

DOPING LAW REGIME AND ITS TUSSLE WITH HUMAN RIGHTS: WITHIN THE ARRAY OF ASIAN COUNTRIES

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ABSTRACT

“Competitive sport begins where healthy sport ends” – Bertolt Brecht

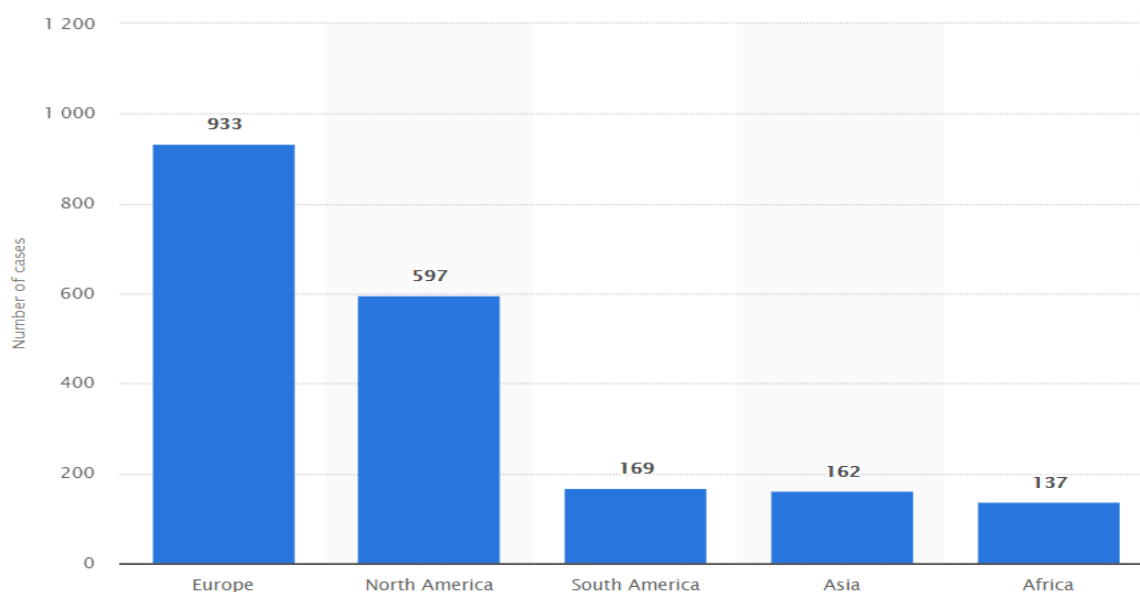
Doping has been seen as a global issue in terms of modern sports. With a brief insight into doping and its history, the paper builds on the three ideals of policy. Global and regional bodies like WADA, SERADO and NADA are analyzed with its development in Asian countries. Followed by a base with existing literature review, the research gap is highlighted. Three major countries: China, India and Japan are taken up and their comparative review on anti-doping policies is sought. Factors like detectability window, pool of responsibility, doping regime, test predictability and sensitivity is discussed. Extensive abuse of fundamental violations of athletes' and their rights are examined. With an aim to supplement or supplant the doctrinal research, empirical research is conducted by taking input from the society at large. After scrutinizing the issues and void, the paper provides for suggestion and recommendations. Although anti-doping laws are not seen from the angle of human rights of athletes, this paper tries to provide an inter-disciplinary approach between the two domains.

Keywords: SERADO, human rights, athletes, doping, prohibited substances

INTRODUCTION

The term doping is derived from the root word ‘dop’ which conventionally implied stimulant drink used by tribals in the 18th century in the regions of South Africaⁱ. Doping means the misuse of certain substances and method to enhance sporting performance and stamina. These substances usually end up transporting more oxygen to the muscles, thus enhancing one’s performance. Doping is not merely a current global issue as it has been prevalent since the 1930sⁱⁱ. Although in the 1930s, the isolation of steroids was either a hit or miss practice; the growth boomed towards the late 1930s with high profile doping scandals with skilled athletes indulging in doping activities and dying in the middle of competitions. In modern sports, doping seems to conflict with the principles of fairness, spirit of equality, morality and ethicsⁱⁱⁱ. Doping dates back to the 3rd century BC when sportsmen used herbal contents like wine, halogen mushrooms, animal parts and brandy as dopes during the Greek Olympics.

Figure 1: Number of doping cases in international sports between 2000 and 2010, by world region



Methamphetamine tablets given to army men during the World War II, eventually were provided to cyclists in the 1950s to overcome fatigue in multi stage competitions as a substitute for cocaine. Anabolic steroids acting as natural antigens in form of testosterone helps that individual dominate the field track. Apart from the conventional drugs and substances, the

WADA has recognised gene doping in 2008 whereby modification of genetic elements to enlarge performance is considered a form of doping. Anti-doping laws rest on 3 ideals: fairness, health of athletes and spirit of sports. With widening of the sports arena, the athlete's rights need to be protected in majorly 4 categories^{iv}:

1. Human Rights
2. Fundamental Procedural Guarantee of Criminal Law
3. Private Law Protection of Personality Rights
4. Rights based on Competition Law

Human right violations traverse rights of athletes on a number of instances considering the doping laws: Consent to medical intervention (informed and free consent); right to privacy in light of communication of records, medical records in terms of blood and urine samples; storing test samples with the concept of 'Athlete Biological Passports'; right to a fair trial without being merely held liable on scientific and medical report; right to dignity and integrity in terms of lack of control over sensitive data; media freedom and data protection^v. The UN Guiding Principles, Human Rights Council and UN High Commission has time and again highlighted the gap of human rights in sports law.

Anti-doping policies first received acknowledgment through the IAAF's initiative in the 1920s. Internationally, the domain stresses on authorities to decide and declare a prohibited list of substances, its usage and methods amounting to doping. In 1928 the first association of International Association of Athlete Federation came about^{vi}. The World Anti-Doping Agency (WADA) was established in 1999 with an aim to promote, coordinate, monitor and fight against the drug use in sports. Considering the increase in doping activities, a regional Organisation in Asia was established recently in 2006 called Southeast Asia Regional Anti-Doping Organisation (SEARADO). UNESCO in 2005 organized an International Convention against Doping in Sports. Apart from international organisations and authorities, National Anti-Doping Authorities (NADA) have been set up with an aim to supplement the international policies, rules, implementations and spreading awareness.

Figure 2 (below) : International Standards

The code, at present, adheres and conjuncts to six International Standards –

- The International Standard for Testing and Investigations (ISTI) – These standards deal with the planning of effective testing procedures and maintaining the integrity or identity of the samples. Additionally, they encompass guidelines from notifying the athlete to the handling and transportation of samples for testing.
- The International Standard for Laboratories (ISL) – This standard ensures proper and valid testing results by specifying the criteria that need to be met by the testing laboratories to achieve and maintain valid accreditation by the organization.
- The International Standard for Therapeutic Use Exemptions (ISTUE) – This standard lays down the conditions and procedures that an athlete needs to follow and fulfill in order to be granted an exemption for the presence of the prohibited drug from the prohibited list in their system as “therapeutic use exemption”.
- The International Standard for the Prohibited List (The List) - These standard deals with the substances or the methods that are prohibited in and out of competitions and is classified into different categories. For example, steroids, stimulants, gene doping etc.
- The International Standard for the Protection of Privacy and Personal Information (ISPPPI) – These standards deal with ensuring the appropriate protection of privacy and personnel data of the athletes while dealing with the organizations and people in relation to anti-doping laws and policies.
- The International Standard for Code Compliance by Signatories (ISCCS) – This standard ensures and monitors the compliance of the code by all its signatories. It ensures the harmonious acceptance of the code by all countries to boost the confidence of athletes in fair sports competitions.

Two more International Standards came force from 1st January 2021 along with the new World Anti-Doping Code 2021 –

- The International Standard for Education (ISE)
- The International Standard for Results Management (ISRM)

LITERATURE REVIEW & RESEARCH GAP

Sr. No.	Existing Literature	Literature Review	Research Gap
1.	Athletes' Rights under the World Anti-Doping Code: A Legitimate Public Interest? – Daniel Goldsworthy	The paper deals with transcending doping activities in sports domain under the umbrella of the strict liability offences. With the World Anti-Doping Agency labelling offences regardless of the athlete's intent has raised issues restricting human rights. This domain has challenged whether they can be morally justified where legitimate social interest outweighs the rights of the individuals. While analysing the contemporary issues, the article analysis the Code and its conformity with international human right standard.	Despite considering the new trends, the author falls short to assess the backdrop progress made in terms of a vision for Drug free sports. The human rights are viewed in a restrictive sense of strict liability violations, rather than on a wide horizon. For instance, violations in terms of fair trial, data protection, media freedom and right to health.
2.	10 Years of Drug Policy in Asia: How Far have We Come? – Claudia Stoicescu	Keeping the global drug control commitments as a backdrop, the report develops on regional policy frameworks in Asia in pursuit of a drug free ASEAN. Highlighting the Article 36 of Political Declaration, the report assesses the progress made in Asia in context of protecting human rights, maintaining peace and security and advancing development.	With a lucid backdrop and timeline progress, the author does not consider the classical positions of doping and the anti-doping systems in light of probability and cost analysis. It creates a vacuum in determining the pool of responsibility, the window of detection, test sensitivity and the predictability of testing.

3.	Doping and Anti-doping in sport in China: An Analysis of Recent and Present Attitudes and Actions – Fan Hong	Doping in modern sports is viewed in the nation of China with its historical influence. The constant drug abuse escalated, the paper outlines the Chinese government's policies and sport authorities' practices. Drug in sports is viewed as a political, moral, educational, medical, social, economic and cultural issue.	The article neglects athletes' way of perceiving their responsibilities and possibilities in nexus to the regulations for anti-doping. The potential threat to an athlete's integrity with the evolving concept of 'Athlete Biological Passports' remains in the grey area.
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OBJECTIVES OF THE RESEARCH

The aim of conducting this research is:

1. To highlight the development in terms of Asia's initiatives and movements for fair and true sports
2. To provide a comparative analysis of the anti-doping policies in Asian Countries typically China, India and Japan
3. To analyze the issues in nexus to doping in terms of countering it
4. To identify the human right violations and issues such as pool of responsibility, window of detection, testing sensitivity and predictability
5. To recommend solutions to bridge the gap between human rights and anti-doping policies

CAUGHT IN NET

Anti-doping law and its enforcement requires extensive resources, informal and formal support from state and non-state actors along with international cooperation. The policy fails short in portraying who exactly are they trying to catch and hold accountable. The broad strokes of fairness, spirit and health only justify exhaustive list of banned substances and do not address the enhancement or intent behind it^{vii}. The 3 ideals often contradict the proportionality principle for awarding punishment. If the laws attain arbitrary hindsight, they will place immense burden

on the athletes. While on one hand taking supplements in form of steroids is banned, Tiger Woods was allowed to proceed with an eye laser surgery to enhance his vision^{viii}. This highlights the difficulty to categories and justify while retaining the stakeholders. A key issue is that sport authorities governing the anti-doping policies hold a monopolistic quasi-public position when it comes to athletes under their jurisdiction. Spotlight in sports becomes a hazard as it often leads to overzealous prosecution^{ix}. Doping law transcends contract law and arbitration therefore athletes cannot claim relief from domestic courts for procedural protection. International players include: IOC, International Sports Federation, National Olympic committees, National Sports Governing Bodies. SEARADO was established by NOCs and governments of Asian countries. Its primary responsibilities include assisting NADA member countries in their region with WADA Code, ensuring they establish Testing Programme and education while building capacity within states and stakeholders^x.

Figure 3: Southeast Asia Regional Anti-Doping Organisation Action Timeline to Counter Doping in Asia

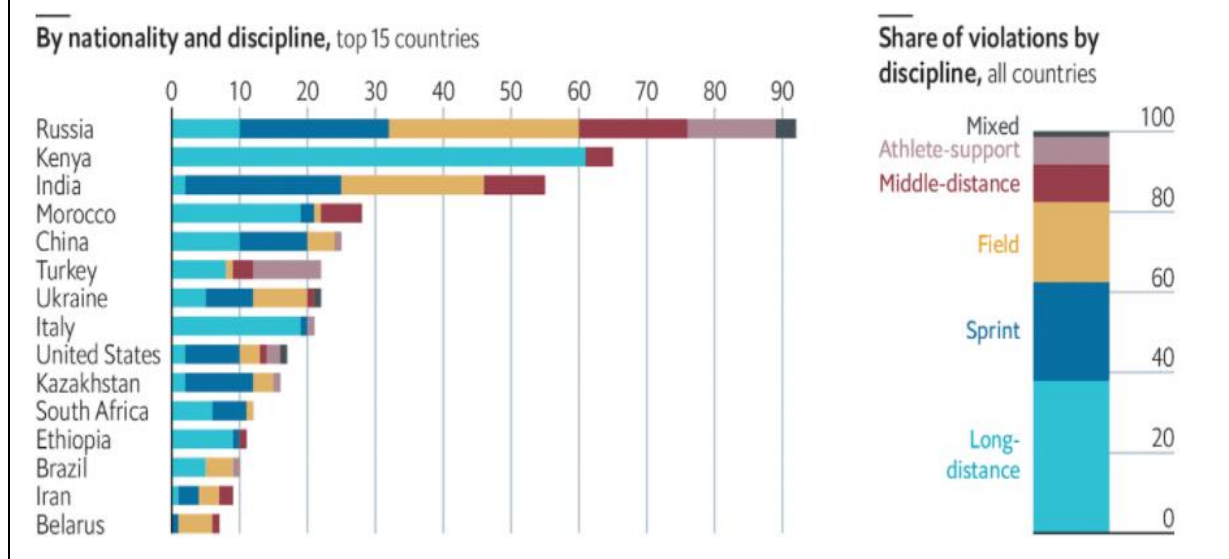
Year	Event/Activity
2006	<ul style="list-style-type: none"> Establishment of SEARADO Malaysia achieves code-compliance
2007	Singapore and Thailand achieve code-compliance
2008	Brunei Darussalam and Indonesia achieve code-compliance
2009	Vietnam achieves code-compliance
2010	<ul style="list-style-type: none"> Athlete outreach programme @ 1st Youth Olympic Games, Singapore Myanmar and Philippines achieve code-compliance
2011	Launch of SEARADO website
2012	<ul style="list-style-type: none"> UNESCO funding for regional project – SEA Games Athlete Outreach Programme SEARADO TUE and RM committees formed Launch of bi-annual SEARADO e-newsletter Cambodia achieves code-compliance
2013	<ul style="list-style-type: none"> 1st Senior DCO seminar 1st UNESCO Regional Project Athlete Outreach Programme @ SEA Games, Myanmar Philippines and Vietnam receive UNESCO funds for national project
2014	<ul style="list-style-type: none"> SEARADO and JADA signs MOU SEARADO and SEA Games Federation signs MOU 2nd UNESCO Regional Project (Phase 1) Cambodia and Malaysia receive UNESCO funds for national project
2015	<ul style="list-style-type: none"> 1st Anti-Doping Intelligence & Investigation Seminar 2nd UNESCO Regional Project (Phase 2) Malaysia and Vietnam receive UNESCO funds for national project SEARADO and SEA Games Federation signs MOU SEARADO and ASEAN Para Sports Federation signs MOU
2016	<ul style="list-style-type: none"> SEARADO and ASEAN Universities Games organising committee signs MOU Singapore receives UNESCO funds for National Project
2017	<ul style="list-style-type: none"> SEARADO, Tokyo 2020 and JADA signs MOU Coach True e-learning module in Bahasa Indonesia, Bahasa Melayu, Khmer, Thai and Vietnamese launched Laos achieves code compliance
2018	SEARADO Anti-Doping Education Trainer's Workshop
2019	<ul style="list-style-type: none"> Laos forms a NADO (LAO-NADO) Timor-Leste achieves code compliance

DOPING IN CHINA

History has been an influencing factor for China's doping practices in sports. In 219BC, Emperor Qing Shi Huang ordered his physician for pills which modify human behaviour and enhance its strengths. On these lines, in 1986, the Oriental Healing Arts International Bulletin lists about 700 formulas of Chinese herbals which stimulates energy, spirit and rejuvenate individuals^{xi}. Based on this, the alchemy tradition of Taoism took forth supplemented with the cultivation of poppy, opium and drugs like cannabis. In 1956, China withdrew from the IOC and Sport Federations due to two key issues, following which doping was not of a concern in sports due to its isolation from international community. But with the split in Communists, China entered the international sports arena with the 1984 Olympics, ranking 4th in the medal tables. Eventually, suspicion drew and in 1988, First Winter Olympics, the first case of doping in China came up with 2 females being tested for a Chinese herbal used for relaxation. As time passed, several instances of 2 gold medals being stripped in swimming and 11 disqualifications in the Asian Games, 1994 cropped up^{xii}.

Rise in doping cases in China was a result of the ambition for gold medals. The government in 1990 set a goal of becoming world's sports power in the upcoming decade. With the opportunity to host 2008 Olympic Games, the nation wanted to seize this chance to display its potential and become a global athletic superpower. On these lines, 2 documents were released: Outline Strategy for Winning Olympic Medals 2001-2010 and the Strategic Plan for Winning Olympic Medals in 2008^{xiii}. Apart from ambition of medals, China awards and encourages financial and corporate sponsorship. With the historical background, the gold triangle provides for easy access to drugs whereby people can buy drugs in open market and on the internet.

Figure 4: Athletes banned for doping violations (August, 2021)



To curb the same, Chinese Olympic Committee Anti-Doping Commission conducted extensive tests during 1990 to 2004, 60% being out of competition. COCADC was formed under the Chinese Sports Ministry and Chinese Olympic Committee. It has two departments: Testing and Administrative office. Testing department carries out national testing, plans for conducting tests and training for the same. The administration office looks into formulating anti-doping education programme, coordinating international organization and overall guidance of policies. The policy impacted strongly as in 2004, tests conducted by WADA and FINA, led to 0 positive cases^{xiv}. The Sports Ministry in 1990 based its policies on 3 aspects: strict banning, strict testing and severe punishment. In 1995 the Sports Law regulation and legislation was formulated in accordance with the ethical consideration of Sports Competition. An urgent ban on drug use in sports was issued in 1998, following which efforts were made to enact a consolidated legal framework. The Chinese constitution encompasses the states duty to promote sports activities and physical fitness.

Eventually, in 2004 the Code of Anti-Doping in China was enacted as a means to fight doping in sports which lays down extensive control mechanisms in the form of custom control, medical supervision and institutions. In international context, China has been a Board member of WADA since 2000, signed the Copenhagen Declaration and accepted the World Anti-Doping Code in the year 2003. After cooperating with Sweden, Britain and Australia, the nation set up the National Doping Control Quality System^{xv}. There are a number of associations (Athletic

Association, Weightlifting Association, Football Association) set up which addresses drug issue on all levels from athletes, doctors, coaches and officials. In 2021, China amended the criminal law Article 355 (Amendment XI) to formally criminalize doping in sports. The amendment provides for any individual luring, instigating or cheating athletes by using banned substances both on international and national level shall be imprisoned up to 3 years and faced with a fine. Based on the gravity of crime and intent of athlete, the punishment shall be severe^{xvi}.

DOPING IN INDIA

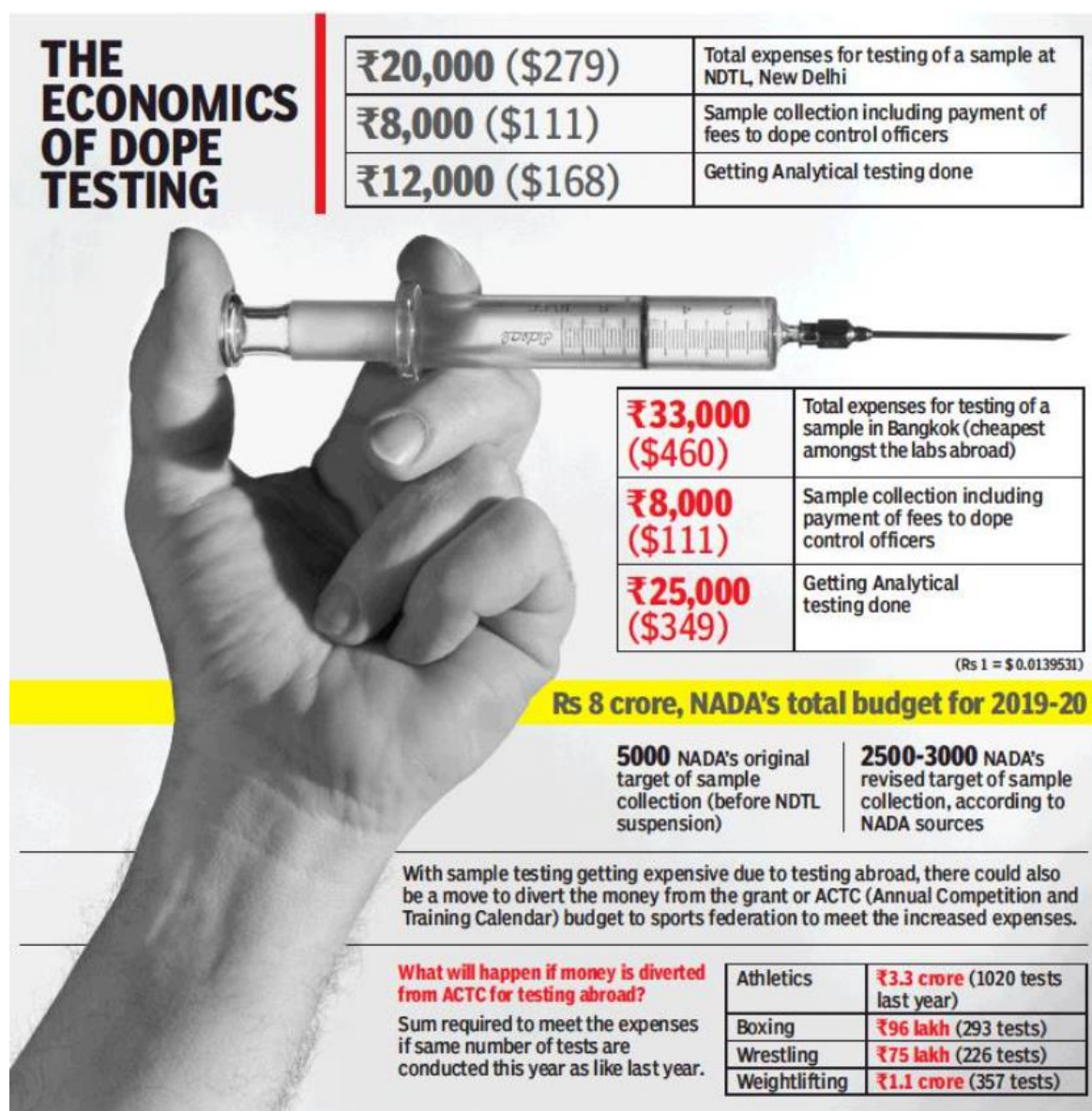
India has aligned its objectives with the International Convention Against Doping in Sports in 2007 and established the National Anti-Doping Agency. The Agency is merely an executing authority for the existing code in lines with domestic policies. NADA is a registered society as of 2005 and a signatory to the Copenhagen Declaration on Anti-Doping and UNESCO's ICAD. NADA seeks to promote, coordinate and monitor doping activities and programs in India. It administers test and ensures non-presence of enhancing drugs. For spreading awareness, the NADA came up with a program called Mass Athlete Awareness Program Against Doping. Unfortunately, the Anti-Doping rules fall flat as it fails to under the ground reality. The rules consider the following as doping^{xvii}:

1. Presence of performance enhancing drugs in sample taken from athlete
2. Using prohibited substances or methods
3. Refusing to submit sample after being notified
4. Failure to give information about whereabouts
5. Tampering with the doping control process
6. Possession of prohibited substance
7. Trafficking prohibited substance
8. Administering prohibited substance/method to athlete

The rules are based on the strict liability principles where athletes are required to be aware of the banned substances and the substances they consume. Considering the literacy rate in India, keeping tab of this becomes a problem. Indian sportspersons take up sports due to the benefit

of government jobs through sports quota^{xviii}. This leads to lack of awareness about doping norms of NADA. Majority of the training camps and centers are not well equipped and monitoring food supplements is difficult. In India, many of the common painkillers and cough syrups contain banned substances which leads to a major challenge. Example: India cricketer Prithvi Shaw and Yusuf Pathan were tested positive for terbutaline which is found commonly in cough syrup. For testing, the number of laboratories is scarce while being expensive^{xix}.

Figure 5: The Economics of Dope Testing



Applying strict liability in India is not feasible considering substances can enter one's body through various loopholes. For instance, in *NADA v. Jyotsna Pansare*, the dope entered the athlete's body through a beauty product having germanium oil. Athletes are unaware of the forum to approach or issue of NADA's tutelage persists considering athletes in India range majorly from rural areas^{xx}. With outrage in 2011, the Ministry of Youth Affairs and Sports enacted a council which countered NADA and its neglect to carry out its objectives. Despite the Disciplinary Tribunals, the right of fair trial gets violated based on the current disposition. The need for anti-doping laws to be reformed is the need of the hour in India. Recently, the NADA Rules, 2021 were formulated to continue efforts to eradicate doping in sports. The rules aim to maintain the integrity of sports, fair competition, level playing field and having clean sport. Its aims are aimed towards health, ethics, excellence in performance, respect for other participants and self, community, teamwork, courage, character, education, fun, dedication and commitment^{xxi}.

DOPING IN JAPAN

Like India, there is no law per se that lays down criminal liability for doping. The Japan Anti-Doping Agency (JADA) was established in 2001 which works on the same lines as NADA. Recently, in 2018 the first anti-doping law: Act on Promotion of Anti-Doping Activities in Sport was formulated^{xxii}. Policy frameworks for supplementing were enacted in 2019 termed as 'Basic Policies for the Comprehensive Promotion of Measures Related to Anti-Doping Activities in Sports' under Article 11(1). JADA provides that when an athlete is tested positive for a prohibited substance, the trial and order shall be passed by the Japan Anti-Doping Disciplinary Panel. Japan in its Basic Act on Sport considers sport as a universal culture. The Law No. 78 of 2011 provides people the right to enjoy happiness and amenities of life through sports^{xxiii}.

The Ministry of Education, Culture, Sports, Science and Technology of Japan took up the UNESCO's fight against doping. Japanese authorities realised their major anti-doping violations were a result of taking over the counter medicines. To counter the same, a Sport Pharmacist Project was launched in association with Japan Pharmaceutical Association as a

means to regulate pharmacists and spread insights into current anti-doping rules and regulations.

FACTOR ISSUES INTERTWINED WITH DOPING

Classification of Natural Abilities – Arguments surrounding what exactly classifies as natural abilities such as what vitamins lead to enhancement or alteration. Debate surrounding use of caffeine, recovery vitamins, supplementary, tablets, proteins are not banned but they in some form alter the human body in terms of recovery, pain and enhancement.

Effectiveness according to some experts – Despite policy framework, the testing is rare. High level athletes testing are once over 2 weeks during the training camps.

Window of Detection – It is the time frame in which the substance remains undetectable, that is it either gets broken down or absorbed in the body. The current testing range is 12 hours to 120 hours. This time frame has serious consequences for detection of micro doping which has a span of less than 12 hours. Example: when an athlete consumes dope immediately before a 24-hour race, the dope goes undetected by the end of the race^{xxiv}.

Test Sensitivity – Implies the accuracy of testing. If 100 samples are collected, the likelihood of presence in terms of classifying it as a doping agent is typically the sensitivity bar. It is impossible to 100% accurately determine, example margin or error or false positive.

Doping Regime – Refers to actual frequency of doping as performed by athletes deciding to partake in the practice.

Predictability of Testing – Likelihood that an athlete choosing to dope is able to predict when the test would be conducted. Likelihood that they will be tested or not within the detectability period.^{xxv}

Figure 6: Doping Detection Probability

Variable	Estimated Values	Drug Types
Window of detectability	12 – 24 hours 48 – 72 hours 120 hours	hGH, micro doping rHuEPO common agents, rHuEPO, DEHP new techniques for old agents
Test sensitivity	10% 40% 60-80%	non-steroidal hormones and hGH hGH (with IGF-I, P-III-P) hGH (N-terminal extension peptide of procollagen type III)
Doping Regime	1.0 (continuous) 0.5 (intermittent)	
Test predictability (tests per year)	2 6 9 12 24	

Pool of Responsibility – Being a novel concept, this principle is based on the fact that all team-members and associated individuals are responsible for doping and not merely the individual athlete. Those being coaches, supplement prescribers, dietitians, medical officers, and so on.

HUMAN RIGHTS AND DOPING

Sports and Human Rights is an unconventional overlap. With this eclipse, memories highlight the abuses and image as a global issue. Sports Law fails to articulate any rights for the athletes, therefore human rights end up getting neglected with the nationalist aspirations. Anti-doping law does not explicitly protect the rights and therefore it is not possible for athletes to have a locus standi in the Court of Arbitration of Sports^{xxvi}.

Fair Trial – Sports authorities deal with a great degree of autonomy and self-regulation. These bodies have specific procedures laid forth and they do not always guarantee same shield to human rights as in domestic level. This brings in the need to combat arbitrariness and ensure proportionality in terms of sanctions prescribed. When any individual tests positive for a prohibited substance, it usually results in the athlete getting banned for a temporary period.

This ban not only impacts his right to livelihood, disrupts mental peace and in ways violates right to life and dignity. Due to the weightage of stake being high, there is a need to ensure due procedure, fairness and proportionality in the proceedings conducted^{xxvii}. The right to a fair trial is therefore viewed as an important tenant. Internationally, the Monitoring Group of the anti-Doping Convention set up in 2017 aims to uphold this right whereby every athlete subject to anti-doping laws is ensured a fair trial. Fair trial in the sense of principles of natural justice, and proceeding before an independent and impartial panel.

Data Protection – Contemporary anti-doping rules provide principles and guidance with respect to collection, sharing, processing and storing of sensitive information pertaining to athletes. They deal with issues ranging from law enforcement investigations, requirements for testing, analysis and assessment of doping measures. Example: location, dates of training, health records, contract details, images and videos, urine and blood samples^{xxviii}. The athletes under the current regime have no scope to deny the collection or processing of information invariably violating their right of autonomy and choice. The key issues are: who has access to the data, how it is shared, how it is protected, who can it be shared with, rights of athletes for accessing or denying.

Miscellaneous – While media has a key role to play, the right of athletes in terms of media freedom should be balanced especially in terms when the doping testing is still under progress. Instances wherein using prohibited substances are administered by coaches, the right to health of athletes is violated^{xxix}. Their social and economic rights are at risk due to commercialization of sport activities. Racism and gender discrimination is a key concern as there are instances wherein doping tests have been manipulated to suit the situation. The gender test based on the level of testosterone is a key example of gender discrimination in the sports arena.

EMPIRICAL RESEARCH

Doping Law Regime and its Tussle with Human Rights: within the Array of Asian Countries

Healthy Greetings!

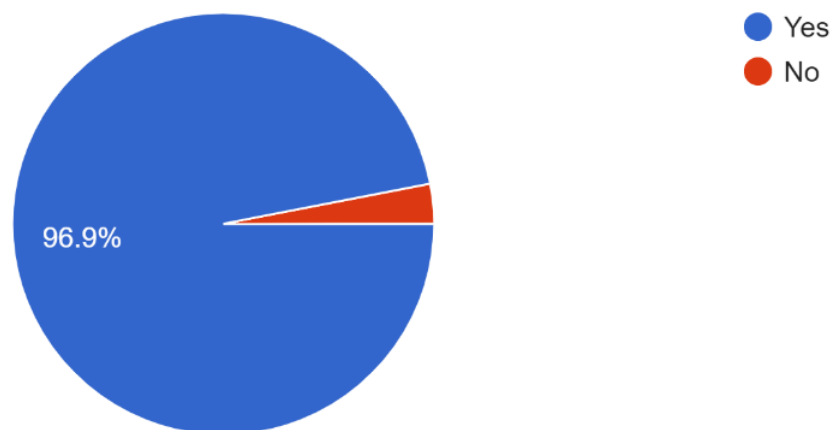
I am a student of Symbiosis Law School, Pune. As part of my research titled "Doping Law Regime and its Tussle with Human Rights: within the Array of Asian Countries", I am conducting an empirical research by taking inputs from the society to understand the ground reality in comparison to the theoretical data. The google form shall not take more than 2-3 minutes of your time, and inputs from your side would be much appreciated. I assure you that this research is of purely academic nature and no personal information provided here shall be disclosed at all.

"Doping" refers to the use of prohibited medications, drugs, or treatments by athletes with the intention of improving athletic performance.

ASIAN JOURNAL OF

Are you aware of the concept of Doping in Sports?

98 responses

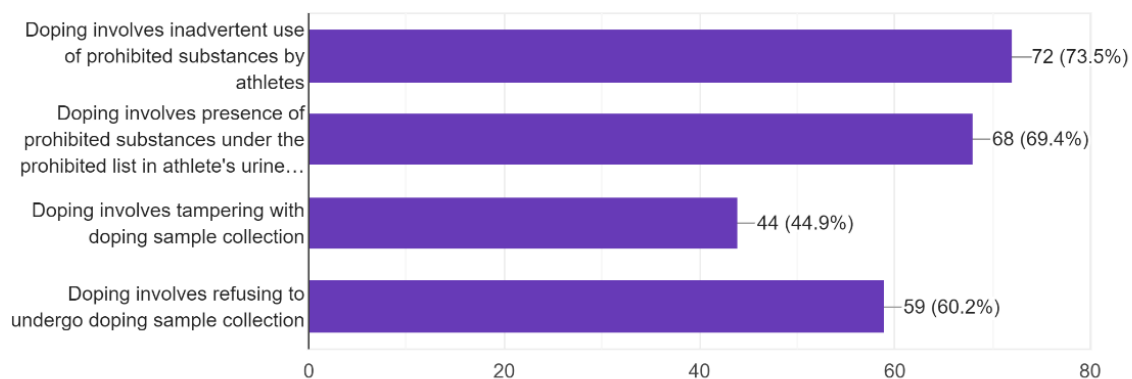


According to you, which of the following defines the concept of doping? *

- ☐ Doping involves inadvertent use of prohibited substances by athletes
- ☐ Doping involves presence of prohibited substances under the prohibited list in athlete's urine sample
- ☐ Doping involves tampering with doping sample collection
- ☐ Doping involves refusing to undergo doping sample collection

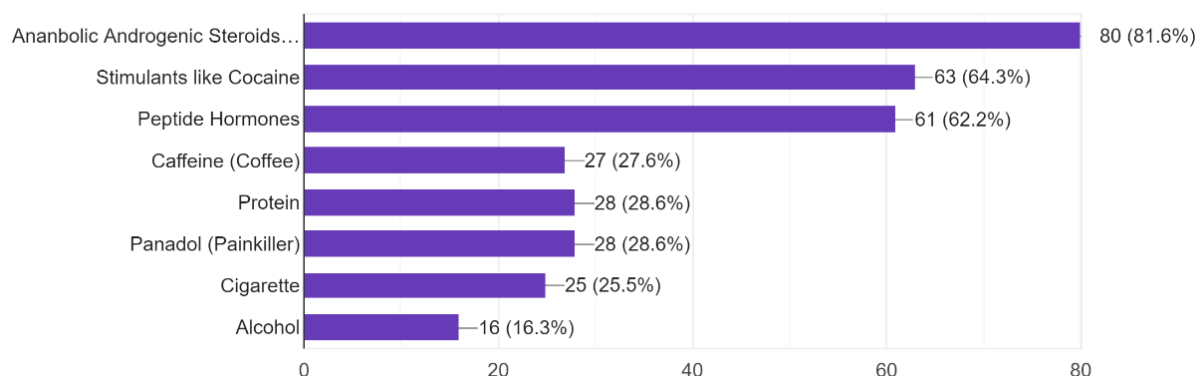
According to you, which of the following defines the concept of doping?

98 responses



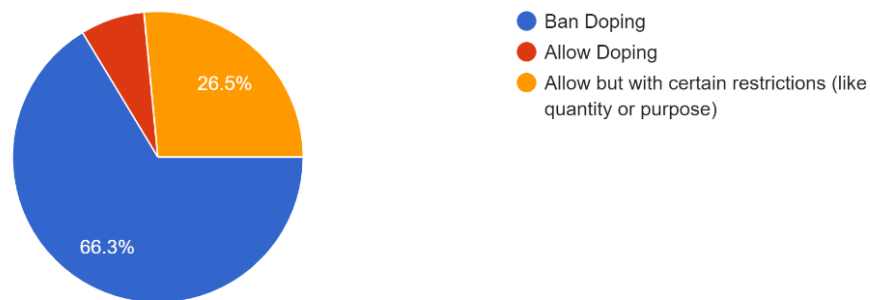
According to you, which of the following substance (s)is/are listed on the World Anti-Doping Agency prohibited list?

98 responses



According to you, should doping be banned or should it be allowed?

98 responses

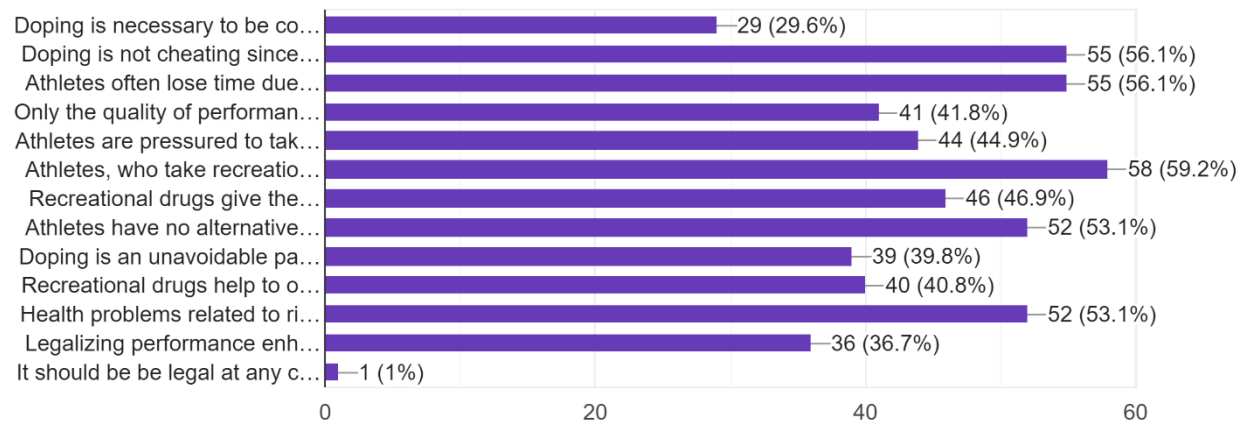


According to you, which of the following reasons could supplement the reasoning for allowing or current prevalence of doping in sports? *

- ☐ Doping is necessary to be competitive
- ☐ Doping is not cheating since everyone does it
- ☐ Athletes often lose time due to injuries and drugs can help to make up the lost time
- ☐ Only the quality of performance should matter, not the way athletes achieve it
- ☐ Athletes are pressured to take performance-enhancing drugs
- ☐ Athletes, who take recreational drugs, use them because they help them in competition
- ☐ Recreational drugs give the motivation to train and compete at the highest level
- ☐ Athletes have no alternative career choices, but sport and do not receive much support from their nations in terms of training
- ☐ Doping is an unavoidable part of the competitive sport
- ☐ Recreational drugs help to overcome boredom during training
- ☐ Health problems related to rigorous training and injuries are just as bad as from doping
- ☐ Legalizing performance enhancements would be beneficial for sports
- ☐ Other: _____

According to you, which of the following reasons could supplement the reasoning for allowing or current prevalence of doping in sports?

98 responses

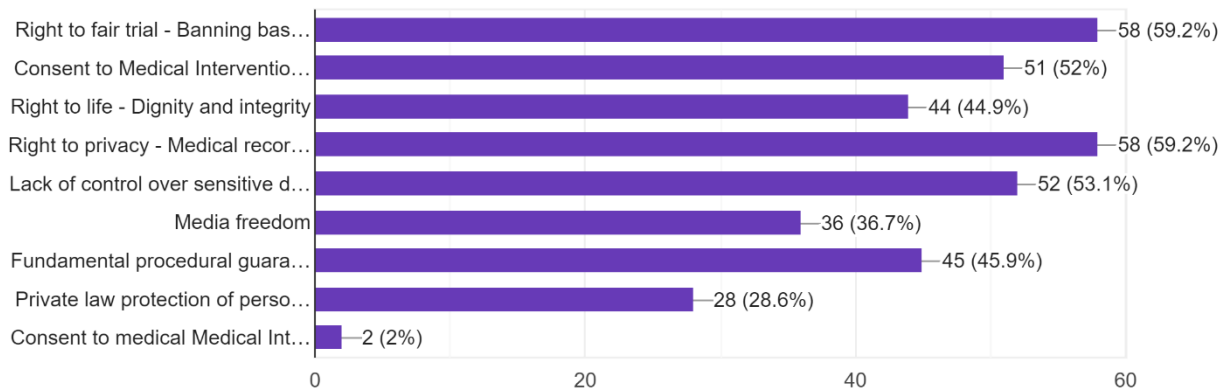


According to you, which of the following fundamental/human rights of athletes are violated in the anti-doping policies? *

- ☐ Right to fair trial - Banning based on medical and scientific evidence directly
- ☐ Consent to Medical Interventions (informed and free)
- ☐ Right to life - Dignity and integrity
- ☐ Right to privacy - Medical records, data protection, disclosure of urine and blood samples
- ☐ Lack of control over sensitive data - Storing testing samples
- ☐ Media freedom
- ☐ Fundamental procedural guarantee of criminal law
- ☐ Private law protection of personality rights

According to you, which of the following fundamental/human rights of athletes are violated in the anti-doping policies?

98 responses

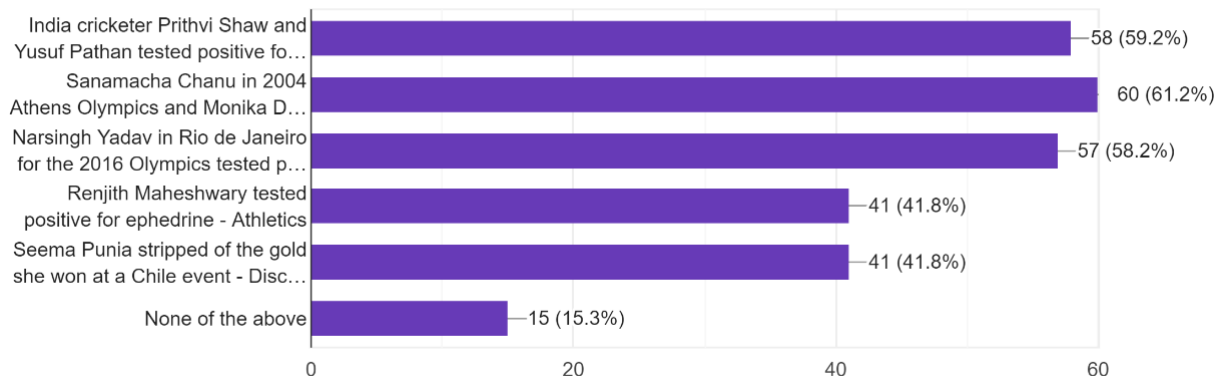


Which of the following doping scandals of India are you aware? *

- ☐ India cricketer Prithvi Shaw and Yusuf Pathan tested positive for terbutaline
- ☐ Sanamacha Chanu in 2004 Athens Olympics and Monika Devi in 2008 Beijing Olympics - Weightlifting category
- ☐ Narsingh Yadav in Rio de Janeiro for the 2016 Olympics tested positive for methandienone
- ☐ Renjith Maheshwary tested positive for ephedrine - Athletics
- ☐ Seema Punia stripped of the gold she won at a Chile event - Discus Throw
- ☐ None of the above

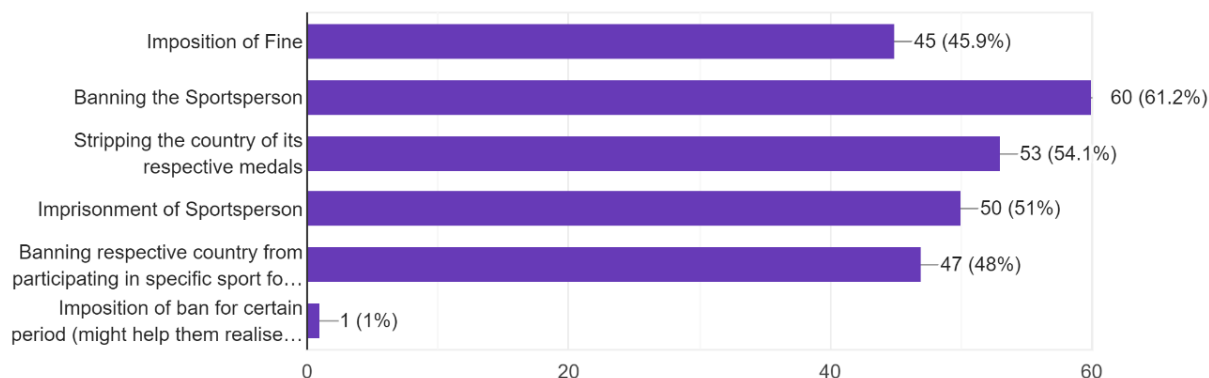
Which of the following doping scandals of India are you aware?

98 responses



According to you, what actions should be taken against an individual caught indulging in doping activities?

98 responses



RECOMMENDATIONS AND SUGGESTIONS

A multi-faceted approach is sought which aims to address the doping issue by formulating rights of athletes', amending the current law which provides for disproportionate punishment for negligent ingestion of prohibited substances. Ensuring that the the reality of sports, nature of performance enhancement substances and the repercussions of sanctions are not diluted in upholding the legal framework. There is a need for what constitutes doping to be narrowed down. While it is true that narrowing only limits the aspect in terms of ever evolving concepts, but for doping the case is otherwise^{xxx}. With an enlarged list, the definition works as an axe

used to cut a paper. As it is inevitable under the current regime to punish those who lack intent, there is a need for specifying levels and substances. This shall enable minimization of chances when it comes to accidental ingestion resulting in a positive report. While the principle of proportionality is overly emphasized, the definition being extremely broad brings in a grey area and does not seem at par with the principle. The resort opted by the Court of Arbitration for Sports which accesses proportionality with a core hinge as necessity can be opted which is a less intrusive restrictions in athletes' human rights^{xxxix}.

The relation between talent and achievement should be open and transparent. Rather than looking at doping substances from an enhancement effect, it should be seen as health effects. If the substances do not enhance one's performance, it should not be considered. If the substance is unhealthy but does not enhance, it should not be on the list; for example, Marijuana. Apart from this, the justifications provided by SERADO should be subject to judicial review and audit^{xxxix}. While there is the strict liability principle and 2-year sanctions, there is a need to take into account the public interest at stake and harm resulting from de-harmonization as the means to attain the ends will be judged. Issues which need to be addressed are the logic and size of the list, the rampant use of doping, the health risk of athletes', the need to justify sentencing policy and limiting mitigating circumstances with an aim to curb the abuse of discretion at the hands of the authority. One must consider the loss of sponsorship, suspension of training, emotional costs attached to the stigma of offence and thereby provide a legitimate backing to the sanction policy.

The contents of the Lists and tests as laid forth by WADA, SERADO and the respective NADAs should be challengeable by the athlete as a basic right to a fair trial. Unfortunately, the CAS is beyond the jurisdiction to adjudicate on the proportionality test and the legitimacy of the tests. By providing athletes' the right to challenge the justification, the authorities shall be forced and obligated to dwell into the scientific rationale behind the inclusion/exclusion in the list. This shall further enable other people to challenge for a more transparent system in association with the scientific community. Accused athletes should be provided the benefit of an insurance product to redistribute risk of unintentional consumption of prohibited substances as conviction is financially draining. Athletes' fully bear the cost until the supplement industry is brought under review. This usually causes an athlete to establish no fault and negligence defense which is a heavy weight of burden. Keeping in mind the issues at hand, the solutions

ought to be directed whereby eradication of doping is set on sound principles, rate of abuses, extent of harm, health of athletes and the impact of sanctions.

CONCLUSION

“*Citius, Altius, Fortius*” translates to “Faster, Higher and Stronger” – Olympic Games Motto

Despite the international effort in Asia countries by setting up SERADO in 2006, given the realities, the organization has been ineffective to reach its desired goal, whereby the primary goal being to eradicate doping in sports. With an alternate to the policy aspect, there is a need to address the pool of responsibility, window of detection, test sensitivity and test predictability. Despite the ideals laid down, internationally there is a need to focus on the ground realities of third world countries and formulating laws as per their convenience. While providing a robust solution, there is need to analyze the history of doping in modern sports and the emergence of an international governing body. In contrast to considerable anti-doping policy developments occurring in other regions of the globe, most Asian nations’ current tactics maintain conservative interpretations of international doping control framework.

ENDNOTES

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