

INTRODUCTION:

An opinion has been sought by the Ministry of Youth Affairs and Sports on the viability of enacting a legislation to criminalize doping in India.

ISSUES:

1. Who are the various stakeholders under an anti-doping regime?
2. What are the fallacies that are present in the current anti-doping regime?
3. What are the various international models in relation to the criminalization of doping?
4. What is the view on the minutes of the Consultation Meeting on Drafting an Anti-Doping Legislation: Doping as a Criminal Offence held on 27.04.2017.
5. Should doping be criminalized in India?



OPINION:

1. Who are the various stakeholders under an anti-doping regime?

- 1.1 In order to ascertain the viability of enacting a legislation to criminalize doping, one must identify and ascertain the responsibilities of the various stakeholders under the present anti-doping regime:
- a. **Ministry of Youth Affairs and Sports:** It has the responsibility of maintaining and improving India's position and reputation through clean participation and performance in sporting competitions across the world.
 - b. **Ministry of Health:** It has the responsibility of promoting healthy lifestyle and ensuring that athletes do not harm their health by using prohibited substances.
 - c. **Ministry of AYUSH:** It has the responsibility of promoting healthy lifestyle and ensuring that ayurvedic products do not contain prohibited substances or carry clear warning in respect of the same.
 - d. **National Anti-Doping Agency (NADA):** It has the responsibility of ensuring compliance with WADA Code and implementing the anti-doping programme in India. Further, it has the responsibility of ensuring that athletes, coaches and support staff are made aware about the rules and procedures mentioned under the national anti-doping code.
 - e. **National Anti-Doping Laboratory:** It has the responsibility of ensuring that the testing of samples is done as per international standards provided by WADA.
 - f. **National Core Group Athletes:** They have the responsibility of being aware of the rules and procedures mentioned under the anti-doping code, including informing NADA about their whereabouts.
 - g. **Young Athletes:** They are usually unaware of the rules and procedures mentioned under the anti-doping code and can be pressurized by internal and external factors to take prohibited substances. Hence, they are the most vulnerable to the ill-effects of doping.
 - h. **Coaches and Support Staff:** They have a responsibility to ensure that they do not possess themselves and/or provide the athlete with any prohibited substances. They must also assist in ensuring that the athletes do not take any prohibited substances.
 - i. **Medical Doctors:** They have a responsibility of ensuring that they do not prescribe any prohibited substances to athletes and/or educate the athletes about Therapeutic Use Exemptions (TUEs).
 - j. **National Sports Federations:** They have a responsibility of ensuring that the sport under their domain is played in a clean and fair manner.

- k. **Sports Administrators and Eminent Sports Persons:** They have the responsibility of serving as role models to young athletes. They also have a responsibility of ensuring that the sporting structures developed by them do not promote doping.
- l. **Physical Education Teachers in Schools:** They have the responsibility of ensuring that young athletes are aware about the anti-doping rules. They must also promote the concept of fair play.
- m. **Lawyers:** They have the responsibility of ensuring adequate legal representation to athletes and educating athletes about the legal implications of doping.
- n. **Dope Control Officers:** They have the responsibility of ensuring that the sample collection takes place in the manner prescribed by WADA and the educate / assist the athletes on how to fill a doping control form.
- o. **Chemists:** They have a responsibility of ensuring that they do not provide any prohibited substances to athletes. Further, they must require athletes to furnish a prescription for purchase of any kind of drugs.
- p. **Sports Journalists:** They have the responsibility of ensuring that they do not breach an athlete's privacy and also ensure widespread education of anti-doping rules in simple terms.

**SPORTS LAW &
MANAGEMENT**

2. What are the fallacies that are present in the current anti-doping regime?

2.1 The fallacies of the current anti-doping regime can be summarized as follows:

- a. **Illiteracy:** The athletes, coaches and persons involved with sports in India are still largely unaware of anti-doping programmes. The level of awareness largely varies from complete lack of knowledge to knowing that doping is harmful to the athlete's career and health. Only a few persons have substantial knowledge about anti-doping, i.e. information about prohibited substances and processes, the supplements and foods that need to be avoided, the method to apply for a therapeutic use exemption, legal avenues available to them in the event of an adverse analytical finding amongst others. Major proportions of our athletes are from the rural India and are illiterate. Being from poor households they do not possess the requisite skill to understand hefty rules and regulations.
- b. **Manner of providing education:** It has been observed that the education about anti-doping in sports is not provided effectively and adequately. There is no strict attendance process in place for ensuring that athletes attend any education camps, which often leads to athletes missing such events. Also, it is imperative to deliver any education with regard to anti-doping in simple terms rather than delivering complex lectures.
- c. **Lack of ability to spread awareness:** NADA is largely involved in the role of policing the anti-doping code without adequately fulfilling its positive duties i.e. of providing anti-doping education. This is the most important duty which it has failed to perform on several occasions. Mere detection and deterrence are not enough and education of an athlete is an essential part of the fight against doping. Deterrence can be successful only if the athletes are educated. The anti-doping code and the list of prohibited substances are unavailable in vernacular languages. This hinders efforts of making the stakeholders aware about requirements and obligations under the anti-doping code.
- d. **Inadvertent commission:** Whilst the NADA rules do not differentiate between intentional and inadvertent doping, it has been noticed that a significant number of such offences occur due to the athletes inadvertently ingesting a substance, due to lack of awareness about the prohibited substances, without any intention of enhancing performance. During any injury or illness, it is a common practice amongst the athletes to stop by a local druggist and ask for a general drug for their disease without realizing that it may be against their anti-doping obligations.
- e. **Unaware doctors:** Athletes often turn to their doctors for doping or anti-doping questions. However, it is observed that medical doctors have very little knowledge of the anti-doping regime and the general medical practitioner who is likely to be consulted needs to be imparted with the knowledge of anti-doping menaces and the lists of prohibited substances. Due to lack of proper information the doctors fail to give sound advice which ultimately affect the athlete. There have been several cases wherein the doctors have prescribed prohibited substances to the athletes, due to being unaware of the list of prohibited substances and/or such doctors being unaware of the need to apply for TUEs.
- f. **Psychological issues like moments of weakness:** Athletes face a number of external and internal factors. Aspects such as the financial uncertainty, familial pressure, pressure from coaches, expectation etc. play a significant factor in affecting an athlete's performance. Such aspects may also lead to the

athlete doping. Athletes require access to counsellors, psychologists to help them deal with such pressures.

- g. **Weak structures:** Even after the verbatim adoption of the WADA Code, 2015 and awareness programmes and education campaigns, NADA has been unable to implement the anti-doping code as it should have been implemented. One of the reasons for this is that the national sports federations are unable to perform their obligations and fulfill their duties which they owe to the athletes of the nation, such as providing adequate information regarding the list of prohibited substances, procedure to apply for a Therapeutic Use Exemption, the correct manner to fill up a doping control form, etc.
- h. **Dope test procedures:** It has been observed that athletes are completely unaware of the dope testing procedures. They do not understand basics like things to mention in the “declaration of medication use and blood transfusion” column in the doping control form.
- i. **The ‘One glove fits all’ approach:** Instead of providing targeted and relevant information, depending upon the group to whom the information is being given, it has been noticed that the same information (in the same mode and manner) is provided to different stakeholders, which leads to the essential information not being able to reach the stakeholder. The manner in which the information is disseminated should be different for different stakeholders.
- j. **Shortage of medical personnel with knowledge of prohibited substances:** It has been noticed that the strength of medical personnel which is currently aware of the anti-doping regime is not enough to cater to the needs of the athletes and coaches in our country. Athletes are unable to find suitable medical personnel to consult while taking a particular medicine in times of emergency and they end up violating their anti-doping obligation.

3. What are the various international models in relation to the criminalization of doping?

Internationally, **WADA** gave a statement in 2015,¹ wherein WADA opposed criminalization of doping for athletes but encouraged governments to penalize persons who traffic, distribute prohibited substances and provide the same to athletes. Despite this, several countries have enacted legislations to criminalize doping.

One method to criminalize doping is to book the offender for 'fraud', as athletes obtain money, facilities etc. by using prohibited methods. **Austria** has introduced a sport specific fraud section under its criminal laws, which provides that a fraud caused by using a substance or method prohibited under the European Anti-Doping Convention is liable for imprisonment up to 3 years. In the event that the damage caused by the use of prohibited substance or method exceeds €50,000, the maximum imprisonment can increase to ten years.

Another method to combat the menace of doping is to introduce a specific legislation criminalizing doping. In **Italy**, doping and related offences are criminalized through a specific legislation. These include criminalizing of athletes and support personnel procuring, administering, consuming (or even encouraging the use of) prohibited substances, with the aim of improving an athlete's competitive performance or to modify the results of an anti-doping test. The legislation also tackles illegal suppliers who trade in prohibited substances outside of the official distribution channels.

Similarly, **Germany** has introduced an anti-doping law in 2016 to cover all sporting events taking place in Germany. The German act differentiates between illegal handling of drugs and self-doping by athletes. The act qualifies a number of actions related to doping (e.g. production, trade, administration, possession of more than a minor quantity of doping substances) as punishable with imprisonment sentences of up to three years. Those who provide the substances can face sentences of up to 10 years when specific enumerated qualifications are present. The athletes using prohibited substances who are covered under this scope are only "elite athletes", i.e. athletes that are members of an anti-doping testing pool, which provides for mandatory tests also during training, and/or if they generate substantial income from such sports. However, this act has been criticized widely and there have been doubts expressed regarding the constitutionality of such an act. Critics have called the law unconstitutional because it fails to identify a legitimate governmental interest for criminal sanctions and its regulations violate the principle of proportionality.

Furthermore, several countries have also criminalized the trade and distribution of doping products. These countries include **Italy**, **Netherlands**, **Germany** and **France**.

¹ <https://www.wada-ama.org/en/media/news/2015-10/wada-statement-on-the-criminalization-of-doping-in-sport>

4. What is the view on the minutes of the Consultation Meeting on Drafting an Anti-Doping Legislation: Doping as a Criminal Offence held on 27.04.2017?

The Minutes of the meeting have been studied in detail and various aspects of what was discussed have been extracted and a comment on the same is provided below:

4.1 *Intentional Doping:*

- a. The word 'intention' has not been defined in the WADA Code, 2015 with clarity. The definition is rather vague and ambiguous. There are no strict parameters to judge what maybe termed as intentional or unintentional doping. The adjudicators must go through several international cases (jurisprudence) to understand the same and accordingly determine the punishment.
- b. Doping usually occurs due to temptation, which maybe in form of influence from a peer, or because of a moment of weakness wherein one is unable to deal with failure. In both cases awareness on harmful effects of doping and the punishment of being convicted for a doping offence must be provided at the grassroots level.
- c. If intention is determined, efforts must also be made to understand the psychological reasons behind the athletes commission of a doping offence and efforts must be made to change such mindset of the athlete. Reformatory measures should be made before convicting an athlete of a criminal offence.
- d. There must be widespread education on the health hazards of doping, just like those done for tobacco. Statutory warnings to be issued, pictorial representations (posters) to be put up at all state and national sports centres.

4.2 *Unintentional Doping*

- a. Education is the key to prevent cases of unintentional doping:
 - (i) Education with regards to the sources of prohibited substance: medicines, hakims, Ayurveda, pain relieving gels, foods, etc.
 - (ii) Therapeutic Use Exemption: Athletes and support personnel should be made aware about the need and the method to apply for TUEs prior to taking any medicine. The medical personnel should be made aware about the need to explain to the athletes about when and how they must apply for a TUE.
 - (iii) Prohibited list: Athletes, support personnel, medical personnel need to be made aware about the constituents of the prohibited list. This information should be made available in vernacular languages.
 - (iv) Whereabouts failures: Athletes must be made aware about the requirement to provide NADA with information about their whereabouts.
 - (v) Chain of custody: NADA and Dope Control officers must ensure that they follow the chain of custody as provided under the anti-doping rules, so as to remove possibilities of contamination.
 - (vi) Sabotage: Athletes and their support personnel must be made aware about the requirement of ensuring that the substances (food, drink, medicines etc.) are not sabotaged by another person.

4.3 *Athlete Support Personnel*

- a. Awareness programs for doctors, physiotherapists, trainers, lawyers, etc. Educate them of the liability under 2.9 (Complicity) of the WADA Code.
- b. Doctors to be aware of what medicines must be prescribed and whether or not TUE is required. They must also be aware of what is prohibited in-competition and what is prohibited out of competition.
- c. Physiotherapist to be aware that even anti-inflammatory gels can cause a doping violation.
- d. Trainers to be prohibited from prescribing any supplements until absolutely certain about contents and to share liability with athlete if such substance is found to contain prohibited substances.
- e. Lawyers assisting athletes to be aware of the WADA, NADA codes and all international standards, to be able to advise and assist athletes on rules relevant to them in a simplified manner.
- f. Case Study – in the case of Subrata Paul – the AIFF doctor for the Indian National Football team prescribed Ascoril.
 - a. Ascoril is of three types: One for expectorant cough and the other for non-expectorant cough. Subrata's condition written on the prescription was cough without expectoration. While, an Ascoril Expectorant contains prohibited substance (terbutaline), the other forms of Ascoril, do not. The doctor should have been careful to the extent that the type of Ascoril to be taken by Subrata should have been specifically told to him and in the event that form of Ascoril contained banned substance, the doctor should have advised him to apply for a TUE. In this case, the liability is more of the Doctor. In such a case as Subrata, can we make the Doctor liable for a criminal offence? Therefore, awareness of athlete support personnel is of utmost importance.

4.4 *Anti-Doping Programs*

- a. Responsibility on NADA for conducting anti-doping awareness programs on a monthly basis in different SAI centres and at other locations.
- b. Attendance to be made compulsory and records to be maintained through a computerized software and/or fingerprint scanners, which may not be tampered with.

4.5 *SAI Centres:*

- a. Cameras to be put in place and ensured that they are functional at all times, to avoid another Narsingh theory to spring up.
- b. Posters with pictorial representations and simple bullet points in vernacular languages to be put up.

4.6 *Over the Counter Drugs:*

- a. Awareness not just to doctors, but even to chemists is a necessity, to avoid cases like Sachin Choudhary, a Paralympian who was encouraged to take DHEA (a prohibited substance) by a chemist.
- b. Forms shall be introduced at chemist shops, which enable athlete to fill forms before purchasing any drugs.

4.7 *Supplements:*

- a. Labels shall be in vernacular languages or translation apps / softwares shall be made for commonly used substances.

4.8 ***Scientists:***

- a. Scientific tests and studies to be put in place for various supplements and their health effects (benefits and side-effects).

4.9 ***Anti-Doping Disciplinary Panel / Anti-Doping Appeal Panel:***

- a. Timely disposal of cases.
- b. Panel to be educated on anti-doping rules and criteria for reduction in sentence.
- c. CAS case studies and jurisprudence to be taken into account to determine intention.



5. Should doping be criminalized in India?

Having taken into account all of the abovementioned points, drafting a bill to criminalize doping and inviting comments on the same is a step in the right direction, however, India still has to go a long way before enacting any such legislation.

It is evident that the athletes, coaches and support personnel are still unaware about the key provisions of the anti-doping code and the prohibited substances. This being the case, a legislation criminalizing doping at the present time would lead to a number of athletes being potentially sentenced to imprisonment. This would be counterproductive to the Indian hopes of performing well in the upcoming international tournaments, such as the 2020 Olympics, 2022 Asian Games, and the Hon'ble Prime Minister's call to achieve sporting excellence by means of setting-up task forces for the 2024 and 2028 Olympic Games.

While the legislature deliberates on passing a bill on criminalizing doping, the stakeholders must ensure that the following steps are taken prior to the enactment of the anti-doping legislation:

- a. *India has become home to several privately owned leagues. Most of these leagues are run in collaboration with the National Sports Federation. The Commercial Rights and Sanction Agreement signed between the league owner and the national sports federation, must obligate a league owner to conduct anti-doping camps and also bind the franchisee owners by the such obligations. Privatization is possibly the best and the fastest way to spread anti-doping awareness and curtail the menace of doping.*
- b. Introduction of forms for athletes at chemist shops, which require the athletes to fill basics with regard to the reason for them purchasing any drug. This can help determine the intention.
- c. Information regarding the anti-doping code and the prohibited list must be made available in at least ten to twelve vernacular languages. Such information should be in simplified terms and not a mere translation of the anti-doping code.
- d. Information regarding the anti-doping code should be disseminated in a fun manner. This may be through quizzes, with the winner/ persons scoring high points getting incentives such as gifts.
- e. Information dissemination and education regarding the anti-doping code and the prohibited substances should be increased. Doping education should form a part of the core education that an athlete is given when the athlete undertakes training whether it be under the aegis of Sports Authority of India, National Sport Federation, National Institute of Sports, academies, clubs. It should be made compulsory for athletes to attend these sessions and understand the anti-doping programme.
- f. In order to increase effectiveness, anti-doping programmes must be made multimodal (e.g. within the school, sports community and family environment).
- g. It is very important that the general medical practitioners, who are likely to be consulted by athletes, are made aware of the anti-doping menaces and the lists of prohibited substances.

- h. Anti-doping education should be targeted primarily at youth levels. School education may include some instructions on anti-doping in general and a special course for all school children participating in competitive sports containing information on anti-doping code and prohibited list in detail.
- i. We need to consider the economic reality, cultural diversity and the level of education of the Indian athletes, coaches and support personnel when providing education. It has been noticed that the seminars conducted by NADA are listless and boring. One way to overcome the same is to use audiovisual aids in such classes/ presentations.
- j. Athletes should be aware of how doping tests are done. It has been found that the athletes, coaches and support personnel are largely unaware of this system and how it works. Therefore, it must be ensured that each of seminar/conference includes a practical, simple and effective demonstration of how the entire process works.
- k. It is recommended that a dedicated 24 hour phone helpline should be set up for providing consultation to the athletes and coaches on the anti-doping programme which shall guide them on which substance they may consume and which they should not. The athletes should be able to call at any time of the day or night and inquire about a particular drug and its effects on their obligation under the NADA Rules, 2015.
- l. It is recommended that an online portal be set up for disseminating information about anti-doping. Such portal should have an interface which allows the user to put in the commercial name of the drug and the feedback should clarify whether the drug is banned in competition and/or out of competition or is a prohibited substance or not. SAI should have designated computer terminals at prominent points in their campuses which shall allow athletes to access such portal, and dedicated employees to guide the athletes on the same.
- m. It is very important to have interactive one on one sessions with athletes, coaches and support staff so that the problems and the issues faced by them can be addressed.
- n. Athletes returning to competitions after long spells should be required to attend three to six months' training in a rehabilitation centre, which should have state of art sports and medical facilities, with mandatory sessions with counsellors and psychologists.
- o. Athletes should be made to partake in activities, other than their sport, in order to develop a sense of fair play in them whilst also ensuring that they learn to resist the temptation to cheat.
- p. While WADA prescribes extreme caution whilst using any supplements², a recommended list of nutrients needed by athletes may be prescribed in order to assist the athletes. However, it should be ensured that such a list should caution the athletes about supplement use and that they should consult with the team doctors prior to any such use. Further, the athletes should be encouraged from a young age to consume natural proteins like eggs, meat, soya, etc. rather than consuming supplements for

² <https://www.wada-ama.org/en/questions-answers/dietary-and-nutritional-supplements>

instant energy / strength. In addition, a laboratory should be identified, besides the NDTL, for the commercial testing of supplements.

- q. Athletes and athlete support personnel must be educated on the whereabouts failures, chain of custody, protection given to whistleblowers and their international standards.
- r. There must be a change in the one-glove fits all approach – eg. children and athletes need to be taught differently. Doctors and athletes need different kinds of information at their disposal.
- s. It is recommended that posters and banners be put up in prominent places which shall attract the players and help in spreading awareness about the harmful effects of doping. Graphic representation in posters of the prohibited substance if commonly available as a standalone form and procedure/processes
- t. Certain star athletes, including retired athletes, should be invited to promote and champion the anti-doping movement in the country. Advertisements on various channels, newspapers should be displayed prominently.
- u. Monthly state-wise seminars on anti-doping should be conducted. Co-ordination with SAI/NIS/NSF/Schools/Colleges/Services should be developed on holding such seminars and conferences on anti-doping.
- v. Booklets and pamphlets should be printed and distributed. These should contain the name of the prohibited substances and their common brand names. The translation of the anti-doping booklet should also be available in local languages.
- w. Ministry of AYUSH should collaborate with NADA to ensure that medicines containing prohibited substances contain clear indication regarding the same. Further, one should ensure that an adequate supply of ayurvedic supplements, which have been tested for prohibited substances, is maintained for the athletes.
- x. National Sports Promotion Organization (NSPO) status must only be granted to organizations once they fulfil certain obligations with regard to education on anti-doping.