

Anti-Doping Awareness in Sports

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Lecture -35

Arbitration in Doping

Good morning friends, and welcome to today's lecture on arbitration and anti-doping. This is a continuation of week 7 lecture, the last lecture in this week, lecture number 5. I am Professor Dobson Dominic, a sports medicine doctor. Just a quick recap of week seven: we started with the doping control, the strategies adopted by the World Anti-Doping Agency, the main one being the Athlete Biological Passport. Then we looked into the newer forms of doping, how we can control it, that is, the genetic doping.

Then we looked into the legal implications, especially fought in the Court of Arbitration in Sports. Now we will look into, in detail, the implications; that is, arbitrations and anti-doping. So in this lecture, we look into a recap of the WADA Code, why arbitration is necessary, the importance of the Court of Arbitration, and we will conclude with some case examples.

So WADA Code, as we already see, is commonly referred to as "the Code", and was established by WADA in 2003. It provides a standardized set of anti-doping rules for athletes and sporting organizations worldwide. The Code aims to protect athletes' fundamental right to participate in a clean sport; that is, doping-free sport. It also promotes a unified approach to anti-doping policies across different sports and countries. So, what is arbitration? Arbitration is basically a dispute resolution mechanism which is held outside the court. So arbitration in sports has a role in sports governance.

The importance of anti-doping arbitration ensures impartiality and also a timely resolution of doping cases, because for any doping cases we cannot go to a regular court; you know it will take a very long process. That is why there is a process called arbitration, where there is a dispute resolution mechanism which is held outside the court, usually in a Court of Arbitration for Sports. So, looking at the anti-doping framework, the key organizations are obviously the World Anti-Doping Agency, which is the main one, followed by the National Anti-Doping Organizations, and also all the international federations which come under WADA. So, the role of arbitration in anti-doping: it

resolves disputes between athletes and regulatory bodies. So if there is a dispute between an individual athlete and the respective association, the arbitration can help in that. It ensures consistent application of anti-doping rules.

It protects athletes' rights while maintaining the sport's integrity. Why is arbitration necessary in sport? Mainly in anti-doping cases, if you see, it involves complex issues like interpreting scientific evidence, assessing the athlete's intent to dope, and also a balance between strict liability; we looked into the strict liability in the previous lecture, along with the fairness in athlete participation. So, the strict liability also has to be given in a fair manner.

So, all this makes arbitration necessary, and arbitration allows specialized panels to address these matters in detail, providing expertise and transparency in the decision-making process. It also helps avoid lengthy court proceedings. If you go to the court, there is obviously a very long, tedious process because these sports cases might not be a priority to the court. So, to avoid a lengthy court process, arbitration is necessary. Again, it can be particularly important for athletes facing time-sensitive sanctions. So, if an athlete is given two years, three years, or even more than that, that means a big chunk of his or her professional life is taken away. So that's why a time-bound resolution is very important, and that is where arbitration is required. So now, coming to the Court of Arbitration for Sport, which is the primary body responsible for arbitrating anti-doping cases on an international level.

It was established in 1984 by the International Olympic Committee, and the Court of Arbitration for Sport has become the preeminent forum for resolving disputes in sport, including doping cases. So, we have seen the four-step process, including starting with the appeal, then the hearing, which includes evidence presentation and expert testimonies, then the decision-making, where independent arbitrators decide based on facts and legal principles, and finally, the sanctions are given or sanctions are reduced, so enforcement of the decision happens. What are the types of cases handled by arbitration panels? Arbitration panels handle several cases, including appeals against doping sanctions, challenges to testing procedures, and also disputes over the interpretation of anti-doping rules. The athlete can challenge that, saying that the testing procedure was not proper. They might also challenge the interpretation of anti-doping rules.

You have 11 anti-doping rule violations. The interpretation of that can be challenged by the athletes. Panels also evaluate cases involving exceptional circumstances, such as unintentional doping; say, the athlete has consumed some genuine sports supplement which was procured or given by a proper source; still, that supplement had some adulteration with a banned substance like anabolic steroids. Then it comes under

unintentional doping or issues related to specific substances. All these cases are handled by arbitration panels.

Arbitration panels are also important to ensure consistency and fairness because the anti-doping organizations of different countries, there is still no 100% uniformity. So, anti-doping arbitration helps maintain consistency in sanctions and interpretation of the World Anti-Doping Code. By relying on precedents; things which have already happened, and established principles, arbitration panels provide a uniform approach to anti-doping decisions across different sports and countries. This helps in protecting the integrity of sports and competition as a whole, and also fosters trust in the anti-doping system. So, what is the role of the World Anti-Doping Agency in the arbitration? WADA supports and promotes arbitration in anti-doping by setting standards and also guidelines for the arbitrators to follow.

WADA also participates in the Court of Arbitration for Sport cases, either as a party or as an observer, ensuring that its WADA Code is correctly applied and advocating for fair and effective anti-doping practices. Now, what are the challenges faced in this anti-doping arbitration? There are several challenges, especially variability in national anti-doping systems. As I said, there is not much consistency in the national anti-doping system followed by one country compared to another. Balancing fairness and stringent rules, so there should be fairness in the sanction, and also it should be strict enough.

There should be a delicate balance in the sanctions given to the athlete. The cost of arbitration for athletes is also high, and that is an important challenge. Also, the most important one is the complexity of scientific evidence. When you deal with gene doping or the newer forms of doping, there is a lot of complexity involved, and that is a big challenge for the arbitration.

Now, let's look into one important case study. This was in 2016, when the famous tennis athlete Maria Sharapova was caught using a banned substance: Meldonium, which is a metabolic modulator involved in fat oxidation. Athlete took the drug since 2006, as she was prescribed by her physician. So, this comes under article 10.5. She was prescribed this medication for a cold and inflammatory illness. Meldonium is a performance-enhancing drug. It enhances athletes' endurance and also helps in recovery. So, when she was caught with this banned substance, she was given a two-year ban by the World Anti-Doping Agency and the International Tennis Federation, and they banned her from tennis.

But she, being an elite athlete, fought the case and appealed. She appealed with the arbitrators and asked the arbitrating panel to decrease her ineligibility because she said she was not negligent for the offense, and the fault lies with the physician who gave the medication without the awareness about the banned list. Subsequently, after a thorough

deliberation, the arbitrators decided to reduce the sentence and reduce the suspension. The panel accepted the athlete's assertion of no serious fault or negligence from the athlete's side, and they reduced her penalty from the two-year ban to a 15-month ban. The important point to note here is, as they still maintained a strict sanctioned penalty, they didn't completely remove her ban but just reduced her penalty from 18 months to 15 months.

So, only a 3-month reduction is given after her appeal. This is something the court of arbitrators does. The future of anti-doping arbitration lies in the advancement in technology. Artificial intelligence in doping tests will be the future. Strengthening the independence of the Court of Arbitration for Sport will ensure consistency in several countries' appeal processes and global harmonization of anti-doping laws. What do you mean by that? There should be consistency in all the countries' national anti-doping agencies.

So, the take-home message is: arbitration ensures fairness, integrity, and justice to enable clean sport, and it is a vital tool for enforcing anti-doping rules globally. More stringent efforts are needed to overcome challenges and also uphold the athletes' rights so that they are not victimized over an extended period of time. These are the references for the lecture. Predominantly, you can look into all this through the WADA website and the WADA Anti-Doping Code. Also, please refer to the National Anti-Doping Rules 2021 and the National Anti-Doping Act 2022.

Thank you for listening. Jai Hind.