



# A facile study concerning the legal issues and challenges concerning doping in sport

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## Abstract

It suffices to state that the essence of sport is geared towards enhancing and promoting good relationships among countries within the global terrain. In this regard, sportsmanship is a key relevance in sports for the actualization of its essence and relevance. However, to accomplish the spirit of sportsmanship, fairness, and harmony during sports competitions had to be maintained. It is in this regard, that the international community sorts to lay down rules, regulations, and laws in banning any form of doping which involve the use of performance-enhancing drugs. Although, doping in sports is considered illegal and unethical by international sports organizations, however, there is still some incidence of athletes involved in doping, giving some legal constrain. It is in this regard, that this study adopts a doctrinal method of study in examining the efficacy, effect, and legal constraints concerning doping in sports. In this regard, a review of several pieces of literature in this study found that there several legal challenges mitigating the successful curbing of doping in sports and they include; the World Anti-Doping Code is a non-governmental document, inadequate and poor testing facilities of drugs enhancing performance and athlete involved in doping are often banned, instead of prosecuting them to deter any further act of doping. It is therefore concluded and recommended that to effectively curb the incidence of doping in sports, the international sports organization must seek to address the above identify legal constrain.

**Keywords:** doping, drugs, legal, sport, sportsmanship

## Introduction

Sport is a microcosm of society (Adltukhov and Nauright, 2018; Aduval, 2017) <sup>[2,4]</sup>, hence it can in bringing an individual from different backgrounds to interact as one and a communal society in the spirit of sportsmanship. However, it suffices to state that the law is a reflection of society's values and norms (Harrel, 2015; Hanstad and Houlihan, 2015) <sup>[16,15]</sup>. It is in this regard that sports and the law have had a long and varied association. This association has largely been dictated by the societal function and role of the individual at a particular time and place in history (Houlihan, 2004) <sup>[17]</sup>. Sports, for instance, were designed to promote better relations among countries of the world. To accomplish this goal, a sense of fairness and harmony throughout the competition had to be maintained, and it is in this regard, that lay down rules, regulations, and laws are made for the banning of the use of performance-enhancing drugs to encourage the spirit of sportsmanship (Scalan and Granville, 1981) <sup>[28]</sup>.

The use of banned performance-enhancing drugs in sports is commonly referred to as doping (Huggins, 2006) <sup>[18]</sup>, doping in sports is highly visible and of great public interest due to the importance of sports as part of the social fabric in society. The use of drugs to enhance performance is considered illegal and unethical by international sports organizations. However, the motives for the ban on drug-enhancing performance are mainly the health risks of the athlete, to ensure there is equality of opportunity for all those contesting as an athlete, and the model

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effect of drug-free sport (Adentillon-Kaestner and Ohl, 2011) <sup>[3]</sup>.

However concerning the legal aspect as per anti-doping laws against the use of performance-enhancing drugs is of vital importance, which this article seeks to preview from the legal perspective. Furthermore, the study will also embark on identifying some possible challenges in curbing doping in sports.

## Some incidences of doping in sport

The development of sports over the century, which have led to the creation of hundreds of sports, from those for a single or individual participant to those with hundreds or groups of simultaneous participants, either competing as a team or individuals (Pielke and Boye, 2019) <sup>[26]</sup>. Most sports involve activities of individual and team varieties. They could be engaged competitively or for recreational purposes (Ababatunde, 2006) <sup>[1]</sup>. Sporting activities are generally recognized as being based on physical athleticism and fitness, and the importance of sports is not winning but taking part, not conquering by all means but fighting well. However, as noble a goal as this, it has little to do with the reality of the modern sports world. Since athletes have found a less stressful means of emerging beyond imagination by taking drugs to enhance performance (Read *et al.*, 2018) <sup>[27]</sup>. For example, According to Scandinavian mythology, they opine that Berserkers could drink an assortment called "Butotens", which is prepared from

the Amanita muscaria mushroom plant. The essence of the consumption of such a mixture is to increase their physical power with the risk of insanity. However, the German missionary and Doctor Albert Schweitzer wrote concerning Gabon during the early 19<sup>th</sup> century that the citizens of Gabon, having eaten certain plant roots or leaves called pagayers, can stay energetically and forcefully all day without feeling thirsty, hungry, or tired, furthermore they also exhibit the feeling of gaiety and happiness through when they on the substance. A contestant in an endurance walking race in Great Britain, Abraham Wood, said in 1807 that he had used some substances called Laudanum, or opium, to enhance his performance to keep him awake during the competition against his co-contestant (Jean-Pierre, 2000) <sup>[20]</sup>. Although, using drugs enhances performance in most instances has also been encouraged primarily due to the volume of money accompanying winning in some sports industries like bodybuilding. Furthermore, given the international endorsement, multimillion dollars contracts, the popularity of the athlete, appearance fees, and sports merchandising represents a billion-dollar industry, their sponsor's support of previously unheard of monetary benefit drugs enhancing performance has also been inspired to be taken by an athlete since they are rewarded for winning at virtually every level of the competition, second place is viewed as the "first loser". And also, a coach's job security is directly related to his team's success, not that they are simply "fighting well". Given this reality, it is not surprising that athletes and coaches will sacrifice and risk a great deal to obtain a competitive edge and enhance performance at all costs not minding the aftermath effect it may cause to athletes both legally and medically.

### **Inadvertence effect of doping**

Though the essence of the ban on the drug that could enhance performance is not just on the equality of chance for athletes, a typical or model effect of drug-free sport for the public recognizes the true spirit of sport. However, the health risk of using performance-enhancing drugs is of great relevance here (Idahosa *et al.*, 2023; Aidonojie *et al.*, 2022; Aidonojie *et al.*, 2022) <sup>[19, 5, 12]</sup>, concerning the fact that the use of these drugs may enhance their performance but some of the adverse effects are as follow; for example, the cyclist that takes nitroglycerine, a drug used to stimulate and fuel the heart after cardiac spasms and which was attributed with enhancing riders breathing. However, the aftereffects are that riders suffered delusion from the fatigue, perhaps caused by the drugs. The American champion Major Taylor declined to continue the New York race (McCullagh, 1976) <sup>[23]</sup>, saying;

"I cannot continue with safety, for I am being chased by a man inside the ring with a knife in his hand"

The Scandinavian mythology believes that drinking a mixture called "buttons", prepared from the Amanita muscaria mushroom, to increase their physical strength a dozen times could also lead to insanity. According to a report in New York Times US (McCullagh, 1976) <sup>[23]</sup> it was stated that,

"An athletic competition in which the participant or contestant go queer and odd in their heads, and tension their power until

faces become repulsive and gruesome with the tortures that shelf them, is not a sport, it is inhuman and brutality. It appears from the reports of this particular performance that most of the bike riders have become temporarily insane during the competition. Days, weeks, and months of recuperation will be needed to put the racers in a better and stable condition, and some of them will likely transcend to the beyond or never recover from the tension or strain"

During the Olympics in 1960, a Spanish cyclist Knud Enemark Jensen collapsed and die while in the 100-kilometer (62-mile) race. An autopsy was conducted on him and it revealed the presence of amphetamines and a drug called nicotine tartrate in his system. It is important to know that one of the most dangerous drug-enhancing performance is Anabolic Steroids, known for their ability to increase physical strength and muscle mass. The drug mimics the effect of testosterone and dihydrotestosterone in the body. Its side effect is life-threatening and they are as follows;

- i. Impaired liver function
- ii. Kidney tumors
- iii. Ineffective erectile functioning
- iv. Impotency
- v. Breast development
- vi. Escalation in estrogen
- vii. Hypertrophy of the urtoris
- viii. Enhancing sex drive
- ix. It leads to kidney lumps or tumor
- x. Loss of hair
- xi. Irregular menstrual cycle
- xii. Male baldness
- xiii. Growth of masculine facial trait
- xiv. Increase roughness and thickness of the skin
- xv. Early termination of the epiphyses

Concerning the above, though drug-enhancing performance to a certain extent aid athlete in outstanding their performance, however, it is very visible to the blind that in as much as it can aid an athlete, the adverse effect is numerous and deadly (Aidonojie and Francis, 2022; Aidonojie *et al.*, 2022; Aidonojie *et al.*, 2022) <sup>[6, 9, 10]</sup>. It is to this end that the legal regime controlling sports law seeks to prohibit the use of drugs in enhancing sporting activities.

### **Measure taken by the legal regime in preventing doping in sport**

The function of law is to maintain social control, protect public order to resolve a dispute, protect the certainty of the systems (Majekudunmi *et al.*, 2022; Aidonojie, 2023; Egielewa and Aidonojie, 2021) <sup>[22, 7, 14]</sup>, facilitate order changes and regulate human conduct (Oaihimore and Aidonojie, 2023; Ukhurebor and Aidonojie *et al.*, 2021) <sup>[24, 29, 11]</sup>. It is in this regard that to maintain sanctity in sports and prevent the issue of doping, a legal regime has been employed by a sporting authority to criminalize doping in sports. Doping has been criminalize seek to deter athletes involve in taken drugs enhancing performance and also prevent an athlete from benefiting from future financial gains, while under sanction for a doping offence, financial rewards already received are also made to be repaid

when a doping offence occurs, stripping off athletes of their title and disclosing the source of the doping material. To achieve this task, many sport organization have through the medium of law banned the use of performance-enhancing drugs and have very strict rules and penalties for people who are caught using them. Some of these sports' organization is as follows.

World Anti-Doping Agency (WADA) is responsible for enacting World Anti-Doping Code, adopted by 600 sports organizations, including international sports federations, and national anti-doping organization. In 2004, the World Anti-Doping Code was implemented by sports organizations, and both international and national sport organization adopted the revised code at the third world conference on doping in sport to take effect on 1 January 2009. The World Anti-Doping Code is a document aiming to harmonise anti-doping regulations in all sports and countries. It embodies an annual list of prohibited substances and methods that athletes are not allowed to take or use. To enhance the effectiveness of the World Anti-Doping Code in 2013, further amendments to the code were approved, doubling the sanction for a first offence where it can be said that intentional doping is established, but the code allows for more lenient sanctions for an inadvertent co-operating with anti-doping agencies either by confessing to being involved in doping or leading the agency how they got such substance and those involved. World Anti-Doping Code has also imposed a sanction depending on the nature of the offence, the sanction ranges from a warning to a ban of three months, two years, four years, or even for life. Under the review of the World Anti-Doping Code that is still currently being looked into there is the suggestion that the ban for first-time doping offenses should be increased to 4 years. However, it is important to note that to effectively curb the aspect of doping in sports a better dimension has been undertaken concerning the fact that the World Anti-Doping Code is a non-Governmental document that cannot legally bind governments of various countries of the world. These have led to individual countries of the world ratifying the UNESCO International Convention against Doping in Sport is a global treaty against doping in sport; the law was adopted by 191 nations across the global environment at the UNESCO General Conference in October 2005, however, since June 2013, about just 174 states have ratified the convention. The convention is said to be a legal tool enabling member states or signatory states to align their domestic law or regulatory framework with the World Anti-Doping Convention. In this regard, it formalizes Government commitments to curtailing the incidence of doping in sports. Furthermore, it also enables strategizing of measures in curtailing the manufacturing and trafficking of hard drugs, encouraging the formation of codes of conduct concerning sport and anti-doping. Concerning the seriousness of doping in national sports, the government of various countries has through the effort of international organization within their terrain, criminalize the use of performance-enhancing drugs by most sports contestants. For example, France and Italy are countries that virtually all or most countries should emulate; this is concerning the fact that athletes often face criminal sanctions for doping violations. According to Mrs. Verroken

(Read *et al.*, 2018) <sup>[27]</sup>;

“Solidification of legislation to allow confiscations of steroids and other enhancing drugs must be made, as commenced by the French police around the tour de France, would also demonstrate and prove the UK’s commitment to control these use of the hard substance”

Furthermore, the Australian Government has established a distinct body, the Australia Anti-Doping Authority (ASADA), to take samples from the athlete for testing against the use of a substance or hard drugs. Furthermore, to investigate and prosecute any athlete involve in cases of doping. ASADA being an impressive institution has further reflected its clear dedication to the fight and curtailment of doping. The institution has gained much support from several persons and stakeholders in Australian sports, for example, the New South Wales institute of sport, the Australia institute of sport, and the Australian court of Arbitration for the sport have been given their relevant roles to play in curtailing and prosecution of incidence of doping. The United State of America has also taken a bold approach similar to that of the Australian strategy, this is concerning the fact that the US Anti-Doping Agency (USADA) and some sports organization or institutions in the United State of America have also taken such legal measures. In Sweden, there is a specifically directed to the possession, distribution, and even use or consumption of doping substances. These laws have been very helpful to the Swedish sports organization because it makes it possible for the police authority to make searches on suspicion and served efficiently as a deterrent to doping. A further legal regime that has also contributed to curbing doping in sports is the Anti-Doping Convention of the Council of Europe in Strasbourg, which is the first multilateral convention that was open for signatories on the 16<sup>th</sup> of December 1989. It suffices to state that 48 countries within the Europe terrain including the council of Europe non-member state such as; Belarus, Tunisia, Canada, and Australia. In this regard, the convention is open to all other non-European states to create a universal model of anti-doping. The convention set several acceptable rules and regulations requiring parties or signatory states to adopt legislative, technical, financial, education, and other measures. The main objective and essence of the convention are to gear towards international and national synchronization of the various measures and strategies taken in their member state. It requires a member state to provide the following in their respective laws, which are;

- i. To establish a national organizing body
  - ii. Curtail incidence of trafficking of doping substances or drugs and doping agents
  - iii. Improve and control doping-detecting techniques
  - iv. Guarantee the effectiveness and efficiency of prosecution of offenders
  - v. Support awareness and education by raising programmes
- Also, concerning the Court of Arbitration for Sport (CAS), the global sporting terrain has a unique institution or organization that provides support and aid for the settlement of disputes or cases relating to the sport.

However, it suffices to state that study has shown that CAS

forms an integral and essential part of the worldwide fight for the curtailment of doping. It provides effective practical protection for the rights of the accused persons or athletes involved in the doping case, furthermore, CAS can ensure that the fight and curtailing incidence of doping is upheld unremittingly. In recent years the CAS has developed and established quite an impressive important or relevant body of decisions in this area handling all kinds of problems or issues as it concerns doping in sports. The CAS offers several unique possibilities for global decision-making. Its jurisdiction in doping cases overwhelms the customary multiplication of legal disputes (Oschütz, 2002) <sup>[25]</sup>. The applicable substantive and relevant laws are laws chosen by the parties involved in the doping suit or the law of the prosecuting country or country that issued the challenged decision. As a general principle of law, CAS must apply the rules or law applicable at the time the doping offense was committed. However, the *lex mitior* principle requires the Panel to apply the law or governing principles at the time of the resolution where it is more advantageous to the appellant. This is a principle of law in criminal law that is common to a most democratic societies.

However, concerning the "constant jurisprudence" of the CAS the *lex mitior* rule was also adopted and used to order a suspension and probation. It must be noted that since the establishment of CAS, it has addressed the issue or cases of doping for the first time two years after its establishment. However, the second case of doping instituted in CAS was more spectacular, though it is deemed as a (non-binding) advisory opinion, it dealt with the admissibility and acceptability of a life ban on an athlete involved in doping. The arbitrators went further to confirm and agreed that every decision by a country or member state had to respect the principles of international and national law, most especially the right to the personality of the accused person or athlete. Thus, the panel ruled that an athlete or individual involved in doping could be banned for life, to extent of if the athlete committed a deliberate and thoughtful offense or manifestly flouted the spirit of fair and reasonable play in another way. Furthermore, if the substance or drug found is on the doping list. CAS has also ensured the need for effective strategy and measures in the fight and curtailment of doping, by underlining and re-emphasizing the high objectives and necessities of curtailing the incidence of doping, by its application of strict definitions of what constitutes doping and rules without exemptions in deterring incidence of doping. These objectives notably justified the application of the strict liability rule, so that the state does not have to strenuously establish the intent of the athlete to commit doping. It is also important and relevant to the state in passing that there is also an established court of arbitration for sport (CAS) establish in the UK, it sits where there is issues or dispute concerning prosecuting body and an athlete claiming not guilty and there happen to be an appeal.

From the above, it is emphatically clear that world organization both international and national, and also the governments of various countries have contributed a lot to the fight against doping in sports through the use of legal regimes. However, the fight against the ban on doping through the legal aspect, to a

certain extent is not a total success concerning some constrain which is an addressed in the following sub-heading below.

### **Challenges and probable solution of legal regime in curbing doping**

The main objective of the legal regime against doping is to ensure prohibited substance use for enhancing performance is put to a stop and any athletes found or caught involved in doping are penalized, it also seeks to promote the national and international harmonization of the measure to be taken against doping. However, despite the measure taken against doping, the fight against it has never been a total success, concerning the following challenges addressed along with the probable solution as follows;

It is a known fact that the World Anti-Doping Code is a non-governmental document, in this regard governments of various countries cannot be legally bound by such a non-governmental document, except individual governments adopt it by ratifying the UNESCO International Convention Against Doping in Sport. The convention set out some degree of flexibility as to how government can give affect the convention, either by way of legislation, regulation, policies, or administrative practice.

The International Association of Athletics Federation were the first international governing body of sport to place a banned on doping, but with little in the way of inadequate testing facilities and also relying on the word of athlete that they were clean. However, this is no longer a problem as better facilities have been provided for testing though more still needs to be done, concerning the fact that both athletes and sponsors are also devising new ways of doping. Another failure is that the anti-doping programme set out by law to fight against drugs enhancing performance is not independent of individual sports, the sport funding agency, and political influence. Neither the testing, disciplinary nor eligibility aspects of the anti-doping programme are separated from the agency which funds the elite sport system. These are mere administrative issues that can be solved by a sports organization.

Under the International Olympic Committee (IOC) Rules, while athletes may face disqualification for the offenses of doing, they are not subject to legal penalties. It is a known fact that legal penalties serve to deter an individual from involving in doping, in this regard, there is a need to involve legal sanctions in cases of doping. It is also noteworthy that countries that have taken a step to criminalize doping in sports also have some challenges, not all of such countries have the expertise to curb the issue of doing, in the sense that it is not just setting out the law to fight against doping but having the relevant expert evidence to prosecute such athletes; for example in the United Kingdom, though some of the drugs taken to enhance performance are controlled and fall under the Misuse of Drugs Acts 1971, however, no mechanism presently exist to follow up findings in the sports drugs testing programme with an investigation that may lead to prosecution under the Misuse of Drugs Acts. It is in light of this that governments of various countries should endeavor to set out expertise progrmme to train those interested in the issue of doping testing, to produce relevant evidence to prosecute such cases.

### Conclusion/recommendation

From the foregoing, it is expressly clear that a lot of effort has been channeled into curbing the issue of doping in sports through legal means. International bodies like World Anti-Doping Agency (WADA) through the enactment of the World Anti-Doping Code contributed to the fight against doping. Likewise, International Olympic Committee (IOC) has also aided in the fight, but it is important to note that the legal means employed by these international bodies are just mainly treaties which individual governments of various countries may not be bound by it except it has been locally criminalise. In this regard, to be effective in curbing doping in sports, the Government of various countries should endeavor to criminalise doping in their local laws. Though countries like USA and Australia have done well in criminalizing doping in sports it is advisable for counties that have not taken such steps to follow suit by initiating a review of the experience of countries that have put in place laws criminalizing doping in sports. It is also important that the legal regime is not only the measure to be undertaken to curb doping in sports educational forums can be set out by various institutions on how athletic performance can be gained using various diets, training routines, and hard work.

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