



HUMAN RIGHTS ISSUES OF ATHLETES WITH RESPECT TO WHEREABOUTS POLICY OF WADA

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ABSTRACT

Sport was born out of mere entertainment but it has become a real profession and greatest spectacle in the world that produces a lot of money, to make a living even for many generations. The best athletes are bestowed with honors, riches and admired as role models by society. However; those who are left midway are not precisely valued. Today's athletes always try to give their best performance and improve their physical fitness. Helping them are refined training methods and technologies. Never have athletes had more training aids at their disposal.

And never have athletes had more opportunities to cheat, mainly through the proliferation of performance-enhancing drugs. WADA is an independent foundation, which was created to promote, coordinate and monitor the fight against drugs in sport. It has issued a world anti-doping Code and has started out-of-competition testing for the athletes. Athletes need to provide Whereabouts information to the International Sports Federation (ISF) or National Anti-Doping Organization (NADO). The paper aims to discuss the human right issue of an athlete as a moral objection to Whereabouts Policy of World Anti Doping Agency.

Keywords: Human Right, Doping, WADA and NADA.

INTRODUCTION

Human Rights of an Athlete

Athletes are individual, private persons. They should get respect for their basic human rights. The human rights of an athlete should not be compromised against any justification. Their dignity should be given utmost importance which is the basis of human rights. It is also recognized as an essential ingredient in sports.

The IOC Charter states, "The goal of Olympism is to place everywhere, sport at the service of the harmonious development of man, with a view to encouraging the establishment of a peaceful society concerned with the preservation of human dignity". It also proclaims that "the practice of sport is a human right. Every individual must have the possibility of practicing sport in accordance with his or her needs".

In respect of the taking of, and testing for, drugs, the principal relevant rights are:

- Privacy and bodily integrity (testing procedures and private habits & hobbies);
- Liberty or freedom of movement;
- Right to an adequate standard of healthcare (the unknown side-effects of performance-enhancing drugs);
- Right to a fair trial (testing, hearing and sanctioning procedures)
- Right to earn a living (contractual and restraint of trade issues); and
- Right to practice one's religious beliefs.

All of these rights are covered in human rights instruments - international, regional and domestic, which are adopted by all countries. And so, they ensure the protection of those rights to all people within their jurisdictions.

World Anti-Doping Agency (WADA)

It is an independent foundation, created by the International Olympic Committee (IOC) on November 10, 1999, in Lausanne, Switzerland. Its current President is Craig Reedie and in 2002, its headquarters were shifted to Montreal, Canada. In 2004, the World Anti-Doping Code was implemented by sports organizations across all sports and all countries for the first time. More than 600 sports organizations have adopted the Code till date. Revisions to the World Anti-Doping Code were adopted at the Third World Conference on Doping in Sport in November 2007. And after a series of changes, the final draft of the code was approved on 15 November 2013.

Its governing bodies compose, in equal parts, by representatives from the sporting movement (including athletes) and governments of the world. The agency's key activities include scientific research, education, development of anti-doping capacities and monitoring of the World Anti-Doping Code is a document that provides regulations regarding



anti-doping for all sports and countries. An annual list is provided in this code, of all the prohibited substances and methods that sportspersons are not allowed to take or use.

Whereabouts Policy of WADA

Whereabouts are information provided by a limited number of top elite athletes about their location to the International Sports Federation (IF) or National Anti-Doping Organization (NADO), so the organizations can conduct doping test at that very place. The two major changes that resulted from the revision of the World Anti-Doping Code are widely criticized from sports organizations all over the world.

It requires top-level athletes included in the registered testing pool of either their IF or NADO to specify 1 hour each day (between 6 a.m. and 11 p.m.) during which they can be located at a specified location for testing. These athletes do not have to identify the 60-minute time-slot at a home address, but they can if they wish to. Previously this was a 24/7 requirement which was formally rejected by The Federation Internationale de Football Association (FIFA) and the Union of European Football Associations (UEFA). They also state that out-of-competition drug testing for players on vacation is unacceptable because it is an invasion of privacy.

Any combination of 3 missed tests or failure to provide accurate whereabouts information within an 18-month period now leads to the opening of a disciplinary proceeding by the ADO with jurisdiction over the athlete. Sanctions range between 1 and 2 years depending on the circumstances of the case. Previously this was discretionary for ADOs with a suggested range of between 3 months and 2 years”.

Violation of Human Rights

Ex-BCCI president Shashank Manohar explained the three reasons. "One is that some players are under security cover and cannot disclose their day-to-day movements. Secondly, they feel that the clause constitutes an invasion of their privacy. Thirdly, the Indian Constitution gives them the right to privacy." De Saedeleer a Brussels-based solicitor who specializes in sports law believes the whereabouts system contradicts "fundamental human rights laws", in particular, Article 8 of the European Convention on Human Rights, which deals with an individual's right to privacy.

The athlete needs to disclose, for example, his/her daily routines, private hobbies or religious practices. The athlete has to provide his residences and the places where he will conduct his regular activities, training, rehab or work. This constitutes an invasion of one's privacy.

So the question arises, whether the interference in an athlete's private life in the name of whereabouts rules can be justified.

The protection of the "spirit of sports" and the establishment of a "level playing field" are the major arguments for the anti-doping fight. Yet, the spirit of sports also referred to as "Olympism", is only one rationale. "Doping" has become a significant issue in nowadays society. Morally it is reprehensible and undermines the credibility of sport as well as its social and economic standing. Moreover, in several countries doping offenses has been integrated into national legislation and in some states, they are even part of the criminal law.

Anti-doping rules are absolutely necessary for sports as per sporting, moral, ethic, business, health, social considerations. It is necessary to ensure an effective anti-doping fight; otherwise, sports as a whole would be called into question. From this point of view, an intelligent testing system with regular out-of-competition controls is absolutely essential.

The main complaints about WADA's whereabouts system address the embodiment of the rules. Therefore, the legal challenge of the opposing parties seems to be based on questions of necessity, adequacy, and proportionality of whereabouts in relation to their aim. The question occurs if the methods (rules) to achieve it are proportional and adequate.

CONCLUSION

Every policy has its pros and cons. On one side WADA is trying to control widespread doping in sports. On the other hand, the athletes are protesting for their human rights violation. Even though doping has to be stopped for providing a level playing field and to promote the principles of sport. All players should get a chance to show their caliber and not the caliber of the medicines. Recently, a convicted Austrian cyclist made a comment, stating that "athletes of summer sports dope in winter, and the other way around". So it is necessary to provide a coherent system of out-of-competition testing in the anti-doping fight. There are diverse arguments whether the current system is appropriate and proportional



for the purpose or whether goes beyond what is necessary. However, athletes themselves have to contribute to guarantee this right.

Today, Sport is an important aspect of the life; indeed, a way of life itself, and for all athletes, recent amendments in the whereabouts policy of WADA, which includes measures for strengthening the global fight against doping in sport are considered important. So, WADA needs to take steps in order to ensure that the human rights of an athlete should not be violated. It is not possible for anyone to provide all information of their whereabouts around the year. The players are also human beings and they also need some privacy. Also, the very aim of IOC is getting violated which is the preserving the dignity of an individual.

As globalization goes deeper how to carefully safeguard ethical values of sport at the same time the rights of athletes has become a big challenge. The process requires openness to external review and criticism, and a willingness to hear a diverse array of voices. It requires a careful balance between the actions required to protect the Athlete's Rights and the current policy of doping.

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