

DE JURE NEXUS LAW JOURNAL

Author:

Srishti Bharti

Symbiosis Law School, Noida

2nd Year, BA LL.B.



DOPING LAWS APPLICABLE IN INDIA

“Doping is the enemy of ambition and hope and when we fight against doping, we are fighting for the future.”

Abstract

Sports form an integral part of our lives and are known for encouraging the values of competition, integrity, and teamwork in our lives. In today's modern world, with the increase in the number of sports, sports athletes, technological principles result in complications that we could have ever imagined. With the increase in competition and expectations from the athletes riding on these sports, winning has become all the more important. Winning medals can be said to be just the start of a sports person's life and career. After the laurels, follow name, fame, huge sums of money as rewards, jobs, and so on. In the race to achieve and excel in the sport, many tend to fall under pressure from various sources ranging from families to coaches, fans to peers. This pushes the athlete to consume banned drugs to equal the expectations and gain an edge over the competitors. This article focuses on the anti-doping laws applicable in India.

Keywords: *Doping, World Anti-Doping Code, National Anti-Doping Agency, Strict Liability*

Introduction

Today doping in sports is nothing new to people. The issue of doping has become a common and regular phenomenon in recent times. It has become a critical issue at all levels of sports competition. It is not only concerned with health issues and life-risking side-effects but also with the moral and ethical values of humanity which affects honesty and team spirit of sports competition which directly affect sportsman spirit and competitions among the athletes around the world.

By definition, doping in sports implies athletes taking illegal substances to improve their performances. Doping is the use of banned drugs, called Performance Enhancing Drugs (PEDs)
Dejurenexus.com

by athletes to enhance sporting performance and stamina. They usually work by causing the body to build more muscles or by limiting muscle fatigue.¹ Though doping seems to be a fancy and quick way to beat the competitors, its long-term side effects cannot be ignored which include heart diseases, respiratory problems, and hormonal issues. The International Olympic Committee regards doping as unlawful and unethical and encourages dope-free sports. It is therefore not permissible in the sporting arena. As a result, World Anti-Doping Agency was established in 1999 to check the menace of doping in sports. WADA is an independent international agency funded by sports organizations and associated countries. It monitors doping in sports based on the World Anti-Doping Code. At the national level, we have the National Anti-Doping Agency (NADA), an independent body under the Union Ministry of Sports which monitors the issue of doping within the country.

1. Deepalakshmi K., The dope on doping in sports, The Hindu (14th August, 2021 11:30 am) <https://www.thehindu.com/sport/other-sports/all-you-need-to-know-about-doping-in-sports/article14511264.ece>

The recent instance of doping involving Rio-bound Indian athletes (Shot putter Inderjit Singh and wrestler Narsingh Yadav) have shown that India is not far behind in the “Doping Games”. There have been various incidences in the past where Indian athletes were involved in the doping scandal. In the year 2000, discus thrower Seema Antil was stripped of her gold medal at the World Junior Championships. Further, she was issued a public warning by the national federation for testing positive for pseudoephedrine. In 2011, NADA handed a one-year ban to six women athletes (Three of them were the 2010 Commonwealth Games and Asian Games 4x400m gold medalists). Mandeep Kaur, Sini Jose, and Ashwini Akkunji were members of the 4x400 relay team who tested positive. Apart from them a long jumper Harikrishnan Muralidharan (Handed one-year ban by NADA) and sprinter Jauna Murmu (Handed two years doping ban by the NADA) also tested positive for doping.²

Doping Laws Applicable in India

In 2005, India ratified the International Convention Against Doping in Sports which was adopted by UNESCO for the effective implementation of the World Anti-Doping Code, and to fulfill the obligations of the ICADS, the Ministry of Youth Affairs and Sports came up with the organization to control doping activities i.e., the National Anti-Doping Agency. NADA was established to implement the Code compliant with anti-doping rules and standards in India. The National Anti-Doping Agency (NADA) formally adopted the World Anti-Doping Code to pursue efforts to eradicate doping in India. It is the organization established by Indian government to possess the primary authority and to adopt and implement anti-doping rules, direct the collection of samples, the management of test results, and conduct investigations at the national level.

The WADA Code has prescribed International Standard for testing and investigations of athletes found to be indulged in doping. It has also laid down detailed procedures to notify athletes, collect samples, conduct tests, and investigate a possible failure to comply with these rules. The principle of strict liability, enshrined in Article 2 of the World Anti-Doping Code, is one of the primary pillars in ascertaining guilt in cases of doping among athletes. Before the codification of this principle in the World Anti-Doping Code, it was widely prevalent, both in

Court of Arbitration for Sport cases as well as the majority of existing anti-doping rules³. The principle is applicable in situations where urine or blood samples collected from an athlete have produced adverse analytical results.

As per this principle, an athlete is responsible for what is detected in his bodily specimens and an anti-doping violation occurs whenever a prohibited substance is found in an athlete's sample. The mere presence of any prohibited substance will give rise to strict liability on the part of the athlete.

Further, the burden and standards of proof in such cases are specified in Article 3 of the WADC. The initial burden of proof to establish the athlete has indulged in doping tendencies is placed upon the relevant anti-doping association which is conducting the tests of prohibited substances.

2. Doping in Indian Sports: A brief history, The Times of India (15th August, 2021 6:30 pm) <http://timesofindia.indiatimes.com/sports/rio-2016-olympics/india-in-olympics-2016/miscellaneous/Doping-in-Indian-sports-A-brief-history/articleshow/53377388.cms>
3. International Olympic Committee Anti-Doping Code (1983) was prevalent prior to the WADA

If an athlete is found guilty of any of the aforementioned violations, sanctions may be imposed under Article 10 of the World Anti-Doping Code. The punishments entailed a range specifically with bans and periods of ineligibility from ongoing or future competitions for a minimum period of 3 months and a maximum of two years for athletes following a positive drug test.

The Code has also set out 10 anti-doping rule violations. If the athlete violates any one or more of these rules, it can lead to an investigation. These rules are applicable when there is a presence of prohibited substance in an athlete's sample, use or attempted use of a prohibited substance or method, refusing to submit to sample collection after being notified, failure to file athlete whereabouts information & missed tests, tampering with any part of the doping control process, possession of a prohibited substance or method, trafficking a prohibited substance or method, administering or attempting to administer a prohibited substance or method to an athlete, complicity in an Anti-Doping Rule Violation, prohibited association with sanctioned Athlete Support Personnel.⁴

According to WADA sanctions, punishment for doping may range from a reprimand to a lifetime ban. The period of the ban varies according to the type of anti-doping violation, the situation of an individual's case, the substance, and the possible repetition of an anti-doping rule violation. However, the decision to strip the medal lies with the respective sports organization.

Criticism of Strict Liability Principle and Uniformity of Laws

Nevertheless, the principle of strict liability has been criticized for ruining the careers of many athletes, who were not necessarily maliciously involved in doping. The principle creates a power imbalance between the World Anti-Doping Agency and athletes, by automatically creating a negative presumption upon the latter. An alternative suggested by the experts expects to shift the burden from the athletes, by allowing pharmaceutical officials and experts to testify

in cases to clarify the probability that a doping violation has been committed with the intent to enhance the athlete's performance.

Although the Code is supposed to be applied uniformly, there is a large deviation that occurs in the execution of the code, enforcement is largely the responsibility of the International Federations and the National Anti-Doping Organizations. However, every organization is responsible for testing the athletes at any competition it holds and organizes, for example, the IOC is supposed to test the athletes in the Olympic competition. It is hence, a duty for the Court of Arbitration of Sports and the WADA body to bring in uniformity and conformity with the WADA code.

4. Deepalakshmi, *supra note 1*
5. Drugs in sport: Wada doubles doping ban in new code, BBC (15th August, 2021 7:30) <http://www.bbc.com/sport/24955873>

“This is not just about elite Olympic athletes, but about every child on a playground who has an Olympic dream....”

Conclusion

While going through the rules and regulations to encourage anti-doping practices, I realized that there is a lack of uniform laws for doping as national laws often conflict and some countries have strict laws while others have lenient laws as some countries have made doping a criminal offense while others just put fines as punishment or ban the athlete.

Now, it's time for India to pass such a law that would deter the athletes and their coaches from involving themselves in such activities. Sports and games should be played with true sportsman spirit because the goal of the Olympic Games and Movement was to contribute to building a peaceful and better world by educating the youth through the sport played without discrimination of any kind and in the Olympic spirit. This also requires mutual understanding with a spirit of friendship, solidarity, and fair play.⁶ Thus, it's high time that we work to remove this menace of doping from the sporting arena by passing a strict law followed by strict implementation.

The primary step to prevent these unfair competitive practices is to spread awareness among the young and aspiring athletes and also among the seniors. Campaigns should be organized to spread more awareness. The coaches and the trainers should not put pressurize athletes of winning as sometimes the coaches and the trainers, themselves provide drugs to athletes for performance enhancement.

Testing should be done properly and efficiently. The laboratory performing doping testing should be provided with advanced machines and techniques. Healthy and hygienic food and facilities should be provided to athletes during their tours at different places so that they don't try to indulge in doping to enhance performance. A uniform law should be made which makes

Dejurenexus.com

doping a criminal offense and strict punishments should be awarded to athletes who indulge in this unfair act. For sports to exist as we know, ensuring vigilance is paramount otherwise the modern-day sports industry will become a commercialized product, bereft of fairness, and competitive spirit and strict liability will surely play a vital role in that part.

A huge number of drugs and methods have been used in doping for sports performance enhancement. It is prevalent in sports competitions at all levels and almost all methods are deleterious to the athlete's health in some manner. Tackling issues at the grassroots level, coaches encouraging fair play and honesty amongst the athletes, effective monitoring and tackling of doping activities by the sports federations can help reach the aspiring athletes and promote healthy participation.

*“The sad thing about doping is how much it obscures our appreciation of greatness.”
- Malcolm Gladwell*



6. Promote Olympism in Society, Olympic (15th August, 2021 7:35 pm) <https://www.olympic.org/the-ioc/promote-olympism>

De Jure Nexus

LAW JOURNAL