

## **DRUGS IN SPORTS AND RIGHT TO HEALTH: AN INDIAN PERSPECTIVE**

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### **1. INTRODUCTION**

Despite India's best efforts, the country has been ranked third on the global doping charts for the past three years running, starting in 2019. Rules and regulations for elite sports must be logically formulated and applied fairly across countries. Doping regulations in India have been the subject of much discussion, drawing attention to the disarray in the country's sports administration.

Images of syringes in stadium restrooms have been ubiquitous for decades. Competitions in remote regions of India don't have anti-doping officers present, and if they were, the number of people who fail tests would be far higher. Even if professional athletes have gotten away with doping in the past, amateurs at all levels are putting their health at danger by trying it out in the hopes of landing a job or making the national team.<sup>1</sup>

Aiming to promote clean sport, the World Anti-Doping Agency has created and is implementing harmonised regulations under the “World Anti-Doping Code, 2021”. The anti-doping experience varies from country to country because WADA depends mostly on National Anti-Doping Organizations to execute the Code. The existing framework, according to some academics, has an outsized effect on athletes hailing from underdeveloped nations. By examining fundamental problems with the Code's implementation in one such country—India—this essay adds to this discussion.

The recent suspension of the “National Dope-Testing Laboratory”, a string of false positive tests, allegations of substantial procedural and substantive errors by domestic tribunals, and challenges to access to justice have all cast doubt on the legitimacy of anti-doping in India. Doping is rampant in India, and the country's anti-doping efforts need a closer look in light of the growing number of scandals and calls for change. It is clear that there is a need for more international cooperation in the fight against doping as India isn't following the Code's requirements and isn't up to par with other jurisdictions' "best practice" standards.

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<sup>1</sup> Yuji Takazawa, 'Relationship Between the Level of Willingness to Learn About Anti-Doping and Objective Knowledge Among Japanese University Athletes: A Cross-Sectional Study' (2022) 4 FRONTIERS IN SPORTS AND ACTIVE LIVING 54-68.

## 2. ANALYSIS

### 2.1 Concept of Doping in sports

Substance administration to an animal or human with the purpose of altering their performance in a sporting event is known as doping. In 1889, the word "doping" appeared in an English dictionary for the very first time. "Dope" originally referred to a mixture of opium and other medicines used to "dope" horses. The Zulu warriors supposedly dubbed the spirit "doop" in Afrikaans or Dutch, but it was actually made from grape leftovers and was used as a "stimulant" during religious ceremonies and conflicts. A more generalized use of the term "dope" to describe various drinks with intoxicating effects emerged later on. The term first used in English Turf Sport in reference to the doping of race horses around the year 1900. It is said that competitors in the Ancient Olympics used figs as a performance enhancer, which is the first evidence of doping in sports. Many sportsmen started experimenting with chemical mixtures in the 19th century, when modern pharmacology was only beginning, in an effort to gain strength and overcome exhaustion. Doping, then, might be thought of as the use of a chemical to boost energy levels, with the ultimate goal of improving athletic performance. The issue of doping affects every continent. How common is doping in athletic competitions is an inherently difficult question to answer. However, anywhere between fourteen percent and thirty-nine percent of athletes knowingly use performance-enhancing drugs. So, the discovered athletes are just the most visible part of a much larger problem. Doping is still a major issue in Indian sports, generally speaking. The most concerning thing is that India is not far behind Russia and Italy on the doping list. As a result, the Indian government is continually holding anti-doping awareness workshops for coaches and athletes around the country and is planning to set up a number of regional anti-doping centers.<sup>2</sup>

With 225 positive cases out of 4,004 samples, India topped the list for the first time, according to the WADA's December 2019 Anti-Doping Testing Statistics Report. When it came to defaults, athletics was among the worst. Several studies have shown that doping was done for financial gain, to be in the spotlight, and to get the best possible results. Friends, coaches, sponsors, or even relatives may encourage them to do this. Similarly, how athletes feel about doping is influenced by the social and cultural milieu in which they participate. Even within the same sport and similar setting, attitudes regarding doping vary by gender. A lack of comprehension of the perspectives of athletes, coaches, and mentors is a big worry in various domains pertaining to doping, particularly at the grassroots level. This ignorance is a big reason why people in India are getting positive results from doping.

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<sup>2</sup> Ulrich Haas and Deborah Healey, *Doping in Sport and the Law* 41-52 (Bloomsbury Publishing 2016).

There are several factors that make doping attractive in India, but the country's weakness in addressing the issue is also due in large part to political influence and a lack of a robust governance system. Instances like these are frequently disregarded by various governing bodies and sports authorities at various levels. This is because these organizations typically demand top performances from athletes in order to attract more sponsors and investors to their respective sports. In India, people view games only as forms of amusement, without giving any thought to how they actually work. After the athletes are taken into custody, there is a lack of ongoing discussion on a national level, and as a result, sports governing bodies are not under much pressure to establish a robust anti-doping policy. New laws and approaches to combat doping will undoubtedly be implemented by these agencies in response to public awareness and demand.

## **2.2. Right to health and drug abuse: Indian Perspective**

Opium was first grown in India in the tenth century. The cultivation and manufacturing, rather than consumption, of opium were regulated by the Opium Acts (1867 and 1878) during the colonial era. In response to rising nationalist sentiment in the 1920s, some provincial governments passed legislation restricting opium use. In 1930, Congress passed the Dangerous Drugs Act. The purpose of this was to regulate the production, distribution, sale, possession, trade, and transaction of narcotics. There were no penalties for using cannabis or other plant-based drugs under the act, which mainly dealt with narcotics made from hemp, coca, and poppy. Licensing and punishing unlicensed activity were the main means of control. To control medications, particularly those made from opium and cannabis, the “Drugs and Cosmetics Act passed in 1940”.

"The State shall endeavor to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and drugs which are injurious to health," reads “Article 47 of the Indian Constitution, further solidifying the prohibitionist sentiment even in the post-independence era”. In addition to this, India has been a signatory to three UN treaties pertaining to drug use: the “Single Convention on Narcotic Drugs (1961), the Convention on Psychotropic Substances (1971), and the Convention against Illicit Traffic in NDPS (1988)”. In 1985, India enacted and executed the NDPS Act to fulfill its responsibilities under these treaties. It superseded the 1930 Dangerous Drugs Act and the Opium Acts. Nonetheless, the DCA of 1940 is still in effect.

The act addresses three main types of drugs and substances: (1) narcotic drugs, (2) psychotropic substances, and (3) controlled substances used in their production, including precursor chemicals like ephedrine and pseudoephedrine. The first two types of drugs and substances are defined by the 1961 Convention and the 1971 Convention, respectively. The 1961 Convention exempts the cannabis-leaf product bhang from the

act, and the excise laws of the individual states are the primary means of regulation for this substance in India. All activities related to psychotropics and narcotics are strictly forbidden by the NDPS Act, with the exception of certain medical and scientific research. It is essentially a punitive statute. On the other hand, it gives the government the authority to legalize drug-related activities for "medicinal or scientific use."<sup>3</sup>

There have been three amendments to the NDPS Act thus far. Death penalty for specific repeat offenses, minimum ten years in jail for specific offenses, bail limitation, and trial by special courts are some of the harsher and more severe rules that resulted from the 1989 amendment. A sentencing system that takes into account the offender's "small," "intermediate," or "commercial" quantity was included in an amendment in 2001. Ultimately, the most recent revision occurred in 2014 and encompassed numerous changes, such as "(a) the establishment of a new category called essential narcotics drugs to standardizedly regulate specific essential narcotics nationwide, (b) an expansion of the law's purpose to encourage medicinal and scientific use of drugs in order to strike a balance between drug control and availability, (c) the introduction of the terms management and recognition and approval of treatment centers to enable the establishment of evidence-based treatment approaches, and (d) the revision of the death penalty to a discretionary measure, among numerous others." Regardless, the act necessitates revision in a number of places. The death penalty, inequitable cooperation among government agencies, the criminalization of drug use and consumption, and the act's reliance on quantity-based sentencing (which renders the offender's motives and role irrelevant) are among the most significant points of criticism.

SUDs are now considered mental illnesses under the Mental Health Care Act of 2017. Many have praised the act for the way it prioritizes people's rights. The act safeguards individuals struggling with addiction from mental health facilities that engage in harsh and inhumane treatment. To that end, state mental health review boards conduct regular evaluations and mandate that all mental health facilities be registered. In addition, the inclusion highlights the fact that SUDs are health issues, not only difficulties with law and order. There are certain negative aspects of MHCA concerning SUDs, notwithstanding these positive developments. It makes use of words like "abuse," which are no longer utilized in the existing taxonomies. When seen collectively, SUDs constitute a singular entity. Both the scope and severity of substance use disorders are not well defined. The MHCA 2017 guarantees various rights to mentally ill people in addition to protection from harsh and humiliating treatment. This is important because substance use disorder treatments often leads to human rights violations and inhumane treatment.

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<sup>3</sup> Ibid.

NADA tests athletes in India, and the National Dope Testing Laboratory (NDTL) in New Delhi analyzes samples for illegal substances. Each authorized testing facility must meet Article 4.4 of the International Standard for Laboratories (ISL). These regulations promote a standardized and unified testing system, regardless of the test location, and their compliance is necessary for labs to produce correct results. Lack of compliance with the ISL and technical documents led to NDTL's WADA certification suspension in August 2019.

Athletes provided 4,004 samples in 2019, increasing gradually. Testing dropped significantly in 2020 due to the COVID-19 pandemic in most jurisdictions. That year, 1,186 tests were taken. This is not surprising considering that (1) India was under a nationwide lockdown for a significant portion of 2020 and (2) the NDTL was suspended during this time, necessitating the expensive outsourcing of all dope tests to foreign laboratories. The rate of athletes returning a positive Adverse Analytical Finding (AAF) is substantially greater than other countries, and it has been increasing recently, due to the comparatively low testing levels. Both 2019 and 2020 saw a significantly higher-than-average percentage of athletes testing positive for AAF, at 5.6% and 4.6%, respectively.

Regarding ADRV disputes in India, the “Anti-Doping Disciplinary Panel (ADDP) has been established to hear appeals from the Anti-Doping Appeal Panel (ADAP), and cases involving international events or athletes can be appealed to the Court of Arbitration for Sport (CAS) following an appeal to ADAP”. Instead of going through the local hearing process, an athlete competing at the international level might ask for a single hearing before CAS, with the approval of WADA and NADA.

The hearing of an athlete's claimed ADRV is plagued by systemic flaws in certain first-instance tribunals. The stakes are quite high for athletes accused of an ADRV, and this is especially true in hearings in India, where there have been complaints about access to justice, substantial errors allegedly committed by the ADDP, and substantial delays in hearings.<sup>4</sup>

False conclusions have been leveled against the ADDP. When 'a panel copied-pasted a paragraph from an earlier decision,' Rajaraman claims that the ADDP "mixed up cases," even though the previous ruling did not pertain to the current case. According to Mohan, the ADDP and ADAP routinely impose 4-year bans on athletes who tested positive to certain substances while competing. This is in contrast to the standard 2-year maximum ineligibility period that occurs when an athlete tests positive for an ADRV, unless NADA can establish that the athlete deliberately consumed the prohibited substance for performance-enhancing

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<sup>4</sup> Anna Qvarfordt, 'Anti-doping - A Legitimate Effort? Elite Athletes' Perspectives on Policy and Practice' (2019) 22 Research Gate 36-45.

purposes. The panels appeared to agree with NADA's contentions that the athlete's failure to disclose the use of certain supplements or medications on their doping control form proved their will to cheat. Experts in the field have pointed out "glaring disparities" in the rule-interpreting processes in India and other countries, and they have suggested that WADA "hold workshops and seminars for the benefit of those who determine the fate of athletes" to address these issues.

The Code establishes minimum procedural guarantees, such as the following: the right to legal representation; the right to an accessible and affordable hearing procedure; the right to a fair, unbiased, and independent hearing; and the right to the prompt resolution of disputes. On the other hand, some have contended that first-instance hearings in less developed nations may be more prone to violating these procedural safeguards. The fact that nations like the UK, Australia, and New Zealand have continuously improved their sports conflict resolution processes is proof of this, as is the fact that India has done nothing along these lines.

Despite athletes' entitlement to self-insured legal representation, many athletes face barriers to justice in anti-doping cases due to the high cost of legal representation, expert testimony, and laboratory testing. Problems with access to justice, however, tend to be more severe in underdeveloped nations. Looking at the decisions that the ADDP has made public reveals that a lot of athletes don't have anyone representing them at the first instance.

Not only is this troubling in and of itself, but observers have also claimed that first-instance proceedings in India are plagued by systematic problems with delay and access to justice. Even though many athletes have the option to appeal to the CAS, Indian sportsmen seldom make use of this ability. Out of 1,206 ADRVs in India, the CAS has only heard the cases of fourteen athletes. With the exception of one case, WADA took its case to the CAS for review. "The fact that only one Indian athlete has ever appealed their case to the CAS may in itself be prima face evidence of access to justice issues in the anti-doping dispute resolution framework," according to earlier arguments.

"A fair hearing within a reasonable time" is an athlete's right, and first-instance tribunals are required to adhere to tight deadlines under the ISRM. Time constraints were likewise included in all earlier iterations of the NADA Rules. Article 8 of the NADA Rules, 2015, for example, established a 45-day window for the panel's formation and the hearing, and a 90-day window for the written decisions.<sup>5</sup>

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<sup>5</sup> Scott Atkinson and Ivan Waddington, *Drugs and Doping in Sport* 96-108 (Routledge 2013).



Athletes in India have frequently voiced their dissatisfaction with the lengthy delays in the hearing process and other aspects of results handling due to the frequent disregard for such deadlines. It took almost a thousand days for the ADDP to reach a first-instance decision in the case of NADA v. Anil Kumar (2012), which included a tested athlete. A banned substance was detected in the athlete's system during a selection trial for the 2010 World Cup Kabaddi on 20 March 2010. The first-instance tribunal finally reached a ruling on 27 December 2012. In an odd twist, the athlete did not learn who would be serving on the panel until 30 November 2012, a full 2.5 years after receiving notification of the B sample analysis results (14 May 2010). The ADDP has not provided any explanation for the lengthy delay in making a decision.

### 3. CONCLUSION

The proper application of anti-doping rules is crucial for the promotion of clean and fair sports in India, as well as globally. The aforementioned regulations serve as more than mere legal frameworks, as they provide the moral and ethical bedrock upon which the integrity of sports is built. In this concluding discourse, we engage in introspection over the necessity of anti-doping regulations in India and its significant ramifications on the realm of sports, the welfare of athletes, and the essence of genuine rivalry.

Fundamentally, anti-doping legislation serve as a witness to the commitment towards upholding integrity within the realm of sports. The fundamental concept of sportsmanship is rooted in the principle that athletes engage in competition under fair and equitable conditions, without the use of artificial aids or benefits. The utilization of performance-enhancing chemicals or practices by athletes results in the distortion of a fair and equitable playing field, hence undermining the fundamental essence of competitive sports.

To safeguard sports integrity, India and other nations battle doping beyond medals and championships. The preservation of victories, appreciation of human accomplishments, and assurance that athletes succeed or fail based on commitment, preparation, and innate skill, not drugs. Anti-doping regulations safeguard the spirit.

Anti-doping policies defend athletes' health and ethics. Athletic competitions ban anabolic steroids, stimulants, including peptide hormones, which may create long-term health issues. These drugs for athletic performance may result in cardiovascular complications, hepatic impairment, hormone abnormalities, psychological troubles, and death.

Sports are popular in India, thus athletes' physical and emotional wellbeing must be considered. Anti-doping laws safeguard athletes from quick fixes and illegal procedures that could harm their health. Sports enthusiasts who commit themselves to athletic pursuits are known to advocate for the enhancement of their overall well-being and extended lifespan.

The implementation of anti-doping legislation plays a crucial role in preserving the fundamental principle of equal opportunity within the realm of sports. In an equitable and morally upright athletic milieu, achievement ought to be ascertained based on an athlete's inherent talents, unwavering commitment, and diligent efforts. When an athlete engages in the use of performance-enhancing substances, they get an inequitable edge over athletes who adhere to anti-doping regulations, so disrupting the equilibrium of competition.