

CRIMINALISATION OF DOPING IN SPORTS IN INDIA

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ABSTRACT

The research paper is related to criminalization of doping in sports in India at the international level. Doping in sports refers to the use of prohibited substances or methods by athletes in order to enhance their performance. This practice is considered unethical and against the spirit of fair play in sports. Currently the punishment for doping is a ban from the sport and various fine depending on the volume of the violation. The National Anti-Doping Act, 2022 is the primary legislation for this paper. The article emphasizes on the importance of sports on the Indian society and economy as a whole. The issues argued included how punishments should be made more severe to International athletes who engage in doping and that if India can handle the criminalisation of doping considering the consequences of criminalisation. Both benefits and consequences of criminalisation were contended. Ultimately the paper takes into account criminal law, sports law and employs a doctrinal research methodology to help ascertain whether the two issues can be solved.

Keywords: Criminalisation, Doping, Criminal law, Sports law, National Anti-Doping Act, 2022

INTRODUCTION

Doping in sports in India refers to the use of prohibited substances or methods by athletes to enhance their performance. This practice is considered unethical and can have detrimental effects on an athlete's health and career. In India, doping is currently not a criminal offense, but it is strictly regulated by the National Anti-Doping Agency (NADA). Doping has become a prevalent issue in Indian sports, particularly in disciplines like weightlifting, athletics, and powerlifting. According to the World Anti-Doping Agency (WADA), India has consistently ranked among the top countries in terms of doping violations. In 2020, India recorded 59 doping violations, placing

it second only to Russia. Several factors contribute to the prevalence of doping in Indian sports. Some of them include:

1) Intense pressure to succeed: Athletes often face immense pressure to perform well, especially at the national and international levels. This pressure can lead them to resort to doping to gain an unfair advantage.

2) Lack of adequate resources for anti-doping measures: NADA, the national anti-doping body, faces resource constraints in conducting comprehensive doping tests and implementing effective anti-doping programs.

3) Inadequate awareness about doping: Athletes and coaches may not be fully aware of the risks and consequences of doping, making them more susceptible to engaging in the practice.

4) Weak enforcement mechanisms: The lack of criminalization of doping in India may make it easier for athletes to evade serious consequences for doping offenses.

Doping is caused by varied reasons and it may differ from person to person. It is important to note that doping is a complex issue and there is no single solution. However, a combination of measures, including testing, education, penalties, and criminalization, can help to deter doping and protect the health and rights of athletes.

RESEARCH QUESTIONS

There are two major research questions that are being addressed in this study namely:

1) Whether criminalisation of doping in India is feasible or not?

2) Whether the current legislation relating to punishments for doping in sports at the national and international level is to be made more stringent?

ARGUMENTS FOR CRIMINALISATION OF DOPING IN INDIA

Sports are an integral part of the Indian economy and sports persons are a source of inspiration for people all over the world. Doping among sportsmen hence would depict a wrongful to the people. Criminalization would send a strong message that doping is not tolerated and that there will be serious consequences for athletes who engage in the practice. This could help to deter athletes from doping in the first place. The action of doping undermines the public's trust in sports and their values of sportsmanship and fair play. Criminalization would help to uphold the integrity of sports and ensure that competitions are fair. India is a leading sports nation, and criminalizing doping would send a strong message to the world that India is committed to clean sport. This could help to deter doping in other countries and promote a more level playing field for athletes around the world. Clean athletes have the right to compete on a level playing field and to know that their opponents are not doping. Criminalization would help to protect the rights of clean athletes by making it more difficult for athletes to dope and by deterring the supply of doping substances and services. Criminalization would make it more difficult for athletes to obtain doping substances and services. This could help to reduce the supply of doping substances and services, which would make it more difficult for athletes to dope. It is important to note that criminalization of doping may in some sense be a panacea. However, it could be a useful tool in the fight against doping. By deterring doping by athletes, protecting the health of athletes, preserving the integrity of sports, sending a strong message to the world, deterring the supply of doping substances and services, and protecting the rights of clean athletes, criminalization of doping could help to create a more level playing field for athletes and promote clean sport in India.¹

ARGUMENTS AGAINST CRIMINALISATION

Criminalisation of doping in sports may have certain benefits but also has various backlogs at the same time. A major issue would be that It would create an unnecessary burden on the criminal justice system. Doping is already a violation of anti-doping rules and regulations, and there are already established penalties in place. Criminalizing doping would add an extra layer of complexity and bureaucracy to the process, and it would divert resources away from other

¹ <https://thewire.in/law/criminalising-doping-sports>

priorities. It would increase the risk of athletes facing criminal penalties for minor doping offenses. The criminal justice system is designed to deal with serious crimes, not minor offenses. Criminalizing doping would mean that athletes could face criminal penalties for even minor infractions, such as taking a contaminated supplement. This could have a devastating impact on an athlete's career and livelihood. It could lead to more athletes doping in secret. If athletes know that they could face criminal penalties for doping, they may be more likely to dope in secret. This would make it more difficult to detect and deter doping, and it could also put athletes at greater risk of health complications. It would be difficult to enforce. It can be difficult to prove that an athlete has intentionally doped, and there are many potential loopholes in any anti-doping law. This could make it difficult to enforce criminal laws against doping, and it could also lead to selective enforcement. It would be counterproductive. The goal of anti-doping measures is to promote clean sport and protect the health of athletes. Criminalizing doping could have the opposite effect, by creating an environment where athletes are more likely to dope in secret and where they are at greater risk of health complications. It is not necessary. There are already effective anti-doping measures in place, and there is no evidence that criminalizing doping would be more effective. Criminalizing doping would also be a disproportionate response to the problem, and it would have a number of unintended consequences.

In conclusion, there are a number of strong arguments against criminalizing doping in sports. Criminalizing doping could lead to more athletes doping in secret, be difficult to enforce, and be counterproductive. Hence it is important to note these drawbacks of criminalisation and analyze whether the drawbacks outweigh the benefits or vice versa and take action to criminalize or not accordingly.

CRIMINAL LAW ASPECT AND RELEVANT LEGISLATIONS

To prove if an act is a criminal act or not certain factors that cause that act should be taken into consideration. The Consequentialist theory by Jeremy Bentham emphasizes that the morality of an act is based on the positive or negative consequences that are caused by the act. In the same way doping in sports is a form of use of performance enhancing drugs to boost one's game performance. It is in no way a positive consequence as it undermines the meaning and agenda of

sport. A sport is to be played in all fair means with the personal hardwork and talent of athletes. Doping is a serious issue as it questions the morality of hardwork and perseverance. In the same manner the harm principle is one such concept that can heavily influence the need for criminalisation of doping in sports.

In criminal law, the harm principle is used to justify the punishment of individuals who have committed crimes that have harmed others. The question of whether the principle is applicable to those who engage in doping is essential as those who do commit an act of using performance enhancing drugs do have an advantage over those who do not. This brings about the question of whether legalizing doping could be plausible. However legalizing doping would lead to various bigger issues such as excessive abuse of drugs to enhance performance and it proves ethics and talent to be futile. For example: Imagining a world where doping is legalized. This would mean that athletes would start using performance enhancing drugs more regularly. There may be certain athletes who feel that using these drugs are ethically wrong but however if they participate in the same sport of those who did use these drugs then those doping would have an unfair advantage. Thus causing harm to those who do not use these drugs. This however is not the reality but the reality lies in the restrictive punishments. The punishments for doping currently is a ban from the respective sport for a period of time or a lifetime ban depending on severity of consequences and a particular fine again depending on the severity of consequences. Therefore the harm principle can be applied to the scenario of doping in sports as it enforces on harm on not only the competitors of the person who uses the drugs but what the various sports persons represents. Some represent their countries while some represent a smaller segment such as a state or just a team. However the highest level of representation is the country. Hence it is a form of betraying one's country by using illegal means to win a game. Whether or not doping at the national level can be considered as treason depends on the specific laws of the country in question.

Treason is a crime that typically involves betraying one's country or acting against its interests. Doping at the national level could be considered treason if it is seen as an act that undermines the country's reputation or its ability to compete in international sporting events. For example, if a country's athletes are caught doping at a major international sporting event, it could damage the country's reputation and make it more difficult for its athletes to be successful in future

competitions. In this sense, doping at the national level could be seen as an act of treason against the country.

However, it is important to note that not all countries have laws that define doping as treason. In India, doping is simply considered a violation of anti-doping rules and regulations. Athletes who dope may face disciplinary action from their sports federation, but they are not likely to be charged with treason. However, this is the issue at hand as the athlete who is representing the country is responsible towards helping a country participate in good faith and fair play in that particular sport. Anything done against the rules of the sport depicts that specific athlete affecting not only those who are connected to the sport but also the countries that are participating in that sport. Hence the penalty should be more severe than what it is currently in India.

INDIAN SPORTS DOPING CASES

There are a variety of cases of doping by Indian athletes in various sports. Some instances are as follows:

- 1) In 2016, weightlifter Sanjita Chanu was stripped of her silver medal at the Rio Olympics after she tested positive for a banned substance.
- 2) In 2018, wrestler Narsingh Yadav was banned for four years by the World Anti-Doping Agency (WADA) after he tested positive for methandienone.
- 3) In 2019, sprinter Dutee Chand was suspended for 21 days by the Athletics Integrity Unit (AIU) for violating hyperandrogenism regulations.
- 4) In 2020, sprinter Dharambir Singh was banned for four years by the AIU after he tested positive for stanozolol.
- 5) In 2022, weightlifter Ragala Venkat Rahul was banned for four years by the National Anti-Doping Agency (NADA) after he tested positive for drostanolone.

These are the various athletes that have engaged in performance enhancing drugs over the years. As per the WADA's 2020 report India was just behind Russia in the largest number of doping violations.² Keeping this in mind the National Anti-Doping Bill, 2022 was passed.

COUNTRIES THAT ARE BENEFITTING FROM CRIMINALISATION OF DOPING

A number of countries have benefited from criminalizing doping in sports. These countries include:

France: France criminalized doping in 2006, and since then, the country has seen a significant decrease in doping violations. In 2005, there were 146 doping violations recorded in France. By 2019, that number had fallen to 38. Following France various other countries like Italy, Spain, Portugal, Greece have criminalized the act and ever since doing so they have seen a significant decrease in doping in the field of sports.

SPORTS AND LAW AN IMPORTANT FACTOR IN INDIAN ECONOMY

Sports in a major part of the Indian economy. People look up to sportsperson in India today. Even in the early 1980s and 90s the citizens of the country appreciated the country's sports accolades. The cricket world cup in 1983 is a perfect example of this. The country's economy and importance to the sport of cricket had increased immensely. As time passed other sports along with cricket had athletes who brought glory to the nation. Sports are a form of emotion for the country now and the country appreciates everyone who represents India at the national level and succeeds in their respective sports. Sports and law are important factors in the Indian economy. Sports can contribute to the economy in a number of ways such as

Direct economic impact: Sports generate revenue through ticket sales, merchandise sales, sponsorships, and television broadcasting rights. For example, the Indian Premier League (IPL)

² <https://sportstar.thehindu.com/other-sports/wada-anti-doping-violations-ranking-india-second-russia-tops-list-nada-regulations-sports-prone-to-drug-use/article66920083.ece>

is one of the most valuable sporting leagues in the world, and it generated an estimated ₹11,000 crore in revenue in 2022.

Indirect economic impact: Sports also generate indirect economic benefits through increased tourism, job creation, and infrastructure development. For example, the Commonwealth Games 2010 in Delhi are estimated to have generated an indirect economic impact of ₹100,000 crore.

Social and cultural impact: Sports also have a positive social and cultural impact, which can lead to economic benefits. For example, sports can help to promote national unity and pride, and they can also inspire young people to participate in physical activity.

Law plays an important role in supporting the sports industry by providing a framework for regulating and protecting the interests of all stakeholders, including athletes, coaches, spectators, and sponsors. For example, sports law can be used to:

Protect the rights of athletes: Sports law can be used to protect the rights of athletes, such as their right to fair pay, their right to safe working conditions, and their right to be treated with dignity and respect. Other factors include Promote the development of sports, Resolve dispute, ensure fair competition.

Overall, sports and law are important factors in the Indian economy. Sports can contribute to the economy by generating revenue, creating jobs, and promoting national unity and pride. Law plays an important role in supporting the sports industry by providing a framework for regulating and protecting the interests of all stakeholders. Hence violation of sports laws can lead to drastic consequences.

CONCLUSION

The two issues can hence be concluded after taking into consideration of various factors including the criminal law aspect of harm principle, strict liability and violation of moral ethics of sportspersons and athletes that do go against the values of the sport and their own country

hence they can be charged with treason for betraying the country. Criminalisation of doping in India is to be made feasible as the benefits of criminalization outweigh the current punishments. It can also be stated that currently the doping cases are not decreasing. India is currently among the top 3 doping violators in sports and this issue needs to be mended in the right manner. The second issue involves the current legislative system being too lenient by just banning an international athlete from a particular sport. The laws need to be made more stringent as these violations affect not only India but countries all around the world in the sports sector. Hence criminalisation of doping in India is the way forward.

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³ <https://www.outlookindia.com/sports/doping-in-indian-sports-continues-unabated-what-can-wada-nada-do--news-211932>