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DOPING: A CONTEMPORARY SPORTS LEGAL ISSUE IN INDIA

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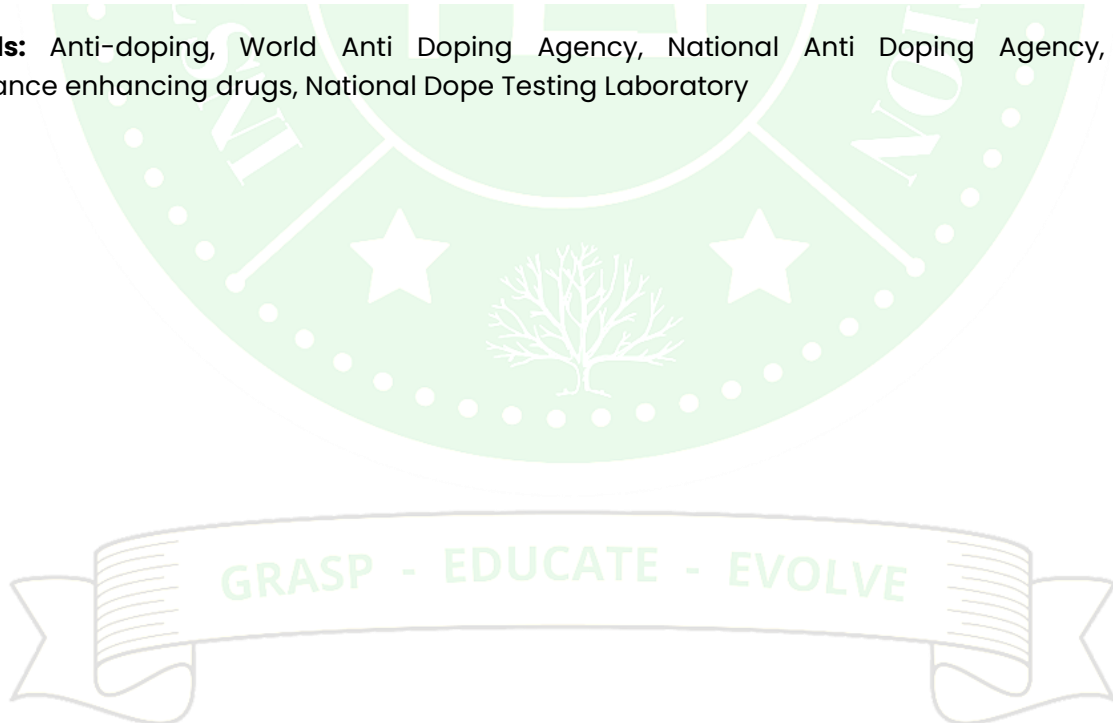
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Abstract

Yathā Hyekena Cakreṇa Na Rathasya Gatirbhavet | Evaṁ Puruṣakāreṇa Vinā Daivaṁ Na Sidhyati ||⁸⁰²

'It means like a chariot cannot move with one wheel, In the same way, destiny also cannot be proved without effort'. The concept of anti-doping is based on the similar thought. As one cannot have a better opportunity over others without hard work by deceitful means. Doping is also an unfair advantage by athletes over other participants in the sports competition. In it prohibited substances are consumed by athletes to enhance their performance during sports competition. Issue of doping is not only limited to a nation's boundary but it has become a global challenge in maintaining the true spirits of sports, ethical values and trust of fans. Doping is not merely a breach of moral or ethical values but it also has some other serious implications also. There are few countries only to have a legislation on anti-doping and India is one of those countries to have a law on practise of doping i.e., The National Anti-Doping Act, 2022. In this article we will discuss available international provisions on anti-doping, the practise of doping in India and along with of provisions of The National Anti-Doping Act, 2022.

Keywords: Anti-doping, World Anti Doping Agency, National Anti Doping Agency, athletes, performance enhancing drugs, National Dope Testing Laboratory



I. Introduction

Doping means use of prohibited substances drugs or methods by athletes⁸⁰³ to enhance their performance by having unfair advantage over other participants in sports competition. These substances are also called as performance enhancing drugs (PEDs) that are used by the athletes to improve their athletic ability in sports.

Use of performance enhancing drugs to win sports is not a concept of modern days but it is a practise from the time of ancient Greek Olympics in 3rd century BC, Greek Olympic athletes were professional who play for glory and to had big cash prizes after winning⁸⁰⁴, like modern day athletes who made sports a battle ground of fame, politics and business.

The International Olympics Committee implemented their first drug testing programme at the 1968 Winter Olympics in Grenoble France but reliable testing for the presence of anabolic steroids had yet to be developed these drugs were not placed on the banned substance list. The International Olympic Committee in 1975 Developed a valid testing for anabolic steroids Then it became the game of police and thief between the IOC and the athletes⁸⁰⁵.

II. Is doping merely an ethical issue or have some serious implications also?⁸⁰⁶

There may be several impacts of doping on sportspersons

Health- it is the main and primary impact on an athlete. It can lead to serious illness like

⁸⁰³ "athlete" means any person who competes in any sport at the national level or international level or participates in any competition, section 2 (d) NADA, 2022

⁸⁰⁴ Bharti Sharma, A Critical Analysis of the Impact of Doping in Sports Domain

⁸⁰⁵ Supra 3

⁸⁰⁶ World squash, Consequences of Doping

cardiovascular disease, Insomnia, blockage of arteries of lungs, sometimes death, dizziness, hormonal imbalance

Joint pains, eye problems, Anxiety, depression, infertility and disturbed menstrual cycle etc.

Tommy Simpson was the first athlete to die Due to performance enhancing drug i.e., methamphetamine⁸⁰⁷

Social - practise of doping can hugely impact the reputation of a person in the society as doping is an offence it will make a person offender, cheater in the eye of people sometimes it feels like abandonment by particular section of the society.

Financial- if an athlete found to had dope, then it will it lead to return of prize money, cancellation of sponsorships, termination of contracts etc

Sanctions- regulatory authority also put sanctions in a form of temporary ban or permanent ban from the sports.

III. International provisions for anti-doping

A. World Anti-Doping Agency⁸⁰⁸- It is an agency with a vision to have sports free of doping practises. It was established in 1999 as an international independent agency to lead a collaborative worldwide movement for doping-free sport.

Its primary role is to develop harmony and coordination related to anti-doping rules and regulations across the world it is basically an organisation which works as watchdog to maintain the integrity of sports.

It has developed World Anti-Doping Code⁸⁰⁹.

⁸⁰⁷ https://en.wikipedia.org/wiki/Death_of_Tom_Simpson accessed on July 31,2023

⁸⁰⁸ <https://www.wada-ama.org/en> accessed on July 31,2023

⁸⁰⁹ https://www.wada-ama.org/sites/default/files/resources/files/2021_wada_code.pdf

According to that's Article 1, Doping is defined as occurrence of one or more of anti-doping rule violations as per the code.

World Anti-Doping Code has Provisions for anti-doping practises, prohibited drugs, methods for performance enhancing etc.

Prohibited substances⁸¹⁰ as per WADA:

There are three categories:

i) Substances prohibited at all times in and out of competition

it includes those substances banned at all times (but not limited to only). Use of these prohibited substances requires a specific medical exemption

Anabolic agents

Peptide Hormones, growth factors, related substances and mimetics

Diuretics and masking agents

beta 2 agonist

Hormone and metabolic modulators

M1 – M2 – M3 Prohibited Methods:

M1 Manipulation of blood and blood components

M2 chemical and physical manipulation

M3 gene and cell doping

ii) substances prohibited in competition- The periodic commencing at 11:59 PM on the day before competition in which athlete is scheduled to participate through to the end of such competition and sample collection process related to such competition

Those substances prohibit only in competition includes but not limited to stimulants, narcotics, glucocorticosteroids

iii) Substances prohibited in particular sports

Beta blockers are prohibited only in certain sports i.e., archery shooting and golf

- Not all substances and methods are mentioned in the prohibited list, a method or substance can be deemed prohibited if it is not correctly approved by any government regulatory health authority for human therapeutic use or it has similar chemical structure
- Any prohibited method of substance can be added to prohibited list if it has potential to enhance sport performance, use of that substance represents or has potential to risk athlete, or use of that substance or magic violet spirits of sports

B. International convention against doping-⁸¹¹It is a multilateral UNESCO Treaty by which states agree to adopt measures to prevent doping in sports. Its main aim to harmonise anti-doping legislation rules regulations internationally to provide uniform fair and equitable environment to all athletes.

IV. Doping in India

India has jumped into second position in the anti-doping violations (ADRV) with 59 instances one place behind Russia as per WADA report 2020⁸¹². WADA started publishing ADRV reports from 2013 and every time India maintained its position among top seven countries. In 1986 for the very first time any Indian athletes tested positive for doping at the Seoul Asian games. India's national doping test laboratory was in suspension and restored in December 2021 by WADA for non-compliance. To solve this issue the parliament has enacted National Anti Doping Act, 2022 and Sports Ministry launched an app i.e., know your medicine it will help

⁸¹¹ <https://en.unesco.org/themes/sport-and-anti-doping/convention> accessed on July,31 2023

⁸¹² K P Mohan, Doping: India is number two in WADA report on anti-doping violations; Russia tops again ,Published on June 1, 2023

⁸¹⁰ WORLD ANTI-DOPING CODE INTERNATIONAL STANDARD PROHIBITED LIST 2023

athletes in differentiating banned substances from routine medicines.⁸¹³

International players are well aware of doping violations and rules but it is important to increase awareness camps, as some of the players may not be that well educated or be able to understand the language of awareness programme. Sometimes they are not aware of prohibited substances in supplements, routine medicines are by negligence or by lack of awareness in tech prohibited substance and tested positive for doping without any fault.

V. National Anti-Doping Act, 2022

The main goal of Act is to maintain high standards of integrity while participating and preparing for sports competition domestically and internationally to regulate anti-doping activities in sports and to meet obligations of India under the international obligations.

Section 2(o) define doping in sport as occurrence of any anti-doping rule violations in the section 4.

- Anti-doping rule violations⁸¹⁴
 - Presence of prohibited substance or its metabolites in athletes body sample beyond decision limit
 - Missed test, as Whereabouts failure by an athlete
 - Any attempt omission or failure described as violation of anti-doping code By World Anti Doping Agency
 - Possession of prohibited substance
 - Traffic or try to traffic prohibited substances
 - Assisting encouraging or abetting violation of anti-doping rule
 - Threatening a person who seeks report of violation

- Consequences of anti-doping rule violations⁸¹⁵

Forfeiture of medals, points, prizes, ineligibility to participate in any competition as decided, provisional suspension, financial sanctions and public disclosure

- Establishment of National Board for Anti-Doping in sports⁸¹⁶

Board shall advise the central government and make recommendations relating to regulating anti-doping spots international obligations and commitments to review the activities of agency towards ensuring compliance with anti-doping any other matter with related to elimination of doping in sports.

- National Anti-Doping Agency⁸¹⁷ it is already existing corporate body before the enactment of Act. It implements the anti-doping programme in India and verb towards promoting clean spot practises across the country it collects a sample, provide anti-doping awareness, research and intelligence.

It also has disciplinary panel, can search and seizure, inspection, necessary action etc

- National Dob Testing Laboratory⁸¹⁸ it is also a prior existing body before the act came into force it is a principal dope testing laboratory established under this act.

Criticism

1. The act is completely based on WADA Code not as per the suitable conditions for India like there is a *strict liability* of athlete even without regarding athlete's fault. Athletes' personal duty to ensure that no prohibited substance enters

⁸¹⁵ Section 6

⁸¹⁶ Section 7

⁸¹⁷ Section 14

⁸¹⁸ Section 26

⁸¹³ Outlook, Doping In Indian Sports Continues Unabated: What Can WADA, NADA Do?

⁸¹⁴ Section 4

their bodies. Presence of prohibited substance or its metabolites or markers in athletes' sample is a sufficient proof.

2. NADA is required to collect details of athletes like gender or sex, medical reports history or their whereabouts information which puts the privacy of athletes at stake because act do not have proper provision to protect their privacy and dignity.

3. There is only one laboratory NDTL for testing which makes difficult to do more testing. Also the credibility of NDTL is not sufficient as it was suspended in 2019

VI. Case Study⁸¹⁹

six Indian athletes who were winner of gold medals in Commonwealth Games, tested positive for the presence of anabolic steroids in their samples taken both in and out of competition. The NDTL confirmed ginseng pills was consumed by athletes that contained prohibited substance. these pills were provided to athletes by their coach it was not disputed whether the pill is given by their coach or not but it is the duty of NADA and NDTL to test all the supplements to be consumed by the athletes. As India has strict liability against doping mere presence of prohibited substance in sample is sufficient proof.

Anti-doping disciplinary panel held that there is no significant negligence and issued a reprimand and suspension for a period of one year from the date of the positive test but NADA and WADA filed second appeal against the decision before the Court of Arbitration for Sports, Luasanne(CAS). The CAS under anti-doping rules of IAF⁸²⁰ and WADC read with NADA Anti-doping rules held that athletes were at fault and issue the full sanction of two years ineligibility for athletes. It is the athletes only

who ended up with huge loss and psychological pressure.

Analysis

NADA didn't take surrounding circumstances into consideration one of the athletes, was a tribal girl who was unable to understand neither Hindi nor English how could she was supposed to know the prohibited substance in the ginseng pill.

VII. Conclusion

There are two kinds of doping practises it may be either intentional or non-intentional. It is intentional when athlete with motive to have unfair advantage or cheating consume prohibited substances or method to enhance his performance ability in the competition. It is not intentional when, consumed by an athlete due to lack of awareness or without any fault. But as the above mentioned there is a strict liability for athletes, it is the non-intentional athletes who becomes victim of the law. There should be increase in awareness or education regarding prohibited substances, anti-doping practises in both English and vernacular languages. It must be mandatory for athletes in their career to have at least 4 to 5 awareness classes regarding anti-doping.

To track anti-doping practises and to prohibit athletes from it to there should be more laboratories to test, it must be cost effective and within the reach of every athlete.

FSSAI Should Mark supplements taken by athletes to be with dope free certification.

Those who are intentional offender of anti-doping there must be strict and stringent punishment for them but after equal, just and fair opportunity to the them to hear.

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⁸²⁰ International Athletes Federation



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