
CRIMINALIZATION OF DOPING IN SPORTS IN INDIA: AN ANALYSIS

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1. Introduction

India ranks third on the global list of dope-offenders compiled by WADA since the past three years. Sports have always been a source to teach one the basic principles of morality, discipline, and time management. This field has always played a cardinal role in peoples' life. Sports unites the people of the country and brings them under the same platform where they do not exist as people of a different religion but as a people of the same country same soil. However, this noble character of this field has withered away due to some unethical behaviour of the sportsmen, one of them is doping. The offence of doping has deeply affected the roots of this disciplinary field as it has taken away the very nature of this field.

2. Doping: Meaning and Concept

Doping has not been defined properly in any legal document. Rather the content of a "doping" offence is defined by the sports different organizations in their own respective manner. Therefore, the definition of doping generally varies between international sports organizations [1]. The consequence of the hierarchy structure binds the national organization to adopt the definition of doping from the international organizations and set them in their norm, standard, and rules for anti-doping sanctions.

But in layman's language doping is the consumption or use of any performance-enhancing substance (PES) or method which has been categorized as a prohibited substance by WADA (World Anti-Doping Agency). PES leads to an increase in immunity, muscle mass, and strength and helps them to outperform themselves.

The word doping is probably derived from the old Dutch word "dop", which was the name of an alcoholic beverage made of grape skins used by Zulu warriors to enhance their prowess in battle.

Further, the World Anti Doping Agency has given a distinct definition to the word 'doping' in its Article 1, which defined it as "Doping is defined as the occurrence of one or more of the anti-doping rule violations set forth in Article 2.1 through Article 2.10 of the

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Code". Therefore, the definition of doping may differ from organization to organization but the meaning remains the same i.e., consumption of the prohibited substance.

WADA in its code has explained the fundamental rationale to have anti-doping sanctions. According to WADA to preserve "the spirit of sport" it is essential to regulate the anti-doping norms of international, national organizations or event-based organizations. Further to provide equal opportunity to each sportsman to showcase their performance without the consumption of prohibited substance and to provide them level playing grounding the existence of World Anti- Doping Code, 2015 and another anti-doping sanctions are required.

WADA has defined "*The spirit of sport is the celebration of the human spirit, body, and mind, and is reflected in values we find in and through sport, including*

- *Ethics, fair play and honest*
- *Health*
- *Excellence in performance*
- *Character and education*
- *Fun and joy*
- *Teamwork*
- *Dedication and commitment*
- *Respect for rules and laws*
- *Respect for self and other Participants*
- *Courage*
- *Community and solidarity"*

The offence of Doping contravenes this sportsmanship spirit and it violates the equality rights of other participants, which again results in human rights violation as set by the Universal Declaration of Human Rights. Therefore, to give equal rights and for equal protection of the law, it is necessary to make doping as an offence.

3. Role of WADA vis-a-vis Anti-Doping Policy

World Anti Doping agency is an international independent agency established in the year 1999 to promote, monitor, and coordinate the fight against doping in sports in all its form and to preserve the 'spirit of sportsmanship.' In the light of the above objective, WADA formulated the World Anti Doping Code, 2015 which is a core document that harmonizes anti-doping sanctions of all the organizations which are its signatory around the globe. It works in conjunction with [six International Standards which aim to foster consistency among anti-doping organizations in various areas](#): testing; laboratories; Therapeutic Use Exemptions (TUEs); the List of Prohibited Substances and Methods; the protection of privacy and personal information; and Code Compliance by Signatories.

According to the World Anti-Doping Code (Code), an athlete can be shown to have violated the anti-doping provisions:

“When a prohibited substance is detected in the urine or blood sample;

When the athlete uses or attempts to use a prohibited substance or method;

When the athlete tampers with or attempts to tamper with a doping sample.

An athlete's urine or blood can be tested for the presence of a prohibited substance in one of the thirty WADA-accredited laboratories throughout the world”

Article 2 of World Anti Doping Code, 2015 provides for the Anti Doping Rules Violation, which states that under the strict liability principle the presence, possession, use or attempted use of any prohibited substance or its metabolites or markers in the specimen of an individual during In competition and Out Competition Testing would be lead to violation of Anti Doping Rules under this Act. Further, it also provides that the act of evasion or refusing or failing to submit samples or where about will also come under the violation of Anti Doping Rules. A violation occurs with or without the intention of the athlete, for the violation the presence or possession is enough to charge the athlete of a doping offence.

Article 3 of the Code further provides that the burden of establishing is on the Anti- Doping Organization to prove that the Anti Doping Rules Violation (ADRV) has occurred.

The anti-doping test is conducted by the Anti-Doping Organization with the testing authority. The anti-doping test is of two types- In-Competition test and out-of Competition Test. In-Competition test is undertaken in connection with competition event generally, 12 hours prior to the competition, and completes at the end of the competition. While out-of Competition test or Targeted Doping Test is carried out of the competition for the non-approved substance or for anabolic agents and other marking or prohibited substance. The Code provides that the sample can be analyzed only by the WADA accredited or approved laboratory. This is the guidelines which World Anti Doping Agency has set for the testing and investigation of sample and which need to be followed by each signatory of WADA.

4. DOPING AS AN OFFENCE: INDIAN PERSPECTIVE

National Anti Doping Agency (NADA) has been set up in India to regulate and monitor the anti-doping sanctions. On November 24, 2005, it was registered as a society under the Societies Registration Act, 1890. In India, it is the main organ that regulates the functionality of doping-free sports.

In 2017 India has been ranked 7th in World Anti Doping Rules Violation (ADRV) and 5th rank when it comes to Adverse Analytical Findings (AAF). It's an alarming signal for India to make doping as a stringent offence so that we can combat doping offence. Russia has been disqualified for 4 years from the Olympics due to their negligence in combating doping offences. India should get alert from this and make its doping offence hard enough to establish the theory of deterrence for the upcoming offenders. Among the NADOs, India's National Anti-Doping Agency (NADA) recorded 109 ADRVs, the second-highest behind Russia's (127) in the 2015 report. With the increase in the number of doping offenders now the time has come in which we should think to criminalize the offence in India. After having such a good example case Prithvi Shaw's doping case wherein even though he was banned from doping his ban was more for the namesake. If the punishment should be difficult the offenders would have fear in mind before committing it.

Now the current scenario of India is just that doping is an ethical offence the athlete or offender will only be banned for some time that too no stringency will be there in his or her ban. This relaxation is motivating more and more sportsmen to commit the offence of doping for their self-gain or to win the competition. It is against the principle of natural justice as it does not provide fairground to every sportsman to show their performance. Either doping

should be criminalized or it should not be made an offence so that each individual gets equal opportunity to perform. Obviously, the latter option is not suitable for a welfare State like India so we should advocate the principle of criminalization of this offence for the betterment of the society as a whole.

Sport Minnows has always been intimated by their fans, but when some sportsman puts a black spot upon the true spirit of the game people lose interest over it and find sport as more a game of cheat. This not only harms the reputation of sportsmen but result in loss of faith and interest of people over sports. Basically, the reasons for the criminalization of doping offence are that:-

- the stigmatic deterrent principle should be adopted to punish the doping offenders;
- For an alteration of public belief in truth sporting performance.

The question is as WADA makes all guidelines for the regulation of anti-doping sanction why it is not making it a criminal offence. To substantiate this question, WADA answered in one interview that it does not want to interfere with the sovereign right of any state and if any state is intending to make doping as a criminal offence so they should set their own standards to criminalize the offence of doping.

As every offence which has now got criminalize was earlier pondered to make it stringent so that people have fear in their mind before committing it. Bottom states that *'the facts of the prohibition, and citizens' evolving response to it, can influence the development of a new strand of positive morality'* and further he substantiated the example of the offence of drink and driving about which there is now *'substantially greater moral disapproval... then was the case 30 years ago when it was first made a criminal offence.'*

The above statement of Bottom can be taken to make doping also a criminal offence. The incarceration is the best way to establish deterrence in any offence. So we should strive to advocate this principle to bring a rapid and great change in professional sports.

5. Conclusion

The Indian Anti Doping Organization i.e. National Anti-Doping Agency has various challenges recently one of its challenges got solved when BCCI became the signatory of NADA and WADA. It gave a huge to anti-doping organizations as earlier it maintained its

own rules and procedures for framing its own anti-doping regulations by claiming that it is an autonomous body. This was a big issue for NADA as BCCI failed to comply with its testing and investigation in consonance with WADA CODE, thereby resulting in delay and failure to get a proper result.

Another issue is that a doping offence is not taken seriously and is just treated as an ethical offence. Therefore, to combat doping it is necessary to make it criminalized.

Anti-doping Agency is now the heart of professional sports as it takes care of the principle of natural justice, equality, and fair play, which are the key essentials of any sporting activity. People should not deviate the meaning of sports by infiltrating it with unethical offences like anti-doping which not only affects the purity of sports but it also affects the morality of man. Due to rapid increase in this offence, the Anti Doping Agencies have stopped taking a valid excuse also to make it very stringent but WADA can alone not act as Anti Doping Agent unless its signatories support it to endeavour the basic objective of 'the spirit of sports' and to provide a level playing ground to each and every individual. So the countries should adopt anti-doping norms strictly to preserve the basic ideals of sportsmanship.

References:

[1] George Engelbrecht, *Adoption, Recognition and Harmonization of Doping Sanctions Between World Sports Organisations*, 3ff (2000). See generally, C. Prokop, *Die Grenzen Der Doping Verbote* 93 (2000).

[2] See: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2657503/>

[3] <https://www.frontiersin.org/articles/10.3389/fpsyg.2018.01890/full>

[4] See: <https://www.wada-ama.org/sites/default/files/resources/files/wada-2015-world-anti-doping-code.pdf>

[5] See: <https://www.wada-ama.org/en/what-we-do/the-code>; <https://sportsgranny.com/wada-the-code>; <http://www.ciss.org/wadas-fifth-world-conference-on-doping-in-sport>

[6] See: <https://www.antidoping.ch/en/testing/control-procedure/analysis-methods-laboratories>

[7] <https://www.antidoping.ch/en/testing/control-procedure/analysis-methods-laboratories>

[8] See: <https://www.thehindubusinessline.com/news/sports/india-ranks-3rd-for-third-year-in-a-row-in-wada-doping-charts/article9615378.ece#>

[9] <https://www.sportsintegrityinitiative.com/anti-doping-rule-violations-during-the-bcci-domestic-season-2018-19/>

[10] Anshul Kulshrestha, <https://libertatem.in/articles/anti-doping-and-its-current-judicial-scenario-in-india/>