132 cases of Anti-Doping Rule Violations.

²¹ 114 cases of Anti-Doping Rule Violations.

²² Article 2 of World Anti-Doping Rule.

Henceforth India is still in the budding state of developing comprehensive laws on the subject of sports and it becomes imperative for us to have a strict law and regulations for promoting sports in India.

VI. CONCLUSION:

Sports has always been the epitome of hard work, dedication determination, and talent. However, during its development, this meaning has been lost to an extent with all the possible corruption, politics, and doping scams in the industry.

It has been an evident and undeniable truth that the application of Performance Enhancement Drugs (PEDs) in the sporting domain can have several adverse consequences. It could result in an uneven advantage to the athletes who use PEDs and possess an unfair edge over their rivals who do not use such substances or use any prohibited methods. It can also be dangerous for the health of the athletes, as PEDs can have serious side effects and long-term health consequences. In addition, doping can erode the trust in the integrity of sports and the accomplishments of athletes. Many organizations in addressing the said ongoing issues, have established anti-doping programs that include testing, education, and enforcement measures. Testing involves the use of sophisticated methods to detect banned substances in an athlete's system, while education programs aim to raise awareness about the dangers and consequences of doping. Enforcement measures can include sanctions, such as fines and bans, for athletes who are found to have used PEDs.

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