



“Ensuring Fair Play: The Legal Implications of DNA Testing in Sports Doping Cases”

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Abstract

On paper, processes, and anti-doping institutions in India are similar to majority of jurisdictions in the world. However, there are some differences in the procedure of implementation of various aspects of the code comprising respect to education, testing, and other procedural elements that lead to such consequences that damage the career and lives of an athlete. DNA testing is a potential approach that can reduce the risk of such unwanted consequences in sports in the country. There are several limitations that can limit effectiveness of DNA testing in anti-doping protocols. However, better identification of the issues will help in planning and implementation of interventions to address the concerns and effective incorporation of the standard in the anti-doping protocol. DNA testing will help safeguard the athlete's rights and ensure fair play. Legal framework and policy will be implemented in a manner that privacy, confidentiality, and informed consent in DNA testing will be maintained. In addition, all members will comply with guidelines to reduce the risk of misuse and errors. Doping is harmful and deceptive to athletes. However, false allegation hampers quality of life of an athlete to a higher extent. Thus, Effective anti-doping regulations are important to ensure safety and clean and fair sport.

Keywords: Sports doping, Anti-doping, fair play, athletes' rights, DNA testing,

1. Introduction and Background

1.1. Overview of anti-doping measures in sports

Doping is recognised as the presence of restricted methods or substances to unethically improve sporting performance and get benefits over competitors. According to the World Anti-Doping Agency, doping is the incidence of violation of one or more of the anti-doping rules, identified in Articles 2.1 to 2.11 of the World Anti-doping Code (WADA,

2024). The aims of the anti-doping measures in sports are maintaining its naturalness, and fairness, promoting health of the sportsperson, and reducing harm to others.

1.2. Importance of fair play and athlete rights

Fair play is an attitude of the sportsperson that is reflected in their behaviour. The spirit of fair play is associated with building a peaceful and better world. Lack of fairness results in destruction of established order in society. Lack of compliance with rules of sport, leads to damage to its spirit (International Fair Play Committee, 2024). Thus, fair play is an important part of active engagement, and both professional and personal development. It teaches people lenience and respect for others. It is the right of every athlete to equal opportunities in competition. Thus, these anti-doping measures ensure fair play and equal rights for every athlete.

1.3. Introduction to Shalu Choudhary's case

The study will focus on significance of DNA testing in sports doping cases explaining the incidence of Shalu Choudhary's case. The athlete in her 30s, who specialised in 800 m events, was banned due to doping charges. However, DNA tests justified that her urine sample might have been tampered with or contaminated. It resulted in withdrawing her for years of suspension.

1.4. History and evolution of anti-doping regulations

The fight against doping in sports was initiated by the International Olympic Committee Medical Commission in 1961 (Ljungqvist,2017). It was commenced as the outcome of death of a Danish cyclist during the Olympic games in Rome. Next, in the 1970s, it increased its strength with active engagement of IOC and the International Association of Athletics Federations. There were several measures taken in the 1970s and 1980s to address doping. Along with education and information campaigns, most important approaches till now are the introduction of rules for doping control, formation and modification of the list of prohibited substances and procedures, initiation of in and out of competition testing, initiation of blood sampling, and many more (Ljungqvist,2017).

1.5. Key organizations involved in anti-doping efforts

In 1999, to strengthen anti-doping actions, WADA was created by the public authorities, and the Olympic movement. Today, WADA is the prime organisation to fight against doping in sports with the help of globally accepted WADA code and UNESCO accredited International Antidoping Convention. Thus, WADA is the international organisation to protect the clean athlete and maintains the integrity of sports. (WADA, 2024). In India, National Anti-Doping Agency is an autonomous body under the Ministry of Youth Affairs and Sports. They engage in implementation of an Anti-doping program in India to ensure fairness in sports.

2. Case Study: Shalu Choudhary's Journey

2.1. Detailed account of Shalu Choudhary's case

Shalu Choudhury, a 30-year-old athlete and middle-distance runner was alleged in doping charges and was banned after her initial appeal was rejected by the disciplinary panel of NADA (Times of India, 2024).

2.2. Initial allegations and disciplinary actions

Defence members of Chaudhury stated that her positive doping test was the outcome of either contamination or tampering during the collection of samples. Though, initially, the Anti-Doping Disciplinary Panel rejected her request for DNA testing, the appeal was accepted by the panel later.

2.3. The appeal process and the role of DNA evidence

Kings College London had the responsibility of the DNA analysis. It showed mixed DNA profiles that resulted from sample mishandling. The appeal panel defined that the counsel of NADA could not disprove the findings of DNA testing (Times of India, 2024).

The outcome was nullification of a four-year ban on the athlete. It was identified that the A and B samples from the formerly analysed urine sample resulted in an insignificant partial DNA profile. It represented the mixture of 2 female persons in equal proportions. The appeals panel order stated that the counsellor for NADA could not identify any other factor in the context of DNA sample report. The outcome was a rejection of the case of the athlete. The counsel for NADA acknowledged the report of the DNA testing and has not confronted it further. Along with the rejection of 4 years ban, the panel ordered NADA to refund 1.5 lakh to the athlete for the expense of DNA testing.

2.4. Final exoneration and implications for the athlete

According to the information of Times of India, (2024), advocates of Shalu Choudhury felt relieved on the decision and expressed their concerns on such allegations that could destroy the personal and professional life of an athlete. They aim to restore the reputation of their client and assist her in returning to competition. They stated how career of Shalu Choudhury has been destroyed by such allegations for around 2 years. The impact of false positive drug tests on personal and professional career of an athlete is evidenced in the case of Peter Bol, an Australian athlete who was exonerated six months ago (The Guardian, 2023). According to the information of authentic media resources, it was identified that false implication of doping resulted in depression of the athlete. Although, it was not her fault, it took over a year and a half to prove her innocence. The findings of DNA tests that exonerated her were out in February 2024, after the allegation of doping by NADA in August 2022. Thus, Shalu Choudhury's case points out the importance of fair handling of doping charges in sports.

3. Legal Framework and Right to Reputation

3.1. Existing legal provisions for DNA testing in sports

There is no legislation in India that can offer particular guidelines to the agencies who are investigating it, or the court to deal with the findings (Patel & Varley, 2019). According to Section 53 of the Code of Criminal Procedure, a police officer along with a medical practitioner can engage in the investigation. Courts are also unenthusiastic to utilise the technique of DNA testing as it is questionable against the right of privacy of an individual under Article 21 of the constitution. In addition, it is against the right of self-incrimination under Article 20(3) of the constitution. However, the DNA Technology Regulation Bill, 2019 aims to establish a framework for the safe and effective use of DNA technology. The bill mentions specifically listed matters for testing. Among these, offences under IPC, and offences that are in special laws are important.

3.2. Analysis of National Anti-Doping Rules regarding DNA evidence

The Anti-Doping rules are designed and implemented according to NADA's responsibilities under the Code. The aim of the rules is complete eradication of doping in sports in India. National Anti-Doping Organisations play an important role in implementation of the code and ensure adherence to the anti-doping rules across various countries. The National Anti-Doping Rules 2021 define the process for the sample collection, management of the test findings, and the conduct of hearings at the national level (National Anti-Doping Agency, 2021). By Article 6.4 of the code, NADA will ask the defined laboratories for sample analysis in compliance with the International Standard for Laboratories. In addition, the laboratories should perform sample analysis in conformity with article 4.7 of the International Standard for Testing and Investigation. Laboratories will conduct the analysis at their own expense and initiative. They can perform analysis as requested by NADA. They will report the findings to NADA. According to Article 6.5, further analysis of sample before and during result management can be possible. If after notification to an athlete for an anti-doping rule violation charge by NADA, additional analysis can be conducted with the

approval from a hearing body and the consent of the athlete (National Anti-Doping Agency, 2021).

3.3. Legal perspective on the right to reputation and fair trial

The right to reputation and right to a fair trial are the basic rights of an Indian citizen (Rawat & Rajsingh, 2021). However, in Choudhury's case, her initial plea for DNA testing was dismissed by Anti-Doping Disciplinary Panel. It took approximately 2 years to prove her innocence. All these conditions resulted in mental, emotional, and physical breakdown; increased depression, defamation. Therefore, lack of presence of fair trial causes harmless people to become convicted and the outcome is reduced trust of people in the justice system of the nation (National Judicial Academy, 2024). Fair trial is the right of people denoted in Article 6 of the Human Rights Act. A fair trial ensures proper and truthful opportunities for the convict to reveal their innocence which was initially dismissed in Choudhury's case.

3.4. How DNA evidence supports fair trial principles

A fair trial is important for complete justice. It is the tool of criminal investigation and directs the pathway to justice. It is identified that implementation of DNA technology has improved judicial system. DNA is important to offer scientific evidence on uncertainties in several investigations. In India, for the first time, DNA technology was introduced in the judicial system in 1991 to give justice to a paternity dispute (Srivastava et al., 2022). Since then, it has been used in the Indian judicial system to manage various civil and criminal disputes. According to Goswami & Goswami, (2018), during the past years, DNA has developed as a forensic tool in India and globally. It helps in addressing various criminal and civil matters and ensures respecting the right to justice of every person.

3.5. Impact of wrongful doping allegations on athletes' careers and lives

The wrongful doping allegation has severe impacts on careers and lives of an athlete. It results in public criticism, loss of sponsorship, disqualification, and suspension. All the factors elevate the risk of poor emotional health and augment the prevalence of mental disorders. It affects overall health and quality of life of an individual. Emotional burden, lack of social support, poor coping ability increase the ideation of suicide, substance abuse, and poor socioeconomic condition.

4. Challenges and Future Implications

4.1. Technical and logistical challenges in DNA sample collection and analysis

According to Star, (2023), in September 2018, there were various objections as notified by WADA for National Dope Testing Laboratories (NDTL). It comprised of issues with usage of radio mass spectrometry sampling method, poor standard operation process with consideration of testing, absence of an effective quality management team. Based on these factors, WADA suspended accreditation of NDTL in August 2019 (Star, 2023). Thus, this suspension was the outcome of a lack of compliance with international standards for testing. It induced the prevalence of false positives or false negatives. Other environmental factors that must be considered during sample collection and analysis are environmental factors for example bacteria, Mold, and others.

4.2. Legal and ethical concerns regarding privacy and consent

Maintaining privacy of the person, ensuring confidentiality of client's information, and informed consent are the legal and ethical responsibilities of the authority while conducting DNA testing. However, according to Khan & Mer, (2024), the Indian legal framework has gaps in addressing the ethical considerations pointed out by international guidelines for example oversight of DNA laboratories, admissibility of DNA findings in the court, offering protection against discrimination, and ensure maintenance of privacy and confidentiality.

4.3. Potential for misuse and errors in DNA testing

Contamination of the DNA profile leads to loss of justice as the individual who has no connection with the crime, may be suspected due to the evidence. At any stage of the process, there is a high chance of DNA contamination. The outcome is an inappropriate result and defective evidence. Contamination results from poor handling of the samples, exposure to environmental factors, cross-contamination, and many more. Unauthorised access to databanks or disclosure of information without consent, may increase the risk of misuse of the DNA information other than its proposed purpose (Srivastava et al., 2022).

4.4. Lessons learned from Shalu Choudhary's case

It is the legal right of every citizen to have the right to a fair trial and the right to reputation. Reform is required to improve efficacy of anti-doping measures in the country to protect athletes and increase legitimacy of the anti-doping institutions of the country. Best practice standards in anti-doping will be implemented to ensure improvement of the global anti-doping system. All limitations of DNA testing should be identified and interventions will be taken to address the issues and effective incorporation in standards protocols.

4.5. Recommendations for incorporating DNA testing into standard anti-doping protocols

It is necessary to comply with the testing standards. It will reduce the risk of misuse, and errors, and prevent the occurrence of suspension of the laboratories by WADA. The system must not provide false positives to destroy the career of an athlete. It will reduce the trust and legitimacy of an anti-doping system (Star, 2022). Resources will be offered for capacity building of institutions. Institutionalised mentoring program can be effective for effective incorporation of DNA testing. Capacity building will increase compliance with standards and best practices and increase the efficiency of DNA testing in all laboratories. Educational interventions will be effective for safe handling of the technology.

4.6. Potential policy changes and improvements in sample collection procedures

It is also required to strengthen the legal framework in India. The outcome will be adoption of the best practices from the international guidelines (Khan& Mer, 2024). It will ensure maintenance of privacy, confidentiality, and protection against discrimination. All the factors will indicate conduction of DNA testing ethically. It will increase trust public in the justice system of the country. To reduce the risk of errors in sample collection procedures, it is essential to implement strict guidelines, and standards for collection. In addition, usage of DNA evidence along with other forms of evidence will result in reliable evidence.

5. Conclusion and Case Comparisons

5.1. Summary of key findings and implications of Shalu Choudhary's exoneration

It is identified how false implications for doping after sample manipulation destroyed the personal and professional life of Shalu Choudhury. Despite the argument posed by Choudhary's defence that her positive doping test resulted from tampering or contamination, she was banned for 4 years (The Indian Express, 2023). Although she is proven innocent, it may take a long time to recover from the experienced trauma and back on track. Therefore, DNA testing is an effective approach that must be included in anti-doping protocol to reduce preventable damage to career and life of an athlete and ensure fair play.

5.2. The role of DNA testing in safeguarding athlete rights and ensuring fair play

Fair play and athletes' rights are important in sports. It permits the sportsperson to integrate into the society and the outcome is building a team. Fair play ensures hope, identity, and pride in sports. Recently, the supreme court has emphasised improving the usage of DNA testing to prove a case. Supreme Court states that it is the violation of right to privacy and personal liberty of an individual who is unwilling to perform the DNA test. However, for a willing individual, it is the scope to nullify an allegation. The technology must be used in a

manner that promotes justice and respects privacy (Samvedam& Nanda, 2024). DNA is a powerful tool to ensure fair play and safeguard the rights of an athlete.

5.3. Overview of other notable cases involving DNA evidence in sports doping

Other notable cases indicated the necessity of strict protocols, and effective testing methods are the case of Marion Jones (false allegation of steroid use), Alberto Contador (accused of doping and DNA analysis was used to identify the source of banned substances which was blood transfusion), Richard Gasquet (tested positive for cocaine, however, it was identified that the source of contamination was a kiss).

5.4. Comparative analysis of similar cases and their influence on anti-doping jurisprudence

There is a similarity between Choudhury and Jones's case. However, Jones faced penalties, and Choudhury was exonerated due to DNA evidence. Both the incidents of Contador, and Gasquet where transfusion origins and contamination were argued, indicate the need for fair trial and athletes' rights in anti-doping protocol. All the incidents signify the importance of strict anti-doping protocol, effective testing methods, fair trials, and respecting the athlete's rights (Rawat&Rajsingh, 2021).

5.5. Future directions for research and policy development in sports law and anti-doping measures

Therefore, more research is required for identification of evidence-based testing protocol and its effective implementation to ensure a significant and effective anti-doping framework. Policies should be refined to respect rights of athletes. Positive collaboration between legal bodies, sports organisations, and researchers will ensure effective implementation of DNA testing to address technical and logistical challenges, reduce misuse and errors, and ensure compliance with ethical and legal standards.

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